

SENATE BILL NO. 256  
INTRODUCED BY TOOLE

A BILL FOR AN ACT ENTITLED: "AN ACT MAKING NET METERING LAWS APPLICABLE TO CERTAIN UTILITIES, ~~INCLUDING COOPERATIVE UTILITIES~~; AMENDING SECTIONS 69-8-103, 69-8-201, ~~69-8-311~~, 69-8-602, AND 69-8-603, MCA; ~~REPEALING SECTION 69-8-605, MCA~~; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** 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 electrical energy, and takes title to 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 electrical energy but that does not take title to 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 of a utility that has restructured in accordance with this chapter.

(9) "Default supply service" means the provision of electricity supply by a default supplier.

(10) "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.

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

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

(13) "Electricity supply costs" means the actual costs of providing default supply service, including but not limited to:

- (a) capacity costs;
- (b) energy costs;
- (c) fuel costs;
- (d) ancillary service costs;
- (e) demand-side management and energy efficiency costs;
- (f) transmission costs, including congestion and losses;
- (g) billing costs;
- (h) planning and administrative costs; and
- (i) any other costs directly related to the purchase of electricity, management of default electricity supply costs, and provision of default supply and related services.

(14) "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.

(15) (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.

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

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

(18) "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.

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

(20) "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.

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

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

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

(b) has a generating capacity of not more than ~~the greater of either 50 kilowatts or the peak load of the facility to which the generator is attached~~ 100 KILOWATTS;

(c) is located on the customer-generator's premises and is metered at the same point as the customer-generator's facilities;

(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~~ electrical energy.

(23) "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.

(24) "Pilot program" means an experimental program using a select set of small customers to assess the

potential for developing and offering customer choice of electricity supply to small customers in the future.

(25) "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.

(26) "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.

(27) "Small customer" means a residential customer or a commercial customer who has an individual account with an average monthly demand in the previous calendar year of less than 50 kilowatts or a new residential or commercial customer with an estimated average monthly demand of less than 50 kilowatts of a public utility that has restructured pursuant to Title 35, chapter 19, or this chapter.

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

(29) "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.

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

(31) "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.

(32) "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 executed before May 2, 1997, 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.

(33) "Transition period" means the period ending July 1, 2027.

(34) "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.

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

(36) "Transmission services provider" means an entity controlling or operating transmission facilities.

(37) "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.

(38) "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.

(39) "Utility" means any public utility or cooperative utility."

**Section 2.** Section 69-8-201, MCA, is amended to read:

**"69-8-201. Public utility -- transition to customer choice -- options and requirements -- waiver. (1)**

Before July 1, 2027, all public utility customers of a public utility that has restructured in accordance with this chapter must have the opportunity to choose an electricity supplier other than the default supplier.

(2) (a) A small customer of a public utility that has restructured in accordance with this chapter:

(i) must receive default supply services from the default supplier as provided in this chapter; and  
(ii) may purchase electricity supply services through a commission-approved small customer electricity supply program as provided in this section.

(b) A small customer receiving electricity from a licensed supplier prior to July 1, 2003, may continue to receive electricity supply from a supplier other than the default supplier.

(c) Customers that represent separately metered services with an estimated average monthly demand of less than 50 kilowatts related to the same individual customer referred to in subsection (3) or (4) may be combined with the respective eligible customer load or loads.

(3) (a) Subject to subsection (3)(b), a customer of a public utility that has restructured in accordance with this chapter and that has an individual load with an average monthly demand of less than 5,000 kilowatts but greater than or equal to 50 kilowatts may choose an electricity supplier.

(b) The total average monthly billing demand for all customers that choose an electricity supplier pursuant to subsection (3)(a) in each calendar year may not exceed 20,000 kilowatts.

(c) A customer referred to in subsection (3)(a) receiving electricity from a licensed supplier prior to July 1, 2003, may continue to receive electricity supply from a supplier other than the default supplier.

(4) (a) Except as provided in subsections (4)(b) through ~~(4)(e)~~ (4)(d), a customer of a utility that has restructured in accordance with this chapter and that has an individual load with an average monthly demand of greater than or equal to 5,000 kilowatts shall purchase its entire electricity supply from the competitive marketplace.

~~(b) A customer referred to in subsection (4)(a) that is receiving its electricity supply from the competitive marketplace may make a one-time election to enter into a permanent power supply contract with the default supplier for service on or after July 1, 2004. These contracts must include the applicable provisions established by the commission pursuant to subsection (5). This election must be submitted to the commission in writing no later than December 31, 2003.~~

~~(c)~~(b) A new customer with an estimated average monthly demand of greater than or equal to 5,000 kilowatts may enter into a power supply contract with the default supplier in order to receive default supply

service. The new customer's election of an electricity supplier must be submitted in writing to the commission at least 90 days before delivery of electricity. These contracts must include the applicable provisions established by the commission pursuant to subsection (5).

~~(d)~~(c) A customer referred to in subsection (4)(a) that was receiving electricity from the default supplier on July 1, 2003, may continue to receive electricity from the default supplier.

~~(e)~~(d) A customer referred to in subsection (4)(a) that is a public agency, as defined in 18-1-101, may enter into a power supply contract with the default supplier for default supply service for all or part of the public agency's load. These contracts must include the applicable provisions established by the commission pursuant to subsection (5).

(5) The commission shall adopt rules and establish rates and fees to enable customers to have reasonable opportunities to choose an electricity supplier or to receive default supply service in accordance with subsections (2) through (4), while providing protection for small customers from higher or more unstable default supply service rates than would otherwise result if these choices were not offered.

(6) An electricity supplier licensed by the commission to offer electricity supply service to small customers may petition the commission for the opportunity to provide electricity to small customers. The total average monthly demand for all customers referred to in subsection (2)(a) in each calendar year that receive service from an electricity supplier that is not the default supplier may not exceed 10,000 kilowatts. The commission shall ensure that electricity supply service provided pursuant to this subsection is consistent with the requirements in subsection (5) and the provision of default supply service pursuant to this chapter.

(7) Based on an analysis of the sources of costs of providing default supply service, the commission may:

(a) establish different categories of default supply service customers to assist with the implementation of this section;

(b) allocate default supply costs; and

(c) develop default supply rates.

(8) (a) Except as provided in subsection (8)(b), a customer receiving default supply service may not resell the electricity.

(b) A default supplier may implement demand reduction programs that reward customers for reducing demand under terms established by the commission.

(9) (a) Except as provided in 69-5-101, 69-5-102, 69-5-104 through 69-5-112, ~~AND~~ ~~and~~ 69-8-402, ~~and~~ ~~Title 69, chapter 8, part 6~~, 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 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.

(b) To the extent that a public utility described in subsection (9)(a) becomes the successor in interest of another public utility that has restructured in accordance with this chapter, it shall assume responsibility only for the applicable transition plan of the acquired public utility.

(10) 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."

~~Section 3. Section 69-8-311, MCA, is amended to read:~~

~~"69-8-311. Cooperative utility -- exemption. (1) Within 1 year after May 2, 1997, a cooperative utility may file a notice with the commission that the cooperative utility does not intend to open the cooperative utility's distribution facilities to electricity suppliers and does not intend to adopt a transition plan. Except as otherwise provided in the universal system benefits program pursuant to 69-8-402 or in the net metering requirements under Title 69, chapter 8, part 6, a cooperative utility filing notice under this section is exempt from the provisions and requirements of this chapter.~~

~~(2) A cooperative utility filing a notice under this section:~~

~~(a) may elect later to adopt a transition plan in accordance with this chapter; and~~

~~(b) may not use a public utility's distribution facilities unless preexisting contracts exist."~~

**Section 3.** Section 69-8-602, MCA, is amended to read:

**"69-8-602. Distribution services provider net metering requirements.** A distribution services provider shall:

(1) allow net metering systems to be interconnected, ~~using a~~ A standard kilowatt-hour meter capable of registering the flow of electricity in two directions must be used if the customer-generator's facility is not demand-metered. If the facility is demand-metered, the generator must be metered with a separate kilowatt-hour meter, and the generated energy must be subtracted from the energy consumed by the customer-generator's facility for billing purposes, unless the commission determines, after appropriate notice and opportunity for comment:

(a) that the use of additional metering equipment to monitor the flow of electricity in each direction is



necessary and appropriate for the interconnection of net metering systems, after taking into account the benefits and costs of purchasing and installing additional metering equipment; and

(b) how the costs of net metering are to be allocated between the customer-generator and the distribution services provider; ~~and~~

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

(a) the distribution services provider will incur direct costs associated with interconnecting or administering net metering systems that exceed any offsetting benefits associated with these net metering systems; and

(b) public policy is best served by imposing these costs on the customer-generator, rather than allocating these costs among the distribution services provider's entire customer base."

**Section 4.** Section 69-8-603, MCA, is amended to read:

**"69-8-603. Net energy measurement calculation.** Consistent with the other provisions of this part, the net energy measurement must be calculated in the following manner:

(1) The distribution services provider shall measure the net ~~electricity~~ electrical energy produced by the customer-generator's generator or consumed by the customer-generator's facility during the billing period, in accordance with normal metering practices.

(2) If the ~~electricity~~ electrical energy supplied by the electricity supplier exceeds the ~~electricity~~ electrical energy generated by the customer-generator and fed back to the electricity supplier during the billing period, the customer-generator must be billed for the net ~~electricity~~ electrical energy and demand supplied by the electricity supplier, in accordance with normal metering practices.

(3) If ~~electricity~~ electrical energy generated by the customer-generator exceeds the electricity supplied by the electricity supplier, the customer-generator must be:

(a) billed for the appropriate customer charges for that billing period, in accordance with 69-8-602; and  
(b) credited for the excess kilowatt hours generated during the billing period, with this kilowatt-hour credit appearing on the bill for the following billing period.

(4) On January 1, April 1, July 1, or October 1 of each year, as designated by the customer-generator as the beginning date of a 12-month billing period, any remaining unused kilowatt-hour credit accumulated during the previous 12 months must be granted to the electricity supplier, without any compensation to the

customer-generator.

(5) NOTWITHSTANDING OTHER NET METERING PROVISIONS THAT MIGHT POTENTIALLY CONFLICT, THE COMMISSION SHALL ESTABLISH, BY RULE OR TARIFF PROCESS, THE REQUIREMENTS NECESSARY TO ENSURE THAT:

(A) CUSTOMER-GENERATORS ARE FULLY COMPENSATED FOR THE VALUE OF THEIR POWER PRODUCTION TO THE UTILITY SYSTEM; AND

(B) COSTS RELATED TO THE CUSTOMER-GENERATORS ARE NOT SHIFTED TO THE UTILITY OR OTHER CUSTOMERS OR CUSTOMER CLASSES."

~~NEW SECTION. **Section 6. Repealer.** Section 69-8-605, MCA, is repealed.~~

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

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