

HOUSE BILL NO. 632  
INTRODUCED BY D. MOOD

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE ELECTRIC UTILITY INDUSTRY RESTRUCTURING AND CUSTOMER CHOICE LAWS; PROVIDING TAX RELIEF FOR A PUBLIC UTILITY OR OTHER ELECTRICITY SUPPLIER THAT SELLS ELECTRICITY AT LIFELINE RATES; DEFINING "LIFELINE RATES"; CLARIFYING THAT THE PUBLIC SERVICE COMMISSION RETAINS AUTHORITY OVER THE PRICE OF ELECTRICITY UNTIL A FINAL TRANSITION PLAN IS APPROVED BY THE COMMISSION; CLARIFYING THAT THE COMMISSION'S AUTHORITY TO SET JUST AND REASONABLE RATES IS A CONTINUING OBLIGATION; REQUIRING THE COMMISSION TO COMMENCE A PROCEEDING TO PROVIDE JUST AND REASONABLE RATES; REQUIRING THE COMMISSION TO ADOPT TEMPORARY LIFELINE RATES FOR COMMERCIAL OR INDUSTRIAL CUSTOMERS; AMENDING SECTIONS 15-31-113, 69-8-103, 69-8-210, 69-8-211, AND 69-8-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE."

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

**Section 1.** Section 15-31-113, MCA, is amended to read:

**"15-31-113. Gross income and net income.** (1) ~~The term~~ Except as provided in subsection (4). "gross income" means all income recognized in determining the corporation's gross income for federal income tax purposes and:

(a) including:

(i) interest exempt from federal income tax and exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered;

(ii) the portion of gain from a liquidation of the reporting corporation not recognized for federal corporate income tax purposes pursuant to sections 331 through 337 of the Internal Revenue Code, as those sections may be amended or renumbered, attributable to stockholders, either individual or corporate, not subject to Montana income or license tax under Title 15, chapter 30 or chapter 31, as appropriate, on the gain passing through to the stockholders pursuant to federal law; and

(b) excluding gain recognized for federal tax purposes as a shareholder of a liquidating corporation pursuant to sections 331 through 337 of the Internal Revenue Code, as those sections may be amended or

renumbered, when the gain is required to be recognized by the liquidating corporation pursuant to subsection (1)(a)(ii) of this section.

(2) The term "net income" means the gross income of the corporation less the deductions set forth in 15-31-114.

(3) A corporation is not exempt from the corporation license tax unless specifically provided for under 15-31-101(3) or 15-31-102. Any corporation not subject to or liable for federal income tax but not exempt from the corporation license tax under 15-31-101(3) or 15-31-102 shall compute gross income for corporation license tax purposes in the same manner as a corporation that is subject to or liable for federal income tax according to the provisions for determining gross income in the federal Internal Revenue Code in effect for the taxable year.

(4) (a) Gross income does not include income from the sale of electricity for lifeline rates under 69-8-403 by a public utility or other electricity supplier as defined in 69-8-103 if that public utility or other electricity supplier is subject to the tax provided in this chapter.

(b) The exclusion from gross income allowed under subsection (4)(a) also applies to a limited liability partnership if the limited liability partnership satisfies the conditions in subsection (4)(a)."

**Section 2.** 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 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) "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) (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) "Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations.

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

(16) "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) "Lifeline rates" means emergency, temporary rates that are adopted for the express purpose of allowing commercial or industrial customers without an affordable supply of electricity as of May 1, 2001, to remain in operation or to recommence operations once suspended.

~~(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.

~~(34)~~(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.

~~(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) renewable resource projects and applications, including those that capture unique social and energy system benefits or that provide transmission and distribution system benefits;
- (d) research and development programs related to energy conservation and renewables;
- (e) market transformation designed to encourage competitive markets for public purpose programs; and
- (f) low-income energy assistance.

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

**Section 3.** Section 69-8-210, MCA, is amended to read:

**"69-8-210. Public utilities -- electricity supply.** (1) Consistent with the provisions of 69-8-403, the commission retains authority over the price of electricity supply paid by customers of Montana utilities until a final transition plan is approved by the commission. The commission's authority and duty to set just and reasonable

rates for electricity supply costs paid by customers is a continuing obligation.

(2) On the effective date of a final 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)(3) During the transition period, the commission may shall 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~~ just and reasonable rates for all customers of a public utility that has filed a transition plan.~~  
In establishing those rates, the commission shall consider the following factors:

(a) cost of production;

(b) reasonable rate of return;

(c) market considerations; and

(d) the ability of customers to pay.

~~(3) If the transition period is extended, then the customers' distribution services provider shall:~~

~~—— (a) extend any cost-based contract with the distribution services provider's affiliate supplier for a term 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.~~

(4) 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."

**Section 4.** 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. A sale by a public utility of its generation assets to a successor or assignee does not relieve either the public utility or its successor or assignee of its obligation to serve customers at just and reasonable rates.

(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 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.

(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 5.** Section 69-8-403, MCA, is amended to read:

**"69-8-403. Commission authority -- rulemaking authority.** (1) Within 7 days of [the effective date of this act] the commission shall immediately commence a proceeding to provide just and reasonable rates to all Montana consumers, taking into consideration the cost of production, a rate of return analysis, the customer's ability to pay, and market conditions, as warranted, and provide a rate that allows all public utility customers to have access to affordable energy.

(2) Within 7 days of [the effective date of this act], the commission shall adopt temporary lifeline rates for all commercial or industrial customers currently unable to purchase power at an affordable price who request this rate determination. The lifeline rate must be set at a price that is based on consideration of data regarding operation costs from those commercial or industrial customers currently without an affordable price of electricity. The lifeline rates must expire as soon as the commission enters an interim order provided for in subsection (3).

(3) The commission shall enter an interim order no later than November 30, 2001, establishing just and reasonable rates for all Montana consumers.

(4) The legislature expressly provides the commission discretion to set just and reasonable rates, and a legal challenge to the interim rate may not be entertained until a final just and reasonable rate has been established by commission order. The commission shall set a final just and reasonable rate before July 1, 2002, and the interim just and reasonable rate must remain in effect until the final just and reasonable rate becomes effective.

(1)(5) Beginning on the effective date of a final 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 or the successor or assignee of a public utility for those customers not being served by a competitive supplier or those customers unable to obtain an affordable price for electricity supply; 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.

(6) The commission may not give final approval to a transition plan until a final just and reasonable rate has been approved by the commission for all customers of a public utility.

~~(2)(7) The~~ The commission may not give final approval to a transition plan unless the commission shall decide if decides 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)(8)~~ The commission shall license electricity suppliers and enforce licensing provisions pursuant to 69-8-404.

~~(4)(9)~~ 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 price, quality, safety, and reliability.

~~(5)(10)~~ 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)(11)~~ 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)(12)~~ The commission shall promulgate rules that protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices.

~~(8)(13)~~ The commission shall license default suppliers and enforce default licensing provisions pursuant to 69-8-416.

~~(9)(14)~~ The commission shall promulgate rules for the licensing of default suppliers on or before

December 1, 1999.

~~(10)~~(15) Until the commission has determined that workable competition has developed for small customers, a default supplier's obligation to serve remains.

~~(11)~~(16) 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)~~(17) 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 6. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 7. Retroactive applicability.** [Section 1] applies retroactively, within the meaning of 1-2-109, to the tax year following December 31, 2000.

NEW SECTION. **Section 8. Termination.** [Section 1] terminates December 31, 2001.

- END -