

*W. L. Linn*

*Senate* BILL NO. 390 *Beaudry*

1 *Sitter*  
2 INTRODUCED BY *Thomas Julian Hoop Bergquist*

3 *Masold*  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY ESTABLISHING RESTRUCTURING REQUIREMENTS  
5 FOR MONTANA'S ELECTRIC UTILITY INDUSTRY; PROVIDING CUSTOMER CHOICE; GENERALLY REVISING  
6 THE TERRITORIAL INTEGRITY LAWS; REMOVING CERTAIN RURAL ELECTRIC COOPERATIVE PROPERTIES  
7 FROM CLASS SEVEN PROPERTY; INCLUDING CERTAIN RURAL ELECTRIC COOPERATIVE PROPERTIES  
8 IN CLASS NINE PROPERTY; AMENDING SECTIONS 15-6-137, 15-6-141, 69-5-101, 69-5-102, 69-5-104,  
9 69-5-105, 69-5-106, 69-5-107, 69-5-108, 69-5-109, 69-5-110, AND 69-5-111, MCA; REPEALING  
10 SECTION 69-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE." *Rehber*

*Yoko Takahashi*

*Handwritten notes on right margin*

11 *Regula ORR*  
12 STATEMENT OF INTENT *Wentik Mills*

13 A statement of intent is required because this bill provides the public service commission with  
14 rulemaking authority. *Wilson Nelson Clark Lash*

15 *Sprague COLE*  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: *Denny*

17 *Impact*  
18 **NEW SECTION. Section 1. Short title.** [Sections 1 through 31] may be cited as the "Electric Utility  
19 Industry Restructuring and Customer Choice Act".

20  
21 **NEW SECTION. Section 2. Legislative findings and policy.** The legislature finds and declares the  
22 following:

- 23 (1) The generation and sale of electricity is becoming a competitive industry.
- 24 (2) Montana customers should have the freedom to choose their supplier of electricity and related  
25 services in a competitive market as soon as administratively feasible. Affording this opportunity serves the  
26 public interest.
- 27 (3) The financial integrity of electrical utilities should be fostered.
- 28 (4) The public interest requires the continued protection of consumers through:
  - 29 (a) licensure of electricity suppliers;
  - 30 (b) provision of information to consumers regarding electricity supply service;

- 1 (c) provision of a process for investigating and resolving complaints;
- 2 (d) continued funding for public purpose programs for:
- 3 (i) cost-effective local energy conservation;
- 4 (ii) low-income customer weatherization;
- 5 (iii) renewable resource applications;
- 6 (iv) research and development programs related to energy conservation and renewables;
- 7 (v) market transformation; and
- 8 (vi) low-income energy bill assistance;
- 9 (e) assurance of service reliability and quality; and
- 10 (f) prevention of anticompetitive and abusive activities.
- 11

12 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 31], unless the context  
13 requires otherwise, the following definitions apply:

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

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

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

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

25 (5) "Cooperative utility" means:

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

27 (b) an existing municipal utility as of [the effective date of this act]; or

28 (c) a federally owned and locally managed electric utility in the state of Montana that is operated  
29 under contract between a federally recognized Indian tribe and the United States.

30 (6) "Customer" or "consumer" means a retail electric customer or consumer.

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

4           (8) "Distribution services provider" means a person controlling or operating distribution facilities for  
5 distribution of electricity to the public.

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

8           (10) "Financing order" means an order of the commission adopted in accordance with [section 31]  
9 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition  
10 bonds.

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

13           (i) distribution;

14           (ii) connection;

15           (iii) disconnection; and

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

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

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

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

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

29           (15) "Nonbypassable rates or charges" means rates or charges approved by the commission  
30 imposed by a customer to pay the customer's share of transition costs or universal system benefits program

1 costs even if the customer has physically bypassed either the utility's transmission or distribution facilities.

2 (16) "Pilot program" means a program using a representative sample of residential and small  
3 commercial customers to assist in developing and offering customer choice of electric supply for all  
4 residential and commercial customers.

5 (17) "Public utility" means any electric utility regulated by the commission pursuant to Title 69,  
6 chapter 3, on [the effective date of this act], including the public utility's successors or assignees.

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

9 (19) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust  
10 certificate, or other evidence of indebtedness or ownership that is secured by or payable from fixed  
11 transition amounts or transition property. Proceeds from transition bonds must be used to recover,  
12 reimburse, finance, or refinance transition costs and to acquire transition property.

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

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

17 (22) "Transition costs" means:

18 (a) a public utility's net verifiable generation-related and electricity supply costs, including costs  
19 of capital, that become unrecoverable as a result of the implementation of [sections 1 through 31] or of  
20 federal law requiring retail open access or customer choice.

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

22 (i) regulatory assets and deferred charges that exist because of current regulatory practices and can  
23 be accounted for up to the effective date of the commission's final order regarding a public utility's  
24 transition plan;

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

26 (iii) existing generation investments and supply commitments or other obligations incurred before  
27 [the effective date of this act];

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

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

4 (23) "Transition period" means the period beginning on July 1, 1998, and ending on July 1, 2002,  
5 unless otherwise extended pursuant to [sections 1 through 31], during which utilities may phase in  
6 customer choice of electricity supplier.

7 (24) "Transition property" means the property right created by a financing order including without  
8 limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue,  
9 collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition  
10 amounts that are the subject of a financing order including those nonbypassable rates and other charges  
11 and fixed transition amounts that are authorized by the commission in the financing order to recover  
12 transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and  
13 acquiring transition property including the costs of issuing, servicing, and retiring transition bonds. Any  
14 right that a utility has in the transition property before the utility's sale or transfer or any other right created  
15 under this section or created in the financing order and assignable under [sections 1 through 31] or  
16 assignable pursuant to a financing order is only a contract right.

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

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

20 (27) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on  
21 a customer to pay the customer's share of universal system benefits program costs.

22 (28) "Universal system benefits programs" means public purpose programs for:

23 (a) cost-effective local energy conservation;

24 (b) low-income customer weatherization;

25 (c) renewable resource applications, including those that capture unique social and energy system  
26 benefits or provide transmission and distribution system benefits;

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

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

29 and

30 (f) low-income energy bill assistance as approved by the commission.

1 (29) "Utility" means any public utility or cooperative utility.

2

3 **NEW SECTION. Section 4. Pilot programs.** (1) Except as provided in [sections 5(4) and 20],  
4 beginning July 1, 1998, utilities shall conduct pilot programs using a representative sample of their  
5 residential and small commercial customers. A report describing and analyzing the results of the pilot  
6 programs must be submitted to the commission and the transition advisory committee established in  
7 [section 29] on or before July 1, 2000.

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

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

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

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

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

18

19 **NEW SECTION. Section 5. Public utility -- transition to customer choice -- waiver.** (1) A public  
20 utility shall, except as provided in this section, adhere to the following deadlines:

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

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

26 (2) (a) Except as provided for in subsection (3), the commission may determine that additional time  
27 is necessary for customers identified in subsection (1)(b); however, the implementation of full customer  
28 choice may not be delayed beyond July 1, 2004.

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

1 more of the following considerations:

2 (i) implementation would not be administratively feasible;

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

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

6 (3) Except as provided in [section 22], a public utility currently doing business in Montana as part  
7 of a single integrated multistate operation, no portion of which lies within the basin of the Columbia River  
8 may:

9 (a) defer compliance with this section until a time that the public utility can reasonably implement  
10 customer choice in the state of the public utility's primary service territory except that the public utility shall  
11 file a transition plan pursuant to [section 6] to provide transition to customer choice on or before July 1,  
12 2002, and must have completed the transition period to customer choice by July 1, 2006; and

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

14 (4) Upon a request from a public utility with fewer than 50 customers, the commission shall waive  
15 compliance with the requirements of [sections 4, 22, and this section].

16

17 **NEW SECTION. Section 6. Public utility -- transition plans.** (1) All public utilities, pursuant to  
18 [sections 1 through 31], shall submit a transition plan to the commission. Plans must be filed with the  
19 commission not later than 1 year before the date by which any customers of the public utility are entitled  
20 to choice of electricity supplier pursuant to [section 5]. The commission may develop a schedule for public  
21 utilities that are required to file plans. The transition plan must demonstrate that the public utility meets  
22 all the requirements of [sections 1 through 31].

23 (2) The commission shall develop a procedural schedule that includes:

24 (a) a preliminary transition plan determination including the commission's findings on whether the  
25 plan is complete and adequate subject to the requirements of [sections 1 through 31]; and

26 (b) an opportunity for a public utility to file a revised plan based on the preliminary determination.

27 (3) Unless waived by the public utility, the commission shall issue a final order approving or denying  
28 the transition plan before 9 months after the date a public utility files a plan. All parties are afforded an  
29 opportunity for hearing before issuance of the final order.

30 (4) The commission shall process a request for approval of a transition plan pursuant to the

1 contested case procedures of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

2 (5) On approval of the plan, the commission shall enforce the public utility obligations as  
3 incorporated in the plan and in the commission's final order.

4

5 **NEW SECTION. Section 7. Public utility -- customer choice -- continued service -- education of**  
6 **customers.** (1) A customer is permitted to choose an electricity supplier pursuant to the deadlines  
7 established in [section 5]. Public utilities shall propose a method for customers to choose an electricity  
8 supplier.

9 (2) If a customer has not chosen an electricity supplier by the end of the transition period, a public  
10 utility shall propose a method in the public utility's transition plans for assigning that customer to an  
11 electricity supplier.

12 (3) A public utility may phase in customer choice to promote the orderly transition to a competitive  
13 market environment pursuant to the deadlines in [section 5].

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

17

18 **NEW SECTION. Section 8. Public utility -- functional separation, divestiture, and nondiscrimination.**

19 (1) To the extent that a public utility is vertically integrated, a public utility shall functionally separate the  
20 public utility's electricity supply, retail transmission and distribution, and regulated and unregulated retail  
21 energy services operations in the state of Montana, upon application to and approval from the commission.

22 (2) The commission may not order a public utility to divest itself of any generation assets or prohibit  
23 a public utility from divesting itself voluntarily of any generation assets.

24 (3) Public utilities shall:

25 (a) prevent undue discrimination in favor of their own power supply, other services, divisions, or  
26 affiliates, if any;

27 (b) prevent any other forms of self-dealing that could result in noncompetitive electricity prices to  
28 customers; and

29 (c) grant customers and their electricity suppliers access to the public utility's retail transmission  
30 and distribution system on a nondiscriminatory basis at rates, terms, and conditions of service comparable



1 to the use of the retail transmission and distribution system by the public utility and the public utility's  
2 affiliates.

3 (4) The provisions of this section are satisfied if the public utility adopts and complies with federal  
4 energy regulatory commission approved code of conduct pursuant to 18 CFR, part 37. The commission  
5 shall promulgate rules relating to the codes of conduct.

6  
7 **NEW SECTION. Section 9. Public utility -- distribution services.** (1) A public utility's distribution  
8 services provider shall:

9 (a) file tariffs that make distribution facilities available to all electricity suppliers, transmission  
10 services providers, and customers on a nondiscriminatory and comparable basis;

11 (b) build and maintain distribution facilities; and

12 (c) be an emergency supplier of electricity and related services.

13 (2) When a distribution services provider acts as an emergency supplier of electricity and related  
14 services to customers, the electricity supplier that should have provided the electricity shall reimburse the  
15 distribution services provider at the higher of a multiple of the cost or a multiple of the then existing market  
16 rate for that electricity. The commission shall determine and authorize the multiple used. The market rate  
17 is the highest published rate for electricity purchased within the local load control area at the time that the  
18 distribution services provider provided the emergency supply. A distribution services provider is not  
19 required to purchase any reserve supply of electricity to fulfill this obligation.

20  
21 **NEW SECTION. Section 10. Public utilities -- transmission services.** For transmission services  
22 regulated by the commission, public utilities, through filed tariffs, shall make transmission services available  
23 for nondiscriminatory and comparable use by all electricity suppliers, by distribution services providers, and  
24 by customers.

25  
26 **NEW SECTION. Section 11. Public utilities -- electricity supply.** (1) On the effective date of a  
27 commission order implementing a public utility's transition plan pursuant to [section 6], the public utility  
28 shall remove its generation assets from the rate base.

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

1 chosen an electricity supplier.

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

4 (a) extend any cost-based contract with the distribution services provider's affiliate supplier for a  
5 term not more than 3 years; or

6 (b) purchase electricity from the market.

7 (4) A tracking mechanism must be used to recover electricity supply costs in rates to ensure that  
8 those costs are fully recovered.

9 (5) If a public utility intends to be an electricity supplier through an unregulated division, then the  
10 public utility must be licensed as an electricity supplier pursuant to [section 24].

11

12 **NEW SECTION. Section 12. Public utilities -- transition costs and charges -- rate moratorium.** (1)

13 Subject to the provisions of this section, the commission shall allow recovery of the following categories  
14 of transition costs:

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

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

21 (c) The unmitigable transition costs related to public utility-owned generation and other power  
22 purchase contracts, except that recovery of those costs is limited to the amount accruing during the first  
23 4 years after the commission enters an order pursuant to [section 6(3)]; and

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

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

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

30 (b) The value of all generation-related assets and liabilities and electricity supply costs must be

1 reasonably demonstrable and must be considered on a net basis, and methods for determining value must  
2 include but are not limited to:

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

4 (ii) appraisal by independent third-party professions; and

5 (iii) a competitive bid sale.

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

9 (d) Unless otherwise provided for in [sections 1 through 31], only costs related to existing  
10 investments and power purchase contracts identified in subsection (2)(c) and costs arising from those  
11 investments and power purchase contracts may be included as transition costs.

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

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

15 (i) customers with new loads of 1,000 kilowatts or greater that were connected to either the public  
16 utility's transmission or distribution facilities after December 31, 1996; or

17 (ii) customers generating electricity for their own use.

18 (c) Subject to commission approval, a utility and a customer may agree to alter the customer's  
19 transition charge payment schedule. Transition charges are the only charges that may be imposed upon  
20 a customer class to recover transition costs under this section. A separate exit fee may not be charged.

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

24 (5) Approval of transition costs and collection of those transition costs through transition charges  
25 is a settlement of all transition costs claims by a public utility. A public utility seeking to recover transition  
26 costs through any means not authorized by [sections 1 through 31] may not collect transition charges with  
27 respect to these transition costs.

28 (6) Public utilities may not charge rates or collect costs, which include costs reallocated to transition  
29 costs, at a level higher than the public utility would reasonably expect to recover in rates had the current  
30 regulatory system remained intact, with the exception of:

1 (a) increased costs related to universal system benefits charges greater than those currently  
2 included in rates; and

3 (b) increased costs necessary to implement full customer choice, including but not limited to  
4 metering, billing, and technology from those customers on whose behalf those increased costs are incurred.

5 (7) If transition bonds are authorized pursuant to [section 31], any savings, net of consolidated tax  
6 impacts, must be used to fund a partial or full rate moratorium for 2 years during the transition period  
7 except as provided in [section 6], to the extent possible to fund transition costs mitigation or shortened  
8 transition cost recovery periods.

9 (8) A public utility shall address in the public utility's transition plan reasonable transition  
10 bond-related rate moratorium and transition costs adjustment opportunities that may exist for the benefit  
11 of customers. The transition plan may include proposed provisions for rate adjustments due to  
12 extraordinary events during the same time period.

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

15 (10) If transition bonds are issued, cost savings associated with and resulting from the bonds must  
16 benefit customers.

17

18 **NEW SECTION. Section 13. Cooperative utility -- transition plan for customer choice.** (1) Except  
19 as provided in [section 20], on or before July 1, 2001, the local governing body of a cooperative utility shall  
20 adopt a transition plan.

21 (2) (a) Except as provided in subsection (2)(b), transition plans must contain a transition period that  
22 may not end later than July 1, 2002. At the conclusion of the transition period, all customers must have  
23 the opportunity to choose an electricity supplier.

24 (b) If after a pilot program for customers of a cooperative utility with loads less than 1,000  
25 kilowatts, a competitive market, technology, or other conditions precedent to full customer choice have not  
26 developed, then the transition plan may be altered by the cooperative utility's governing body for those  
27 customers.

28 (3) [Sections 1 through 31] do not require the cooperative utility to divest itself of any generation,  
29 transmission, or distribution assets or prohibit a cooperative utility from divesting itself voluntarily of those  
30 assets.

1           (4) A cooperative utility's local governing body shall certify to the commission that the local  
2 governing body has adopted a transition plan. In the cooperative utility's certification filing, the cooperative  
3 utility shall provide to the commission documentation that the cooperative utility's transition plan is  
4 consistent with [sections 1 through 31].

5  
6           NEW SECTION. **Section 14. Cooperative utility -- customer choice -- education of customers --**  
7 **continued service.** (1) Except as provided in [section 20], cooperative utilities shall propose a method for  
8 cooperative utility customers to choose an electricity supplier.

9           (2) Customer choice may be phased in to promote the orderly transition to a competitive market  
10 environment.

11           (3) Cooperative utilities shall educate their customers about customer choice so that customers may  
12 make an informed choice of an electricity supplier. This education process must give special emphasis to  
13 education efforts during the transition period.

14           (4) If a cooperative utility customer has not chosen an electricity supplier by the end of the  
15 transition period, then the electricity supplier is the cooperative utility that filed the plan or an electricity  
16 supplier designated by the cooperative utility.

17  
18           NEW SECTION. **Section 15. Cooperative utility -- functional separation.** (1) To the extent that a  
19 cooperative utility is vertically integrated, the cooperative utility has the option to functionally separate the  
20 cooperative utility's electricity supply, transmission, distribution, and unregulated energy services assets  
21 and operations in the state of Montana. If the cooperative utility intends to exercise this option, the  
22 cooperative utility's transition plan must explain the cooperative utility's proposed separation process.

23           (2) A cooperative utility shall describe in the transition plan measures taken by the cooperative  
24 utility to prevent undue discrimination in favor of the cooperative utility's own electricity supply, if any, and  
25 in favor of the cooperative utility's affiliates, if any.

26           (3) Cooperative utilities may establish a code of conduct similar to the federal energy regulatory  
27 commission's code of conduct established in 18 CFR, part 37.

28  
29           NEW SECTION. **Section 16. Cooperative utility -- distribution services.** (1) A cooperative utility  
30 transition plan must include distribution facility tariffs that must be established by the cooperative utility's

1 local governing body and must include the obligation for the cooperative utility to:

2 (a) make distribution services available to all electricity suppliers, transmission services providers,  
3 and customers on a nondiscriminatory and comparable basis;

4 (b) build and maintain distribution facilities; and

5 (c) be an emergency supplier of electricity and related services.

6 (2) If a distribution services provider acts as an emergency supplier of electricity and related  
7 services to a customer of an electricity supplier, then the electricity supplier failing to meet contractual  
8 obligations shall reimburse the distribution services provider at an amount to be set by the local governing  
9 body but may not exceed the higher of a multiple of the cost or a multiple of the then existing market rate  
10 for that electricity. The market rate is the highest published rate for electricity purchased within the local  
11 load control area at the time that the distribution services provider provided the emergency supply. A  
12 distribution services provider is not required to purchase any reserve supply of electricity to fulfill this  
13 obligation.

14 (3) Recoverable costs for cooperative utilities must be based upon standard financial reporting  
15 statements and may reflect comparable rates of return of other utilities.

16

17 **NEW SECTION. Section 17. Cooperative utility -- transmission services.** Transition plans must  
18 state whether the cooperative utility's transmission services, if any, are regulated by the federal energy  
19 regulatory commission. If those services are not regulated by the federal energy regulatory commission,  
20 the plan must provide the basis for comparable and nondiscriminatory use by all electricity suppliers,  
21 distribution services providers, and customers. A cooperative utility's local governing body shall establish  
22 the cooperative utility's transmission tariffs.

23

24 **NEW SECTION. Section 18. Cooperative utility -- electricity supply.** (1) A transition plan may  
25 provide for a cooperative utility to own electric generation assets and for a cooperative utility to offer  
26 electricity supply service. The local governing body shall establish the price for electricity supply service  
27 offered by a cooperative utility.

28 (2) Cooperative utilities intending to offer electricity supply service shall comply with the provisions  
29 of [section 24].

30 (3) If a cooperative utility offers electricity supply service competitively to customers using a public

1 utility's distribution facilities, the cooperative utility shall create an affiliated for-profit entity or similar  
2 structure to serve those customers that allows the entity to be taxed at the same level as other for-profit  
3 electricity suppliers.

4  
5 **NEW SECTION. Section 19. Cooperative utility -- transition costs and charges.** (1) For the  
6 purposes of this section, "transition costs" means those costs, liabilities, and investments that cooperative  
7 utilities would reasonably expect to recover if fully bundled ratemaking conditions continued and that may  
8 not be recoverable as a result of the transition to a competitive market for electricity supply service.

9 (2) Transition costs eligible for treatment include but are not limited to:

10 (a) regulatory assets and deferred charges typically recoverable in rates;

11 (b) nonutility and utility power purchase contracts;

12 (c) existing commitments or obligations incurred before [the effective date of this act] and other  
13 cooperative utility investments rendered uneconomic as a result of the implementation of [sections 1  
14 through 31] or the introduction of retail wheeling through federal legislation or regulation;

15 (d) costs associated with any renegotiation or buyout of the existing nonutility and utility power  
16 purchase contracts; and

17 (e) revenue that appears as a portion of a facility charge necessary to meet debt service  
18 requirements.

19 (3) For a cooperative utility's transition costs to be fully recoverable, the cooperative utility shall  
20 make reasonable efforts to mitigate those transition costs.

21 (4) Cooperative utilities may not collect any more costs, including costs reallocated to transition  
22 costs, at a level higher than would otherwise be anticipated had the current regulatory system remained  
23 intact, with the exception of:

24 (a) increased costs related to universal system benefits charges; and

25 (b) increased costs of metering, billing, and technology necessary to facilitate full customer choice.

26 (5) Subject to the obligation to mitigate transition costs, a cooperative utility shall fully recover  
27 transition costs as approved by its local governing body. Unmitigable transition costs are nonbypassable  
28 and collected on a nondiscriminatory basis from consumers using the cooperative utility's distribution  
29 facilities in the receipt of electricity supply services.

30 (6) A cooperative utility may not collect transition costs from a customer for which the cooperative

1 utility does not have and never has had an obligation to incur costs to provide electricity supply service  
2 unless the unmitigated transition costs were incurred solely on behalf of the customer.

3 (7) Approval of and collection of transition costs through a transition charge is a settlement of all  
4 transition claims by a cooperative utility. A cooperative utility seeking to recover transition costs through  
5 any other means may not collect transition charges.

6  
7 **NEW SECTION. Section 20. Cooperative utility -- exemption.** (1) Within 1 year after [the effective  
8 date of this act], a cooperative utility may file a notice with the commission that the cooperative utility does  
9 not intend to open the cooperative utility's distribution facilities to electricity suppliers and does not intend  
10 to adopt a transition plan. Except as otherwise provided in the universal system benefits program pursuant  
11 to [section 22], a cooperative utility filing notice under this section is exempt from the provisions and  
12 requirements of [sections 1 through 31].

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

14 (a) may elect later to adopt a transition plan in accordance with [sections 1 through 31]; and

15 (b) may not use a public utility's distribution facilities.

16  
17 **NEW SECTION. Section 21. Maintaining safety and reliability.** Utilities shall maintain standards  
18 of safety and reliability of the electric delivery system and existing customer service requirements.

19  
20 **NEW SECTION. Section 22. Universal system benefits programs.** (1) Universal system benefits  
21 programs are established for the state of Montana to ensure continued funding of energy conservation,  
22 renewable resource applications, and low-income energy bill assistance during the transition period and into  
23 the future.

24 (2) On or after January 1, 1999, 2.4% of each utility's annual retail sales revenue in Montana for  
25 the calendar year ending December 31, 1995, is established as the annual funding level for universal  
26 system benefits programs. Unless modified as provided in subsection (12), this funding level remains in  
27 effect until July 1, 2003.

28 (3) The recovery of all universal system benefits programs costs imposed pursuant to this section,  
29 is authorized through the imposition of a universal system benefits charge assessed at the meter for each  
30 local utility system customer as provided in this section.



1 (4) Utilities must receive credit toward annual funding requirements for a utility's internal programs  
2 or activities that qualify as universal system benefits programs and for customers' programs or activities  
3 as provided in subsection (12).

4 (5) If a utility's or a customer's credit for internal activities do not satisfy the annual funding  
5 provisions of subsection (2), then the utility shall make a payment for any difference.

6 (6) Cooperative utilities may pool their statewide credits to satisfy their annual funding requirements  
7 for universal system benefits programs or low-income energy bill assistance.

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

11 (8) A utility's annual funding requirement for low-income energy bill assistance is established at  
12 17% of the utility's annual universal system benefits funding level and is inclusive within the overall  
13 universal system benefits funding level.

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

16 (10) If a utility's credit for internal activities does not satisfy its annual funding requirement, then  
17 the utility shall make a payment for any difference.

18 (11) An individual customer may not bear a disproportionate share of the local utility's funding  
19 requirements, and a sliding scale must be implemented to provide a more equitable distribution of program  
20 costs.

21 (12) A customer with loads greater than 1,000 kilowatts shall:

22 (a) pay the lesser of:

23 (i) \$500,000 net of the customer credits provided for in this subsection (12); or

24 (ii) the product of .9 mills per kilowatt hour multiplied by the customer's kilowatt hour purchases,  
25 net of customer credits provided for in this subsection (12);

26 (b) receive credit toward that customer's annual universal system benefits charge for internal  
27 expenditures and activities that qualify as a universal system benefits program expenditure and these  
28 internal expenditures must include but not be limited to:

29 (i) expenditures that result in a reduction in the consumption of electrical energy in the customer's  
30 facility; and

1 (ii) those portions of expenditures for the purchase of power at retail or wholesale that are for the  
2 acquisition or support of renewable energy or conservation-related activities; and

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

8 (13) A utility in the state of Montana may not be advantaged or disadvantaged in the competitive  
9 electricity supply market, including the consideration of the existence of universal system benefits programs  
10 and the comparable level of funding for those programs throughout the regions neighboring Montana.

11 (14) A public utility shall prepare and submit an annual summary report of the public utility's  
12 activities relating to all universal system benefits programs to the commission and the transition advisory  
13 committee provided for in [section 29]. A cooperative utility shall prepare and submit annual summary  
14 reports of activities to the cooperative utility's respective local governing body, the statewide cooperative  
15 utility office, and the transition advisory committee. The annual report must include, but is not limited to:

16 (a) the types of internal utility and customer programs being used to satisfy the provisions of  
17 [sections 1 through 31];

18 (b) the level of funding for those programs relative to the annual funding requirements prescribed  
19 in subsection (2); and

20 (c) any payments made to the statewide funds in the event that internal funding was below the  
21 prescribed annual funding requirements.

22

23 **NEW SECTION. Section 23. Commission authority -- rulemaking authority.** (1) Beginning on the  
24 effective date of a commission order regarding a public utility's transition plan, the commission shall  
25 regulate the public utility's retail transmission and distribution services within the state of Montana, as  
26 provided in [sections 1 through 31], and may not regulate the price of electricity supply except as electricity  
27 supply may be procured during the transition period by the distribution function of a public utility for those  
28 customers that do not have a choice of electricity supplier or for those customers that have not yet been  
29 assigned an electricity supplier. During the transition period, those procurements may include a cost-based  
30 contract from a supply affiliate or an unregulated division.

1 (2) If the transition period is extended for certain customers because workable competition in the  
2 electricity supply market does not exist, then the commission shall regulate distribution services providers  
3 in accordance with [section 9].

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

8 (4) The commission shall license electricity suppliers and enforce licensing provisions pursuant to  
9 [section 24].

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

12 (6) The commission shall establish just and reasonable rates through established ratemaking  
13 principles for public utility distribution and transmission services and shall regulate these services. The  
14 commission may approve rates and charges for electricity distribution and transmission services based on  
15 alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public  
16 utility that the alternative method complies with [sections 1 through 31], and on the public utility's  
17 transition plan.

18 (7) The commission shall certify that a cooperative utility has adopted a transition plan that complies  
19 with [sections 1 through 31]. A cooperative utility's transition plan is considered certified 60 days after  
20 the cooperative utility files for certification.

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

23 (9) In addition to promulgating rules expressly provided for in [sections 1 through 31], the  
24 commission may promulgate any other rules necessary to carry out the provision of [sections 1 through  
25 31].

26 (10) [Sections 1 through 31] do not give the commission the authority to:

27 (a) regulate cooperative utilities in any manner other than reviewing certification filings for  
28 compliance with [sections 1 through 31]; or

29 (b) compel any change to a cooperative utility's certification filing made pursuant to [sections 1  
30 through 31].

1           **NEW SECTION. Section 24. Licensing.** (1) Except as provided in [section 20], an electricity  
2 supplier shall file an application with and obtain a license from the commission before offering electricity  
3 for sale to retail customers in the state of Montana.

4           (2) As a condition of licensing, an electricity supplier shall identify and describe its business  
5 activities and purposes and the business purposes of each of the electricity supplier's affiliates, including  
6 whether an affiliate that owns or operates distribution facilities offers customer choice through open, fair,  
7 and nondiscriminatory access to the electricity supplier or the electricity supplier's affiliate's distribution  
8 facilities.

9           (3) The commission may require electricity suppliers that provide electricity supply service to small  
10 customers to make a standard service offer that ensures that those customers have access to affordable  
11 electricity.

12           (4) The commission may require:

13           (a) proof of financial integrity and a demonstration of adequate reserve margins or the ability to  
14 obtain those reserves; and

15           (b) a licensee to post a bond if an electricity supplier fails to supply electricity or is not operating.

16           (5) An electricity supplier shall provide the commission and all distribution services providers with  
17 copies of all license applications pursuant to subsection (2). Licensees shall update information and file  
18 annual reports with the commission and all distribution services providers.

19           (6) License applications are effective 30 days after filing with the commission, unless the  
20 commission rejects the application during that period. If the commission rejects a license application, the  
21 commission shall specify the reasons in writing and, if practical, identify alternative ways to overcome  
22 deficiencies.

23           (7) Notwithstanding [sections 1 through 31], a cooperative utility is not required to apply for a  
24 license from the commission to be an electricity supplier to customers normally served by that cooperative  
25 utility in its traditional service territory or to any customers normally served by another cooperative utility  
26 subject to the consent of the other cooperative utility's local governing body.

27

28           **NEW SECTION. Section 25. Penalties -- license revocation.** (1) The commission may begin a  
29 proceeding to either impose a penalty or revoke or suspend a license of an electricity supplier for just cause  
30 on the commission's own investigation or upon the complaint of an affected party if it is established that

1 the electricity supplier:

2 (a) intentionally provided false information to the commission;

3 (b) switched, or cause to be switched, the electricity supply for a customer without first obtaining  
4 the customer's written permission; or

5 (c) failed to provide a reasonably adequate supply of electricity for its customers in Montana.

6 (2) Any person selling or offering to sell electricity in this state in violation of [sections 24, 27,]  
7 and this section is subject to a fine of not less than \$100 or more than \$1,000 for the violation or a license  
8 revocation or suspension.

9 (3) The fine must be recovered in a civil action upon the complaint by the commission in any court  
10 of competent jurisdiction.

11 (4) A license revocation proceeding under this section is a contested case proceeding pursuant to  
12 the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

13

14 **NEW SECTION. Section 26. Bill information -- customer nonpayment -- commission rulemaking.**

15 (1) Electrical bills to consumers must disclose each component of the electrical bill in accordance with rules  
16 promulgated by the commission. The electrical bill must disclose but is not limited to the following:

17 (a) distribution and transmission charges;

18 (b) electricity supply charges;

19 (c) competitive transition charges; and

20 (d) universal system benefits charges.

21 (2) The commission shall promulgate rules establishing the procedures relating to how and when  
22 an electricity supplier may discontinue service to a customer because of the customer's nonpayment and  
23 the procedures relating to reconnection, except that those rules may not apply to electricity suppliers that  
24 are cooperative utilities.

25 (3) Local governing bodies of a cooperative utility shall retain authority for cooperative utilities  
26 regarding:

27 (a) customer nonpayment and reconnection; and

28 (b) information contained in electrical bills to consumers.

29

30 **NEW SECTION. Section 27. Unauthorized switching -- commission rulemaking.** (1) An electricity

1 supplier or any person, firm, corporation, or governmental entity may not make any change in the electricity  
2 supplier for a customer without first obtaining the customer's written permission.

3 (2) The commission shall promulgate rules establishing procedures to prevent unauthorized  
4 switching.

5

6 **NEW SECTION. Section 28. Reciprocity.** (1) Except as provided in [section 20], all electricity  
7 suppliers must be afforded open, fair, and nondiscriminatory access to customers and a comparable  
8 opportunity to compete.

9 (2) A distribution services provider or the distribution services provider's affiliates may not use  
10 another distribution services provider's facilities in the state of Montana to sell electricity to customers in  
11 the state of Montana unless the first distribution services provider or the distribution services provider's  
12 affiliates offers comparable and nondiscriminatory access to the distribution services provider's distribution  
13 facilities.

14

15 **NEW SECTION. Section 29. Transition advisory committee.** (1) A transition advisory committee  
16 on electric utility industry restructuring is created. The transition advisory committee is composed of 18  
17 members who are appointed as follows:

18 (a) The speaker of the house shall appoint two members from the house of representatives.

19 (b) The president of the senate shall appoint two members from the senate.

20 (c) The director of the department of environmental quality shall appoint one department  
21 representative.

22 (d) The legislative consumer council shall appoint one representative.

23 (e) Two representatives of the cooperative utility industry are appointed as designated by the  
24 Montana electrical cooperative association.

25 (f) Two representatives selected by the public utilities in the state of Montana are appointed.

26 (g) One representative of the commission is appointed.

27 (h) The governor shall appoint the following committee members:

28 (i) one representative from the industrial community with an interest in the restructuring of the  
29 electric utility industry;

30 (ii) one representative from the nonindustrial retail electric consumer sector;

- 1 (iii) one representative from organized labor;
- 2 (iv) one representative from the community comprising environmental and conservation interests;
- 3 (v) one representative of low-income consumers;
- 4 (vi) one representative of Montana's Indian tribes; and
- 5 (vii) one representative of the electric power market industry.

6 (2) In case of a vacancy, a replacement must be selected in the manner of the original appointment.

7 (3) Legislative members are entitled to salary and expenses as provided in section 5-2-302. Other

8 members serve without salary and without reimbursement of expenses.

9 (4) The public service commission, legislative services division, and appropriate state agencies shall

10 provide staff assistance as requested by the committee.

11 (5) Transition advisory committee members must be appointed within 60 days of [the effective date

12 of this act] to an initial term expiring on December 31, 1999. Subsequent terms must be for up to 2 years

13 expiring on January 1 of odd-numbered years.

14 (6) The governor shall appoint a transition advisory committee presiding officer.

15 (7) The transition advisory committee on electric utility industry restructuring must dissolve on the

16 earlier of either the date that full transition to retail competition is completed or December 31, 2004.

17 (8) The transition advisory committee shall provide an annual report on the status of electric utility

18 restructuring on or before November 1 to the governor, the speaker of the house, the president of the

19 senate and the commission.

20 (9) The transition advisory committee shall meet quarterly or as often as is necessary to conduct

21 its business.

22 (10) The transition advisory committee shall analyze and report on the transition to effective

23 competition in the competitive electricity supply market. The annual report made in the year 2000 must

24 evaluate specifically the pilot programs for customers with loads under 1,000 kilowatts and must include

25 legislative recommendations, if it appears appropriate, about the best means to further encourage the

26 development of customer choice and meaningful market access for the benefit of smaller customers. The

27 annual report for the year 2000 must also address the need, if any, for additional consumer protection

28 including protection from abusive or anticompetitive practices.

29 (11) The criteria that the transition advisory committee must use to evaluate effective competition

30 in the electricity supply market include but are not limited to the following:

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

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

5 (c) the level of interest among electricity suppliers and the opportunity for electricity suppliers to  
6 serve smaller customers; and

7 (d) the existence of the requisite technical and administrative support that enables smaller  
8 customers to have choice of electricity supply.

9 (12) The transition advisory committee shall recommend legislation if necessary to promote electric  
10 utility restructuring and retail choice of electricity suppliers.

11 (13) The transition advisory committee shall make recommendations to the governor, regarding the  
12 implementation of statewide universal system benefits and universal energy bill assistance funds, in time  
13 to allow for those funds to be created on or before January 1, 1999. This may include recommendations  
14 regarding the assignment of an existing government agency or private nonprofit entity as the fund  
15 administrator and administration guidelines for the funds including the means by which funds may be made  
16 available for use.

17 (14) The transition advisory committee shall monitor and evaluate the universal system benefits  
18 programs and comparable levels of funding for the region and make recommendations to the 58th  
19 legislature to adjust the funding level provided for in [section 22] to coincide with the related activities of  
20 the region at that time.

21 (15) On or before July 1, 2002, the transition advisory committee, in coordination with the  
22 commission, shall conduct a reevaluation of the ongoing need for universal system benefits programs and  
23 annual funding requirements and shall make recommendations to the 58th legislature regarding the future  
24 need for those programs. The determination must focus specifically on the existence of markets to provide  
25 for any or all of the universal system benefits programs or whether other means for funding those programs  
26 have developed. These recommendations may also address how future reevaluations will be provided for,  
27 if necessary.

28 (16) On or before November 1, 2001, the transition advisory committee shall collect information  
29 to determine whether Montana utilities or their affiliates have an opportunity to sell electricity to customers  
30 outside of the state of Montana comparable to the opportunity provided pursuant to [sections 1 through



1 31] to utilities or their affiliates located outside the state of Montana. That information must be included  
2 in the report to the 58th legislature.

3

4 NEW SECTION. **Section 30. Tax revenue analysis.** (1) The revenue oversight committee, as  
5 provided for in 5-18-102, shall analyze the amount of state and local tax revenue derived from previously  
6 regulated electricity suppliers that will enter the competitive market and report to the legislature annually  
7 on how revenue to the state or local government is changed by restructuring and competition.

8 (2) On or before November 30, 1998, the revenue oversight committee shall recommend legislative  
9 changes, if any, to address the establishment of comparable state and local taxation burdens on all market  
10 participants in the supply of electricity. Any legislation recommended by the revenue oversight committee  
11 should place comparable state and local taxation burdens upon all market participants.

12

13 NEW SECTION. **Section 31. Transition costs financing.** (1) A utility may, after July 1, 1997, apply  
14 to the commission for a determination that certain transition costs may be recovered through the issuance  
15 of transition bonds. After the issuance of a financing order, the utility retains sole discretion regarding  
16 whether to sell, assign, or otherwise transfer or pledge transition property or to cause the transition bonds  
17 to be issued, including the right to defer or postpone the sale, assignment, transfer, pledge, or issuance.

18 (2) (a) The commission may issue financing orders in accordance with this section to facilitate the  
19 recovery, reimbursement, financing, or refinancing of transition costs and the acquisition of transition  
20 property. A financing order may be adopted only upon the application of a utility and may only become  
21 effective in accordance with its terms after the utility files with the commission the utility's written consent  
22 to all terms and conditions of the financing order. A financing order may specify how amounts collected  
23 from a customer are allocated between fixed transition amounts and other charges.

24 (b) A financing order must include, without limitation, a procedure for the expeditious approval by  
25 the commission of periodic adjustments to fixed transition amounts included in the order to ensure recovery  
26 of all transition costs and the costs of capital associated with the proposed recovery, reimbursement,  
27 financing, or refinancing of transition costs and the acquisition of transition property including the costs  
28 of issuing, servicing, and retiring the transition bonds contemplated by the financing order. These  
29 adjustments may not impose fixed transition amounts upon customer classes that were not subject to the  
30 fixed transition amounts in the pertinent financing order.

1           (3) (a) Notwithstanding any other provision of law, and except as otherwise provided in this section  
2 with respect to transition property that has been made the basis for the issuance of transition bonds, the  
3 financing orders and the fixed transition amounts must be irrevocable.

4           (b) The commission may not by rescinding, altering, or amending the financing order or otherwise:

5           (i) revalue or revise for ratemaking purposes the transition costs or the costs of recovering,  
6 reimbursing, financing, or refinancing the transition costs and acquiring transition property;

7           (ii) determine that the fixed transition amounts or rates are unjust or unreasonable; or

8           (iii) in any way reduce or impair the value of transition property either directly or indirectly by taking  
9 fixed transition amounts into account when setting other rates for the utility.

10          (c) The amount of revenue arising with respect to the transition property may not be subject to  
11 reduction, impairment, postponement, or termination.

12          (d) Except as otherwise provided in this section, the state pledges and agrees with the assignees  
13 and pledgees of transition property and transition bondholders that the state may not limit or alter the fixed  
14 transition amounts, transition property, financing orders, or any right under the obligations until the  
15 obligations, together with the interest on the obligations are fully met and discharged.

16          (e) Notwithstanding any other provision of this section, the commission shall approve those  
17 adjustments to the fixed transition amounts as may be necessary to ensure timely recovery of all transition  
18 costs that are the subject of the pertinent financing order and the costs of capital associated with the  
19 recovery, reimbursement, financing, or refinancing of transition costs and acquiring transition property  
20 including the costs of issuing, servicing, and retiring the transition bonds contemplated by the financing  
21 order. The adjustments may not impose fixed transition amounts upon customer classes that were not  
22 subject to the fixed transition amounts in the pertinent financing order.

23          (4) (a) Financing orders do not constitute a debt or liability of the state or of any political subdivision  
24 of the state if issued through the board and do not constitute a pledge of the full faith and credit of the  
25 state or any of the state's political subdivisions if issued through the board. The financing orders are  
26 payable solely from the funds provided under this section. The bonds and offering documents must contain  
27 a statement to the following effect:

28                 "Neither the full faith and credit nor the taxing power of the State of Montana is pledged to the  
29 payment of the principal of or interest on this security."

30          (b) The issuance of bonds under this section may not directly, indirectly, or contingently obligate

1 the state or any political subdivision of the state to levy or to pledge any form of taxation or to make any  
2 appropriation for bond payment.

3 (5) The commission shall establish procedures for the expeditious processing of applications for  
4 financing orders, including the approval or disapproval of applications within 120 days after a utility submits  
5 a complete application. The commission shall provide in any financing order for a procedure for the  
6 expeditious approval by the commission of periodic adjustments to the fixed transition amounts that are  
7 the subject of the pertinent financing order pursuant to subsection (2). The commission shall determine  
8 on each anniversary of the issuance of the financing order and at additional intervals as may be provided  
9 for in the financing order whether the adjustments are required and shall provide for the adjustments, if  
10 required, to be approved within 60 days of each anniversary of the issuance of the financing order or of  
11 each additional interval provided for in the financing order.

12 (6) Fixed transition amounts become transition property when and to the extent that a financing  
13 order authorizing the fixed transition amounts has become effective in accordance with subsection (2), and  
14 the transition property must thereafter continuously exist as property for all purposes with all of the rights  
15 and privileges of [sections 1 through 31] for the period and to the extent provided in the financing order  
16 or until the transition bonds are paid in full including all principal, interest, premium, costs, and arrearages  
17 on the transition bonds.

18 (7) Transition bonds may be issued upon commission approval in the pertinent financing order.  
19 Transition bonds must specify that they do not provide recourse to the credit or any assets of the utility,  
20 other than the transition property as specified in the pertinent financing order.

21 (8) (a) A utility may sell, assign, or transfer all or portions of the utility's interest in transition  
22 property to an assignee. A utility or an assignee may further sell, assign, or transfer the utility's interest  
23 in that transition property to one or more assignees in connection with the issuance of transition bonds to  
24 the extent approved in the pertinent financing order.

25 (b) A utility or an assignee may pledge transition property as collateral for transition bonds to the  
26 extent approved in the pertinent financing order and may provide for a security interest in the transition  
27 property as provided in this section.

28 (c) Transition property may be sold, assigned, or transferred for the benefit of:

29 (i) transition bondholders in connection with the exercise of remedies upon a default; or

30 (ii) any person acquiring the transition property after a sale, assignment, or transfer pursuant to this

1 section.

2 (9) (a) To the extent that any interest in transition property is sold, assigned, transferred, or pledged  
3 as collateral, the commission shall authorize the utility to contract with any assignee so that the utility will,  
4 subject to the utility's rights under subsection (18):

5 (i) continue to operate the utility's system and to provide service to the utility's customers;

6 (ii) collect amounts in respect of the fixed transition amounts for the benefit and account of the  
7 assignee; and

8 (iii) account for and remit these amounts to or for the account of the assignee.

9 (b) Contracting with the assignee in accordance with the commission's authorization may not impair  
10 or negate the characterization of the sale, assignment, transfer, or pledge as a true sale, an absolute  
11 assignment or transfer, or a grant of a security interest, as applicable.

12 (10) Notwithstanding any other provision of law, any provision under this section or under a  
13 financing order requiring that the commission take or refrain from taking action with respect to the subject  
14 matter of a financing order binds the commission and any successor commission or agency exercising  
15 functions similar to the commission, and the commission or any successor commission or agency may not  
16 rescind, alter, or amend that requirement in a financing order.

17 (11) A pledge or any other security interest in transition property is valid, is enforceable against the  
18 pledgor and third parties, including judgment lien creditors, subject only to the rights of any third parties  
19 holding security interests in the transition property perfected in the manner described in this section, and  
20 attaches only when all of the following have taken place:

21 (a) the commission has issued the financing order authorizing the fixed transition amounts included  
22 in the transition property;

23 (b) value has been given by the pledgees of the transition property; and

24 (c) the pledgor has signed a security agreement or other financing-related agreement covering the  
25 transition property.

26 (12) (a) A valid and enforceable security interest in transition property is perfected only when it has  
27 attached and when a financing statement has been filed with the commission in accordance with  
28 procedures that the commission may establish. The financing statement must name the pledgor of the  
29 transition property as debtor and identify the transition property.

30 (b) Any description of the transition property is sufficient if the description refers to the financing

1 order creating the transition property.

2 (c) The commission may require other filings with respect to the security interest in accordance with  
3 procedures the commission may establish, except that these filings may not affect the perfection of the  
4 security interest.

5 (13) A perfected security interest in transition property is a continuously perfected security interest  
6 in all revenue and proceeds arising with respect to the transition property, whether or not the revenue or  
7 proceeds have accrued. Conflicting security interests must rank according to priority in time of perfection.  
8 Transition property constitutes property for all purposes, including for contracts securing transition bonds,  
9 whether or not the revenue and proceeds arising with respect to the transition property have accrued.

10 (14) (a) Subject to the terms of the security agreement covering the transition property and the  
11 rights of any third parties holding security interests in the transition property perfected in the manner  
12 described in this section, the validity and relative priority of a security interest created under this section  
13 is not defeated or adversely affected by:

14 (i) the commingling of revenue arising with respect to the transition property with other funds of  
15 the utility that is the pledgor or transferor of the transition property; or

16 (ii) any security interest of any third party in a deposit account of that utility perfected under Title  
17 30, chapter 9, part 3, into which the revenue is deposited.

18 (b) Subject to the terms of the security agreement, upon compliance with the requirements of this  
19 section, a pledgee of the transition property has a perfected security interest in all cash and deposit  
20 accounts of the utility in which revenue arising with respect to the transition property has been commingled  
21 with other funds, but the perfected security interest must be limited to an amount no greater than the  
22 amount of the revenue with respect to the transition property received by the utility within 12 months  
23 before any default under the security agreement or the institution of insolvency proceedings by or against  
24 the utility, less payments from the revenue to the pledgees during that 12-month period.

25 (15) (a) If a default occurs under the security agreement covering the transition property, a pledgee  
26 of the transition property, subject to the terms of the security agreement, has all rights and remedies of a  
27 secured party upon default under Title 30, chapter 9, part 5, and is entitled to foreclose or otherwise  
28 enforce the pledgee's security interest in the transition property, subject to the rights of any third parties  
29 holding prior security interests in the transition property perfected in the manner provided in this section.

30 (b) The commission may require in the financing order creating the transition property that in the

1 event of default by the utility in payment of revenue arising with respect to the transition property, the  
2 commission and any successor to the commission, upon the application by a pledgee or assignee of the  
3 transition property and without limiting any other remedies available to the pledgees or transferees by  
4 reason of the default shall order the sequestration and payment to the pledgee or assignee of the proceeds  
5 of the transition property. An order must remain in full force and effect notwithstanding any bankruptcy,  
6 reorganization, or other insolvency proceedings with respect to the public utility or a debtor, pledgor, or  
7 transferor of the transition property.

8 (c) Any sum in excess of amounts necessary to pay principal, premium, if any, interest, costs, and  
9 arrearages on the transition bonds and other costs arising under the security agreement must be remitted  
10 to the debtor or to the pledgor as provided in the security agreement.

11 (16) (a) A transfer of transition property by a utility to an assignee or by the assignee to another  
12 assignee that the parties have in the governing documentation expressly stated to be a sale or other  
13 absolute transfer in a transaction approved or authorized in a financing order must be treated as an absolute  
14 transfer of all of the transferor's right, title, and interest, as in a true sale, and not as a pledge or other  
15 financing of the transition property, other than for federal and state income and franchise tax purposes.

16 (b) Granting to transition bondholders a preferred right to revenue of the utility or the provision by  
17 the utility or an assignee of other credit enhancement with respect to transition bonds may not impair or  
18 negate the characterization of any transfer as a true sale, other than for federal and state income and  
19 franchise tax purposes.

20 (c) Notwithstanding the provisions of this subsection (16), for state tax purposes, a transfer must  
21 be treated as a pledge or other financing unless the governing documentation or transfer specifically states  
22 that transfer is intended to be treated otherwise. The characterization of the transfer as a true sale or other  
23 absolute transfer in the governing documentation of a transfer is not intended to prejudice the  
24 characterization of the transfer as a pledge or other financing for federal tax purposes.

25 (17) A sale, assignment, or other transfer of transition property may only be considered perfected  
26 as against any third person, including any judicial lien creditor, when both of the following have taken place:

27 (a) the financing order authorizing the fixed transition amounts included in the transition property  
28 has become effective in accordance with subsection (2); and

29 (b) an assignment of the transition property, in writing, has been executed and delivered to the  
30 transferee.

1 (18) (a) As between bona fide assignees of the same right for value without notice, the assignee  
2 first filing a financing statement with the commission in accordance with procedures that the commission  
3 may establish has priority. The financing statement must name the assignor of the transition property as  
4 debtor and must identify the transition property. Any description of the transition property is sufficient if  
5 the description refers to the financing order creating the transition property. The commission may require  
6 the assignor or the assignee to make other filings with respect to the transfer in accordance with  
7 procedures that the commission may establish, but these filings may not affect the perfection of the  
8 transfer.

9 (b) Any successor to the utility, whether pursuant to any bankruptcy, reorganization, or other  
10 insolvency proceeding or pursuant to any merger, sale, or transfer, by operation of law, or otherwise, shall  
11 perform and satisfy all obligations of the utility pursuant to this section in the same manner and to the same  
12 extent as the utility, including but not limited to collecting and paying to the assignee or pledgee, as the  
13 case may be, revenue arising with respect to the transition property sold, assigned, transferred, or pledged  
14 to secure transition bonds.

15 (19) Transition property or any right, title, or interest of a utility, assignee, or pledgee described in  
16 the definition of transition property, whether before or after the issuance of a financing order, does not  
17 constitute an account or general intangibles under 30-9-106. Any right, title, or interest pertaining to a  
18 financing order, including the interest pertaining to a financing order, along with the associated transition  
19 property and any revenue, collections, claims, payments, money, or proceeds of or arising from fixed  
20 transition amounts pursuant to the financing order, may not be considered proceeds of any right, title, or  
21 interest other than in the order and the transition property arising from the order.

22 (20) The lien under this section is enforceable against the pledgor and all third parties, including  
23 judicial lien creditors, subject only to the rights of any third parties holding security interests in the transition  
24 property previously perfected in the manner described in this section if value has been given by the  
25 purchasers of transition bonds. A perfected lien in transition property is a continuously perfected security  
26 interest in all revenue and proceeds arising with respect to the associated transition property, whether or  
27 not revenue has been accrued. Transition property constitutes property for the purposes of contracts  
28 securing transition bonds, whether or not the related revenue has accrued. The lien created under this  
29 section is perfected and ranks before any lien, including any judicial lien, that subsequently attaches to the  
30 transition property, to the fixed transition costs, and to the financing order and any rights created by the

1 order or any proceeds of the order. The relative priority of a lien created under this section is not defeated  
2 or adversely affected by changes to the financing order or to the fixed transition amounts payable by any  
3 customer.

4 (21) The commission shall establish and maintain a separate system of records to reflect the date  
5 and time of receipt of all filings made under this section and may provide that transfers of transition  
6 property to an assignee be filed in accordance with the same system.

7 (22) Any sale, assignment, or other transfer of transition property or any pledge of transition  
8 property is exempt from any state or local sales, income, transfers, gains, receipts, or similar taxes.

9 (23) The transition bonds issued under [sections 1 through 31] are exempt from the provisions of  
10 Title 30, chapter 10, but copies of all prospectus and disclosure documents must be deposited for public  
11 inspection with the state securities commissioner.

12 (24) The granting, perfection, and priority of security interests with respect to transition property  
13 and the proceeds thereof are governed by this section rather than Title 30, chapter 9.

14

15 **Section 32.** Section 15-6-137, MCA, is amended to read:

16 **"15-6-137. Class seven property -- description -- taxable percentage.** (1) Class seven property  
17 includes:

18 (a) all property used and owned by persons, firms, corporations, or other organizations that are  
19 engaged in the business of furnishing telephone communications exclusively to rural areas or to rural areas  
20 and cities and towns of 800 persons or less;

21 (b) all property owned by cooperative rural electrical and cooperative rural telephone associations  
22 that serve less than 95% of the electricity consumers or telephone users within the incorporated limits of  
23 a city or town, except rural electric cooperative properties described in 15-6-141(1)(a);

24 (c) electric transformers and meters; electric light and power substation machinery; natural gas  
25 measuring and regulating station equipment, meters, and compressor station machinery owned by  
26 noncentrally assessed public utilities; and tools used in the repair and maintenance of this property.

27 (2) To qualify for this classification, the average circuit miles for each station on the telephone  
28 communication system described in subsection (1)(b) must be more than 1 mile.

29 (3) Class seven property is taxed at 8% of its market value."  
30



1           **Section 33.** Section 15-6-141, MCA, is amended to read:

2           **"15-6-141. Class nine property -- description -- taxable percentage.** (1) Class nine property  
3 includes:

4           (a) centrally assessed electric power companies' allocations, including, if congress passes legislation  
5 that allows the state to tax property owned by an agency created by congress to transmit or distribute  
6 electrical energy, allocations of properties constructed, owned, or operated by a public agency created by  
7 the congress to transmit or distribute electric energy produced at privately owned generating facilities ~~+~~  
8 not including rural electric cooperatives; However, properties of rural electric cooperatives serving less  
9 than 95% of the electric consumers located within the incorporated limits of a city or town of more than  
10 3,500 persons in which a centrally assessed electric power company also owns property are included.

11           (b) allocations for centrally assessed natural gas companies having a major distribution system in  
12 this state; and

13           (c) centrally assessed companies' allocations except:

14           (i) electric power and natural gas companies' property;

15           (ii) property owned by cooperative rural electric and cooperative rural telephone associations and  
16 classified in class five;

17           (iii) property owned by organizations providing telephone communications to rural areas and  
18 classified in class seven;

19           (iv) railroad transportation property included in class twelve; and

20           (v) airline transportation property included in class twelve.

21           (2) Class nine property is taxed at 12% of market value."  
22

23           **Section 34.** Section 69-5-101, MCA, is amended to read:

24           **"69-5-101. Short title.** This part ~~shall be~~ is known and may be cited as the "Territorial Integrity  
25 Act of 1974"."  
26

27           **Section 35.** Section 69-5-102, MCA, is amended to read:

28           **"69-5-102. Definitions.** When used in this part, the following definitions apply:

29           (1) ~~"Commercial premises" means the premises where the business of selling, warehousing, or~~  
30 ~~distributing a commodity or other business activity is carried on or professional or other services are~~

1 ~~rendered.~~ "Agreement" means a written agreement between two or more electric facilities providers that  
 2 identifies the geographical area to be served exclusively by each electric facilities provider that is a party  
 3 to the agreement and any terms and conditions pertinent to the agreement.

4 (2) "Electric cooperative" means a rural electric cooperative organized under Title 35, chapter 18,  
 5 or a foreign corporation admitted thereunder to do business in Montana.

6 (3) "Electric ~~supplier~~ facilities provider" means any electrical utility and any electric cooperative that  
 7 provides electric service facilities to the public.

8 (4) "Electric service facilities" means any distribution or transmission system or related facility  
 9 necessary to provide electricity to the premises, including lines.

10 ~~(4)(5)~~ "Electric utility" means a person, firm, or corporation other than an electric cooperative  
 11 ~~which furnishes electrical~~ that provides electric service facilities to the public.

12 ~~(5) "Industrial premises" means the premises where an industrial activity is carried on, including~~  
 13 ~~but not limited to the operation of factories, mills, machine shops, mines, oil wells, refineries, pumping,~~  
 14 ~~cleaning and dyeing works, creameries, canneries, stockyards, feedlots, military installations, or other~~  
 15 ~~extractive, fabricating, or processing activities.~~

16 (6) "Line" means any electric supply conductor ~~operating at a nominal voltage level of 34,500 volts~~  
 17 ~~or less, measured phase to phase.~~

18 (7) "Premises" means a building, residence, structure, or facility to which ~~electricity is being~~ electric  
 19 service facilities are provided or is are to be furnished; provided, that installed; however, two or more  
 20 buildings, structures, or facilities which that are located on one tract or contiguous tracts of land and that  
 21 are utilized used by one electric consumer for farming, business, commercial, industrial, institutional,  
 22 governmental, or trailer court purposes ~~shall~~ must together constitute one premises, except that any ~~such~~  
 23 building, structure, or facility, other than a trailer court, ~~shall~~ may not, together with any other building,  
 24 structure, or facility, constitute one premises if the electric service to it is separately metered and the  
 25 charges for ~~such that~~ service are calculated independently of charges for service to any other building,  
 26 structure, or facility.

27 (8) "Utility" means a public utility regulated by the commission pursuant to Title 69, chapter 3, or  
 28 a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18."

29

30 **Section 36.** Section 69-5-104, MCA, is amended to read:

1           **"69-5-104. Continuation of ~~service~~ electric service facilities to existing consumers. Every ~~Each~~**  
 2 **electric ~~supplier~~ service facilities provider shall ~~have~~ has the right to ~~serve~~ provide electric service facilities**  
 3 **to all premises being served by it or to which any of its facilities are attached on ~~February 1, 1971~~ [the**  
 4 **effective date of this act]."**

5  
 6           **Section 37.** Section 69-5-105, MCA, is amended to read:

7           **"69-5-105. Service to new consumers.** (1) Subject to ~~69-5-106~~ this part, the electric ~~supplier~~  
 8 ~~facilities provider~~ having a line nearest the premises, as measured in accordance with subsection (2), shall  
 9 ~~serve provide electric service facilities to the~~ premises initially requiring service after ~~February 1, 1971~~ [the  
 10 effective date of this act], which ~~creates a rebuttable presumption that the nearest line is the least-cost~~  
 11 electric service facility to the new customer. However, a customer or another electric facilities provider  
 12 may rebut the presumption, and another electric facilities provider may provide the electric service facilities  
 13 if it can do so at less cost.

14           (2) All measurements under this part shall ~~shall~~ must be made on the shortest straight line ~~which that~~  
 15 can be drawn from the conductor nearest the premises to the nearest permanent portion of the premises.  
 16 ~~Construction power for premises to be constructed shall be supplied by the electric supplier having the right~~  
 17 ~~to serve the completed premises.~~

18           (3) If the electric facilities providers are unable to reach agreement as to which electric facilities  
 19 provider can provide electric service facilities at least cost, an independent consultant engineer agreeable  
 20 to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on  
 21 a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction,  
 22 as provided in 69-5-110, shall determine which electric facilities provider can extend its lines to the  
 23 consumer at the least cost. The cost of those engineering services must be paid equally by the electric  
 24 facilities providers involved."

25  
 26           **Section 38.** Section 69-5-106, MCA, is amended to read:

27           **"69-5-106. ~~Service~~ Electric service facilities to industrial or commercial premises large customers.**  
 28 (1) An electric utility has the right to furnish electric service facilities to any ~~industrial or commercial~~  
 29 ~~premises~~ if the estimated connected load for full ~~plant~~ operation at ~~such industrial or commercial~~ the  
 30 premises will be 400 kilowatts or larger within 2 years from the date of initial service ~~provided such and~~

1 ~~if the~~ electric utility can extend its ~~lines~~ facilities to ~~such industrial or commercial~~ the premises at less cost  
 2 to the electric utility ~~or the industrial or commercial customer~~ than the electric cooperative cost. The  
 3 estimated connected load ~~shall~~ must be determined from the plans and specifications prepared for  
 4 construction of the premises or, if ~~such an~~ estimate is not available, ~~shall~~ must be determined by agreement  
 5 of the electric ~~supplier~~ facilities provider and the customer. The fact that the actual connected load after  
 6 2 years from the date of initial service is less than 400 kilowatts does not affect the right of the electric  
 7 ~~supplier~~ facilities provider initially providing electric service facilities to continue to provide electric service  
 8 facilities to ~~such the~~ premises.

9 (2) An independent consultant engineer agreeable to both electric ~~suppliers~~ facilities providers or,  
 10 in the event of failure of the electric ~~suppliers~~ facilities providers to agree on a consultant engineer, an  
 11 independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110,  
 12 shall determine which electric ~~supplier~~ facilities provider can extend its ~~lines to the consumer~~ facilities at  
 13 the least cost to the utility. The cost of ~~such those~~ engineering services ~~shall~~ must be paid equally by the  
 14 electric ~~suppliers~~ facilities providers involved.

15 ~~(3) No premises other than another such commercial or industrial premises shall be served from~~  
 16 ~~a line constructed under this section."~~

17

18 **Section 39.** Section 69-5-107, MCA, is amended to read:

19 **"69-5-107. ~~Service to property owned by electric supplier~~ Customer-owned facilities.** ~~Nothing in~~  
 20 ~~69-5-103 through 69-5-106 shall restrict the right of an electric supplier to furnish electric service to any~~  
 21 ~~property owned by the electric supplier. This part may not limit a customer's right to construct, own, or~~  
 22 ~~operate electric service facilities for the customer's own use, and construction, ownership, or use may not~~  
 23 ~~cause the customer to be considered a utility. A customer may not duplicate existing electric service~~  
 24 ~~facilities."~~

25

26 **Section 40.** Section 69-5-108, MCA, is amended to read:

27 **"69-5-108. ~~Agreements between electric suppliers as to service areas~~ facilities providers.**  
 28 ~~Notwithstanding the provisions of 69-5-103 through 69-5-109, an electric supplier may furnish electric~~  
 29 ~~service to any consumer at any premises being served by another electric supplier upon written agreement~~  
 30 ~~of the affected electric suppliers or at premises that another electric supplier has the right to serve pursuant~~

1 ~~to this part, upon written agreement of the affected electric suppliers. Utilities may enter into agreements~~  
 2 ~~that identify the geographical area to be exclusively served by each electric facilities provider that is party~~  
 3 ~~to the agreement, overriding the provisions of 69-5-105 and 69-5-107. If an agreement is approved by the~~  
 4 ~~commission pursuant to this part, the agreement is valid and binding on all electric facilities providers and~~  
 5 ~~all customers, except those provided for in 69-5-106."~~

6  
 7 **Section 41.** Section 69-5-109, MCA, is amended to read:

8 **"69-5-109. Special provisions for annexed areas.** ~~With respect to service in areas which are~~  
 9 ~~annexed to incorporated municipalities having a population in excess of 3,500 persons, electric suppliers~~  
 10 ~~have rights and are subject to restrictions as follows:~~

11 ~~(1) Every electric supplier has the right to serve all premises being served by it on the date of~~  
 12 ~~annexation.~~

13 ~~(2) An electric cooperative does not have the right to serve any premises initially requiring service~~  
 14 ~~on or after the date of annexation. The restriction stated in this subsection does not apply to incorporated~~  
 15 ~~municipalities in which 95% or more of the premises were served by an electric cooperative on February~~  
 16 ~~4, 1971. (1) Electric facilities providers providing electric service facilities in or near areas that are~~  
 17 ~~incorporated municipalities having a population in excess of 3,500 persons and having annexed areas since~~  
 18 ~~1985 or having existing municipal planning zones on [the effective date of this act] shall enter into~~  
 19 ~~agreements dividing the annexed and planning zone areas into exclusive service territories and shall submit~~  
 20 ~~the agreements to the commission for approval, pursuant to this part.~~

21 ~~(2) The agreements do not apply to electric service facilities with loads of 400 kilowatts or greater.~~  
 22 ~~Agreements must be based on the location of facilities in place on [the effective date of this act].~~

23 ~~(3) If electric facilities providers have failed to negotiate agreements within 1 year from the~~  
 24 ~~[effective date of this act], the commission shall divide the annexed and planning zone areas into exclusive~~  
 25 ~~service territories, using the considerations pursuant to [section 44].~~

26 ~~(4) Until agreements are final, electric service facilities to new customers will be provided pursuant~~  
 27 ~~to 69-5-105."~~

28  
 29 **Section 42.** Section 69-5-110, MCA, is amended to read:

30 **"69-5-110. Jurisdiction of district courts over disputes.** The district courts of the county or

1 counties within which the premises or lines involved in any dispute are located ~~shall~~ have jurisdiction under  
 2 this part over all electric ~~suppliers~~ facilities providers subject to ~~the provisions thereof~~ this part."

3  
 4 **Section 43.** Section 69-5-111, MCA, is amended to read:

5 "**69-5-111. Judicial remedies.** (1) Whenever ~~it shall appear that any~~ an electric ~~supplier~~ facilities  
 6 provider is failing or omitting or about to fail or omit to do anything required of it by this part or is doing  
 7 or is about to do anything or to permit anything to be done contrary to or in violation of this part, ~~any~~ the  
 8 electric ~~supplier~~ facilities provider affected ~~thereby shall have the right to~~ may file a complaint in the district  
 9 court ~~briefly~~ setting forth the acts or omissions complained of and requesting an injunction.

10 (2) If an affidavit showing that grounds exist ~~therefor~~ that an electric facilities provider is in  
 11 violation of this part is filed with the complaint, a temporary restraining order ~~shall~~ must be issued without  
 12 notice. A copy of the temporary restraining order, complaint, and affidavit ~~shall~~ must be served upon the  
 13 defendant, together with an order to show cause why the temporary restraining order should not be made  
 14 permanent, within 5 days after issuance of the temporary restraining order. The hearing on the order to  
 15 show cause must be held at a date specified ~~therein in the order, which shall~~ and may not be more than  
 16 10 days after service ~~thereof of the order~~ and ~~shall~~ must take precedence over all matters pending before  
 17 the district court. A judgment making the injunction permanent or dissolving the temporary restraining order  
 18 ~~therefore that was~~ issued and dismissing the complaint must be made ~~not later than~~ before 10 days after  
 19 the hearing on the order to show cause.

20 (3) Any party aggrieved by the order may appeal to the supreme court of Montana by filing a notice  
 21 of appeal in the district court within 20 days from entry of the order. The appeal must be perfected within  
 22 20 days ~~thereafter~~ after filing the notice of appeal and ~~shall~~ must take precedence over all matters pending  
 23 before the supreme court of Montana."

24  
 25 **NEW SECTION. Section 44. Commission jurisdiction over agreements.** (1) All agreements between  
 26 electric facilities providers must be submitted to the commission for approval. Each agreement must clearly  
 27 identify the geographical area to be served by each electric facilities provider. The submission must include:

- 28 (a) a map and a written description of the area;  
 29 (b) the terms and conditions pertaining to the implementation of the agreement;  
 30 (c) the number and class of customers to be transferred;

1 (d) assurance that the affected customers have been contacted and have received a written  
2 explanation of the difference in rates; and

3 (e) information with respect to the degree of acceptance by affected customers, such as the number  
4 in favor of and those opposed to the transfer.

5 (2) In approving agreements, the commission shall consider but not be limited to consideration of:

6 (a) the reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the  
7 reliability of electric service to the existing or future ratepayers of any electric facilities provider party of  
8 the agreement; and

9 (b) the reasonable likelihood that the agreement will eliminate existing or potentially uneconomic  
10 duplication of electric service facilities.

11 (3) An agreement approved by the commission is valid and enforceable, and except as provided  
12 in 69-5-106, an electric facilities provider may not offer, construct, or extend electric service facilities into  
13 an exclusive territory.

14 (4) The commission shall state its findings and conclusions for approving or disapproving an  
15 agreement and shall render a decision within 90 days of receipt of the agreement. The electric facilities  
16 providers submitting the agreement to the commission shall act according to the agreement until a decision  
17 is rendered.

18 (5) Upon approval of the agreement, any modification, changes, or corrections to this agreement  
19 must be approved by the commission.

20 (6) The commission may promulgate rules to administer this part consistent with the requirements  
21 of this part.

22

23 **NEW SECTION. Section 45. Repealer.** Section 69-5-103, MCA, is repealed.

24

25 **NEW SECTION. Section 46. Saving clause.** [This act] does not affect rights and duties that  
26 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this  
27 act].

28

29 **NEW SECTION. Section 47. Severability.** If a part of [this act] is invalid, all valid parts that are  
30 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its

1 applications, the part remains in effect in all valid applications that are severable from the invalid  
2 applications.

3

4 **NEW SECTION. Section 48. Codification instructions.** (1) [Sections 1 through 31] are intended  
5 to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through 31].

6 (2) [Section 44] is intended to be codified as an integral part of Title 69, chapter 5, part 1, and the  
7 provisions of Title 69, chapter 5, part 1, apply to [section 44].

8

9 **NEW SECTION. Section 49. Effective date.** [This act] is effective on passage and approval.

10

-END-



## 1 SENATE BILL NO. 390

2 INTRODUCED BY THOMAS, QUILICI, HARP, BERGSAGEL, SLITER, MOLNAR, BEAUDRY, MASOLO,  
3 GRINDE, MAHLUM, MENAHAN, DEVLIN, SHEA, CHRISTIAENS, SIMPKINS, STANG, DEPRATU,  
4 L. TAYLOR, HARRINGTON, BOOKOUT-REINICKE, STORY, OHS, PAVLOVICH, DEVANEY, JABS,  
5 REHBEIN, KEATING, TOEWS, TROPILA, ORR, FOSTER, LYNCH, GALVIN, MCCARTHY, BECK, RYAN,  
6 EMERSON, KITZENBERG, DEBRUYCKER, HERTEL, MILLS, GRADY, HALLIGAN, M. TAYLOR,  
7 GROSFIELD, WILSON, NELSON, CLARK, TASH, BISHOP, BENEDICT, SPRAGUE, COLE, MOHL, ELLIS,  
8 JENKINS, KOTTEL, WYATT, DENNY

9  
10 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY ESTABLISHING RESTRUCTURING REQUIREMENTS  
11 FORMONTANA'S ELECTRIC UTILITY INDUSTRY; PROVIDING CUSTOMER CHOICE; GENERALLY REVISING  
12 THE TERRITORIAL INTEGRITY LAWS; REMOVING CERTAIN RURAL ELECTRIC COOPERATIVE PROPERTIES  
13 FROM CLASS SEVEN PROPERTY; INCLUDING CERTAIN RURAL ELECTRIC COOPERATIVE PROPERTIES  
14 IN CLASS NINE PROPERTY; AMENDING SECTIONS 15-6-137, 15-6-141, 69-5-101, 69-5-102, 69-5-104,  
15 69-5-105, 69-5-106, 69-5-107, 69-5-108, 69-5-109, 69-5-110, AND 69-5-111, MCA; REPEALING  
16 SECTION 69-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

17  
18 STATEMENT OF INTENT

19 A statement of intent is required because this bill provides the public service commission with  
20 rulemaking authority.

21  
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23  
24 NEW SECTION. Section 1. Short title. [Sections 1 through 31] may be cited as the "Electric Utility  
25 Industry Restructuring and Customer Choice Act".

26  
27 NEW SECTION. Section 2. Legislative findings and policy. The legislature finds and declares the  
28 following:

29 (1) The generation and sale of electricity is becoming a competitive industry.

30 (2) Montana customers should have the freedom to choose their supplier of electricity and related

1 services in a competitive market as soon as administratively feasible. Affording this opportunity serves the  
2 public interest.

3 (3) The financial integrity of electrical utilities should be fostered WHILE RECOGNIZING THE  
4 INTERESTS OF MONTANA CONSUMERS.

5 (4) The public interest requires the continued protection of consumers through:

6 (a) licensure of electricity suppliers;

7 (b) provision of information to consumers regarding electricity supply service;

8 (c) provision of a process for investigating and resolving complaints;

9 (d) continued funding for public purpose programs for:

10 (i) cost-effective local energy conservation;

11 (ii) low-income customer weatherization;

12 (iii) renewable resource applications;

13 (iv) research and development programs related to energy conservation and renewables;

14 (v) market transformation; and

15 (vi) low-income energy bill assistance;

16 (e) assurance of service reliability and quality; and

17 (f) prevention of anticompetitive and abusive activities.

18

19 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 31], unless the context  
20 requires otherwise, the following definitions apply:

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

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

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

30 (4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or

1 intermediary in the sale and purchase of electric energy but that does not take title to electric energy.

2 (5) "Cooperative utility" means:

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

4 (b) an existing municipal ELECTRIC utility as of [the effective date of this act]; or

5 (c) a federally owned and locally managed electric utility in the state of Montana that is operated  
6 under contract between a federally recognized Indian tribe and the United States.

7 (6) "Customer" or "consumer" means a retail electric customer or consumer. THE UNIVERSITY OF  
8 MONTANA, PURSUANT TO 20-25-201(1), AND MONTANA STATE UNIVERSITY, PURSUANT TO  
9 20-25-201(2), ARE EACH CONSIDERED A SINGLE RETAIL ELECTRIC CUSTOMER OR CONSUMER WITH  
10 A SINGLE INDIVIDUAL LOAD.

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

14 (8) "Distribution services provider" means a person controlling or operating distribution facilities for  
15 distribution of electricity to the public.

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

18 (10) "Financing order" means an order of the commission adopted in accordance with [section 31]  
19 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition  
20 bonds.

21 (11) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not  
22 limited to:

23 (i) distribution;

24 (ii) connection;

25 (iii) disconnection; and

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

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

1 amounts must include nonbypassable rates or charges to recover federal and state taxes in which the  
2 transition cost recovery period is modified by the transactions approved in the financing order.

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

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

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

9 (15) "Nonbypassable rates or charges" means rates or charges approved by the commission  
10 imposed ~~by~~ ON a customer to pay the customer's share of transition costs or universal system benefits  
11 program costs even if the customer has physically bypassed either the utility's transmission or distribution  
12 facilities.

13 (16) "Pilot program" means a program using a representative sample of residential and small  
14 commercial customers to assist in developing and offering customer choice of electric supply for all  
15 residential and commercial customers.

16 (17) "Public utility" means any electric utility regulated by the commission pursuant to Title 69,  
17 chapter 3, on [the effective date of this act], including the public utility's successors or assignees.

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

20 (19) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust  
21 certificate, or other evidence of indebtedness or ownership ISSUED BY THE BOARD OR OTHER  
22 TRANSITION BONDS ISSUER that is secured by or payable from fixed transition amounts or transition  
23 property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance  
24 transition costs and to acquire transition property.

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

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

29 (22) "Transition costs" means:

30 (a) a public utility's net verifiable generation-related and electricity supply costs, including costs

1 of capital, that become unrecoverable as a result of the implementation of [sections 1 through 31] or of  
2 federal law requiring retail open access or customer choice.

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

4 (i) regulatory assets and deferred charges that exist because of current regulatory practices and can  
5 be accounted for up to the effective date of the commission's final order regarding a public utility's  
6 transition plan AND CONSERVATION INVESTMENTS MADE PRIOR TO UNIVERSAL SYSTEM BENEFITS  
7 CHARGE IMPLEMENTATION;

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

9 (iii) existing generation investments and supply commitments or other obligations incurred before  
10 [the effective date of this act] AND COSTS ARISING FROM THESE INVESTMENTS AND COMMITMENTS;

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

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

17 (23) "Transition period" means the period beginning on July 1, 1998, and ending on July 1, 2002,  
18 unless otherwise extended pursuant to [sections 1 through 31], during which utilities may phase in  
19 customer choice of electricity supplier.

20 (24) "Transition property" means the property right created by a financing order including without  
21 limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue,  
22 collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition  
23 amounts that are the subject of a financing order including those nonbypassable rates and other charges  
24 and fixed transition amounts that are authorized by the commission in the financing order to recover  
25 transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and  
26 acquiring transition property including the costs of issuing, servicing, and retiring transition bonds. Any  
27 right that a utility has in the transition property before the utility's sale or transfer or any other right created  
28 under this section or created in the financing order and assignable under [sections 1 through 31] or  
29 assignable pursuant to a financing order is only a contract right.

30 (25) "Transmission facilities" means those facilities that are used to provide transmission services

1 as determined by the federal energy regulatory commission and the commission.

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

3 (27) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on  
4 a customer to pay the customer's share of universal system benefits program costs.

5 (28) "Universal system benefits programs" means public purpose programs for:

6 (a) cost-effective local energy conservation;

7 (b) low-income customer weatherization;

8 (c) renewable resource applications, including those that capture unique social and energy system  
9 benefits or provide transmission and distribution system benefits;

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

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

12 and

13 (f) low-income energy bill assistance ~~as approved by the commission.~~

14 (29) "Utility" means any public utility or cooperative utility.

15

16 **NEW SECTION. Section 4. Pilot programs.** (1) Except as provided in [sections 5(4) and 20],  
17 beginning July 1, 1998, utilities shall conduct pilot programs using a representative sample of their  
18 residential and small commercial customers. A report describing and analyzing the results of the pilot  
19 programs must be submitted to the commission and the transition advisory committee established in  
20 [section 29] on or before July 1, 2000.

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

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

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

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

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

1           **NEW SECTION. Section 5. Public utility -- transition to customer choice -- waiver.** (1) A public  
2 utility shall, except as provided in this section, adhere to the following deadlines:

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

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

8           (2) (a) Except as provided for in subsection (3), the commission may determine that additional time  
9 is necessary for customers identified in subsection (1)(b); however, the implementation of full customer  
10 choice may not be delayed beyond July 1, 2004.

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

14           (i) implementation would not be administratively feasible;

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

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

18           (3) Except as provided in ~~[section~~ **SECTIONS 22 AND 34 THROUGH 44**], a public utility currently  
19 doing business in Montana as part of a single integrated multistate operation, no portion of which lies within  
20 the basin of the Columbia River may:

21           (a) defer compliance with ~~this section~~ **SECTIONS 1 THROUGH 31** until a time that the public utility  
22 can reasonably implement customer choice in the state of the public utility's primary service territory except  
23 that the public utility shall file a transition plan pursuant to [section 6] to provide transition to customer  
24 choice on or before July 1, 2002, and must have completed the transition period to customer choice by  
25 July 1, 2006; and

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

27           (4) Upon a request from a public utility with fewer than 50 customers, the commission shall waive  
28 compliance with the requirements of [sections 4, **6 THROUGH 12, 22**, and this section].  
29

30           **NEW SECTION. Section 6. Public utility -- transition plans.** (1) All public utilities, pursuant to

1 [sections 1 through 31], shall submit a transition plan to the commission. Plans must be filed with the  
2 commission not later than 1 year before the date by which any customers of the public utility are entitled  
3 to choice of electricity supplier pursuant to [section 5]. The commission may develop a schedule for public  
4 utilities that are required to file plans. The transition plan must demonstrate that the public utility meets  
5 all the requirements of [sections 1 through 31].

6 (2) The commission shall develop a procedural schedule that includes:

7 (a) a preliminary transition plan determination including the commission's findings on whether the  
8 plan is complete and adequate subject to the requirements of [sections 1 through 31]; and

9 (b) an opportunity for a public utility to file a revised plan based on the preliminary determination.

10 (3) Unless waived by the public utility, the commission shall issue a final order approving,  
11 MODIFYING, or denying the transition plan before 9 months after the date a public utility files a plan. All  
12 parties are afforded an opportunity for hearing before issuance of the final order.

13 (4) The commission shall process a request for approval of a transition plan pursuant to the  
14 contested case procedures of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

15 (5) On approval of the plan, the commission shall enforce the public utility obligations as  
16 incorporated in the plan and in the commission's final order.

17

18 **NEW SECTION. Section 7. Public utility -- customer choice -- continued service -- education of**  
19 **customers.** (1) A customer is permitted to choose an electricity supplier pursuant to the deadlines  
20 established in [section 5]. Public utilities shall propose a method for customers to choose an electricity  
21 supplier.

22 (2) If a customer has not chosen an electricity supplier by the end of the transition period, a public  
23 utility shall propose a method in the public utility's transition plans for assigning that customer to an  
24 electricity supplier.

25 (3) A public utility may phase in customer choice to promote the orderly transition to a competitive  
26 market environment pursuant to the deadlines in [section 5].

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

30



1           **NEW SECTION. Section 8. Public utility -- functional separation, divestiture, and nondiscrimination.**

2           (1) To the extent that a public utility is vertically integrated, a public utility shall functionally separate the  
3 public utility's electricity supply, retail transmission and distribution, and regulated and unregulated retail  
4 energy services operations in the state of Montana, upon application to and approval from the commission.

5           (2) The commission may not order a public utility to divest itself of any generation assets or prohibit  
6 a public utility from divesting itself voluntarily of any generation assets.

7           (3) Public utilities shall:

8           (a) prevent undue discrimination in favor of their own power supply, other services, divisions, or  
9 affiliates, if any;

10           (b) prevent any other forms of self-dealing that could result in noncompetitive electricity prices to  
11 customers; and

12           (c) grant customers and their electricity suppliers access to the public utility's retail transmission  
13 and distribution system on a nondiscriminatory basis at rates, terms, and conditions of service comparable  
14 to the use of the retail transmission and distribution system by the public utility and the public utility's  
15 affiliates.

16           (4) The provisions of this section are satisfied if the public utility adopts and complies with A CODE  
17 OF CONDUCT CONSISTENT WITH federal energy regulatory commission approved code of conduct  
18 pursuant to 18 CFR, part 37. The commission shall promulgate rules relating to the codes of conduct.

19  
20           **NEW SECTION. Section 9. Public utility -- distribution services.** (1) A public utility's distribution  
21 services provider shall:

22           (a) file tariffs that make distribution facilities available to all electricity suppliers, transmission  
23 services providers, and customers on a nondiscriminatory and comparable basis;

24           (b) build and maintain distribution facilities; and

25           (c) be an emergency supplier of electricity and related services.

26           (2) When a distribution services provider acts as an emergency supplier of electricity and related  
27 services to customers, the electricity supplier that should have provided the electricity shall reimburse the  
28 distribution services provider at the higher of a multiple of the cost or a multiple of the then existing market  
29 rate for that electricity. The commission shall determine and authorize the multiple used. The market rate  
30 is the highest published rate for electricity purchased within the local load control area at the time that the

1 distribution services provider provided the emergency supply. A distribution services provider is not  
 2 required to purchase any reserve supply of electricity to fulfill this obligation.

3

4 **NEW SECTION. Section 10. Public utilities -- transmission services.** For transmission services  
 5 regulated by the commission, public utilities, through filed tariffs, shall make transmission services available  
 6 for nondiscriminatory and comparable use by all electricity suppliers, by distribution services providers, and  
 7 by customers.

8

9 **NEW SECTION. Section 11. Public utilities -- electricity supply.** (1) On the effective date of a  
 10 commission order implementing a public utility's transition plan pursuant to [section 6], the public utility  
 11 shall remove its generation assets from the rate base.

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

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

17 (a) extend any cost-based contract with the distribution services provider's affiliate supplier for a  
 18 term not more than 3 years; or

19 (b) purchase electricity from the market; AND

20 ~~(4) A tracking~~ (C) USE A mechanism ~~must be used to recover~~ THAT RECOVERS electricity supply  
 21 costs in rates to ensure that those costs are fully recovered.

22 (5) If a public utility intends to be an electricity supplier through an unregulated division, then the  
 23 public utility must be licensed as an electricity supplier pursuant to [section 24].

24

25 **NEW SECTION. Section 12. Public utilities -- transition costs and charges -- rate moratorium.** (1)  
 26 Subject to the provisions of this section, the commission shall allow recovery of the following categories  
 27 of transition costs:

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

30 (b) the unmitigable costs of energy supply-related regulatory assets and deferred charges that exist

1 because of current regulatory practices and that can be accounted for up to the effective date of the  
 2 commission's final order regarding a public utility's transition plan, including costs, expenses, and  
 3 reasonable fees related to issuing of transition bonds;

4 (c) The unmitigable transition costs related to public utility-owned generation and other power  
 5 purchase contracts, except that recovery of those costs is limited to the amount accruing during the first  
 6 4 years after the commission enters an order pursuant to [section 6(3)]; and

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

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

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

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

- 16 (i) estimating future market values of electricity and ancillary services provided by the assets;
- 17 (ii) appraisal by independent third-party ~~professionals~~ PROFESSIONALS; and
- 18 (iii) a competitive bid sale.

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

22 (d) Unless otherwise provided for in [sections 1 through 31], only costs related to existing  
 23 investments and power purchase contracts identified in subsection (2)(c) and costs arising from those  
 24 investments and power purchase contracts may be included as transition costs.

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

27 (b) A transition charge may not be collected from CUSTOMERS FOR:

- 28 (i) ~~customers with new~~ OR ADDITIONAL loads of 1,000 kilowatts or greater that were ~~connected~~  
 29 ~~to either the public utility's transmission or distribution facilities~~ FIRST SERVED BY THE PUBLIC UTILITY  
 30 after December 31, 1996; or

1           (ii) ~~customers generating electricity for their own use~~ LOADS SERVED BY THAT CUSTOMER'S  
2 OWN GENERATION.

3           (c) Subject to commission approval, a utility and a customer may agree to alter the customer's  
4 transition charge payment schedule. PUBLIC UTILITIES MAY FILE WITH THE COMMISSION TARIFFS FOR  
5 ELECTRIC SERVICE RATES THAT FOSTER ECONOMIC DEVELOPMENT OR RETENTION OF EXISTING  
6 CUSTOMERS WITHIN THE STATE, INCLUDING GENERALLY AVAILABLE RATE SCHEDULES. Transition  
7 charges are the only charges that may be imposed upon a customer class to recover transition costs under  
8 this section. A separate exit fee may not be charged.

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

12           (5) Approval of transition costs and collection of those transition costs through transition charges  
13 is a settlement of all transition costs claims by a public utility. A public utility seeking to recover transition  
14 costs through any means not authorized by [sections 1 through 31] may not collect transition charges with  
15 respect to these transition costs.

16           ~~(6) Public utilities may not charge rates or collect costs, which include costs reallocated to transition~~  
17 ~~costs, at a level higher than the public utility would reasonably expect to recover in rates had the current~~  
18 ~~regulatory system remained intact, with the exception of:~~

19           ~~(a) increased costs related to universal system benefits charges greater than those currently~~  
20 ~~included in rates; and~~

21           ~~(b) increased costs necessary to implement full customer choice, including but not limited to~~  
22 ~~metering, billing, and technology from those customers on whose behalf those increased costs are incurred.~~

23           ~~(7) If transition bonds are authorized pursuant to [section 31], any savings, net of consolidated tax~~  
24 ~~impacts, must be used to fund a partial or full rate moratorium for 2 years during the transition period~~  
25 ~~except as provided in [section 6], to the extent possible to fund transition costs mitigation or shortened~~  
26 ~~transition cost recovery periods.~~

27           ~~(8) A public utility shall address in the public utility's transition plan reasonable transition~~  
28 ~~bond related rate moratorium and transition costs adjustment opportunities that may exist for the benefit~~  
29 ~~of customers. The transition plan may include proposed provisions for rate adjustments due to~~  
30 ~~extraordinary events during the same time period.~~

1           (6) EXCEPT AS PROVIDED IN SUBSECTION (7), PUBLIC UTILITIES SHALL IMPLEMENT A RATE  
2 MORATORIUM DURING THE TRANSITION PERIOD AS FOLLOWS:

3           (A) FROM JULY 1, 1998, THROUGH JUNE 30, 2000, PUBLIC UTILITIES MAY NOT CHARGE RATES  
4 HIGHER THAN THOSE RATES IN EFFECT ON JULY 1, 1998.

5           (B) FROM JULY 1, 2000, THROUGH JUNE 30, 2002, AND ONLY FOR THOSE CUSTOMERS  
6 SUBJECT TO THE PROVISIONS OF [SECTION 5(1)(B)], PUBLIC UTILITIES MAY NOT INCREASE THAT  
7 INCREMENT OF RATES NORMALLY ALLOCATED TO ELECTRIC SUPPLY-RELATED COSTS ABOVE THE  
8 INCREMENT ASSOCIATED WITH ELECTRIC SUPPLY-RELATED COSTS REFLECTED IN RATES IN EFFECT  
9 ON JULY 1, 1998. BEGINNING ON JULY 1, 2000, PUBLIC UTILITIES MAY PROPOSE INCREASES TO  
10 THOSE INCREMENTS OF RATES NORMALLY ALLOCATED TO TRANSMISSION AND DISTRIBUTION  
11 COSTS.

12           (7) EXCEPTED FROM THE PROVISIONS OF SUBSECTION (6) ARE:

13           (A) INCREASED COSTS RELATED TO UNIVERSAL SYSTEM BENEFITS PROGRAMS GREATER THAN  
14 THOSE CURRENTLY IN RATES, INCLUDING THE TREATMENT OF UNIVERSAL SYSTEM BENEFITS  
15 PROGRAM COSTS AS AN EXPENSE;

16           (B) INCREASED COSTS NECESSARY TO IMPLEMENT FULL CUSTOMER CHOICE, INCLUDING BUT  
17 NOT LIMITED TO METERING, BILLING, AND TECHNOLOGY. THOSE COSTS MUST BE RECOVERED FROM  
18 THE CUSTOMERS ON WHOSE BEHALF THE INCREASED COSTS ARE INCURRED.

19           (C) SUBJECT TO COMMISSION APPROVAL, EXTRAORDINARY EVENTS RESULTING IN EITHER:

20           (I) A 4% ANNUAL REVENUE REQUIREMENT INCREASE FROM JULY 1, 1998, THROUGH JUNE 30,  
21 2000; OR

22           (II) AN 8% POWER SUPPLY-RELATED ANNUAL REVENUE REQUIREMENT INCREASE FROM JULY  
23 1, 2000, THROUGH JUNE 30, 2002;

24           (D) PORTIONS OF THE INCREASE OR DECREASE IN THE ANNUAL STATE AND LOCAL PROPERTY  
25 TAX EXPENSE THAT ARE GREATER THAN THE PAYMENT OR ADJUSTMENT THAT RESULTS FROM  
26 APPLYING THE INDUSTRY-RECOGNIZED RATES OF INFLATION TO THE INCREASE OR DECREASE IN THE  
27 STATE AND LOCAL PROPERTY TAX EXPENSE REFLECTED IN RATES AS OF [THE EFFECTIVE DATE OF  
28 THIS ACT].

29           (8) NOTWITHSTANDING SUBSECTIONS (6) AND (7), DURING THE TRANSITION PERIOD, PUBLIC  
30 UTILITIES MAY NOT CHARGE RATES OR COLLECT COSTS THAT INCLUDE COSTS REALLOCATED TO

1 TRANSITION COSTS AT A LEVEL HIGHER THAN THE PUBLIC UTILITY WOULD REASONABLY EXPECT TO  
 2 RECOVER IN RATES HAD THE CURRENT REGULATORY SYSTEM REMAINED INTACT.

3 (9) PUBLIC UTILITIES SHALL APPLY SAVINGS RESULTING UNDER [SECTION 31] TOWARD THE  
 4 RATE MORATORIUM PURSUANT TO SUBSECTION (6).

5 (10) PUBLIC UTILITIES MAY ACCELERATE THE AMORTIZATION OF ACCUMULATED DEFERRED  
 6 INVESTMENT TAX CREDITS ASSOCIATED WITH TRANSMISSION, DISTRIBUTION, AND THE GENERAL  
 7 PLANT AS AN ADJUSTMENT TO EARNINGS. ACCUMULATED DEFERRED INVESTMENT TAX CREDITS  
 8 AMORTIZED UNDER THIS SUBSECTION MAY NOT BE REFLECTED IN OPERATING INCOME FOR  
 9 RATEMAKING PURPOSES.

10 ~~(9)(11)~~ The commission shall issue the accounting orders necessary to align rate moratorium timing  
 11 and requirements to actual transition bonds savings.

12 ~~(10) If transition bonds are issued, cost savings associated with and resulting from the bonds must~~  
 13 ~~benefit customers.~~

14

15 NEW SECTION. Section 13. Cooperative utility -- transition plan for customer choice. (1) Except  
 16 as provided in [section 20], on or before July 1, 2001, the local governing body of a cooperative utility shall  
 17 adopt a transition plan.

18 (2) (a) Except as provided in subsection (2)(b), transition plans must contain a transition period that  
 19 may not end later than July 1, 2002. At the conclusion of the transition period, all customers must have  
 20 the opportunity to choose an electricity supplier.

21 (b) If after a pilot program for customers of a cooperative utility with loads less than 1,000  
 22 kilowatts, a competitive market, technology, or other conditions precedent to full customer choice have not  
 23 developed, then the transition plan may be altered by the cooperative utility's governing body for those  
 24 customers.

25 (3) [Sections 1 through 31] do not require the cooperative utility to divest itself of any generation,  
 26 transmission, or distribution assets or prohibit a cooperative utility from divesting itself voluntarily of those  
 27 assets.

28 (4) A cooperative utility's local governing body shall certify to the commission that the local  
 29 governing body has adopted a transition plan. In the cooperative utility's certification filing, the cooperative  
 30 utility shall provide to the commission documentation that the cooperative utility's transition plan is

1 consistent with [sections 1 through 31].

2

3 **NEW SECTION. Section 14. Cooperative utility -- customer choice -- education of customers --**  
4 **continued service.** (1) Except as provided in [section 20], cooperative utilities shall propose a method for  
5 cooperative utility customers to choose an electricity supplier.

6 (2) Customer choice may be phased in to promote the orderly transition to a competitive market  
7 environment.

8 (3) Cooperative utilities shall educate their customers about customer choice so that customers may  
9 make an informed choice of an electricity supplier. This education process must give special emphasis to  
10 education efforts during the transition period.

11 (4) If a cooperative utility customer has not chosen an electricity supplier by the end of the  
12 transition period, then the electricity supplier is the cooperative utility that filed the plan or an electricity  
13 supplier designated by the cooperative utility.

14

15 **NEW SECTION. Section 15. Cooperative utility -- functional separation.** (1) To the extent that a  
16 cooperative utility is vertically integrated, the cooperative utility has the option to functionally separate the  
17 cooperative utility's electricity supply, transmission, distribution, and unregulated energy services assets  
18 and operations in the state of Montana. If the cooperative utility intends to exercise this option, the  
19 cooperative utility's transition plan must explain the cooperative utility's proposed separation process.

20 (2) A cooperative utility shall describe in the transition plan measures taken by the cooperative  
21 utility to prevent undue discrimination in favor of the cooperative utility's own electricity supply, if any, and  
22 in favor of the cooperative utility's affiliates, if any.

23 (3) Cooperative utilities may establish a code of conduct similar to the federal energy regulatory  
24 commission's code of conduct established in 18 CFR, part 37.

25

26 **NEW SECTION. Section 16. Cooperative utility -- distribution services.** (1) A cooperative utility  
27 transition plan must include distribution facility tariffs that must be established by the cooperative utility's  
28 local governing body and must include the obligation for the cooperative utility to:

29 (a) make distribution services available to all electricity suppliers, transmission services providers,  
30 and customers on a nondiscriminatory and comparable basis;

1 (b) build and maintain distribution facilities; and

2 (c) be an emergency supplier of electricity and related services.

3 (2) If a distribution services provider acts as an emergency supplier of electricity and related  
4 services to a customer of an electricity supplier, then the electricity supplier failing to meet contractual  
5 obligations shall reimburse the distribution services provider at an amount to be set by the local governing  
6 body but may not exceed the higher of a multiple of the cost or a multiple of the then existing market rate  
7 for that electricity. The market rate is the highest published rate for electricity purchased within the local  
8 load control area at the time that the distribution services provider provided the emergency supply. A  
9 distribution services provider is not required to purchase any reserve supply of electricity to fulfill this  
10 obligation.

11 (3) Recoverable costs for cooperative utilities must be based upon standard financial reporting  
12 statements and may reflect comparable rates of return of other utilities.

13

14 **NEW SECTION. Section 17. Cooperative utility -- transmission services.** Transition plans must  
15 state whether the cooperative utility's transmission services, if any, are regulated by the federal energy  
16 regulatory commission. If those services are not regulated by the federal energy regulatory commission,  
17 the plan must provide the basis for comparable and nondiscriminatory use by all electricity suppliers,  
18 distribution services providers, and customers. A cooperative utility's local governing body shall establish  
19 the cooperative utility's transmission tariffs.

20

21 **NEW SECTION. Section 18. Cooperative utility -- electricity supply.** (1) A transition plan may  
22 provide for a cooperative utility to own electric generation assets and for a cooperative utility to offer  
23 electricity supply service. The local governing body shall establish the price for electricity supply service  
24 offered by a cooperative utility.

25 (2) Cooperative utilities intending to offer electricity supply service shall comply with the provisions  
26 of [section 24].

27 (3) If a cooperative utility offers electricity supply service competitively to customers using a public  
28 utility's distribution facilities, the cooperative utility shall create an affiliated for-profit entity or similar  
29 structure to serve those customers that allows the entity to be taxed at the same level as other for-profit  
30 electricity suppliers.



1           **NEW SECTION. Section 19. Cooperative utility -- transition costs and charges.** (1) For the  
2 purposes of this section, "transition costs" means those costs, liabilities, and investments that cooperative  
3 utilities would reasonably expect to recover if fully bundled ratemaking conditions continued and that may  
4 not be recoverable as a result of the transition to a competitive market for electricity supply service.

5           (2) Transition costs eligible for treatment include but are not limited to:

6           (a) regulatory assets and deferred charges typically recoverable in rates;

7           (b) nonutility and utility power purchase contracts;

8           (c) existing commitments or obligations incurred before [the effective date of this act] and other  
9 cooperative utility investments rendered uneconomic as a result of the implementation of [sections 1  
10 through 31] or the introduction of retail wheeling through federal legislation or regulation;

11           (d) costs associated with any renegotiation or buyout of the existing nonutility and utility power  
12 purchase contracts; and

13           (e) revenue that appears as a portion of a facility charge necessary to meet debt service  
14 requirements.

15           (3) For a cooperative utility's transition costs to be fully recoverable, the cooperative utility shall  
16 make reasonable efforts to mitigate those transition costs.

17           (4) Cooperative utilities may not collect any more costs, including costs reallocated to transition  
18 costs, at a level higher than would otherwise be anticipated had the current regulatory system remained  
19 intact, with the exception of:

20           (a) increased costs related to universal system benefits charges; and

21           (b) increased costs of metering, billing, and technology necessary to facilitate full customer choice.

22           (5) Subject to the obligation to mitigate transition costs, a cooperative utility shall fully recover  
23 transition costs as approved by its local governing body. Unmitigable transition costs are nonbypassable  
24 and collected on a nondiscriminatory basis from consumers using the cooperative utility's distribution  
25 facilities in the receipt of electricity supply services.

26           (6) A cooperative utility may not collect transition costs from a customer for which the cooperative  
27 utility does not have and never has had an obligation to incur costs to provide electricity supply service  
28 unless the unmitigated transition costs were incurred solely on behalf of the customer.

29           (7) Approval of and collection of transition costs through a transition charge is a settlement of all  
30 transition claims by a cooperative utility. A cooperative utility seeking to recover transition costs through

1 any other means may not collect transition charges.

2

3 **NEW SECTION. Section 20. Cooperative utility -- exemption.** (1) Within 1 year after [the effective  
4 date of this act], a cooperative utility may file a notice with the commission that the cooperative utility does  
5 not intend to open the cooperative utility's distribution facilities to electricity suppliers and does not intend  
6 to adopt a transition plan. Except as otherwise provided in the universal system benefits program pursuant  
7 to [section 22], a cooperative utility filing notice under this section is exempt from the provisions and  
8 requirements of [sections 1 through 31].

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

10 (a) may elect later to adopt a transition plan in accordance with [sections 1 through 31]; and

11 (b) may not use a public utility's distribution facilities UNLESS PREEXISTING CONTRACTS EXIST.

12

13 **NEW SECTION. Section 21. Maintaining safety and reliability.** Utilities shall maintain standards  
14 of safety and reliability of the electric delivery system and existing customer service requirements.

15

16 **NEW SECTION. Section 22. Universal system benefits programs.** (1) Universal system benefits  
17 programs are established for the state of Montana to ensure continued funding of energy conservation,  
18 renewable resource applications, and low-income energy bill assistance during the transition period and into  
19 the future.

20 (2) ~~On or after~~ BEGINNING January 1, 1999, 2.4% of each utility's annual retail sales revenue in  
21 Montana for the calendar year ending December 31, 1995, is established as the annual funding level for  
22 universal system benefits programs. Unless modified as provided in subsection ~~(4)(7)~~ (7), this funding level  
23 remains in effect until July 1, 2003.

24 ~~(3)(A)~~ (A) The recovery of all universal system benefits programs costs imposed pursuant to this  
25 section, is authorized through the imposition of a universal system benefits charge assessed at the meter  
26 for each local utility system customer as provided in this section.

27 ~~(4)(B)~~ (B) Utilities must receive credit toward annual funding requirements for a utility's internal  
28 programs or activities that qualify as universal system benefits programs, INCLUDING THOSE PORTIONS  
29 OF EXPENDITURES FOR THE PURCHASE OF POWER THAT ARE FOR THE ACQUISITION OR SUPPORT OF  
30 RENEWABLE ENERGY, CONSERVATION-RELATED ACTIVITIES, OR LOW-INCOME ENERGY BILL

1 ASSISTANCE, and for customers' programs or activities as provided in subsection ~~(12)~~ (7).

2 (C) A UTILITY AT WHICH THE SALE OF POWER FOR FINAL END-USE OCCURS IS THE UTILITY  
3 THAT RECEIVES CREDIT FOR THE UNIVERSAL SYSTEM BENEFITS PROGRAM EXPENDITURE.

4 (D) FOR A UTILITY TO RECEIVE CREDIT FOR LOW-INCOME RELATED EXPENDITURES, THE  
5 ACTIVITY MUST HAVE TAKEN PLACE IN MONTANA.

6 ~~(6)~~(E) If a utility's or a customer's credit for internal activities do not satisfy the annual funding  
7 provisions of subsection (2), then the utility shall make a payment TO THE UNIVERSAL SYSTEM BENEFITS  
8 FUND for any difference.

9 ~~(6)~~(3) Cooperative utilities may COLLECTIVELY pool their statewide credits to satisfy their annual  
10 funding requirements for universal system benefits programs ~~or~~ AND low-income energy bill assistance.

11 ~~(7)~~(4) A utility's transition plan must describe how the utility proposes to provide for universal  
12 system benefits programs, including the methodologies, such as cost-effectiveness and need determination,  
13 used to measure the utility's level of contribution to each program.

14 ~~(8)~~(5) A utility's annual funding requirement for low-income energy bill AND WEATHERIZATION  
15 assistance is established at 17% of the utility's annual universal system benefits funding level and is  
16 inclusive within the overall universal system benefits funding level.

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

19 ~~(10)~~(B) If a utility's credit for internal activities does not satisfy its annual funding requirement,  
20 then the utility shall make a payment for any difference TO THE UNIVERSAL ENERGY BILL ASSISTANCE  
21 FUND.

22 ~~(11)~~(6) An individual customer may not bear a disproportionate share of the local utility's funding  
23 requirements, and a sliding scale must be implemented to provide a more equitable distribution of program  
24 costs.

25 ~~(12)~~(7) A customer with loads greater than 1,000 kilowatts shall:

26 (a) pay A UNIVERSAL SYSTEM BENEFITS PROGRAM CHARGE EQUAL TO the lesser of:

27 (i) \$500,000 ~~net of~~ LESS the customer credits provided for in this subsection ~~(12)~~ (7); or

28 (ii) the product of .9 mills per kilowatt hour multiplied by the customer's kilowatt hour purchases,  
29 ~~net of~~ LESS customer credits provided for in this subsection ~~(12)~~ (7);

30 (b) receive credit toward that customer's annual universal system benefits charge for internal

1 expenditures and activities that qualify as a universal system benefits program expenditure and these  
2 internal expenditures must include but not be limited to:

3 (i) expenditures that result in a reduction in the consumption of electrical energy in the customer's  
4 facility; and

5 (ii) those portions of expenditures for the purchase of power at retail or wholesale that are for the  
6 acquisition or support of renewable energy or conservation-related activities; and

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

12 ~~(13)~~(8) A utility in the state of Montana may not be advantaged or disadvantaged in the competitive  
13 electricity supply market, including the consideration of the existence of universal system benefits programs  
14 and the comparable level of funding for those programs throughout the regions neighboring Montana.

15 ~~(14)~~(9) A public utility shall prepare and submit an annual summary report of the public utility's  
16 activities relating to all universal system benefits programs to the commission and the transition advisory  
17 committee provided for in [section 29]. A cooperative utility shall prepare and submit annual summary  
18 reports of activities to the cooperative utility's respective local governing body, the statewide cooperative  
19 utility office, and the transition advisory committee. The annual report must include, but is not limited to:

20 (a) the types of internal utility and customer programs being used to satisfy the provisions of  
21 [sections 1 through 31];

22 (b) the level of funding for those programs relative to the annual funding requirements prescribed  
23 in subsection (2); and

24 (c) any payments made to the statewide funds in the event that internal funding was below the  
25 prescribed annual funding requirements.

26

27 **NEW SECTION. Section 23. Commission authority -- rulemaking authority.** (1) Beginning on the  
28 effective date of a commission order regarding a public utility's transition plan, the commission shall  
29 regulate the public utility's retail transmission and distribution services within the state of Montana, as  
30 provided in [sections 1 through 31], and may not regulate the price of electricity supply except as electricity

1 supply may be procured during the transition period by the distribution function of a public utility for those  
2 customers that ~~do not have a choice of~~ HAVE NOT CHOSEN AN electricity supplier or for those customers  
3 that have not yet been assigned an electricity supplier. During the transition period, those procurements  
4 may include a cost-based contract from a supply affiliate or an unregulated division.

5 (2) If the transition period is extended for certain customers because THE COMMISSION FINDS  
6 THAT workable competition in the electricity supply market does not exist, then the commission shall  
7 CONTINUE TO regulate THE PROVISION OF ELECTRICITY SUPPLY BY distribution services providers in  
8 accordance with [section ~~9~~ (11)].

9 (3) The commission shall decide if there is workable competition in the electricity supply market by  
10 determining whether COMPETITION IS sufficient ~~price elasticity of demand exists in the electricity supply~~  
11 ~~market~~ to inhibit monopoly pricing or anticompetitive price leadership. In reaching a decision, the  
12 commission may not rely solely on market share estimates.

13 (4) The commission shall license electricity suppliers and enforce licensing provisions pursuant to  
14 [section 24].

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

17 (6) The commission shall establish just and reasonable rates through established ratemaking  
18 principles for public utility distribution and transmission services and shall regulate these services. The  
19 commission may approve rates and charges for electricity distribution and transmission services based on  
20 alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public  
21 utility that the alternative method complies with [sections 1 through 31], and on the public utility's  
22 transition plan.

23 (7) The commission shall certify that a cooperative utility has adopted a transition plan that complies  
24 with [sections 1 through 31]. A cooperative utility's transition plan is considered certified 60 days after  
25 the cooperative utility files for certification.

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

28 (9) In addition to promulgating rules expressly provided for in [sections 1 through 31], the  
29 commission may promulgate any other rules necessary to carry out the provision of [sections 1 through  
30 31].

1 (10) [Sections 1 through 31] do not give the commission the authority to:

2 (a) regulate cooperative utilities in any manner other than reviewing certification filings for  
3 compliance with [sections 1 through 31]; or

4 (b) compel any change to a cooperative utility's certification filing made pursuant to [sections 1  
5 through 31].

6

7 **NEW SECTION. Section 24. Licensing.** (1) Except as provided in [section 20], an electricity  
8 supplier shall file an application with and obtain a license from the commission before offering electricity  
9 for sale to retail customers in the state of Montana.

10 (2) As a condition of licensing, an electricity supplier shall identify and describe its business  
11 activities and purposes and the business purposes of each of the electricity supplier's affiliates, including  
12 whether an affiliate that owns or operates distribution facilities offers customer choice through open, fair,  
13 and nondiscriminatory access to the electricity ~~supplier~~ **SUPPLIER'S** or the electricity supplier's affiliate's  
14 distribution facilities.

15 (3) The commission may require electricity suppliers that provide electricity supply service to small  
16 customers to make a standard service offer that ensures that those customers have access to affordable  
17 electricity.

18 (4) The commission may require:

19 (a) proof of financial integrity and a demonstration of adequate reserve margins or the ability to  
20 obtain those reserves; and

21 (b) a licensee to post a bond ~~if SHOULD~~ an electricity supplier ~~fails~~ **FAIL** to supply electricity or ~~is~~  
22 ~~not operating~~ **LACK FINANCIAL INTEGRITY.**

23 (5) An electricity supplier shall provide the commission and all distribution services providers with  
24 copies of all license applications pursuant to subsection (2). Licensees shall update information and file  
25 annual reports with the commission and all distribution services providers.

26 (6) License applications are effective 30 days after filing with the commission, unless the  
27 commission rejects the application during that period. If the commission rejects a license application, the  
28 commission shall specify the reasons in writing and, if practical, identify alternative ways to overcome  
29 deficiencies.

30 (7) Notwithstanding [sections 1 through 31], a cooperative utility is not required to apply for a

1 license from the commission to be an electricity supplier to customers ~~normally~~ served by that cooperative  
2 utility in its ~~traditional~~ ELECTRIC FACILITIES service territory or to any customers ~~normally~~ served by  
3 another cooperative utility subject to the consent of the other cooperative utility's local governing body.

4  
5 NEW SECTION. Section 25. Penalties -- license revocation. (1) The commission may begin a  
6 proceeding to ~~either impose a penalty or~~ revoke or suspend a license of an electricity supplier, IMPOSE A  
7 PENALTY, OR BOTH, for just cause on the commission's own investigation or upon the complaint of an  
8 affected party if it is established that the electricity supplier:

- 9 (a) intentionally provided false information to the commission;
- 10 (b) switched, or cause to be switched, the electricity supply for a customer without first obtaining
- 11 the customer's written permission; ~~or~~
- 12 (c) failed to provide a reasonably adequate supply of electricity for its customers in Montana; OR
- 13 (D) COMMITTED FRAUD OR ENGAGED IN DECEPTIVE PRACTICES.

14 (2) Any person selling or offering to sell electricity in this state in violation of [sections 24, 27,]  
15 and this section is subject to a fine of not less than \$100 or more than \$1,000 for the violation or a license  
16 revocation or suspension. EACH DAY OF EACH VIOLATION CONSTITUTES A SEPARATE VIOLATION.

17 (3) The fine must be recovered in a civil action upon the complaint by the commission in any court  
18 of competent jurisdiction.

19 (4) A license revocation proceeding under this section is a contested case proceeding pursuant to  
20 the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

21  
22 NEW SECTION. Section 26. Bill information -- customer nonpayment -- commission rulemaking.

23 (1) Electrical bills to consumers must disclose each component of the electrical bill in accordance with rules  
24 promulgated by the commission. ~~The electrical bill~~ ELECTRICAL BILLS must disclose but ~~is~~ ARE not limited  
25 to the following:

- 26 (a) distribution and transmission charges;
- 27 (b) electricity supply charges;
- 28 (c) competitive transition charges; and
- 29 (d) universal system benefits charges.

30 (2) The commission shall promulgate rules establishing the procedures relating to how and when

1 an electricity supplier may discontinue service to a customer because of the customer's nonpayment and  
2 the procedures relating to reconnection, except that those rules may not apply to electricity suppliers that  
3 are cooperative utilities.

4 (3) Local governing bodies of a cooperative utility shall retain authority for cooperative utilities  
5 regarding:

6 (a) customer nonpayment and reconnection; and

7 (b) information contained in electrical bills to consumers.

8

9 **NEW SECTION. Section 27. Unauthorized switching -- commission rulemaking.** (1) An electricity  
10 supplier or any person, firm, corporation, or governmental entity may not make any change in the electricity  
11 supplier for a customer without first obtaining the customer's written permission.

12 (2) The commission shall promulgate rules establishing procedures to prevent unauthorized  
13 switching.

14

15 **NEW SECTION. Section 28. Reciprocity.** (1) Except as provided in [section 20], all electricity  
16 suppliers must be afforded open, fair, and nondiscriminatory access to customers and a comparable  
17 opportunity to compete.

18 (2) A distribution services provider or the distribution services provider's affiliates may not use  
19 another distribution services provider's facilities in the state of Montana to sell electricity to customers in  
20 the state of Montana unless the first distribution services provider or the distribution services provider's  
21 affiliates offers comparable and nondiscriminatory access to the distribution services provider's distribution  
22 facilities.

23

24 **NEW SECTION. Section 29. Transition advisory committee.** (1) A transition advisory committee  
25 on electric utility industry restructuring is created. The transition advisory committee is composed of 18  
26 members who are appointed as follows:

27 (a) The speaker of the house shall appoint two members from the house of representatives.

28 (b) The president of the senate shall appoint two members from the senate.

29 (c) The director of the department of environmental quality shall appoint one department  
30 representative.



- 1 (d) The legislative consumer ~~council~~ COUNSEL COMMITTEE shall appoint one representative.
- 2 (e) Two representatives of the cooperative utility industry are appointed as designated by the  
3 Montana electrical cooperative association.
- 4 (f) Two representatives selected by the public utilities in the state of Montana are appointed.
- 5 (g) One representative of the commission is appointed.
- 6 (h) The governor shall appoint the following committee members:
- 7 (i) one representative from the industrial community with an interest in the restructuring of the  
8 electric utility industry;
- 9 (ii) one representative from the nonindustrial retail electric consumer sector;
- 10 (iii) one representative from organized labor;
- 11 (iv) one representative from the community comprising environmental and conservation interests;
- 12 (v) one representative ~~of~~ FROM A low-income consumers PROGRAM PROVIDER;
- 13 (vi) one representative of Montana's Indian tribes; and
- 14 (vii) one representative of the electric power market industry.
- 15 (2) In case of a vacancy, a replacement must be selected in the manner of the original appointment.
- 16 (3) Legislative members are entitled to salary and expenses as provided in section 5-2-302. ~~Other~~  
17 ~~members serve without salary and without reimbursement of expenses.~~
- 18 (4) The public service commission, legislative services division, and appropriate state agencies shall  
19 provide staff assistance as requested by the committee.
- 20 (5) Transition advisory committee members must be appointed within 60 days of [the effective date  
21 of this act] to an initial term expiring on December 31, 1999. Subsequent terms must be for up to 2 years  
22 expiring on January 1 of odd-numbered years.
- 23 (6) The governor shall appoint a transition advisory committee presiding officer.
- 24 (7) The transition advisory committee on electric utility industry restructuring must dissolve on the  
25 earlier of either the date that full transition to retail competition is completed or December 31, 2004.
- 26 (8) The transition advisory committee shall provide an annual report on the status of electric utility  
27 restructuring on or before November 1 to the governor, the speaker of the house, the president of the  
28 senate and the commission.
- 29 (9) The transition advisory committee shall meet quarterly or as often as is necessary to conduct  
30 its business.

1           (10) The transition advisory committee shall analyze and report on the transition to effective  
2 competition in the competitive electricity supply market. The annual report made in the year 2000 must  
3 evaluate specifically the pilot programs for customers with loads under 1,000 kilowatts and must include  
4 legislative recommendations, if it appears appropriate, about the best means to further encourage the  
5 development of customer choice and meaningful market access for the benefit of smaller customers. The  
6 annual report for the year 2000 must also address the need, if any, for additional consumer protection  
7 including protection from abusive or anticompetitive practices.

8           (11) The criteria that the transition advisory committee must use to evaluate effective competition  
9 in the electricity supply market include but are not limited to the following:

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

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

14           (c) the level of interest among electricity suppliers and the opportunity for electricity suppliers to  
15 serve smaller customers; and

16           (d) the existence of the requisite technical and administrative support that enables smaller  
17 customers to have choice of electricity supply.

18           (12) The transition advisory committee shall recommend legislation if necessary to promote electric  
19 utility restructuring and retail choice of electricity suppliers.

20           (13) The transition advisory committee shall make recommendations to the governor, regarding the  
21 implementation of statewide universal system benefits and universal energy bill assistance funds, in time  
22 to allow for those funds to be created on or before January 1, 1999. This may include recommendations  
23 regarding the assignment of an existing government agency or private nonprofit entity as the fund  
24 administrator and administration guidelines for the funds including the means by which funds may be made  
25 available for use.

26           (14) The transition advisory committee shall monitor and evaluate the universal system benefits  
27 programs and comparable levels of funding for the region and make recommendations to the 58th  
28 legislature to adjust the funding level provided for in [section 22] to coincide with the related activities of  
29 the region at that time.

30           (15) On or before July 1, 2002, the transition advisory committee, in coordination with the

1 commission, shall conduct a reevaluation of the ongoing need for universal system benefits programs and  
2 annual funding requirements and shall make recommendations to the 58th legislature regarding the future  
3 need for those programs. The determination must focus specifically on the existence of markets to provide  
4 for any or all of the universal system benefits programs or whether other means for funding those programs  
5 have developed. These recommendations may also address how future reevaluations will be provided for,  
6 if necessary.

7 (16) On or before November 1, 2001, the transition advisory committee shall collect information  
8 to determine whether Montana utilities or their affiliates have an opportunity to sell electricity to customers  
9 outside of the state of Montana comparable to the opportunity provided pursuant to [sections 1 through  
10 31] to utilities or their affiliates located outside the state of Montana. That information must be included  
11 in the report to the 58th legislature.

12 (17) ON OR BEFORE NOVEMBER 1, 1998, THE TRANSITION ADVISORY COMMITTEE SHALL  
13 MAKE RECOMMENDATIONS TO THE GOVERNOR AND THE LEGISLATURE REGARDING THE PROVISION  
14 OF LOW-INCOME ENERGY ASSISTANCE PROGRAMS IN MONTANA BY ALL ENERGY PROVIDERS.

15  
16 NEW SECTION. Section 30. Tax revenue analysis. (1) The revenue oversight committee, as  
17 provided for in 5-18-102, shall analyze the amount of state and local tax revenue derived from previously  
18 regulated electricity suppliers that will enter the competitive market and report to the legislature annually  
19 on how revenue to the state or local government is changed by restructuring and competition.

20 (2) On or before November 30, 1998, the revenue oversight committee shall recommend legislative  
21 changes, if any, to address the establishment of comparable state and local taxation burdens on all market  
22 participants in the supply of electricity. Any legislation recommended by the revenue oversight committee  
23 should place comparable state and local taxation burdens upon all market participants.

24  
25 NEW SECTION. Section 31. Transition costs financing. (1) A utility may, after July 1, 1997, apply  
26 to the commission for a determination that certain transition costs may be recovered through the issuance  
27 of transition bonds. IF TRANSITION BONDS ARE ISSUED, COST SAVINGS ASSOCIATED WITH AND  
28 RESULTING FROM THE BONDS MUST BENEFIT CUSTOMERS. After the issuance of a financing order, the  
29 utility retains sole discretion regarding whether to sell, assign, or otherwise transfer or pledge transition  
30 property or to cause the transition bonds to be issued, including the right to defer or postpone the sale,

1 assignment, transfer, pledge, or issuance. IF TRANSITION BONDS ARE NOT ISSUED WITHIN 4 YEARS OF  
2 THE ISSUANCE OF THE FINANCING ORDER, THE FINANCING ORDER MUST TERMINATE. THE UTILITY  
3 MAY APPLY FOR AN EXTENSION OR RENEWAL OF A FINANCING ORDER.

4 (2) (a) The commission may issue financing orders in accordance with this section to facilitate the  
5 recovery, reimbursement, financing, or refinancing of transition costs and the acquisition of transition  
6 property. A financing order may be adopted only upon the application of a utility and may only become  
7 effective in accordance with its terms after the utility files with the commission the utility's written consent  
8 to all terms and conditions of the financing order. A financing order may specify how amounts collected  
9 from a customer are allocated between fixed transition amounts and other charges.

10 (b) A financing order must include, without limitation, a procedure for the expeditious approval by  
11 the commission of periodic adjustments to fixed transition amounts included in the order to ensure recovery  
12 of all transition costs and the costs of capital associated with the proposed recovery, reimbursement,  
13 financing, or refinancing of transition costs and the acquisition of transition property including the costs  
14 of issuing, servicing, and retiring the transition bonds contemplated by the financing order. THE ORDER  
15 MUST SET FORTH THE TERM OVER WHICH THE TRANSITION BONDS ARE TO BE PAID, BUT THOSE  
16 TERMS MAY NOT EXCEED 20 YEARS. These adjustments may not impose fixed transition amounts upon  
17 customer classes that were not subject to the fixed transition amounts in the pertinent financing order.

18 (3) (a) Notwithstanding any other provision of law, and except as otherwise provided in this section  
19 with respect to transition property that has been made the basis for the issuance of transition bonds AND  
20 UPON THE ISSUANCE OF TRANSITION BONDS, the financing orders and the fixed transition amounts must  
21 be irrevocable.

22 (b) ~~The~~ IF TRANSITION BONDS HAVE BEEN ISSUED, THE commission may not by rescinding,  
23 altering, or amending the financing order or otherwise:

24 (i) revalue or revise for ratemaking purposes the transition costs or the costs of recovering,  
25 reimbursing, financing, or refinancing the transition costs and acquiring transition property;

26 (ii) determine that the fixed transition amounts or rates are unjust or unreasonable; or

27 (iii) in any way reduce or impair the value of transition property either directly or indirectly by taking  
28 fixed transition amounts into account when setting other rates for the utility.

29 (c) The amount of revenue arising with respect to the transition property may not be subject to  
30 reduction, impairment, postponement, or termination.

1 (d) Except as otherwise provided in this section, the state pledges and agrees with the assignees  
2 and pledgees of transition property and transition bondholders that the state may not limit or alter the fixed  
3 transition amounts, transition property, financing orders, or any right under the obligations until the  
4 obligations, together with the interest on the obligations are fully met and discharged. THE BOARD, AS  
5 AGENT FOR THE STATE, IS AUTHORIZED TO INCLUDE THIS PLEDGE AND UNDERTAKING FOR THE  
6 STATE IN THESE OBLIGATIONS.

7 (e) Notwithstanding any other provision of this section, the commission shall approve those  
8 adjustments to the fixed transition amounts as may be necessary to ensure timely recovery of all transition  
9 costs that are the subject of the pertinent financing order and the costs of capital associated with the  
10 recovery, reimbursement, financing, or refinancing of transition costs and acquiring transition property  
11 including the costs of issuing, servicing, and retiring the transition bonds contemplated by the financing  
12 order. The adjustments may not impose fixed transition amounts upon customer classes that were not  
13 subject to the fixed transition amounts in the pertinent financing order.

14 (4) (a) Financing orders do not constitute a debt or liability of the state or of any political subdivision  
15 of the state if issued through the board and do not constitute a pledge of the full faith and credit of the  
16 state or any of the state's political subdivisions if issued through the board. The financing orders are  
17 payable solely from the funds provided under this section. The bonds and offering documents must contain  
18 ON THEIR FACE a statement to the following effect:

19 ~~"Neither the full faith and credit nor the taxing power of the State of Montana is pledged to the~~  
20 ~~payment of the principal of or interest on this security."~~ THIS BOND MAY NOT CONSTITUTE AN  
21 INDEBTEDNESS OR A LOAN OF CREDIT OF THE STATE OF MONTANA OR ANY POLITICAL SUBDIVISION  
22 OF THE STATE OF MONTANA WITHIN ANY CONSTITUTIONAL OR STATUTORY PROVISION. NEITHER  
23 THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF MONTANA IS PLEDGED TO  
24 THE PAYMENT OF THE PRINCIPAL OR INTEREST ON THIS BOND, AND NEITHER THE STATE OF  
25 MONTANA NOR ANY POLITICAL SUBDIVISION OF THE STATE OF MONTANA IS OBLIGATED, DIRECTLY,  
26 INDIRECTLY, OR CONTINGENTLY, TO LEVY OR TO PLEDGE ANY FORM OF TAXATION OR TO MAKE ANY  
27 APPROPRIATION FOR THE PAYMENT OF THIS BOND. THIS BOND IS A LIMITED OBLIGATION OF THE  
28 ISSUER, PAYABLE SOLELY OUT OF THE TRANSITION PROPERTY OR THE PROCEEDS OF THAT  
29 PROPERTY SPECIFICALLY PLEDGED FOR ITS PAYMENT AND NOT OTHERWISE.

30 (b) The issuance of bonds under this section may not directly, indirectly, or contingently obligate

1 the state or any political subdivision of the state to levy or to pledge any form of taxation or to make any  
2 appropriation for bond payment.

3 (5) The commission shall establish procedures for the expeditious processing of applications for  
4 financing orders, including the approval or disapproval of applications within 120 days after a utility submits  
5 a complete application. The commission shall provide in any financing order for a procedure for the  
6 expeditious approval by the commission of periodic adjustments to the fixed transition amounts that are  
7 the subject of the pertinent financing order pursuant to subsection (2). The commission shall determine  
8 on each anniversary of the issuance of the financing order and at additional intervals as may be provided  
9 for in the financing order whether the adjustments are required and shall provide for the adjustments, if  
10 required, to be approved within 60 days of each anniversary of the issuance of the financing order or of  
11 each additional interval provided for in the financing order.

12 (6) Fixed transition amounts become transition property when and to the extent that a financing  
13 order authorizing the fixed transition amounts has become effective in accordance with subsection (2), and  
14 the transition property must thereafter continuously exist as property for all purposes with all of the rights  
15 and privileges of [sections 1 through 31] for the period and to the extent provided in the financing order  
16 or until the transition bonds are paid in full including all principal, interest, premium, costs, and arrearages  
17 on the transition bonds.

18 (7) Transition bonds may be issued upon commission approval in the pertinent financing order.  
19 Transition bonds must specify that they do not provide recourse to the credit or any assets of the utility,  
20 other than the transition property as specified in the pertinent financing order.

21 (8) (a) A utility may sell, assign, or transfer all or portions of the utility's interest in transition  
22 property to an assignee. A utility or an assignee may further sell, assign, or transfer the utility's interest  
23 in that transition property to one or more assignees in connection with the issuance of transition bonds to  
24 the extent approved in the pertinent financing order.

25 (b) A utility or an assignee may pledge transition property as collateral for transition bonds to the  
26 extent approved in the pertinent financing order and may provide for a security interest in the transition  
27 property as provided in this section.

28 (c) Transition property may be sold, assigned, or transferred for the benefit of:

29 (i) transition bondholders in connection with the exercise of remedies upon a default; or

30 (ii) any person acquiring the transition property after a sale, assignment, or transfer pursuant to this

1 section.

2 (9) (a) To the extent that any interest in transition property is sold, assigned, transferred, or pledged  
3 as collateral, the commission shall authorize the utility to contract with any assignee so that the utility will,  
4 subject to the utility's rights under subsection (18):

5 (i) continue to operate the utility's system and to provide service to the utility's customers;

6 (ii) collect amounts in respect of the fixed transition amounts for the benefit and account of the  
7 assignee; and

8 (iii) account for and remit these amounts to or for the account of the assignee.

9 (b) Contracting with the assignee in accordance with the commission's authorization may not impair  
10 or negate the characterization of the sale, assignment, transfer, or pledge as a true sale, an absolute  
11 assignment or transfer, or a grant of a security interest, as applicable.

12 (10) Notwithstanding any other provision of law, any provision under this section or under a  
13 financing order requiring that the commission take or refrain from taking action with respect to the subject  
14 matter of a financing order binds the commission and any successor commission or agency exercising  
15 functions similar to the commission, and the commission or any successor commission or agency may not  
16 rescind, alter, or amend that requirement in a financing order.

17 (11) A pledge or any other security interest in transition property is valid, is enforceable against the  
18 pledgor and third parties, including judgment lien creditors, subject only to the rights of any third parties  
19 holding security interests in the transition property perfected in the manner described in this section, and  
20 attaches only when all of the following have taken place:

21 (a) the commission has issued the financing order authorizing the fixed transition amounts included  
22 in the transition property;

23 (b) value has been given by the pledgees of the transition property; and

24 (c) the pledgor has signed a security agreement or other financing-related agreement covering the  
25 transition property.

26 (12) (a) A valid and enforceable security interest in transition property is perfected only when it has  
27 attached and when a financing statement has been filed with the ~~commission~~ SECRETARY OF STATE in  
28 accordance with procedures that the ~~commission~~ SECRETARY OF STATE may establish. The financing  
29 statement must name the pledgor of the transition property as debtor and identify the transition property.

30 (b) Any description of the transition property is sufficient if the description refers to the financing

1 order creating the transition property.

2 (c) The commission may require other filings with respect to the security interest in accordance with  
3 procedures the commission may establish, except that these filings may not affect the perfection of the  
4 security interest.

5 (13) A perfected security interest in transition property is a continuously perfected security interest  
6 in all revenue and proceeds arising with respect to the transition property, whether or not the revenue or  
7 proceeds have accrued. Conflicting security interests must rank according to priority in time of perfection.  
8 Transition property constitutes property for all purposes, including for contracts securing transition bonds,  
9 whether or not the revenue and proceeds arising with respect to the transition property have accrued.

10 (14) (a) Subject to the terms of the security agreement covering the transition property and the  
11 rights of any third parties holding security interests in the transition property perfected in the manner  
12 described in this section, the validity and relative priority of a security interest created under this section  
13 is not defeated or adversely affected by:

14 (i) the commingling of revenue arising with respect to the transition property with other funds of  
15 the utility that is the pledgor or transferor of the transition property; or

16 (ii) any security interest of any third party in a deposit account of that utility perfected under Title  
17 30, chapter 9, part 3, into which the revenue is deposited.

18 (b) Subject to the terms of the security agreement, upon compliance with the requirements of this  
19 section, a pledgee of the transition property has a perfected security interest in all cash and deposit  
20 accounts of the utility in which revenue arising with respect to the transition property has been commingled  
21 with other funds, but the perfected security interest must be limited to an amount no greater than the  
22 amount of the revenue with respect to the transition property received by the utility within 12 months  
23 before any default under the security agreement or the institution of insolvency proceedings by or against  
24 the utility, less payments from the revenue to the pledgees during that 12-month period.

25 (15) (a) If a default occurs under the security agreement covering the transition property, a pledgee  
26 of the transition property, subject to the terms of the security agreement, has all rights and remedies of a  
27 secured party upon default under Title 30, chapter 9, part 5, and is entitled to foreclose or otherwise  
28 enforce the pledgee's security interest in the transition property, subject to the rights of any third parties  
29 holding prior security interests in the transition property perfected in the manner provided in this section.

30 (b) The commission may require in the financing order creating the transition property that in the



1 event of default by the utility in payment of revenue arising with respect to the transition property, the  
2 commission and any successor to the commission, upon the application by a pledgee or assignee of the  
3 transition property and without limiting any other remedies available to the pledgees or transferees by  
4 reason of the default shall order the sequestration and payment to the pledgee or assignee of the proceeds  
5 of the transition property. An order must remain in full force and effect notwithstanding any bankruptcy,  
6 reorganization, or other insolvency proceedings with respect to the public utility or a debtor, pledgor, or  
7 transferor of the transition property.

8 (c) Any sum in excess of amounts necessary to pay principal, premium, if any, interest, costs, and  
9 arrearages on the transition bonds and other costs arising under the security agreement must be remitted  
10 to the debtor or to the pledgor as provided in the security agreement.

11 (16) (a) A transfer of transition property by a utility to an assignee or by the assignee to another  
12 assignee that the parties have in the governing documentation expressly stated to be a sale or other  
13 absolute transfer in a transaction approved or authorized in a financing order must be treated as an absolute  
14 transfer of all of the transferor's right, title, and interest, as in a true sale, and not as a pledge or other  
15 financing of the transition property, other than for federal and state income and franchise tax purposes.

16 (b) Granting to transition bondholders a preferred right to revenue of the utility or the provision by  
17 the utility or an assignee of other credit enhancement with respect to transition bonds may not impair or  
18 negate the characterization of any transfer as a true sale, other than for federal and state income and  
19 franchise tax purposes.

20 (c) Notwithstanding the provisions of this subsection (16), for state tax purposes, a transfer must  
21 be treated as a pledge or other financing unless the governing documentation or transfer specifically states  
22 that transfer is intended to be treated otherwise. The characterization of the transfer as a true sale or other  
23 absolute transfer in the governing documentation of a transfer is not intended to prejudice the  
24 characterization of the transfer as a pledge or other financing for federal tax purposes.

25 (17) A sale, assignment, or other transfer of transition property may only be considered perfected  
26 as against any third person, including any judicial lien creditor, when both of the following have taken place:

27 (a) the financing order authorizing the fixed transition amounts included in the transition property  
28 has become effective in accordance with subsection (2); and

29 (b) an assignment of the transition property, in writing, has been executed and delivered to the  
30 transferee.

1           (18) (a) As between bona fide assignees of the same right for value without notice, the assignee  
2 first filing a financing statement with the commission in accordance with procedures that the commission  
3 may establish has priority. The financing statement must name the assignor of the transition property as  
4 debtor and must identify the transition property. Any description of the transition property is sufficient if  
5 the description refers to the financing order creating the transition property. The commission may require  
6 the assignor or the assignee to make other filings with respect to the transfer in accordance with  
7 procedures that the commission may establish, but these filings may not affect the perfection of the  
8 transfer.

9           (b) Any successor to the utility, whether pursuant to any bankruptcy, reorganization, or other  
10 insolvency proceeding or pursuant to any merger, sale, or transfer, by operation of law, or otherwise, shall  
11 perform and satisfy all obligations of the utility pursuant to this section in the same manner and to the same  
12 extent as the utility, including but not limited to collecting and paying to the assignee or pledgee, as the  
13 case may be, revenue arising with respect to the transition property sold, assigned, transferred, or pledged  
14 to secure transition bonds.

15           (19) Transition property or any right, title, or interest of a utility, assignee, or pledgee described in  
16 the definition of transition property, whether before or after the issuance of a financing order, does not  
17 constitute an account or general intangibles under 30-9-106. Any right, title, or interest pertaining to a  
18 financing order, including the interest pertaining to a financing order, along with the associated transition  
19 property and any revenue, collections, claims, payments, money, or proceeds of or arising from fixed  
20 transition amounts pursuant to the financing order, may not be considered proceeds of any right, title, or  
21 interest other than in the order and the transition property arising from the order.

22           (20) The lien under this section is enforceable against the pledgor and all third parties, including  
23 judicial lien creditors, subject only to the rights of any third parties holding security interests in the transition  
24 property previously perfected in the manner described in this section if value has been given by the  
25 purchasers of transition bonds. A perfected lien in transition property is a continuously perfected security  
26 interest in all revenue and proceeds arising with respect to the associated transition property, whether or  
27 not revenue has been accrued. Transition property constitutes property for the purposes of contracts  
28 securing transition bonds, whether or not the related revenue has accrued. The lien created under this  
29 section is perfected and ranks before any lien, including any judicial lien, that subsequently attaches to the  
30 transition property, to the fixed transition costs, and to the financing order and any rights created by the

1 order or any proceeds of the order. The relative priority of a lien created under this section is not defeated  
2 or adversely affected by changes to the financing order or to the fixed transition amounts payable by any  
3 customer.

4 (21) The commission shall establish and maintain a separate system of records to reflect the date  
5 and time of receipt of all filings made under this section and may provide that transfers of transition  
6 property to an assignee be filed in accordance with the same system.

7 (22) Any sale, assignment, or other transfer of transition property or any pledge of transition  
8 property is exempt from any state or local sales, income, transfers, gains, receipts, or similar taxes.

9 (23) The transition bonds issued under [sections 1 through 31] are exempt from the provisions of  
10 Title 30, chapter 10, but copies of all prospectus and disclosure documents must be deposited for public  
11 inspection with the state securities commissioner.

12 (24) The granting, perfection, and priority of security interests with respect to transition property  
13 and the proceeds thereof are governed by this section rather than Title 30, chapter 9.

14

15 **Section 32.** Section 15-6-137, MCA, is amended to read:

16 **"15-6-137. Class seven property -- description -- taxable percentage.** (1) Class seven property  
17 includes:

18 (a) all property used and owned by persons, firms, corporations, or other organizations that are  
19 engaged in the business of furnishing telephone communications exclusively to rural areas or to rural areas  
20 and cities and towns of 800 persons or less;

21 (b) all property owned by cooperative rural electrical and cooperative rural telephone associations  
22 that serve less than 95% of the electricity consumers or telephone users within the incorporated limits of  
23 a city or town, except rural electric cooperative properties described in 15-6-141(1)(a);

24 (c) electric transformers and meters; electric light and power substation machinery; natural gas  
25 measuring and regulating station equipment, meters, and compressor station machinery owned by  
26 noncentrally assessed public utilities; and tools used in the repair and maintenance of this property.

27 (2) To qualify for this classification, the average circuit miles for each station on the telephone  
28 communication system described in subsection (1)(b) must be more than 1 mile.

29 (3) Class seven property is taxed at 8% of its market value."  
30

1           **Section 33.** Section 15-6-141, MCA, is amended to read:

2           **"15-6-141. Class nine property -- description -- taxable percentage.** (1) Class nine property  
3 includes:

4           (a) centrally assessed electric power companies' allocations, including, if congress passes legislation  
5 that allows the state to tax property owned by an agency created by congress to transmit or distribute  
6 electrical energy, allocations of properties constructed, owned, or operated by a public agency created by  
7 the congress to transmit or distribute electric energy produced at privately owned generating facilities ~~+~~  
8 not including rural electric cooperatives~~;~~; ~~However, properties of rural electric cooperatives~~  
9 COOPERATIVES' PROPERTY USED FOR THE SOLE PURPOSE OF serving CUSTOMERS REPRESENTING less  
10 than 95% of the electric consumers located within the incorporated limits of a city or town of more than  
11 3,500 persons in which a centrally assessed electric power company also owns property are IS included.

12           (b) allocations for centrally assessed natural gas companies having a major distribution system in  
13 this state; and

14           (c) centrally assessed companies' allocations except:

15           (i) electric power and natural gas companies' property;

16           (ii) property owned by cooperative rural electric and cooperative rural telephone associations and  
17 classified in class five;

18           (iii) property owned by organizations providing telephone communications to rural areas and  
19 classified in class seven;

20           (iv) railroad transportation property included in class twelve; and

21           (v) airline transportation property included in class twelve.

22           (2) Class nine property is taxed at 12% of market value."  
23

24           **Section 34.** Section 69-5-101, MCA, is amended to read:

25           **"69-5-101. Short title.** This part ~~shall be~~ is known and may be cited as the "Territorial Integrity  
26 Act of 1971"."

27

28           **Section 35.** Section 69-5-102, MCA, is amended to read:

29           **"69-5-102. Definitions.** When used in this part, the following definitions apply:

30           (1) ~~"Commercial premises" means the premises where the business of selling, warehousing, or~~

1 ~~distributing a commodity or other business activity is carried on or professional or other services are~~  
 2 ~~rendered.~~ "Agreement" means a written agreement between two or more electric facilities providers that  
 3 identifies the geographical area to be served exclusively by each electric facilities provider that is a party  
 4 to the agreement and any terms and conditions pertinent to the agreement.

5 (2) "Electric cooperative" means a rural electric cooperative organized under Title 35, chapter 18,  
 6 or a foreign corporation admitted thereunder to do business in Montana.

7 (3) ~~"Electric supplier facilities provider" means any electrical utility and any electric cooperative that~~  
 8 provides electric service facilities to the public.

9 (4) "Electric service facilities" means any distribution or transmission system or related facility  
 10 necessary to provide electricity to the premises, including lines.

11 ~~(4)(5)~~ "Electric utility" means a person, firm, or corporation other than an electric cooperative  
 12 ~~which furnishes electrical~~ that provides electric service facilities to the public.

13 ~~(5) "Industrial premises" means the premises where an industrial activity is carried on, including~~  
 14 ~~but not limited to the operation of factories, mills, machine shops, mines, oil wells, refineries, pumping,~~  
 15 ~~cleaning and dyeing works, creameries, canneries, stockyards, feedlots, military installations, or other~~  
 16 ~~extractive, fabricating, or processing activities.~~

17 (6) "Line" means any electric supply conductor ~~operating at a nominal voltage level of 34,500 volts~~  
 18 ~~or less, measured phase to phase.~~

19 (7) "Premises" means a building, residence, structure, or facility to which ~~electricity is being~~ electric  
 20 service facilities are provided or is are to be furnished; provided, that installed; however, two or more  
 21 buildings, structures, or facilities which that are located on one tract or contiguous tracts of land and that  
 22 are utilized used by one electric consumer for farming, business, commercial, industrial, institutional,  
 23 governmental, or trailer court purposes ~~shall~~ must together constitute one premises, except that any ~~such~~  
 24 building, structure, or facility, other than a trailer court, ~~shall~~ may not, together with any other building,  
 25 structure, or facility, constitute one premises if the electric service to it is separately metered and the  
 26 charges for ~~such that~~ service are calculated independently of charges for service to any other building,  
 27 structure, or facility.

28 (8) "Utility" means a public utility regulated by the commission pursuant to Title 69, chapter 3, or  
 29 a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18."

30

1           **Section 36.** Section 69-5-104, MCA, is amended to read:

2           "**69-5-104. Continuation of ~~service~~ electric service facilities to existing consumers.** ~~Every~~ Each  
3 ~~electric supplier service facilities provider shall have~~ has the right to ~~serve~~ provide electric service facilities  
4 to all premises being served by it or to which any of its facilities are attached on February 1, 1971 [the  
5 effective date of this act]."

6

7           **Section 37.** Section 69-5-105, MCA, is amended to read:

8           "**69-5-105. Service to new consumers.** (1) Subject to ~~69-5-106 this part~~, the electric ~~supplier~~  
9 facilities provider having a line nearest the premises, as measured in accordance with subsection (2), shall  
10 ~~serve~~ provide electric service facilities to the premises initially requiring service after ~~February 1, 1971 [the~~  
11 effective date of this act], which creates a rebuttable presumption that the nearest line is the least-cost  
12 electric service facility to the new customer. However, a customer or another electric facilities provider  
13 may rebut the presumption, and another electric facilities provider may provide the electric service facilities  
14 if it can do so at less cost.

15           (2) All measurements under this part ~~shall~~ must be made on the shortest straight line ~~which that~~  
16 can be drawn from the conductor nearest the premises to the nearest permanent portion of the premises.  
17 ~~Construction power for premises to be constructed shall be supplied by the electric supplier having the right~~  
18 ~~to serve the completed premises.~~

19           (3) If the electric facilities providers are unable to reach agreement as to which electric facilities  
20 provider can provide electric service facilities at least cost, an independent consultant engineer agreeable  
21 to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on  
22 a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction,  
23 as provided in 69-5-110, shall determine which electric facilities provider can extend its lines to the  
24 consumer at the least cost. The cost of those engineering services must be paid equally by the electric  
25 facilities providers involved."

26

27           **Section 38.** Section 69-5-106, MCA, is amended to read:

28           "**69-5-106. ~~Service~~ Electric service facilities to industrial or commercial premises ~~large customers.~~**  
29 (1) An electric utility has the right to furnish electric service facilities to any ~~industrial or commercial~~  
30 premises if the estimated connected load for full ~~plant~~ operation at ~~each industrial or commercial~~ the

1 premises will be 400 kilowatts or larger within 2 years from the date of initial service ~~provided such and~~  
 2 if the electric utility can extend its lines facilities to such industrial or commercial the premises at less cost  
 3 to the electric utility ~~or the industrial or commercial customer~~ than the electric cooperative cost. The  
 4 estimated connected load ~~shall~~ must be determined from the plans and specifications prepared for  
 5 construction of the premises or, if ~~such an~~ estimate is not available, ~~shall~~ must be determined by agreement  
 6 of the electric ~~supplier~~ facilities provider and the customer. The fact that the actual connected load after  
 7 2 years from the date of initial service is less than 400 kilowatts does not affect the right of the electric  
 8 ~~supplier~~ facilities provider initially providing electric service facilities to continue to provide electric service  
 9 facilities to ~~such the~~ premises.

10 (2) An independent consultant engineer agreeable to both electric ~~suppliers~~ facilities providers or,  
 11 in the event of failure of the electric ~~suppliers~~ facilities providers to agree on a consultant engineer, an  
 12 independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110,  
 13 shall determine which electric ~~supplier~~ facilities provider can extend its ~~lines to the consumer~~ facilities at  
 14 the least cost to the utility. The cost of ~~such those~~ engineering services ~~shall~~ must be paid equally by the  
 15 electric ~~suppliers~~ facilities providers involved.

16 ~~(3) No premises other than another such commercial or industrial premises shall be served from~~  
 17 ~~a line constructed under this section."~~

18  
 19 **Section 39.** Section 69-5-107, MCA, is amended to read:

20 **"69-5-107. Service to property owned by electric supplier Customer-owned facilities.** Nothing in  
 21 ~~69-5-103 through 69-5-106 shall restrict the right of an electric supplier to furnish electric service to any~~  
 22 ~~property owned by the electric supplier. This part may not limit a customer's right to construct, own, or~~  
 23 ~~operate electric service facilities for the customer's own use, and construction, ownership, or use may not~~  
 24 ~~cause the customer to be considered a utility. A customer may not duplicate existing electric service~~  
 25 ~~facilities."~~

26  
 27 **Section 40.** Section 69-5-108, MCA, is amended to read:

28 **"69-5-108. Agreements between electric ~~suppliers as to service areas~~ facilities providers.**  
 29 ~~Notwithstanding the provisions of 69-5-103 through 69-5-109, an electric supplier may furnish electric~~  
 30 ~~service to any consumer at any premises being served by another electric supplier upon written agreement~~

1 ~~of the affected electric suppliers or at premises that another electric supplier has the right to serve pursuant~~  
 2 ~~to this part, upon written agreement of the affected electric suppliers.~~ Utilities may enter into agreements  
 3 that identify the geographical area to be exclusively served by each electric facilities provider that is party  
 4 to the agreement, overriding the provisions of 69-5-105 and 69-5-107. If an agreement is approved by the  
 5 commission pursuant to this part, the agreement is valid and binding on all electric facilities providers and  
 6 all customers, except those provided for in 69-5-106."

7  
 8 **Section 41.** Section 69-5-109, MCA, is amended to read:

9 ~~"69-5-109. Special provisions for annexed areas. With respect to service in areas which are~~  
 10 ~~annexed to incorporated municipalities having a population in excess of 3,500 persons, electric suppliers~~  
 11 ~~have rights and are subject to restrictions as follows:~~

12 ~~(1) Every electric supplier has the right to serve all premises being served by it on the date of~~  
 13 ~~annexation.~~

14 ~~(2) An electric cooperative does not have the right to serve any premises initially requiring service~~  
 15 ~~on or after the date of annexation. The restriction stated in this subsection does not apply to incorporated~~  
 16 ~~municipalities in which 95% or more of the premises were served by an electric cooperative on February~~  
 17 ~~1, 1971.~~ (1) Electric facilities providers providing electric service facilities in or near areas that are

18 incorporated municipalities having a population in excess of 3,500 persons and having annexed areas since  
 19 1985 or having existing municipal planning zones on [the effective date of this act] shall enter into  
 20 agreements dividing the annexed and planning zone areas into exclusive service territories and shall submit  
 21 the agreements to the commission for approval, pursuant to this part.

22 (2) The agreements do not apply to electric service facilities with loads of 400 kilowatts or greater.  
 23 Agreements must be based on the location of facilities in place on [the effective date of this act].

24 (3) If electric facilities providers have failed to negotiate agreements within 1 year from the  
 25 [effective date of this act], the commission shall divide the annexed and planning zone areas into exclusive  
 26 service territories, using the considerations pursuant to [section 44].

27 (4) Until agreements are final, electric service facilities to new customers will be provided pursuant  
 28 to 69-5-105."

29  
 30 **Section 42.** Section 69-5-110, MCA, is amended to read:



1           **"69-5-110. Jurisdiction of district courts over disputes.** The district courts of the county or  
 2 counties within which the premises or lines involved in any dispute are located ~~shall~~ have jurisdiction under  
 3 this part over all electric ~~suppliers~~ facilities providers subject to ~~the provisions thereof~~ this part."

4  
 5           **Section 43.** Section 69-5-111, MCA, is amended to read:

6           **"69-5-111. Judicial remedies.** (1) Whenever ~~it shall appear that any~~ an electric supplier facilities  
 7 provider is failing or omitting or about to fail or omit to do anything required of it by this part or is doing  
 8 or is about to do anything or to permit anything to be done contrary to or in violation of this part, ~~any~~ the  
 9 electric ~~supplier~~ facilities provider affected ~~thereby shall have the right to~~ may file a complaint in the district  
 10 court ~~briefly~~ setting forth the acts or omissions complained of and requesting an injunction.

11           (2) If an affidavit showing that grounds exist ~~therefor~~ that an electric facilities provider is in  
 12 violation of this part is filed with the complaint, a temporary restraining order ~~shall~~ must be issued without  
 13 notice. A copy of the temporary restraining order, complaint, and affidavit ~~shall~~ must be served upon the  
 14 defendant, together with an order to show cause why the temporary restraining order should not be made  
 15 permanent, within 5 days after issuance of the temporary restraining order. The hearing on the order to  
 16 show cause must be held at a date specified ~~therein~~ in the order, ~~which shall~~ and may not be more than  
 17 10 days after service ~~thereof~~ of the order and ~~shall~~ must take precedence over all matters pending before  
 18 the district court. A judgment making the injunction permanent or dissolving the temporary restraining order  
 19 ~~therefore~~ that was issued and dismissing the complaint must be made ~~not later than~~ before 10 days after  
 20 the hearing on the order to show cause.

21           (3) Any party aggrieved by the order may appeal to the supreme court of Montana by filing a notice  
 22 of appeal in the district court within 20 days from entry of the order. The appeal must be perfected within  
 23 20 days ~~thereafter~~ after filing the notice of appeal and ~~shall~~ must take precedence over all matters pending  
 24 before the supreme court of Montana."

25  
 26           **NEW SECTION. Section 44. Commission jurisdiction over agreements.** (1) All agreements between  
 27 electric facilities providers must be submitted to the commission for approval. Each agreement must clearly  
 28 identify the geographical area to be served by each electric facilities provider. The submission must include:

29           (a) a map and a written description of the area; AND

30           (b) the terms and conditions pertaining to the implementation of the agreement;

1            (2) WHENEVER AN AGREEMENT INVOLVES THE EXCHANGE OR TRANSFER OF CUSTOMERS  
 2 WITHIN SERVICE TERRITORIES, THE FOLLOWING MUST ALSO BE INCLUDED WITH THE AGREEMENT  
 3 SUBMISSION:

4            ~~(e)~~(A) the number and class of customers to be transferred;

5            ~~(d)~~(B) assurance that the affected customers have been contacted and have received a written  
 6 explanation of the difference in rates; and

7            ~~(e)~~(C) information with respect to the degree of acceptance by affected customers, such as the  
 8 number in favor of and those opposed to the transfer.

9            ~~(2)~~(3) In approving agreements, the commission shall consider but not be limited to consideration  
 10 of:

11            (a) the reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the  
 12 reliability of electric service to the existing or future ratepayers of any electric facilities provider party of  
 13 the agreement; and

14            (b) the reasonable likelihood that the agreement will eliminate existing or potentially uneconomic  
 15 duplication of electric service facilities.

16            ~~(3)~~(4) An agreement approved by the commission is valid and enforceable, and except as provided  
 17 in 69-5-106, an electric facilities provider may not offer, construct, or extend electric service facilities into  
 18 an exclusive territory.

19            ~~(4)~~(5) The commission shall state its findings and conclusions for approving or disapproving an  
 20 agreement and shall render a decision within 90 days of receipt of the agreement. The electric facilities  
 21 providers submitting the agreement to the commission shall act according to the agreement until a decision  
 22 is rendered.

23            ~~(5)~~(6) Upon approval of the agreement, any modification, changes, or corrections to this agreement  
 24 must be approved by the commission.

25            ~~(6)~~(7) The commission may promulgate rules to administer this part consistent with the  
 26 requirements of this part.

27  
 28            NEW SECTION. Section 45. Repealer. Section 69-5-103, MCA, is repealed.

29  
 30            NEW SECTION. Section 46. Saving clause. [This act] does not affect rights and duties that

1 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this  
2 act].

3  
4 **NEW SECTION. Section 47. Severability.** If a part of [this act] is invalid, all valid parts that are  
5 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
6 applications, the part remains in effect in all valid applications that are severable from the invalid  
7 applications.

8  
9 **NEW SECTION. Section 48. Codification instructions.** (1) [Sections 1 through 31] are intended  
10 to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through 31].  
11 (2) [Section 44] is intended to be codified as an integral part of Title 69, chapter 5, part 1, and the  
12 provisions of Title 69, chapter 5, part 1, apply to [section 44].

13  
14 **NEW SECTION. Section 49. Effective date.** [This act] is effective on passage and approval.

15 -END-

SENATE BILL NO. 390

INTRODUCED BY THOMAS, QUILICI, HARP, BERGSAGEL, SLITER, MOLNAR, BEAUDRY, MASOLO, GRINDE, MAHLUM, MENAHAN, DEVLIN, SHEA, CHRISTIAENS, SIMPKINS, STANG, DEPRATU, L. TAYLOR, HARRINGTON, BOOKOUT-REINICKE, STORY, OHS, PAVLOVICH, DEVANEY, JABS, REHBEIN, KEATING, TOEWS, TROPILA, ORR, FOSTER, LYNCH, GALVIN, MCCARTHY, BECK, RYAN, EMERSON, KITZENBERG, DEBRUYCKER, HERTEL, MILLS, GRADY, HALLIGAN, M. TAYLOR, GROSFIELD, WILSON, NELSON, CLARK, TASH, BISHOP, BENEDICT, SPRAGUE, COLE, MOHL, ELLIS, JENKINS, KOTTEL, WYATT, DENNY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY ESTABLISHING RESTRUCTURING REQUIREMENTS FORMONTANA'S ELECTRIC UTILITY INDUSTRY; PROVIDING CUSTOMER CHOICE; GENERALLY REVISING THE TERRITORIAL INTEGRITY LAWS; REMOVING CERTAIN RURAL ELECTRIC COOPERATIVE PROPERTIES FROM CLASS SEVEN PROPERTY; INCLUDING CERTAIN RURAL ELECTRIC COOPERATIVE PROPERTIES IN CLASS NINE PROPERTY; AMENDING SECTIONS 15-6-137, 15-6-141, 69-5-101, 69-5-102, 69-5-104, 69-5-105, 69-5-106, 69-5-107, 69-5-108, 69-5-109, 69-5-110, AND 69-5-111, MCA; REPEALING SECTION 69-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required because this bill provides the public service commission with rulemaking authority.

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 31] may be cited as the "Electric Utility Industry Restructuring and Customer Choice Act".

NEW SECTION. **Section 2. Legislative findings and policy.** The legislature finds and declares the following:

- (1) The generation and sale of electricity is becoming a competitive industry.
- (2) Montana customers should have the freedom to choose their supplier of electricity and related



1 services in a competitive market as soon as administratively feasible. Affording this opportunity serves the  
2 public interest.

3 (3) The financial integrity of electrical utilities should be fostered WHILE RECOGNIZING THE  
4 INTERESTS OF MONTANA CONSUMERS.

5 (4) The public interest requires the continued protection of consumers through:

6 (a) licensure of electricity suppliers;

7 (b) provision of information to consumers regarding electricity supply service;

8 (c) provision of a process for investigating and resolving complaints;

9 (d) continued funding for public purpose programs for:

10 (i) cost-effective local energy conservation;

11 (ii) low-income customer weatherization;

12 (iii) renewable resource applications;

13 (iv) research and development programs related to energy conservation and renewables;

14 (v) market transformation; and

15 (vi) low-income energy bill assistance;

16 (e) assurance of service reliability and quality; and

17 (f) prevention of anticompetitive and abusive activities.

18

19 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 31], unless the context  
20 requires otherwise, the following definitions apply:

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

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

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

30 (4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or

1 intermediary in the sale and purchase of electric energy but that does not take title to electric energy.

2 (5) "Cooperative utility" means:

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

4 (b) an existing municipal ELECTRIC utility as of [the effective date of this act]; or

5 (c) a federally owned and locally managed electric utility in the state of Montana that is operated  
6 under contract between a federally recognized Indian tribe and the United States.

7 (6) "Customer" or "consumer" means a retail electric customer or consumer. THE UNIVERSITY OF  
8 MONTANA, PURSUANT TO 20-25-201(1), AND MONTANA STATE UNIVERSITY, PURSUANT TO  
9 20-25-201(2), ARE EACH CONSIDERED A SINGLE RETAIL ELECTRIC CUSTOMER OR CONSUMER WITH  
10 A SINGLE INDIVIDUAL LOAD.

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

14 (8) "Distribution services provider" means a person controlling or operating distribution facilities for  
15 distribution of electricity to the public.

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

18 (10) "Financing order" means an order of the commission adopted in accordance with [section 31]  
19 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition  
20 bonds.

21 (11) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not  
22 limited to:

23 (i) distribution;

24 (ii) connection;

25 (iii) disconnection; and

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

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

1 amounts must include nonbypassable rates or charges to recover federal and state taxes in which the  
2 transition cost recovery period is modified by the transactions approved in the financing order.

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

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

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

9 (15) "Nonbypassable rates or charges" means rates or charges approved by the commission  
10 imposed ~~by~~ ON a customer to pay the customer's share of transition costs or universal system benefits  
11 program costs even if the customer has physically bypassed either the utility's transmission or distribution  
12 facilities.

13 (16) "Pilot program" means a program using a representative sample of residential and small  
14 commercial customers to assist in developing and offering customer choice of electric supply for all  
15 residential and commercial customers.

16 (17) "Public utility" means any electric utility regulated by the commission pursuant to Title 69,  
17 chapter 3, on [the effective date of this act], including the public utility's successors or assignees.

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

20 (19) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust  
21 certificate, or other evidence of indebtedness or ownership ISSUED BY THE BOARD OR OTHER  
22 TRANSITION BONDS ISSUER that is secured by or payable from fixed transition amounts or transition  
23 property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance  
24 transition costs and to acquire transition property.

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

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

29 (22) "Transition costs" means:

30 (a) a public utility's net verifiable generation-related and electricity supply costs, including costs

1 of capital, that become unrecoverable as a result of the implementation of [sections 1 through 31] or of  
2 federal law requiring retail open access or customer choice.

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

4 (i) regulatory assets and deferred charges that exist because of current regulatory practices and can  
5 be accounted for up to the effective date of the commission's final order regarding a public utility's  
6 transition plan AND CONSERVATION INVESTMENTS MADE PRIOR TO UNIVERSAL SYSTEM BENEFITS

7 CHARGE IMPLEMENTATION;

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

9 (iii) existing generation investments and supply commitments or other obligations incurred before  
10 [the effective date of this act] AND COSTS ARISING FROM THESE INVESTMENTS AND COMMITMENTS;

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

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

17 (23) "Transition period" means the period beginning on July 1, 1998, and ending on July 1, 2002,  
18 unless otherwise extended pursuant to [sections 1 through 31], during which utilities may phase in  
19 customer choice of electricity supplier.

20 (24) "Transition property" means the property right created by a financing order including without  
21 limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue,  
22 collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition  
23 amounts that are the subject of a financing order including those nonbypassable rates and other charges  
24 and fixed transition amounts that are authorized by the commission in the financing order to recover  
25 transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and  
26 acquiring transition property including the costs of issuing, servicing, and retiring transition bonds. Any  
27 right that a utility has in the transition property before the utility's sale or transfer or any other right created  
28 under this section or created in the financing order and assignable under [sections 1 through 31] or  
29 assignable pursuant to a financing order is only a contract right.

30 (25) "Transmission facilities" means those facilities that are used to provide transmission services



1 as determined by the federal energy regulatory commission and the commission.

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

3 (27) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on  
4 a customer to pay the customer's share of universal system benefits program costs.

5 (28) "Universal system benefits programs" means public purpose programs for:

6 (a) cost-effective local energy conservation;

7 (b) low-income customer weatherization;

8 (c) renewable resource applications, including those that capture unique social and energy system  
9 benefits or provide transmission and distribution system benefits;

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

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

12 and

13 (f) low-income energy bill assistance ~~as approved by the commission.~~

14 (29) "Utility" means any public utility or cooperative utility.

15

16 **NEW SECTION. Section 4. Pilot programs.** (1) Except as provided in [sections 5(4) and 20],  
17 beginning July 1, 1998, utilities shall conduct pilot programs using a representative sample of their  
18 residential and small commercial customers. A report describing and analyzing the results of the pilot  
19 programs must be submitted to the commission and the transition advisory committee established in  
20 [section 29] on or before July 1, 2000.

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

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

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

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

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

1           **NEW SECTION. Section 5. Public utility -- transition to customer choice -- waiver.** (1) A public  
2 utility shall, except as provided in this section, adhere to the following deadlines:

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

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

8           (2) (a) Except as provided for in subsection (3), the commission may determine that additional time  
9 is necessary for customers identified in subsection (1)(b); however, the implementation of full customer  
10 choice may not be delayed beyond July 1, 2004.

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

14           (i) implementation would not be administratively feasible;

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

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

18           (3) Except as provided in ~~[section~~ **SECTIONS 22 AND 34 THROUGH 44**], a public utility currently  
19 doing business in Montana as part of a single integrated multistate operation, no portion of which lies within  
20 the basin of the Columbia River may:

21           (a) defer compliance with ~~this section~~ **SECTIONS 1 THROUGH 31** until a time that the public utility  
22 can reasonably implement customer choice in the state of the public utility's primary service territory except  
23 that the public utility shall file a transition plan pursuant to [section 6] to provide transition to customer  
24 choice on or before July 1, 2002, and must have completed the transition period to customer choice by  
25 July 1, 2006; and

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

27           (4) Upon a request from a public utility with fewer than 50 customers, the commission shall waive  
28 compliance with the requirements of [sections 4, **6 THROUGH 12, 22**, and this section].

29

30           **NEW SECTION. Section 6. Public utility -- transition plans.** (1) All public utilities, pursuant to

1 [sections 1 through 31], shall submit a transition plan to the commission. Plans must be filed with the  
2 commission not later than 1 year before the date by which any customers of the public utility are entitled  
3 to choice of electricity supplier pursuant to [section 5]. The commission may develop a schedule for public  
4 utilities that are required to file plans. The transition plan must demonstrate that the public utility meets  
5 all the requirements of [sections 1 through 31].

6 (2) The commission shall develop a procedural schedule that includes:

7 (a) a preliminary transition plan determination including the commission's findings on whether the  
8 plan is complete and adequate subject to the requirements of [sections 1 through 31]; and

9 (b) an opportunity for a public utility to file a revised plan based on the preliminary determination.

10 (3) Unless waived by the public utility, the commission shall issue a final order approving,  
11 MODIFYING, or denying the transition plan before 9 months after the date a public utility files a plan. All  
12 parties are afforded an opportunity for hearing before issuance of the final order.

13 (4) The commission shall process a request for approval of a transition plan pursuant to the  
14 contested case procedures of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

15 (5) On approval of the plan, the commission shall enforce the public utility obligations as  
16 incorporated in the plan and in the commission's final order.

17

18 **NEW SECTION. Section 7. Public utility -- customer choice -- continued service -- education of**  
19 **customers.** (1) A customer is permitted to choose an electricity supplier pursuant to the deadlines  
20 established in [section 5]. Public utilities shall propose a method for customers to choose an electricity  
21 supplier.

22 (2) If a customer has not chosen an electricity supplier by the end of the transition period, a public  
23 utility shall propose a method in the public utility's transition plans for assigning that customer to an  
24 electricity supplier.

25 (3) A public utility may phase in customer choice to promote the orderly transition to a competitive  
26 market environment pursuant to the deadlines in [section 5].

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

30

1 **NEW SECTION. Section 8. Public utility -- functional separation, divestiture, and nondiscrimination.**

2 (1) To the extent that a public utility is vertically integrated, a public utility shall functionally separate the  
3 public utility’s electricity supply, retail transmission and distribution, and regulated and unregulated retail  
4 energy services operations in the state of Montana, upon application to and approval from the commission.

5 (2) The commission may not order a public utility to divest itself of any generation assets or prohibit  
6 a public utility from divesting itself voluntarily of any generation assets.

7 (3) Public utilities shall:

8 (a) prevent undue discrimination in favor of their own power supply, other services, divisions, or  
9 affiliates, if any;

10 (b) prevent any other forms of self-dealing that could result in noncompetitive electricity prices to  
11 customers; and

12 (c) grant customers and their electricity suppliers access to the public utility’s retail transmission  
13 and distribution system on a nondiscriminatory basis at rates, terms, and conditions of service comparable  
14 to the use of the retail transmission and distribution system by the public utility and the public utility’s  
15 affiliates.

16 (4) The provisions of this section are satisfied if the public utility adopts and complies with A CODE  
17 OF CONDUCT CONSISTENT WITH federal energy regulatory commission approved code of conduct  
18 pursuant to 18 CFR, part 37. The commission shall promulgate rules relating to the codes of conduct.

19

20 **NEW SECTION. Section 9. Public utility -- distribution services.** (1) A public utility’s distribution  
21 services provider shall:

22 (a) file tariffs that make distribution facilities available to all electricity suppliers, transmission  
23 services providers, and customers on a nondiscriminatory and comparable basis;

24 (b) build and maintain distribution facilities; and

25 (c) be an emergency supplier of electricity and related services.

26 (2) When a distribution services provider acts as an emergency supplier of electricity and related  
27 services to customers, the electricity supplier that should have provided the electricity shall reimburse the  
28 distribution services provider at the higher of a multiple of the cost or a multiple of the then existing market  
29 rate for that electricity. The commission shall determine and authorize the multiple used. The market rate  
30 is the highest published rate for electricity purchased within the local load control area at the time that the

1 distribution services provider provided the emergency supply. A distribution services provider is not  
2 required to purchase any reserve supply of electricity to fulfill this obligation.

3

4 **NEW SECTION. Section 10. Public utilities -- transmission services.** For transmission services  
5 regulated by the commission, public utilities, through filed tariffs, shall make transmission services available  
6 for nondiscriminatory and comparable use by all electricity suppliers, by distribution services providers, and  
7 by customers.

8

9 **NEW SECTION. Section 11. Public utilities -- electricity supply.** (1) On the effective date of a  
10 commission order implementing a public utility's transition plan pursuant to [section 6], the public utility  
11 shall remove its generation assets from the rate base.

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

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

17 (a) extend any cost-based contract with the distribution services provider's affiliate supplier for a  
18 term not more than 3 years; or

19 (b) purchase electricity from the market; AND

20 ~~(4) A tracking~~ (C) USE A mechanism ~~must be used to recover~~ THAT RECOVERS electricity supply  
21 costs in rates to ensure that those costs are fully recovered.

22 (5) If a public utility intends to be an electricity supplier through an unregulated division, then the  
23 public utility must be licensed as an electricity supplier pursuant to [section 24].

24

25 **NEW SECTION. Section 12. Public utilities -- transition costs and charges -- rate moratorium.** (1)  
26 Subject to the provisions of this section, the commission shall allow recovery of the following categories  
27 of transition costs:

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

30 (b) the unmitigable costs of energy supply-related regulatory assets and deferred charges that exist

1 because of current regulatory practices and that can be accounted for up to the effective date of the  
2 commission's final order regarding a public utility's transition plan, including costs, expenses, and  
3 reasonable fees related to issuing of transition bonds;

4 (c) The unmitigable transition costs related to public utility-owned generation and other power  
5 purchase contracts, except that recovery of those costs is limited to the amount accruing during the first  
6 4 years after the commission enters an order pursuant to [section 6(3)]; and

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

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

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

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

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

17 (ii) appraisal by independent third-party ~~professionals~~ PROFESSIONALS; and

18 (iii) a competitive bid sale.

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

22 (d) Unless otherwise provided for in [sections 1 through 31], only costs related to existing  
23 investments and power purchase contracts identified in subsection (2)(c) and costs arising from those  
24 investments and power purchase contracts may be included as transition costs.

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

27 (b) A transition charge may not be collected from CUSTOMERS FOR:

28 (i) ~~customers with new~~ OR ADDITIONAL loads of 1,000 kilowatts or greater that were ~~connected~~  
29 ~~to either the public utility's transmission or distribution facilities~~ FIRST SERVED BY THE PUBLIC UTILITY  
30 after December 31, 1996; or

1           (ii) ~~customers generating electricity for their own use~~ LOADS SERVED BY THAT CUSTOMER'S  
2 OWN GENERATION.

3           (c) Subject to commission approval, a utility and a customer may agree to alter the customer's  
4 transition charge payment schedule. PUBLIC UTILITIES MAY FILE WITH THE COMMISSION TARIFFS FOR  
5 ELECTRIC SERVICE RATES THAT FOSTER ECONOMIC DEVELOPMENT OR RETENTION OF EXISTING  
6 CUSTOMERS WITHIN THE STATE, INCLUDING GENERALLY AVAILABLE RATE SCHEDULES. Transition  
7 charges are the only charges that may be imposed upon a customer class to recover transition costs under  
8 this section. A separate exit fee may not be charged.

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

12           (5) Approval of transition costs and collection of those transition costs through transition charges  
13 is a settlement of all transition costs claims by a public utility. A public utility seeking to recover transition  
14 costs through any means not authorized by [sections 1 through 31] may not collect transition charges with  
15 respect to these transition costs.

16           ~~(6) Public utilities may not charge rates or collect costs, which include costs reallocated to transition~~  
17 ~~costs, at a level higher than the public utility would reasonably expect to recover in rates had the current~~  
18 ~~regulatory system remained intact, with the exception of:~~

19           ~~(a) increased costs related to universal system benefits charges greater than those currently~~  
20 ~~included in rates; and~~

21           ~~(b) increased costs necessary to implement full customer choice, including but not limited to~~  
22 ~~metering, billing, and technology from those customers on whose behalf those increased costs are incurred.~~

23           ~~(7) If transition bonds are authorized pursuant to [section 31], any savings, net of consolidated tax~~  
24 ~~impacts, must be used to fund a partial or full rate moratorium for 2 years during the transition period~~  
25 ~~except as provided in [section 6], to the extent possible to fund transition costs mitigation or shortened~~  
26 ~~transition cost recovery periods.~~

27           ~~(8) A public utility shall address in the public utility's transition plan reasonable transition~~  
28 ~~bond-related rate moratorium and transition costs adjustment opportunities that may exist for the benefit~~  
29 ~~of customers. The transition plan may include proposed provisions for rate adjustments due to~~  
30 ~~extraordinary events during the same time period.~~

1           (6) EXCEPT AS PROVIDED IN SUBSECTION (7), PUBLIC UTILITIES SHALL IMPLEMENT A RATE  
2 MORATORIUM DURING THE TRANSITION PERIOD AS FOLLOWS:

3           (A) FROM JULY 1, 1998, THROUGH JUNE 30, 2000, PUBLIC UTILITIES MAY NOT CHARGE RATES  
4 HIGHER THAN THOSE RATES IN EFFECT ON JULY 1, 1998.

5           (B) FROM JULY 1, 2000, THROUGH JUNE 30, 2002, AND ONLY FOR THOSE CUSTOMERS  
6 SUBJECT TO THE PROVISIONS OF [SECTION 5(1)(B)], PUBLIC UTILITIES MAY NOT INCREASE THAT  
7 INCREMENT OF RATES NORMALLY ALLOCATED TO ELECTRIC SUPPLY-RELATED COSTS ABOVE THE  
8 INCREMENT ASSOCIATED WITH ELECTRIC SUPPLY-RELATED COSTS REFLECTED IN RATES IN EFFECT  
9 ON JULY 1, 1998. BEGINNING ON JULY 1, 2000, PUBLIC UTILITIES MAY PROPOSE INCREASES TO  
10 THOSE INCREMENTS OF RATES NORMALLY ALLOCATED TO TRANSMISSION AND DISTRIBUTION  
11 COSTS.

12           (7) EXCEPTED FROM THE PROVISIONS OF SUBSECTION (6) ARE:

13           (A) INCREASED COSTS RELATED TO UNIVERSAL SYSTEM BENEFITS PROGRAMS GREATER THAN  
14 THOSE CURRENTLY IN RATES, INCLUDING THE TREATMENT OF UNIVERSAL SYSTEM BENEFITS  
15 PROGRAM COSTS AS AN EXPENSE;

16           (B) INCREASED COSTS NECESSARY TO IMPLEMENT FULL CUSTOMER CHOICE, INCLUDING BUT  
17 NOT LIMITED TO METERING, BILLING, AND TECHNOLOGY. THOSE COSTS MUST BE RECOVERED FROM  
18 THE CUSTOMERS ON WHOSE BEHALF THE INCREASED COSTS ARE INCURRED.

19           (C) SUBJECT TO COMMISSION APPROVAL, EXTRAORDINARY EVENTS RESULTING IN EITHER:

20           (I) A 4% ANNUAL REVENUE REQUIREMENT INCREASE FROM JULY 1, 1998, THROUGH JUNE 30,  
21 2000; OR

22           (II) AN 8% POWER SUPPLY-RELATED ANNUAL REVENUE REQUIREMENT INCREASE FROM JULY  
23 1, 2000, THROUGH JUNE 30, 2002;

24           (D) PORTIONS OF THE INCREASE OR DECREASE IN THE ANNUAL STATE AND LOCAL PROPERTY  
25 TAX EXPENSE THAT ARE GREATER THAN THE PAYMENT OR ADJUSTMENT THAT RESULTS FROM  
26 APPLYING THE INDUSTRY-RECOGNIZED RATES OF INFLATION TO THE INCREASE OR DECREASE IN THE  
27 STATE AND LOCAL PROPERTY TAX EXPENSE REFLECTED IN RATES AS OF [THE EFFECTIVE DATE OF  
28 THIS ACT].

29           (8) NOTWITHSTANDING SUBSECTIONS (6) AND (7), DURING THE TRANSITION PERIOD, PUBLIC  
30 UTILITIES MAY NOT CHARGE RATES OR COLLECT COSTS THAT INCLUDE COSTS REALLOCATED TO



1 TRANSITION COSTS AT A LEVEL HIGHER THAN THE PUBLIC UTILITY WOULD REASONABLY EXPECT TO  
 2 RECOVER IN RATES HAD THE CURRENT REGULATORY SYSTEM REMAINED INTACT.

3 (9) PUBLIC UTILITIES SHALL APPLY SAVINGS RESULTING UNDER [SECTION 31] TOWARD THE  
 4 RATE MORATORIUM PURSUANT TO SUBSECTION (6).

5 (10) PUBLIC UTILITIES MAY ACCELERATE THE AMORTIZATION OF ACCUMULATED DEFERRED  
 6 INVESTMENT TAX CREDITS ASSOCIATED WITH TRANSMISSION, DISTRIBUTION, AND THE GENERAL  
 7 PLANT AS AN ADJUSTMENT TO EARNINGS. ACCUMULATED DEFERRED INVESTMENT TAX CREDITS  
 8 AMORTIZED UNDER THIS SUBSECTION MAY NOT BE REFLECTED IN OPERATING INCOME FOR  
 9 RATEMAKING PURPOSES.

10 ~~(9)(11)~~ The commission shall issue the accounting orders necessary to align rate moratorium timing  
 11 and requirements to actual transition bonds savings.

12 ~~(10) If transition bonds are issued, cost savings associated with and resulting from the bonds must~~  
 13 ~~benefit customers.~~

14

15 **NEW SECTION. Section 13. Cooperative utility -- transition plan for customer choice.** (1) Except  
 16 as provided in [section 20], on or before July 1, 2001, the local governing body of a cooperative utility shall  
 17 adopt a transition plan.

18 (2) (a) Except as provided in subsection (2)(b), transition plans must contain a transition period that  
 19 may not end later than July 1, 2002. At the conclusion of the transition period, all customers must have  
 20 the opportunity to choose an electricity supplier.

21 (b) If after a pilot program for customers of a cooperative utility with loads less than 1,000  
 22 kilowatts, a competitive market, technology, or other conditions precedent to full customer choice have not  
 23 developed, then the transition plan may be altered by the cooperative utility's governing body for those  
 24 customers.

25 (3) [Sections 1 through 31] do not require the cooperative utility to divest itself of any generation,  
 26 transmission, or distribution assets or prohibit a cooperative utility from divesting itself voluntarily of those  
 27 assets.

28 (4) A cooperative utility's local governing body shall certify to the commission that the local  
 29 governing body has adopted a transition plan. In the cooperative utility's certification filing, the cooperative  
 30 utility shall provide to the commission documentation that the cooperative utility's transition plan is

1 consistent with [sections 1 through 31].

2

3 **NEW SECTION. Section 14. Cooperative utility -- customer choice -- education of customers --**  
4 **continued service.** (1) Except as provided in [section 20], cooperative utilities shall propose a method for  
5 cooperative utility customers to choose an electricity supplier.

6 (2) Customer choice may be phased in to promote the orderly transition to a competitive market  
7 environment.

8 (3) Cooperative utilities shall educate their customers about customer choice so that customers may  
9 make an informed choice of an electricity supplier. This education process must give special emphasis to  
10 education efforts during the transition period.

11 (4) If a cooperative utility customer has not chosen an electricity supplier by the end of the  
12 transition period, then the electricity supplier is the cooperative utility that filed the plan or an electricity  
13 supplier designated by the cooperative utility.

14

15 **NEW SECTION. Section 15. Cooperative utility -- functional separation.** (1) To the extent that a  
16 cooperative utility is vertically integrated, the cooperative utility has the option to functionally separate the  
17 cooperative utility's electricity supply, transmission, distribution, and unregulated energy services assets  
18 and operations in the state of Montana. If the cooperative utility intends to exercise this option, the  
19 cooperative utility's transition plan must explain the cooperative utility's proposed separation process.

20 (2) A cooperative utility shall describe in the transition plan measures taken by the cooperative  
21 utility to prevent undue discrimination in favor of the cooperative utility's own electricity supply, if any, and  
22 in favor of the cooperative utility's affiliates, if any.

23 (3) Cooperative utilities may establish a code of conduct similar to the federal energy regulatory  
24 commission's code of conduct established in 18 CFR, part 37.

25

26 **NEW SECTION. Section 16. Cooperative utility -- distribution services.** (1) A cooperative utility  
27 transition plan must include distribution facility tariffs that must be established by the cooperative utility's  
28 local governing body and must include the obligation for the cooperative utility to:

29 (a) make distribution services available to all electricity suppliers, transmission services providers,  
30 and customers on a nondiscriminatory and comparable basis;

1 (b) build and maintain distribution facilities; and

2 (c) be an emergency supplier of electricity and related services.

3 (2) If a distribution services provider acts as an emergency supplier of electricity and related  
4 services to a customer of an electricity supplier, then the electricity supplier failing to meet contractual  
5 obligations shall reimburse the distribution services provider at an amount to be set by the local governing  
6 body but may not exceed the higher of a multiple of the cost or a multiple of the then existing market rate  
7 for that electricity. The market rate is the highest published rate for electricity purchased within the local  
8 load control area at the time that the distribution services provider provided the emergency supply. A  
9 distribution services provider is not required to purchase any reserve supply of electricity to fulfill this  
10 obligation.

11 (3) Recoverable costs for cooperative utilities must be based upon standard financial reporting  
12 statements and may reflect comparable rates of return of other utilities.

13

14 **NEW SECTION. Section 17. Cooperative utility -- transmission services.** Transition plans must  
15 state whether the cooperative utility's transmission services, if any, are regulated by the federal energy  
16 regulatory commission. If those services are not regulated by the federal energy regulatory commission,  
17 the plan must provide the basis for comparable and nondiscriminatory use by all electricity suppliers,  
18 distribution services providers, and customers. A cooperative utility's local governing body shall establish  
19 the cooperative utility's transmission tariffs.

20

21 **NEW SECTION. Section 18. Cooperative utility -- electricity supply.** (1) A transition plan may  
22 provide for a cooperative utility to own electric generation assets and for a cooperative utility to offer  
23 electricity supply service. The local governing body shall establish the price for electricity supply service  
24 offered by a cooperative utility.

25 (2) Cooperative utilities intending to offer electricity supply service shall comply with the provisions  
26 of [section 24].

27 (3) If a cooperative utility offers electricity supply service competitively to customers using a public  
28 utility's distribution facilities, the cooperative utility shall create an affiliated for-profit entity or similar  
29 structure to serve those customers that allows the entity to be taxed at the same level as other for-profit  
30 electricity suppliers.

1           **NEW SECTION.**   **Section 19. Cooperative utility -- transition costs and charges.** (1) For the  
2 purposes of this section, "transition costs" means those costs, liabilities, and investments that cooperative  
3 utilities would reasonably expect to recover if fully bundled ratemaking conditions continued and that may  
4 not be recoverable as a result of the transition to a competitive market for electricity supply service.

5           (2) Transition costs eligible for treatment include but are not limited to:

6           (a) regulatory assets and deferred charges typically recoverable in rates;

7           (b) nonutility and utility power purchase contracts;

8           (c) existing commitments or obligations incurred before [the effective date of this act] and other  
9 cooperative utility investments rendered uneconomic as a result of the implementation of [sections 1  
10 through 31] or the introduction of retail wheeling through federal legislation or regulation;

11           (d) costs associated with any renegotiation or buyout of the existing nonutility and utility power  
12 purchase contracts; and

13           (e) revenue that appears as a portion of a facility charge necessary to meet debt service  
14 requirements.

15           (3) For a cooperative utility's transition costs to be fully recoverable, the cooperative utility shall  
16 make reasonable efforts to mitigate those transition costs.

17           (4) Cooperative utilities may not collect any more costs, including costs reallocated to transition  
18 costs, at a level higher than would otherwise be anticipated had the current regulatory system remained  
19 intact, with the exception of:

20           (a) increased costs related to universal system benefits charges; and

21           (b) increased costs of metering, billing, and technology necessary to facilitate full customer choice.

22           (5) Subject to the obligation to mitigate transition costs, a cooperative utility shall fully recover  
23 transition costs as approved by its local governing body. Unmitigable transition costs are nonbypassable  
24 and collected on a nondiscriminatory basis from consumers using the cooperative utility's distribution  
25 facilities in the receipt of electricity supply services.

26           (6) A cooperative utility may not collect transition costs from a customer for which the cooperative  
27 utility does not have and never has had an obligation to incur costs to provide electricity supply service  
28 unless the unmitigated transition costs were incurred solely on behalf of the customer.

29           (7) Approval of and collection of transition costs through a transition charge is a settlement of all  
30 transition claims by a cooperative utility. A cooperative utility seeking to recover transition costs through

1 any other means may not collect transition charges.

2

3 **NEW SECTION. Section 20. Cooperative utility -- exemption.** (1) Within 1 year after [the effective  
4 date of this act], a cooperative utility may file a notice with the commission that the cooperative utility does  
5 not intend to open the cooperative utility's distribution facilities to electricity suppliers and does not intend  
6 to adopt a transition plan. Except as otherwise provided in the universal system benefits program pursuant  
7 to [section 22], a cooperative utility filing notice under this section is exempt from the provisions and  
8 requirements of [sections 1 through 31].

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

10 (a) may elect later to adopt a transition plan in accordance with [sections 1 through 31]; and

11 (b) may not use a public utility's distribution facilities **UNLESS PREEXISTING CONTRACTS EXIST.**

12

13 **NEW SECTION. Section 21. Maintaining safety and reliability.** Utilities shall maintain standards  
14 of safety and reliability of the electric delivery system and existing customer service requirements.

15

16 **NEW SECTION. Section 22. Universal system benefits programs.** (1) Universal system benefits  
17 programs are established for the state of Montana to ensure continued funding of energy conservation,  
18 renewable resource applications, and low-income energy bill assistance during the transition period and into  
19 the future.

20 (2) ~~On or after~~ **BEGINNING** January 1, 1999, 2.4% of each utility's annual retail sales revenue in  
21 Montana for the calendar year ending December 31, 1995, is established as the annual funding level for  
22 universal system benefits programs. Unless modified as provided in subsection ~~{42}~~ **(7)**, this funding level  
23 remains in effect until July 1, 2003.

24 ~~{3}~~**(A)** The recovery of all universal system benefits programs costs imposed pursuant to this  
25 section, is authorized through the imposition of a universal system benefits charge assessed at the meter  
26 for each local utility system customer as provided in this section.

27 ~~{4}~~**(B)** Utilities must receive credit toward annual funding requirements for a utility's internal  
28 programs or activities that qualify as universal system benefits programs, **INCLUDING THOSE PORTIONS**  
29 **OF EXPENDITURES FOR THE PURCHASE OF POWER THAT ARE FOR THE ACQUISITION OR SUPPORT OF**  
30 **RENEWABLE ENERGY, CONSERVATION-RELATED ACTIVITIES, OR LOW-INCOME ENERGY BILL**

1 ASSISTANCE, and for customers' programs or activities as provided in subsection ~~(12)~~ (7).

2 (C) A UTILITY AT WHICH THE SALE OF POWER FOR FINAL END-USE OCCURS IS THE UTILITY  
3 THAT RECEIVES CREDIT FOR THE UNIVERSAL SYSTEM BENEFITS PROGRAM EXPENDITURE.

4 (D) FOR A UTILITY TO RECEIVE CREDIT FOR LOW-INCOME RELATED EXPENDITURES, THE  
5 ACTIVITY MUST HAVE TAKEN PLACE IN MONTANA.

6 ~~(5)~~(E) If a utility's or a customer's credit for internal activities do not satisfy the annual funding  
7 provisions of subsection (2), then the utility shall make a payment TO THE UNIVERSAL SYSTEM BENEFITS  
8 FUND for any difference.

9 ~~(6)~~(3) Cooperative utilities may COLLECTIVELY pool their statewide credits to satisfy their annual  
10 funding requirements for universal system benefits programs ~~or~~ AND low-income energy bill assistance.

11 ~~(7)~~(4) A utility's transition plan must describe how the utility proposes to provide for universal  
12 system benefits programs, including the methodologies, such as cost-effectiveness and need determination,  
13 used to measure the utility's level of contribution to each program.

14 ~~(8)~~(5) A utility's annual funding requirement for low-income energy bill AND WEATHERIZATION  
15 assistance is established at 17% of the utility's annual universal system benefits funding level and is  
16 inclusive within the overall universal system benefits funding level.

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

19 ~~(10)~~(B) If a utility's credit for internal activities does not satisfy its annual funding requirement,  
20 then the utility shall make a payment for any difference TO THE UNIVERSAL ENERGY BILL ASSISTANCE  
21 FUND.

22 ~~(11)~~(6) An individual customer may not bear a disproportionate share of the local utility's funding  
23 requirements, and a sliding scale must be implemented to provide a more equitable distribution of program  
24 costs.

25 ~~(12)~~(7) A customer with loads greater than 1,000 kilowatts shall:

26 (a) pay A UNIVERSAL SYSTEM BENEFITS PROGRAM CHARGE EQUAL TO the lesser of:

27 (i) \$500,000 ~~net of~~ LESS the customer credits provided for in this subsection ~~(12)~~ (7); or

28 (ii) the product of .9 mills per kilowatt hour multiplied by the customer's kilowatt hour purchases,  
29 ~~net of~~ LESS customer credits provided for in this subsection ~~(12)~~ (7);

30 (b) receive credit toward that customer's annual universal system benefits charge for internal

1 expenditures and activities that qualify as a universal system benefits program expenditure and these  
2 internal expenditures must include but not be limited to:

3 (i) expenditures that result in a reduction in the consumption of electrical energy in the customer's  
4 facility; and

5 (ii) those portions of expenditures for the purchase of power at retail or wholesale that are for the  
6 acquisition or support of renewable energy or conservation-related activities; and

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

12 ~~(13)(8)~~ A utility in the state of Montana may not be advantaged or disadvantaged in the competitive  
13 electricity supply market, including the consideration of the existence of universal system benefits programs  
14 and the comparable level of funding for those programs throughout the regions neighboring Montana.

15 ~~(14)(9)~~ A public utility shall prepare and submit an annual summary report of the public utility's  
16 activities relating to all universal system benefits programs to the commission and the transition advisory  
17 committee provided for in [section 29]. A cooperative utility shall prepare and submit annual summary  
18 reports of activities to the cooperative utility's respective local governing body, the statewide cooperative  
19 utility office, and the transition advisory committee. The annual report must include, but is not limited to:

20 (a) the types of internal utility and customer programs being used to satisfy the provisions of  
21 [sections 1 through 31];

22 (b) the level of funding for those programs relative to the annual funding requirements prescribed  
23 in subsection (2); and

24 (c) any payments made to the statewide funds in the event that internal funding was below the  
25 prescribed annual funding requirements.

26

27 **NEW SECTION. Section 23. Commission authority -- rulemaking authority.** (1) Beginning on the  
28 effective date of a commission order regarding a public utility's transition plan, the commission shall  
29 regulate the public utility's retail transmission and distribution services within the state of Montana, as  
30 provided in [sections 1 through 31], and may not regulate the price of electricity supply except as electricity

1 supply may be procured during the transition period by the distribution function of a public utility for those  
2 customers that ~~do not have a choice of~~ HAVE NOT CHOSEN AN electricity supplier or for those customers  
3 that have not yet been assigned an electricity supplier. During the transition period, those procurements  
4 may include a cost-based contract from a supply affiliate or an unregulated division.

5 (2) If the transition period is extended for certain customers because THE COMMISSION FINDS  
6 THAT workable competition in the electricity supply market does not exist, then the commission shall  
7 CONTINUE TO regulate THE PROVISION OF ELECTRICITY SUPPLY BY distribution services providers in  
8 accordance with [section ~~9~~ (11)].

9 (3) The commission shall decide if there is workable competition in the electricity supply market by  
10 determining whether COMPETITION IS sufficient ~~price elasticity of demand exists in the electricity supply~~  
11 ~~market~~ to inhibit monopoly pricing or anticompetitive price leadership. In reaching a decision, the  
12 commission may not rely solely on market share estimates.

13 (4) The commission shall license electricity suppliers and enforce licensing provisions pursuant to  
14 [section 24].

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

17 (6) The commission shall establish just and reasonable rates through established ratemaking  
18 principles for public utility distribution and transmission services and shall regulate these services. The  
19 commission may approve rates and charges for electricity distribution and transmission services based on  
20 alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public  
21 utility that the alternative method complies with [sections 1 through 31], and on the public utility's  
22 transition plan.

23 (7) The commission shall certify that a cooperative utility has adopted a transition plan that complies  
24 with [sections 1 through 31]. A cooperative utility's transition plan is considered certified 60 days after  
25 the cooperative utility files for certification.

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

28 (9) In addition to promulgating rules expressly provided for in [sections 1 through 31], the  
29 commission may promulgate any other rules necessary to carry out the provision of [sections 1 through  
30 31].



1 (10) [Sections 1 through 31] do not give the commission the authority to:

2 (a) regulate cooperative utilities in any manner other than reviewing certification filings for  
3 compliance with [sections 1 through 31]; or

4 (b) compel any change to a cooperative utility's certification filing made pursuant to [sections 1  
5 through 31].

6  
7 **NEW SECTION. Section 24. Licensing.** (1) Except as provided in [section 20], an electricity  
8 supplier shall file an application with and obtain a license from the commission before offering electricity  
9 for sale to retail customers in the state of Montana.

10 (2) As a condition of licensing, an electricity supplier shall identify and describe its business  
11 activities and purposes and the business purposes of each of the electricity supplier's affiliates, including  
12 whether an affiliate that owns or operates distribution facilities offers customer choice through open, fair,  
13 and nondiscriminatory access to the electricity ~~supplier~~ **SUPPLIER'S** or the electricity supplier's affiliate's  
14 distribution facilities.

15 (3) The commission may require electricity suppliers that provide electricity supply service to small  
16 customers to make a standard service offer that ensures that those customers have access to affordable  
17 electricity.

18 (4) The commission may require:

19 (a) proof of financial integrity and a demonstration of adequate reserve margins or the ability to  
20 obtain those reserves; and

21 (b) a licensee to post a bond ~~if~~ **SHOULD** an electricity supplier ~~fails~~ **FAIL** to supply electricity or is  
22 ~~not operating~~ **LACK FINANCIAL INTEGRITY.**

23 (5) An electricity supplier shall provide the commission and all distribution services providers with  
24 copies of all license applications pursuant to subsection (2). Licensees shall update information and file  
25 annual reports with the commission and all distribution services providers.

26 (6) License applications are effective 30 days after filing with the commission, unless the  
27 commission rejects the application during that period. If the commission rejects a license application, the  
28 commission shall specify the reasons in writing and, if practical, identify alternative ways to overcome  
29 deficiencies.

30 (7) Notwithstanding [sections 1 through 31], a cooperative utility is not required to apply for a

1 license from the commission to be an electricity supplier to customers ~~normally~~ served by that cooperative  
 2 utility in its ~~traditional~~ ELECTRIC FACILITIES service territory or to any customers ~~normally~~ served by  
 3 another cooperative utility subject to the consent of the other cooperative utility's local governing body.  
 4

5 NEW SECTION. Section 25. Penalties -- license revocation. (1) The commission may begin a  
 6 proceeding to ~~either impose a penalty or~~ revoke or suspend a license of an electricity supplier, IMPOSE A  
 7 PENALTY, OR BOTH, for just cause on the commission's own investigation or upon the complaint of an  
 8 affected party if it is established that the electricity supplier:

9 (a) intentionally provided false information to the commission;

10 (b) switched, or cause to be switched, the electricity supply for a customer without first obtaining  
 11 the customer's written permission; ~~or~~

12 (c) failed to provide a reasonably adequate supply of electricity for its customers in Montana; OR

13 (D) COMMITTED FRAUD OR ENGAGED IN DECEPTIVE PRACTICES.

14 (2) Any person selling or offering to sell electricity in this state in violation of [sections 24, 27,]  
 15 and this section is subject to a fine of not less than \$100 or more than \$1,000 for the violation or a license  
 16 revocation or suspension. EACH DAY OF EACH VIOLATION CONSTITUTES A SEPARATE VIOLATION.

17 (3) The fine must be recovered in a civil action upon the complaint by the commission in any court  
 18 of competent jurisdiction.

19 (4) A license revocation proceeding under this section is a contested case proceeding pursuant to  
 20 the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

21  
 22 NEW SECTION. Section 26. Bill information -- customer nonpayment -- commission rulemaking.

23 (1) Electrical bills to consumers must disclose each component of the electrical bill in accordance with rules  
 24 promulgated by the commission. ~~The electrical bill~~ ELECTRICAL BILLS must disclose but ~~is~~ ARE not limited  
 25 to the following:

26 (a) distribution and transmission charges;

27 (b) electricity supply charges;

28 (c) competitive transition charges; and

29 (d) universal system benefits charges.

30 (2) The commission shall promulgate rules establishing the procedures relating to how and when

1 an electricity supplier may discontinue service to a customer because of the customer's nonpayment and  
2 the procedures relating to reconnection, except that those rules may not apply to electricity suppliers that  
3 are cooperative utilities.

4 (3) Local governing bodies of a cooperative utility shall retain authority for cooperative utilities  
5 regarding:

6 (a) customer nonpayment and reconnection; and

7 (b) information contained in electrical bills to consumers.

8

9 **NEW SECTION. Section 27. Unauthorized switching -- commission rulemaking.** (1) An electricity  
10 supplier or any person, firm, corporation, or governmental entity may not make any change in the electricity  
11 supplier for a customer without first obtaining the customer's written permission.

12 (2) The commission shall promulgate rules establishing procedures to prevent unauthorized  
13 switching.

14

15 **NEW SECTION. Section 28. Reciprocity.** (1) Except as provided in [section 20], all electricity  
16 suppliers must be afforded open, fair, and nondiscriminatory access to customers and a comparable  
17 opportunity to compete.

18 (2) A distribution services provider or the distribution services provider's affiliates may not use  
19 another distribution services provider's facilities in the state of Montana to sell electricity to customers in  
20 the state of Montana unless the first distribution services provider or the distribution services provider's  
21 affiliates offers comparable and nondiscriminatory access to the distribution services provider's distribution  
22 facilities.

23

24 **NEW SECTION. Section 29. Transition advisory committee.** (1) A transition advisory committee  
25 on electric utility industry restructuring is created. The transition advisory committee is composed of 18  
26 members who are appointed as follows:

27 (a) The speaker of the house shall appoint two members from the house of representatives.

28 (b) The president of the senate shall appoint two members from the senate.

29 (c) The director of the department of environmental quality shall appoint one department  
30 representative.

- 1 (d) The legislative consumer ~~council~~ COUNSEL COMMITTEE shall appoint one representative.
- 2 (e) Two representatives of the cooperative utility industry are appointed as designated by the  
3 Montana electrical cooperative association.
- 4 (f) Two representatives selected by the public utilities in the state of Montana are appointed.
- 5 (g) One representative of the commission is appointed.
- 6 (h) The governor shall appoint the following committee members:
- 7 (i) one representative from the industrial community with an interest in the restructuring of the  
8 electric utility industry;
- 9 (ii) one representative from the nonindustrial retail electric consumer sector;
- 10 (iii) one representative from organized labor;
- 11 (iv) one representative from the community comprising environmental and conservation interests;
- 12 (v) one representative ~~of~~ FROM A low-income consumers PROGRAM PROVIDER;
- 13 (vi) one representative of Montana's Indian tribes; and
- 14 (vii) one representative of the electric power market industry.
- 15 (2) In case of a vacancy, a replacement must be selected in the manner of the original appointment.
- 16 (3) Legislative members are entitled to salary and expenses as provided in section 5-2-302. ~~Other~~  
17 ~~members serve without salary and without reimbursement of expenses.~~
- 18 (4) The public service commission, legislative services division, and appropriate state agencies shall  
19 provide staff assistance as requested by the committee.
- 20 (5) Transition advisory committee members must be appointed within 60 days of [the effective date  
21 of this act] to an initial term expiring on December 31, 1999. Subsequent terms must be for up to 2 years  
22 expiring on January 1 of odd-numbered years.
- 23 (6) The governor shall appoint a transition advisory committee presiding officer.
- 24 (7) The transition advisory committee on electric utility industry restructuring must dissolve on the  
25 earlier of either the date that full transition to retail competition is completed or December 31, 2004.
- 26 (8) The transition advisory committee shall provide an annual report on the status of electric utility  
27 restructuring on or before November 1 to the governor, the speaker of the house, the president of the  
28 senate and the commission.
- 29 (9) The transition advisory committee shall meet quarterly or as often as is necessary to conduct  
30 its business.

1 (10) The transition advisory committee shall analyze and report on the transition to effective  
2 competition in the competitive electricity supply market. The annual report made in the year 2000 must  
3 evaluate specifically the pilot programs for customers with loads under 1,000 kilowatts and must include  
4 legislative recommendations, if it appears appropriate, about the best means to further encourage the  
5 development of customer choice and meaningful market access for the benefit of smaller customers. The  
6 annual report for the year 2000 must also address the need, if any, for additional consumer protection  
7 including protection from abusive or anticompetitive practices.

8 (11) The criteria that the transition advisory committee must use to evaluate effective competition  
9 in the electricity supply market include but are not limited to the following:

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

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

14 (c) the level of interest among electricity suppliers and the opportunity for electricity suppliers to  
15 serve smaller customers; and

16 (d) the existence of the requisite technical and administrative support that enables smaller  
17 customers to have choice of electricity supply.

18 (12) The transition advisory committee shall recommend legislation if necessary to promote electric  
19 utility restructuring and retail choice of electricity suppliers.

20 (13) The transition advisory committee shall make recommendations to the governor, regarding the  
21 implementation of statewide universal system benefits and universal energy bill assistance funds, in time  
22 to allow for those funds to be created on or before January 1, 1999. This may include recommendations  
23 regarding the assignment of an existing government agency or private nonprofit entity as the fund  
24 administrator and administration guidelines for the funds including the means by which funds may be made  
25 available for use.

26 (14) The transition advisory committee shall monitor and evaluate the universal system benefits  
27 programs and comparable levels of funding for the region and make recommendations to the 58th  
28 legislature to adjust the funding level provided for in [section 22] to coincide with the related activities of  
29 the region at that time.

30 (15) On or before July 1, 2002, the transition advisory committee, in coordination with the

1 commission, shall conduct a reevaluation of the ongoing need for universal system benefits programs and  
2 annual funding requirements and shall make recommendations to the 58th legislature regarding the future  
3 need for those programs. The determination must focus specifically on the existence of markets to provide  
4 for any or all of the universal system benefits programs or whether other means for funding those programs  
5 have developed. These recommendations may also address how future reevaluations will be provided for,  
6 if necessary.

7 (16) On or before November 1, 2001, the transition advisory committee shall collect information  
8 to determine whether Montana utilities or their affiliates have an opportunity to sell electricity to customers  
9 outside of the state of Montana comparable to the opportunity provided pursuant to [sections 1 through  
10 31] to utilities or their affiliates located outside the state of Montana. That information must be included  
11 in the report to the 58th legislature.

12 (17) ON OR BEFORE NOVEMBER 1, 1998, THE TRANSITION ADVISORY COMMITTEE SHALL  
13 MAKE RECOMMENDATIONS TO THE GOVERNOR AND THE LEGISLATURE REGARDING THE PROVISION  
14 OF LOW-INCOME ENERGY ASSISTANCE PROGRAMS IN MONTANA BY ALL ENERGY PROVIDERS.

15  
16 NEW SECTION. Section 30. Tax revenue analysis. (1) The revenue oversight committee, as  
17 provided for in 5-18-102, shall analyze the amount of state and local tax revenue derived from previously  
18 regulated electricity suppliers that will enter the competitive market and report to the legislature annually  
19 on how revenue to the state or local government is changed by restructuring and competition.

20 (2) On or before November 30, 1998, the revenue oversight committee shall recommend legislative  
21 changes, if any, to address the establishment of comparable state and local taxation burdens on all market  
22 participants in the supply of electricity. Any legislation recommended by the revenue oversight committee  
23 should place comparable state and local taxation burdens upon all market participants.

24  
25 NEW SECTION. Section 31. Transition costs financing. (1) A utility may, after July 1, 1997, apply  
26 to the commission for a determination that certain transition costs may be recovered through the issuance  
27 of transition bonds. IF TRANSITION BONDS ARE ISSUED, COST SAVINGS ASSOCIATED WITH AND  
28 RESULTING FROM THE BONDS MUST BENEFIT CUSTOMERS. After the issuance of a financing order, the  
29 utility retains sole discretion regarding whether to sell, assign, or otherwise transfer or pledge transition  
30 property or to cause the transition bonds to be issued, including the right to defer or postpone the sale,

1 assignment, transfer, pledge, or issuance. IF TRANSITION BONDS ARE NOT ISSUED WITHIN 4 YEARS OF  
2 THE ISSUANCE OF THE FINANCING ORDER, THE FINANCING ORDER MUST TERMINATE. THE UTILITY  
3 MAY APPLY FOR AN EXTENSION OR RENEWAL OF A FINANCING ORDER.

4 (2) (a) The commission may issue financing orders in accordance with this section to facilitate the  
5 recovery, reimbursement, financing, or refinancing of transition costs and the acquisition of transition  
6 property. A financing order may be adopted only upon the application of a utility and may only become  
7 effective in accordance with its terms after the utility files with the commission the utility's written consent  
8 to all terms and conditions of the financing order. A financing order may specify how amounts collected  
9 from a customer are allocated between fixed transition amounts and other charges.

10 (b) A financing order must include, without limitation, a procedure for the expeditious approval by  
11 the commission of periodic adjustments to fixed transition amounts included in the order to ensure recovery  
12 of all transition costs and the costs of capital associated with the proposed recovery, reimbursement,  
13 financing, or refinancing of transition costs and the acquisition of transition property including the costs  
14 of issuing, servicing, and retiring the transition bonds contemplated by the financing order. THE ORDER  
15 MUST SET FORTH THE TERM OVER WHICH THE TRANSITION BONDS ARE TO BE PAID, BUT THOSE  
16 TERMS MAY NOT EXCEED 20 YEARS. These adjustments may not impose fixed transition amounts upon  
17 customer classes that were not subject to the fixed transition amounts in the pertinent financing order.

18 (3) (a) Notwithstanding any other provision of law, and except as otherwise provided in this section  
19 with respect to transition property that has been made the basis for the issuance of transition bonds AND  
20 UPON THE ISSUANCE OF TRANSITION BONDS, the financing orders and the fixed transition amounts must  
21 be irrevocable.

22 (b) ~~The~~ IF TRANSITION BONDS HAVE BEEN ISSUED, THE commission may not by rescinding,  
23 altering, or amending the financing order or otherwise:

24 (i) revalue or revise for ratemaking purposes the transition costs or the costs of recovering,  
25 reimbursing, financing, or refinancing the transition costs and acquiring transition property;

26 (ii) determine that the fixed transition amounts or rates are unjust or unreasonable; or

27 (iii) in any way reduce or impair the value of transition property either directly or indirectly by taking  
28 fixed transition amounts into account when setting other rates for the utility.

29 (c) The amount of revenue arising with respect to the transition property may not be subject to  
30 reduction, impairment, postponement, or termination.

1 (d) Except as otherwise provided in this section, the state pledges and agrees with the assignees  
2 and pledgees of transition property and transition bondholders that the state may not limit or alter the fixed  
3 transition amounts, transition property, financing orders, or any right under the obligations until the  
4 obligations, together with the interest on the obligations are fully met and discharged. THE BOARD, AS  
5 AGENT FOR THE STATE, IS AUTHORIZED TO INCLUDE THIS PLEDGE AND UNDERTAKING FOR THE  
6 STATE IN THESE OBLIGATIONS.

7 (e) Notwithstanding any other provision of this section, the commission shall approve those  
8 adjustments to the fixed transition amounts as may be necessary to ensure timely recovery of all transition  
9 costs that are the subject of the pertinent financing order and the costs of capital associated with the  
10 recovery, reimbursement, financing, or refinancing of transition costs and acquiring transition property  
11 including the costs of issuing, servicing, and retiring the transition bonds contemplated by the financing  
12 order. The adjustments may not impose fixed transition amounts upon customer classes that were not  
13 subject to the fixed transition amounts in the pertinent financing order.

14 (4) (a) Financing orders do not constitute a debt or liability of the state or of any political subdivision  
15 of the state if issued through the board and do not constitute a pledge of the full faith and credit of the  
16 state or any of the state's political subdivisions if issued through the board. The financing orders are  
17 payable solely from the funds provided under this section. The bonds and offering documents must contain  
18 ON THEIR FACE a statement to the following effect:

19 ~~"Neither the full faith and credit nor the taxing power of the State of Montana is pledged to the~~  
20 ~~payment of the principal of or interest on this security."~~ THIS BOND MAY NOT CONSTITUTE AN  
21 INDEBTEDNESS OR A LOAN OF CREDIT OF THE STATE OF MONTANA OR ANY POLITICAL SUBDIVISION  
22 OF THE STATE OF MONTANA WITHIN ANY CONSTITUTIONAL OR STATUTORY PROVISION. NEITHER  
23 THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF MONTANA IS PLEDGED TO  
24 THE PAYMENT OF THE PRINCIPAL OR INTEREST ON THIS BOND, AND NEITHER THE STATE OF  
25 MONTANA NOR ANY POLITICAL SUBDIVISION OF THE STATE OF MONTANA IS OBLIGATED, DIRECTLY,  
26 INDIRECTLY, OR CONTINGENTLY, TO LEVY OR TO PLEDGE ANY FORM OF TAXATION OR TO MAKE ANY  
27 APPROPRIATION FOR THE PAYMENT OF THIS BOND. THIS BOND IS A LIMITED OBLIGATION OF THE  
28 ISSUER, PAYABLE SOLELY OUT OF THE TRANSITION PROPERTY OR THE PROCEEDS OF THAT  
29 PROPERTY SPECIFICALLY PLEDGED FOR ITS PAYMENT AND NOT OTHERWISE.

30 (b) The issuance of bonds under this section may not directly, indirectly, or contingently obligate



1 the state or any political subdivision of the state to levy or to pledge any form of taxation or to make any  
2 appropriation for bond payment.

3 (5) The commission shall establish procedures for the expeditious processing of applications for  
4 financing orders, including the approval or disapproval of applications within 120 days after a utility submits  
5 a complete application. The commission shall provide in any financing order for a procedure for the  
6 expeditious approval by the commission of periodic adjustments to the fixed transition amounts that are  
7 the subject of the pertinent financing order pursuant to subsection (2). The commission shall determine  
8 on each anniversary of the issuance of the financing order and at additional intervals as may be provided  
9 for in the financing order whether the adjustments are required and shall provide for the adjustments, if  
10 required, to be approved within 60 days of each anniversary of the issuance of the financing order or of  
11 each additional interval provided for in the financing order.

12 (6) Fixed transition amounts become transition property when and to the extent that a financing  
13 order authorizing the fixed transition amounts has become effective in accordance with subsection (2), and  
14 the transition property must thereafter continuously exist as property for all purposes with all of the rights  
15 and privileges of [sections 1 through 31] for the period and to the extent provided in the financing order  
16 or until the transition bonds are paid in full including all principal, interest, premium, costs, and arrearages  
17 on the transition bonds.

18 (7) Transition bonds may be issued upon commission approval in the pertinent financing order.  
19 Transition bonds must specify that they do not provide recourse to the credit or any assets of the utility,  
20 other than the transition property as specified in the pertinent financing order.

21 (8) (a) A utility may sell, assign, or transfer all or portions of the utility's interest in transition  
22 property to an assignee. A utility or an assignee may further sell, assign, or transfer the utility's interest  
23 in that transition property to one or more assignees in connection with the issuance of transition bonds to  
24 the extent approved in the pertinent financing order.

25 (b) A utility or an assignee may pledge transition property as collateral for transition bonds to the  
26 extent approved in the pertinent financing order and may provide for a security interest in the transition  
27 property as provided in this section.

28 (c) Transition property may be sold, assigned, or transferred for the benefit of:

29 (i) transition bondholders in connection with the exercise of remedies upon a default; or

30 (ii) any person acquiring the transition property after a sale, assignment, or transfer pursuant to this

1 section.

2 (9) (a) To the extent that any interest in transition property is sold, assigned, transferred, or pledged  
3 as collateral, the commission shall authorize the utility to contract with any assignee so that the utility will,  
4 subject to the utility's rights under subsection (18):

5 (i) continue to operate the utility's system and to provide service to the utility's customers;

6 (ii) collect amounts in respect of the fixed transition amounts for the benefit and account of the  
7 assignee; and

8 (iii) account for and remit these amounts to or for the account of the assignee.

9 (b) Contracting with the assignee in accordance with the commission's authorization may not impair  
10 or negate the characterization of the sale, assignment, transfer, or pledge as a true sale, an absolute  
11 assignment or transfer, or a grant of a security interest, as applicable.

12 (10) Notwithstanding any other provision of law, any provision under this section or under a  
13 financing order requiring that the commission take or refrain from taking action with respect to the subject  
14 matter of a financing order binds the commission and any successor commission or agency exercising  
15 functions similar to the commission, and the commission or any successor commission or agency may not  
16 rescind, alter, or amend that requirement in a financing order.

17 (11) A pledge or any other security interest in transition property is valid, is enforceable against the  
18 pledgor and third parties, including judgment lien creditors, subject only to the rights of any third parties  
19 holding security interests in the transition property perfected in the manner described in this section, and  
20 attaches only when all of the following have taken place:

21 (a) the commission has issued the financing order authorizing the fixed transition amounts included  
22 in the transition property;

23 (b) value has been given by the pledgees of the transition property; and

24 (c) the pledgor has signed a security agreement or other financing-related agreement covering the  
25 transition property.

26 (12) (a) A valid and enforceable security interest in transition property is perfected only when it has  
27 attached and when a financing statement has been filed with the ~~commission~~ SECRETARY OF STATE in  
28 accordance with procedures that the ~~commission~~ SECRETARY OF STATE may establish. The financing  
29 statement must name the pledgor of the transition property as debtor and identify the transition property.

30 (b) Any description of the transition property is sufficient if the description refers to the financing

1 order creating the transition property.

2 (c) The commission may require other filings with respect to the security interest in accordance with  
3 procedures the commission may establish, except that these filings may not affect the perfection of the  
4 security interest.

5 (13) A perfected security interest in transition property is a continuously perfected security interest  
6 in all revenue and proceeds arising with respect to the transition property, whether or not the revenue or  
7 proceeds have accrued. Conflicting security interests must rank according to priority in time of perfection.  
8 Transition property constitutes property for all purposes, including for contracts securing transition bonds,  
9 whether or not the revenue and proceeds arising with respect to the transition property have accrued.

10 (14) (a) Subject to the terms of the security agreement covering the transition property and the  
11 rights of any third parties holding security interests in the transition property perfected in the manner  
12 described in this section, the validity and relative priority of a security interest created under this section  
13 is not defeated or adversely affected by:

14 (i) the commingling of revenue arising with respect to the transition property with other funds of  
15 the utility that is the pledgor or transferor of the transition property; or

16 (ii) any security interest of any third party in a deposit account of that utility perfected under Title  
17 30, chapter 9, part 3, into which the revenue is deposited.

18 (b) Subject to the terms of the security agreement, upon compliance with the requirements of this  
19 section, a pledgee of the transition property has a perfected security interest in all cash and deposit  
20 accounts of the utility in which revenue arising with respect to the transition property has been commingled  
21 with other funds, but the perfected security interest must be limited to an amount no greater than the  
22 amount of the revenue with respect to the transition property received by the utility within 12 months  
23 before any default under the security agreement or the institution of insolvency proceedings by or against  
24 the utility, less payments from the revenue to the pledgees during that 12-month period.

25 (15) (a) If a default occurs under the security agreement covering the transition property, a pledgee  
26 of the transition property, subject to the terms of the security agreement, has all rights and remedies of a  
27 secured party upon default under Title 30, chapter 9, part 5, and is entitled to foreclose or otherwise  
28 enforce the pledgee's security interest in the transition property, subject to the rights of any third parties  
29 holding prior security interests in the transition property perfected in the manner provided in this section.

30 (b) The commission may require in the financing order creating the transition property that in the

1 event of default by the utility in payment of revenue arising with respect to the transition property, the  
2 commission and any successor to the commission, upon the application by a pledgee or assignee of the  
3 transition property and without limiting any other remedies available to the pledgees or transferees by  
4 reason of the default shall order the sequestration and payment to the pledgee or assignee of the proceeds  
5 of the transition property. An order must remain in full force and effect notwithstanding any bankruptcy,  
6 reorganization, or other insolvency proceedings with respect to the public utility or a debtor, pledgor, or  
7 transferor of the transition property.

8 (c) Any sum in excess of amounts necessary to pay principal, premium, if any, interest, costs, and  
9 arrearages on the transition bonds and other costs arising under the security agreement must be remitted  
10 to the debtor or to the pledgor as provided in the security agreement.

11 (16) (a) A transfer of transition property by a utility to an assignee or by the assignee to another  
12 assignee that the parties have in the governing documentation expressly stated to be a sale or other  
13 absolute transfer in a transaction approved or authorized in a financing order must be treated as an absolute  
14 transfer of all of the transferor's right, title, and interest, as in a true sale, and not as a pledge or other  
15 financing of the transition property, other than for federal and state income and franchise tax purposes.

16 (b) Granting to transition bondholders a preferred right to revenue of the utility or the provision by  
17 the utility or an assignee of other credit enhancement with respect to transition bonds may not impair or  
18 negate the characterization of any transfer as a true sale, other than for federal and state income and  
19 franchise tax purposes.

20 (c) Notwithstanding the provisions of this subsection (16), for state tax purposes, a transfer must  
21 be treated as a pledge or other financing unless the governing documentation or transfer specifically states  
22 that transfer is intended to be treated otherwise. The characterization of the transfer as a true sale or other  
23 absolute transfer in the governing documentation of a transfer is not intended to prejudice the  
24 characterization of the transfer as a pledge or other financing for federal tax purposes.

25 (17) A sale, assignment, or other transfer of transition property may only be considered perfected  
26 as against any third person, including any judicial lien creditor, when both of the following have taken place:

27 (a) the financing order authorizing the fixed transition amounts included in the transition property  
28 has become effective in accordance with subsection (2); and

29 (b) an assignment of the transition property, in writing, has been executed and delivered to the  
30 transferee.

1 (18) (a) As between bona fide assignees of the same right for value without notice, the assignee  
2 first filing a financing statement with the commission in accordance with procedures that the commission  
3 may establish has priority. The financing statement must name the assignor of the transition property as  
4 debtor and must identify the transition property. Any description of the transition property is sufficient if  
5 the description refers to the financing order creating the transition property. The commission may require  
6 the assignor or the assignee to make other filings with respect to the transfer in accordance with  
7 procedures that the commission may establish, but these filings may not affect the perfection of the  
8 transfer.

9 (b) Any successor to the utility, whether pursuant to any bankruptcy, reorganization, or other  
10 insolvency proceeding or pursuant to any merger, sale, or transfer, by operation of law, or otherwise, shall  
11 perform and satisfy all obligations of the utility pursuant to this section in the same manner and to the same  
12 extent as the utility, including but not limited to collecting and paying to the assignee or pledgee, as the  
13 case may be, revenue arising with respect to the transition property sold, assigned, transferred, or pledged  
14 to secure transition bonds.

15 (19) Transition property or any right, title, or interest of a utility, assignee, or pledgee described in  
16 the definition of transition property, whether before or after the issuance of a financing order, does not  
17 constitute an account or general intangibles under 30-9-106. Any right, title, or interest pertaining to a  
18 financing order, including the interest pertaining to a financing order, along with the associated transition  
19 property and any revenue, collections, claims, payments, money, or proceeds of or arising from fixed  
20 transition amounts pursuant to the financing order, may not be considered proceeds of any right, title, or  
21 interest other than in the order and the transition property arising from the order.

22 (20) The lien under this section is enforceable against the pledgor and all third parties, including  
23 judicial lien creditors, subject only to the rights of any third parties holding security interests in the transition  
24 property previously perfected in the manner described in this section if value has been given by the  
25 purchasers of transition bonds. A perfected lien in transition property is a continuously perfected security  
26 interest in all revenue and proceeds arising with respect to the associated transition property, whether or  
27 not revenue has been accrued. Transition property constitutes property for the purposes of contracts  
28 securing transition bonds, whether or not the related revenue has accrued. The lien created under this  
29 section is perfected and ranks before any lien, including any judicial lien, that subsequently attaches to the  
30 transition property, to the fixed transition costs, and to the financing order and any rights created by the

1 order or any proceeds of the order. The relative priority of a lien created under this section is not defeated  
2 or adversely affected by changes to the financing order or to the fixed transition amounts payable by any  
3 customer.

4 (21) The commission shall establish and maintain a separate system of records to reflect the date  
5 and time of receipt of all filings made under this section and may provide that transfers of transition  
6 property to an assignee be filed in accordance with the same system.

7 (22) Any sale, assignment, or other transfer of transition property or any pledge of transition  
8 property is exempt from any state or local sales, income, transfers, gains, receipts, or similar taxes.

9 (23) The transition bonds issued under [sections 1 through 31] are exempt from the provisions of  
10 Title 30, chapter 10, but copies of all prospectus and disclosure documents must be deposited for public  
11 inspection with the state securities commissioner.

12 (24) The granting, perfection, and priority of security interests with respect to transition property  
13 and the proceeds thereof are governed by this section rather than Title 30, chapter 9.

14 (25) UPON THE PAYMENT IN FULL OF TRANSITION BOND PRINCIPAL AND INTEREST, THE  
15 UTILITY SHALL DISCONTINUE CHARGING AND COLLECTING THE COMPETITIVE TRANSITION CHARGE  
16 ASSOCIATED WITH THAT PORTION OF THE UTILITY'S APPROVED TRANSITION COSTS.

17

18 **Section 32.** Section 15-6-137, MCA, is amended to read:

19 **"15-6-137. Class seven property -- description -- taxable percentage.** (1) Class seven property  
20 includes:

21 (a) all property used and owned by persons, firms, corporations, or other organizations that are  
22 engaged in the business of furnishing telephone communications exclusively to rural areas or to rural areas  
23 and cities and towns of 800 persons or less;

24 (b) all property owned by cooperative rural electrical and cooperative rural telephone associations  
25 that serve less than 95% of the electricity consumers or telephone users within the incorporated limits of  
26 a city or town, except rural electric cooperative properties described in 15-6-141(1)(a);

27 (c) electric transformers and meters; electric light and power substation machinery; natural gas  
28 measuring and regulating station equipment, meters, and compressor station machinery owned by  
29 noncentrally assessed public utilities; and tools used in the repair and maintenance of this property.

30 (2) To qualify for this classification, the average circuit miles for each station on the telephone

1 communication system described in subsection (1)(b) must be more than 1 mile.

2 (3) Class seven property is taxed at 8% of its market value."

3

4 **Section 33.** Section 15-6-141, MCA, is amended to read:

5 **"15-6-141. Class nine property -- description -- taxable percentage.** (1) Class nine property  
6 includes:

7 (a) centrally assessed electric power companies' allocations, including, if congress passes legislation  
8 that allows the state to tax property owned by an agency created by congress to transmit or distribute  
9 electrical energy, allocations of properties constructed, owned, or operated by a public agency created by  
10 the congress to transmit or distribute electric energy produced at privately owned generating facilities ~~+~~  
11 ~~not including rural electric cooperatives~~; However, properties of rural electric cooperatives  
12 COOPERATIVES' PROPERTY USED FOR THE SOLE PURPOSE OF serving CUSTOMERS REPRESENTING less  
13 than 95% of the electric consumers located within the incorporated limits of a city or town of more than  
14 3,500 persons in which a centrally assessed electric power company also owns property are IS included.

15 (b) allocations for centrally assessed natural gas companies having a major distribution system in  
16 this state; and

17 (c) centrally assessed companies' allocations except:

18 (i) electric power and natural gas companies' property;

19 (ii) property owned by cooperative rural electric and cooperative rural telephone associations and  
20 classified in class five;

21 (iii) property owned by organizations providing telephone communications to rural areas and  
22 classified in class seven;

23 (iv) railroad transportation property included in class twelve; and

24 (v) airline transportation property included in class twelve.

25 (2) Class nine property is taxed at 12% of market value."

26

27 **Section 34.** Section 69-5-101, MCA, is amended to read:

28 **"69-5-101. Short title.** This part ~~shall be~~ is known and may be cited as the "Territorial Integrity  
29 Act of 1974"."

30

1           **Section 35.** Section 69-5-102, MCA, is amended to read:

2           **"69-5-102. Definitions.** When used in this part, the following definitions apply:

3           (1) ~~"Commercial premises" means the premises where the business of selling, warehousing, or~~  
4 ~~distributing a commodity or other business activity is carried on or professional or other services are~~  
5 ~~rendered.~~ "Agreement" means a written agreement between two or more electric facilities providers that  
6 identifies the geographical area to be served exclusively by each electric facilities provider that is a party  
7 to the agreement and any terms and conditions pertinent to the agreement.

8           (2) "Electric cooperative" means a rural electric cooperative organized under Title 35, chapter 18,  
9 or a foreign corporation admitted thereunder to do business in Montana.

10          (3) ~~"Electric supplier facilities provider" means any electrical utility and any electric cooperative that~~  
11 provides electric service facilities to the public.

12          (4) "Electric service facilities" means any distribution or transmission system or related facility  
13 necessary to provide electricity to the premises, including lines.

14          ~~(4)(5)~~ (5) "Electric utility" means a person, firm, or corporation other than an electric cooperative  
15 ~~which furnishes electrical~~ that provides electric service facilities to the public.

16          ~~(5) "Industrial premises" means the premises where an industrial activity is carried on, including~~  
17 ~~but not limited to the operation of factories, mills, machine shops, mines, oil wells, refineries, pumping,~~  
18 ~~cleaning and dyeing works, creameries, canneries, stockyards, feedlots, military installations, or other~~  
19 ~~extractive, fabricating, or processing activities.~~

20          (6) "Line" means any electric supply conductor ~~operating at a nominal voltage level of 34,500 volts~~  
21 ~~or less, measured phase to phase.~~

22          (7) "Premises" means a building, residence, structure, or facility to which ~~electricity is being~~ electric  
23 service facilities are provided or is are to be furnished; provided, that installed; however, two or more  
24 buildings, structures, or facilities ~~which that~~ are located on one tract or contiguous tracts of land and that  
25 are ~~utilized~~ used by one electric consumer for farming, business, commercial, industrial, institutional,  
26 governmental, or trailer court purposes ~~shall~~ must together constitute one premises, except that any ~~such~~  
27 building, structure, or facility, other than a trailer court, ~~shall~~ may not, together with any other building,  
28 structure, or facility, constitute one premises if the electric service to it is separately metered and the  
29 charges for ~~such that~~ service are calculated independently of charges for service to any other building,  
30 structure, or facility.



1           (8) "Utility" means a public utility regulated by the commission pursuant to Title 69, chapter 3, or  
 2           a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18."

3  
 4           **Section 36.** Section 69-5-104, MCA, is amended to read:

5           **"69-5-104. Continuation of ~~service~~ electric service facilities to existing consumers.** ~~Every~~ Each  
 6           ~~electric supplier service facilities provider shall have~~ has the right to ~~serve~~ provide electric service facilities  
 7           to all premises being served by it or to which any of its facilities are attached on ~~February 1, 1971~~ [the  
 8           effective date of this act]."

9  
 10           **Section 37.** Section 69-5-105, MCA, is amended to read:

11           **"69-5-105. Service to new consumers.** (1) Subject to ~~69-5-106~~ this part, the electric supplier  
 12           ~~facilities provider~~ having a line nearest the premises, as measured in accordance with subsection (2), shall  
 13           ~~serve~~ provide electric service facilities to the premises initially requiring service after ~~February 1, 1971~~ [the  
 14           effective date of this act], which creates a rebuttable presumption that the nearest line is the least-cost  
 15           electric service facility to the new customer. However, a customer or another electric facilities provider  
 16           may rebut the presumption, and another electric facilities provider may provide the electric service facilities  
 17           if it can do so at less cost.

18           (2) All measurements under this part ~~shall~~ must be made on the shortest straight line ~~which~~ that  
 19           can be drawn from the conductor nearest the premises to the nearest permanent portion of the premises.  
 20           ~~Construction power for premises to be constructed shall be supplied by the electric supplier having the right~~  
 21           ~~to serve the completed premises.~~

22           (3) If the electric facilities providers are unable to reach agreement as to which electric facilities  
 23           provider can provide electric service facilities at least cost, an independent consultant engineer agreeable  
 24           to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on  
 25           a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction,  
 26           as provided in 69-5-110, shall determine which electric facilities provider can extend its lines to the  
 27           consumer at the least cost. The cost of those engineering services must be paid equally by the electric  
 28           facilities providers involved."

29  
 30           **Section 38.** Section 69-5-106, MCA, is amended to read:

1           **"69-5-106. ~~Service~~ Electric service facilities to industrial or commercial premises large customers.**

2           (1) An electric utility has the right to furnish electric service facilities to any ~~industrial or commercial~~  
3           premises if the estimated connected load for full ~~plant~~ operation at ~~such industrial or commercial~~ the  
4           premises will be 400 kilowatts or larger within 2 years from the date of initial service ~~provided such and~~  
5           if the electric utility can extend its ~~lines~~ facilities to ~~such industrial or commercial~~ the premises at less cost  
6           to the electric utility ~~or the industrial or commercial customer~~ than the electric cooperative cost. The  
7           estimated connected load ~~shall~~ must be determined from the plans and specifications prepared for  
8           construction of the premises or, if ~~such an~~ estimate is not available, ~~shall~~ must be determined by agreement  
9           of the electric ~~supplier~~ facilities provider and the customer. The fact that the actual connected load after  
10          2 years from the date of initial service is less than 400 kilowatts does not affect the right of the electric  
11          ~~supplier~~ facilities provider initially providing electric service facilities to continue to provide electric service  
12          facilities to ~~such the~~ premises.

13          (2) An independent consultant engineer agreeable to both electric ~~suppliers~~ facilities providers or,  
14          in the event of failure of the electric ~~suppliers~~ facilities providers to agree on a consultant engineer, an  
15          independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110,  
16          shall determine which electric ~~supplier~~ facilities provider can extend its ~~lines to the consumer~~ facilities at  
17          the least cost to the utility. The cost of ~~such those~~ engineering services ~~shall~~ must be paid equally by the  
18          electric ~~suppliers~~ facilities providers involved.

19          ~~(3) No premises other than another such commercial or industrial premises shall be served from~~  
20          ~~a line constructed under this section."~~

21

22          **Section 39.** Section 69-5-107, MCA, is amended to read:

23          **"69-5-107. ~~Service to property owned by electric supplier~~ Customer-owned facilities.** Nothing in  
24          ~~69-5-103 through 69-5-106 shall restrict the right of an electric supplier to furnish electric service to any~~  
25          ~~property owned by the electric supplier.~~ This part may not limit a customer's right to construct, own, or  
26          operate electric service facilities for the customer's own use, and construction, ownership, or use may not  
27          cause the customer to be considered a utility. A customer may not duplicate existing electric service  
28          facilities."

29

30          **Section 40.** Section 69-5-108, MCA, is amended to read:

1           "**69-5-108. Agreements between electric suppliers as to service areas facilities providers.**  
2 ~~Notwithstanding the provisions of 69-5-103 through 69-5-109, an electric supplier may furnish electric~~  
3 ~~service to any consumer at any premises being served by another electric supplier upon written agreement~~  
4 ~~of the affected electric suppliers or at premises that another electric supplier has the right to serve pursuant~~  
5 ~~to this part, upon written agreement of the affected electric suppliers. Utilities may enter into agreements~~  
6 ~~that identify the geographical area to be exclusively served by each electric facilities provider that is party~~  
7 ~~to the agreement, overriding the provisions of 69-5-105 and 69-5-107. If an agreement is approved by the~~  
8 ~~commission pursuant to this part, the agreement is valid and binding on all electric facilities providers and~~  
9 ~~all customers, except those provided for in 69-5-106."~~

10  
11           **Section 41.** Section 69-5-109, MCA, is amended to read:

12           "**69-5-109. Special provisions for annexed areas.** ~~With respect to service in areas which are~~  
13 ~~annexed to incorporated municipalities having a population in excess of 3,500 persons, electric suppliers~~  
14 ~~have rights and are subject to restrictions as follows:~~

15           ~~(1) Every electric supplier has the right to serve all premises being served by it on the date of~~  
16 ~~annexation.~~

17           ~~(2) An electric cooperative does not have the right to serve any premises initially requiring service~~  
18 ~~on or after the date of annexation. The restriction stated in this subsection does not apply to incorporated~~  
19 ~~municipalities in which 95% or more of the premises were served by an electric cooperative on February~~  
20 ~~1, 1971. (1) Electric facilities providers providing electric service facilities in or near areas that are~~  
21 ~~incorporated municipalities having a population in excess of 3,500 persons and having annexed areas since~~  
22 ~~1985 or having existing municipal planning zones on [the effective date of this act] shall enter into~~  
23 ~~agreements dividing the annexed and planning zone areas into exclusive service territories and shall submit~~  
24 ~~the agreements to the commission for approval, pursuant to this part.~~

25           ~~(2) The agreements do not apply to electric service facilities with loads of 400 kilowatts or greater.~~  
26 ~~Agreements must be based on the location of facilities in place on [the effective date of this act].~~

27           ~~(3) If electric facilities providers have failed to negotiate agreements within 1 year from the~~  
28 ~~[effective date of this act], the commission shall divide the annexed and planning zone areas into exclusive~~  
29 ~~service territories, using the considerations pursuant to [section 44].~~

30           ~~(4) Until agreements are final, electric service facilities to new customers will be provided pursuant~~

1 to 69-5-105."

2

3 **Section 42.** Section 69-5-110, MCA, is amended to read:

4 "69-5-110. **Jurisdiction of district courts over disputes.** The district courts of the county or  
5 counties within which the premises or lines involved in any dispute are located ~~shall~~ have jurisdiction under  
6 this part over all electric ~~suppliers~~ facilities providers subject to ~~the provisions thereof~~ this part."

7

8 **Section 43.** Section 69-5-111, MCA, is amended to read:

9 "69-5-111. **Judicial remedies.** (1) Whenever it ~~shall appear that any~~ an electric supplier facilities  
10 provider is failing or omitting or about to fail or omit to do anything required of it by this part or is doing  
11 or is about to do anything or to permit anything to be done contrary to or in violation of this part, ~~any the~~  
12 electric ~~supplier facilities provider~~ affected thereby shall have the right to may file a complaint in the district  
13 court ~~briefly~~ setting forth the acts or omissions complained of and requesting an injunction.

14 (2) If an affidavit showing that grounds exist ~~therefor~~ that an electric facilities provider is in  
15 violation of this part is filed with the complaint, a temporary restraining order ~~shall~~ must be issued without  
16 notice. A copy of the temporary restraining order, complaint, and affidavit ~~shall~~ must be served upon the  
17 defendant, together with an order to show cause why the temporary restraining order should not be made  
18 permanent, within 5 days after issuance of the temporary restraining order. The hearing on the order to  
19 show cause must be held at a date specified ~~therein in the order, which shall~~ and may not be more than  
20 10 days after service ~~thereof of the order~~ and ~~shall~~ must take precedence over all matters pending before  
21 the district court. A judgment making the injunction permanent or dissolving the temporary restraining order  
22 ~~thereof~~ that was issued and dismissing the complaint must be made ~~not later than~~ before 10 days after  
23 the hearing on the order to show cause.

24 (3) Any party aggrieved by the order may appeal to the supreme court of Montana by filing a notice  
25 of appeal in the district court within 20 days from entry of the order. The appeal must be perfected within  
26 20 days ~~thereafter~~ after filing the notice of appeal and ~~shall~~ must take precedence over all matters pending  
27 before the supreme court of Montana."

28

29 **NEW SECTION. Section 44. Commission jurisdiction over agreements.** (1) All agreements between  
30 electric facilities providers must be submitted to the commission for approval. Each agreement must clearly

1 identify the geographical area to be served by each electric facilities provider. The submission must include:

2 (a) a map and a written description of the area; AND

3 (b) the terms and conditions pertaining to the implementation of the agreement;

4 (2) WHENEVER AN AGREEMENT INVOLVES THE EXCHANGE OR TRANSFER OF CUSTOMERS  
 5 WITHIN SERVICE TERRITORIES, THE FOLLOWING MUST ALSO BE INCLUDED WITH THE AGREEMENT  
 6 SUBMISSION:

7 ~~(a)~~(A) the number and class of customers to be transferred;

8 ~~(d)~~(B) assurance that the affected customers have been contacted and have received a written  
 9 explanation of the difference in rates; and

10 ~~(e)~~(C) information with respect to the degree of acceptance by affected customers, such as the  
 11 number in favor of and those opposed to the transfer.

12 ~~(2)~~(3) In approving agreements, the commission shall consider but not be limited to consideration  
 13 of:

14 (a) the reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the  
 15 reliability of electric service to the existing or future ratepayers of any electric facilities provider party of  
 16 the agreement; and

17 (b) the reasonable likelihood that the agreement will eliminate existing or potentially uneconomic  
 18 duplication of electric service facilities.

19 ~~(3)~~(4) An agreement approved by the commission is valid and enforceable, and except as provided  
 20 in 69-5-106, an electric facilities provider may not offer, construct, or extend electric service facilities into  
 21 an exclusive territory.

22 ~~(4)~~(5) The commission shall state its findings and conclusions for approving or disapproving an  
 23 agreement and shall render a decision within 90 days of receipt of the agreement. The electric facilities  
 24 providers submitting the agreement to the commission shall act according to the agreement until a decision  
 25 is rendered.

26 ~~(5)~~(6) Upon approval of the agreement, any modification, changes, or corrections to this agreement  
 27 must be approved by the commission.

28 ~~(6)~~(7) The commission may promulgate rules to administer this part consistent with the  
 29 requirements of this part.

30

1            NEW SECTION. **Section 45. Repealer.** Section 69-5-103, MCA, is repealed.

2

3            NEW SECTION. **Section 46. Saving clause.** [This act] does not affect rights and duties that  
4 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this  
5 act].

6

7            NEW SECTION. **Section 47. Severability.** If a part of [this act] is invalid, all valid parts that are  
8 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
9 applications, the part remains in effect in all valid applications that are severable from the invalid  
10 applications.

11

12            NEW SECTION. **Section 48. Codification instructions.** (1) [Sections 1 through 31] are intended  
13 to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through 31].

14            (2) [Section 44] is intended to be codified as an integral part of Title 69, chapter 5, part 1, and the  
15 provisions of Title 69, chapter 5, part 1, apply to [section 44].

16

17            NEW SECTION. **Section 49. Effective date.** [This act] is effective on passage and approval.

18

-END-

## 1 SENATE BILL NO. 390

2 INTRODUCED BY THOMAS, QUILICI, HARP, BERGSAGEL, SLITER, MOLNAR, BEAUDRY, MASOLO,  
3 GRINDE, MAHLUM, MENAHAN, DEVLIN, SHEA, CHRISTIAENS, SIMPKINS, STANG, DEPRATU,  
4 L. TAYLOR, HARRINGTON, BOOKOUT-REINICKE, STORY, OHS, PAVLOVICH, DEVANEY, JABS,  
5 REHBEIN, KEATING, TOEWS, TROPILA, ORR, FOSTER, LYNCH, GALVIN, MCCARTHY, BECK, RYAN,  
6 EMERSON, KITZENBERG, DEBRUYCKER, HERTEL, MILLS, GRADY, HALLIGAN, M. TAYLOR,  
7 GROSFIELD, WILSON, NELSON, CLARK, TASH, BISHOP, BENEDICT, SPRAGUE, COLE, MOHL, ELLIS,  
8 JENKINS, KOTTEL, WYATT, DENNY

9  
10 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY ESTABLISHING RESTRUCTURING REQUIREMENTS  
11 FORMONTANA'S ELECTRIC UTILITY INDUSTRY; PROVIDING CUSTOMER CHOICE; GENERALLY REVISING  
12 THE TERRITORIAL INTEGRITY LAWS; REMOVING CERTAIN RURAL ELECTRIC COOPERATIVE PROPERTIES  
13 FROM CLASS SEVEN PROPERTY; INCLUDING CERTAIN RURAL ELECTRIC COOPERATIVE PROPERTIES  
14 IN CLASS NINE PROPERTY; APPROPRIATING FUNDS FOR THE ACTIVITIES OF THE TRANSITION  
15 ADVISORY COMMITTEE ON ELECTRIC UTILITY INDUSTRY RESTRUCTURING; IMPOSING A FEE ON  
16 ELECTRIC UTILITY COMPANIES TO SUPPORT THE ACTIVITIES OF THE TRANSITION ADVISORY  
17 COMMITTEE; AMENDING SECTIONS 15-6-137, 15-6-141, 69-5-101, 69-5-102, 69-5-104, 69-5-105,  
18 69-5-106, 69-5-107, 69-5-108, 69-5-109, 69-5-110, AND 69-5-111, MCA; REPEALING SECTION  
19 69-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

## 21 STATEMENT OF INTENT

22 A statement of intent is required because this bill provides the public service commission with  
23 rulemaking authority.

24  
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

26  
27 NEW SECTION. Section 1. Short title. [Sections 1 through 31] may be cited as the "Electric Utility  
28 Industry Restructuring and Customer Choice Act".

29  
30 NEW SECTION. Section 2. Legislative findings and policy. The legislature finds and declares the

1 following:

2 (1) The generation and sale of electricity is becoming a competitive industry.

3 (2) Montana customers should have the freedom to choose their supplier of electricity and related  
4 services in a competitive market as soon as administratively feasible. Affording this opportunity serves the  
5 public interest.

6 (3) The INTERESTS OF MONTANA CONSUMERS SHOULD BE PROTECTED AND THE financial  
7 integrity of electrical utilities should be fostered WHILE RECOGNIZING THE INTERESTS OF MONTANA  
8 CONSUMERS.

9 (4) The public interest requires the continued protection of consumers through:

10 (a) licensure of electricity suppliers;

11 (b) provision of information to consumers regarding electricity supply service;

12 (c) provision of a process for investigating and resolving complaints;

13 (d) continued funding for public purpose programs for:

14 (i) cost-effective local energy conservation;

15 (ii) low-income customer weatherization;

16 (iii) renewable resource PROJECTS AND applications;

17 (iv) research and development programs related to energy conservation and renewables;

18 (v) market transformation; and

19 (vi) low-income energy bill assistance;

20 (e) assurance of service reliability and quality; and

21 (f) prevention of anticompetitive and abusive activities.

22 (5) A UTILITY IN THE STATE OF MONTANA MAY NOT BE ADVANTAGED OR DISADVANTAGED  
23 IN THE COMPETITIVE ELECTRICITY SUPPLY MARKET, INCLUDING THE CONSIDERATION OF THE  
24 EXISTENCE OF UNIVERSAL SYSTEM BENEFITS PROGRAMS AND THE COMPARABLE LEVEL OF FUNDING  
25 FOR THOSE PROGRAMS THROUGHOUT THE REGIONS NEIGHBORING MONTANA.

26

27 NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 31], unless the context  
28 requires otherwise, the following definitions apply:

29 (1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that  
30 aggregates retail customers and purchases electric energy and takes title to electric energy as an



1 intermediary for sale to retail customers.

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

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

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

10 (5) "Cooperative utility" means:

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

12 (b) an existing municipal ELECTRIC utility as of [the effective date of this act]; ~~or,~~

13 ~~(c) a federally owned and locally managed electric utility in the state of Montana that is operated~~  
14 ~~under contract between a federally recognized Indian tribe and the United States.~~

15 (6) "Customer" or "consumer" means a retail electric customer or consumer. THE UNIVERSITY OF  
16 MONTANA, PURSUANT TO 20-25-201(1), AND MONTANA STATE UNIVERSITY, PURSUANT TO  
17 20-25-201(2), ARE EACH CONSIDERED A SINGLE RETAIL ELECTRIC CUSTOMER OR CONSUMER WITH  
18 A SINGLE INDIVIDUAL LOAD.

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

22 (8) "Distribution services provider" means a person controlling or operating distribution facilities for  
23 distribution of electricity to the public.

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

26 (10) "Financing order" means an order of the commission adopted in accordance with [section 31]  
27 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition  
28 bonds.

29 (11) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not  
30 limited to:

1 (i) distribution;  
2 (ii) connection;  
3 (iii) disconnection; and  
4 (iv) termination rates and charges that are authorized by the commission in a financing order to  
5 permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the  
6 transition costs and acquiring transition property through a plan approved by the commission in the  
7 financing order, including the costs of issuing, servicing, and retiring transition bonds.

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

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

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

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

17 (15) "Nonbypassable rates or charges" means rates or charges approved by the commission  
18 imposed by ON a customer to pay the customer's share of transition costs or universal system benefits  
19 program costs even if the customer has physically bypassed either the utility's transmission or distribution  
20 facilities.

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

24 (17) "Public utility" means any electric utility regulated by the commission pursuant to Title 69,  
25 chapter 3, on [the effective date of this act], including the public utility's successors or assignees.

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

28 (19) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust  
29 certificate, or other evidence of indebtedness or ownership ISSUED BY THE BOARD OR OTHER  
30 TRANSITION BONDS ISSUER that is secured by or payable from fixed transition amounts or transition

1 property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance  
2 transition costs and to acquire transition property.

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

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

7 (22) "Transition costs" means:

8 (a) a public utility's net verifiable generation-related and electricity supply costs, including costs  
9 of capital, that become unrecoverable as a result of the implementation of [sections 1 through 31] or of  
10 federal law requiring retail open access or customer choice.

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

12 (i) regulatory assets and deferred charges that exist because of current regulatory practices and can  
13 be accounted for up to the effective date of the commission's final order regarding a public utility's  
14 transition plan AND CONSERVATION INVESTMENTS MADE PRIOR TO UNIVERSAL SYSTEM BENEFITS

15 CHARGE IMPLEMENTATION;

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

17 (iii) existing generation investments and supply commitments or other obligations incurred before  
18 [the effective date of this act] AND COSTS ARISING FROM THESE INVESTMENTS AND COMMITMENTS;

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

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

25 (23) "Transition period" means the period beginning on July 1, 1998, and ending on July 1, 2002,  
26 unless otherwise extended pursuant to [sections 1 through 31], during which utilities may phase in  
27 customer choice of electricity supplier.

28 (24) "Transition property" means the property right created by a financing order including without  
29 limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue,  
30 collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition

1 amounts that are the subject of a financing order including those nonbypassable rates and other charges  
 2 and fixed transition amounts that are authorized by the commission in the financing order to recover  
 3 transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and  
 4 acquiring transition property including the costs of issuing, servicing, and retiring transition bonds. Any  
 5 right that a utility has in the transition property before the utility's sale or transfer or any other right created  
 6 under this section or created in the financing order and assignable under [sections 1 through 31] or  
 7 assignable pursuant to a financing order is only a contract right.

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

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

11 (27) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on  
 12 a customer to pay the customer's share of universal system benefits program costs.

13 (28) "Universal system benefits programs" means public purpose programs for:

14 (a) cost-effective local energy conservation;

15 (b) low-income customer weatherization;

16 (c) renewable resource PROJECTS AND applications, including those that capture unique social and  
 17 energy system benefits or provide transmission and distribution system benefits;

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

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

20 and

21 (f) low-income energy bill assistance ~~as approved by the commission.~~

22 (29) "Utility" means any public utility or cooperative utility.

23

24 **NEW SECTION. Section 4. Pilot programs.** (1) Except as provided in [sections 5(4) and 20],  
 25 beginning July 1, 1998, utilities shall conduct pilot programs using a representative sample of their  
 26 residential and small commercial customers. A report describing and analyzing the results of the pilot  
 27 programs must be submitted to the commission and the transition advisory committee established in  
 28 [section 29] on or before July 1, 2000.

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

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

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

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

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

9

10 **NEW SECTION.** **Section 5. Public utility -- transition to customer choice -- waiver.** (1) A public  
11 utility shall, except as provided in this section, adhere to the following deadlines:

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

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

17 (2) (a) Except as provided for in subsection (3), the commission may determine that additional time  
18 is necessary for customers identified in subsection (1)(b); however, the implementation of full customer  
19 choice may not be delayed beyond July 1, 2004.

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

23 (i) implementation would not be administratively feasible;

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

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

27 (3) Except as provided in ~~section~~ **SECTIONS 22 AND 34 THROUGH 44**, a public utility currently  
28 doing business in Montana as part of a single integrated multistate operation, no portion of which lies within  
29 the basin of the Columbia River may:

30 (a) defer compliance with ~~this section~~ **SECTIONS 1 THROUGH 31** until a time that the public utility

1 can reasonably implement customer choice in the state of the public utility's primary service territory except  
 2 that the public utility shall file a transition plan pursuant to [section 6] to provide transition to customer  
 3 choice on or before July 1, 2002, and must have completed the transition period to customer choice by  
 4 July 1, 2006; and

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

6 (4) Upon a request from a public utility with fewer than 50 customers, the commission shall waive  
 7 compliance with the requirements of [sections 4, 6 THROUGH 12, 22, and this section].

8

9 **NEW SECTION. Section 6. Public utility -- transition plans.** (1) All public utilities, pursuant to  
 10 [sections 1 through 31], shall submit a transition plan to the commission. Plans must be filed with the  
 11 commission not later than 1 year before the date by which any customers of the public utility are entitled  
 12 to choice of electricity supplier pursuant to [section 5]. The commission may develop a schedule for public  
 13 utilities that are required to file plans. The transition plan must demonstrate that the public utility meets  
 14 all the requirements of [sections 1 through 31].

15 (2) The commission shall develop a procedural schedule that includes:

16 (a) a preliminary transition plan determination including the commission's findings on whether the  
 17 plan is complete and adequate subject to the requirements of [sections 1 through 31]; and

18 (b) an opportunity for a public utility to file a revised plan based on the preliminary determination.

19 (3) Unless waived by the public utility, the commission shall issue a final order approving,  
 20 MODIFYING, or denying the transition plan before 9 months after the date a public utility files a plan. All  
 21 parties are afforded an opportunity for hearing before issuance of the final order.

22 (4) The commission shall process a request for approval of a transition plan pursuant to the  
 23 contested case procedures of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

24 (5) On approval of the plan, the commission shall enforce the public utility obligations as  
 25 incorporated in the plan and in the commission's final order.

26

27 **NEW SECTION. Section 7. Public utility -- customer choice -- continued service -- education of**  
 28 **customers.** (1) A customer is permitted to choose an electricity supplier pursuant to the deadlines  
 29 established in [section 5]. Public utilities shall propose a method for customers to choose an electricity  
 30 supplier.

1 (2) If a customer has not chosen an electricity supplier by the end of the transition period, a public  
2 utility shall propose a method in the public utility’s transition plans for assigning that customer to an  
3 electricity supplier.

4 (3) A public utility may phase in customer choice to promote the orderly transition to a competitive  
5 market environment pursuant to the deadlines in [section 5].

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

9

10 **NEW SECTION. Section 8. Public utility -- functional separation, divestiture, and nondiscrimination.**

11 (1) To the extent that a public utility is vertically integrated, a public utility shall functionally separate the  
12 public utility’s electricity supply, retail transmission and distribution, and regulated and unregulated retail  
13 energy services operations in the state of Montana, upon application to and approval from the commission.

14 (2) The commission may not order a public utility to divest itself of any generation assets or prohibit  
15 a public utility from divesting itself voluntarily of any generation assets.

16 (3) Public utilities shall:

17 (a) prevent undue discrimination in favor of their own power supply, other services, divisions, or  
18 affiliates, if any;

19 (b) prevent any other forms of self-dealing that could result in noncompetitive electricity prices to  
20 customers; and

21 (c) grant customers and their electricity suppliers access to the public utility’s retail transmission  
22 and distribution system on a nondiscriminatory basis at rates, terms, and conditions of service comparable  
23 to the use of the retail transmission and distribution system by the public utility and the public utility’s  
24 affiliates.

25 (4) The provisions of this section are satisfied if the public utility adopts and complies with A CODE  
26 OF CONDUCT CONSISTENT WITH federal energy regulatory commission approved code of conduct  
27 pursuant to 18 CFR, part 37. The commission shall promulgate rules relating to the codes of conduct.

28

29 **NEW SECTION. Section 9. Public utility -- distribution services.** (1) A public utility’s distribution  
30 services provider shall:

1 (a) file tariffs that make distribution facilities available to all electricity suppliers, transmission  
2 services providers, and customers on a nondiscriminatory and comparable basis;

3 (b) build and maintain distribution facilities; and

4 (c) be an emergency supplier of electricity and related services.

5 (2) When a distribution services provider acts as an emergency supplier of electricity and related  
6 services to customers, the electricity supplier that should have provided the electricity shall reimburse the  
7 distribution services provider at the higher of a multiple of the cost or a multiple of the then existing market  
8 rate for that electricity. The commission shall determine and authorize the multiple used. The market rate  
9 is the highest published rate for electricity purchased within the local load control area at the time that the  
10 distribution services provider provided the emergency supply. A distribution services provider is not  
11 required to purchase any reserve supply of electricity to fulfill this obligation.

12  
13 **NEW SECTION. Section 10. Public utilities -- transmission services.** For transmission services  
14 regulated by the commission, public utilities, through filed tariffs, shall make transmission services available  
15 for nondiscriminatory and comparable use by all electricity suppliers, by distribution services providers, and  
16 by customers.

17  
18 **NEW SECTION. Section 11. Public utilities -- electricity supply.** (1) On the effective date of a  
19 commission order implementing a public utility's transition plan pursuant to [section 6], the public utility  
20 shall remove its generation assets from the rate base.

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

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

26 (a) extend any cost-based contract with the distribution services provider's affiliate supplier for a  
27 term not more than 3 years; or

28 (b) purchase electricity from the market; AND

29 ~~(4) A tracking (C) USE A mechanism must be used to recover~~ THAT RECOVERS electricity supply  
30 costs in rates to ensure that those costs are fully recovered.



1 (5) If a public utility intends to be an electricity supplier through an unregulated division, then the  
 2 public utility must be licensed as an electricity supplier pursuant to [section 24].

3  
 4 **NEW SECTION. Section 12. Public utilities -- transition costs and charges -- rate moratorium.** (1)

5 Subject to the provisions of this section, the commission shall allow recovery of the following categories  
 6 of transition costs:

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

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

13 (c) The unmitigable transition costs related to public utility-owned generation and other power  
 14 purchase contracts, except that recovery of those costs is limited to the amount accruing during the first  
 15 4 years after the commission enters an order pursuant to [section 6(3)]; and

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

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

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

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

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

26 (ii) appraisal by independent third-party ~~professionals~~ PROFESSIONALS; ~~and~~ OR

27 (iii) a competitive bid sale.

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

1 (d) Unless otherwise provided for in [sections 1 through 31], only costs related to existing  
 2 investments and power purchase contracts identified in subsection (2)(c) and costs arising from those  
 3 investments and power purchase contracts may be included as transition costs.

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

6 (b) A transition charge may not be collected from CUSTOMERS FOR:

7 (i) ~~customers with new~~ OR ADDITIONAL loads of 1,000 kilowatts or greater that were ~~connected~~  
 8 ~~to either the public utility's transmission or distribution facilities~~ FIRST SERVED BY THE PUBLIC UTILITY  
 9 after December 31, 1996; or

10 (ii) ~~customers generating electricity for their own use~~ LOADS SERVED BY THAT CUSTOMER'S  
 11 OWN GENERATION.

12 (c) Subject to commission approval, a utility and a customer may agree to alter the customer's  
 13 transition charge payment schedule. PUBLIC UTILITIES MAY FILE WITH THE COMMISSION TARIFFS FOR  
 14 ELECTRIC SERVICE RATES THAT FOSTER ECONOMIC DEVELOPMENT OR RETENTION OF EXISTING  
 15 CUSTOMERS WITHIN THE STATE, INCLUDING GENERALLY AVAILABLE RATE SCHEDULES. Transition  
 16 charges are the only charges that may be imposed upon a customer class to recover transition costs under  
 17 this section. A separate exit fee may not be charged.

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

21 (5) Approval of transition costs and collection of those transition costs through transition charges  
 22 is a settlement of all transition costs claims by a public utility. A public utility seeking to recover transition  
 23 costs through any means not authorized by [sections 1 through 31] may not collect transition charges with  
 24 respect to these transition costs.

25 ~~(6) Public utilities may not charge rates or collect costs, which include costs reallocated to transition~~  
 26 ~~costs, at a level higher than the public utility would reasonably expect to recover in rates had the current~~  
 27 ~~regulatory system remained intact, with the exception of:~~

28 ~~(a) increased costs related to universal system benefits charges greater than those currently~~  
 29 ~~included in rates; and~~

30 ~~(b) increased costs necessary to implement full customer choice, including but not limited to~~

1 metering, billing, and technology from those customers on whose behalf those increased costs are incurred.

2 ~~(7) If transition bonds are authorized pursuant to [section 31], any savings, net of consolidated tax~~  
3 ~~impacts, must be used to fund a partial or full rate moratorium for 2 years during the transition period~~  
4 ~~except as provided in [section 6], to the extent possible to fund transition costs mitigation or shortened~~  
5 ~~transition cost recovery periods.~~

6 ~~(8) A public utility shall address in the public utility's transition plan reasonable transition~~  
7 ~~bond-related rate moratorium and transition costs adjustment opportunities that may exist for the benefit~~  
8 ~~of customers. The transition plan may include proposed provisions for rate adjustments due to~~  
9 ~~extraordinary events during the same time period.~~

10 (6) EXCEPT AS PROVIDED IN SUBSECTION (7), PUBLIC UTILITIES SHALL IMPLEMENT A RATE  
11 MORATORIUM DURING THE TRANSITION PERIOD AS FOLLOWS:

12 (A) FROM JULY 1, 1998, THROUGH JUNE 30, 2000, PUBLIC UTILITIES MAY NOT CHARGE RATES  
13 HIGHER THAN THOSE RATES IN EFFECT ON JULY 1, 1998.

14 (B) FROM JULY 1, 2000, THROUGH JUNE 30, 2002, AND ONLY FOR THOSE CUSTOMERS  
15 SUBJECT TO THE PROVISIONS OF [SECTION 5(1)(B)], PUBLIC UTILITIES MAY NOT INCREASE THAT  
16 INCREMENT OF RATES NORMALLY ALLOCATED TO ELECTRIC SUPPLY-RELATED COSTS ABOVE THE  
17 INCREMENT ASSOCIATED WITH ELECTRIC SUPPLY-RELATED COSTS REFLECTED IN RATES IN EFFECT  
18 ON JULY 1, 1998. BEGINNING ON JULY 1, 2000, PUBLIC UTILITIES MAY PROPOSE INCREASES TO  
19 THOSE INCREMENTS OF RATES NORMALLY ALLOCATED TO TRANSMISSION AND DISTRIBUTION  
20 COSTS.

21 (7) EXCEPTED FROM THE PROVISIONS OF SUBSECTION (6) ARE:

22 (A) INCREASED COSTS RELATED TO UNIVERSAL SYSTEM BENEFITS PROGRAMS GREATER THAN  
23 THOSE CURRENTLY IN RATES, INCLUDING THE TREATMENT OF UNIVERSAL SYSTEM BENEFITS  
24 PROGRAM COSTS AS AN EXPENSE;

25 (B) INCREASED COSTS NECESSARY TO IMPLEMENT FULL CUSTOMER CHOICE, INCLUDING BUT  
26 NOT LIMITED TO METERING, BILLING, AND TECHNOLOGY. THOSE COSTS MUST BE RECOVERED FROM  
27 THE CUSTOMERS ON WHOSE BEHALF THE INCREASED COSTS ARE INCURRED.

28 (C) SUBJECT TO COMMISSION APPROVAL, AN EXTRAORDINARY ~~EVENTS~~ EVENT RESULTING  
29 IN EITHER:

30 (I) A 4% ANNUAL REVENUE REQUIREMENT INCREASE FROM JULY 1, 1998, THROUGH JUNE 30,

1 2000; OR

2 (II) AN 8% POWER SUPPLY-RELATED ANNUAL REVENUE REQUIREMENT INCREASE FROM JULY  
3 1, 2000, THROUGH JUNE 30, 2002;

4 (D) PORTIONS OF THE INCREASE OR DECREASE IN THE ANNUAL STATE AND LOCAL PROPERTY  
5 TAX EXPENSE THAT ARE GREATER THAN THE PAYMENT OR ADJUSTMENT THAT RESULTS FROM  
6 APPLYING THE INDUSTRY-RECOGNIZED RATES OF INFLATION TO THE INCREASE OR DECREASE IN THE  
7 STATE AND LOCAL PROPERTY TAX EXPENSE REFLECTED IN RATES AS OF [THE EFFECTIVE DATE OF  
8 THIS ACT].

9 (8) NOTWITHSTANDING SUBSECTIONS (6) AND (7), DURING THE TRANSITION PERIOD, PUBLIC  
10 UTILITIES MAY NOT CHARGE RATES OR COLLECT COSTS THAT INCLUDE COSTS REALLOCATED TO  
11 TRANSITION COSTS AT A LEVEL HIGHER THAN THE PUBLIC UTILITY WOULD REASONABLY EXPECT TO  
12 RECOVER IN RATES HAD THE CURRENT REGULATORY SYSTEM REMAINED INTACT.

13 (9) PUBLIC UTILITIES SHALL APPLY SAVINGS RESULTING UNDER [SECTION 31] TOWARD THE  
14 RATE MORATORIUM PURSUANT TO SUBSECTION (6).

15 (10) PUBLIC UTILITIES MAY ACCELERATE THE AMORTIZATION OF ACCUMULATED DEFERRED  
16 INVESTMENT TAX CREDITS ASSOCIATED WITH TRANSMISSION, DISTRIBUTION, AND THE GENERAL  
17 PLANT AS AN ADJUSTMENT TO EARNINGS. ACCUMULATED DEFERRED INVESTMENT TAX CREDITS  
18 AMORTIZED UNDER THIS SUBSECTION MAY NOT BE REFLECTED IN OPERATING INCOME FOR  
19 RATEMAKING PURPOSES.

20 ~~(9)(11)~~ The commission shall issue the accounting orders necessary to align rate moratorium timing  
21 and requirements to actual transition bonds savings.

22 ~~(10) If transition bonds are issued, cost savings associated with and resulting from the bonds must~~  
23 ~~benefit customers.~~

24  
25 **NEW SECTION. Section 13. Cooperative utility -- transition plan for customer choice.** (1) Except  
26 as provided in [section 20], on or before July 1, 2001, the local governing body of a cooperative utility shall  
27 adopt a transition plan.

28 (2) (a) Except as provided in subsection (2)(b), transition plans must contain a transition period that  
29 may not end later than July 1, 2002. At the conclusion of the transition period, all customers must have  
30 the opportunity to choose an electricity supplier.

1 (b) If after a pilot program for customers of a cooperative utility with loads less than 1,000  
2 kilowatts, a competitive market, technology, or other conditions precedent to full customer choice have not  
3 developed, then the transition plan may be altered by the cooperative utility's governing body for those  
4 customers.

5 (3) [Sections 1 through 31] do not require the cooperative utility to divest itself of any generation,  
6 transmission, or distribution assets or prohibit a cooperative utility from divesting itself voluntarily of those  
7 assets.

8 (4) A cooperative utility's local governing body shall certify to the commission that the local  
9 governing body has adopted a transition plan. In the cooperative utility's certification filing, the cooperative  
10 utility shall provide to the commission documentation that the cooperative utility's transition plan is  
11 consistent with [sections 1 through 31].

12  
13 **NEW SECTION. Section 14. Cooperative utility -- customer choice -- education of customers --**  
14 **continued service.** (1) Except as provided in [section 20], cooperative utilities shall propose a method for  
15 cooperative utility customers to choose an electricity supplier.

16 (2) Customer choice may be phased in to promote the orderly transition to a competitive market  
17 environment.

18 (3) Cooperative utilities shall educate their customers about customer choice so that customers may  
19 make an informed choice of an electricity supplier. This education process must give special emphasis to  
20 education efforts during the transition period.

21 (4) If a cooperative utility customer has not chosen an electricity supplier by the end of the  
22 transition period, then the electricity supplier is the cooperative utility that filed the plan or an electricity  
23 supplier designated by the cooperative utility.

24  
25 **NEW SECTION. Section 15. Cooperative utility -- functional separation.** (1) To the extent that a  
26 cooperative utility is vertically integrated, the cooperative utility has the option to functionally separate the  
27 cooperative utility's electricity supply, transmission, distribution, and unregulated energy services assets  
28 and operations in the state of Montana. If the cooperative utility intends to exercise this option, the  
29 cooperative utility's transition plan must explain the cooperative utility's proposed separation process.

30 (2) A cooperative utility shall describe in the transition plan measures taken by the cooperative

1 utility to prevent undue discrimination in favor of the cooperative utility's own electricity supply, if any, and  
2 in favor of the cooperative utility's affiliates, if any.

3 (3) Cooperative utilities may establish a code of conduct similar to the federal energy regulatory  
4 commission's code of conduct established in 18 CFR, part 37.

5  
6 **NEW SECTION. Section 16. Cooperative utility -- distribution services.** (1) A cooperative utility  
7 transition plan must include distribution facility tariffs that must be established by the cooperative utility's  
8 local governing body and must include the obligation for the cooperative utility to:

9 (a) make distribution services available to all electricity suppliers, transmission services providers,  
10 and customers on a nondiscriminatory and comparable basis;

11 (b) build and maintain distribution facilities; and

12 (c) be an emergency supplier of electricity and related services.

13 (2) If a distribution services provider acts as an emergency supplier of electricity and related  
14 services to a customer of an electricity supplier, then the electricity supplier failing to meet contractual  
15 obligations shall reimburse the distribution services provider at an amount to be set by the local governing  
16 body but may not exceed the higher of a multiple of the cost or a multiple of the then existing market rate  
17 for that electricity. The market rate is the highest published rate for electricity purchased within the local  
18 load control area at the time that the distribution services provider provided the emergency supply. A  
19 distribution services provider is not required to purchase any reserve supply of electricity to fulfill this  
20 obligation.

21 (3) Recoverable costs for cooperative utilities must be based upon standard financial reporting  
22 statements and may reflect comparable rates of return of other utilities.

23  
24 **NEW SECTION. Section 17. Cooperative utility -- transmission services.** Transition plans must  
25 state whether the cooperative utility's transmission services, if any, are regulated by the federal energy  
26 regulatory commission. If those services are not regulated by the federal energy regulatory commission,  
27 the plan must provide the basis for comparable and nondiscriminatory use by all electricity suppliers,  
28 distribution services providers, and customers. A cooperative utility's local governing body shall establish  
29 the cooperative utility's transmission tariffs.

30

1           **NEW SECTION.** **Section 18. Cooperative utility -- electricity supply.** (1) A transition plan may  
 2 provide for a cooperative utility to own electric generation assets and for a cooperative utility to offer  
 3 electricity supply service. The local governing body shall establish the price for electricity supply service  
 4 offered by a cooperative utility.

5           (2) Cooperative utilities intending to offer electricity supply service shall comply with the provisions  
 6 of [section 24].

7           (3) If a cooperative utility offers electricity supply service competitively to customers using a public  
 8 utility's distribution facilities, the cooperative utility shall create an affiliated for-profit entity or similar  
 9 structure to serve those customers that allows the entity to be taxed at the same level as other for-profit  
 10 electricity suppliers.

11  
 12           **NEW SECTION.** **Section 19. Cooperative utility -- transition costs and charges.** (1) For the  
 13 purposes of this section, "transition costs" means those costs, liabilities, and investments that cooperative  
 14 utilities would reasonably expect to recover if fully bundled ratemaking conditions continued and that may  
 15 not be recoverable as a result of the transition to a competitive market for electricity supply service.

16           (2) Transition costs eligible for treatment include but are not limited to:

17           (a) regulatory assets and deferred charges typically recoverable in rates;

18           (b) nonutility and utility power purchase contracts;

19           (c) existing commitments or obligations incurred before [the effective date of this act] and other  
 20 cooperative utility investments rendered uneconomic as a result of the implementation of [sections 1  
 21 through 31] or the introduction of retail wheeling through federal legislation or regulation;

22           (d) costs associated with any renegotiation or buyout of the existing nonutility and utility power  
 23 purchase contracts; ~~and~~

24           (e) revenue that appears as a portion of a facility charge necessary to meet debt service  
 25 requirements, INCLUDING ANY COVERAGE AMOUNTS REQUIRED BY ANY MORTGAGE, INDENTURE, OR  
 26 OTHER FINANCING DOCUMENT;

27           (F) COSTS OF REFINANCING AND RETIRING DEBT OF THE COOPERATIVE UTILITY AND  
 28 ASSOCIATED FEDERAL AND STATE TAX LIABILITIES OR OTHER UTILITY COSTS FOR WHICH THE USE  
 29 OF TRANSITION BONDS WOULD BENEFIT CUSTOMERS; AND

30           (G) ALL COSTS, EXPENSES, AND REASONABLE FEES RELATED TO TRANSITION BONDS.

1 (3) For a cooperative utility's transition costs to be fully recoverable, the cooperative utility shall  
2 make reasonable efforts to mitigate those transition costs.

3 (4) Cooperative utilities may not collect any more costs, including costs reallocated to transition  
4 costs, at a level higher than would otherwise be anticipated had the current regulatory system remained  
5 intact, with the exception of:

6 (a) increased costs related to universal system benefits charges; and

7 (b) increased costs of metering, billing, and technology necessary to facilitate full customer choice.

8 (5) Subject to the obligation to mitigate transition costs, a cooperative utility shall fully recover  
9 transition costs as approved by its local governing body. Unmitigable transition costs are nonbypassable  
10 and collected on a nondiscriminatory basis from consumers using the cooperative utility's distribution  
11 facilities in the receipt of electricity supply services.

12 (6) A cooperative utility may not collect transition costs from a customer for which the cooperative  
13 utility does not have and never has had an obligation to incur costs to provide electricity supply service  
14 unless the unmitigated transition costs were incurred solely on behalf of the customer.

15 (7) Approval of and collection of transition costs through a transition charge is a settlement of all  
16 transition claims by a cooperative utility. A cooperative utility seeking to recover transition costs through  
17 any other means may not collect transition charges.

18  
19 **NEW SECTION. Section 20. Cooperative utility -- exemption.** (1) Within 1 year after [the effective  
20 date of this act], a cooperative utility may file a notice with the commission that the cooperative utility does  
21 not intend to open the cooperative utility's distribution facilities to electricity suppliers and does not intend  
22 to adopt a transition plan. Except as otherwise provided in the universal system benefits program pursuant  
23 to [section 22], a cooperative utility filing notice under this section is exempt from the provisions and  
24 requirements of [sections 1 through 31].

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

26 (a) may elect later to adopt a transition plan in accordance with [sections 1 through 31]; and

27 (b) may not use a public utility's distribution facilities UNLESS PREEXISTING CONTRACTS EXIST.

28  
29 **NEW SECTION. Section 21. Maintaining safety and reliability.** Utilities shall maintain standards  
30 of safety and reliability of the electric delivery system and existing customer service requirements.



1            NEW SECTION. Section 22. Universal system benefits programs. (1) Universal system benefits  
 2 programs are established for the state of Montana to ensure continued funding of AND NEW  
 3 EXPENDITURES FOR energy conservation, renewable resource PROJECTS AND applications, and  
 4 low-income energy bill assistance during the transition period and into the future.

5            (2) ~~On or after~~ BEGINNING January 1, 1999, 2.4% of each utility's annual retail sales revenue in  
 6 Montana for the calendar year ending December 31, 1995, is established as the annual funding level for  
 7 universal system benefits programs. Unless modified as provided in subsection ~~(42)~~ (7), this funding level  
 8 remains in effect until July 1, 2003.

9            ~~(3)~~ (A) The recovery of all universal system benefits programs costs imposed pursuant to this  
 10 section, is authorized through the imposition of a universal system benefits charge assessed at the meter  
 11 for each local utility system customer as provided in this section.

12            ~~(4)~~ (B) Utilities must receive credit toward annual funding requirements for a utility's internal  
 13 programs or activities that qualify as universal system benefits programs, INCLUDING THOSE PORTIONS  
 14 OF EXPENDITURES FOR THE PURCHASE OF POWER THAT ARE FOR THE ACQUISITION OR SUPPORT OF  
 15 RENEWABLE ENERGY, CONSERVATION-RELATED ACTIVITIES, OR LOW-INCOME ENERGY BILL  
 16 ASSISTANCE, and for customers' programs or activities as provided in subsection ~~(42)~~ (7).

17            (C) A UTILITY AT WHICH THE SALE OF POWER FOR FINAL END-USE OCCURS IS THE UTILITY  
 18 THAT RECEIVES CREDIT FOR THE UNIVERSAL SYSTEM BENEFITS PROGRAM EXPENDITURE.

19            (D) FOR A UTILITY TO RECEIVE CREDIT FOR LOW-INCOME RELATED EXPENDITURES, THE  
 20 ACTIVITY MUST HAVE TAKEN PLACE IN MONTANA.

21            ~~(5)~~ (E) If a utility's or a customer's credit for internal activities do not satisfy the annual funding  
 22 provisions of subsection (2), then the utility shall make a payment TO THE UNIVERSAL SYSTEM BENEFITS  
 23 FUND for any difference.

24            ~~(6)~~ (3) Cooperative utilities may COLLECTIVELY pool their statewide credits to satisfy their annual  
 25 funding requirements for universal system benefits programs ~~or~~ AND low-income energy bill assistance.

26            ~~(7)~~ (4) A utility's transition plan must describe how the utility proposes to provide for universal  
 27 system benefits programs, including the methodologies, such as cost-effectiveness and need determination,  
 28 used to measure the utility's level of contribution to each program.

29            ~~(8)~~ (5) A utility's MINIMUM annual funding requirement for low-income energy bill AND  
 30 WEATHERIZATION assistance is established at 17% of the utility's annual universal system benefits funding

1 level and is inclusive within the overall universal system benefits funding level.

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

4 ~~(10)(B)~~ If a utility's credit for internal activities does not satisfy its annual funding requirement,  
5 then the utility shall make a payment for any difference TO THE UNIVERSAL ENERGY BILL ASSISTANCE  
6 FUND.

7 ~~(11)(6)~~ An individual customer may not bear a disproportionate share of the local utility's funding  
8 requirements, and a sliding scale must be implemented to provide a more equitable distribution of program  
9 costs.

10 ~~(12)(7)~~ A customer with loads greater than 1,000 kilowatts shall:

11 (a) pay A UNIVERSAL SYSTEM BENEFITS PROGRAM CHARGE EQUAL TO the lesser of:

12 (i) \$500,000 ~~net of~~ LESS the customer credits provided for in this subsection ~~(12) (7)~~; or

13 (ii) the product of .9 mills per kilowatt hour multiplied by the customer's kilowatt hour purchases,  
14 ~~net of~~ LESS customer credits provided for in this subsection ~~(12) (7)~~;

15 (b) receive credit toward that customer's annual universal system benefits charge for internal  
16 expenditures and activities that qualify as a universal system benefits program expenditure and these  
17 internal expenditures must include but not be limited to:

18 (i) expenditures that result in a reduction in the consumption of electrical energy in the customer's  
19 facility; and

20 (ii) those portions of expenditures for the purchase of power at retail or wholesale that are for the  
21 acquisition or support of renewable energy or conservation-related activities; and

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

27 ~~(13)(8)~~ A utility in the state of Montana may not be advantaged or disadvantaged in the competitive  
28 electricity supply market, including the consideration of the existence of universal system benefits programs  
29 and the comparable level of funding for those programs throughout the regions neighboring Montana.

30 ~~(14)(9)~~ (8) A public utility shall prepare and submit an annual summary report of the public utility's

1 activities relating to all universal system benefits programs to the commission and the transition advisory  
 2 committee provided for in [section 29]. A cooperative utility shall prepare and submit annual summary  
 3 reports of activities to the cooperative utility's respective local governing body, the statewide cooperative  
 4 utility office, and the transition advisory committee. The annual report must include, but is not limited to:

5 (a) the types of internal utility and customer programs being used to satisfy the provisions of  
 6 [sections 1 through 31];

7 (b) the level of funding for those programs relative to the annual funding requirements prescribed  
 8 in subsection (2); and

9 (c) any payments made to the statewide funds in the event that internal funding was below the  
 10 prescribed annual funding requirements.

11  
 12 **NEW SECTION. Section 23. Commission authority -- rulemaking authority.** (1) Beginning on the  
 13 effective date of a commission order regarding a public utility's transition plan, the commission shall  
 14 regulate the public utility's retail transmission and distribution services within the state of Montana, as  
 15 provided in [sections 1 through 31], and may not regulate the price of electricity supply except as electricity  
 16 supply may be procured during the transition period by the distribution function of a public utility for those  
 17 customers that ~~do not have a choice of~~ **HAVE NOT CHOSEN AN** electricity supplier or for those customers  
 18 that have not yet been assigned an electricity supplier. During the transition period, those procurements  
 19 may include a cost-based contract from a supply affiliate or an unregulated division.

20 (2) If the transition period is extended for certain customers because **THE COMMISSION FINDS**  
 21 **THAT** workable competition in the electricity supply market does not exist, then the commission shall  
 22 **CONTINUE TO** regulate **THE PROVISION OF ELECTRICITY SUPPLY BY** distribution services providers in  
 23 accordance with [section ~~9 (11)~~ 11].

24 (3) The commission shall decide if there is workable competition in the electricity supply market by  
 25 determining whether **COMPETITION IS** sufficient ~~price elasticity of demand exists in the electricity supply~~  
 26 ~~market~~ to inhibit monopoly pricing or anticompetitive price leadership. In reaching a decision, the  
 27 commission may not rely solely on market share estimates.

28 (4) The commission shall license electricity suppliers and enforce licensing provisions pursuant to  
 29 [section 24].

30 (5) The commission shall promulgate rules that identify the licensees and ensure that the offered

1 electricity supply is provided as offered and is adequate in terms of quality, safety and reliability.

2 (6) The commission shall establish just and reasonable rates through established ratemaking  
3 principles for public utility distribution and transmission services and shall regulate these services. The  
4 commission may approve rates and charges for electricity distribution and transmission services based on  
5 alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public  
6 utility that the alternative method complies with [sections 1 through 31], and on the public utility's  
7 transition plan.

8 (7) The commission shall certify that a cooperative utility has adopted a transition plan that complies  
9 with [sections 1 through 31]. A cooperative utility's transition plan is considered certified 60 days after  
10 the cooperative utility files for certification.

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

13 (9) In addition to promulgating rules expressly provided for in [sections 1 through 31], the  
14 commission may promulgate any other rules necessary to carry out the provision of [sections 1 through  
15 31].

16 (10) [Sections 1 through 31] do not give the commission the authority to:

17 (a) regulate cooperative utilities in any manner other than reviewing certification filings for  
18 compliance with [sections 1 through 31]; or

19 (b) compel any change to a cooperative utility's certification filing made pursuant to [sections 1  
20 through 31].

21  
22 **NEW SECTION. Section 24. Licensing.** (1) Except as provided in [section 20], an electricity  
23 supplier shall file an application with and obtain a license from the commission before offering electricity  
24 for sale to retail customers in the state of Montana.

25 (2) As a condition of licensing, an electricity supplier shall identify and describe its ~~business~~  
26 activities and purposes and the ~~business~~ purposes of each of the electricity supplier's affiliates, IF ANY,  
27 including whether an affiliate that owns or operates distribution facilities offers customer choice through  
28 open, fair, and nondiscriminatory access to the electricity ~~supplier~~ SUPPLIER'S or the electricity supplier's  
29 affiliate's distribution facilities.

30 (3) The commission may require electricity suppliers that provide electricity supply service to small

1 customers to make a standard service offer that ensures that those customers have access to affordable  
2 electricity.

3 (4) The commission may require:

4 (a) proof of financial integrity and a demonstration of adequate reserve margins or the ability to  
5 obtain those reserves; and

6 (b) a licensee to post a bond if SHOULD an electricity supplier ~~fail~~ FAIL to supply electricity or is  
7 ~~not operating~~ LACK FINANCIAL INTEGRITY.

8 (5) An electricity supplier shall provide the commission and all distribution services providers with  
9 copies of all license applications pursuant to subsection (2). Licensees shall update information and file  
10 annual reports with the commission and all distribution services providers.

11 (6) License applications are effective 30 days after filing with the commission, unless the  
12 commission rejects the application during that period. If the commission rejects a license application, the  
13 commission shall specify the reasons in writing and, if practical, identify alternative ways to overcome  
14 deficiencies.

15 (7) Notwithstanding [sections 1 through 31], a cooperative utility is not required to apply for a  
16 license from the commission to be an electricity supplier to customers ~~normally~~ served by that cooperative  
17 utility in its ~~traditional~~ ELECTRIC FACILITIES service territory or to any customers ~~normally~~ served by  
18 another cooperative utility subject to the consent of the other cooperative utility's local governing body.

19

20 NEW SECTION. Section 25. Penalties -- license revocation. (1) The commission may begin a  
21 proceeding to ~~either impose a penalty or~~ revoke or suspend a license of an electricity supplier, IMPOSE A  
22 PENALTY, OR BOTH, for just cause on the commission's own investigation or upon the complaint of an  
23 affected party if it is established that the electricity supplier:

24 (a) intentionally provided false information to the commission;

25 (b) switched, or cause to be switched, the electricity supply for a customer without first obtaining  
26 the customer's written permission; ~~or~~

27 (c) failed to provide a reasonably adequate supply of electricity for its customers in Montana; OR

28 (D) COMMITTED FRAUD OR ENGAGED IN DECEPTIVE PRACTICES.

29 (2) Any person selling or offering to sell electricity in this state in violation of [sections 24, 27,]

30 and this section is subject to a fine of not less than \$100 or more than \$1,000 for the violation or a license

1 revocation or suspension. EACH DAY OF EACH VIOLATION CONSTITUTES A SEPARATE VIOLATION.

2 (3) The fine must be recovered in a civil action upon the complaint by the commission in any court  
3 of competent jurisdiction.

4 (4) A license revocation proceeding under this section is a contested case proceeding pursuant to  
5 the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

6

7 NEW SECTION. Section 26. Bill information -- customer nonpayment -- commission rulemaking.

8 (1) Electrical bills to consumers must disclose each component of the electrical bill in accordance with rules  
9 promulgated by the commission. ~~The electrical bill~~ ELECTRICAL BILLS must disclose but ~~is~~ ARE not limited  
10 to the following:

11 (a) distribution and transmission charges;

12 (b) electricity supply charges;

13 (c) competitive transition charges; and

14 (d) universal system benefits charges.

15 (2) The commission shall promulgate rules establishing the procedures relating to how and when  
16 an electricity supplier may discontinue service to a customer because of the customer's nonpayment and  
17 the procedures relating to reconnection, except that those rules may not apply to electricity suppliers that  
18 are cooperative utilities.

19 (3) Local governing bodies of a cooperative utility shall retain authority for cooperative utilities  
20 regarding:

21 (a) customer nonpayment and reconnection; and

22 (b) information contained in electrical bills to consumers.

23

24 NEW SECTION. Section 27. Unauthorized switching -- commission rulemaking. (1) An electricity  
25 supplier or any person, firm, corporation, or governmental entity may not make any change in the electricity  
26 supplier for a customer without first obtaining the customer's written permission.

27 (2) The commission shall promulgate rules establishing procedures to prevent unauthorized  
28 switching.

29

30 NEW SECTION. Section 28. Reciprocity. (1) Except as provided in [section 20], all electricity

1 suppliers must be afforded open, fair, and nondiscriminatory access to customers and a comparable  
2 opportunity to compete.

3 (2) A distribution services provider or the distribution services provider's affiliates may not use  
4 another distribution services provider's facilities in the state of Montana to sell electricity to customers in  
5 the state of Montana unless the first distribution services provider or the distribution services provider's  
6 affiliates offers comparable and nondiscriminatory access to the distribution services provider's distribution  
7 facilities.

8

9 NEW SECTION. Section 29. Transition advisory committee. (1) A transition advisory committee  
10 on electric utility industry restructuring is created. The transition advisory committee is composed of ~~18~~  
11 EIGHT VOTING members who are appointed as follows:

12 (a) The speaker of the house shall appoint ~~two~~ FOUR members from the house of representatives,  
13 NOT MORE THAN TWO OF WHOM MAY BE FROM ONE POLITICAL PARTY.

14 (b) The president of the senate shall appoint ~~two~~ FOUR members from the senate, NOT MORE  
15 THAN TWO OF WHOM MAY BE FROM ONE POLITICAL PARTY.

16 (2) THE FOLLOWING ENTITIES SHALL APPOINT NONVOTING ADVISORY REPRESENTATIVES TO  
17 THE TRANSITION ADVISORY COMMITTEE:

18 ~~(a)~~ (A) The director of the department of environmental quality shall appoint one department  
19 representative.

20 ~~(d)~~ (B) The legislative consumer council COUNSEL COMMITTEE shall appoint one representative.

21 ~~(e)~~ (C) ~~Two representatives~~ ONE REPRESENTATIVE of the cooperative utility industry are IS  
22 appointed as designated by the Montana electrical cooperative association.

23 ~~(f)~~ (D) ~~Two representatives selected by the~~ THE public utilities in the state of Montana ~~are appointed~~  
24 SHALL APPOINT ONE MEMBER.

25 ~~(g)~~ (E) ~~One representative of the~~ THE commission ~~is appointed~~ SHALL APPOINT ONE MEMBER.

26 ~~(h)~~ (F) The governor shall appoint the following NONVOTING committee members:

27 (i) one representative from the industrial community with an interest in the restructuring of the  
28 electric utility industry;

29 (ii) one representative from the nonindustrial retail electric consumer sector;

30 (iii) one representative from organized labor;

1 (iv) one representative from the community comprising environmental and conservation interests;

2 (v) one representative of ~~FROM A~~ low-income consumers PROGRAM PROVIDER;

3 (vi) one representative of Montana's Indian tribes; and

4 (vii) one representative of the electric power market industry.

5 ~~(2)(3)~~ In case of a vacancy, a replacement must be selected in the manner of the original  
6 appointment.

7 ~~(3)(4)~~ Legislative members are entitled to salary and expenses as provided in section 5-2-302.  
8 ~~Other members serve without salary and without reimbursement of expenses.~~

9 ~~(4)(5)~~ The public service commission, legislative services division, and appropriate state agencies  
10 shall provide staff assistance as requested by the committee.

11 ~~(5)(6)~~ Transition advisory committee members must be appointed within 60 days of [the effective  
12 date of this act] to an initial term expiring on December 31, 1999. Subsequent terms must be for up to  
13 2 years expiring on January 1 of odd-numbered years.

14 ~~(6)(7)~~ ~~The governor shall appoint a transition advisory committee presiding officer.~~ THE VOTING  
15 MEMBERS SHALL SELECT A TRANSITION ADVISORY COMMITTEE PRESIDING OFFICER.

16 ~~(7)(8)~~ The transition advisory committee on electric utility industry restructuring must dissolve on  
17 the earlier of either the date that full transition to retail competition is completed or December 31, 2004.

18 ~~(8)(9)~~ The transition advisory committee shall provide an annual report on the status of electric  
19 utility restructuring on or before November 1 to the governor, the speaker of the house, the president of  
20 the senate, and the commission AND SHALL PROVIDE QUARTERLY INTERIM SUMMARY REPORTS TO THE  
21 MEMBERS OF THE LEGISLATURE THROUGH JANUARY 1, 1999.

22 ~~(9)(10)~~ The transition advisory committee shall meet AT LEAST quarterly or as often as is necessary  
23 to conduct its business.

24 ~~(10)(11)~~ The transition advisory committee shall analyze and report on the transition to effective  
25 competition in the competitive electricity supply market. The annual report made in the year 2000 must  
26 evaluate specifically the pilot programs for customers with loads under 1,000 kilowatts and must include  
27 legislative recommendations, if it appears appropriate, about the best means to further encourage the  
28 development of customer choice and meaningful market access for the benefit of smaller customers. The  
29 annual report for the year 2000 must also address the need, if any, for additional consumer protection  
30 including protection from abusive or anticompetitive practices.



1           ~~(11)~~(12) The criteria that the transition advisory committee must use to evaluate effective  
2 competition in the electricity supply market include but are not limited to the following:

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

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

7           (c) the level of interest among electricity suppliers and the opportunity for electricity suppliers to  
8 serve smaller customers; and

9           (d) the existence of the requisite technical and administrative support that enables smaller  
10 customers to have choice of electricity supply.

11           ~~(12)~~(13) The transition advisory committee shall recommend legislation if necessary to promote  
12 electric utility restructuring and retail choice of electricity suppliers.

13           ~~(13)~~(14) The transition advisory committee shall make recommendations to the governor, regarding  
14 the implementation of statewide universal system benefits and universal energy ~~bill~~ assistance funds, in  
15 time to allow for those funds to be created on or before January 1, 1999. This may include  
16 recommendations regarding the assignment of an existing government agency or private nonprofit entity  
17 as the fund administrator and administration guidelines for the funds including the means by which funds  
18 may be made available for use.

19           ~~(14)~~(15) The transition advisory committee shall monitor and evaluate the universal system benefits  
20 programs and comparable levels of funding for the region and make recommendations to the 58th  
21 legislature to adjust the funding level provided for in [section 22] to coincide with the related activities of  
22 the region at that time.

23           ~~(15)~~(16) On or before July 1, 2002, the transition advisory committee, in coordination with the  
24 commission, shall conduct a reevaluation of the ongoing need for universal system benefits programs and  
25 annual funding requirements and shall make recommendations to the 58th legislature regarding the future  
26 need for those programs. The determination must focus specifically on the existence of markets to provide  
27 for any or all of the universal system benefits programs or whether other means for funding those programs  
28 have developed. These recommendations may also address how future reevaluations will be provided for,  
29 if necessary.

30           ~~(16)~~(17) On or before November 1, 2001, the transition advisory committee shall collect information

1 to determine whether Montana utilities or their affiliates have an opportunity to sell electricity to customers  
 2 outside of the state of Montana comparable to the opportunity provided pursuant to [sections 1 through  
 3 31] to utilities or their affiliates located outside the state of Montana. That information must be included  
 4 in the report to the 58th legislature.

5 ~~(17)~~(18) ON OR BEFORE NOVEMBER 1, 1998, THE TRANSITION ADVISORY COMMITTEE SHALL  
 6 MAKE RECOMMENDATIONS TO THE GOVERNOR AND THE LEGISLATURE REGARDING THE PROVISION  
 7 OF LOW-INCOME ENERGY ASSISTANCE PROGRAMS IN MONTANA BY ALL ENERGY PROVIDERS.

8

9 NEW SECTION. Section 30. Tax revenue analysis. (1) The revenue oversight committee, as  
 10 provided for in 5-18-102, shall analyze the amount of state and local tax revenue derived from previously  
 11 regulated electricity suppliers that will enter the competitive market and report to the legislature annually  
 12 on how revenue to the state or local government is changed by restructuring and competition.

13 (2) On or before November 30, 1998, the revenue oversight committee shall recommend legislative  
 14 changes, if any, to address the establishment of comparable state and local taxation burdens on all market  
 15 participants in the supply of electricity. Any legislation recommended by the revenue oversight committee  
 16 should place comparable state and local taxation burdens upon all market participants.

17

18 NEW SECTION. Section 31. Transition costs financing. (1) A utility may, after July 1, 1997, apply  
 19 to the commission for a determination that certain transition costs may be recovered through the issuance  
 20 of transition bonds. IF TRANSITION BONDS ARE ISSUED, COST SAVINGS ASSOCIATED WITH AND  
 21 RESULTING FROM THE BONDS MUST BENEFIT CUSTOMERS. After the issuance of a financing order, the  
 22 utility retains sole discretion regarding whether to sell, assign, or otherwise transfer or pledge transition  
 23 property or to cause the transition bonds to be issued, including the right to defer or postpone the sale,  
 24 assignment, transfer, pledge, or issuance. IF TRANSITION BONDS ARE NOT ISSUED WITHIN 4 YEARS OF  
 25 THE ISSUANCE OF THE FINANCING ORDER, THE FINANCING ORDER MUST TERMINATE. THE UTILITY  
 26 MAY APPLY FOR AN EXTENSION OR RENEWAL OF A FINANCING ORDER.

27 (2) (a) The commission may issue financing orders in accordance with this section to facilitate the  
 28 recovery, reimbursement, financing, or refinancing of transition costs and the acquisition of transition  
 29 property. A financing order may be adopted only upon the application of a utility and may only become  
 30 effective in accordance with its terms after the utility files with the commission the utility's written consent

1 to all terms and conditions of the financing order. A financing order may specify how amounts collected  
2 from a customer are allocated between fixed transition amounts and other charges.

3 (b) A financing order must include, without limitation, a procedure for the expeditious approval by  
4 the commission of periodic adjustments to NONBYPASSABLE RATES AND CHARGES ASSOCIATED WITH  
5 fixed transition amounts included in the order to ensure recovery of all transition costs and the costs of  
6 capital associated with the proposed recovery, reimbursement, financing, or refinancing of transition costs  
7 and the acquisition of transition property including the costs of issuing, servicing, and retiring the transition  
8 bonds contemplated by the financing order. THE ORDER MUST SET FORTH THE TERM OVER WHICH THE  
9 TRANSITION BONDS ARE TO BE PAID, BUT THOSE TERMS MAY NOT EXCEED 20 YEARS. These  
10 adjustments may not impose fixed transition amounts upon customer classes that were not subject to the  
11 fixed transition amounts in the pertinent financing order.

12 (3) (a) Notwithstanding any other provision of law, and except as otherwise provided in this section  
13 with respect to transition property that has been made the basis for the issuance of transition bonds AND  
14 UPON THE ISSUANCE OF TRANSITION BONDS, the financing orders and the fixed transition amounts must  
15 be irrevocable.

16 (b) ~~The~~ IF TRANSITION BONDS HAVE BEEN ISSUED, THE commission may not by rescinding,  
17 altering, or amending the financing order or otherwise:

18 (i) revalue or revise for ratemaking purposes the transition costs or the costs of recovering,  
19 reimbursing, financing, or refinancing the transition costs and acquiring transition property;

20 (ii) determine that the fixed transition amounts or rates are unjust or unreasonable; or

21 (iii) in any way reduce or impair the value of transition property either directly or indirectly by taking  
22 fixed transition amounts into account when setting other rates for the utility.

23 (c) The TOTAL amount of ~~revenue arising with respect to~~ the transition property may not be subject  
24 to reduction, impairment, postponement, or termination.

25 (d) Except as otherwise provided in this section, the state pledges and agrees with the assignees  
26 and pledgees of transition property and transition bondholders that the state may not limit or alter the fixed  
27 transition amounts, transition property, financing orders, or any right under the ~~obligations~~ BONDS until the  
28 ~~obligations~~ BONDS, together with the interest on the ~~obligations~~ BONDS, are fully met and discharged. THE  
29 BOARD, AS AGENT FOR THE STATE, IS AUTHORIZED TO INCLUDE THIS PLEDGE AND UNDERTAKING  
30 FOR THE STATE IN THESE OBLIGATIONS BONDS.

1 (e) Notwithstanding any other provision of this section, the commission shall approve those  
2 adjustments to the fixed transition amounts as may be necessary to ensure timely recovery of all transition  
3 costs that are the subject of the pertinent financing order and the costs of capital associated with the  
4 recovery, reimbursement, financing, or refinancing of transition costs and acquiring transition property  
5 including the costs of issuing, servicing, and retiring the transition bonds contemplated by the financing  
6 order. The adjustments may not impose fixed transition amounts upon customer classes that were not  
7 subject to the fixed transition amounts in the pertinent financing order.

8 (4) (a) Financing orders do not constitute a debt or liability of the state or of any political subdivision  
9 of the state if issued through the board and do not constitute a pledge of the full faith and credit of the  
10 state or any of the state's political subdivisions if issued through the board. The financing orders are  
11 payable solely from the funds provided under this section. The bonds and offering documents must contain  
12 ON THEIR FACE a statement to the following effect:

13 ~~"Neither the full faith and credit nor the taxing power of the State of Montana is pledged to the~~  
14 ~~payment of the principal of or interest on this security."~~ THIS BOND MAY NOT CONSTITUTE AN  
15 INDEBTEDNESS OR A LOAN OF CREDIT OF THE STATE OF MONTANA OR ANY POLITICAL SUBDIVISION  
16 OF THE STATE OF MONTANA WITHIN ANY CONSTITUTIONAL OR STATUTORY PROVISION. NEITHER  
17 THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF MONTANA IS PLEDGED TO  
18 THE PAYMENT OF THE PRINCIPAL OR INTEREST ON THIS BOND, AND NEITHER THE STATE OF  
19 MONTANA NOR ANY POLITICAL SUBDIVISION OF THE STATE OF MONTANA IS OBLIGATED, DIRECTLY,  
20 INDIRECTLY, OR CONTINGENTLY, TO LEVY OR TO PLEDGE ANY FORM OF TAXATION OR TO MAKE ANY  
21 APPROPRIATION FOR THE PAYMENT OF THIS BOND. THIS BOND IS A LIMITED OBLIGATION OF THE  
22 ISSUER, PAYABLE SOLELY OUT OF THE TRANSITION PROPERTY OR THE PROCEEDS OF THAT  
23 PROPERTY SPECIFICALLY PLEDGED FOR ITS PAYMENT AND NOT OTHERWISE.

24 (b) The issuance of bonds under this section may not directly, indirectly, or contingently obligate  
25 the state or any political subdivision of the state to levy or to pledge any form of taxation or to make any  
26 appropriation for bond payment.

27 (5) The commission shall establish procedures for the expeditious processing of applications for  
28 financing orders, including the approval or disapproval of applications within 120 days after a utility submits  
29 a complete application. The commission shall provide in any financing order for a procedure for the  
30 expeditious approval by the commission of periodic adjustments to the fixed transition amounts that are

1 the subject of the pertinent financing order pursuant to subsection (2). The commission shall determine  
2 on each anniversary of the issuance of the financing order and at additional intervals as may be provided  
3 for in the financing order whether the adjustments are required and shall provide for the adjustments, if  
4 required, to be approved within 60 days of each anniversary of the issuance of the financing order or of  
5 each additional interval provided for in the financing order.

6 (6) Fixed transition amounts become transition property when and to the extent that a financing  
7 order authorizing the fixed transition amounts has become effective in accordance with subsection (2), and  
8 the transition property must thereafter continuously exist as property for all purposes with all of the rights  
9 and privileges of [sections 1 through 31] for the period and to the extent provided in the financing order  
10 or until the transition bonds are paid in full including all principal, interest, premium, costs, and arrearages  
11 on the transition bonds.

12 (7) Transition bonds may be issued upon commission approval in the pertinent financing order.  
13 Transition bonds must specify that they do not provide recourse to the credit or any assets of the utility,  
14 other than the transition property as specified in the pertinent financing order.

15 (8) (a) A utility may sell, assign, or transfer all or portions of the utility's interest in transition  
16 property to an assignee. A utility or an assignee may further sell, assign, or transfer the utility's interest  
17 in that transition property to one or more assignees in connection with the issuance of transition bonds to  
18 the extent approved in the pertinent financing order.

19 (b) A utility or an assignee may pledge transition property as collateral for transition bonds to the  
20 extent approved in the pertinent financing order and may provide for a security interest in the transition  
21 property as provided in this section.

22 (c) Transition property may be sold, assigned, or transferred for the benefit of:

23 (i) transition bondholders in connection with the exercise of remedies upon a default; or

24 (ii) any person acquiring the transition property after a sale, assignment, or transfer pursuant to this  
25 section.

26 (9) (a) To the extent that any interest in transition property is sold, assigned, transferred, or pledged  
27 as collateral, the commission shall authorize the utility to contract with any assignee so that the utility will,  
28 subject to the utility's rights under subsection (18):

29 (i) continue to operate the utility's system and to provide service to the utility's customers;

30 (ii) collect amounts in respect of the fixed transition amounts for the benefit and account of the

1 assignee; and

2 (iii) account for and remit these amounts to or for the account of the assignee.

3 (b) Contracting with the assignee in accordance with the commission's authorization may not impair  
4 or negate the characterization of the sale, assignment, transfer, or pledge as a true sale, an absolute  
5 assignment or transfer, or a grant of a security interest, as applicable.

6 (10) Notwithstanding any other provision of law, any provision under this section or under a  
7 financing order requiring that the commission take or refrain from taking action with respect to the subject  
8 matter of a financing order binds the commission and any successor commission or agency exercising  
9 functions similar to the commission, and the commission or any successor commission or agency may not  
10 rescind, alter, or amend that requirement in a financing order.

11 (11) A pledge or any other security interest in transition property is valid, is enforceable against the  
12 pledgor and third parties, including judgment lien creditors, subject only to the rights of any third parties  
13 holding security interests in the transition property perfected in the manner described in this section, and  
14 attaches only when all of the following have taken place:

15 (a) the commission has issued the financing order authorizing the fixed transition amounts included  
16 in the transition property;

17 (b) value has been given by the pledgees of the transition property; and

18 (c) the pledgor has signed a security agreement or other financing-related agreement covering the  
19 transition property.

20 (12) (a) A valid and enforceable security interest in transition property is perfected only when it has  
21 attached and when a financing statement has been filed with the ~~commission~~ SECRETARY OF STATE in  
22 accordance with procedures that the ~~commission~~ SECRETARY OF STATE may establish. The financing  
23 statement must name the pledgor of the transition property as debtor and identify the transition property.

24 (b) Any description of the transition property is sufficient if the description refers to the financing  
25 order creating the transition property.

26 (c) The commission may require other filings with respect to the security interest in accordance with  
27 procedures the commission may establish, except that these filings may not affect the perfection of the  
28 security interest.

29 (13) A perfected security interest in transition property is a continuously perfected security interest  
30 in all revenue and proceeds arising with respect to the transition property, whether or not the revenue or

1 proceeds have accrued. Conflicting security interests must rank according to priority in time of perfection.  
2 Transition property constitutes property for all purposes, including for contracts securing transition bonds,  
3 whether or not the revenue and proceeds arising with respect to the transition property have accrued.

4 (14) (a) Subject to the terms of the security agreement covering the transition property and the  
5 rights of any third parties holding security interests in the transition property perfected in the manner  
6 described in this section, the validity and relative priority of a security interest created under this section  
7 is not defeated or adversely affected by:

8 (i) the commingling of revenue arising with respect to the transition property with other funds of  
9 the utility that is the pledgor or transferor of the transition property; or

10 (ii) any security interest of any third party in a deposit account of that utility perfected under Title  
11 30, chapter 9, part 3, into which the revenue is deposited.

12 (b) Subject to the terms of the security agreement, upon compliance with the requirements of this  
13 section, a pledgee of the transition property has a perfected security interest in all cash and deposit  
14 accounts of the utility in which revenue arising with respect to the transition property has been commingled  
15 with other funds, but the perfected security interest must be limited to an amount no greater than the  
16 amount of the revenue with respect to the transition property received by the utility within 12 months  
17 before any default under the security agreement or the institution of insolvency proceedings by or against  
18 the utility, less payments from the revenue to the pledgees during that 12-month period.

19 (15) (a) If a default occurs under the security agreement covering the transition property, a pledgee  
20 of the transition property, subject to the terms of the security agreement, has all rights and remedies of a  
21 secured party upon default under Title 30, chapter 9, part 5, and is entitled to foreclose or otherwise  
22 enforce the pledgee's security interest in the transition property, subject to the rights of any third parties  
23 holding prior security interests in the transition property perfected in the manner provided in this section.

24 (b) The commission may require in the financing order creating the transition property that in the  
25 event of default by the utility in payment of revenue arising with respect to the transition property, the  
26 commission and any successor to the commission, upon the application by a pledgee or assignee of the  
27 transition property and without limiting any other remedies available to the pledgees or transferees by  
28 reason of the default shall order the sequestration and payment to the pledgee or assignee of the proceeds  
29 of the transition property. An order must remain in full force and effect notwithstanding any bankruptcy,  
30 reorganization, or other insolvency proceedings with respect to the public utility or a debtor, pledgor, or

1 transferor of the transition property.

2 (c) Any sum in excess of amounts necessary to pay principal, premium, if any, interest, costs, and  
3 arrearages on the transition bonds and other costs arising under the security agreement must be remitted  
4 to the debtor or to the pledgor as provided in the security agreement.

5 (16) (a) A transfer of transition property by a utility to an assignee or by the assignee to another  
6 assignee that the parties have in the governing documentation expressly stated to be a sale or other  
7 absolute transfer in a transaction approved or authorized in a financing order must be treated as an absolute  
8 transfer of all of the transferor's right, title, and interest, as in a true sale, and not as a pledge or other  
9 financing of the transition property, other than for federal and state income and franchise tax purposes.

10 (b) Granting to transition bondholders a preferred right to revenue of the utility or the provision by  
11 the utility or an assignee of other credit enhancement with respect to transition bonds may not impair or  
12 negate the characterization of any transfer as a true sale, other than for federal and state income and  
13 franchise tax purposes.

14 (c) Notwithstanding the provisions of this subsection (16), for state tax purposes, a transfer must  
15 be treated as a pledge or other financing unless the governing documentation ~~or~~ OF transfer specifically  
16 states that THE transfer is intended to be treated otherwise. The characterization of the transfer as a true  
17 sale or other absolute transfer in the governing documentation of a transfer is not intended to prejudice the  
18 characterization of the transfer as a pledge or other financing for federal tax purposes.

19 (17) A sale, assignment, or other transfer of transition property may only be considered perfected  
20 as against any third person, including any judicial lien creditor, when both of the following have taken place:

21 (a) the financing order authorizing the fixed transition amounts included in the transition property  
22 has become effective in accordance with subsection (2); and

23 (b) an assignment of the transition property, in writing, has been executed and delivered to the  
24 transferee.

25 (18) (a) As between bona fide assignees of the same right for value without notice, the assignee  
26 first filing a financing statement with the ~~commission~~ SECRETARY OF STATE in accordance with  
27 procedures that the ~~commission~~ SECRETARY OF STATE may establish has priority. The financing  
28 statement must name the assignor of the transition property as debtor and must identify the transition  
29 property. Any description of the transition property is sufficient if the description refers to the financing  
30 order creating the transition property. The commission may require the assignor or the assignee to make



1 other filings with respect to the transfer in accordance with procedures that the commission may establish,  
2 but these filings may not affect the perfection of the transfer.

3 (b) Any successor to the utility, whether pursuant to any bankruptcy, reorganization, or other  
4 insolvency proceeding or pursuant to any merger, sale, or transfer, by operation of law, or otherwise, shall  
5 perform and satisfy all obligations of the utility pursuant to this section in the same manner and to the same  
6 extent as the utility, including but not limited to collecting and paying to the assignee or pledgee, as the  
7 case may be, revenue arising with respect to the transition property sold, assigned, transferred, or pledged  
8 to secure transition bonds.

9 (19) Transition property or any right, title, or interest of a utility, assignee, or pledgee described in  
10 the definition of transition property, whether before or after the issuance of a financing order, does not  
11 constitute an account or general intangibles under 30-9-106. Any right, title, or interest pertaining to a  
12 financing order, including the interest pertaining to a financing order, along with the associated transition  
13 property and any revenue, collections, claims, payments, money, or proceeds of or arising from fixed  
14 transition amounts pursuant to the financing order, may not be considered proceeds of any right, title, or  
15 interest other than in the order and the transition property arising from the order.

16 (20) The lien under this section is enforceable against the pledgor and all third parties, including  
17 judicial lien creditors, subject only to the rights of any third parties holding security interests in the transition  
18 property previously perfected in the manner described in this section if value has been given by the  
19 purchasers of transition bonds. A perfected lien in transition property is a continuously perfected security  
20 interest in all revenue and proceeds arising with respect to the associated transition property, whether or  
21 not revenue has been accrued. Transition property constitutes property for the purposes of contracts  
22 securing transition bonds, whether or not the related revenue has accrued. The lien created under this  
23 section is perfected and ranks before any lien, including any judicial lien, that subsequently attaches to the  
24 transition property, to the fixed transition costs, and to the financing order and any rights created by the  
25 order or any proceeds of the order. The relative priority of a lien created under this section is not defeated  
26 or adversely affected by changes to the financing order or to the fixed transition amounts payable by any  
27 customer.

28 (21) The commission shall establish and maintain a separate system of records to reflect the date  
29 and time of receipt of all filings made under this section and may provide that transfers of transition  
30 property to an assignee be filed in accordance with the same system.

1 (22) Any sale, assignment, or other transfer of transition property or any pledge of transition  
2 property is exempt from any state or local sales, income, transfers, gains, receipts, or similar taxes.

3 (23) The transition bonds issued under [sections 1 through 31] are exempt from the provisions of  
4 Title 30, chapter 10, but copies of all prospectus and disclosure documents must be deposited for public  
5 inspection with the state securities commissioner.

6 (24) The granting, perfection, and priority of security interests with respect to transition property  
7 and the proceeds thereof are governed by this section rather than Title 30, chapter 9.

8 (25) UPON THE PAYMENT IN FULL OF TRANSITION BOND PRINCIPAL AND INTEREST, THE  
9 UTILITY SHALL DISCONTINUE CHARGING AND COLLECTING THE COMPETITIVE TRANSITION CHARGE  
10 ASSOCIATED WITH THAT PORTION OF THE UTILITY'S APPROVED TRANSITION COSTS.

11 (26) THE COMMISSION MAY, BY ORDER OR RULE AND SUBJECT TO TERMS AND CONDITIONS  
12 THAT IT MAY PRESCRIBE, EXEMPT ANY SECURITY OR CLASS OF SECURITIES FOR WHICH AN  
13 APPLICATION IS REQUIRED UNDER THIS TITLE OR ANY PUBLIC UTILITY OR CLASS OF PUBLIC UTILITY  
14 FROM THE PROVISIONS OF THIS TITLE IF IT FINDS THAT THE APPLICATION OF THIS TITLE TO THE  
15 SECURITY, CLASS OF SECURITY, PUBLIC UTILITY, OR CLASS OF PUBLIC UTILITY IS NOT REQUIRED BY  
16 THE PUBLIC INTEREST.

17

18 **Section 32.** Section 15-6-137, MCA, is amended to read:

19 "15-6-137. **Class seven property -- description -- taxable percentage.** (1) Class seven property  
20 includes:

21 (a) all property used and owned by persons, firms, corporations, or other organizations that are  
22 engaged in the business of furnishing telephone communications exclusively to rural areas or to rural areas  
23 and cities and towns of 800 persons or less;

24 (b) all property owned by cooperative rural electrical and cooperative rural telephone associations  
25 that serve less than 95% of the electricity consumers or telephone users within the incorporated limits of  
26 a city or town, except rural electric cooperative properties described in 15-6-141(1)(a);

27 (c) electric transformers and meters; electric light and power substation machinery; natural gas  
28 measuring and regulating station equipment, meters, and compressor station machinery owned by  
29 noncentrally assessed public utilities; and tools used in the repair and maintenance of this property.

30 (2) To qualify for this classification, the average circuit miles for each station on the telephone

1 communication system described in subsection (1)(b) must be more than 1 mile.

2 (3) Class seven property is taxed at 8% of its market value."

3

4 **Section 33.** Section 15-6-141, MCA, is amended to read:

5 **"15-6-141. Class nine property -- description -- taxable percentage.** (1) Class nine property  
6 includes:

7 (a) centrally assessed electric power companies' allocations, including, if congress passes legislation  
8 that allows the state to tax property owned by an agency created by congress to transmit or distribute  
9 electrical energy, allocations of properties constructed, owned, or operated by a public agency created by  
10 the congress to transmit or distribute electric energy produced at privately owned generating facilities ~~+~~  
11 not including rural electric cooperatives~~};~~. ~~However, properties of rural electric cooperatives~~  
12 COOPERATIVES' PROPERTY USED FOR THE SOLE PURPOSE OF serving CUSTOMERS REPRESENTING less  
13 than 95% of the electric consumers located within the incorporated limits of a city or town of more than  
14 3,500 persons in which a centrally assessed electric power company also owns property ~~are~~ IS included.  
15 FOR PURPOSES OF THIS SUBSECTION (1)(A), "PROPERTY USED FOR THE SOLE PURPOSE" DOES NOT  
16 INCLUDE A HEADQUARTERS, OFFICE, SHOP, OR OTHER SIMILAR FACILITY.

17 (b) allocations for centrally assessed natural gas companies having a major distribution system in  
18 this state; and

19 (c) centrally assessed companies' allocations except:

20 (i) electric power and natural gas companies' property;

21 (ii) property owned by cooperative rural electric and cooperative rural telephone associations and  
22 classified in class five;

23 (iii) property owned by organizations providing telephone communications to rural areas and  
24 classified in class seven;

25 (iv) railroad transportation property included in class twelve; and

26 (v) airline transportation property included in class twelve.

27 (2) Class nine property is taxed at 12% of market value."

28

29 **Section 34.** Section 69-5-101, MCA, is amended to read:

30 **"69-5-101. Short title.** This part ~~shall be~~ is known and may be cited as the "Territorial Integrity

1 Act of 1974".

2

3 **Section 35.** Section 69-5-102, MCA, is amended to read:

4 **"69-5-102. Definitions.** When used in this part, the following definitions apply:

5 (1) ~~"Commercial premises" means the premises where the business of selling, warehousing, or~~  
 6 ~~distributing a commodity or other business activity is carried on or professional or other services are~~  
 7 ~~rendered. "Agreement" means a written agreement between two or more electric facilities providers that~~  
 8 ~~identifies the geographical area to be served exclusively by each electric facilities provider that is a party~~  
 9 ~~to the agreement and any terms and conditions pertinent to the agreement.~~

10 (2) "Electric cooperative" means a rural electric cooperative organized under Title 35, chapter 18,  
 11 or a foreign corporation admitted thereunder to do business in Montana.

12 (3) "Electric ~~supplier~~ facilities provider" means any electrical utility ~~and any electric cooperative that~~  
 13 ~~provides electric service facilities to the public.~~

14 (4) "Electric service facilities" means any distribution or transmission system or related facility  
 15 necessary to provide electricity to the premises, including lines.

16 ~~(4)(5)~~ (5) "Electric utility" means a person, firm, or corporation other than an electric cooperative  
 17 ~~which furnishes electrical~~ that provides electric service facilities to the public.

18 ~~(5) "Industrial premises" means the premises where an industrial activity is carried on, including~~  
 19 ~~but not limited to the operation of factories, mills, machine shops, mines, oil wells, refineries, pumping,~~  
 20 ~~cleaning and dyeing works, creameries, canneries, stockyards, feedlots, military installations, or other~~  
 21 ~~extractive, fabricating, or processing activities.~~

22 (6) "Line" means any electric supply conductor ~~operating at a nominal voltage level of 34,500 volts~~  
 23 ~~or less, measured phase to phase.~~

24 (7) "Premises" means a building, residence, structure, or facility to which ~~electricity is being~~ electric  
 25 service facilities are provided or ~~is~~ are to be furnished; ~~provided, that installed; however,~~ two or more  
 26 buildings, structures, or facilities ~~which that~~ are located on one tract or contiguous tracts of land and that  
 27 are ~~utilized~~ used by one electric consumer for farming, business, commercial, industrial, institutional,  
 28 governmental, or trailer court purposes ~~shall~~ must together constitute one premises, except that any ~~such~~  
 29 building, structure, or facility, other than a trailer court, ~~shall~~ may not, together with any other building,  
 30 structure, or facility, constitute one premises if the electric service to it is separately metered and the

1 charges for ~~such~~ that service are calculated independently of charges for service to any other building,  
2 structure, or facility.

3 (8) "Utility" means a public utility regulated by the commission pursuant to Title 69, chapter 3, or  
4 a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18."

5  
6 **Section 36.** Section 69-5-104, MCA, is amended to read:

7 **"69-5-104. Continuation of ~~service~~ electric service facilities to existing consumers. ~~Every~~ Each**  
8 **electric ~~supplier~~ service facilities provider shall have ~~has~~ the right to ~~serve~~ provide electric service facilities**  
9 **to all premises being served by it or to which any of its facilities are attached on ~~February 1, 1971~~ [the**  
10 **effective date of this act]."**

11  
12 **Section 37.** Section 69-5-105, MCA, is amended to read:

13 **"69-5-105. Service to new consumers.** (1) Subject to ~~69-5-106~~ this part, the electric ~~supplier~~  
14 **facilities provider** having a line nearest the premises, as measured in accordance with subsection (2), shall  
15 **serve provide electric service facilities to the premises initially requiring service after ~~February 1, 1971~~ [the**  
16 **effective date of this act], which creates a rebuttable presumption that the nearest line is the least-cost**  
17 **electric service facility to the new customer. However, a customer or another electric facilities provider**  
18 **may rebut the presumption, and another electric facilities provider may provide the electric service facilities**  
19 **if it can do so at less cost.**

20 (2) All measurements under this part ~~shall~~ must be made on the shortest straight line ~~which~~ that  
21 can be drawn from the conductor nearest the premises to the nearest permanent portion of the premises.  
22 ~~Construction power for premises to be constructed shall be supplied by the electric supplier having the right~~  
23 ~~to serve the completed premises.~~

24 (3) If the electric facilities providers are unable to reach agreement as to which electric facilities  
25 **provider can provide electric service facilities at least cost, an independent consultant engineer agreeable**  
26 **to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on**  
27 **a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction,**  
28 **as provided in 69-5-110, shall determine which electric facilities provider can extend its lines to the**  
29 **consumer at the least cost. The cost of those engineering services must be paid equally by the electric**  
30 **facilities providers involved."**

1           **Section 38.** Section 69-5-106, MCA, is amended to read:

2           "**69-5-106. ~~Service~~ Electric service facilities to industrial or commercial premises large customers.**

3           (1) An electric utility has the right to furnish electric service facilities to any ~~industrial or commercial~~  
4           premises if the estimated connected load for full ~~plant~~ operation at ~~such industrial or commercial~~ the  
5           premises will be 400 kilowatts or larger within 2 years from the date of initial service ~~provided such and~~  
6           if the electric utility can extend its ~~lines~~ facilities to ~~such industrial or commercial~~ the premises at less cost  
7           to the electric utility ~~or the industrial or commercial customer~~ than the electric cooperative cost. The  
8           estimated connected load ~~shall~~ must be determined from the plans and specifications prepared for  
9           construction of the premises or, if ~~such an~~ estimate is not available, ~~shall~~ must be determined by agreement  
10          of the electric ~~supplier~~ facilities provider and the customer. The fact that the actual connected load after  
11          2 years from the date of initial service is less than 400 kilowatts does not affect the right of the electric  
12          ~~supplier~~ facilities provider initially providing electric service facilities to continue to provide electric service  
13          facilities to ~~such the~~ premises.

14          (2) An independent consultant engineer agreeable to both electric ~~suppliers~~ facilities providers or,  
15          in the event of failure of the electric ~~suppliers~~ facilities providers to agree on a consultant engineer, an  
16          independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110,  
17          shall determine which electric ~~supplier~~ facilities provider can extend its ~~lines to the consumer~~ facilities at  
18          the least cost to the utility. The cost of ~~such those~~ engineering services ~~shall~~ must be paid equally by the  
19          electric ~~suppliers~~ facilities providers involved.

20          ~~(3) No premises other than another such commercial or industrial premises shall be served from~~  
21          ~~a line constructed under this section."~~

22

23          **Section 39.** Section 69-5-107, MCA, is amended to read:

24          "**69-5-107. ~~Service to property owned by electric supplier~~ Customer-owned facilities.** Nothing in  
25          ~~69-5-103 through 69-5-106 shall restrict the right of an electric supplier to furnish electric service to any~~  
26          ~~property owned by the electric supplier. This part may not limit a customer's right to construct, own, or~~  
27          operate electric service facilities for the customer's own use, and construction, ownership, or use may not  
28          cause the customer to be considered a utility. A customer may not duplicate existing electric service  
29          facilities."

30

1           **Section 40.** Section 69-5-108, MCA, is amended to read:

2           "**69-5-108. Agreements between electric suppliers as to service areas facilities providers.**

3   ~~Notwithstanding the provisions of 69-5-103 through 69-5-109, an electric supplier may furnish electric~~  
4   ~~service to any consumer at any premises being served by another electric supplier upon written agreement~~  
5   ~~of the affected electric suppliers or at premises that another electric supplier has the right to serve pursuant~~  
6   ~~to this part, upon written agreement of the affected electric suppliers. Utilities may enter into agreements~~  
7   that identify the geographical area to be exclusively served by each electric facilities provider that is party  
8   to the agreement, overriding the provisions of 69-5-105 and 69-5-107. If an agreement is approved by the  
9   commission pursuant to this part, the agreement is valid and binding on all electric facilities providers and  
10   all customers, except those provided for in 69-5-106."

11  
12           **Section 41.** Section 69-5-109, MCA, is amended to read:

13           "**69-5-109. Special provisions for annexed areas.** ~~With respect to service in areas which are~~  
14   ~~annexed to incorporated municipalities having a population in excess of 3,500 persons, electric suppliers~~  
15   ~~have rights and are subject to restrictions as follows:~~

16           ~~(1) Every electric supplier has the right to serve all premises being served by it on the date of~~  
17   ~~annexation.~~

18           ~~(2) An electric cooperative does not have the right to serve any premises initially requiring service~~  
19   ~~on or after the date of annexation. The restriction stated in this subsection does not apply to incorporated~~  
20   ~~municipalities in which 95% or more of the premises were served by an electric cooperative on February~~  
21   ~~4, 1971. (1) Electric facilities providers providing electric service facilities in or near areas that are~~  
22   incorporated municipalities having a population in excess of 3,500 persons and having annexed areas since  
23   1985 or having existing municipal planning zones on [the effective date of this act] shall enter into  
24   agreements dividing the annexed and planning zone areas into exclusive service territories and shall submit  
25   the agreements to the commission for approval, pursuant to this part.

26           (2) The agreements do not apply to electric service facilities with loads of 400 kilowatts or greater.  
27   Agreements must be based on the location of facilities in place on [the effective date of this act].

28           (3) If electric facilities providers have failed to negotiate agreements within 1 year from the  
29   [effective date of this act], the commission shall divide the annexed and planning zone areas into exclusive  
30   service territories, using the considerations pursuant to [section 44].

1           (4) Until agreements are final, electric service facilities to new customers will be provided pursuant  
 2 to 69-5-105."

3  
 4           **Section 42.** Section 69-5-110, MCA, is amended to read:

5           **"69-5-110. Jurisdiction of district courts over disputes.** The district courts of the county or  
 6 counties within which the premises or lines involved in any dispute are located ~~shall~~ have jurisdiction under  
 7 this part over all electric ~~suppliers~~ facilities providers subject to ~~the provisions thereof~~ this part."

8  
 9           **Section 43.** Section 69-5-111, MCA, is amended to read:

10           **"69-5-111. Judicial remedies.** (1) Whenever ~~it shall appear that any an~~ an electric supplier facilities  
 11 provider is failing or omitting or about to fail or omit to do anything required of it by this part or is doing  
 12 or is about to do anything or to permit anything to be done contrary to or in violation of this part, ~~any the~~  
 13 electric ~~supplier~~ facilities provider affected ~~thereby shall have the right to~~ may file a complaint in the district  
 14 court ~~briefly~~ setting forth the acts or omissions complained of and requesting an injunction.

15           (2) If an affidavit showing that grounds exist ~~therefor~~ that an electric facilities provider is in  
 16 violation of this part is filed with the complaint, a temporary restraining order ~~shall~~ must be issued without  
 17 notice. A copy of the temporary restraining order, complaint, and affidavit ~~shall~~ must be served upon the  
 18 defendant, together with an order to show cause why the temporary restraining order should not be made  
 19 permanent, within 5 days after issuance of the temporary restraining order. The hearing on the order to  
 20 show cause must be held at a date specified ~~therein in the order, which shall~~ and may not be more than  
 21 10 days after service ~~thereof of the order~~ and ~~shall~~ must take precedence over all matters pending before  
 22 the district court. A judgment making the injunction permanent or dissolving the temporary restraining order  
 23 ~~therefore that was~~ issued and dismissing the complaint must be made ~~not later than~~ before 10 days after  
 24 the hearing on the order to show cause.

25           (3) Any party aggrieved by the order may appeal to the supreme court of Montana by filing a notice  
 26 of appeal in the district court within 20 days from entry of the order. The appeal must be perfected within  
 27 20 days ~~thereafter~~ after filing the notice of appeal and ~~shall~~ must take precedence over all matters pending  
 28 before the supreme court of Montana."

29  
 30           **NEW SECTION. Section 44. Commission jurisdiction over agreements.** (1) All agreements between



1 electric facilities providers must be submitted to the commission for approval. Each agreement must clearly  
 2 identify the geographical area to be served by each electric facilities provider. The submission must include:

3 (a) a map and a written description of the area; AND

4 (b) the terms and conditions pertaining to the implementation of the agreement.

5 (2) WHENEVER AN AGREEMENT INVOLVES THE EXCHANGE OR TRANSFER OF CUSTOMERS

6 WITHIN SERVICE TERRITORIES, THE FOLLOWING MUST ALSO BE INCLUDED WITH THE AGREEMENT

7 SUBMISSION:

8 ~~(a)~~(A) the number and class of customers to be transferred;

9 ~~(b)~~(B) assurance that the affected customers have been contacted and have received a written  
 10 explanation of the difference in rates; and

11 ~~(c)~~(C) information with respect to the degree of acceptance by affected customers, such as the  
 12 number in favor of and those opposed to the transfer.

13 ~~(2)~~(3) In approving agreements, the commission shall consider but not be limited to consideration  
 14 of:

15 (a) the reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the  
 16 reliability of electric service to the existing or future ratepayers of any electric facilities provider party of  
 17 the agreement; and

18 (b) the reasonable likelihood that the agreement will eliminate existing or potentially uneconomic  
 19 duplication of electric service facilities.

20 ~~(3)~~(4) An agreement approved by the commission is valid and enforceable, and except as provided  
 21 in 69-5-106, an electric facilities provider may not offer, construct, or extend electric service facilities into  
 22 an exclusive territory.

23 ~~(4)~~(5) The commission shall state its findings and conclusions for approving or disapproving an  
 24 agreement and shall render a decision within 90 days of receipt of the agreement. The electric facilities  
 25 providers submitting the agreement to the commission shall act according to the agreement until a decision  
 26 is rendered.

27 ~~(5)~~(6) Upon approval of the agreement, any modification, changes, or corrections to this agreement  
 28 must be approved by the commission.

29 ~~(6)~~(7) The commission may promulgate rules to administer this part consistent with the  
 30 requirements of this part.

1           NEW SECTION. SECTION 45. FUNDING FOR TRANSITION ADVISORY COMMITTEE. (1) THERE  
2 IS AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND TO WHICH ALL FEES COLLECTED UNDER  
3 [SECTION 46] AND THIS SECTION MUST BE DEPOSITED AND FROM WHICH ALL APPROPRIATIONS TO  
4 THE LEGISLATIVE SERVICES DIVISION FOR THE ACTIVITIES OF THE TRANSITION ADVISORY  
5 COMMITTEE MUST BE PAID. AN APPROPRIATION TO THE LEGISLATIVE SERVICES DIVISION FOR THE  
6 ACTIVITIES OF THE TRANSITION ADVISORY COMMITTEE MAY CONSIST OF A BASE APPROPRIATION  
7 FOR REGULAR OPERATING EXPENSES.

8           (2) IN ADDITION TO ALL OTHER LICENSES, FEES, AND TAXES IMPOSED BY LAW, ALL ELECTRIC  
9 UTILITY COMPANIES SHALL:

10           (A) WITHIN 30 DAYS AFTER THE CLOSE OF EACH CALENDAR QUARTER, FILE WITH THE  
11 DEPARTMENT OF PUBLIC SERVICE REGULATION AND THE DEPARTMENT OF REVENUE A STATEMENT,  
12 IN A FORM THAT THE COMMISSION AND DEPARTMENT OF REVENUE MAY DETERMINE, SHOWING THE  
13 GROSS OPERATING REVENUE FROM ALL ACTIVITIES BY THE COMMISSION WITHIN THE STATE FOR  
14 THAT CALENDAR QUARTER OF OPERATION OR PORTION OF A QUARTER, SEPARATELY STATING  
15 GROSS REVENUE FROM SALES TO OTHER COMPANIES FOR RESALE; AND

16           (B) AT THAT TIME PAY TO THE DEPARTMENT OF REVENUE A FEE BASED ON A PERCENTAGE  
17 OF THE GROSS OPERATING REVENUE REPORTED, AS DETERMINED BY THE DEPARTMENT OF REVENUE  
18 UNDER [SECTION 46].

19           (3) UNLESS THE DEPARTMENT OF REVENUE REQUIRES OTHERWISE, A STATEMENT FILED  
20 PURSUANT TO 69-1-223(2)(A) MEETS THE REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION.

21           (4) THE AMOUNT OF MONEY THAT MAY BE RAISED BY THE FEE ON THE ELECTRIC UTILITY  
22 COMPANIES DURING A FISCAL YEAR MAY NOT BE INCREASED, EXCEPT AS PROVIDED IN [SECTION  
23 46], FROM THE AMOUNT APPROPRIATED, INCLUDING BOTH BASE AND CONTINGENCY  
24 APPROPRIATIONS, BY THE LEGISLATURE FOR THAT FISCAL YEAR. ANY ADDITIONAL MONEY REQUIRED  
25 FOR OPERATION OF THE TRANSITION ADVISORY COMMITTEE MUST BE OBTAINED FROM OTHER  
26 SOURCES IN A MANNER AUTHORIZED BY THE LEGISLATURE.

27           (5) AS USED IN [SECTION 46] AND THIS SECTION, "ELECTRIC UTILITY COMPANY" HAS THE  
28 SAME MEANING AS "ELECTRIC FACILITIES PROVIDER" AS DEFINED IN 69-5-102.

29  
30           NEW SECTION. SECTION 46. DETERMINATION OF FEE FOR ACTIVITIES OF TRANSITION

1 ADVISORY COMMITTEE -- FAILURE TO PAY -- PENALTY -- STATUTE OF LIMITATIONS. (1) ON OR  
2 BEFORE JUNE 30 IN EACH YEAR, THE DEPARTMENT OF REVENUE SHALL:

3 (A) DETERMINE THE TOTAL GROSS OPERATING REVENUE GENERATED BY ALL ACTIVITIES  
4 WITHIN THIS STATE FOR ALL ELECTRIC UTILITY COMPANIES FOR THE PREVIOUS FISCAL YEAR;

5 (B) COMPUTE THE PERCENTAGE, SUBJECT TO REVISION AS PROVIDED IN SUBSECTION (2), OF  
6 THE AMOUNT DETERMINED IN SUBSECTION (1)(A) THAT WILL PRODUCE AN AMOUNT EQUAL TO THE  
7 APPROPRIATION TO THE LEGISLATIVE SERVICES DIVISION, EXCEPT THAT AN ELECTRIC UTILITY  
8 COMPANY OWNED AND OPERATED BY ANY MUNICIPAL CORPORATION WITHIN THIS STATE MAY NOT  
9 BE REQUIRED TO PAY A SUM IN EXCESS OF 0.06 OF 1% OF ITS GROSS OPERATING REVENUE;

10 (C) ADJUST THE PERCENTAGE MULTIPLIER COMPUTED IN SUBSECTION (1)(B) TO ENSURE THAT  
11 SUFFICIENT FUNDS ARE GENERATED TO MEET THE APPROPRIATION AND THAT EXCESS FUNDS ARE  
12 NOT GENERATED OR RETAINED; AND

13 (D) GIVE NOTICE BY MAIL TO EACH ELECTRIC UTILITY COMPANY OF THE PERCENTAGE TO BE  
14 APPLIED TO THE GROSS OPERATING REVENUE TO DETERMINE THE AMOUNT OF THE FEE TO BE PAID.

15 (2) (A) THE DEPARTMENT OF REVENUE SHALL ADJUST THE PERCENTAGE MULTIPLIER IF THE  
16 DEPARTMENT CONSIDERS A CHANGE NECESSARY TO MEET OR TO NOT EXCEED THE AMOUNT TO BE  
17 RAISED BY THE FEE BECAUSE OF:

18 (I) FLUCTUATIONS IN THE ACTUAL GROSS OPERATING REVENUE SUBJECT TO THE FEE; OR

19 (II) SUBMISSION AND APPROVAL OF A BUDGET AMENDMENT AUTHORIZING THE SPENDING  
20 OF MONEY FROM A CONTINGENCY APPROPRIATION INCLUDED IN THE APPROPRIATION FOR THE  
21 LEGISLATIVE SERVICES DIVISION IN SUPPORT OF THE ACTIVITIES OF THE TRANSITION ADVISORY  
22 COMMITTEE AND AUTHORIZED TO BE RAISED BY MEANS OF THE FEE.

23 (B) ADJUSTMENTS OF THE PERCENTAGE MULTIPLIER ARE SUBJECT TO THE EXCEPTION  
24 PROVIDED IN SUBSECTION (1)(B) FOR MUNICIPALLY OWNED AND OPERATED ELECTRIC UTILITY  
25 COMPANIES.

26 (C) ELECTRIC UTILITY COMPANIES MUST BE GIVEN AT LEAST 30 DAYS' NOTICE OF ANY  
27 CHANGE IN THE PERCENTAGE MULTIPLIER.

28 (D) ANY CHANGE IN THE PERCENTAGE MULTIPLIER IS EFFECTIVE AT THE BEGINNING OF THE  
29 NEXT CALENDAR QUARTER.

30 (3) IN THE EVENT THAT THE FEE CHARGED IN 1 YEAR IS IN EXCESS OF THE AMOUNT

1 ACTUALLY EXPENDED IN THAT YEAR, THE EXCESS MUST BE DEDUCTED FROM THE AMOUNT  
 2 REQUIRED TO BE RAISED BY THE FEE FOR THE NEXT YEAR BEFORE THE DETERMINATION REQUIRED  
 3 BY SUBSECTION (1) IS MADE. MONEY REMAINING UNSPENT AT THE CLOSE OF THE FISCAL YEAR  
 4 MUST BE USED TO REDUCE THE PERCENTAGE CALCULATED UNDER THIS SECTION IN THE  
 5 SUBSEQUENT FISCAL YEAR.

6 (4) ALL FEES PAID BY AN ELECTRIC UTILITY COMPANY PURSUANT TO THIS SECTION ARE  
 7 IMMEDIATELY RECOVERABLE BY THE ELECTRIC UTILITY COMPANY IN ITS RATES AND CHARGES.  
 8 WITHIN 30 DAYS AFTER THE ISSUANCE BY THE DEPARTMENT OF REVENUE OF THE NOTICE REQUIRED  
 9 BY SUBSECTION (1), THE COMMISSION SHALL BY SEPARATE ORDER AUTHORIZE EACH ELECTRIC  
 10 UTILITY COMPANY TO FULLY RECOVER IN ITS RATES AND CHARGES, ON AN ANNUAL BASIS, THE  
 11 FEES LEVIED BY THIS SECTION.

12 (5) (A) IF AN ELECTRIC UTILITY COMPANY FAILS, NEGLECTS, OR REFUSES TO FILE A  
 13 STATEMENT OR TO PAY THE FEE REQUIRED BY [SECTION 45] OR THIS SECTION, THE DEPARTMENT  
 14 OF REVENUE SHALL COLLECT THE FEE IN THE SAME MANNER AS THE FEE FOR THE OFFICE OF THE  
 15 LEGISLATIVE CONSUMER COUNSEL IS COLLECTED IN 69-1-225 THROUGH 69-1-230.

16 (B) THE PENALTY FOR FAILURE TO PAY THE FEE IMPOSED UNDER [SECTION 45] AND THIS  
 17 SECTION IS THE SAME AS THE PENALTY UNDER 69-1-226.

18 (C) AN OVERPAYMENT OF THE FEE MUST BE PROCESSED IN THE SAME MANNER AS AN  
 19 OVERPAYMENT IS PROCESSED UNDER 69-1-228.

20 (D) THE STATUTE OF LIMITATIONS FOR A DEFICIENCY ASSESSMENT IS THE SAME AS  
 21 PROVIDED IN 69-1-230.

22  
 23 NEW SECTION. SECTION 47. APPROPRIATION. THERE IS APPROPRIATED FROM THE FEES  
 24 COLLECTED UNDER [SECTIONS 45 AND 46] TO THE LEGISLATIVE SERVICES DIVISION \$76,000 FOR THE  
 25 ACTIVITIES OF THE TRANSITION ADVISORY COMMITTEE ON ELECTRIC UTILITY INDUSTRY  
 26 RESTRUCTURING. THIS IS A BIENNIAL APPROPRIATION.

27  
 28 NEW SECTION. Section 48. Repealer. Section 69-5-103, MCA, is repealed.

29  
 30 NEW SECTION. Section 49. Saving clause. [This act] does not affect rights and duties that

1 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this  
2 act].

3  
4 **NEW SECTION. Section 50. Severability.** If a part of [this act] is invalid, all valid parts that are  
5 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
6 applications, the part remains in effect in all valid applications that are severable from the invalid  
7 applications.

8  
9 **NEW SECTION. Section 51. Codification instructions.** (1) [Sections 1 through 31, 45, AND 46]  
10 are intended to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections  
11 1 through 31, 45, AND 46].

12 (2) [Section 44] is intended to be codified as an integral part of Title 69, chapter 5, part 1, and the  
13 provisions of Title 69, chapter 5, part 1, apply to [section 44].

14  
15 **NEW SECTION. Section 52. Effective date.** [This act] is effective on passage and approval.

16 -END-

SENATE BILL NO. 390

INTRODUCED BY THOMAS, QUILICI, HARP, BERGSAGEL, SLITER, MOLNAR, BEAUDRY, MASOLO, GRINDE, MAHLUM, MENAHAN, DEVLIN, SHEA, CHRISTIAENS, SIMPKINS, STANG, DEPRATU, L. TAYLOR, HARRINGTON, BOOKOUT-REINICKE, STORY, OHS, PAVLOVICH, DEVANEY, JABS, REHBEIN, KEATING, TOEWS, TROPILA, ORR, FOSTER, LYNCH, GALVIN, MCCARTHY, BECK, RYAN, EMERSON, KITZENBERG, DEBRUYCKER, HERTEL, MILLS, GRADY, HALLIGAN, M. TAYLOR, GROSFIELD, WILSON, NELSON, CLARK, TASH, BISHOP, BENEDICT, SPRAGUE, COLE, MOHL, ELLIS, JENKINS, KOTTEL, WYATT, DENNY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY ESTABLISHING RESTRUCTURING REQUIREMENTS FORMONTANA'S ELECTRIC UTILITY INDUSTRY; PROVIDING CUSTOMER CHOICE; GENERALLY REVISING THE TERRITORIAL INTEGRITY LAWS; REMOVING CERTAIN RURAL ELECTRIC COOPERATIVE PROPERTIES FROM CLASS SEVEN PROPERTY; INCLUDING CERTAIN RURAL ELECTRIC COOPERATIVE PROPERTIES IN CLASS NINE PROPERTY; APPROPRIATING FUNDS FOR THE ACTIVITIES OF THE TRANSITION ADVISORY COMMITTEE ON ELECTRIC UTILITY INDUSTRY RESTRUCTURING; IMPOSING A FEE ON ELECTRIC UTILITY COMPANIES TO SUPPORT THE ACTIVITIES OF THE TRANSITION ADVISORY COMMITTEE; AMENDING SECTIONS 15-6-137, 15-6-141, 69-5-101, 69-5-102, 69-5-104, 69-5-105, 69-5-106, 69-5-107, 69-5-108, 69-5-109, 69-5-110, AND 69-5-111, MCA; REPEALING SECTION 69-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required because this bill provides the public service commission with rulemaking authority.

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 31] may be cited as the "Electric Utility Industry Restructuring and Customer Choice Act".

NEW SECTION. **Section 2. Legislative findings and policy.** The legislature finds and declares the

1 following:

2 (1) The generation and sale of electricity is becoming a competitive industry.

3 (2) Montana customers should have the freedom to choose their supplier of electricity and related  
4 services in a competitive market as soon as administratively feasible. Affording this opportunity serves the  
5 public interest.

6 (3) The INTERESTS OF MONTANA CONSUMERS SHOULD BE PROTECTED AND THE financial  
7 integrity of electrical utilities should be fostered WHILE RECOGNIZING THE INTERESTS OF MONTANA  
8 CONSUMERS.

9 (4) The public interest requires the continued protection of consumers through:

10 (a) licensure of electricity suppliers;

11 (b) provision of information to consumers regarding electricity supply service;

12 (c) provision of a process for investigating and resolving complaints;

13 (d) continued funding for public purpose programs for:

14 (i) cost-effective local energy conservation;

15 (ii) low-income customer weatherization;

16 (iii) renewable resource PROJECTS AND applications;

17 (iv) research and development programs related to energy conservation and renewables;

18 (v) market transformation; and

19 (vi) low-income energy ~~bill~~ assistance;

20 (e) assurance of service reliability and quality; and

21 (f) prevention of anticompetitive and abusive activities.

22 (5) A UTILITY IN THE STATE OF MONTANA MAY NOT BE ADVANTAGED OR DISADVANTAGED  
23 IN THE COMPETITIVE ELECTRICITY SUPPLY MARKET, INCLUDING THE CONSIDERATION OF THE  
24 EXISTENCE OF UNIVERSAL SYSTEM BENEFITS PROGRAMS AND THE COMPARABLE LEVEL OF FUNDING  
25 FOR THOSE PROGRAMS THROUGHOUT THE REGIONS NEIGHBORING MONTANA.

26

27 NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 31], unless the context  
28 requires otherwise, the following definitions apply:

29 (1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that  
30 aggregates retail customers and purchases electric energy and takes title to electric energy as an

1 intermediary for sale to retail customers.

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

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

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

10 (5) "Cooperative utility" means:

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

12 (b) an existing municipal ELECTRIC utility as of [the effective date of this act]; ~~or,~~

13 ~~(c) a federally owned and locally managed electric utility in the state of Montana that is operated~~  
14 ~~under contract between a federally recognized Indian tribe and the United States.~~

15 (6) "Customer" or "consumer" means a retail electric customer or consumer. THE UNIVERSITY OF  
16 MONTANA, PURSUANT TO 20-25-201(1), AND MONTANA STATE UNIVERSITY, PURSUANT TO  
17 20-25-201(2), ARE EACH CONSIDERED A SINGLE RETAIL ELECTRIC CUSTOMER OR CONSUMER WITH  
18 A SINGLE INDIVIDUAL LOAD.

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

22 (8) "Distribution services provider" means a person controlling or operating distribution facilities for  
23 distribution of electricity to the public.

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

26 (10) "Financing order" means an order of the commission adopted in accordance with [section 31]  
27 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition  
28 bonds.

29 (11) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not  
30 limited to:



1 (i) distribution;  
 2 (ii) connection;  
 3 (iii) disconnection; and  
 4 (iv) termination rates and charges that are authorized by the commission in a financing order to  
 5 permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the  
 6 transition costs and acquiring transition property through a plan approved by the commission in the  
 7 financing order, including the costs of issuing, servicing, and retiring transition bonds.

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

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

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

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

17 (15) "Nonbypassable rates or charges" means rates or charges approved by the commission  
 18 imposed by ON a customer to pay the customer's share of transition costs or universal system benefits  
 19 program costs even if the customer has physically bypassed either the utility's transmission or distribution  
 20 facilities.

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

24 (17) "Public utility" means any electric utility regulated by the commission pursuant to Title 69,  
 25 chapter 3, on [the effective date of this act], including the public utility's successors or assignees.

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

28 (19) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust  
 29 certificate, or other evidence of indebtedness or ownership ISSUED BY THE BOARD OR OTHER  
 30 TRANSITION BONDS ISSUER that is secured by or payable from fixed transition amounts or transition

1 property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance  
2 transition costs and to acquire transition property.

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

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

7 (22) "Transition costs" means:

8 (a) a public utility's net verifiable generation-related and electricity supply costs, including costs  
9 of capital, that become unrecoverable as a result of the implementation of [sections 1 through 31] or of  
10 federal law requiring retail open access or customer choice.

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

12 (i) regulatory assets and deferred charges that exist because of current regulatory practices and can  
13 be accounted for up to the effective date of the commission's final order regarding a public utility's  
14 transition plan AND CONSERVATION INVESTMENTS MADE PRIOR TO UNIVERSAL SYSTEM BENEFITS

15 CHARGE IMPLEMENTATION;

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

17 (iii) existing generation investments and supply commitments or other obligations incurred before  
18 [the effective date of this act] AND COSTS ARISING FROM THESE INVESTMENTS AND COMMITMENTS;

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

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

25 (23) "Transition period" means the period beginning on July 1, 1998, and ending on July 1, 2002,  
26 unless otherwise extended pursuant to [sections 1 through 31], during which utilities may phase in  
27 customer choice of electricity supplier.

28 (24) "Transition property" means the property right created by a financing order including without  
29 limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue,  
30 collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition

1 amounts that are the subject of a financing order including those nonbypassable rates and other charges  
 2 and fixed transition amounts that are authorized by the commission in the financing order to recover  
 3 transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and  
 4 acquiring transition property including the costs of issuing, servicing, and retiring transition bonds. Any  
 5 right that a utility has in the transition property before the utility's sale or transfer or any other right created  
 6 under this section or created in the financing order and assignable under [sections 1 through 31] or  
 7 assignable pursuant to a financing order is only a contract right.

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

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

11 (27) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on  
 12 a customer to pay the customer's share of universal system benefits program costs.

13 (28) "Universal system benefits programs" means public purpose programs for:

14 (a) cost-effective local energy conservation;

15 (b) low-income customer weatherization;

16 (c) renewable resource PROJECTS AND applications, including those that capture unique social and  
 17 energy system benefits or provide transmission and distribution system benefits;

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

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

20 and

21 (f) low-income energy bill assistance ~~as approved by the commission.~~

22 (29) "Utility" means any public utility or cooperative utility.

23

24 NEW SECTION. Section 4. Pilot programs. (1) Except as provided in [sections 5(4) and 20],  
 25 beginning July 1, 1998, utilities shall conduct pilot programs using a representative sample of their  
 26 residential and small commercial customers. A report describing and analyzing the results of the pilot  
 27 programs must be submitted to the commission and the transition advisory committee established in  
 28 [section 29] on or before July 1, 2000.

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

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

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

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

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

9

10 **NEW SECTION. Section 5. Public utility -- transition to customer choice -- waiver.** (1) A public  
11 utility shall, except as provided in this section, adhere to the following deadlines:

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

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

17 (2) (a) Except as provided for in subsection (3), the commission may determine that additional time  
18 is necessary for customers identified in subsection (1)(b); however, the implementation of full customer  
19 choice may not be delayed beyond July 1, 2004.

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

23 (i) implementation would not be administratively feasible;

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

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

27 (3) Except as provided in ~~section~~ **SECTIONS 22 AND 34 THROUGH 44**, a public utility currently  
28 doing business in Montana as part of a single integrated multistate operation, no portion of which lies within  
29 the basin of the Columbia River may:

30 (a) defer compliance with ~~this section~~ **SECTIONS 1 THROUGH 31** until a time that the public utility

1 can reasonably implement customer choice in the state of the public utility's primary service territory except  
2 that the public utility shall file a transition plan pursuant to [section 6] to provide transition to customer  
3 choice on or before July 1, 2002, and must have completed the transition period to customer choice by  
4 July 1, 2006; and

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

6 (4) Upon a request from a public utility with fewer than 50 customers, the commission shall waive  
7 compliance with the requirements of [sections 4, 6 THROUGH 12, 22, and this section].

8

9 **NEW SECTION. Section 6. Public utility -- transition plans.** (1) All public utilities, pursuant to  
10 [sections 1 through 31], shall submit a transition plan to the commission. Plans must be filed with the  
11 commission not later than 1 year before the date by which any customers of the public utility are entitled  
12 to choice of electricity supplier pursuant to [section 5]. The commission may develop a schedule for public  
13 utilities that are required to file plans. The transition plan must demonstrate that the public utility meets  
14 all the requirements of [sections 1 through 31].

15 (2) The commission shall develop a procedural schedule that includes:

16 (a) a preliminary transition plan determination including the commission's findings on whether the  
17 plan is complete and adequate subject to the requirements of [sections 1 through 31]; and

18 (b) an opportunity for a public utility to file a revised plan based on the preliminary determination.

19 (3) Unless waived by the public utility, the commission shall issue a final order approving,  
20 MODIFYING, or denying the transition plan before 9 months after the date a public utility files a plan. All  
21 parties are afforded an opportunity for hearing before issuance of the final order.

22 (4) The commission shall process a request for approval of a transition plan pursuant to the  
23 contested case procedures of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

24 (5) On approval of the plan, the commission shall enforce the public utility obligations as  
25 incorporated in the plan and in the commission's final order.

26

27 **NEW SECTION. Section 7. Public utility -- customer choice -- continued service -- education of**  
28 **customers.** (1) A customer is permitted to choose an electricity supplier pursuant to the deadlines  
29 established in [section 5]. Public utilities shall propose a method for customers to choose an electricity  
30 supplier.

1 (2) If a customer has not chosen an electricity supplier by the end of the transition period, a public  
 2 utility shall propose a method in the public utility's transition plans for assigning that customer to an  
 3 electricity supplier.

4 (3) A public utility may phase in customer choice to promote the orderly transition to a competitive  
 5 market environment pursuant to the deadlines in [section 5].

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

9

10 **NEW SECTION. Section 8. Public utility -- functional separation, divestiture, and nondiscrimination.**

11 (1) To the extent that a public utility is vertically integrated, a public utility shall functionally separate the  
 12 public utility's electricity supply, retail transmission and distribution, and regulated and unregulated retail  
 13 energy services operations in the state of Montana, upon application to and approval from the commission.

14 (2) The commission may not order a public utility to divest itself of any generation assets or prohibit  
 15 a public utility from divesting itself voluntarily of any generation assets.

16 (3) Public utilities shall:

17 (a) prevent undue discrimination in favor of their own power supply, other services, divisions, or  
 18 affiliates, if any;

19 (b) prevent any other forms of self-dealing that could result in noncompetitive electricity prices to  
 20 customers; and

21 (c) grant customers and their electricity suppliers access to the public utility's retail transmission  
 22 and distribution system on a nondiscriminatory basis at rates, terms, and conditions of service comparable  
 23 to the use of the retail transmission and distribution system by the public utility and the public utility's  
 24 affiliates.

25 (4) The provisions of this section are satisfied if the public utility adopts and complies with A CODE  
 26 OF CONDUCT CONSISTENT WITH federal energy regulatory commission approved code of conduct  
 27 pursuant to 18 CFR, part 37. The commission shall promulgate rules relating to the codes of conduct.

28

29 **NEW SECTION. Section 9. Public utility -- distribution services.** (1) A public utility's distribution  
 30 services provider shall:

1 (a) file tariffs that make distribution facilities available to all electricity suppliers, transmission  
2 services providers, and customers on a nondiscriminatory and comparable basis;

3 (b) build and maintain distribution facilities; and

4 (c) be an emergency supplier of electricity and related services.

5 (2) When a distribution services provider acts as an emergency supplier of electricity and related  
6 services to customers, the electricity supplier that should have provided the electricity shall reimburse the  
7 distribution services provider at the higher of a multiple of the cost or a multiple of the then existing market  
8 rate for that electricity. The commission shall determine and authorize the multiple used. The market rate  
9 is the highest published rate for electricity purchased within the local load control area at the time that the  
10 distribution services provider provided the emergency supply. A distribution services provider is not  
11 required to purchase any reserve supply of electricity to fulfill this obligation.

12  
13 **NEW SECTION. Section 10. Public utilities -- transmission services.** For transmission services  
14 regulated by the commission, public utilities, through filed tariffs, shall make transmission services available  
15 for nondiscriminatory and comparable use by all electricity suppliers, by distribution services providers, and  
16 by customers.

17  
18 **NEW SECTION. Section 11. Public utilities -- electricity supply.** (1) On the effective date of a  
19 commission order implementing a public utility's transition plan pursuant to [section 6], the public utility  
20 shall remove its generation assets from the rate base.

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

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

26 (a) extend any cost-based contract with the distribution services provider's affiliate supplier for a  
27 term not more than 3 years; or

28 (b) purchase electricity from the market; AND

29 ~~(4) A tracking (C) USE A mechanism must be used to recover~~ THAT RECOVERS electricity supply  
30 costs in rates to ensure that those costs are fully recovered.

1 (5) If a public utility intends to be an electricity supplier through an unregulated division, then the  
2 public utility must be licensed as an electricity supplier pursuant to [section 24].

3  
4 **NEW SECTION. Section 12. Public utilities -- transition costs and charges -- rate moratorium.** (1)

5 Subject to the provisions of this section, the commission shall allow recovery of the following categories  
6 of transition costs:

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

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

13 (c) The unmitigable transition costs related to public utility-owned generation and other power  
14 purchase contracts, except that recovery of those costs is limited to the amount accruing during the first  
15 4 years after the commission enters an order pursuant to [section 6(3)]; and

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

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

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

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

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

26 (ii) appraisal by independent third-party ~~professionals~~ PROFESSIONALS; ~~and~~ OR

27 (iii) a competitive bid sale.

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



1 (d) Unless otherwise provided for in [sections 1 through 31], only costs related to existing  
 2 investments and power purchase contracts identified in subsection (2)(c) and costs arising from those  
 3 investments and power purchase contracts may be included as transition costs.

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

6 (b) A transition charge may not be collected from CUSTOMERS FOR:

7 (i) ~~customers with new~~ OR ADDITIONAL loads of 1,000 kilowatts or greater that were ~~connected~~  
 8 ~~to either the public utility's transmission or distribution facilities~~ FIRST SERVED BY THE PUBLIC UTILITY  
 9 after December 31, 1996; or

10 (ii) ~~customers generating electricity for their own use~~ LOADS SERVED BY THAT CUSTOMER'S  
 11 OWN GENERATION.

12 (c) Subject to commission approval, a utility and a customer may agree to alter the customer's  
 13 transition charge payment schedule. PUBLIC UTILITIES MAY FILE WITH THE COMMISSION TARIFFS FOR  
 14 ELECTRIC SERVICE RATES THAT FOSTER ECONOMIC DEVELOPMENT OR RETENTION OF EXISTING  
 15 CUSTOMERS WITHIN THE STATE, INCLUDING GENERALLY AVAILABLE RATE SCHEDULES. Transition  
 16 charges are the only charges that may be imposed upon a customer class to recover transition costs under  
 17 this section. A separate exit fee may not be charged.

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

21 (5) Approval of transition costs and collection of those transition costs through transition charges  
 22 is a settlement of all transition costs claims by a public utility. A public utility seeking to recover transition  
 23 costs through any means not authorized by [sections 1 through 31] may not collect transition charges with  
 24 respect to these transition costs.

25 ~~(6) Public utilities may not charge rates or collect costs, which include costs reallocated to transition~~  
 26 ~~costs, at a level higher than the public utility would reasonably expect to recover in rates had the current~~  
 27 ~~regulatory system remained intact, with the exception of:~~

28 ~~(a) increased costs related to universal system benefits charges greater than those currently~~  
 29 ~~included in rates; and~~

30 ~~(b) increased costs necessary to implement full customer choice, including but not limited to~~

1 metering, billing, and technology from those customers on whose behalf those increased costs are incurred.

2 ~~(7) If transition bonds are authorized pursuant to [section 31], any savings, net of consolidated tax~~  
 3 ~~impacts, must be used to fund a partial or full rate moratorium for 2 years during the transition period~~  
 4 ~~except as provided in [section 6], to the extent possible to fund transition costs mitigation or shortened~~  
 5 ~~transition cost recovery periods.~~

6 ~~(8) A public utility shall address in the public utility's transition plan reasonable transition~~  
 7 ~~bond-related rate moratorium and transition costs adjustment opportunities that may exist for the benefit~~  
 8 ~~of customers. The transition plan may include proposed provisions for rate adjustments due to~~  
 9 ~~extraordinary events during the same time period.~~

10 (6) EXCEPT AS PROVIDED IN SUBSECTION (7), PUBLIC UTILITIES SHALL IMPLEMENT A RATE  
 11 MORATORIUM DURING THE TRANSITION PERIOD AS FOLLOWS:

12 (A) FROM JULY 1, 1998, THROUGH JUNE 30, 2000, PUBLIC UTILITIES MAY NOT CHARGE RATES  
 13 HIGHER THAN THOSE RATES IN EFFECT ON JULY 1, 1998.

14 (B) FROM JULY 1, 2000, THROUGH JUNE 30, 2002, AND ONLY FOR THOSE CUSTOMERS  
 15 SUBJECT TO THE PROVISIONS OF [SECTION 5(1)(B)], PUBLIC UTILITIES MAY NOT INCREASE THAT  
 16 INCREMENT OF RATES NORMALLY ALLOCATED TO ELECTRIC SUPPLY-RELATED COSTS ABOVE THE  
 17 INCREMENT ASSOCIATED WITH ELECTRIC SUPPLY-RELATED COSTS REFLECTED IN RATES IN EFFECT  
 18 ON JULY 1, 1998. BEGINNING ON JULY 1, 2000, PUBLIC UTILITIES MAY PROPOSE INCREASES TO  
 19 THOSE INCREMENTS OF RATES NORMALLY ALLOCATED TO TRANSMISSION AND DISTRIBUTION  
 20 COSTS.

21 (7) EXCEPTED FROM THE PROVISIONS OF SUBSECTION (6) ARE:

22 (A) INCREASED COSTS RELATED TO UNIVERSAL SYSTEM BENEFITS PROGRAMS GREATER THAN  
 23 THOSE CURRENTLY IN RATES, INCLUDING THE TREATMENT OF UNIVERSAL SYSTEM BENEFITS  
 24 PROGRAM COSTS AS AN EXPENSE;

25 (B) INCREASED COSTS NECESSARY TO IMPLEMENT FULL CUSTOMER CHOICE, INCLUDING BUT  
 26 NOT LIMITED TO METERING, BILLING, AND TECHNOLOGY. THOSE COSTS MUST BE RECOVERED FROM  
 27 THE CUSTOMERS ON WHOSE BEHALF THE INCREASED COSTS ARE INCURRED.

28 (C) SUBJECT TO COMMISSION APPROVAL, AN EXTRAORDINARY EVENTS EVENT RESULTING  
 29 IN EITHER:

30 (I) A 4% ANNUAL REVENUE REQUIREMENT INCREASE FROM JULY 1, 1998, THROUGH JUNE 30,

1 2000; OR

2 (II) AN 8% POWER SUPPLY-RELATED ANNUAL REVENUE REQUIREMENT INCREASE FROM JULY  
3 1, 2000, THROUGH JUNE 30, 2002;

4 (D) PORTIONS OF THE INCREASE OR DECREASE IN THE ANNUAL STATE AND LOCAL PROPERTY  
5 TAX EXPENSE THAT ARE GREATER THAN THE PAYMENT OR ADJUSTMENT THAT RESULTS FROM  
6 APPLYING THE INDUSTRY-RECOGNIZED RATES OF INFLATION TO THE INCREASE OR DECREASE IN THE  
7 STATE AND LOCAL PROPERTY TAX EXPENSE REFLECTED IN RATES AS OF [THE EFFECTIVE DATE OF  
8 THIS ACT].

9 (8) NOTWITHSTANDING SUBSECTIONS (6) AND (7), DURING THE TRANSITION PERIOD, PUBLIC  
10 UTILITIES MAY NOT CHARGE RATES OR COLLECT COSTS THAT INCLUDE COSTS REALLOCATED TO  
11 TRANSITION COSTS AT A LEVEL HIGHER THAN THE PUBLIC UTILITY WOULD REASONABLY EXPECT TO  
12 RECOVER IN RATES HAD THE CURRENT REGULATORY SYSTEM REMAINED INTACT.

13 (9) PUBLIC UTILITIES SHALL APPLY SAVINGS RESULTING UNDER [SECTION 31] TOWARD THE  
14 RATE MORATORIUM PURSUANT TO SUBSECTION (6).

15 (10) PUBLIC DURING THE 4-YEAR TRANSITION PERIOD, PUBLIC UTILITIES MAY ACCELERATE  
16 THE AMORTIZATION OF ACCUMULATED DEFERRED INVESTMENT TAX CREDITS ASSOCIATED WITH  
17 TRANSMISSION, DISTRIBUTION, AND THE GENERAL PLANT AS AN ADJUSTMENT TO EARNINGS IF  
18 ELECTRIC EARNINGS FALL BELOW 9.5% EARNED RETURN ON AVERAGE EQUITY. THE PUBLIC UTILITY  
19 MAY INCLUDE THE FLOW THROUGH OF INVESTMENT TAX CREDITS SO THAT THE PUBLIC UTILITY'S  
20 EARNED RETURN ON EQUITY IS MAINTAINED AT 9.5%. ACCUMULATED DEFERRED INVESTMENT TAX  
21 CREDITS AMORTIZED UNDER THIS SUBSECTION MAY NOT BE REFLECTED IN OPERATING INCOME FOR  
22 RATEMAKING PURPOSES.

23 ~~(9)(11)~~ The commission shall issue the accounting orders necessary to align rate moratorium timing  
24 and requirements to actual transition bonds savings.

25 ~~(10) If transition bonds are issued, cost savings associated with and resulting from the bonds must~~  
26 ~~benefit customers.~~

27  
28 **NEW SECTION. Section 13. Cooperative utility -- transition plan for customer choice.** (1) Except  
29 as provided in [section 20], on or before July 1, 2001, the local governing body of a cooperative utility shall  
30 adopt a transition plan.

1           (2) (a) Except as provided in subsection (2)(b), transition plans must contain a transition period that  
2 may not end later than July 1, 2002. At the conclusion of the transition period, all customers must have  
3 the opportunity to choose an electricity supplier.

4           (b) If after a pilot program for customers of a cooperative utility with loads less than 1,000  
5 kilowatts, a competitive market, technology, or other conditions precedent to full customer choice have not  
6 developed, then the transition plan may be altered by the cooperative utility's governing body for those  
7 customers.

8           (3) [Sections 1 through 31] do not require the cooperative utility to divest itself of any generation,  
9 transmission, or distribution assets or prohibit a cooperative utility from divesting itself voluntarily of those  
10 assets.

11           (4) A cooperative utility's local governing body shall certify to the commission that the local  
12 governing body has adopted a transition plan. In the cooperative utility's certification filing, the cooperative  
13 utility shall provide to the commission documentation that the cooperative utility's transition plan is  
14 consistent with [sections 1 through 31].

15  
16           **NEW SECTION. Section 14. Cooperative utility -- customer choice -- education of customers --**  
17 **continued service.** (1) Except as provided in [section 20], cooperative utilities shall propose a method for  
18 cooperative utility customers to choose an electricity supplier.

19           (2) Customer choice may be phased in to promote the orderly transition to a competitive market  
20 environment.

21           (3) Cooperative utilities shall educate their customers about customer choice so that customers may  
22 make an informed choice of an electricity supplier. This education process must give special emphasis to  
23 education efforts during the transition period.

24           (4) If a cooperative utility customer has not chosen an electricity supplier by the end of the  
25 transition period, then the electricity supplier is the cooperative utility that filed the plan or an electricity  
26 supplier designated by the cooperative utility.

27  
28           **NEW SECTION. Section 15. Cooperative utility -- functional separation.** (1) To the extent that a  
29 cooperative utility is vertically integrated, the cooperative utility has the option to functionally separate the  
30 cooperative utility's electricity supply, transmission, distribution, and unregulated energy services assets

1 and operations in the state of Montana. If the cooperative utility intends to exercise this option, the  
2 cooperative utility's transition plan must explain the cooperative utility's proposed separation process.

3 (2) A cooperative utility shall describe in the transition plan measures taken by the cooperative  
4 utility to prevent undue discrimination in favor of the cooperative utility's own electricity supply, if any, and  
5 in favor of the cooperative utility's affiliates, if any.

6 (3) Cooperative utilities may establish a code of conduct similar to the federal energy regulatory  
7 commission's code of conduct established in 18 CFR, part 37.

8  
9 **NEW SECTION. Section 16. Cooperative utility -- distribution services.** (1) A cooperative utility  
10 transition plan must include distribution facility tariffs that must be established by the cooperative utility's  
11 local governing body and must include the obligation for the cooperative utility to:

12 (a) make distribution services available to all electricity suppliers, transmission services providers,  
13 and customers on a nondiscriminatory and comparable basis;

14 (b) build and maintain distribution facilities; and

15 (c) be an emergency supplier of electricity and related services.

16 (2) If a distribution services provider acts as an emergency supplier of electricity and related  
17 services to a customer of an electricity supplier, then the electricity supplier failing to meet contractuai  
18 obligations shall reimburse the distribution services provider at an amount to be set by the local governing  
19 body but may not exceed the higher of a multiple of the cost or a multiple of the then existing market rate  
20 for that electricity. The market rate is the highest published rate for electricity purchased within the local  
21 load control area at the time that the distribution services provider provided the emergency supply. A  
22 distribution services provider is not required to purchase any reserve supply of electricity to fulfill this  
23 obligation.

24 (3) Recoverable costs for cooperative utilities must be based upon standard financial reporting  
25 statements and may reflect comparable rates of return of other utilities.

26  
27 **NEW SECTION. Section 17. Cooperative utility -- transmission services.** Transition plans must  
28 state whether the cooperative utility's transmission services, if any, are regulated by the federal energy  
29 regulatory commission. If those services are not regulated by the federal energy regulatory commission,  
30 the plan must provide the basis for comparable and nondiscriminatory use by all electricity suppliers,

1 distribution services providers, and customers. A cooperative utility's local governing body shall establish  
 2 the cooperative utility's transmission tariffs.

3  
 4 **NEW SECTION. Section 18. Cooperative utility -- electricity supply.** (1) A transition plan may  
 5 provide for a cooperative utility to own electric generation assets and for a cooperative utility to offer  
 6 electricity supply service. The local governing body shall establish the price for electricity supply service  
 7 offered by a cooperative utility.

8 (2) Cooperative utilities intending to offer electricity supply service shall comply with the provisions  
 9 of [section 24].

10 (3) If a cooperative utility offers electricity supply service competitively to customers using a public  
 11 utility's distribution facilities, the cooperative utility shall create an affiliated for-profit entity or similar  
 12 structure to serve those customers that allows the entity to be taxed at the same level as other for-profit  
 13 electricity suppliers.

14  
 15 **NEW SECTION. Section 19. Cooperative utility -- transition costs and charges.** (1) For the  
 16 purposes of this section, "transition costs" means those costs, liabilities, and investments that cooperative  
 17 utilities would reasonably expect to recover if fully bundled ratemaking conditions continued and that may  
 18 not be recoverable as a result of the transition to a competitive market for electricity supply service.

19 (2) Transition costs eligible for treatment include but are not limited to:

20 (a) regulatory assets and deferred charges typically recoverable in rates;

21 (b) nonutility and utility power purchase contracts;

22 (c) existing commitments or obligations incurred before [the effective date of this act] and other  
 23 cooperative utility investments rendered uneconomic as a result of the implementation of [sections 1  
 24 through 31] or the introduction of retail wheeling through federal legislation or regulation;

25 (d) costs associated with any renegotiation or buyout of the existing nonutility and utility power  
 26 purchase contracts; ~~and~~

27 (e) revenue that appears as a portion of a facility charge necessary to meet debt service  
 28 requirements, INCLUDING ANY COVERAGE AMOUNTS REQUIRED BY ANY MORTGAGE, INDENTURE, OR

29 OTHER FINANCING DOCUMENT;

30 (F) COSTS OF REFINANCING AND RETIRING DEBT OF THE COOPERATIVE UTILITY AND

1 ASSOCIATED FEDERAL AND STATE TAX LIABILITIES OR OTHER UTILITY COSTS FOR WHICH THE USE  
 2 OF TRANSITION BONDS WOULD BENEFIT CUSTOMERS; AND

3 (G) ALL COSTS, EXPENSES, AND REASONABLE FEES RELATED TO TRANSITION BONDS.

4 (3) For a cooperative utility's transition costs to be fully recoverable, the cooperative utility shall  
 5 make reasonable efforts to mitigate those transition costs.

6 (4) Cooperative utilities may not collect any more costs, including costs reallocated to transition  
 7 costs, at a level higher than would otherwise be anticipated had the current regulatory system remained  
 8 intact, with the exception of:

9 (a) increased costs related to universal system benefits charges; and

10 (b) increased costs of metering, billing, and technology necessary to facilitate full customer choice.

11 (5) Subject to the obligation to mitigate transition costs, a cooperative utility shall fully recover  
 12 transition costs as approved by its local governing body. Unmitigable transition costs are nonbypassable  
 13 and collected on a nondiscriminatory basis from consumers using the cooperative utility's distribution  
 14 facilities in the receipt of electricity supply services.

15 (6) A cooperative utility may not collect transition costs from a customer for which the cooperative  
 16 utility does not have and never has had an obligation to incur costs to provide electricity supply service  
 17 unless the unmitigated transition costs were incurred solely on behalf of the customer.

18 (7) Approval of and collection of transition costs through a transition charge is a settlement of all  
 19 transition claims by a cooperative utility. A cooperative utility seeking to recover transition costs through  
 20 any other means may not collect transition charges.

21  
 22 **NEW SECTION. Section 20. Cooperative utility -- exemption.** (1) Within 1 year after [the effective  
 23 date of this act], a cooperative utility may file a notice with the commission that the cooperative utility does  
 24 not intend to open the cooperative utility's distribution facilities to electricity suppliers and does not intend  
 25 to adopt a transition plan. Except as otherwise provided in the universal system benefits program pursuant  
 26 to [section 22], a cooperative utility filing notice under this section is exempt from the provisions and  
 27 requirements of [sections 1 through 31].

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

29 (a) may elect later to adopt a transition plan in accordance with [sections 1 through 31]; and

30 (b) may not use a public utility's distribution facilities UNLESS PREEXISTING CONTRACTS EXIST.

1            NEW SECTION. Section 21. Maintaining safety and reliability. Utilities shall maintain standards  
2 of safety and reliability of the electric delivery system and existing customer service requirements.

3  
4            NEW SECTION. Section 22. Universal system benefits programs. (1) Universal system benefits  
5 programs are established for the state of Montana to ensure continued funding of AND NEW  
6 EXPENDITURES FOR energy conservation, renewable resource PROJECTS AND applications, and  
7 low-income energy bill assistance during the transition period and into the future.

8            (2) ~~On or after~~ BEGINNING January 1, 1999, 2.4% of each utility's annual retail sales revenue in  
9 Montana for the calendar year ending December 31, 1995, is established as the annual funding level for  
10 universal system benefits programs. Unless modified as provided in subsection ~~(42)~~ (7), this funding level  
11 remains in effect until July 1, 2003.

12            ~~(3)(A)~~ (A) The recovery of all universal system benefits programs costs imposed pursuant to this  
13 section, is authorized through the imposition of a universal system benefits charge assessed at the meter  
14 for each local utility system customer as provided in this section.

15            ~~(4)(B)~~ (B) Utilities must receive credit toward annual funding requirements for a utility's internal  
16 programs or activities that qualify as universal system benefits programs, INCLUDING THOSE PORTIONS  
17 OF EXPENDITURES FOR THE PURCHASE OF POWER THAT ARE FOR THE ACQUISITION OR SUPPORT OF  
18 RENEWABLE ENERGY, CONSERVATION-RELATED ACTIVITIES, OR LOW-INCOME ENERGY BILL  
19 ASSISTANCE, and for customers' programs or activities as provided in subsection ~~(42)~~ (7).

20            (C) A UTILITY AT WHICH THE SALE OF POWER FOR FINAL END-USE OCCURS IS THE UTILITY  
21 THAT RECEIVES CREDIT FOR THE UNIVERSAL SYSTEM BENEFITS PROGRAM EXPENDITURE.

22            (D) FOR A UTILITY TO RECEIVE CREDIT FOR LOW-INCOME RELATED EXPENDITURES, THE  
23 ACTIVITY MUST HAVE TAKEN PLACE IN MONTANA.

24            ~~(5)(E)~~ (E) If a utility's or a customer's credit for internal activities do not satisfy the annual funding  
25 provisions of subsection (2), then the utility shall make a payment TO THE UNIVERSAL SYSTEM BENEFITS  
26 FUND for any difference.

27            ~~(6)(3)~~ (3) Cooperative utilities may COLLECTIVELY pool their statewide credits to satisfy their annual  
28 funding requirements for universal system benefits programs ~~or~~ AND low-income energy bill assistance.

29            ~~(7)(4)~~ (4) A utility's transition plan must describe how the utility proposes to provide for universal  
30 system benefits programs, including the methodologies, such as cost-effectiveness and need determination,



1 used to measure the utility's level of contribution to each program.

2 ~~(8)(5)~~ A utility's MINIMUM annual funding requirement for low-income energy ~~bill~~ AND  
3 WEATHERIZATION assistance is established at 17% of the utility's annual universal system benefits funding  
4 level and is inclusive within the overall universal system benefits funding level.

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

7 ~~(10)(B)~~ If a utility's credit for internal activities does not satisfy its annual funding requirement,  
8 then the utility shall make a payment for any difference TO THE UNIVERSAL ENERGY BILL ASSISTANCE  
9 FUND.

10 ~~(11)(6)~~ An individual customer may not bear a disproportionate share of the local utility's funding  
11 requirements, and a sliding scale must be implemented to provide a more equitable distribution of program  
12 costs.

13 ~~(12)(7)~~ A customer with loads greater than 1,000 kilowatts shall:

14 (a) pay A UNIVERSAL SYSTEM BENEFITS PROGRAM CHARGE EQUAL TO the lesser of:

15 (i) \$500,000 ~~net of~~ LESS the customer credits provided for in this subsection ~~(12) (7)~~; or

16 (ii) the product of .9 mills per kilowatt hour multiplied by the customer's kilowatt hour purchases,  
17 ~~net of~~ LESS customer credits provided for in this subsection ~~(12) (7)~~;

18 (b) receive credit toward that customer's annual universal system benefits charge for internal  
19 expenditures and activities that qualify as a universal system benefits program expenditure and these  
20 internal expenditures must include but not be limited to:

21 (i) expenditures that result in a reduction in the consumption of electrical energy in the customer's  
22 facility; and

23 (ii) those portions of expenditures for the purchase of power at retail or wholesale that are for the  
24 acquisition or support of renewable energy or conservation-related activities; and

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

30 ~~(13)(8)~~ A utility in the state of Montana may not be advantaged or disadvantaged in the competitive

1 electricity supply market, including the consideration of the existence of universal system benefits programs  
 2 and the comparable level of funding for those programs throughout the regions neighboring Montana.

3 ~~(14)(9)(8)~~ A public utility shall prepare and submit an annual summary report of the public utility's  
 4 activities relating to all universal system benefits programs to the commission and the transition advisory  
 5 committee provided for in [section 29]. A cooperative utility shall prepare and submit annual summary  
 6 reports of activities to the cooperative utility's respective local governing body, the statewide cooperative  
 7 utility office, and the transition advisory committee. The annual report must include, but is not limited to:

8 (a) the types of internal utility and customer programs being used to satisfy the provisions of  
 9 [sections 1 through 31];

10 (b) the level of funding for those programs relative to the annual funding requirements prescribed  
 11 in subsection (2); and

12 (c) any payments made to the statewide funds in the event that internal funding was below the  
 13 prescribed annual funding requirements.

14  
 15 **NEW SECTION. Section 23. Commission authority -- rulemaking authority.** (1) Beginning on the  
 16 effective date of a commission order regarding a public utility's transition plan, the commission shall  
 17 regulate the public utility's retail transmission and distribution services within the state of Montana, as  
 18 provided in [sections 1 through 31], and may not regulate the price of electricity supply except as electricity  
 19 supply may be procured during the transition period by the distribution function of a public utility for those  
 20 customers that ~~do not have a choice of~~ **HAVE NOT CHOSEN AN** electricity supplier or for those customers  
 21 that have not yet been assigned an electricity supplier. During the transition period, those procurements  
 22 may include a cost-based contract from a supply affiliate or an unregulated division.

23 (2) If the transition period is extended for certain customers because **THE COMMISSION FINDS**  
 24 **THAT** workable competition in the electricity supply market does not exist, then the commission shall  
 25 **CONTINUE TO** regulate **THE PROVISION OF ELECTRICITY SUPPLY BY** distribution services providers in  
 26 accordance with [section ~~9~~ **11**].

27 (3) The commission shall decide if there is workable competition in the electricity supply market by  
 28 determining whether **COMPETITION IS** sufficient ~~price elasticity of demand exists in the electricity supply~~  
 29 ~~market~~ to inhibit monopoly pricing or anticompetitive price leadership. In reaching a decision, the  
 30 commission may not rely solely on market share estimates.

1 (4) The commission shall license electricity suppliers and enforce licensing provisions pursuant to  
2 [section 24].

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

5 (6) The commission shall establish just and reasonable rates through established ratemaking  
6 principles for public utility distribution and transmission services and shall regulate these services. The  
7 commission may approve rates and charges for electricity distribution and transmission services based on  
8 alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public  
9 utility that the alternative method complies with [sections 1 through 31], and on the public utility's  
10 transition plan.

11 (7) The commission shall certify that a cooperative utility has adopted a transition plan that complies  
12 with [sections 1 through 31]. A cooperative utility's transition plan is considered certified 60 days after  
13 the cooperative utility files for certification.

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

16 (9) In addition to promulgating rules expressly provided for in [sections 1 through 31], the  
17 commission may promulgate any other rules necessary to carry out the provision of [sections 1 through  
18 31].

19 (10) [Sections 1 through 31] do not give the commission the authority to:

20 (a) regulate cooperative utilities in any manner other than reviewing certification filings for  
21 compliance with [sections 1 through 31]; or

22 (b) compel any change to a cooperative utility's certification filing made pursuant to [sections 1  
23 through 31].

24  
25 **NEW SECTION. Section 24. Licensing.** (1) Except as provided in [section 20], an electricity  
26 supplier shall file an application with and obtain a license from the commission before offering electricity  
27 for sale to retail customers in the state of Montana.

28 (2) As a condition of licensing, an electricity supplier shall identify and describe its ~~business~~  
29 activities and purposes and the ~~business~~ purposes of each of the electricity supplier's affiliates, IF ANY,  
30 including whether an affiliate that owns or operates distribution facilities offers customer choice through

1 open, fair, and nondiscriminatory access to the electricity ~~supplier~~ SUPPLIER'S or the electricity supplier's  
2 affiliate's distribution facilities.

3 (3) The commission may require electricity suppliers that provide electricity supply service to small  
4 customers to make a standard service offer that ensures that those customers have access to affordable  
5 electricity.

6 (4) The commission may require:

7 (a) proof of financial integrity and a demonstration of adequate reserve margins or the ability to  
8 obtain those reserves; and

9 (b) a licensee to post a bond ~~if~~ SHOULD an electricity supplier ~~fails~~ FAIL to supply electricity or ~~is~~  
10 ~~not operating~~ LACK FINANCIAL INTEGRITY.

11 (5) An electricity supplier shall provide the commission and all distribution services providers with  
12 copies of all license applications pursuant to subsection (2). Licensees shall update information and file  
13 annual reports with the commission and all distribution services providers.

14 (6) License applications are effective 30 days after filing with the commission, unless the  
15 commission rejects the application during that period. If the commission rejects a license application, the  
16 commission shall specify the reasons in writing and, if practical, identify alternative ways to overcome  
17 deficiencies.

18 (7) Notwithstanding [sections 1 through 31], a cooperative utility is not required to apply for a  
19 license from the commission to be an electricity supplier to customers ~~normally~~ served by that cooperative  
20 utility in its ~~traditional~~ ELECTRIC FACILITIES service territory or to any customers ~~normally~~ served by  
21 another cooperative utility subject to the consent of the other cooperative utility's local governing body.

22  
23 **NEW SECTION. Section 25. Penalties -- license revocation.** (1) The commission may begin a  
24 proceeding to ~~either impose a penalty or~~ revoke or suspend a license of an electricity supplier, IMPOSE A  
25 PENALTY, OR BOTH, for just cause on the commission's own investigation or upon the complaint of an  
26 affected party if it is established that the electricity supplier:

27 (a) intentionally provided false information to the commission;

28 (b) switched, or cause to be switched, the electricity supply for a customer without first obtaining  
29 the customer's written permission; ~~or~~

30 (c) failed to provide a reasonably adequate supply of electricity for its customers in Montana; OR

1            (D) COMMITTED FRAUD OR ENGAGED IN DECEPTIVE PRACTICES.

2            (2) Any person selling or offering to sell electricity in this state in violation of [sections 24, 27,]  
3 and this section is subject to a fine of not less than \$100 or more than \$1,000 for the violation or a license  
4 revocation or suspension. EACH DAY OF EACH VIOLATION CONSTITUTES A SEPARATE VIOLATION.

5            (3) The fine must be recovered in a civil action upon the complaint by the commission in any court  
6 of competent jurisdiction.

7            (4) A license revocation proceeding under this section is a contested case proceeding pursuant to  
8 the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

9

10           NEW SECTION. Section 26. Bill information -- customer nonpayment -- commission rulemaking.

11 (1) Electrical bills to consumers must disclose each component of the electrical bill in accordance with rules  
12 promulgated by the commission. ~~The electrical bill~~ ELECTRICAL BILLS must disclose but ~~is~~ ARE not limited  
13 to the following:

14            (a) distribution and transmission charges;

15            (b) electricity supply charges;

16            (c) competitive transition charges; and

17            (d) universal system benefits charges.

18            (2) The commission shall promulgate rules establishing the procedures relating to how and when  
19 an electricity supplier may discontinue service to a customer because of the customer's nonpayment and  
20 the procedures relating to reconnection, except that those rules may not apply to electricity suppliers that  
21 are cooperative utilities.

22            (3) Local governing bodies of a cooperative utility shall retain authority for cooperative utilities  
23 regarding:

24            (a) customer nonpayment and reconnection; and

25            (b) information contained in electrical bills to consumers.

26

27           NEW SECTION. Section 27. Unauthorized switching -- commission rulemaking. (1) An electricity  
28 supplier or any person, firm, corporation, or governmental entity may not make any change in the electricity  
29 supplier for a customer without first obtaining the customer's written permission.

30            (2) The commission shall promulgate rules establishing procedures to prevent unauthorized

1 switching.

2

3 NEW SECTION. Section 28. Reciprocity. (1) Except as provided in [section 20], all electricity  
4 suppliers must be afforded open, fair, and nondiscriminatory access to customers and a comparable  
5 opportunity to compete.

6 (2) A distribution services provider or the distribution services provider's affiliates may not use  
7 another distribution services provider's facilities in the state of Montana to sell electricity to customers in  
8 the state of Montana unless the first distribution services provider or the distribution services provider's  
9 affiliates offers comparable and nondiscriminatory access to the distribution services provider's distribution  
10 facilities.

11

12 NEW SECTION. Section 29. Transition advisory committee. (1) A transition advisory committee  
13 on electric utility industry restructuring is created. The transition advisory committee is composed of ~~18~~  
14 EIGHT VOTING members who are appointed as follows:

15 (a) The speaker of the house shall appoint ~~two~~ FOUR members from the house of representatives,  
16 NOT MORE THAN TWO OF WHOM MAY BE FROM ONE POLITICAL PARTY.

17 (b) The president of the senate shall appoint ~~two~~ FOUR members from the senate, NOT MORE  
18 THAN TWO OF WHOM MAY BE FROM ONE POLITICAL PARTY.

19 (2) THE FOLLOWING ENTITIES SHALL APPOINT NONVOTING ADVISORY REPRESENTATIVES TO  
20 THE TRANSITION ADVISORY COMMITTEE:

21 ~~(a)(A)~~ The director of the department of environmental quality shall appoint one department  
22 representative.

23 ~~(d)(B)~~ The legislative consumer council COUNSEL COMMITTEE shall appoint one representative.

24 ~~(e)(C)~~ ~~Two representatives~~ ONE REPRESENTATIVE of the cooperative utility industry ~~are~~ IS  
25 appointed as designated by the Montana electrical cooperative association.

26 ~~(f)(D)~~ ~~Two representatives selected by the~~ THE public utilities in the state of Montana ~~are appointed~~  
27 SHALL APPOINT ONE MEMBER.

28 ~~(g)(E)~~ ~~One representative of the~~ THE commission ~~is appointed~~ SHALL APPOINT ONE MEMBER.

29 ~~(h)(F)~~ The governor shall appoint the following NONVOTING committee members:

30 (i) one representative from the industrial community with an interest in the restructuring of the

- 1 electric utility industry;
- 2 (ii) one representative from the nonindustrial retail electric consumer sector;
- 3 (iii) one representative from organized labor;
- 4 (iv) one representative from the community comprising environmental and conservation interests;
- 5 (v) one representative of FROM A low-income consumers PROGRAM PROVIDER;
- 6 (vi) one representative of Montana's Indian tribes; and
- 7 (vii) one representative of the electric power market industry.

8 ~~(2)(3)~~ In case of a vacancy, a replacement must be selected in the manner of the original  
9 appointment.

10 ~~(3)(4)~~ Legislative members are entitled to salary and expenses as provided in section 5-2-302.

11 ~~Other members serve without salary and without reimbursement of expenses.~~

12 ~~(4)(5)~~ The public service commission, legislative services division, and appropriate state agencies  
13 shall provide staff assistance as requested by the committee.

14 ~~(5)(6)~~ Transition advisory committee members must be appointed within 60 days of [the effective  
15 date of this act] to an initial term expiring on December 31, 1999. Subsequent terms must be for up to  
16 2 years expiring on January 1 of odd-numbered years.

17 ~~(6)(7) The governor shall appoint a transition advisory committee presiding officer.~~ THE VOTING  
18 MEMBERS SHALL SELECT A TRANSITION ADVISORY COMMITTEE PRESIDING OFFICER.

19 ~~(7)(8)~~ The transition advisory committee on electric utility industry restructuring must dissolve on  
20 the earlier of either the date that full transition to retail competition is completed or December 31, 2004.

21 ~~(8)(9)~~ The transition advisory committee shall provide an annual report on the status of electric  
22 utility restructuring on or before November 1 to the governor, the speaker of the house, the president of  
23 the senate, and the commission AND SHALL PROVIDE QUARTERLY INTERIM SUMMARY REPORTS TO THE  
24 MEMBERS OF THE LEGISLATURE THROUGH JANUARY 1, 1999.

25 ~~(9)(10)~~ The transition advisory committee shall meet AT LEAST quarterly or as often as is necessary  
26 to conduct its business.

27 ~~(10)(11)~~ The transition advisory committee shall analyze and report on the transition to effective  
28 competition in the competitive electricity supply market. The annual report made in the year 2000 must  
29 evaluate specifically the pilot programs for customers with loads under 1,000 kilowatts and must include  
30 legislative recommendations, if it appears appropriate, about the best means to further encourage the

1 development of customer choice and meaningful market access for the benefit of smaller customers. The  
2 annual report for the year 2000 must also address the need, if any, for additional consumer protection  
3 including protection from abusive or anticompetitive practices.

4 ~~(11)~~(12) The criteria that the transition advisory committee must use to evaluate effective  
5 competition in the electricity supply market include but are not limited to the following:

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

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

10 (c) the level of interest among electricity suppliers and the opportunity for electricity suppliers to  
11 serve smaller customers; and

12 (d) the existence of the requisite technical and administrative support that enables smaller  
13 customers to have choice of electricity supply.

14 ~~(12)~~(13) The transition advisory committee shall recommend legislation if necessary to promote  
15 electric utility restructuring and retail choice of electricity suppliers.

16 ~~(13)~~(14) The transition advisory committee shall make recommendations to the governor, regarding  
17 the implementation of statewide universal system benefits and universal energy ~~bill~~ assistance funds, in  
18 time to allow for those funds to be created on or before January 1, 1999. This may include  
19 recommendations regarding the assignment of an existing government agency or private nonprofit entity  
20 as the fund administrator and administration guidelines for the funds including the means by which funds  
21 may be made available for use.

22 ~~(14)~~(15) The transition advisory committee shall monitor and evaluate the universal system benefits  
23 programs and comparable levels of funding for the region and make recommendations to the 58th  
24 legislature to adjust the funding level provided for in [section 22] to coincide with the related activities of  
25 the region at that time.

26 ~~(15)~~(16) On or before July 1, 2002, the transition advisory committee, in coordination with the  
27 commission, shall conduct a reevaluation of the ongoing need for universal system benefits programs and  
28 annual funding requirements and shall make recommendations to the 58th legislature regarding the future  
29 need for those programs. The determination must focus specifically on the existence of markets to provide  
30 for any or all of the universal system benefits programs or whether other means for funding those programs



1 have developed. These recommendations may also address how future reevaluations will be provided for,  
2 if necessary.

3 ~~(16)~~(17) On or before November 1, 2001, the transition advisory committee shall collect information  
4 to determine whether Montana utilities or their affiliates have an opportunity to sell electricity to customers  
5 outside of the state of Montana comparable to the opportunity provided pursuant to [sections 1 through  
6 31] to utilities or their affiliates located outside the state of Montana. That information must be included  
7 in the report to the 58th legislature.

8 ~~(17)~~(18) ON OR BEFORE NOVEMBER 1, 1998, THE TRANSITION ADVISORY COMMITTEE SHALL  
9 MAKE RECOMMENDATIONS TO THE GOVERNOR AND THE LEGISLATURE REGARDING THE PROVISION  
10 OF LOW-INCOME ENERGY ASSISTANCE PROGRAMS IN MONTANA BY ALL ENERGY PROVIDERS.

11  
12 NEW SECTION. Section 30. Tax revenue analysis. (1) The revenue oversight committee, as  
13 provided for in 5-18-102, shall analyze the amount of state and local tax revenue derived from previously  
14 regulated electricity suppliers that will enter the competitive market and report to the legislature annually  
15 on how revenue to the state or local government is changed by restructuring and competition.

16 (2) On or before November 30, 1998, the revenue oversight committee shall recommend legislative  
17 changes, if any, to address the establishment of comparable state and local taxation burdens on all market  
18 participants in the supply of electricity. Any legislation recommended by the revenue oversight committee  
19 should place comparable state and local taxation burdens upon all market participants.

20  
21 NEW SECTION. Section 31. Transition costs financing. (1) A utility may, after July 1, 1997, apply  
22 to the commission for a determination that certain transition costs may be recovered through the issuance  
23 of transition bonds. IF TRANSITION BONDS ARE ISSUED, COST SAVINGS ASSOCIATED WITH AND  
24 RESULTING FROM THE BONDS MUST BENEFIT CUSTOMERS. After the issuance of a financing order, the  
25 utility retains sole discretion regarding whether to sell, assign, or otherwise transfer or pledge transition  
26 property or to cause the transition bonds to be issued, including the right to defer or postpone the sale,  
27 assignment, transfer, pledge, or issuance. IF TRANSITION BONDS ARE NOT ISSUED WITHIN 4 YEARS OF  
28 THE ISSUANCE OF THE FINANCING ORDER, THE FINANCING ORDER MUST TERMINATE. THE UTILITY  
29 MAY APPLY FOR AN EXTENSION OR RENEWAL OF A FINANCING ORDER.

30 (2) (a) The commission may issue financing orders in accordance with this section to facilitate the

1 recovery, reimbursement, financing, or refinancing of transition costs and the acquisition of transition  
 2 property. A financing order may be adopted only upon the application of a utility and may only become  
 3 effective in accordance with its terms after the utility files with the commission the utility's written consent  
 4 to all terms and conditions of the financing order. A financing order may specify how amounts collected  
 5 from a customer are allocated between fixed transition amounts and other charges.

6 (b) A financing order must include, without limitation, a procedure for the expeditious approval by  
 7 the commission of periodic adjustments to NONBYPASSABLE RATES AND CHARGES ASSOCIATED WITH  
 8 fixed transition amounts included in the order to ensure recovery of all transition costs and the costs of  
 9 capital associated with the proposed recovery, reimbursement, financing, or refinancing of transition costs  
 10 and the acquisition of transition property including the costs of issuing, servicing, and retiring the transition  
 11 bonds contemplated by the financing order. THE ORDER MUST SET FORTH THE TERM OVER WHICH THE  
 12 TRANSITION BONDS ARE TO BE PAID, BUT THOSE TERMS MAY NOT EXCEED 20 YEARS. These  
 13 adjustments may not impose fixed transition amounts upon customer classes that were not subject to the  
 14 fixed transition amounts in the pertinent financing order.

15 (3) (a) Notwithstanding any other provision of law, and except as otherwise provided in this section  
 16 with respect to transition property that has been made the basis for the issuance of transition bonds AND  
 17 UPON THE ISSUANCE OF TRANSITION BONDS, the financing orders and the fixed transition amounts must  
 18 be irrevocable.

19 (b) ~~The~~ IF TRANSITION BONDS HAVE BEEN ISSUED, THE commission may not by rescinding,  
 20 altering, or amending the financing order or otherwise:

21 (i) revalue or revise for ratemaking purposes the transition costs or the costs of recovering,  
 22 reimbursing, financing, or refinancing the transition costs and acquiring transition property;

23 (ii) determine that the fixed transition amounts or rates are unjust or unreasonable; or

24 (iii) in any way reduce or impair the value of transition property either directly or indirectly by taking  
 25 fixed transition amounts into account when setting other rates for the utility.

26 (c) The TOTAL amount of ~~revenue arising with respect to~~ the transition property may not be subject  
 27 to reduction, impairment, postponement, or termination.

28 (d) Except as otherwise provided in this section, the state pledges and agrees with the assignees  
 29 and pledgees of transition property and transition bondholders that the state may not limit or alter the fixed  
 30 transition amounts, transition property, financing orders, or any right under the ~~obligations~~ BONDS until the

1 ~~obligations~~ BONDS, together with the interest on the ~~obligations~~ BONDS, are fully met and discharged. THE  
2 BOARD, AS AGENT FOR THE STATE, IS AUTHORIZED TO INCLUDE THIS PLEDGE AND UNDERTAKING  
3 FOR THE STATE IN THESE OBLIGATIONS BONDS.

4 (e) Notwithstanding any other provision of this section, the commission shall approve those  
5 adjustments to the fixed transition amounts as may be necessary to ensure timely recovery of all transition  
6 costs that are the subject of the pertinent financing order and the costs of capital associated with the  
7 recovery, reimbursement, financing, or refinancing of transition costs and acquiring transition property  
8 including the costs of issuing, servicing, and retiring the transition bonds contemplated by the financing  
9 order. The adjustments may not impose fixed transition amounts upon customer classes that were not  
10 subject to the fixed transition amounts in the pertinent financing order.

11 (4) (a) Financing orders do not constitute a debt or liability of the state or of any political subdivision  
12 of the state if issued through the board and do not constitute a pledge of the full faith and credit of the  
13 state or any of the state's political subdivisions if issued through the board. The financing orders are  
14 payable solely from the funds provided under this section. The bonds and offering documents must contain  
15 ON THEIR FACE a statement to the following effect:

16 ~~"Neither the full faith and credit nor the taxing power of the State of Montana is pledged to the~~  
17 ~~payment of the principal of or interest on this security."~~ THIS BOND MAY NOT CONSTITUTE AN  
18 INDEBTEDNESS OR A LOAN OF CREDIT OF THE STATE OF MONTANA OR ANY POLITICAL SUBDIVISION  
19 OF THE STATE OF MONTANA WITHIN ANY CONSTITUTIONAL OR STATUTORY PROVISION. NEITHER  
20 THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF MONTANA IS PLEDGED TO  
21 THE PAYMENT OF THE PRINCIPAL OR INTEREST ON THIS BOND, AND NEITHER THE STATE OF  
22 MONTANA NOR ANY POLITICAL SUBDIVISION OF THE STATE OF MONTANA IS OBLIGATED, DIRECTLY,  
23 INDIRECTLY, OR CONTINGENTLY, TO LEVY OR TO PLEDGE ANY FORM OF TAXATION OR TO MAKE ANY  
24 APPROPRIATION FOR THE PAYMENT OF THIS BOND. THIS BOND IS A LIMITED OBLIGATION OF THE  
25 ISSUER, PAYABLE SOLELY OUT OF THE TRANSITION PROPERTY OR THE PROCEEDS OF THAT  
26 PROPERTY SPECIFICALLY PLEDGED FOR ITS PAYMENT AND NOT OTHERWISE.

27 (b) The issuance of bonds under this section may not directly, indirectly, or contingently obligate  
28 the state or any political subdivision of the state to levy or to pledge any form of taxation or to make any  
29 appropriation for bond payment.

30 (5) The commission shall establish procedures for the expeditious processing of applications for

1 financing orders, including the approval or disapproval of applications within 120 days after a utility submits  
2 a complete application. The commission shall provide in any financing order for a procedure for the  
3 expeditious approval by the commission of periodic adjustments to the fixed transition amounts that are  
4 the subject of the pertinent financing order pursuant to subsection (2). The commission shall determine  
5 on each anniversary of the issuance of the financing order and at additional intervals as may be provided  
6 for in the financing order whether the adjustments are required and shall provide for the adjustments, if  
7 required, to be approved within 60 days of each anniversary of the issuance of the financing order or of  
8 each additional interval provided for in the financing order.

9 (6) Fixed transition amounts become transition property when and to the extent that a financing  
10 order authorizing the fixed transition amounts has become effective in accordance with subsection (2), and  
11 the transition property must thereafter continuously exist as property for all purposes with all of the rights  
12 and privileges of [sections 1 through 31] for the period and to the extent provided in the financing order  
13 or until the transition bonds are paid in full including all principal, interest, premium, costs, and arrearages  
14 on the transition bonds.

15 (7) Transition bonds may be issued upon commission approval in the pertinent financing order.  
16 Transition bonds must specify that they do not provide recourse to the credit or any assets of the utility,  
17 other than the transition property as specified in the pertinent financing order.

18 (8) (a) A utility may sell, assign, or transfer all or portions of the utility's interest in transition  
19 property to an assignee. A utility or an assignee may further sell, assign, or transfer the utility's interest  
20 in that transition property to one or more assignees in connection with the issuance of transition bonds to  
21 the extent approved in the pertinent financing order.

22 (b) A utility or an assignee may pledge transition property as collateral for transition bonds to the  
23 extent approved in the pertinent financing order and may provide for a security interest in the transition  
24 property as provided in this section.

25 (c) Transition property may be sold, assigned, or transferred for the benefit of:

26 (i) transition bondholders in connection with the exercise of remedies upon a default; or

27 (ii) any person acquiring the transition property after a sale, assignment, or transfer pursuant to this  
28 section.

29 (9) (a) To the extent that any interest in transition property is sold, assigned, transferred, or pledged  
30 as collateral, the commission shall authorize the utility to contract with any assignee so that the utility will,

1 subject to the utility's rights under subsection (18):

2 (i) continue to operate the utility's system and to provide service to the utility's customers;

3 (ii) collect amounts in respect of the fixed transition amounts for the benefit and account of the  
4 assignee; and

5 (iii) account for and remit these amounts to or for the account of the assignee.

6 (b) Contracting with the assignee in accordance with the commission's authorization may not impair  
7 or negate the characterization of the sale, assignment, transfer, or pledge as a true sale, an absolute  
8 assignment or transfer, or a grant of a security interest, as applicable.

9 (10) Notwithstanding any other provision of law, any provision under this section or under a  
10 financing order requiring that the commission take or refrain from taking action with respect to the subject  
11 matter of a financing order binds the commission and any successor commission or agency exercising  
12 functions similar to the commission, and the commission or any successor commission or agency may not  
13 rescind, alter, or amend that requirement in a financing order.

14 (11) A pledge or any other security interest in transition property is valid, is enforceable against the  
15 pledgor and third parties, including judgment lien creditors, subject only to the rights of any third parties  
16 holding security interests in the transition property perfected in the manner described in this section, and  
17 attaches only when all of the following have taken place:

18 (a) the commission has issued the financing order authorizing the fixed transition amounts included  
19 in the transition property;

20 (b) value has been given by the pledgees of the transition property; and

21 (c) the pledgor has signed a security agreement or other financing-related agreement covering the  
22 transition property.

23 (12) (a) A valid and enforceable security interest in transition property is perfected only when it has  
24 attached and when a financing statement has been filed with the ~~commission~~ SECRETARY OF STATE in  
25 accordance with procedures that the ~~commission~~ SECRETARY OF STATE may establish. The financing  
26 statement must name the pledgor of the transition property as debtor and identify the transition property.

27 (b) Any description of the transition property is sufficient if the description refers to the financing  
28 order creating the transition property.

29 (c) The commission may require other filings with respect to the security interest in accordance with  
30 procedures the commission may establish, except that these filings may not affect the perfection of the

1 security interest.

2 (13) A perfected security interest in transition property is a continuously perfected security interest  
3 in all revenue and proceeds arising with respect to the transition property, whether or not the revenue or  
4 proceeds have accrued. Conflicting security interests must rank according to priority in time of perfection.  
5 Transition property constitutes property for all purposes, including for contracts securing transition bonds,  
6 whether or not the revenue and proceeds arising with respect to the transition property have accrued.

7 (14) (a) Subject to the terms of the security agreement covering the transition property and the  
8 rights of any third parties holding security interests in the transition property perfected in the manner  
9 described in this section, the validity and relative priority of a security interest created under this section  
10 is not defeated or adversely affected by:

11 (i) the commingling of revenue arising with respect to the transition property with other funds of  
12 the utility that is the pledgor or transferor of the transition property; or

13 (ii) any security interest of any third party in a deposit account of that utility perfected under Title  
14 30, chapter 9, part 3, into which the revenue is deposited.

15 (b) Subject to the terms of the security agreement, upon compliance with the requirements of this  
16 section, a pledgee of the transition property has a perfected security interest in all cash and deposit  
17 accounts of the utility in which revenue arising with respect to the transition property has been commingled  
18 with other funds, but the perfected security interest must be limited to an amount no greater than the  
19 amount of the revenue with respect to the transition property received by the utility within 12 months  
20 before any default under the security agreement or the institution of insolvency proceedings by or against  
21 the utility, less payments from the revenue to the pledgees during that 12-month period.

22 (15) (a) If a default occurs under the security agreement covering the transition property, a pledgee  
23 of the transition property, subject to the terms of the security agreement, has all rights and remedies of a  
24 secured party upon default under Title 30, chapter 9, part 5, and is entitled to foreclose or otherwise  
25 enforce the pledgee's security interest in the transition property, subject to the rights of any third parties  
26 holding prior security interests in the transition property perfected in the manner provided in this section.

27 (b) The commission may require in the financing order creating the transition property that in the  
28 event of default by the utility in payment of revenue arising with respect to the transition property, the  
29 commission and any successor to the commission, upon the application by a pledgee or assignee of the  
30 transition property and without limiting any other remedies available to the pledgees or transferees by

1 reason of the default shall order the sequestration and payment to the pledgee or assignee of the proceeds  
2 of the transition property. An order must remain in full force and effect notwithstanding any bankruptcy,  
3 reorganization, or other insolvency proceedings with respect to the public utility or a debtor, pledgor, or  
4 transferor of the transition property.

5 (c) Any sum in excess of amounts necessary to pay principal, premium, if any, interest, costs, and  
6 arrearages on the transition bonds and other costs arising under the security agreement must be remitted  
7 to the debtor or to the pledgor as provided in the security agreement.

8 (16) (a) A transfer of transition property by a utility to an assignee or by the assignee to another  
9 assignee that the parties have in the governing documentation expressly stated to be a sale or other  
10 absolute transfer in a transaction approved or authorized in a financing order must be treated as an absolute  
11 transfer of all of the transferor's right, title, and interest, as in a true sale, and not as a pledge or other  
12 financing of the transition property, other than for federal and state income and franchise tax purposes.

13 (b) Granting to transition bondholders a preferred right to revenue of the utility or the provision by  
14 the utility or an assignee of other credit enhancement with respect to transition bonds may not impair or  
15 negate the characterization of any transfer as a true sale, other than for federal and state income and  
16 franchise tax purposes.

17 (c) Notwithstanding the provisions of this subsection (16), for state tax purposes, a transfer must  
18 be treated as a pledge or other financing unless the governing documentation ~~or~~ OF transfer specifically  
19 states that THE transfer is intended to be treated otherwise. The characterization of the transfer as a true  
20 sale or other absolute transfer in the governing documentation of a transfer is not intended to prejudice the  
21 characterization of the transfer as a pledge or other financing for federal tax purposes.

22 (17) A sale, assignment, or other transfer of transition property may only be considered perfected  
23 as against any third person, including any judicial lien creditor, when both of the following have taken place:

24 (a) the financing order authorizing the fixed transition amounts included in the transition property  
25 has become effective in accordance with subsection (2); and

26 (b) an assignment of the transition property, in writing, has been executed and delivered to the  
27 transferee.

28 (18) (a) As between bona fide assignees of the same right for value without notice, the assignee  
29 first filing a financing statement with the ~~commission~~ SECRETARY OF STATE in accordance with  
30 procedures that the ~~commission~~ SECRETARY OF STATE may establish has priority. The financing

1 statement must name the assignor of the transition property as debtor and must identify the transition  
2 property. Any description of the transition property is sufficient if the description refers to the financing  
3 order creating the transition property. The commission may require the assignor or the assignee to make  
4 other filings with respect to the transfer in accordance with procedures that the commission may establish,  
5 but these filings may not affect the perfection of the transfer.

6 (b) Any successor to the utility, whether pursuant to any bankruptcy, reorganization, or other  
7 insolvency proceeding or pursuant to any merger, sale, or transfer, by operation of law, or otherwise, shall  
8 perform and satisfy all obligations of the utility pursuant to this section in the same manner and to the same  
9 extent as the utility, including but not limited to collecting and paying to the assignee or pledgee, as the  
10 case may be, revenue arising with respect to the transition property sold, assigned, transferred, or pledged  
11 to secure transition bonds.

12 (19) Transition property or any right, title, or interest of a utility, assignee, or pledgee described in  
13 the definition of transition property, whether before or after the issuance of a financing order, does not  
14 constitute an account or general intangibles under 30-9-106. Any right, title, or interest pertaining to a  
15 financing order, including the interest pertaining to a financing order, along with the associated transition  
16 property and any revenue, collections, claims, payments, money, or proceeds of or arising from fixed  
17 transition amounts pursuant to the financing order, may not be considered proceeds of any right, title, or  
18 interest other than in the order and the transition property arising from the order.

19 (20) The lien under this section is enforceable against the pledgor and all third parties, including  
20 judicial lien creditors, subject only to the rights of any third parties holding security interests in the transition  
21 property previously perfected in the manner described in this section if value has been given by the  
22 purchasers of transition bonds. A perfected lien in transition property is a continuously perfected security  
23 interest in all revenue and proceeds arising with respect to the associated transition property, whether or  
24 not revenue has been accrued. Transition property constitutes property for the purposes of contracts  
25 securing transition bonds, whether or not the related revenue has accrued. The lien created under this  
26 section is perfected and ranks before any lien, including any judicial lien, that subsequently attaches to the  
27 transition property, to the fixed transition costs, and to the financing order and any rights created by the  
28 order or any proceeds of the order. The relative priority of a lien created under this section is not defeated  
29 or adversely affected by changes to the financing order or to the fixed transition amounts payable by any  
30 customer.



1 (21) The commission shall establish and maintain a separate system of records to reflect the date  
2 and time of receipt of all filings made under this section and may provide that transfers of transition  
3 property to an assignee be filed in accordance with the same system.

4 (22) Any sale, assignment, or other transfer of transition property or any pledge of transition  
5 property is exempt from any state or local sales, income, transfers, gains, receipts, or similar taxes.

6 (23) The transition bonds issued under [sections 1 through 31] are exempt from the provisions of  
7 Title 30, chapter 10, but copies of all prospectus and disclosure documents must be deposited for public  
8 inspection with the state securities commissioner.

9 (24) The granting, perfection, and priority of security interests with respect to transition property  
10 and the proceeds thereof are governed by this section rather than Title 30, chapter 9.

11 (25) UPON THE PAYMENT IN FULL OF TRANSITION BOND PRINCIPAL AND INTEREST, THE  
12 UTILITY SHALL DISCONTINUE CHARGING AND COLLECTING THE COMPETITIVE TRANSITION CHARGE  
13 ASSOCIATED WITH THAT PORTION OF THE UTILITY'S APPROVED TRANSITION COSTS.

14 (26) THE COMMISSION MAY, BY ORDER OR RULE AND SUBJECT TO TERMS AND CONDITIONS  
15 THAT IT MAY PRESCRIBE, EXEMPT ANY SECURITY OR CLASS OF SECURITIES FOR WHICH AN  
16 APPLICATION IS REQUIRED UNDER THIS TITLE OR ANY PUBLIC UTILITY OR CLASS OF PUBLIC UTILITY  
17 FROM THE PROVISIONS OF THIS TITLE IF IT FINDS THAT THE APPLICATION OF THIS TITLE TO THE  
18 SECURITY, CLASS OF SECURITY, PUBLIC UTILITY, OR CLASS OF PUBLIC UTILITY IS NOT REQUIRED BY  
19 THE PUBLIC INTEREST.

20  
21 **Section 32.** Section 15-6-137, MCA, is amended to read:

22 **"15-6-137. Class seven property -- description -- taxable percentage.** (1) Class seven property  
23 includes:

24 (a) all property used and owned by persons, firms, corporations, or other organizations that are  
25 engaged in the business of furnishing telephone communications exclusively to rural areas or to rural areas  
26 and cities and towns of 800 persons or less;

27 (b) all property owned by cooperative rural electrical and cooperative rural telephone associations  
28 that serve less than 95% of the electricity consumers or telephone users within the incorporated limits of  
29 a city or town, except rural electric cooperative properties described in 15-6-141(1)(a);

30 (c) electric transformers and meters; electric light and power substation machinery; natural gas

1 measuring and regulating station equipment, meters, and compressor station machinery owned by  
 2 noncentrally assessed public utilities; and tools used in the repair and maintenance of this property.

3 (2) To qualify for this classification, the average circuit miles for each station on the telephone  
 4 communication system described in subsection (1)(b) must be more than 1 mile.

5 (3) Class seven property is taxed at 8% of its market value."  
 6

7 **Section 33.** Section 15-6-141, MCA, is amended to read:

8 **"15-6-141. Class nine property -- description -- taxable percentage.** (1) Class nine property  
 9 includes:

10 (a) centrally assessed electric power companies' allocations, including, if congress passes legislation  
 11 that allows the state to tax property owned by an agency created by congress to transmit or distribute  
 12 electrical energy, allocations of properties constructed, owned, or operated by a public agency created by  
 13 the congress to transmit or distribute electric energy produced at privately owned generating facilities ~~to~~  
 14 not including rural electric cooperatives); However, properties of rural electric cooperatives  
 15 COOPERATIVES' PROPERTY USED FOR THE SOLE PURPOSE OF serving CUSTOMERS REPRESENTING less  
 16 than 95% of the electric consumers located within the incorporated limits of a city or town of more than  
 17 3,500 persons in which a centrally assessed electric power company also owns property are IS included.  
 18 FOR PURPOSES OF THIS SUBSECTION (1)(A), "PROPERTY USED FOR THE SOLE PURPOSE" DOES NOT  
 19 INCLUDE A HEADQUARTERS, OFFICE, SHOP, OR OTHER SIMILAR FACILITY.

20 (b) allocations for centrally assessed natural gas companies having a major distribution system in  
 21 this state; and

22 (c) centrally assessed companies' allocations except:

23 (i) electric power and natural gas companies' property;

24 (ii) property owned by cooperative rural electric and cooperative rural telephone associations and  
 25 classified in class five;

26 (iii) property owned by organizations providing telephone communications to rural areas and  
 27 classified in class seven;

28 (iv) railroad transportation property included in class twelve; and

29 (v) airline transportation property included in class twelve.

30 (2) Class nine property is taxed at 12% of market value."

1           **Section 34.** Section 69-5-101, MCA, is amended to read:

2           **"69-5-101. Short title.** This part ~~shall be~~ is known and may be cited as the "Territorial Integrity  
3 Act of 1971"."

4

5           **Section 35.** Section 69-5-102, MCA, is amended to read:

6           **"69-5-102. Definitions.** When used in this part, the following definitions apply:

7           (1) ~~"Commercial premises" means the premises where the business of selling, warehousing, or~~  
8 ~~distributing a commodity or other business activity is carried on or professional or other services are~~  
9 ~~rendered.~~ "Agreement" means a written agreement between two or more electric facilities providers that  
10 identifies the geographical area to be served exclusively by each electric facilities provider that is a party  
11 to the agreement and any terms and conditions pertinent to the agreement.

12           (2) "Electric cooperative" means a rural electric cooperative organized under Title 35, chapter 18,  
13 or a foreign corporation admitted thereunder to do business in Montana.

14           (3) ~~"Electric supplier facilities provider" means any electrical utility and any electric cooperative that~~  
15 provides electric service facilities to the public.

16           (4) "Electric service facilities" means any distribution or transmission system or related facility  
17 necessary to provide electricity to the premises, including lines.

18           ~~(4)(5)~~ (5) "Electric utility" means a person, firm, or corporation other than an electric cooperative  
19 ~~which furnishes electrical that provides electric service facilities~~ to the public.

20           ~~(5) "Industrial premises" means the premises where an industrial activity is carried on, including~~  
21 ~~but not limited to the operation of factories, mills, machine shops, mines, oil wells, refineries, pumping,~~  
22 ~~cleaning and dyeing works, creameries, canneries, stockyards, feedlots, military installations, or other~~  
23 ~~extractive, fabricating, or processing activities.~~

24           (6) "Line" means any electric supply conductor ~~operating at a nominal voltage level of 34,500 volts~~  
25 ~~or less, measured phase to phase.~~

26           (7) "Premises" means a building, residence, structure, or facility to which ~~electricity is being~~ electric  
27 service facilities are provided or is are to be furnished; provided, that installed; however, two or more  
28 buildings, structures, or facilities which that are located on one tract or contiguous tracts of land and that  
29 are utilized used by one electric consumer for farming, business, commercial, industrial, institutional,  
30 governmental, or trailer court purposes shall must together constitute one premises, except that any such

1 building, structure, or facility, other than a trailer court, ~~shall~~ may not, together with any other building,  
 2 structure, or facility, constitute one premises if the electric service to it is separately metered and the  
 3 charges for ~~such~~ that service are calculated independently of charges for service to any other building,  
 4 structure, or facility.

5 (8) "Utility" means a public utility regulated by the commission pursuant to Title 69, chapter 3, or  
 6 a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18."

7  
 8 **Section 36.** Section 69-5-104, MCA, is amended to read:

9 **"69-5-104. Continuation of ~~service~~ electric service facilities to existing consumers. ~~Every~~ Each**  
 10 **electric ~~supplier~~ service facilities provider shall have has the right to ~~serve~~ provide electric service facilities**  
 11 **to all premises being served by it or to which any of its facilities are attached on February 1, 1974 [the**  
 12 **effective date of this act]."**

13  
 14 **Section 37.** Section 69-5-105, MCA, is amended to read:

15 **"69-5-105. Service to new consumers. (1) Subject to ~~69-5-106~~ this part, the electric ~~supplier~~**  
 16 **facilities provider having a line nearest the premises, as measured in accordance with subsection (2), shall**  
 17 **serve provide electric service facilities to the premises initially requiring service after February 1, 1974 [the**  
 18 **effective date of this act], which creates a rebuttable presumption that the nearest line is the least-cost**  
 19 **electric service facility to the new customer. However, a customer or another electric facilities provider**  
 20 **may rebut the presumption, and another electric facilities provider may provide the electric service facilities**  
 21 **if it can do so at less cost.**

22 (2) All measurements under this part ~~shall~~ must be made on the shortest straight line ~~which that~~  
 23 can be drawn from the conductor nearest the premises to the nearest permanent portion of the premises.  
 24 ~~Construction power for premises to be constructed shall be supplied by the electric supplier having the right~~  
 25 ~~to serve the completed premises.~~

26 (3) If the electric facilities providers are unable to reach agreement as to which electric facilities  
 27 provider can provide electric service facilities at least cost, an independent consultant engineer agreeable  
 28 to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on  
 29 a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction,  
 30 as provided in 69-5-110, shall determine which electric facilities provider can extend its lines to the

1 consumer at the least cost. The cost of those engineering services must be paid equally by the electric  
 2 facilities providers involved."

3  
 4 **Section 38.** Section 69-5-106, MCA, is amended to read:

5 **"69-5-106. ~~Service~~ Electric service facilities to industrial or commercial premises large customers.**

6 (1) An electric utility has the right to furnish electric service facilities to any ~~industrial or commercial~~  
 7 ~~premises~~ if the estimated connected load for full ~~plant~~ operation at ~~such industrial or commercial~~ the  
 8 ~~premises~~ will be 400 kilowatts or larger within 2 years from the date of initial service ~~provided such and~~  
 9 if the electric utility can extend its ~~lines~~ facilities to ~~such industrial or commercial~~ the premises at less cost  
 10 to the electric utility ~~or the industrial or commercial customer~~ than the electric cooperative cost. The  
 11 estimated connected load ~~shall~~ must be determined from the plans and specifications prepared for  
 12 construction of the premises or, if ~~such an~~ estimate is not available, ~~shall~~ must be determined by agreement  
 13 of the electric ~~supplier~~ facilities provider and the customer. The fact that the actual connected load after  
 14 2 years from the date of initial service is less than 400 kilowatts does not affect the right of the electric  
 15 ~~supplier~~ facilities provider initially providing electric service facilities to continue to provide electric service  
 16 facilities to such the premises.

17 (2) An independent consultant engineer agreeable to both electric ~~suppliers~~ facilities providers or,  
 18 in the event of failure of the electric ~~suppliers~~ facilities providers to agree on a consultant engineer, an  
 19 independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110,  
 20 shall determine which electric ~~supplier~~ facilities provider can extend its ~~lines to the consumer~~ facilities at  
 21 the least cost to the utility. The cost of ~~such those~~ engineering services ~~shall~~ must be paid equally by the  
 22 electric ~~suppliers~~ facilities providers involved.

23 ~~(3) No premises other than another such commercial or industrial premises shall be served from~~  
 24 ~~a line constructed under this section."~~

25  
 26 **Section 39.** Section 69-5-107, MCA, is amended to read:

27 **"69-5-107. ~~Service to property owned by electric supplier~~ Customer-owned facilities. Nothing in**  
 28 ~~69-5-103 through 69-5-106 shall restrict the right of an electric supplier to furnish electric service to any~~  
 29 ~~property owned by the electric supplier. This part may not limit a customer's right to construct, own, or~~  
 30 operate electric service facilities for the customer's own use, and construction, ownership, or use may not

1 cause the customer to be considered a utility. A customer may not duplicate existing electric service  
 2 facilities."

3  
 4 **Section 40.** Section 69-5-108, MCA, is amended to read:

5 **"69-5-108. Agreements between electric suppliers as to service areas facilities providers.**  
 6 ~~Notwithstanding the provisions of 69-5-103 through 69-5-109, an electric supplier may furnish electric~~  
 7 ~~service to any consumer at any premises being served by another electric supplier upon written agreement~~  
 8 ~~of the affected electric suppliers or at premises that another electric supplier has the right to serve pursuant~~  
 9 ~~to this part, upon written agreement of the affected electric suppliers. Utilities may enter into agreements~~  
 10 that identify the geographical area to be exclusively served by each electric facilities provider that is party  
 11 to the agreement, overriding the provisions of 69-5-105 and 69-5-107. If an agreement is approved by the  
 12 commission pursuant to this part, the agreement is valid and binding on all electric facilities providers and  
 13 all customers, except those provided for in 69-5-106."

14  
 15 **Section 41.** Section 69-5-109, MCA, is amended to read:

16 **"69-5-109. Special provisions for annexed areas.** ~~With respect to service in areas which are~~  
 17 ~~annexed to incorporated municipalities having a population in excess of 3,500 persons, electric suppliers~~  
 18 ~~have rights and are subject to restrictions as follows:~~

19 ~~(1) Every electric supplier has the right to serve all premises being served by it on the date of~~  
 20 ~~annexation.~~

21 ~~(2) An electric cooperative does not have the right to serve any premises initially requiring service~~  
 22 ~~on or after the date of annexation. The restriction stated in this subsection does not apply to incorporated~~  
 23 ~~municipalities in which 95% or more of the premises were served by an electric cooperative on February~~  
 24 ~~1, 1971. (1) Electric facilities providers providing electric service facilities in or near areas that are~~  
 25 incorporated municipalities having a population in excess of 3,500 persons and having annexed areas since  
 26 1985 or having existing municipal planning zones on [the effective date of this act] shall enter into  
 27 agreements dividing the annexed and planning zone areas into exclusive service territories and shall submit  
 28 the agreements to the commission for approval, pursuant to this part.

29 (2) The agreements do not apply to electric service facilities with loads of 400 kilowatts or greater.  
 30 Agreements must be based on the location of facilities in place on [the effective date of this act].

1           (3) If electric facilities providers have failed to negotiate agreements within 1 year from the  
 2 [effective date of this act], the commission shall divide the annexed and planning zone areas into exclusive  
 3 service territories, using the considerations pursuant to [section 44].

4           (4) Until agreements are final, electric service facilities to new customers will be provided pursuant  
 5 to 69-5-105."

6  
 7           **Section 42.** Section 69-5-110, MCA, is amended to read:

8           **"69-5-110. Jurisdiction of district courts over disputes.** The district courts of the county or  
 9 counties within which the premises or lines involved in any dispute are located ~~shall~~ have jurisdiction under  
 10 this part over all electric ~~suppliers~~ facilities providers subject to ~~the provisions thereof~~ this part."

11  
 12           **Section 43.** Section 69-5-111, MCA, is amended to read:

13           **"69-5-111. Judicial remedies.** (1) Whenever ~~it shall appear that any an~~ an electric supplier facilities  
 14 provider is failing or omitting or about to fail or omit to do anything required of it by this part or is doing  
 15 or is about to do anything or to permit anything to be done contrary to or in violation of this part, ~~any the~~  
 16 electric supplier facilities provider affected ~~thereby shall have the right to~~ may file a complaint in the district  
 17 court ~~briefly~~ setting forth the acts or omissions complained of and requesting an injunction.

18           (2) If an affidavit showing that grounds exist ~~therefor~~ that an electric facilities provider is in  
 19 violation of this part is filed with the complaint, a temporary restraining order ~~shall~~ must be issued without  
 20 notice. A copy of the temporary restraining order, complaint, and affidavit ~~shall~~ must be served upon the  
 21 defendant, together with an order to show cause why the temporary restraining order should not be made  
 22 permanent, within 5 days after issuance of the temporary restraining order. The hearing on the order to  
 23 show cause must be held at a date specified ~~therein in the order, which shall~~ and may not be more than  
 24 10 days after service ~~thereof of the order~~ and shall must take precedence over all matters pending before  
 25 the district court. A judgment making the injunction permanent or dissolving the temporary restraining order  
 26 ~~thereof~~ that was issued and dismissing the complaint must be made ~~not later than~~ before 10 days after  
 27 the hearing on the order to show cause.

28           (3) Any party aggrieved by the order may appeal to the supreme court of Montana by filing a notice  
 29 of appeal in the district court within 20 days from entry of the order. The appeal must be perfected within  
 30 20 days ~~thereafter~~ after filing the notice of appeal and ~~shall~~ must take precedence over all matters pending

1 before the supreme court of Montana."

2

3 NEW SECTION. Section 44. Commission jurisdiction over agreements. (1) All agreements between  
4 electric facilities providers must be submitted to the commission for approval. Each agreement must clearly  
5 identify the geographical area to be served by each electric facilities provider. The submission must include:

6 (a) a map and a written description of the area; AND

7 (b) the terms and conditions pertaining to the implementation of the agreement.

8 (2) WHENEVER AN AGREEMENT INVOLVES THE EXCHANGE OR TRANSFER OF CUSTOMERS  
9 WITHIN SERVICE TERRITORIES, THE FOLLOWING MUST ALSO BE INCLUDED WITH THE AGREEMENT  
10 SUBMISSION:

11 ~~(a)~~(A) the number and class of customers to be transferred;

12 ~~(d)~~(B) assurance that the affected customers have been contacted and have received a written  
13 explanation of the difference in rates; and

14 ~~(e)~~(C) information with respect to the degree of acceptance by affected customers, such as the  
15 number in favor of and those opposed to the transfer.

16 ~~(2)~~(3) In approving agreements, the commission shall consider but not be limited to consideration  
17 of:

18 (a) the reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the  
19 reliability of electric service to the existing or future ratepayers of any electric facilities provider party of  
20 the agreement; and

21 (b) the reasonable likelihood that the agreement will eliminate existing or potentially uneconomic  
22 duplication of electric service facilities.

23 ~~(3)~~(4) An agreement approved by the commission is valid and enforceable, and except as provided  
24 in 69-5-106, an electric facilities provider may not offer, construct, or extend electric service facilities into  
25 an exclusive territory.

26 ~~(4)~~(5) The commission shall state its findings and conclusions for approving or disapproving an  
27 agreement and shall render a decision within 90 days of receipt of the agreement. The electric facilities  
28 providers submitting the agreement to the commission shall act according to the agreement until a decision  
29 is rendered.

30 ~~(5)~~(6) Upon approval of the agreement, any modification, changes, or corrections to this agreement



1 must be approved by the commission.

2 ~~(6)(7)~~ The commission may promulgate rules to administer this part consistent with the  
3 requirements of this part.

4

5 ~~NEW SECTION. SECTION 45. FUNDING FOR TRANSITION ADVISORY COMMITTEE. (1) THERE~~  
6 ~~IS AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND TO WHICH ALL FEES COLLECTED UNDER~~  
7 ~~[SECTION 46] AND THIS SECTION MUST BE DEPOSITED AND FROM WHICH ALL APPROPRIATIONS TO~~  
8 ~~THE LEGISLATIVE SERVICES DIVISION FOR THE ACTIVITIES OF THE TRANSITION ADVISORY~~  
9 ~~COMMITTEE MUST BE PAID. AN APPROPRIATION TO THE LEGISLATIVE SERVICES DIVISION FOR THE~~  
10 ~~ACTIVITIES OF THE TRANSITION ADVISORY COMMITTEE MAY CONSIST OF A BASE APPROPRIATION~~  
11 ~~FOR REGULAR OPERATING EXPENSES.~~

12 ~~(2) IN ADDITION TO ALL OTHER LICENSES, FEES, AND TAXES IMPOSED BY LAW, ALL ELECTRIC~~  
13 ~~UTILITY COMPANIES SHALL:~~

14 ~~(A) WITHIN 30 DAYS AFTER THE CLOSE OF EACH CALENDAR QUARTER, FILE WITH THE~~  
15 ~~DEPARTMENT OF PUBLIC SERVICE REGULATION AND THE DEPARTMENT OF REVENUE A STATEMENT,~~  
16 ~~IN A FORM THAT THE COMMISSION AND DEPARTMENT OF REVENUE MAY DETERMINE, SHOWING THE~~  
17 ~~GROSS OPERATING REVENUE FROM ALL ACTIVITIES BY THE COMMISSION WITHIN THE STATE FOR~~  
18 ~~THAT CALENDAR QUARTER OF OPERATION OR PORTION OF A QUARTER, SEPARATELY STATING~~  
19 ~~GROSS REVENUE FROM SALES TO OTHER COMPANIES FOR RESALE; AND~~

20 ~~(B) AT THAT TIME PAY TO THE DEPARTMENT OF REVENUE A FEE BASED ON A PERCENTAGE~~  
21 ~~OF THE GROSS OPERATING REVENUE REPORTED, AS DETERMINED BY THE DEPARTMENT OF REVENUE~~  
22 ~~UNDER [SECTION 46].~~

23 ~~(3) UNLESS THE DEPARTMENT OF REVENUE REQUIRES OTHERWISE, A STATEMENT FILED~~  
24 ~~PURSUANT TO 69-1-223(2)(A) MEETS THE REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION.~~

25 ~~(4) THE AMOUNT OF MONEY THAT MAY BE RAISED BY THE FEE ON THE ELECTRIC UTILITY~~  
26 ~~COMPANIES DURING A FISCAL YEAR MAY NOT BE INCREASED, EXCEPT AS PROVIDED IN [SECTION~~  
27 ~~46], FROM THE AMOUNT APPROPRIATED, INCLUDING BOTH BASE AND CONTINGENCY~~  
28 ~~APPROPRIATIONS, BY THE LEGISLATURE FOR THAT FISCAL YEAR. ANY ADDITIONAL MONEY REQUIRED~~  
29 ~~FOR OPERATION OF THE TRANSITION ADVISORY COMMITTEE MUST BE OBTAINED FROM OTHER~~  
30 ~~SOURCES IN A MANNER AUTHORIZED BY THE LEGISLATURE.~~

1 ~~(5) AS USED IN SECTION 46 AND THIS SECTION, "ELECTRIC UTILITY COMPANY" HAS THE~~  
 2 ~~SAME MEANING AS "ELECTRIC FACILITIES PROVIDER" AS DEFINED IN 69-5-102.~~

3  
 4 ~~NEW SECTION. SECTION 46. DETERMINATION OF FEE FOR ACTIVITIES OF TRANSITION~~  
 5 ~~ADVISORY COMMITTEE -- FAILURE TO PAY -- PENALTY -- STATUTE OF LIMITATIONS. (1) ON OR~~  
 6 ~~BEFORE JUNE 30 IN EACH YEAR, THE DEPARTMENT OF REVENUE SHALL:~~

7 ~~(A) DETERMINE THE TOTAL GROSS OPERATING REVENUE GENERATED BY ALL ACTIVITIES~~  
 8 ~~WITHIN THIS STATE FOR ALL ELECTRIC UTILITY COMPANIES FOR THE PREVIOUS FISCAL YEAR;~~

9 ~~(B) COMPUTE THE PERCENTAGE, SUBJECT TO REVISION AS PROVIDED IN SUBSECTION (2), OF~~  
 10 ~~THE AMOUNT DETERMINED IN SUBSECTION (1)(A) THAT WILL PRODUCE AN AMOUNT EQUAL TO THE~~  
 11 ~~APPROPRIATION TO THE LEGISLATIVE SERVICES DIVISION, EXCEPT THAT AN ELECTRIC UTILITY~~  
 12 ~~COMPANY OWNED AND OPERATED BY ANY MUNICIPAL CORPORATION WITHIN THIS STATE MAY NOT~~  
 13 ~~BE REQUIRED TO PAY A SUM IN EXCESS OF 0.06 OF 1% OF ITS GROSS OPERATING REVENUE;~~

14 ~~(C) ADJUST THE PERCENTAGE MULTIPLIER COMPUTED IN SUBSECTION (1)(B) TO ENSURE THAT~~  
 15 ~~SUFFICIENT FUNDS ARE GENERATED TO MEET THE APPROPRIATION AND THAT EXCESS FUNDS ARE~~  
 16 ~~NOT GENERATED OR RETAINED; AND~~

17 ~~(D) GIVE NOTICE BY MAIL TO EACH ELECTRIC UTILITY COMPANY OF THE PERCENTAGE TO BE~~  
 18 ~~APPLIED TO THE GROSS OPERATING REVENUE TO DETERMINE THE AMOUNT OF THE FEE TO BE PAID.~~

19 ~~(2) (A) THE DEPARTMENT OF REVENUE SHALL ADJUST THE PERCENTAGE MULTIPLIER IF THE~~  
 20 ~~DEPARTMENT CONSIDERS A CHANGE NECESSARY TO MEET OR TO NOT EXCEED THE AMOUNT TO BE~~  
 21 ~~RAISED BY THE FEE BECAUSE OF:~~

22 ~~(i) FLUCTUATIONS IN THE ACTUAL GROSS OPERATING REVENUE SUBJECT TO THE FEE; OR~~

23 ~~(ii) SUBMISSION AND APPROVAL OF A BUDGET AMENDMENT AUTHORIZING THE SPENDING~~  
 24 ~~OF MONEY FROM A CONTINGENCY APPROPRIATION INCLUDED IN THE APPROPRIATION FOR THE~~  
 25 ~~LEGISLATIVE SERVICES DIVISION IN SUPPORT OF THE ACTIVITIES OF THE TRANSITION ADVISORY~~  
 26 ~~COMMITTEE AND AUTHORIZED TO BE RAISED BY MEANS OF THE FEE.~~

27 ~~(B) ADJUSTMENTS OF THE PERCENTAGE MULTIPLIER ARE SUBJECT TO THE EXCEPTION~~  
 28 ~~PROVIDED IN SUBSECTION (1)(B) FOR MUNICIPALLY OWNED AND OPERATED ELECTRIC UTILITY~~  
 29 ~~COMPANIES.~~

30 ~~(C) ELECTRIC UTILITY COMPANIES MUST BE GIVEN AT LEAST 30 DAYS' NOTICE OF ANY~~

1 ~~CHANGE IN THE PERCENTAGE MULTIPLIER.~~

2 ~~(D) ANY CHANGE IN THE PERCENTAGE MULTIPLIER IS EFFECTIVE AT THE BEGINNING OF THE~~  
3 ~~NEXT CALENDAR QUARTER.~~

4 ~~(3) IN THE EVENT THAT THE FEE CHARGED IN 1 YEAR IS IN EXCESS OF THE AMOUNT~~  
5 ~~ACTUALLY EXPENDED IN THAT YEAR, THE EXCESS MUST BE DEDUCTED FROM THE AMOUNT~~  
6 ~~REQUIRED TO BE RAISED BY THE FEE FOR THE NEXT YEAR BEFORE THE DETERMINATION REQUIRED~~  
7 ~~BY SUBSECTION (1) IS MADE. MONEY REMAINING UNSPENT AT THE CLOSE OF THE FISCAL YEAR~~  
8 ~~MUST BE USED TO REDUCE THE PERCENTAGE CALCULATED UNDER THIS SECTION IN THE~~  
9 ~~SUBSEQUENT FISCAL YEAR.~~

10 ~~(4) ALL FEES PAID BY AN ELECTRIC UTILITY COMPANY PURSUANT TO THIS SECTION ARE~~  
11 ~~IMMEDIATELY RECOVERABLE BY THE ELECTRIC UTILITY COMPANY IN ITS RATES AND CHARGES.~~  
12 ~~WITHIN 30 DAYS AFTER THE ISSUANCE BY THE DEPARTMENT OF REVENUE OF THE NOTICE REQUIRED~~  
13 ~~BY SUBSECTION (1), THE COMMISSION SHALL BY SEPARATE ORDER AUTHORIZE EACH ELECTRIC~~  
14 ~~UTILITY COMPANY TO FULLY RECOVER IN ITS RATES AND CHARGES, ON AN ANNUAL BASIS, THE~~  
15 ~~FEES LEVIED BY THIS SECTION.~~

16 ~~(6) (A) IF AN ELECTRIC UTILITY COMPANY FAILS, NEGLECTS, OR REFUSES TO FILE A~~  
17 ~~STATEMENT OR TO PAY THE FEE REQUIRED BY [SECTION 46] OR THIS SECTION, THE DEPARTMENT~~  
18 ~~OF REVENUE SHALL COLLECT THE FEE IN THE SAME MANNER AS THE FEE FOR THE OFFICE OF THE~~  
19 ~~LEGISLATIVE CONSUMER COUNSEL IS COLLECTED IN 69-1-225 THROUGH 69-1-230.~~

20 ~~(B) THE PENALTY FOR FAILURE TO PAY THE FEE IMPOSED UNDER [SECTION 46] AND THIS~~  
21 ~~SECTION IS THE SAME AS THE PENALTY UNDER 69-1-226.~~

22 ~~(C) AN OVERPAYMENT OF THE FEE MUST BE PROCESSED IN THE SAME MANNER AS AN~~  
23 ~~OVERPAYMENT IS PROCESSED UNDER 69-1-228.~~

24 ~~(D) THE STATUTE OF LIMITATIONS FOR A DEFICIENCY ASSESSMENT IS THE SAME AS~~  
25 ~~PROVIDED IN 69-1-230.~~

26

27 ~~NEW SECTION. SECTION 45. APPROPRIATION. THERE IS APPROPRIATED FROM THE FEES~~  
28 ~~COLLECTED UNDER [SECTIONS 45 AND 46] TO THE LEGISLATIVE SERVICES DIVISION \$76,000 FOR THE~~  
29 ~~ACTIVITIES OF THE TRANSITION ADVISORY COMMITTEE ON ELECTRIC UTILITY INDUSTRY~~  
30 ~~RESTRUCTURING. THIS IS A BIENNIAL APPROPRIATION. (1) THE LEGISLATIVE SERVICES DIVISION~~

1 MAY ACCEPT GIFTS, GRANTS, OR OTHER DONATIONS FOR THE PURPOSE OF OFFSETTING THE COSTS  
 2 OF CONDUCTING THE ACTIVITIES OF THE TRANSITION ADVISORY COMMITTEE UNDER [SECTION 29]  
 3 OR THE STUDY REQUIRED IN [SECTION 30].

4 (2) A GIFT, GRANT, OR OTHER DONATION MADE BY A PUBLIC UTILITY, AS DEFINED IN  
 5 69-3-101(1)(A), (1)(C), OR (1)(D), IS A COST THAT IS NONRECOVERABLE FROM RATEPAYERS AND  
 6 MUST BE BORNE 100% BY THE SHAREHOLDERS OF THE COMPANY MAKING THE GIFT, GRANT, OR  
 7 DONATION.

8 (3) THE LEGISLATIVE SERVICES DIVISION IS APPROPRIATED UP TO \$200,000 OF ANY GIFTS,  
 9 GRANTS, OR OTHER DONATIONS RECEIVED UNDER THIS SECTION, AND THE APPROPRIATION IS A  
 10 BIENNIAL APPROPRIATION.

11 (4) IF THE AMOUNT OF GIFTS, GRANTS, OR DONATIONS EXCEEDS THE AMOUNT  
 12 APPROPRIATED UNDER SUBSECTION (3), THE EXCESS MUST BE REFUNDED TO THE DONORS IN THE  
 13 RATIO OF THEIR RESPECTIVE GIFT, GRANT, OR DONATION TO THE TOTAL GIFTS, GRANTS, AND  
 14 DONATIONS RECEIVED.

15 (5) IF THE AMOUNT OF THE GIFTS, GRANTS, AND DONATIONS EXPENDED FOR CONDUCTING  
 16 THE ACTIVITIES OF THE TRANSITION ADVISORY COMMITTEE UNDER [SECTION 29] OR THE STUDY  
 17 REQUIRED IN [SECTION 30] IS LESS THAN THE AMOUNT RECEIVED AS GIFTS, GRANTS, OR  
 18 DONATIONS, THE EXCESS MUST BE REFUNDED TO THE DONORS IN THE RATIO OF THEIR RESPECTIVE  
 19 GIFT, GRANT, OR DONATION TO THE TOTAL GIFTS, GRANTS, AND DONATIONS RECEIVED.

20

21 NEW SECTION. Section 46. Repealer. Section 69-5-103, MCA, is repealed.

22

23 NEW SECTION. Section 47. Saving clause. [This act] does not affect rights and duties that  
 24 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this  
 25 act].

26

27 NEW SECTION. Section 48. Severability. If a part of [this act] is invalid, all valid parts that are  
 28 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
 29 applications, the part remains in effect in all valid applications that are severable from the invalid  
 30 applications.

1            **NEW SECTION. Section 49. Codification instructions.** (1) [Sections 1 through 31, ~~45, AND 46~~]  
2 are intended to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections  
3 1 through 31, ~~45, AND 46~~].

4            (2) [Section 44] is intended to be codified as an integral part of Title 69, chapter 5, part 1, and the  
5 provisions of Title 69, chapter 5, part 1, apply to [section 44].

6

7            **NEW SECTION. Section 50. Effective date.** [This act] is effective on passage and approval.

8

-END-