

**Amendment - 1st Reading-white - Requested by: Greg Kmetz - (H) Energy, Technology and Federal Relations**

- 2023

68th Legislature 2023

Drafter: Trevor Graff, 406-444-4975

HB0643.001.001

1 HOUSE BILL NO. 643

2 INTRODUCED BY J. KASSMIER

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING NET METERING LAWS; INCREASING THE CAP ON  
5 NET METERING SYSTEMS; REQUIRING THE PUBLIC SERVICE COMMISSION TO ESTABLISH  
6 SEPARATE RATE CLASSIFICATIONS FOR CUSTOMER GENERATORS; REQUIRING A UTILITY TO  
7 CONDUCT A COST-BENEFIT STUDY; PROVIDING RULEMAKING AUTHORITY; REVISING THE  
8 DEFINITION OF "NET METERING SYSTEM"; AMENDING SECTIONS 69-8-103, ~~69-8-601~~, 69-8-602, 69-8-  
9 610, 69-8-611, AND 69-8-612, MCA; AMENDING SECTION 13, CHAPTER 248, LAWS OF 2017; AND  
10 PROVIDING EFFECTIVE DATES."

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

13  
14 **Section 1.** Section 69-8-103, MCA, is amended to read:

15 **"69-8-103. Definitions.** As used in this chapter, unless the context requires otherwise, the following  
16 definitions apply:

17 (1) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing  
18 vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest  
19 in or right to transition property. The term also includes an entity, corporation, public authority, partnership,  
20 trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as security, the  
21 assignee's interest in or right to transition property.

22 (2) "Board" means the board of investments created by 2-15-1808.

23 (3) "Carbon offset provider" means a qualified third-party entity that arranges for projects or actions  
24 that either reduce carbon dioxide emissions or increase the absorption of carbon dioxide.

25 (4) "Cooperative utility" means:

26 (a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

27 (b) an existing municipal electric utility as of May 2, 1997.

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- 1           (5)     "Cost-effective carbon offsets" means any combination of certified actions that are taken to  
2 reduce carbon dioxide emissions or that increase the absorption of carbon dioxide, which collectively do not  
3 increase the cost of electricity produced annually on a per-megawatt-hour basis by more than 2.5%, including:
- 4           (a)     actions undertaken by the applicant that reduce carbon dioxide emissions or that increase the  
5 absorption of carbon dioxide from a facility or equipment used to generate electricity; or  
6           (b)     actions by a carbon offset provider on behalf of the applicant.
- 7           (6)     "Customer-generator" means a user of a net metering system.
- 8           (7)     "Distribution facilities" means those facilities by and through which electricity is received from  
9 transmission facilities and distributed to a retail customer and that are controlled or operated by a utility.
- 10          (8)     "Electricity supply costs" means the actual costs incurred in providing electricity supply service  
11 through power purchase agreements, demand-side management, and energy efficiency programs, including  
12 but not limited to:
- 13          (a)     capacity costs;  
14          (b)     energy costs;  
15          (c)     fuel costs;  
16          (d)     ancillary service costs;  
17          (e)     transmission costs, including congestion and losses;  
18          (f)     planning and administrative costs; and  
19          (g)     any other costs directly related to the purchase of electricity and the management and  
20 provision of power purchase agreements.
- 21          (9)     "Electricity supply resource" means:  
22          (a)     contracts for electric capacity and generation;  
23          (b)     plants owned or leased by a utility or equipment used to generate electricity;  
24          (c)     customer load management and energy conservation programs; or  
25          (d)     other means of providing adequate, reliable service to customers, as determined by the  
26 commission.
- 27          (10)    "Electricity supply service" means the provision of electricity supply and related services

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1 through power purchase agreements, the acquisition and operation of electrical generation facilities, demand-  
2 side management, and energy efficiency programs.

3 (11) "Financing order" means an order of the commission adopted in accordance with 69-8-503 that  
4 authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

5 (12) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not  
6 limited to:

7 (i) distribution;

8 (ii) connection;

9 (iii) disconnection; and

10 (iv) termination rates and charges that are authorized by the commission in a financing order to  
11 permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the  
12 transition costs and of acquiring transition property through a plan approved by the commission in the financing  
13 order, including the costs of issuing, servicing, and retiring transition bonds.

14 (b) If requested by the utility in the utility's application for a financing order, fixed transition amounts  
15 must include nonbypassable rates or charges to recover federal and state taxes in which the transition cost  
16 recovery period is modified by the transactions approved in the financing order.

17 (13) "Generation assets cost of service" means a return on invested capital and all costs associated  
18 with the acquisition, construction, administration, operation, and maintenance of a plant or equipment owned or  
19 leased by a public utility and used for the production of electricity.

20 (14) "Interested person" means a retail electricity customer, the consumer counsel established in 5-  
21 15-201, the commission, or a utility.

22 (15) "Large customer" means, for universal system benefits programs purposes, a customer with an  
23 individual load greater than a monthly average of 1,000 kilowatt demand in the previous calendar year for that  
24 individual load.

25 (16) "Local governing body" means a local board of trustees of a rural electric cooperative.

26 (17) "Low-income customer" means those energy consumer households and families with incomes  
27 at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

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1 (18) "Net metering" means measuring the difference between the electricity distributed to and the  
2 electricity generated by a customer-generator that is fed back to the distribution system during the applicable  
3 billing period.

4 (19) "Net metering system" means a facility for the production of electrical energy that:

5 ~~(a) uses as its fuel solar, wind, or hydropower;~~

6 ~~(b)(a)~~ has a generating capacity of not more than ~~50~~ 100 kilowatts;

7 ~~(c)(b)~~ is located on the customer-generator's premises;

8 ~~(d)(c)~~ operates in parallel with the utility's distribution facilities; and

9 ~~(e)(d)~~ is intended primarily to offset part or all of the customer-generator's requirements for electricity.

10 (20) "Nonbypassable rates or charges" means rates or charges that are approved by the  
11 commission and imposed on a customer to pay the customer's share of transition costs or universal system  
12 benefits programs costs even if the customer has physically bypassed either the utility's transmission or  
13 distribution facilities.

14 (21) "Public utility" has the meaning of a public utility regulated by the commission pursuant to Title  
15 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.

16 (22) "Qualifying load" means, for payments and credits associated with universal system benefits  
17 programs, all nonresidential demand-metered accounts of a large customer within the utility's service territory in  
18 which the customer qualifies as a large customer.

19 (23) "Retail customer" means a customer that purchases electricity for residential, commercial, or  
20 industrial end-use purposes and does not resell electricity to others.

21 (24) "Transition bondholder" means a holder of transition bonds, including trustees, collateral  
22 agents, and other entities acting for the benefit of that bondholder.

23 (25) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust  
24 certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer  
25 that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition  
26 bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition  
27 property.

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1           (26) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to  
2 pay the customer's share of transition costs.

3           (27) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending  
4 when a utility customer does not have any liability for payment of transition costs.

5           (28) "Transition costs" means:

6           (a) a public utility's net verifiable generation-related and electricity supply costs, including costs of  
7 capital, that become unrecoverable as a result of the implementation of federal law requiring retail open access  
8 or customer choice or of this chapter;

9           (b) those costs that include but are not limited to:

10           (i) regulatory assets and deferred charges that exist because of current regulatory practices and  
11 can be accounted for up to the effective date of the commission's final order regarding a public utility's transition  
12 plan and conservation investments made prior to universal system benefits charge implementation;

13           (ii) nonutility and utility power purchase contracts executed before May 2, 1997, including  
14 qualifying facility contracts;

15           (iii) existing generation investments and supply commitments or other obligations incurred before  
16 May 2, 1997, and costs arising from these investments and commitments;

17           (iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power  
18 purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to  
19 issuing transition bonds; and

20           (v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated  
21 federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit  
22 customers.

23           (29) "Transition property" means the property right created by a financing order, including without  
24 limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue,  
25 collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts  
26 that are the subject of a financing order, including those nonbypassable rates and other charges and fixed  
27 transition amounts that are authorized by the commission in the financing order to recover transition costs and

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1 the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition  
2 property, including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the  
3 transition property before the utility's sale or transfer or any other right created under this section or created in  
4 the financing order and assignable under this chapter or assignable pursuant to a financing order is only a  
5 contract right.

6 (30) "Transmission facilities" means those facilities that are used to provide transmission services  
7 as determined by the federal energy regulatory commission and the commission and that are controlled or  
8 operated by a utility.

9 (31) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a  
10 customer to pay the customer's share of universal system benefits programs costs.

11 (32) "Universal system benefits programs" means public purpose programs for:

12 (a) cost-effective local energy conservation;

13 (b) low-income customer weatherization;

14 (c) renewable resource projects and applications, including those that capture unique social and  
15 energy system benefits or that provide transmission and distribution system benefits;

16 (d) research and development programs related to energy conservation and renewables;

17 (e) market transformation designed to encourage competitive markets for public purpose  
18 programs; and

19 (f) low-income energy assistance.

20 (33) "Utility" means any public utility or cooperative utility."  
21

22 **Section 2. Section 69-8-601, MCA, is amended to read:**

23 ~~"69-8-601. — Legislative findings. The legislature finds that it is in the public interest to promote net~~  
24 ~~metering because it:~~

25 ~~(1) — encourages private investment in renewable energy resources;~~

26 ~~(2) — stimulates Montana's economic growth; and~~

27 ~~(3) — enhances the continued diversification of the energy resources used in Montana."~~

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2           **Section 2.** Section 69-8-602, MCA, is amended to read:

3           " ~~69-8-602. (Temporary) Utility net metering requirements.~~ A utility shall:

4           ~~(1) allow net metering systems to be interconnected using a standard kilowatt-hour meter capable of~~  
5 ~~registering the flow of electricity in two directions, unless the commission determines, after appropriate notice~~  
6 ~~and opportunity for comment:~~

7           ~~(a) that the use of additional metering equipment to monitor the flow of electricity in each direction is~~  
8 ~~necessary and appropriate for the interconnection of net metering systems, after taking into account the~~  
9 ~~benefits and costs of purchasing and installing additional metering equipment; and~~

10           ~~(b) how the costs of net metering are to be allocated between the customer-generator and the utility;~~  
11 ~~and~~

12           ~~(2) charge the customer-generator a minimum monthly fee that is the same as other customers of the~~  
13 ~~electric utility in the same rate class. The commission shall determine, after appropriate notice and opportunity~~  
14 ~~for comment if:~~

15           ~~(a) the utility will incur direct costs associated with interconnecting or administering net metering~~  
16 ~~systems that exceed any offsetting benefits associated with these net metering systems; and~~

17           ~~(b) public policy is best served by imposing these costs on the customer-generator, rather than~~  
18 ~~allocating these costs among the utility's entire customer base.~~

19           **69-8-602. (Effective on occurrence of contingency) Utility net metering requirements.** (1) A  
20 utility shall allow net metering systems to be interconnected using a standard kilowatt-hour meter capable of  
21 registering the flow of electricity in two directions.

22           (2) (a) If the The commission shall determines determine, after appropriate notice and opportunity  
23 for comment, that whether or not the use of additional metering equipment to monitor the flow of electricity in  
24 each direction is necessary and appropriate for the interconnection of net metering systems, the commission  
25 may establish additional metering equipment requirements.

26           (b) The commission shall consider the benefits and costs to a public utility and a customer-  
27 generator of purchasing and installing additional metering equipment and how the costs of additional net

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1 metering equipment are to be allocated between the customer-generator and the public utility.

2 (3) (a) The commission shall charge the customer-generator an appropriate rate pursuant to 69-3-  
3 306.

4 (b) ~~Notwithstanding 69-8-610 through 69-8-612, if the commission determines, after appropriate~~  
5 ~~notice and opportunity for comment, that a public utility is incurring direct costs associated with interconnecting~~  
6 ~~or administering net metering systems that exceed any offsetting benefits associated with these net metering~~  
7 ~~systems, the commission may impose these costs on the customer-generator, rather than allocating these~~  
8 ~~costs among the public utility's entire customer base.~~

9 (4) The aggregate generating capacity of net metering ~~may not exceed~~ must reach 5% of a utility's  
10 forecasted summer peak load as defined in the most recent integrated resource plan filed with the commission  
11 until separate rate classifications for customer generators are established in accordance with 69-8-611."

12

13 **Section 3.** Section 69-8-610, MCA, is amended to read:

14 "**69-8-610. Value of distributed energy resources analysis**~~Cost-benefit~~ **Cost of service analysis**  
15 **for customer generators.** (1) Before April 1, 2018 ~~September 30, 2025~~2026, a public utility shall:

16 (a) ~~conduct a study of the costs and benefits of~~ file a cost of service study with the commission that  
17 reflects customer generators as defined in 69-8-103; and conduct a value of distributed energy resources  
18 study.

19 (b) ~~submit the study to the commission for the purpose of making determinations in accordance with a~~  
20 ~~public utility's general rate case pursuant to 69-8-611.~~

21 (2) The utility may engage independent consultants or advisory services to complete ~~a cost-benefit~~  
22 ~~study~~ the cost of service study a value of distributed energy resources study. Costs are recoverable in rates.

23 (3) ~~After May 3, 2017, the commission may establish minimum information required for inclusion in a~~  
24 ~~study conducted by a public utility in accordance with subsection (1)(a)."~~

25

26 **Section 4.** Section 69-8-611, MCA, is amended to read:

27 "**69-8-611. Classification of service -- net metering customers.** (1) After a study is completed in

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1 accordance with 69-8-610 and subject to subsections (2) and through (4) of this section, if the commission finds  
2 that ~~customer generators should be served under a separate classification of service as part of a public utility's~~  
3 ~~general rate case, it shall may~~ establish appropriate appropriate separate classifications and rates based on the  
4 commission's findings relative to:

5 ~~(a) the utility system benefits of the net metering resource; and~~

6 ~~(b) (a) the utility system benefits of the net metering resource; and~~

7 ~~(b) the cost to provide service to customer-generators.~~

8 (2) ~~The commission may, based on differences between net metering systems, establish~~  
9 ~~subclassifications and rates as part of a public utility's general rate case. The commission may, based on~~  
10 ~~differences between net metering systems, establish subclassifications and rates~~ Rates established in this  
11 ~~section shall not include subsidies from public utility customers who do not use net metering systems to~~  
12 ~~customer generators.~~

13 (3) The commission may approve separate rates for customer-generators' production and  
14 consumption and require separate metering subject to 69-8-602 if it finds it is in the public interest and as part  
15 of a public utility's ~~general rate case~~ filing.

16 (4) If a public utility files a general rate case in accordance with Title 69, chapter 3, the general rate  
17 case must include the study required in accordance with 69-8-610 and be used by the commission to meet the  
18 requirements of the review of classifications of service required in this section."

19

20 **Section 5.** Section 69-8-612, MCA, is amended to read:

21 **"69-8-612. New classifications of service -- grandfather clause.** (1) Except as provided in  
22 subsection (2), if the commission approves new classifications of service for customer-generators in  
23 accordance with 69-8-611, the new classifications apply only to customer-generators interconnecting net  
24 metering systems ~~on or after the date on which the commission adopts a final order that are implemented and~~  
25 ~~connected~~ 6 months after the date on which the commission adopts a final order implementing the new  
26 classifications.

27 (2) (a) A customer-generator that interconnects a net metering system prior to commission

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1 approval of new classifications of service for customer-generators may accept service under the new  
2 classifications of service at any time.

3 (b) After accepting service under a new classification of service, the customer-generator may not  
4 return to its original classification of service."

5

6 **Section 6.** Section 13, Chapter 248, Laws of 2017, is amended to read:

7 **"Section 13. Effective date -- contingency -- contingent voidness.** (1) Except as provided in  
8 subsection (2), [this act] is effective on passage and approval.

9 (2) (a) [Sections 5, 6, 9(2), 10(2), and 12] are effective on the date that the public service  
10 commission issues an order making a determination that customer-generators are being served under a  
11 separate an appropriate classification of service in accordance with [section 2].

12 (b) [Sections 9(1), 10(1), and 11] are void on occurrence of the contingency in subsection (2)(a).

13 (c) The public service commission shall provide a copy of the order to the code commissioner  
14 within 10 days of issuing the order.

15 (d) [Section 5] is effective on passage and approval of [LC 0183 of the 2023 session]."

16

17 **NEW SECTION. Section 7. Effective dates -- contingent voidness.** (1) Except as provided in  
18 subsection (2), [this act] is effective on passage and approval.

19 (2) [Section 1] is effective on the date that the public service commission issues an order making a  
20 determination that customer-generators are being served under a separate classification of service in  
21 accordance with [section ~~32~~].

22 (3) [Section ~~3(4)2(4)~~] is void on the date that the public service commission issues an order  
23 making a determination that customer-generators are being served under a separate classification of service in  
24 accordance with [section ~~32~~].

25 (4) The public service commission shall provide a copy of the order to the code commissioner  
26 within 10 days of issuing the order.

27

- END -