

## HOUSE BILL NO. 811

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A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE GENERATING CAPACITY FOR CUSTOMER-  
GENERATED ELECTRICITY; AMENDING SECTION 69-8-103, 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) "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.

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

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

(4) "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.

(5) "Cost-effective carbon offsets" means any combination of certified actions that are taken to  
reduce carbon dioxide emissions or that increase the absorption of carbon dioxide, which collectively do not  
increase the cost of electricity produced annually on a per-megawatt-hour basis by more than 2.5%, including:

(a) actions undertaken by the applicant that reduce carbon dioxide emissions or that increase the

1 absorption of carbon dioxide from a facility or equipment used to generate electricity; or

2 (b) actions by a carbon offset provider on behalf of the applicant.

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

4 (7) "Distribution facilities" means those facilities by and through which electricity is received from  
5 transmission facilities and distributed to a retail customer and that are controlled or operated by a utility.

6 (8) "Electricity supply costs" means the actual costs incurred in providing electricity supply service  
7 through power purchase agreements, demand-side management, and energy efficiency programs, including  
8 but not limited to:

9 (a) capacity costs;

10 (b) energy costs;

11 (c) fuel costs;

12 (d) ancillary service costs;

13 (e) transmission costs, including congestion and losses;

14 (f) planning and administrative costs; and

15 (g) any other costs directly related to the purchase of electricity and the management and  
16 provision of power purchase agreements.

17 (9) "Electricity supply resource" means:

18 (a) contracts for electric capacity and generation;

19 (b) plants owned or leased by a utility or equipment used to generate electricity;

20 (c) customer load management and energy conservation programs; or

21 (d) other means of providing adequate, reliable service to customers, as determined by the  
22 commission.

23 (10) "Electricity supply service" means the provision of electricity supply and related services  
24 through power purchase agreements, the acquisition and operation of electrical generation facilities, demand-  
25 side management, and energy efficiency programs.

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

28 (12) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not

1 limited to:

2 (i) distribution;

3 (ii) connection;

4 (iii) disconnection; and

5 (iv) termination rates and charges that are authorized by the commission in a financing order to

6 permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the

7 transition costs and of acquiring transition property through a plan approved by the commission in the financing

8 order, including the costs of issuing, servicing, and retiring transition bonds.

9 (b) If requested by the utility in the utility's application for a financing order, fixed transition amounts

10 must include nonbypassable rates or charges to recover federal and state taxes in which the transition cost

11 recovery period is modified by the transactions approved in the financing order.

12 (13) "Generation assets cost of service" means a return on invested capital and all costs associated

13 with the acquisition, construction, administration, operation, and maintenance of a plant or equipment owned or

14 leased by a public utility and used for the production of electricity.

15 (14) "Interested person" means a retail electricity customer, the consumer counsel established in 5-

16 15-201, the commission, or a utility.

17 (15) "Large customer" means, for universal system benefits programs purposes, a customer with an

18 individual load greater than a monthly average of 1,000 kilowatt demand in the previous calendar year for that

19 individual load.

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

21 (17) "Low-income customer" means those energy consumer households and families with incomes

22 at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

23 (18) "Net metering" means measuring the difference between the electricity distributed to and the

24 electricity generated by a customer-generator that is fed back to the distribution system during the applicable

25 billing period.

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

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

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

- 1 (c) is located on the customer-generator's premises;
- 2 (d) operates in parallel with the utility's distribution facilities; and
- 3 (e) is intended primarily to offset part or all of the customer-generator's requirements for electricity.
- 4 (20) "Nonbypassable rates or charges" means rates or charges that are approved by the
- 5 commission and imposed on a customer to pay the customer's share of transition costs or universal system
- 6 benefits programs costs even if the customer has physically bypassed either the utility's transmission or
- 7 distribution facilities.
- 8 (21) "Public utility" has the meaning of a public utility regulated by the commission pursuant to Title
- 9 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.
- 10 (22) "Qualifying load" means, for payments and credits associated with universal system benefits
- 11 programs, all nonresidential demand-metered accounts of a large customer within the utility's service territory in
- 12 which the customer qualifies as a large customer.
- 13 (23) "Retail customer" means a customer that purchases electricity for residential, commercial, or
- 14 industrial end-use purposes and does not resell electricity to others.
- 15 (24) "Transition bondholder" means a holder of transition bonds, including trustees, collateral
- 16 agents, and other entities acting for the benefit of that bondholder.
- 17 (25) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust
- 18 certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer
- 19 that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition
- 20 bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition
- 21 property.
- 22 (26) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to
- 23 pay the customer's share of transition costs.
- 24 (27) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending
- 25 when a utility customer does not have any liability for payment of transition costs.
- 26 (28) "Transition costs" means:
- 27 (a) a public utility's net verifiable generation-related and electricity supply costs, including costs of
- 28 capital, that become unrecoverable as a result of the implementation of federal law requiring retail open access

1 or customer choice or of this chapter;

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

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

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

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

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

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

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

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

(31) "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.

(32) "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.

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

**NEW SECTION. Section 2. Effective date.** [This act] is effective on passage and approval.

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