

## Introduction

A universal system benefits (USB) charge is assessed on electricity and natural gas customers in Montana to pay for certain public purpose programs. During the 2003-2004 interim, the Energy and Telecommunications Interim Committee decided to evaluate:

- ?? the amount of the charge;
- ?? the use of the funds collected, including the allocation of funds among programs; and
- ?? the disposition of collected universal system benefit funds.

This draft workbook presents background information and potential options. Additional options will be identified by committee members and interested parties.

Although the general purpose of the USB laws for natural gas and electricity are similar, the requirements governing the two programs are different.

The requirements for both programs were initially established in 1997. An evaluation of each program was required by July 1, 2002.

## Evaluation of Electricity Programs

The transition advisory committee (TAC) on electric industry restructuring was required to conduct a reevaluation of the ongoing need for USB programs and annual funding requirements and make recommendations to the 58th Legislature regarding the future need for USB programs. The law required that the determination of need focus specifically on:

- ?? the existence of markets to provide for any of the USB programs; and
- ?? whether or not other means for funding USB programs have been developed.

The recommendations of the TAC are presented in Appendix A.

## Evaluation of Natural Gas Programs

The Public Service Commission (PSC) was required to conduct an evaluation of the ongoing need for natural gas USB programs and annual funding requirements and make recommendations to the 58th Legislature regarding the future need for USB programs. The focus of the determination of need required by law was the same as for electricity programs.

- ?? The PSC concluded:
- ?? there are no other known markets for natural gas USB programs; and
- ?? there are no other known existing sources of funding to accomplish the purpose of natural gas USB programs.

The PSC recommended that the natural gas USB program continue.

# USB Charge

## Electricity

### Current charge

The USB charge is assessed on a per-kilowatt-hour basis for electric & distribution the customers at the meter. Except for large customers, the amount of the charge was derived as follows:

- ?? The annual funding level is statutorily established at 2.4% of each utility's annual retail sales revenue in Montana for calendar year 1995.
- ?? The PSC approved rates for regulated utilities based on this annual funding level.
- ?? The governing boards of cooperatives establish rates sufficient to collect the required funds for cooperatives.

The rate for a large customer<sup>1</sup> is set statutorily at 0.9 mills per kilowatt hour, not to exceed \$500,000 each year-; these amounts are part of the utility's annual funding obligation.

The USB charges do not change on an annual basis. ~~Therefore~~ therefore, the revenue raised each year varies depending on the utility's demand, and the portion of the demand that is attributable to qualifying large customers.<sup>2</sup> The total funding available for USB programs may be more or less than the "annual funding level." Table 1 illustrates this point.

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<sup>1</sup>A "large customer" is a customer with an individual load greater than a monthly average demand of 1,000 kilowatts in the previous calendar year (69-8-103(18), MCA).

<sup>2</sup>A utility could file a revised charge if necessary to collect the funding levels established by law. Note that the charge originally terminated in 2003. In 2003, the charge was extended until Dec. 31, 2005 (HB 509).

**Table 1. Annual USB Funding Level -- Regulated Electric Utilities**

Electric Utility	Annual Funding Level	USB Funds Collected in 2002
NorthWestern Energy (NWE)	8,559,615	8,237,435
Montana-Dakota Utilities' Co. (MDU)	674,660	752,550

The vast majority of USB revenue from electricity customers is collected by NWE.

Under current law, the universal system benefits charge rates remain in effect through December 31, 2005.

### History

The current formula for calculating the annual funding level for USB programs was established in SB 390 (1997). The annual funding requirement first went into effect in 1999.<sup>3</sup>

SB 390 created a transition advisory committee (TAC) on electric utility industry restructuring. (In 2003 HB 509 eliminated the TAC and the Energy and Telecommunications Interim Committee was created.) The TAC was required to report on various aspects of USB programs.

The TAC was required by law to make recommendations to the 58th Legislature to adjust the funding level to coincide with the related activities of the region at that time. In 2002, the TAC found that the current funding level was adequate. The TAC was presented with information regarding funding levels for USB programs in other states. None of the states adjacent to Montana had statutorily mandated USB programs. Two states - California and Oregon - were identified as being in the region and having USB programs, although low-income bill assistance is not included in their funding and weatherization funding is limited. The average charge in California was 3% and the approximate charge in Oregon was 3.5% of retail revenue from electricity sales.<sup>4</sup>

### **Natural Gas**

#### Requirements

The "Natural Gas Utility Restructuring and Customer Choice Act" (Ch. 506, L. 1997) required the

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<sup>3</sup>MDU was not required to restructure, but is required to comply with the USB requirements. Following a PSC order directing universal system benefits compliance and subsequent orders, MDU began collecting the charge in 2000.

<sup>4</sup>Information presented to the committee regarding funding of USB programs by other states can be found in the TAC's December 2002 Report, *The Electrical Utility Industry Restructuring Transition Advisory Committee: A Report to the Governor and The 38th Legislature*, Legislative Services Division, Helena, Montana.

PSC to establish a universal system benefits charge to apply to end users of natural gas. (The law has not been amended since enactment.) The PSC adopted rules<sup>5</sup> to implement this requirement. Key requirements of the statute and rules include the following:

- ?? Natural gas utilities, distribution services providers, and transmission service providers are required to assess a **USB** charge. ~~per dekatherm or million cubic feet of gas delivered for end use to each end user.~~ (Correct??)
- ?? The statute does not establish an annual funding level for all programs, but requires that at least 0.42 % of a natural gas utility's annual revenue be applied to low-income weatherization and bill assistance (69-3-1408(2), MCA.).
- ?? The law requires the PSC to establish the charge, taking into consideration the current level of expenditure by the natural gas utility, cost-effectiveness, and similar costs imposed in other states.
- ?? The PSC rules require that the charge be sufficient to generate at least 1.12 % of the entity's annual revenue derived from natural gas services to end users. However, the rules authorize a utility that objects to the minimum funding level established by rule to file an alternative proposal.
- ?? Entities that deliver gas for end use were required to file a USB program plan with the PSC by August 5, 1998. Utilities were required to propose tariffs reflecting changes to rates, if necessary to meet the required funding level.

In contrast to the USB charge imposed on electricity consumers, the funding level for USB natural gas programs changes annually.

Funding levels vary widely among gas utilities, ranging from 0.42 percent of annual revenue to 1.12% of annual revenue.

### Comparison of Funding Levels - Gas v. Electric

The required charge for natural gas is much less than for electricity customers. Depending on the utility, the natural gas USB charge ranges from approximately 1/5 to 1/2 of the electricity charge.

## **Options**

### Electricity

1. No change to current law regarding current funding level, determination of rates, or sunset date.
2. Extend or eliminate the termination date for the USB charge.

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<sup>5</sup>ARM 38.5.7020 through 38.5.7021

3. Revise funding levels for electricity programs. Must be combined with option 2 .6
4. Request additional information related to funding levels.
5. Require that the USB charge be evaluated periodically and revised, if necessary, in order to maintain statutory funding levels. Must be combined with option 2.
6. Evaluate whether or not the difference in funding levels for electricity and natural gas USB programs is appropriate, taking into consideration who pays and who benefits.
7. Provide that electricity and natural gas funds can benefit both kinds of customers.
8. Establish separate low-income bill assistance fund that fluctuates monthly
- 9.

### Gas

10. No change to current law.
11. Revise funding levels for natural gas programs.
12. Evaluate whether or not the difference in funding levels for electricity and natural gas USB programs is appropriate, taking into consideration who pays and who benefits.
13. Request additional information related to funding levels.
14. Add an option similar to #5 above
15. Provide that electricity and natural gas funds can benefit both kinds of customers.
- ~~15.~~16. Establish separate low-income bill assistance fund that fluctuates monthly
- ~~16.~~17.

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<sup>6</sup>A bill passed by the 2005 Legislature becomes effective October 1, 2005, three months before the charge expires.

# USB Programs

## Electricity

Universal system benefits programs are public purpose programs for:

- ?? cost-effective energy conservation;
- ?? low-income weatherization;
- ?? renewable resource projects and applications;
- ?? research and development programs related to energy conservation and renewables;
- ?? market transformation designed to encourage competitive markets for public purpose programs; and
- ?? low-income energy assistance (69-8-103(38), MCA).

Department of Revenue (DOR) rules (Appendix B) flesh out the activities that qualify for credits or expenditures under each of these categories.

In 2002, the TAC's Universal System Benefits Program Subcommittee found:

- ?? fledgling markets exist for certain types of energy efficiency and alternative energy applications; and
- ?? markets do not exist for low-income energy assistance.

## Natural Gas

Natural gas universal service programs are more narrowly defined to include public service programs for:

cost-effective local energy conservation; low-income weatherization; and low-income energy bill assistance.

## Options

### Electricity

17. No change to programs authorized.
18. Revise the list of programs authorized.
19. Request more information on specific programs.
- 20.
- 21.

### Natural Gas

- 22. No change to programs authorized
- 23. Revise the list of programs authorized.
- 24. Request more information on specific programs.
- 25.
- 26.

**Disposition of USB Funds**

**Electricity**

Allocation of Funds

The law requires that [a minimum of](#) 17% of the annual funding requirement be dedicated to low-income energy and weatherization assistance.

Regulated utilities were required to submit a USB program plan. The PSC approved the plans, including the allocation of funds among programs. The Montana Power Company (predecessor of NWE) proposed to establish a group to advise the company on allocations and USB programs and the PSC agreed to this proposal.

Allocations approved by the PSC were significantly different for each electric utility.

**Table 2. Initial Allocation of USB Funds by Electric Utility Pursuant to PSC Order (% of annual funding level)**

Program	NWE	MDU
Low-income assistance	21	46
Energy efficiency	21	22
Market transformation	13	0
Renewable resource projects	13	0
Research and development	3	14
Large customer self-directed	29	18

The law provides that large customers must receive credit for their internal expenditures and activities that qualify. Large customers are allowed to "self-direct" funds, meaning they can allocate funds as they choose among USB programs.

Expenditures

Utilities and large customers are not required to spend money on USB programs. However,

utilities and large customers receive credit for eligible programs and expenditures. If the utility's total annual ~~credits~~ [credits for qualifying expenditures](#) do not satisfy its annual funding requirement, the utility must make a payment to the state. Cooperative utilities are allowed to collectively pool their statewide credits to satisfy their annual funding requirements for US13 programs and low-income energy assistance.

Utilities and large customers must submit annual reports including claimed credits to the DOR by March 1. Claimed credits are presumed to be acceptable unless proven otherwise by the challenging party.

Department of Revenue rules (Appendix 13) address the types of expenditures that are eligible for credits as well as the timing of those expenditures. With respect to timing, the expenditure is considered to have occurred when resources or funds are financially committed by a utility or large customer to a program, project, or activity by payment, contract, or other obligation.<sup>7</sup> The credited funds or resources must be expended by the end of the following year, unless the department grants an extension. The DOR has granted extensions to NWE with the result that in 2003, NWE had carried forward approximately \$3.4 million of collected US13 funds from 2000-2002.<sup>8</sup> [All but \\$1.1 million was for projects that were in fact completed in 2003.](#)

Claimed credits may be challenged within 60 days of receipt of the annual report by the DOR. Upon receipt of the report, the department publishes a notice in the six major newspapers of general circulation in Montana. The notice must include the specific date by which challenges may be made. Department rules establish procedures for addressing disputes over challenged claims.

Two state funds have been established for deposit of payments from utilities that do not spend their annual funding level:

a fund administered by the Montana Department of Public Health and Human Services to provide universal low-income energy assistance; and a fund administered by the Montana Department of Environmental Quality to provide for other USB programs. (69-8-412, MCA).

## Natural Gas

The law requires that 0.42% of a natural gas utility's annual revenue be applied to low-income weatherization and bill assistance. The statute and rules do not otherwise specify how funds should be allocated among programs. Expenditures for types of ~~US13~~ [USB"B"](#) programs were approved by PSC order for each utility.

## Program Beneficiaries

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<sup>7</sup>ARM 42.29.111

<sup>8</sup>The staff attorney for the Energy and Telecommunications committee has been asked to prepare a legal opinion regarding whether or not the DOR complied with the statute.



Electricity funds are not required to be -necessarily used for electricity-specific programs. For example, most utilities give money to Energy Share, which is a private nonprofit organization that exists to help Montanans faced with energy emergencies. Greg Groepper, Energy Share Director explained to the Governor's Consumer Energy Protection Task Force on August 27, 2003 that approximately 3/4 of the NWE customers helped by Energy Share are gas customers and that Energy Share does not receive funds collected from natural gas USB charges.

## Options

### Electricity

27. Revise the allocation of funds to low-income programs.
28. Require that funds collected from electricity customers be used for the benefit of electricity customers.
29. Require that utilities subject to the USB requirement keep funds collected from the USB charge in specifically identified USB trust accounts (as is currently done by NWE), subject to the following requirements:
  - a. money in the USB accounts must be used exclusively for USB purposes;
  - b. revenue from the USB charge may not be intermingled with any other funds or accounts;
  - c. interest accrued on the USB revenue must be credited to the USB trust account and used for as other USB funds programs; and
  - d. the funds in the USB trust account must be clearly identified as public purpose funds that are not the property of the utility.
30. Establish a date certain by which a utility is required to pay USB funds collected in excess of credits to the state universal system benefits fund.
31. Limit the ability to carry forward USB funds to subsequent years.<sup>9</sup>
  - a. Prohibit any carry forward of USB funds so the state can distribute the funds to programs.
  - b. Allow carry-forward for a specified period of time only when specific criteria are met (e.g., a contract has been signed that provides for expenditure of the funds for qualified programs within the next year. or projects are abandoned, or as projects are completed under budget)
  - c. Specify a maximum dollar amount that may be carried forward to the next year.
  - d. Establish other standards or criteria.
32. Clarify in statute how the funds that are not expended and transmitted to the state should be allocated between the two types of state funds.
33. Conform statute to actual practice by requiring the utility to spend the USB revenue collected each year on USB funds or remit the remaining funds to the state. (Current law requires the utility to remit the difference between USB credits and the annual funding level.)
- 34.

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<sup>9</sup>If the Legislature chooses to delegate to the DOR the authority to authorize carry forward of funds, under case law interpreting the separation of powers provision in the Montana Constitution, the Legislature must provide sufficient statutory standards and criteria to guide the DOR.

35.

### Natural Gas

36. Request additional information on natural gas USB programs.
37. Require that funds collected from natural gas customers be used for the benefit of natural gas customers (or not, per #7).
38. Require that utilities subject to the USB requirement keep funds collected from the USB charge in specifically identified USB trust accounts, subject to the following requirements:
  - a. money in the USB accounts must be used exclusively for USB purposes;
  - b. revenue from the USB charge may not be intermingled with any other funds or accounts;
  - c. interest accrued on the USB revenue must be credited to the USB trust account and used for USB programs; and
  - d. the funds in the USB trust account must be clearly identified as public purpose funds that are not the property of the utility.

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40.

41.

## **Combined Options**

### **USB Charge**

#### Electricity

1. No change to current law regarding current funding level, determination of rates, or sunset date.
2. Extend or eliminate the termination date for the USB charge.
3. Revise funding levels for electricity programs. Must be combined with option 2.<sup>10</sup>
4. Request additional information related to funding levels.
5. Require that the USB charge be evaluated periodically and revised, if necessary, in order to maintain statutory funding levels. Must be combined with option 2.
6. Evaluate whether or not the difference in funding levels for electricity and natural gas USB programs is appropriate, taking into consideration who pays and who benefits.
- 7.
- 8.
- 9.

#### Gas

10. No change to current law.

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<sup>10</sup>A bill passed by the 2005 Legislature becomes effective October 1, 2005, three months before the charge expires.

11. Revise funding levels for natural gas programs.
12. Evaluate whether or not the difference in funding levels for electricity and natural gas USB programs is appropriate, taking into consideration who pays and who benefits.
13. Request additional information related to funding levels.
- 14.
- 15.
- 16.

## **USB Programs**

### Electricity

17. No change to programs authorized.
18. Revise the list of programs authorized.
19. Request more information on specific programs.
- 20.
- 21.

### Natural Gas

22. No change to programs authorized
23. Revise the list of programs authorized.
24. Request more information on specific programs.
- 25.
- 26.

## **Disposition of USB Funds**

### Electricity

27. Revise the allocation of funds to low-income programs.
28. Require that funds collected from electricity customers be used for the benefit of electricity customers [\(or not, per #7\)](#).
29. Require that utilities subject to the USB requirement keep funds collected from the USB charge in specifically identified USB trust accounts, subject to the following requirements:
  - a. money in the USB accounts must be used exclusively for USB purposes;
  - b. revenue from the USB charge may not be intermingled with any other funds or accounts;
  - c. interest accrued on the USB revenue must be credited to the USB trust account and used for USB programs; and
  - d. the funds in the USB trust account must be clearly identified as public purpose funds that are not the property of the utility.
30. Establish a date certain by which a utility is required to pay USB funds collected in excess of credits to the state universal system benefits fund.

31. Limit the ability to carry forward USB funds to subsequent years.<sup>11</sup>
  - a. Prohibit any carry forward of USB funds so the state can distribute the funds to programs.
  - b. Allow carry-forward for a specified period of time only when specific criteria are met (e.g., a contract has been signed that provides for expenditure of the funds for qualified programs within the next year.)
  - c. Specify a maximum dollar amount that may be carried forward to the next year
  - d. Establish other standards or criteria
32. Clarify in statute how the funds that are not expended and transmitted to the state should be allocated between the two types of state funds.
33. Conform statute to actual practice by requiring the utility to spend the USB revenue collected each year on USB funds or remit the remaining funds to the state. (Current law requires the utility to remit the difference between USB credits and the annual funding level.)
- 34.
- 35.

### Natural Gas

36. Request additional information on natural gas USB programs.
37. Require that funds collected from natural gas customers be used for the benefit of natural gas customers.
38. Require that utilities subject to the USB requirement keep funds collected from the USB charge in specifically identified USB trust accounts, subject to the following requirements:
  - a. money in the USB accounts must be used exclusively for USB purposes;
  - b. revenue from the USB charge may not be intermingled with any other funds or accounts;
  - c. interest accrued on the USB revenue must be credited to the USB trust account and used for USB programs; and
  - d. the funds in the USB trust account must be clearly identified as public purpose funds that are not the property of the utility.
- 39.
- 40.
- 41.

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<sup>11</sup>If the Legislature chooses to delegate to the DOR the authority to authorize carry forward of funds, under case law interpreting the separation of powers provision in the Montana Constitution, the Legislature must provide sufficient statutory standards and criteria to guide the DOR.

## Appendix A

### Finding and Recommendations of the Transition Advisory Committee (2002)

(The full TAC adopted the recommendations of the Universal System Benefits Program (USBP) Subcommittee, listed below, in April 2002.)

1. It is the finding of the Subcommittee that fledgling markets exist for certain types of energy efficiency and alternative energy applications. Markets do not exist for low-income energy assistance.
2. The Subcommittee finds that there is an ongoing need for USBP.
3. The Subcommittee finds that the current funding for USBP is adequate at 2.4%.
4. The Subcommittee supports the governor's recommendation that:
  - (a) any USBP funding money deposited in state special revenue accounts be expended in the utility service territory from which the money was received;
  - (b) in assessing USBP funding needs, the state departments administering the funds should be required to solicit utility and public comment from the utility service territory from which the money was received; and
  - (c) LC 93 implementing the governor's recommendations be adopted and requested by Committee.
5. The Subcommittee recommends that the USBP irrigation statutory allocation funding mechanism be revisited and made more flexible to meet the realistic needs of the utility and its customers.