

HOUSE BILL NO. 474

INTRODUCED BY P. SLITER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO ELECTRICAL ENERGY; ~~INCREASING THE WHOLESALE ENERGY TRANSACTION TAX; CREATING A WINDFALL PROFITS TAX; PROVIDING THAT A PORTION OF THE INCREASED TAX MUST BE USED FOR LOW-INCOME ENERGY ASSISTANCE; PROVIDING A TAX CREDIT FOR THE DEFAULT SUPPLIER; ALLOWING CUSTOMERS WHO ELECTED AN ALTERNATIVE ELECTRICAL ENERGY SUPPLIER ~~A LIMITED AN~~ OPPORTUNITY TO RECEIVE ELECTRICAL ENERGY FROM THE DEFAULT SUPPLIER; PROVIDING THAT ELECTRICAL ENERGY PURCHASED FROM THE DEFAULT SUPPLIER BY A DEFAULT CUSTOMER MUST BE USED FOR A CONSUMPTIVE PURPOSE AND MAY NOT BE REMARKETED; ~~REQUIRING THE PUBLIC SERVICE COMMISSION TO TAKE THE TAX CREDIT FOR THE DEFAULT SUPPLIER INTO CONSIDERATION WHEN ESTABLISHING RATES FOR THE DEFAULT SUPPLIER; AUTHORIZING THE PUBLIC SERVICE COMMISSION TO USE THE PROCEEDS OF THE WINDFALL PROFITS TAX TO CONTRACT FOR THE PURCHASE OF ELECTRICAL ENERGY FOR SALE TO MONTANA CUSTOMERS ON BEHALF OF THE DEFAULT SUPPLIER; AUTHORIZING THE BOARD OF INVESTMENTS TO INVEST IN NEW GENERATION PROJECTS THAT MEET CERTAIN CRITERIA; PROVIDING ELIGIBILITY CRITERIA FOR THE PROJECTS, INCLUDING LONG-TERM CONTRACTS WITH THE DEFAULT SUPPLIER OR A MONTANA INDUSTRY FOR THE PURCHASE OF THE ELECTRICAL ENERGY GENERATED BY THE PROJECTS; REQUIRING A PLEDGE OF THE CONTRACT PROCEEDS AS A REPAYMENT OPTION FOR THE INVESTMENTS; MAKING THE STATE A PARTY TO THE CONTRACT IN THE EVENT OF DEFAULT IN PAYMENT BY DEFAULT SUPPLIER; EXTENDING THE DURATION OF THE UNIVERSAL SYSTEM BENEFITS CHARGE; MODIFYING THE DEFAULT SUPPLIER LICENSING RULES; CREATING A CONSUMER ELECTRICITY SUPPORT PROGRAM; PROVIDING THAT AN ELECTRICITY BUYING COOPERATIVE MAY SERVE AS A SUPPLIER OR PROMOTER OF ALTERNATIVE ENERGY AND CONSERVATION PROGRAMS; DEFINING "ELECTRICITY SUPPLY COSTS"; CLARIFYING THE DEFINITION OF "UNIVERSAL SYSTEM BENEFITS PROGRAMS" TO INCLUDE IRRIGATED AGRICULTURE; PROVIDING FOR PROCEDURES FOR A TRANSITION TO CUSTOMER CHOICE; PROVIDING FOR THE DEFAULT SUPPLIER'S RECOVERY OF ELECTRICITY SUPPLY COSTS; REVISING THE UNIVERSAL SYSTEM BENEFITS PROGRAMS FUNDING LEVEL TO INCLUDE IRRIGATED AGRICULTURE; ESTABLISHING A MONTANA POWER AUTHORITY; ALLOWING THE AUTHORITY TO PURCHASE, CONSTRUCT, AND OPERATE ELECTRICAL GENERATION FACILITIES OR ELECTRICAL ENERGY~~~~

TRANSMISSION OR DISTRIBUTION SYSTEMS AND TO ENTER INTO JOINT VENTURES FOR THESE PURPOSES; AUTHORIZING THE BOARD OF EXAMINERS TO ISSUE REVENUE BONDS FOR THE MONTANA POWER AUTHORITY TO ACQUIRE ELECTRICAL GENERATION FACILITIES AND TO BUILD ELECTRICAL ENERGY TRANSMISSION OR DISTRIBUTION SYSTEMS; PROVIDING THAT THE PRINCIPAL AND INTEREST ON THE BONDS IS PAYABLE FROM THE SALE OF ELECTRICAL ENERGY FROM THE FACILITIES AND FROM ELECTRICAL ENERGY TRANSMISSION AND DISTRIBUTION CHARGES; AMENDING SECTIONS 15-72-104, 15-72-106, SECTION SECTIONS 17-7-502, 35-19-104, 69-8-103, 69-8-104, 69-8-201 AND 69-8-416, 69-8-203, 69-8-210, 69-8-211, 69-8-402, 69-8-403, 69-8-412, AND 69-8-414, 69-8-211, AND 69-8-403; MCA; REPEALING SECTIONS 35-19-103, 69-8-416, AND 69-8-417, MCA; AND PROVIDING AN EFFECTIVE DATE DATES AND A TERMINATION DATE; AND PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN EFFECTIVE DATE."

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

~~Section 1.~~ Section 15-72-104, MCA, is amended to read:

~~"15-72-104. Wholesale energy transaction tax -- rate of tax -- exemptions -- cost recovery.~~ (1) (a) Except as provided in subsection (3), a wholesale energy transaction tax is imposed upon electricity transmitted within the state as provided in this section. The tax is imposed at a rate of 0.015 0.5 cent per kilowatt hour of electricity transmitted by a transmission services provider in the state.

~~(b) For electricity produced in the state for delivery outside of the state, the taxpayer is the person owning or operating the electrical generation facility producing the electricity. The transmission services provider shall collect the tax from the person based upon the kilowatt hours introduced onto transmission lines from the electrical generation facility. The amount of kilowatt hours subject to tax must be reduced by 5% to compensate for transmission line losses.~~

~~(c) For electricity produced in the state for delivery within the state, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider. The taxpayer may apply for a refund for overpayment of taxes pursuant to 15-72-116.~~

~~(d) For electricity produced outside the state for delivery inside the state, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider.~~

~~———— (e) For electricity delivered to a distribution services provider that is a rural electric cooperative for delivery to purchasers that have opted for customer choice under the provisions of Title 69, chapter 8, part 3, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based on the amount of kilowatt hours of electricity delivered to the distribution services provider that is attributable to customers that have opted for customer choice.~~

~~———— (f) For electricity delivered to a distribution services provider that prior to May 2, 1999, was owned by a public utility as defined in 69-3-101, the tax is imposed on the successor distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider.~~

~~———— (2) (a) If more than one transmission services provider transmits electricity, the last transmission services provider transmitting or delivering the electricity shall collect the tax.~~

~~———— (b) If the transmission services provider is an agency of the United States government, the distribution services provider receiving the electricity shall self-assess the tax subject to the provisions of this part.~~

~~———— (c) If an electrical generation facility located within the state produces electricity for sale inside and outside the state, sales within the state are considered to have come from electricity produced within the state for purposes of the tax imposed by this section.~~

~~———— (3) (a) Electricity transmitted through the state that is not produced or delivered in the state is exempt from the tax imposed by this section.~~

~~———— (b) Electricity produced in the state by an agency of the of the United States government for delivery outside of the state is exempt from the tax imposed by this section.~~

~~———— (c) Electricity delivered to a distribution services provider that is a municipal utility described in 69-8-103(5)(b) or a rural electric cooperative organized under the provisions of Title 35, chapter 18, is exempt from the tax imposed by this section.~~

~~———— (d) Electricity delivered to a purchaser that receives its power directly from a transmission or distribution facility owned by an entity of the United States government on or before May 2, 1997, or electricity that is transmitted exclusively on transmission or distribution facilities owned by an entity of the United States government on or before May 2, 1997, is exempt from the tax imposed by this section.~~

~~———— [(e) Electricity delivered by a distribution services provider to a customer with loads of 1,000 kilowatts or greater that was first served by a public utility after December 31, 1996, is exempt from the tax imposed by this section, provided that the customer purchases the electricity pursuant to a contract or contracts that establish the purchase price or prices of electricity. The exemption allowed by this subsection (3)(e) does not apply to electricity~~

purchased under a renewal or extension of an existing contract or existing contracts.]

~~———— (4) A distribution services provider is allowed to recover the tax imposed by this section and the administrative costs to comply with this part in its rates. (Bracketed language terminates January 1, 2003--sec. 40, Ch. 556, L. 1999.)"~~

~~———— **Section 2.** Section 15-72-106, MCA, is amended to read:~~

~~———— "**15-72-106. Collection of wholesale energy transaction tax -- disposition of revenue.** (1) A transmission services provider shall collect the tax imposed under 15-72-104 from the taxpayer and pay the tax collected to the department. If the transmission services provider collects a tax in excess of the tax imposed by 15-72-104, both the tax and the excess must be remitted to the department.~~

~~———— (2) A self-assessing distribution services provider is subject to the provisions of this part.~~

~~———— (3) (a) The Except as provided in subsection (3)(b), the wholesale energy transaction tax collected under this part must be deposited in the general fund.~~

~~———— (b) The department shall deposit 0.5% of the tax collected under this part in the low-income energy assistance fund provided for in 69-8-412(1)(b)."~~

~~———— NEW SECTION. Section 3. Default electricity supplier -- tax credit. (1) There is a credit against taxes otherwise due under this chapter from a licensed default supplier of electricity as provided for in 69-8-416. The amount of the credit is based upon the difference in the rate at which the default supplier purchases electricity after June 30, 2002, and the rate at which the default supplier purchased electricity for sale on June 30, 2002. The rate differential is multiplied by the amount of electricity purchased for sale in Montana to the customers of the default supplier.~~

~~———— (2) A credit may not be refunded if a taxpayer has a tax liability of less than the amount of the credit.~~

~~———— (3) The credit allowed under this section may be used as a carryback against taxes imposed under this chapter and may be used as a carryforward against taxes imposed by this chapter for succeeding tax years. The entire amount of the credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.~~

~~———— NEW SECTION. Section 1. WINDFALL PROFITS TAX. (1) THERE IS A TAX IMPOSED ON THE WINDFALL PROFITS DERIVED FROM THE SALE OF ELECTRICAL ENERGY GENERATED IN MONTANA. THE TAX RATE IS EQUAL TO 90% OF THE WINDFALL PROFITS.~~

~~(2) IN ORDER TO CALCULATE WINDFALL PROFITS, EACH ENTITY SELLING ELECTRICAL ENERGY GENERATED IN MONTANA SHALL REPORT TO THE DEPARTMENT THE TOTAL INCOME FROM SALES OF ELECTRICAL ENERGY GENERATED IN MONTANA. THE DEPARTMENT SHALL SUBTRACT FROM THE TOTAL INCOME THE TOTAL KILOWATT HOURS GENERATED TIMES THE BASE YEAR PRICE. THE AMOUNT DETERMINED IS THE TAX BASE FOR THE WINDFALL PROFITS TAX. THE TAX BASE TIMES THE TAX RATE IS THE AMOUNT OF WINDFALL PROFITS TAX DUE TO THE STATE.~~

~~(3) THE BASE YEAR PRICE IS CALCULATED AS 5 CENTS PER KILOWATT HOUR. THE DEPARTMENT SHALL ADJUST THE BASE YEAR PRICE TO ACCOUNT FOR INFLATION BY MULTIPLYING THE BASE YEAR PRICE BY THE INFLATION FACTOR FOR THE PRIOR YEAR. FOR PURPOSES OF THIS SUBSECTION, "INFLATION FACTOR" HAS THE MEANING PROVIDED IN 15-30-101.~~

~~(4) THE PROCEEDS OF THE WINDFALL PROFITS TAX MUST BE DEPOSITED IN THE STATE SPECIAL REVENUE ACCOUNT PROVIDED FOR IN [SECTION 2].~~

~~(5) THE DEPARTMENT MAY REQUEST ASSISTANCE FROM THE PUBLIC SERVICE COMMISSION IN ANALYZING DATA NECESSARY TO CALCULATE THE WINDFALL PROFITS TAX.~~

~~NEW SECTION. SECTION 2. WINDFALL PROFITS TAX ACCOUNT -- USE. (1) THERE IS A WINDFALL PROFITS TAX ACCOUNT IN THE STATE SPECIAL REVENUE FUND. THE PROCEEDS OF THE TAX COLLECTED PURSUANT TO [SECTION 1] MUST BE DEPOSITED IN THE ACCOUNT.~~

~~(2) THE MONEY IN THE ACCOUNT MAY BE USED BY THE PUBLIC SERVICE COMMISSION TO CONTRACT FOR ELECTRICAL ENERGY FOR DISTRIBUTION TO MONTANA CUSTOMERS ON BEHALF OF THE DEFAULT SUPPLIER PROVIDED FOR IN 69-8-416 AND TO FUND THE LOW-INCOME ENERGY ASSISTANCE PROGRAM PROVIDED FOR IN 69-8-412.~~

NEW SECTION. SECTION 1. PURPOSE. THE PURPOSES OF [SECTIONS 3 THROUGH 7 1 THROUGH 5] ARE TO:

(1) CREATE UP TO 250 450 MEGAWATTS OF ELECTRICAL ENERGY FROM NEW GENERATION PROJECTS IN MONTANA; AND

(2) PERMIT THE PURCHASE OF UP TO 120 MEGAWATTS OF ELECTRICAL ENERGY FROM EXISTING QUALIFIED FACILITIES THAT ARE LOCATED IN MONTANA FOR THE PURPOSE OF PROVIDING CONSUMERS WITH LOW-COST, RELIABLE ELECTRICAL ENERGY.

NEW SECTION. SECTION 2. DEFINITIONS. AS USED IN [SECTIONS 3 THROUGH 7 1 THROUGH 5], THE FOLLOWING DEFINITIONS APPLY:

(1) "DEFAULT SUPPLIER" HAS THE MEANING PROVIDED IN 69-8-103.

(2) "MONTANA INDUSTRY" MEANS A COMMERCIAL ENTERPRISE LOCATED WITHIN MONTANA THAT WOULD HAVE

CONSUMED MORE THAN 5 MEGAWATTS OF ELECTRICAL ENERGY ON AN AVERAGE DURING THE LAST 12 MONTHS IF THE ENTERPRISE HAD NOT CLOSED DUE TO ELECTRICAL PRICES.

(2)(3) "QUALIFIED FACILITY" MEANS AN ELECTRICAL GENERATION FACILITY OWNED OR OPERATED BY AN EXEMPT WHOLESale GENERATOR OR AN ENTITY CERTIFIED AS AN EXEMPT WHOLESale GENERATOR PURSUANT TO SECTION 32 OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, 15 U.S.C. 79z-5A, OR AS PROVIDED FOR IN 16 U.S.C. 796(17)(A).

NEW SECTION. SECTION 3. QUALIFICATION DATE. IN ORDER TO PARTICIPATE IN [SECTIONS 3 THROUGH 7 1 THROUGH 5], A NEW GENERATION PROJECT MUST COMMENCE OR HAVE COMPLETED CONSTRUCTION BY JULY 1, 2003, OR BE AN EXISTING QUALIFIED FACILITY CHOOSING TO PARTICIPATE IN THE CONTRACT PORTION OF THE PROGRAM PROVIDED FOR IN [SECTION 7] [SECTION 5].

NEW SECTION. SECTION 4. INVESTMENT CRITERIA. (1) THE BOARD OF INVESTMENTS SHALL REVIEW APPLICATIONS FROM PROPOSED NEW ELECTRICAL GENERATION FACILITIES AND EXISTING QUALIFIED FACILITIES FOR IN-STATE INVESTMENTS PURSUANT TO TITLE 17, CHAPTER 6, PART 3. IN ORDER TO MAKE AN INVESTMENT IN A NEW ELECTRICAL GENERATION FACILITY OR AN EXISTING QUALIFIED FACILITY, THE BOARD SHALL DETERMINE THAT:

(A) THE PROJECT PROMOTES ECONOMIC DEVELOPMENT IN MONTANA AND CREATES OR MAINTAINS EMPLOYMENT OPPORTUNITIES IN MONTANA;

(B) THE CONSTRUCTION OF THE PROJECT WILL PROVIDE STABLE ELECTRICAL ENERGY RATES FOR MONTANANS WHO RELY ON THE DEFAULT SUPPLIER FOR ELECTRICAL ENERGY;

(C) THE PROJECT WILL MAINTAIN ENVIRONMENTAL QUALITY CONSISTENT WITH STATE AND FEDERAL STANDARDS;
AND

(D) THE PROJECT POSSESSES LONG-TERM ECONOMIC PROSPECTS CONSISTENT WITH THE OBLIGATION TO PROVIDE ELECTRICAL ENERGY GENERATION CAPACITY AND ELECTRICAL ENERGY FOR THE TERM OF THE CONTRACTS AS REQUIRED IN [SECTION 7] [SECTION 5].

(2) A PROJECT SELECTED BY THE BOARD MUST BE COLLATERALIZED BY PAYMENTS FOR THE SALE OF THE ELECTRICITY PRODUCED BY THE PROJECT TO THE DEFAULT SUPPLIER OR A MONTANA INDUSTRY AT RATES NOT IN EXCESS OF 5 CENTS PER KILOWATT HOUR PLUS ANNUAL ESCALATIONS EQUAL TO THE INFLATION RATE. A PAYMENT MAY BE MADE FROM THE ASSETS OF THE STATE IF THE DEFAULT SUPPLIER OR ITS ASSIGNEE OR A MONTANA INDUSTRY FAILS TO PAY THE APPROVED PROJECT FOR ENERGY DELIVERED IN ORDER TO MAINTAIN THE SUPPLY OF ENERGY TO MONTANA. THE STATE MUST BE A PARTY TO THE CONTRACT AND MAY BRING A CAUSE OF ACTION AGAINST THE DEFAULT SUPPLIER OR A MONTANA

INDUSTRY FOR NONPAYMENT.

NEW SECTION. SECTION 5. TERM OF CONTRACT -- PLEDGE. (1) A PROJECT IS NOT ELIGIBLE FOR AN INVESTMENT UNDER ~~SECTION 6~~ [SECTION 4] UNLESS THE APPLICANT HAS SIGNED AN ASSIGNABLE ELECTRICAL ENERGY SALES AGREEMENT WITH THE DEFAULT SUPPLIER OR ITS SUCCESSOR IN INTEREST OR WITH A MONTANA INDUSTRY FOR A TERM OF NOT LESS THAN 15 YEARS OR MORE THAN 25 YEARS.

(2) THE PROCEEDS OF THE CONTRACT MUST BE PLEDGED AS SECURITY FOR THE REPAYMENT OF THE INVESTMENT.

SECTION 6. SECTION 17-7-502, MCA, IS AMENDED TO READ:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-31-702; 15-34-115; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-406; 16-1-411; 17-3-106; 17-3-212; 17-3-222; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 67-3-205; [section 19]; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-505; 80-2-222; 80-4-416; 80-11-518; 81-5-111; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory

appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; and pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005.)"

SECTION 7. SECTION 35-19-104, MCA, IS AMENDED TO READ:

"35-19-104. Permissible purpose of incorporation. A buying cooperative may be organized under this chapter only for the purpose of supplying electricity to small customers as ~~a default~~ an electrical energy supplier, pursuant to ~~69-8-403~~ Title 69, chapter 8, parts 1 through 5, or for serving as a supplier or promoter of alternative energy and conservation programs."

SECTION 8. SECTION 69-8-103, MCA, IS AMENDED TO READ:

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

(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers, purchases ~~electric~~ electrical energy, and takes title to ~~electric~~ electrical energy as an intermediary for sale to retail customers.

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

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

(4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of ~~electric~~ electrical energy but that does not take title to ~~electric~~ electrical energy.

(5) "Cooperative utility" means:

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

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

(6) "Customer" or "consumer" means a retail electric customer or consumer. The university of Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single retail electric customer or consumer with a single individual load.

(7) "Customer-generator" means a user of a net metering system.

(8) "Default supplier" means a customer's distribution services provider ~~or a person that has received a default supplier license from the commission.~~

(9) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.

(10) "Distribution services provider" means a utility owning distribution facilities for distribution of electricity to the public.

(11) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers, offering to sell electricity to retail customers in the state of Montana.

(12) (a) "Electricity supply costs" means actual costs of the electricity. Actual costs include fuel, ancillary service costs, transmission costs including congestion and losses, and any other costs directly related to the purchase of electricity and management of electricity costs or a related service.

(b) Revenue from the sale of surplus electricity must be deducted from the costs included under subsection (12)(a). Total transmission costs are recoverable only once in electricity supply costs.

(c) The terms used in this subsection (12) must be construed according to industry standards.

~~(12)~~(13) "Financing order" means an order of the commission adopted in accordance with 69-8-503 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

~~(13)~~(14) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not limited to:

(i) distribution;

(ii) connection;

(iii) disconnection; and

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

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

~~(14)~~(15) "Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations.

~~(15)~~(16) "Interested person" means a retail electricity customer, the consumer counsel established in 5-15-201, the commission, or a utility.

~~(16)~~(17) "Large customer" means, for universal system benefits programs purposes, a customer with an individual load greater than a monthly average of 1,000 kilowatt demand in the previous calendar year for that individual load.

~~(17)~~(18) "Local governing body" means a local board of trustees of a rural electric cooperative.

~~(18)~~(19) "Low-income customer" means those energy consumer households and families with incomes at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

~~(19)~~(20) "Net metering" means measuring the difference between the electricity distributed to and the electricity generated by a customer-generator that is fed back to the distribution system during the applicable billing period.

~~(20)~~(21) "Net metering system" means a facility for the production of ~~electric~~ electrical energy that:

- (a) uses as its fuel solar, wind, or hydropower;
- (b) has a generating capacity of not more than 50 kilowatts;
- (c) is located on the customer-generator's premises;
- (d) operates in parallel with the distribution services provider's distribution facilities; and
- (e) is intended primarily to offset part or all of the customer-generator's requirements for electricity.

~~(21)~~(22) "Nonbypassable rates or charges" means rates or charges that are approved by the commission and imposed on a customer to pay the customer's share of transition costs or universal system benefits programs costs even if the customer has physically bypassed either the utility's transmission or distribution facilities.

~~(22)~~(23) "Pilot program" means a program using a representative sample of residential and small commercial customers to assist in developing and offering customer choice of electricity supply for all residential and commercial customers.

~~(23)~~(24) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.

~~(24)~~(25) "Qualifying load" means, for payments and credits associated with universal system benefits

programs, all nonresidential demand-metered accounts of a large customer within the utility's service territory in which the customer qualifies as a large customer.

~~(25)~~(26) "Small customer" means a residential customer or a small commercial customer who has an individual account with an average monthly demand in the previous calendar year of less than 100 kilowatts or a new commercial customer with an estimated average monthly demand of less than 100 kilowatts of a public utility distribution services provider that has opened access on its distribution system pursuant to Title 35, chapter 19, or this chapter.

~~(26)~~(27) "Transition bondholder" means a holder of transition bonds, including trustees, collateral agents, and other entities acting for the benefit of that holder.

~~(27)~~(28) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

~~(28)~~(29) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of transition costs.

~~(29)~~(30) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of transition costs.

~~(30)~~(31) "Transition costs" means:

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

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

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

(ii) nonutility and utility power purchase contracts, including qualifying facility contracts;

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

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

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

~~(31)~~(32) "Transition period" means the period beginning on July 1, 1998, and ending on July 1, 2002, unless otherwise extended pursuant to this chapter, during which utilities may phase in customer choice of electricity supplier 2007.

~~(32)~~(33) "Transition property" means the property right created by a financing order, including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that are the subject of a financing order, including those nonbypassable rates and other charges and fixed transition amounts that are authorized by the commission in the financing order to recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property, including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other right created under this section or created in the financing order and assignable under this chapter or assignable pursuant to a financing order is only a contract right.

~~(33)~~(34) "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission.

(35) "Transmission services provider" means a person controlling or operating transmission facilities.

~~(35)~~(36) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits programs costs.

~~(36)~~(37) "Universal system benefits programs" means public purpose programs for:

(a) cost-effective local energy conservation;

(b) low-income customer weatherization;

(c) reducing energy costs of irrigated agriculture in Montana through conservation and efficiency measures;

~~(e)~~(d) renewable resource projects and applications, including those that capture unique social and energy system benefits or that provide transmission and distribution system benefits;

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

~~(e)~~(f) market transformation designed to encourage competitive markets for public purpose programs;

and

~~(f)~~(g) low-income energy assistance.

~~(37)~~(38) "Utility" means any public utility or cooperative utility."

SECTION 9. SECTION 69-8-104, MCA, IS AMENDED TO READ:

"69-8-104. Pilot programs. (1) Except as provided in ~~69-8-201(4)~~ 69-8-201(5) and 69-8-311, beginning July 1, 1998, utilities shall conduct pilot programs using a representative sample of their residential and small commercial customers. A report describing and analyzing the results of the pilot programs must be submitted to the commission and the transition advisory committee established in 69-8-501 on or before July 1, 2000.

(2) Utilities shall use pilot programs to gather necessary information to determine the most effective and timely options for providing customer choice. Necessary information includes but is not limited to:

(a) the level of demand for electricity supply choice and the availability of market prices for smaller customers;

(b) the best means to encourage and support the development of sufficient markets and bargaining power for the benefit of smaller customers;

(c) the electricity suppliers' interest in serving smaller customers and the opportunities in providing service to smaller customers; and

(d) experience in the broad range of technical and administrative support matters involved in designing and delivering unbundled retail services to smaller customers."

Section 10. Section 69-8-201, MCA, is amended to read:

"69-8-201. Public utility -- transition to customer choice -- waiver. (1) A public utility shall, except as provided in this section, adhere to the following deadlines:

(a) ~~On~~ Subject to subsection (6)(4), on or before July 1, 1998, all customers with individual loads greater than 1,000 kilowatts and for loads of the same customer with individual loads at a meter greater than 300 kilowatts that aggregate to 1,000 kilowatts or greater must have the opportunity to choose an electricity supplier.

(b) Subject to subsection (2), and as soon as is administratively feasible but before July 1, 2002, all other public utility customers must have the opportunity to choose an electricity supplier.

(2) ~~(a) Except as provided for in subsection (4), the commission may determine that additional time is necessary for customers identified in subsection (1)(b); however, the implementation of full customer choice may not be delayed beyond July 1, 2004.~~

~~(b) A determination by the commission that additional time is necessary for subsection (1)(b) customers must be made at least 60 days in advance of the scheduled date and must be based on one or more of the following considerations:~~

~~(i)(A) implementation would not be administratively feasible;~~

~~(ii)(B)~~ implementation would materially affect the reliability of the electric system; or

~~(iii)(C)~~ Montana customers or electricity suppliers would be disadvantaged due to lack of a competitive electricity supply market.

(3) The commission shall designate the public utility or one or more default suppliers to provide regulated default service for those ~~small~~ customers DESCRIBED IN SUBSECTIONS (1)(A) AND (1)(B) of a public utility that are not being served by a competitive electricity supplier and those customers who elect to receive service from the default supplier. ~~The transition advisory committee shall review and address the need for continued default supply service and make recommendation to the 57th legislature.~~ A customer who elects to receive service from the default supplier may only use the electricity for consumptive purposes and must SHALL enter into a contract with the default supplier that prohibits the customer from remarketing the electricity. A DISTRIBUTION SERVICES PROVIDER HAS AN ONGOING REGULATED DEFAULT SUPPLY OBLIGATION BEYOND THE END OF THE TRANSITION PERIOD.

(4) THE COMMISSION SHALL ESTABLISH PROCEDURES AND TERMS UNDER WHICH CUSTOMERS MAY CHOOSE AN ELECTRICITY SUPPLIER OTHER THAN THE DEFAULT SUPPLIER OR MAY CHOOSE TO BE SERVED BY THE DEFAULT SUPPLIER. THE CHOICE MUST BE AVAILABLE FOR THE PERIOD BEGINNING JULY 1, 2002. THE PROCEDURES MUST PROVIDE FOR AN ORDERLY PROCESS OF CHOICE DURING THE TRANSITION PERIOD AND PROVIDE CONDITIONS FOR LEAVING AND RETURNING TO THE DEFAULT SUPPLIER. THE PROCEDURES MUST TAKE INTO ACCOUNT ELECTRICITY SUPPLY CONTRACTS FOR SUPPLYING CUSTOMERS DURING THE TRANSITION PERIOD. THE PROCEDURES MUST PROVIDE FOR THE RECOVERY OF COSTS ASSOCIATED WITH THOSE CUSTOMERS WHO CHOOSE AN ALTERNATIVE ELECTRICITY SUPPLIER AND WHO WISH TO RETURN TO THE DEFAULT SUPPLIER.

~~(4)(5)~~ Except as provided in 69-5-101, 69-5-102, 69-5-104 through 69-5-112, and 69-8-402, 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, may:

(a) defer compliance with this chapter until a time that the public utility can reasonably implement customer choice in the state of the public utility's primary service territory, except that the public utility shall file a transition plan pursuant to 69-8-202 to provide transition to customer choice on or before July 1, 2002, and must have completed the transition period to customer choice by July 1, 2006; and

(b) petition the commission to delay the public utility's transition plan filing until July 1, 2004.

~~(5)(6)~~ Upon a request from a public utility with fewer than 50 customers, the commission shall waive compliance with the requirements of 69-8-104, 69-8-202 through 69-8-204, 69-8-208 through 69-8-211, 69-8-402, and this section.

~~(6) A customer who chose an electricity supplier prior to July 1, 2001, may make an election prior to~~

October 1, 2001 to receive its electricity from the default supplier. A customer who chose an electricity supplier prior to July 1, 2001, and who chooses to receive the customer's electricity from the default supplier pursuant to this subsection is bound by the election and may not again elect to choose an electricity supplier other than the default supplier."

~~SECTION 7. SECTION 69-8-416, MCA, IS AMENDED TO READ:~~

~~"69-8-416. Default supplier license. (1) In developing licensing rules for default suppliers, the commission shall promote and facilitate the development of a competitive market for electricity supply:~~

~~(2) Default supplier licensing rules must ensure that:~~

~~(a) a default supplier may not purchase electricity for or sell electricity to commercial or industrial electric consumers having individual accounts with an average monthly demand in the previous calendar year of 100 kilowatts or more or to new commercial or industrial electric consumers having individual accounts with an estimated monthly demand of 100 kilowatts or more;~~

~~(b)(A) a default supplier may not discount its commission-approved rates to retain or gain customers;~~

~~(c)(B) a default supplier may not obligate customers to a contractual term or service;~~

~~(d)(C) federal power marketing administration power or benefits acquired by a default supplier are distributed as widely and equitably as possible among small customers and in a manner that encourages competition;~~

~~(e)(D) a default supplier, except when the default supplier is the distribution services provider, may not construct, purchase, take, receive, or otherwise acquire or own, hold, equip, maintain, or operate electric generating plants or transmission or distribution lines or systems, except that a default supplier may enter into transmission or distribution agreements for the lease or use of capacity on transmission and distribution systems owned by others to supply electricity to its customers in the state;~~

~~(f)(E) a default supplier may not offer for sale any products other than electricity supply or provide electricity supply to members or customers other than those residing in the state or sell electricity or otherwise engage in the marketing of electricity on the wholesale market, but may dispose of excess electricity associated with temporary load-energy imbalances:~~

~~(3) Except as provided in subsection (2)(e), a default supplier may provide only a single electricity supply service to all of its small customers. A default supplier may also offer an additional electricity supply service that includes a component of renewable energy:~~

~~(4) A default supplier may not offer other supply services unless the default supplier forms a separate~~

entity."

SECTION 11. SECTION 69-8-203, MCA, IS AMENDED TO READ:

"69-8-203. Public utility -- customer choice --~~continued service~~ -- education of customers. (1) A customer is permitted to choose an electricity supplier pursuant to the deadlines established in 69-8-201. Public utilities shall propose a method for customers to choose an electricity supplier.

~~(2) If a customer has not chosen an electricity supplier by the end of the transition period, a city, county, or consolidated government that is licensed as an electricity supplier may, upon application to and approval by the commission, become the default supplier to residential and commercial customers of a public utility within its jurisdiction. For customers that are not within the jurisdiction of a licensed and approved city, county, or consolidated government electricity supplier area, a public utility shall propose a method in the public utility's transition plans for assigning that customer to an electricity supplier. The commission shall establish an application process and guidelines for the designation of one or more default suppliers for the distribution area of each public utility.~~

~~————(3) A public utility may phase in customer choice to promote the orderly transition to a competitive market environment pursuant to the deadlines in 69-8-201.~~

~~(4)~~(2) Public utilities shall educate their customers about customer choice so that customers may make an informed choice of an electricity supplier. This education process must give special emphasis to education efforts during the transition period."

SECTION 12. SECTION 69-8-210, MCA, IS AMENDED TO READ:

"69-8-210. Public utilities -- electricity supply. (1) On the effective date of a commission order implementing a public utility's transition plan pursuant to 69-8-202, the public utility shall remove its generation assets from the rate base.

~~(2) During the transition period, the commission may establish cost-based prices for electricity supply service for customers that do not have a choice of electricity supply service or that have not yet chosen an electricity supplier.~~

~~(3)~~(2) If During the transition period, ~~is extended,~~ then the customers' distribution services provider, acting as the default supplier, shall:

(a) beginning July 1, 2002, extend any cost-based contract with the distribution services provider's affiliate supplier for a term of not more than 3 years; or

(b) purchase electricity from the market; and

(c) use a mechanism that recovers electricity supply costs in rates ~~to ensure that those costs are fully recovered~~ as provided in subsection (4).

(3) (a) The default supplier shall provide for the full electricity supply requirements of all default supply customers. To meet these requirements, the default supplier shall procure a portfolio of electricity supply using industry-accepted procurement practices, which may include negotiated contracts or competitive bidding. The commission may develop reasonable requirements for the use of competitive bidding in the procurement process.

(b) A default supplier may submit material related to proposed bids or contracts concerning electricity supply to the commission before the default supplier enters into the contract. The commission may comment on the material.

(c) In reviewing electricity supply contracts, the commission shall consider only those facts that were known or should reasonably have been known by the default supplier at the time the contract was entered into and that would have materially affected the cost or reliability of the electricity supply to be procured.

(4) (a) The commission shall use an electricity cost recovery mechanism that ensures that all prudently incurred electricity supply costs are fully recoverable in rates. The cost recovery mechanism must provide for prospective rate adjustments for cost differences resulting from cost changes, load changes, and the time value of money on the differences.

(b) The default supplier shall submit a proposed electricity supply cost recovery mechanism to the commission for approval on or before July 1, 2001. A mechanism must be adopted by the commission before March 30, 2002.

(c) The commission shall establish a method to provide for the full recovery of electricity supply costs that extend beyond the end of the transition period.

~~(4)~~(5) If a public utility intends to be an electricity supplier through an unregulated division, then the public utility must be licensed as an electricity supplier pursuant to 69-8-404.

(6) A public utility shall offer its customers an opportunity to purchase a separately marketed product composed of power from renewable resources. This product may be priced differently from the standard electricity product authorized in this section. For the purposes of this section, "renewable resources" means biomass, wind, solar, or geothermal resources."

SECTION 13. SECTION 69-8-211, MCA, IS AMENDED TO READ:

"69-8-211. Public utilities -- transition costs and charges -- rate moratorium. (1) Subject to the

provisions of this section, the commission shall allow recovery of the following categories of transition costs:

(a) the unmitigable costs of qualifying facility contracts, including reasonable buyout or buydown costs, for which the contract price of generation is above the market price for generation;

(b) the unmitigable costs of energy supply-related regulatory assets and deferred charges that exist because of current regulatory practices and that can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan, including costs, expenses, and reasonable fees related to issuing of transition bonds;

(c) the unmitigable transition costs related to public utility-owned generation and other power purchase contracts, except that recovery of those costs is limited to the amount accruing during the first 4 years after the commission enters an order pursuant to 69-8-202(3); and

(d) other transition costs as may qualify for recovery under this section.

(2) Transition costs as determined by the commission upon an affirmative showing by a public utility must meet the following requirements:

(a) Transition costs must reflect all reasonable mitigation by the public utility, including but not limited to good faith efforts to renegotiate contracts, buying out or buying down contracts, and refinancing through transition bonds.

(b) The value of all generation-related assets and liabilities and electricity supply costs must be reasonably demonstrable and must be considered on a net basis, and methods for determining value must include but are not limited to:

(i) estimating future market values of electricity and ancillary services provided by the assets;

(ii) appraisal by independent third-party professionals; or

(iii) a competitive bid sale.

(c) Investments and power purchase contracts must have been previously allowed in rates or, if not previously in rates, must be determined to be used and useful to ratepayers in connection with the commission's approval of the utility's transition plan.

(d) Unless otherwise provided for in this chapter, only costs related to existing investments and power purchase contracts identified in subsection (2)(c) and costs arising from those investments and power purchase contracts may be included as transition costs.

(3) (a) On commission approval of the amount of a public utility's transition costs, those costs must be recovered through the imposition of a transition charge.

(b) A transition charge may not be collected from customers for:

(i) new or additional loads of 1,000 kilowatts or greater that were first served by the public utility after December 31, 1996; or

(ii) loads served by that customer's own generation.

(c) Subject to commission approval, a utility and a customer may agree to alter the customer's transition charge payment schedule. Public utilities may file with the commission tariffs for electric service rates that foster economic development or retention of existing customers within the state, including generally available rate schedules. Transition charges are the only charges that may be imposed upon a customer class to recover transition costs under this section. A separate exit fee may not be charged.

(4) Transition charges must be imposed within a transition cost recovery period approved by the commission on a case-by-case basis. Except for transition costs recovered under subsection (1)(c), categories of transition costs may have varying transition cost recovery periods.

(5) Approval of transition costs and collection of those transition costs through transition charges is a settlement of all transition costs claims by a public utility. A public utility seeking to recover transition costs through any means not authorized by this chapter may not collect transition charges with respect to these transition costs.

(6) Except as provided in subsection (7), public utilities shall implement a rate moratorium ~~during the transition period as follows:~~

~~—— (a) From July 1, 1998, through June 30, 2000, public utilities may not charge rates higher than those rates in effect on July 1, 1998.~~

~~—— (b) From from July 1, 2000, through June 30, 2002, and only for those customers subject to the provisions of 69-8-201(1)(b); During that period, public utilities may not increase that increment of rates normally allocated to electric supply-related costs above the increment associated with electric supply-related costs reflected in rates in effect on July 1, 1998. Beginning on July 1, 2000, public utilities may propose increases to those increments of rates normally allocated to transmission and distribution costs.~~

(7) Excepted from the provisions of subsection (6) are:

(a) increased costs related to universal system benefits programs greater than those currently in rates, including the treatment of universal system benefits program costs as an expense;

(b) increased costs necessary to implement full customer choice, including but not limited to metering, billing, and technology. Those costs must be recovered from the customers on whose behalf the increased costs are incurred.

(c) subject to commission approval, an extraordinary event resulting in either:

(i) a 4% annual revenue requirement increase from July 1, 1998, through June 30, 2000; or

(ii) an 8% power supply-related annual revenue requirement increase from July 1, 2000, through June 30, 2002;

(d) the increase or decrease in the annual state and local property tax expense that has occurred since May 2, 1997.

(8) Notwithstanding subsections (6) and (7), during the transition period, public utilities may not charge rates or collect costs that include costs reallocated to transition costs at a level higher than the public utility would reasonably expect to recover in rates had the current regulatory system remained intact.

(9) Public utilities shall apply savings resulting under 69-8-503 toward the rate moratorium pursuant to subsection (6).

(10) ~~During the 4-year transition period~~ Before July 1, 2002, public utilities may accelerate the amortization of accumulated deferred investment tax credits associated with transmission, distribution, and the general plant as an adjustment to earnings if electric earnings fall below 9.5% earned return on average equity. The public utility may include the flow through of investment tax credits so that the public utility's earned return on equity is maintained at 9.5%. Accumulated deferred investment tax credits amortized under this subsection may not be reflected in operating income for ratemaking purposes.

(11) The commission shall issue the accounting orders necessary to align rate moratorium timing and requirements to actual transition bonds savings."

SECTION 14. SECTION 69-8-402, MCA, IS AMENDED TO READ:

"69-8-402. Universal system benefits programs. (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, energy conservation measures for irrigated agriculture, and low-income energy assistance during the transition period and into the future.

(2) Beginning January 1, 1999, 2.4% of each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the initial funding level for universal system benefits programs. To collect this amount of funds on an annualized basis in 1999, the commission shall establish rates for utilities subject to its jurisdiction and the governing boards of cooperatives shall establish rates for the cooperatives. Except as provided in subsection ~~(7)~~ (8), these universal system benefits charge rates must remain in effect until ~~July 1, 2003~~ December 31, 2005.

(a) The recovery of all universal system benefits programs costs imposed pursuant to this section is authorized through the imposition of a universal system benefits charge assessed at the meter for each local

utility system customer as provided in this section.

(b) Utilities must receive credit toward annual funding requirements for a utility's internal programs or activities that qualify as universal system benefits programs, including those portions of expenditures for the purchase of power that are for the acquisition or support of renewable energy, conservation-related activities, conservation and efficiency measures for irrigated agriculture, or low-income energy assistance, and for large customers' programs or activities as provided in subsection ~~(7)~~ (8). The department of revenue shall review claimed credits of the utilities and large customers pursuant to 69-8-414.

(c) A utility's distribution services provider at which the sale of power for final end use occurs is the utility that receives credit for the universal system benefits programs expenditure.

(d) A customer's distribution services provider shall collect universal system benefits funds less any allowable credits.

(e) For a utility to receive credit for low-income related expenditures and conservation and efficiency measures for irrigated agriculture, the activity must have taken place in Montana.

(f) If a utility's or a large customer's credit for internal activities does not satisfy the annual funding provisions of subsection (2), then the utility shall make a payment to the universal system benefits fund established in 69-8-412 for any difference.

(3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding requirements for universal system benefits programs, conservation and efficiency measures for irrigated agriculture, and low-income energy assistance.

(4) A utility's transition plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to measure the utility's level of contribution to each program.

(5) A utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 17% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(a) A utility must receive credit toward the utility's low-income energy assistance annual funding requirement for the utility's internal low-income energy assistance programs or activities.

(b) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal low-income energy assistance fund established in 69-8-412.

(6) An individual customer may not bear a disproportionate share of the local utility's funding

requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

(7) (a) Except for those utilities that have not filed a transition plan, a utility's minimum annual funding requirement for reducing energy costs through conservation and efficiency measures for irrigated agriculture is established at 6% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(b) A utility must receive credit toward the utility's irrigated agriculture assistance annual funding requirement for the utility's internal irrigated agriculture assistance programs or activities.

(c) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the irrigated agriculture energy assistance fund established in 69-8-412.

~~(7)~~(8) (a) A large customer:

(i) shall pay a universal system benefits programs charge with respect to the large customer's qualifying load equal to the lesser of:

(A) \$500,000, less the large customer credits provided for in this subsection ~~(7)~~ (8); or

(B) the product of 0.9 mills per kilowatt hour multiplied by the large customer's total kilowatt hour purchases, less large customer credits with respect to that qualifying load provided for in this subsection ~~(7)~~ (8);

(ii) must receive credit toward that large customer's universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits programs expenditure, and these internal expenditures must include but not be limited to:

(A) expenditures that result in a reduction in the consumption of electrical energy in the large customer's facility; and

(B) those portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities.

(b) Large customers making these expenditures must receive a credit against the large customer's universal system benefits charge, except that any of those amounts expended in a calendar year that exceed that large customer's universal system benefits charge for the calendar year must be used as a credit against those charges in future years until the total amount of those expenditures has been credited against that large customer's universal system benefits charges.

~~(8)~~(9) A public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission, the department of revenue, and the transition advisory committee provided for in 69-8-501. A cooperative utility shall prepare and submit annual

summary reports of activities to the cooperative utility's respective local governing body, the statewide cooperative utility office, and the transition advisory committee. The statewide cooperative utility office shall prepare and submit an annual summary report of the activities of individual cooperative utilities, including a summary of the pooling of statewide credits, as provided in subsection (3), to the department of revenue and to the transition advisory committee. The annual report of a public utility or of the statewide cooperative utility office must include but is not limited to:

- (a) the types of internal utility and customer programs being used to satisfy the provisions of this chapter;
- (b) the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2); and
- (c) any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements.

~~(9)(10)~~ A utility or large customer filing for a credit shall develop and maintain appropriate documentation to support the utility's or the large customer's claim for the credit.

~~(10)(11)~~ (a) A large customer claiming credits for a calendar year shall submit an annual summary report of its universal system benefits programs activities and expenditures to the department of revenue and to the large customer's utility. The annual report of a large customer must identify each qualifying project or expenditure for which it has claimed a credit and the amount of the credit. Prior approval by the department of revenue or the utility is not required, except as provided in subsection ~~(10)(b)~~ (11)(b).

(b) If a large customer claims a credit that the department of revenue disallows in whole or in part, the large customer is financially responsible for the disallowance. A large customer and the large customer's utility may mutually agree that credits claimed by the large customer be first approved by the utility. If the utility approves the large customer credit, the utility may be financially responsible for any subsequent disallowance."

SECTION 15. SECTION 69-8-403, MCA, IS AMENDED TO READ:

"69-8-403. Commission authority -- rulemaking authority. (1) Beginning on the effective date of a commission order regarding a public utility's transition plan, the commission shall regulate the public utility's retail transmission and distribution services within the state of Montana, as provided in this chapter, and may not regulate the price of electricity supply except as electricity supply may be procured as provided in this section:

- (a) by one or more default suppliers for those customers not being served by a competitive supplier; or
- (b) by the distribution function of a public utility for those customers that are not being served by a competitive electricity supplier as provided by commission rules. During the transition period, those procurements

may include a cost-based contract from a supply affiliate or an unregulated division.

(2) The commission shall decide if there is workable competition in the electricity supply market by determining whether competition is sufficient to inhibit monopoly pricing or anticompetitive price leadership. In reaching a decision, the commission may not rely solely on market share estimates.

(3) The commission shall license electricity suppliers and enforce licensing provisions pursuant to 69-8-404.

(4) The commission shall promulgate rules that identify the licensees and ensure that the offered electricity supply is provided as offered and is adequate in terms of quality, safety, and reliability.

(5) The commission shall establish just and reasonable rates through established ratemaking principles for public utility distribution and transmission services and shall regulate these services. The commission may approve rates and charges for electricity distribution and transmission services based on alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public utility that the alternative method complies with this chapter, and on the public utility's transition plan.

(6) The commission shall certify that a cooperative utility has adopted a transition plan that complies with this chapter. A cooperative utility's transition plan is considered certified 60 days after the cooperative utility files for certification.

(7) The commission shall promulgate rules that protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices.

~~(8) The commission shall license default suppliers and enforce default licensing provisions pursuant to 69-8-416.~~

~~— (9) The commission shall promulgate rules for the licensing of default suppliers on or before December 1, 1999.~~

(8) The commission shall establish electricity supply rates for individual customer classes, which may vary based on cost factors associated with classifications of service or customers and any other reasonable consideration. Collectively, the individual electricity supply rates must reflect the full level of electricity supply costs that the default supplier incurs on behalf of its customers.

~~(10)~~(9) Until the commission has determined that workable competition has developed for small customers, a default supplier's obligation to serve remains.

~~(11)~~(10) In addition to promulgating rules expressly provided for in this chapter, the commission may promulgate any other rules necessary to carry out the provision of this chapter.

~~(12)~~(11) This chapter does not give the commission the authority to:

- (a) regulate cooperative utilities in any manner other than reviewing certification filings for compliance with this chapter; or
- (b) compel any change to a cooperative utility's certification filing made pursuant to this chapter."

SECTION 16. SECTION 69-8-412, MCA, IS AMENDED TO READ:

"69-8-412. Funds established -- fund administrators designated -- purpose of funds -- department rulemaking authority to administer funds. (1) If, pursuant to 69-8-402(2)(f) or (5)(b), there is any positive difference between credits and the annual funding requirement, the department of revenue shall establish one or ~~both~~ all of the following funds:

- (a) a fund to provide for universal system benefits programs other than low-income energy assistance. The department of environmental quality shall administer this fund.
- (b) a fund to provide universal low-income energy assistance. The department of public health and human services shall administer this fund.

(c) a fund to provide for reductions in the energy costs of irrigated agriculture through energy conservation and efficiency measures. The department of agriculture shall administer this fund.

- (2) The purpose of these funds is to fund universal system benefits programs.
- (3) The department of environmental quality and the department of public health and human services may adopt rules that administer and expend the money in each respective fund based on an annual statewide funding assessment that identifies funding needs in universal system benefits programs. The annual assessment must take into account existing utility and large customer universal system benefits programs expenditures."

SECTION 17. SECTION 69-8-414, MCA, IS AMENDED TO READ:

"69-8-414. Universal system benefits programs credit review process. (1) All annual reports required pursuant to ~~69-8-402(8) and (10)~~ 69-8-402(9) and (11) must be filed with the department of revenue on March 1 of each year.

(2) Except as provided in 69-8-413, upon a challenge by an interested person, the department of revenue shall ensure that the credit claimed is consistent with this chapter. An interested person may file comments challenging the claim, including supporting documentation, with the department of revenue. A challenge of any claimed credit must be filed within 60 days of the department of revenue's receipt of the credit claimant's annual reports required pursuant to ~~69-8-402(8) and (10)~~ 69-8-402(9) and (11).

(3) Claimed credits are presumed to be correct unless challenged by an interested person. If a challenge

is filed by an interested person, the department of revenue shall conduct an initial review of a challenged credit and shall make a determination as to the likelihood that the challenged credit qualifies for universal system benefits programs. If the department of revenue finds that the challenged credit is not likely to qualify for universal system benefits programs, the department of revenue shall formally review the challenge; otherwise, the department of revenue shall dismiss the challenge and provide a statement of the reasons supporting dismissal of the challenge. The department of revenue may request additional information from the credit claimant or interested person. The department of revenue shall complete the initial review within 30 days of the challenge.

(4) If the department of revenue determines that a formal review of a challenged credit is necessary, the department of revenue shall provide public notice of the opportunity to comment to the credit claimant and interested persons. The department of revenue may also schedule an oral hearing. If a hearing is scheduled, the department of revenue shall provide public notice of the hearing to the credit claimant and interested persons.

(5) For a formal credit review challenge, the following procedures apply:

(a) The credit claimant shall provide documentation supporting the credit claimed to the department of revenue and to all interested persons, subject to department of revenue protective orders for confidential or sensitive materials, upon a showing of a privacy interest by the credit claimant.

(b) The department of revenue shall make all materials related to the claim, the challenge, and the submitted comments available to the credit claimant and for public inspection and photocopying, subject to any department of revenue protective orders.

(c) The credit claimant may respond in writing to any comments and other documents filed by an interested person.

(d) The department of revenue may ask for additional detailed information to implement this section.

(6) Upon completing a formal review of a challenged credit, the department of revenue shall make a decision to certify or to deny the credit claimed, providing a statement of the reasons supporting the department of revenue's decision. The formal review of a challenged credit, including the department of revenue's final decision, must be completed within 60 days of the department of revenue's public notice of the opportunity to comment on the challenged credit."

~~Section 5. Section 69-8-211, MCA, is amended to read:~~

~~"69-8-211. Public utilities -- transition costs and charges -- rate moratorium. (1) Subject to the provisions of this section, the commission shall allow recovery of the following categories of transition costs:~~

~~(a) the unmitigable costs of qualifying facility contracts, including reasonable buyout or buydown costs,~~

for which the contract price of generation is above the market price for generation;

~~—— (b) the unmitigable costs of energy supply-related regulatory assets and deferred charges that exist because of current regulatory practices and that can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan, including costs, expenses, and reasonable fees related to issuing of transition bonds;~~

~~—— (c) the unmitigable transition costs related to public utility-owned generation and other power purchase contracts, except that recovery of those costs is limited to the amount accruing during the first 4 years after the commission enters an order pursuant to 69-8-202(3); and~~

~~—— (d) other transition costs as may qualify for recovery under this section.~~

~~—— (2) Transition costs as determined by the commission upon an affirmative showing by a public utility must meet the following requirements:~~

~~—— (a) Transition costs must reflect all reasonable mitigation by the public utility, including but not limited to good faith efforts to renegotiate contracts, buying out or buying down contracts, and refinancing through transition bonds.~~

~~—— (b) The value of all generation-related assets and liabilities and electricity supply costs must be reasonably demonstrable and must be considered on a net basis, and methods for determining value must include but are not limited to:~~

~~—— (i) estimating future market values of electricity and ancillary services provided by the assets;~~

~~—— (ii) appraisal by independent third-party professionals; or~~

~~—— (iii) a competitive bid sale.~~

~~—— (c) Investments and power purchase contracts must have been previously allowed in rates or, if not previously in rates, must be determined to be used and useful to ratepayers in connection with the commission's approval of the utility's transition plan.~~

~~—— (d) Unless otherwise provided for in this chapter, only costs related to existing investments and power purchase contracts identified in subsection (2)(c) and costs arising from those investments and power purchase contracts may be included as transition costs.~~

~~—— (3) (a) On commission approval of the amount of a public utility's transition costs, those costs must be recovered through the imposition of a transition charge:~~

~~—— (b) A transition charge may not be collected from customers for:~~

~~—— (i) new or additional loads of 1,000 kilowatts or greater that were first served by the public utility after December 31, 1996; or~~

~~———(ii) loads served by that customer's own generation.~~

~~———(c) Subject to commission approval, a utility and a customer may agree to alter the customer's transition charge payment schedule. Public utilities may file with the commission tariffs for electric service rates that foster economic development or retention of existing customers within the state, including generally available rate schedules. Transition charges are the only charges that may be imposed upon a customer class to recover transition costs under this section. A separate exit fee may not be charged.~~

~~———(4) Transition charges must be imposed within a transition cost recovery period approved by the commission on a case-by-case basis. Except for transition costs recovered under subsection (1)(c), categories of transition costs may have varying transition cost recovery periods.~~

~~———(5) Approval of transition costs and collection of those transition costs through transition charges is a settlement of all transition costs claims by a public utility. A public utility seeking to recover transition costs through any means not authorized by this chapter may not collect transition charges with respect to these transition costs.~~

~~———(6) Except as provided in subsection (7), public utilities shall implement a rate moratorium during the transition period as follows:~~

~~———(a) From July 1, 1998, through June 30, 2000, public utilities may not charge rates higher than those rates in effect on July 1, 1998.~~

~~———(b) From July 1, 2000, through Through June 30, 2002, and only for those customers subject to the provisions of 69-8-201(1)(b), public utilities may not increase that increment of rates normally allocated to electric supply-related costs above the increment associated with electric supply-related costs reflected in rates in effect on July 1, 1998. Beginning on July 1, 2000, public utilities may propose increases to those increments of rates normally allocated to transmission and distribution costs. In establishing rates for a licensed default supplier, the commission shall take into account the amount of the tax credit claimed under [section 3].~~

~~———(7) Excepted from the provisions of subsection (6) are:~~

~~———(a) increased costs related to universal system benefits programs greater than those currently in rates, including the treatment of universal system benefits program costs as an expense;~~

~~———(b) increased costs necessary to implement full customer choice, including but not limited to metering, billing, and technology. Those costs must be recovered from the customers on whose behalf the increased costs are incurred.~~

~~———(c) subject to commission approval, an extraordinary event resulting in either:~~

~~———(i) a 4% annual revenue requirement increase from July 1, 1998, through June 30, 2000; or~~

~~———(ii) an 8% power supply-related annual revenue requirement increase from July 1, 2000, through June~~

30, 2002;

~~———(d) the increase or decrease in the annual state and local property tax expense that has occurred since May 2, 1997.~~

~~———(8) Notwithstanding subsections (6) and (7), during the transition period, public utilities may not charge rates or collect costs that include costs reallocated to transition costs at a level higher than the public utility would reasonably expect to recover in rates had the current regulatory system remained intact.~~

~~———(9) Public utilities shall apply savings resulting under 69-8-503 toward the rate moratorium pursuant to subsection (6).~~

~~———(10) During the 4-year transition period, public utilities may accelerate the amortization of accumulated deferred investment tax credits associated with transmission, distribution, and the general plant as an adjustment to earnings if electric earnings fall below 9.5% earned return on average equity. The public utility may include the flow through of investment tax credits so that the public utility's earned return on equity is maintained at 9.5%. Accumulated deferred investment tax credits amortized under this subsection may not be reflected in operating income for ratemaking purposes.~~

~~———(11) The commission shall issue the accounting orders necessary to align rate moratorium timing and requirements to actual transition bonds savings."~~

~~———~~ **Section 6.** Section 69-8-403, MCA, is amended to read:

~~———~~ **"69-8-403. Commission authority -- rulemaking authority.** (1) Beginning on the effective date of a commission order regarding a public utility's transition plan, the commission shall regulate the public utility's retail transmission and distribution services within the state of Montana, as provided in this chapter, and may not regulate the price of electricity supply except as electricity supply may be procured as provided in this section:

~~———~~ (a) by one or more default suppliers for those customers not being served by a competitive supplier; or

~~———~~ (b) by the distribution function of a public utility for those customers that are not being served by a competitive electricity supplier as provided by commission rules. During the transition period, those procurements may include a cost-based contract from a supply affiliate or an unregulated division.

~~———~~ (2) The commission shall decide if there is workable competition in the electricity supply market by determining whether competition is sufficient to inhibit monopoly pricing or anticompetitive price leadership. In reaching a decision, the commission may not rely solely on market share estimates.

~~———~~ (3) The commission shall license electricity suppliers and enforce licensing provisions pursuant to 69-8-404.

~~———— (4) The commission shall promulgate rules that identify the licensees and ensure that the offered electricity supply is provided as offered and is adequate in terms of quality, safety, and reliability.~~

~~———— (5) The commission shall establish just and reasonable rates through established ratemaking principles for public utility distribution and transmission services and shall regulate these services. The commission may approve rates and charges for electricity distribution and transmission services based on alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public utility that the alternative method complies with this chapter, and on the public utility's transition plan. In establishing rates for the default supplier, the commission shall take into account the amount of the tax credit provided for in [section 3].~~

~~———— (6) The commission shall certify that a cooperative utility has adopted a transition plan that complies with this chapter. A cooperative utility's transition plan is considered certified 60 days after the cooperative utility files for certification.~~

~~———— (7) The commission shall promulgate rules that protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices.~~

~~———— (8) The commission shall license default suppliers and enforce default licensing provisions pursuant to 69-8-416.~~

~~———— (9) The commission shall promulgate rules for the licensing of default suppliers on or before December 1, 1999.~~

~~———— (10) Until the commission has determined that workable competition has developed for small customers, a default supplier's obligation to serve remains.~~

~~———— (11) In addition to promulgating rules expressly provided for in this chapter, the commission may promulgate any other rules necessary to carry out the provision of this chapter.~~

~~———— (12) This chapter does not give the commission the authority to:~~

~~———— (a) regulate cooperative utilities in any manner other than reviewing certification filings for compliance with this chapter; or~~

~~———— (b) compel any change to a cooperative utility's certification filing made pursuant to this chapter."~~

NEW SECTION. SECTION 18. CONSUMER ELECTRICITY SUPPORT PROGRAM. (1) THERE IS A CONSUMER ELECTRICITY SUPPORT PROGRAM. THE PURPOSE OF THE PROGRAM IS TO PROVIDE AN AFFORDABLE AND RELIABLE ELECTRICITY SUPPLY TO CUSTOMERS OF THE DEFAULT SUPPLIER FROM JULY 1, 2002, UNTIL JUNE 30, 2007. THE CONSUMER ELECTRICITY SUPPORT PROGRAM CONSISTS OF FINANCIAL SUPPORT OR THE ASSIGNMENT AND SUBSEQUENT DISPOSITION OF ELECTRICITY SUPPLY.

(2) THERE IS A CONSUMER ELECTRICITY SUPPORT ACCOUNT IN THE STATE SPECIAL REVENUE FUND. THE ACCOUNT MUST BE USED FOR THE DEPOSIT OF ANY OF THE FINANCIAL SOURCES DEDICATED TO THE ACCOUNT. DISTRIBUTIONS FROM THE ACCOUNT MUST BE IN ACCORDANCE WITH RULES ADOPTED BY THE DEPARTMENT OF ADMINISTRATION FOR THE PROGRAM. FINANCIAL SOURCES FOR FUNDING THE ACCOUNT MAY INCLUDE:

(A) ALLOCATIONS FROM THE STATE AS PROVIDED BY LAW; AND

(B) OTHER FINANCIAL SOURCES AS IDENTIFIED IN RULES ADOPTED BY THE DEPARTMENT OF ADMINISTRATION.

(3) ELECTRICITY SUPPLY MADE AVAILABLE FOR THE PROGRAM MUST BE EITHER DISPOSED OF, WITH THE RESULTING REVENUE DEPOSITED TO THE CONSUMER ELECTRICITY SUPPORT ACCOUNT, OR ASSIGNED TO THE DISTRIBUTION SERVICES PROVIDER TO SERVE DEFAULT SUPPLY CUSTOMERS. THE ELECTRICITY SUPPLY PROVIDERS MUST BE REIMBURSED FOR ELECTRICITY SUPPLY CONTRIBUTED AND USED IN ACCORDANCE WITH RULES ADOPTED BY THE DEPARTMENT OF ADMINISTRATION FOR THIS PROGRAM. ELECTRICITY SUPPLY SOURCES INCLUDE:

(A) ELECTRICITY PROVIDED BY ELECTRICITY SUPPLIERS;

(B) ELECTRICITY AVAILABLE IN THE ELECTRICAL ENERGY POOL ESTABLISHED IN [SECTION 1 OF HOUSE BILL NO. 645];

(C) GOVERNMENT POWER AUTHORITIES;

(D) QUALIFYING FACILITY ELECTRICITY SUPPLY AS PROVIDED BY LAW; AND

(E) ANY OTHER SOURCE OF ELECTRICITY SUPPLY AS IDENTIFIED IN RULES ADOPTED BY THE DEPARTMENT OF ADMINISTRATION.

(4) THE CONSUMER ELECTRICITY SUPPORT PROGRAM MUST BE ADMINISTERED BY THE DEPARTMENT OF ADMINISTRATION. THE DEPARTMENT SHALL ADOPT RULES NECESSARY TO OPERATE THE PROGRAM AND TO ALLOCATE THE CONSUMER ELECTRICITY SUPPORT RESOURCES BEGINNING JULY 1, 2002. THE RULES MUST PROVIDE FOR THE EQUITABLE DISTRIBUTION OF PROGRAM RESOURCES FOR DEFAULT SUPPLY CUSTOMERS AND FOR THE REIMBURSEMENT OF THE ELECTRICITY SUPPLY PROVIDERS. THE RULES MUST BALANCE THE SHORT-TERM CONSIDERATIONS OF COST MITIGATION WITH THE LONGER-TERM INTERESTS OF ENCOURAGING CUSTOMER DEMAND RESPONSE BY ESTABLISHING ACCURATE ELECTRICITY SUPPLY PRICE SIGNALS. THE DEPARTMENT SHALL IMPLEMENT THE CONSUMER ELECTRICITY SUPPORT PROGRAM IN COORDINATION WITH THE DEFAULT SUPPLIER.

(5) THE DEPARTMENT OF ADMINISTRATION MAY RECOVER THE COSTS OF ADMINISTERING THE PROGRAM FROM THE CONSUMER ELECTRICITY SUPPORT ACCOUNT.

NEW SECTION. SECTION 19. FUNDING OF CONSUMER ELECTRICITY SUPPORT PROGRAM. (1) UP TO \$100 MILLION EACH YEAR FROM THE REVENUE DERIVED FROM THE ELECTRICAL ENERGY EXCESS REVENUE TAX IMPOSED BY

[SECTIONS 1 THROUGH 10 OF SENATE BILL NO. 512] MUST BE TRANSFERRED FROM THE GENERAL FUND INTO THE CONSUMER ELECTRICITY SUPPORT ACCOUNT.

(2) PURSUANT TO RULES ADOPTED BY THE DEPARTMENT OF ADMINISTRATION UNDER [SECTION 18], AT LEAST 80% OF THE MONEY IN THE ACCOUNT MUST BE USED TO PROMOTE PRICE STABILITY OF THE SUPPLY OF ELECTRICAL ENERGY IN MONTANA:

(A) FOR DEFAULT CUSTOMERS OF A PUBLIC UTILITY THAT HAS SUBMITTED A TRANSITION PLAN PURSUANT TO PARTS 1 THROUGH 5 OF THIS CHAPTER ON OR BEFORE JULY 1, 2001; AND

(B) FOR CUSTOMERS THAT CHOSE AN ELECTRICAL ENERGY SUPPLIER AS PROVIDED IN TITLE 69, CHAPTER 8, PART 2.

(3) PURSUANT TO RULES ADOPTED BY THE DEPARTMENT OF ADMINISTRATION UNDER [SECTION 18], THE AMOUNT REMAINING IN THE ACCOUNT AFTER PROMOTING PRICE STABILITY OF THE SUPPLY OF ELECTRICAL ENERGY UNDER SUBSECTION (2) OF THIS SECTION MAY BE USED FOR THE FOLLOWING PURPOSES:

(A) ASSISTING IN THE RECRUITMENT OF NEW EMPLOYERS WITH 100 EMPLOYEES OR MORE AND IN THE PROMOTION OF THE EXPANSION OF EMPLOYMENT BY 100 EMPLOYEES OR MORE BY EXISTING EMPLOYERS WHO NEED A REASONABLE AND STABLE SUPPLY OF ELECTRICAL ENERGY;

(B) FUNDING UNIVERSAL SYSTEM BENEFITS PROGRAMS PROVIDED FOR IN THIS CHAPTER;

(C) PROVIDING LOW-INTEREST LOANS FOR NEW TRANSMISSION FACILITIES OR FOR IMPROVEMENTS TO EXISTING TRANSMISSION FACILITIES;

(D) PROVIDING LOW-INTEREST LOANS FOR THE CONSTRUCTION OF NEW TEMPORARY OR PERMANENT ELECTRICAL GENERATION FACILITIES AND FOR THE EXPANSION OF THE NET GENERATION CAPACITY OF EXISTING ELECTRICAL GENERATION FACILITIES. THE ELECTRICAL GENERATION FACILITIES REFERRED TO IN THIS SUBSECTION MUST HAVE AN ELECTRICAL GENERATION CAPACITY OF 60 MEGAWATTS OR LESS.

(4) IN ADOPTING RULES, THE DEPARTMENT OF ADMINISTRATION SHALL CONSULT WITH THE COMMISSION AND THE CONSUMER COUNSEL. THE DEPARTMENT MAY CONTRACT WITH THE COMMISSION FOR THE ADMINISTRATION OF PORTIONS OF THE PROGRAM.

(5) THE FUNDS DEPOSITED IN THE ACCOUNT UNDER THIS SECTION BUT NOT EXPENDED FOR THE PURPOSES ESTABLISHED IN THIS SECTION MUST BE TRANSFERRED TO THE GENERAL FUND AFTER THE END OF EACH BIENNIUM.

(6) THE MONEY IN THE STATE SPECIAL REVENUE ACCOUNT IS STATUTORILY APPROPRIATED, AS PROVIDED IN 17-7-502, FOR THE PURPOSES OF [SECTION 18] AND THIS SECTION.

NEW SECTION. SECTION 20. SHORT TITLE. [SECTIONS 20 THROUGH 28] MAY BE CITED AS THE "MONTANA

POWER AUTHORITY ACT".

NEW SECTION. SECTION 21. PURPOSE. THE LEGISLATURE FINDS AND DECLARES THAT:

(1) THE ECONOMIC VIABILITY AND SECURITY OF THE STATE OF MONTANA IS DIRECTLY LINKED TO RELIABLE AND AFFORDABLE ELECTRICAL ENERGY;

(2) ELECTRICAL ENERGY HAS BECOME A BASIC AND IRREPLACEABLE NECESSITY THAT IMPACTS THE PUBLIC HEALTH, SAFETY, AND WELFARE OF ALL MONTANA CITIZENS;

(3) MONTANA'S RESIDENTIAL, AGRICULTURAL, GOVERNMENTAL, COMMERCIAL, AND INDUSTRIAL CONSUMERS OF ELECTRICAL ENERGY ARE ENTITLED TO COST-BASED PRICES FOR ELECTRICAL ENERGY; AND

(4) IT IS IN THE PUBLIC INTEREST THAT THE MONTANA POWER AUTHORITY HAVE THE ABILITY TO:

(A) PURCHASE ELECTRICAL ENERGY FROM ANY SUPPLIER IN THE WHOLESALE MARKET FOR THE PURPOSE OF PROVIDING RELIABLE, COST-BASED POWER EXCLUSIVELY TO MONTANA CONSUMERS;

(B) CONSTRUCT, ACQUIRE, OR ENTER INTO JOINT VENTURES TO CONSTRUCT OR ACQUIRE ELECTRICAL GENERATION FACILITIES THAT WILL PROVIDE COST-BASED POWER TO CONSUMERS IN MONTANA;

(C) CONSTRUCT, ACQUIRE, OR ENTER INTO JOINT VENTURES TO CONSTRUCT OR ACQUIRE ELECTRICAL ENERGY TRANSMISSION OR DISTRIBUTION SYSTEMS;

(D) SELL ELECTRICAL ENERGY TO A DEFAULT SUPPLIER AND TO ANY MUNICIPAL UTILITY, COOPERATIVE UTILITY, OR INVESTOR-OWNED UTILITY THAT SERVES MONTANA CUSTOMERS;

(E) CONTRACT WITH PUBLIC OR PRIVATE ENTITIES FOR THE OPERATION AND MAINTENANCE OF STATE-OWNED POWER FACILITIES; AND

(F) ENCOURAGE AND SUPPORT ENERGY CONSERVATION TO MITIGATE CONSUMER COSTS AND DETRIMENTAL IMPACTS ON THE ENVIRONMENT.

NEW SECTION. SECTION 22. DEFINITIONS. AS USED IN [SECTIONS 20 THROUGH 28], UNLESS THE CONTEXT REQUIRES OTHERWISE, THE FOLLOWING DEFINITIONS APPLY:

(1) "COST-BASED" MEANS THE PRICE CHARGED TO A DISTRIBUTION SERVICES PROVIDER THAT IS SUFFICIENT TO MEET THE OPERATING COSTS, INCLUDING COMMODITY COSTS, OF THE MONTANA POWER AUTHORITY AND TO ENSURE TIMELY REPAYMENT OF BONDS ISSUED ON BEHALF OF OR ANY OTHER DEBT INCURRED BY THE MONTANA POWER AUTHORITY.

(2) "DEFAULT SUPPLIER" MEANS A DISTRIBUTION SERVICES PROVIDER.

(3) "DEPARTMENT" MEANS THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION ESTABLISHED IN

2-15-3301.

(4) "MONTANA POWER AUTHORITY" OR "AUTHORITY" MEANS THE CITIZEN BOARD ESTABLISHED IN [SECTION 23].

NEW SECTION. SECTION 23. MONTANA POWER AUTHORITY -- BOARD COMPOSITION -- PROCEDURES. (1)

THERE IS A MONTANA POWER AUTHORITY CONSISTING OF A SEVEN-MEMBER CITIZEN BOARD APPOINTED BY THE GOVERNOR WITH THE CONSENT OF THE SENATE.

(2) IN SELECTING THE MEMBERS, THE GOVERNOR SHALL:

(A) CONSIDER EACH PROSPECTIVE MEMBER'S KNOWLEDGE AND UNDERSTANDING OF THE STRUCTURAL AND FINANCIAL DIMENSIONS OF THE ELECTRICAL ENERGY SECTOR OF THE STATE'S ECONOMY;

(B) ENSURE THAT TWO OF THE MEMBERS BROADLY REPRESENT, AS EVIDENCED BY THEIR BACKGROUND, EXPERIENCE, AND LIVELIHOOD, THE FOLLOWING CATEGORIES OF ELECTRICAL ENERGY CONSUMPTION:

(I) IRRIGATED AGRICULTURE;

(II) COMMERCIAL AND INDUSTRIAL ENTERPRISE; AND

(III) RESIDENTIAL;

(C) CHOOSE AN AT-LARGE MEMBER WITH ACADEMIC OR BUSINESS CREDENTIALS THAT INDICATE THAT THE PERSON HAS SUBSTANTIAL EXPERIENCE IN ENERGY MARKETS IN THE REGION OF THE WESTERN STATES; AND

(D) CHOOSE AN AT-LARGE MEMBER WITH SUBSTANTIAL EXPERIENCE IN FINANCIAL, BANKING, AND BONDING MATTERS.

(3) THE MEMBERS SHALL ELECT THE PRESIDING OFFICER BY MAJORITY VOTE.

(4) MEMBERS OF THE MONTANA POWER AUTHORITY SHALL SERVE STAGGERED 4-YEAR TERMS. THE GOVERNOR SHALL DESIGNATE TWO OF THE INITIAL MEMBERS TO SERVE 2-YEAR TERMS AND THREE OF THE INITIAL MEMBERS TO SERVE 3-YEAR TERMS. VACANCIES MUST BE FILLED BY APPOINTMENT FOR THE UNEXPIRED TERM. A MEMBER MAY NOT SERVE MORE THAN TWO CONSECUTIVE TERMS.

(5) THE MONTANA POWER AUTHORITY SHALL MEET AT LEAST TWICE A YEAR AND MAY MEET MORE FREQUENTLY AS REQUIRED BY CIRCUMSTANCES OR AT THE REQUEST OF ANY TWO OR MORE MEMBERS OF THE AUTHORITY.

(6) DECISIONS OF THE MONTANA POWER AUTHORITY REQUIRE A SIMPLE MAJORITY OF THE WHOLE MEMBERSHIP.

(7) THE MONTANA POWER AUTHORITY IS ATTACHED TO THE DEPARTMENT FOR ADMINISTRATIVE PURPOSES, AND THE DEPARTMENT SHALL PROVIDE STAFF SUPPORT AND A LIAISON BETWEEN THE AUTHORITY AND OTHER STATE OR FEDERAL AGENCIES.

NEW SECTION. SECTION 24. POWERS AND DUTIES. (1) THE MONTANA POWER AUTHORITY MAY:

(A) PURCHASE ELECTRICAL ENERGY FROM ANY WHOLESALE POWER SUPPLIER, ON A CONTRACTUAL BASIS, WITHOUT LIMITATION ON THE DURATION OF ANY CONTRACT, TO MEET THE AGGREGATED LOAD REQUIREMENTS OF CONSUMERS IN THE SERVICE TERRITORY OF A DISTRIBUTION SERVICES PROVIDER IN MONTANA;

(B) PURCHASE, CONSTRUCT, AND OPERATE ELECTRICAL GENERATION FACILITIES OR ELECTRICAL ENERGY TRANSMISSION OR DISTRIBUTION SYSTEMS IN THE STATE;

(C) ENTER INTO JOINT VENTURES WITH ANY MUNICIPALITY, A COOPERATIVE, AN INVESTOR-OWNED UTILITY, OR ANY OTHER PUBLIC OR LICENSED PRIVATE ENTITY IN MONTANA FOR THE PURPOSE OF FINANCING THE CONSTRUCTION OF AN ELECTRICAL GENERATION FACILITY OR AN ELECTRICAL ENERGY TRANSMISSION OR DISTRIBUTION SYSTEM;

(D) REQUEST THAT THE LEGISLATURE AUTHORIZE REVENUE BONDS TO BE ISSUED BY THE BOARD OF EXAMINERS PURSUANT TO TITLE 17, CHAPTER 5, FOR THE PURPOSE OF:

(I) CONSTRUCTING ELECTRICAL GENERATION FACILITIES OR ELECTRICAL ENERGY TRANSMISSION OR DISTRIBUTION SYSTEMS IN THE STATE; OR

(II) PURCHASING AN ELECTRICAL GENERATION FACILITY OR AN ELECTRICAL ENERGY TRANSMISSION OR DISTRIBUTION SYSTEM; OR

(E) SELL ELECTRICAL ENERGY TO ANY DISTRIBUTION SERVICES PROVIDER IN THE STATE;

(F) PARTICIPATE IN A REGIONAL TRANSMISSION ORGANIZATION ESTABLISHED IN RESPONSE TO OR IN COMPLIANCE WITH AN ORDER OF THE FEDERAL ENERGY REGULATORY COMMISSION; AND

(G) PARTICIPATE WITH ANY MUNICIPALITY IN AN ELECTRICAL ENERGY GENERATION PROJECT AS PROVIDED IN TITLE 90, CHAPTER 5, PART 1. THE BONDS MAY BE PUBLICLY OR PRIVATELY SOLD, BEAR INTEREST AT RATES AND TIMES, AND MATURE AT TIMES NOT EXCEEDING 40 YEARS FROM THE DATE OF ISSUANCE AS THE BOARD SHALL DETERMINE. THE BOARD MAY ISSUE THE BONDS PURSUANT TO A RESOLUTION OR INDENTURE OF TRUST WITH A FINANCIAL INSTITUTION HAVING THE POWERS OF A TRUST COMPANY. THE RESOLUTION OR INDENTURE MAY CONTAIN PROVISIONS FOR PROTECTING AND ENFORCING THE RIGHTS OF BONDHOLDERS THAT ARE REASONABLE AND PROPER AND NOT IN VIOLATION OF LAW, INCLUDING COVENANTS SETTING FORTH THE DUTIES OF THE STATE, THE BOARD OF EXAMINERS, THE AUTHORITY, OR AGENCIES OF THE STATE IN RELATION TO THE ACQUISITION, CONSTRUCTION, IMPROVEMENTS, MAINTENANCE, OPERATION, REPAIR, AND INSURANCE OF THE PROJECT FINANCED WITH THE PROCEEDS OF THE BONDS AND THE CUSTODY AND APPLICATION OF ALL MONEY. THE TRUST INDENTURE MAY SET FORTH THE RIGHTS AND REMEDIES OF THE BONDHOLDERS AS IS CUSTOMARY IN TRUST INDENTURES, DEEDS OF TRUST, AND MORTGAGES SECURING BONDS.

(2) THE MONTANA POWER AUTHORITY SHALL, SUBSEQUENT TO THE PURCHASE OF ELECTRICAL ENERGY FROM THE WHOLESALE MARKET OR THE GENERATION OF POWER FROM AN IN-STATE GENERATION FACILITY, OFFER COST-BASED ELECTRICAL ENERGY TO MONTANA CONSUMERS, INCLUDING TO A DEFAULT SUPPLIER AND TO ANY MUNICIPAL UTILITY,

COOPERATIVE UTILITY, OR INVESTOR-OWNED UTILITY IN THE STATE.

NEW SECTION. SECTION 25. BOND AUTHORIZATION. (1) THE BOARD OF EXAMINERS MAY ISSUE AND SELL BONDS OF THE STATE IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$500 MILLION FOR THE PURPOSES AUTHORIZED IN [SECTION 26]. THE BONDS ARE REVENUE OBLIGATIONS IN WHICH THE NET REVENUE FROM THE SALE OF THE ELECTRICAL ENERGY PRODUCED FROM THE ELECTRICAL GENERATION FACILITIES ACQUIRED OR BUILT PURSUANT TO [SECTION 26] OR REVENUE FROM ELECTRICAL ENERGY TRANSMISSION AND DISTRIBUTION CHARGES IS PLEDGED FOR PAYMENT OF THE PRINCIPAL AND INTEREST ON THE BONDS. THE BOARD MAY ISSUE THE BONDS IN ACCORDANCE WITH THE APPLICABLE PROVISIONS CONTAINED IN 17-5-921 THROUGH 17-5-930.

(2) THE PROCEEDS OF THE BONDS, OTHER THAN ANY PREMIUMS AND ACCRUED INTEREST RECEIVED, MUST BE DEPOSITED IN AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND. PREMIUMS AND ACCRUED INTEREST MUST BE DEPOSITED IN THE DEBT SERVICE FUND ESTABLISHED IN 17-2-102. PROCEEDS OF BONDS DEPOSITED IN THE ACCOUNT MAY BE USED TO PAY THE COSTS OF ISSUING THE BONDS AND TO FULFILL THE PURPOSES AUTHORIZED IN [SECTION 26]. FOR THE PURPOSES OF 17-5-803 AND 17-5-804, THE ACCOUNT CONSTITUTES A CAPITAL PROJECTS ACCOUNT. THE BOND PROCEEDS MUST BE AVAILABLE TO THE MONTANA POWER AUTHORITY AND MAY BE USED FOR THE PURPOSES AUTHORIZED IN THIS SECTION WITHOUT FURTHER BUDGETARY AUTHORIZATION.

(3) (A) IN AUTHORIZING THE SALE AND ISSUANCE OF THE BONDS, THE BOARD OF EXAMINERS, UPON REQUEST OF THE MONTANA POWER AUTHORITY, MAY CREATE SEPARATE ACCOUNTS OR SUBACCOUNTS TO PROVIDE FOR THE PAYMENT AND SECURITY OF THE BONDS, INCLUDING A DEBT SERVICE RESERVE ACCOUNT. THE NET REVENUE FROM THE SALE OF THE ELECTRICAL ENERGY PRODUCED FROM THE ELECTRICAL GENERATION FACILITIES ACQUIRED PURSUANT TO [SECTION 26] MUST BE PLEDGED TO THESE ACCOUNTS.

(B) THE ELECTRICAL ENERGY PRODUCED FROM THE ELECTRICAL GENERATION FACILITIES MUST BE OFFERED TO IN-STATE CUSTOMERS BEFORE THE ELECTRICAL ENERGY MAY BE OFFERED TO OTHER CUSTOMERS.

NEW SECTION. SECTION 26. USE OF BOND PROCEEDS. THE MONTANA POWER AUTHORITY SHALL USE THE PROCEEDS OF THE BONDS AUTHORIZED IN [SECTION 25] TO PURCHASE THE ELECTRICAL GENERATION FACILITIES AND ASSOCIATED WATER RIGHTS FOR THOSE FACILITIES, TO BUILD ELECTRICAL ENERGY GENERATION FACILITIES, TO DESIGN AND BUILD NEW STATE-OWNED ELECTRICAL ENERGY TRANSMISSION OR DISTRIBUTION SYSTEMS, OR TO PAY CAPITALIZED INTEREST DURING CONSTRUCTION, TO FUND A DEBT SERVICE RESERVE, AND TO PAY COSTS ASSOCIATED WITH THE SALE AND SECURITY OF THE BONDS. THE MONTANA POWER AUTHORITY MAY NOT ACQUIRE A FACILITY OR SYSTEM THAT IS ASSOCIATED WITH A SUPERFUND PROJECT.

NEW SECTION. SECTION 27. INTERAGENCY COOPERATION. (1) STATE AGENCIES SHALL COOPERATE WITH THE MONTANA POWER AUTHORITY IN THE PLANNING OF ELECTRICAL ENERGY PURCHASES OR THE PERMITTING OR CONSTRUCTING OF ELECTRICAL GENERATION FACILITIES.

(2) WITHIN THE LIMITS OF AVAILABLE RESOURCES, STATE AGENCIES SHALL PROVIDE SCIENTIFIC, ECONOMIC, AND OTHER RELEVANT DATA REQUESTED BY THE MONTANA POWER AUTHORITY.

NEW SECTION. SECTION 28. PLEDGE. IN ACCORDANCE WITH CONSTITUTIONS OF THE UNITED STATES AND THE STATE OF MONTANA, THE STATE PLEDGES THAT IT WILL NOT IN ANY WAY IMPAIR THE OBLIGATIONS OF ANY AGREEMENT BETWEEN THE STATE AND THE HOLDERS OF THE BONDS ISSUED BY THE STATE.

NEW SECTION. SECTION 29. ADOPTION OF RULES. BECAUSE THE SUPPLY AND PRICE OF ELECTRICITY CONSTITUTE A THREAT TO THE PUBLIC HEALTH, SAFETY, AND WELFARE, THE COMMISSION AND THE DEPARTMENT OF ADMINISTRATION MAY BEGIN PROCEEDINGS TO ADOPT RULES IMMEDIATELY UPON PASSAGE AND APPROVAL OF [THIS ACT]. THE RULES MUST BE ADOPTED BY JULY 1, 2001.

NEW SECTION. SECTION 30. REPEALER. SECTIONS 35-19-103, 69-8-416, AND 69-8-417, MCA, ARE REPEALED.

NEW SECTION. Section 31. Codification instruction. (1) [Section 3-1] is intended to be codified as an integral part of Title 15, chapter 31, part 1, and the provisions of Title 15, chapter 31, part 1, apply to [section 3-1].

———— (2) [SECTION 2] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 69, CHAPTER 8, AND THE PROVISIONS OF TITLE 69, CHAPTER 8, APPLY TO [SECTION 2].

———— (3) [SECTIONS 3 THROUGH 7] (1) [SECTIONS 1 THROUGH 5] ARE INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 17, CHAPTER 6, AND THE PROVISIONS OF TITLE 17, CHAPTER 6, APPLY TO [SECTIONS 3 THROUGH 7] [SECTIONS 1 THROUGH 5].

(2) [SECTIONS 18 AND 19] 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 18 AND 19].

(3) [SECTIONS 20 THROUGH 28] ARE INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 69, AND THE PROVISIONS OF TITLE 69 APPLY TO [SECTIONS 20 THROUGH 28].

NEW SECTION. Section 32. Effective date DATES. ~~[This act] (1) EXCEPT AS PROVIDED IN SUBSECTION (2), [THIS ACT] is effective July 1, 2001.~~

~~(2) [SECTIONS 29 AND 31 AND THIS SECTION] ARE EFFECTIVE ON PASSAGE AND APPROVAL.~~

~~NEW SECTION. Section 9. Termination. [This act] terminates June 30, 2007.~~

- END -