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BILL NO.

SB 396

INTRODUCED BY

Tommy *Thomas* *Arndt* *Beaudry*

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING NATURAL GAS UTILITIES TO PROVIDE FOR CUSTOMER CHOICE; ALLOWING NATURAL GAS UTILITIES TO USE TRANSITION BOND FINANCING FOR TRANSITION COSTS; REQUIRING THE PUBLIC SERVICE COMMISSION TO LICENSE NATURAL GAS SUPPLIERS; ESTABLISHING RECIPROCITY FOR ALL NATURAL GAS SUPPLIERS; PROVIDING FOR UNIVERSAL SYSTEM BENEFITS PROGRAMS; 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 6] may be cited as the "Natural Gas Utility Restructuring and Customer Choice Act".

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 6], the following definitions apply:

(1) "Customer" means a natural gas customer or consumer of natural gas supply or natural gas transmission facilities, storage facilities, or distribution facilities.

(2) "Distribution facilities" means those facilities that are not transmission facilities:
(a) by and through which natural gas is received from a transmission services provider and transmitted to the customer; and
(b) operated by a distribution services provider.

(3) "Distribution services provider" means a person controlling or operating distribution facilities for distribution of natural gas to the public.

(4) "Natural gas supplier" means a person, including aggregators, market aggregators, brokers, and marketers, that is offering to sell natural gas to retail customers in the state of Montana.

1 (5) "Natural gas utility" means a utility regulated by the commission on [the effective date of this
2 act] that provides natural gas services to the public.

3 (6) "Open access" means that a natural gas utility has made its transmission facilities, storage
4 facilities, or distribution facilities available to all natural gas suppliers, transmission services providers,
5 distribution services providers, and customers on a nondiscriminatory and comparable basis.

6 (7) "Storage facilities" means those facilities that are owned, controlled, or operated by a person
7 offering storage service for natural gas and generally means any underground reservoir suitable for the
8 storage of natural gas and the facilities used to inject and withdraw natural gas into and out of that
9 underground reservoir.

10 (8) "Transition costs" means:

11 (a) a natural gas utility's net, verifiable production- and gathering-related costs, including costs
12 of capital, that become unrecoverable as a result of customer choice and open access. These costs include
13 but are not limited to:

14 (i) regulatory assets and deferred charges that exist as a result of current regulatory practices and
15 that may be accounted for up to the point in time that the commission issues a final order in a transition
16 plan filing docket, including all costs, expenses, and fees related to the issuance of transition bonds;

17 (ii) the above-market costs associated with existing gas supply commitments;

18 (iii) other natural gas utility investments rendered uneconomic as a result of implementation of
19 customer choice and open access;

20 (iv) the costs associated with renegotiation or buyout of existing natural gas purchase contracts;

21 and

22 (v) the costs associated with the issuance of any related transition bonds authorized by the
23 commission pursuant to [section 3].

24 (b) the costs of refinancing or retiring debt or equity capital of the natural gas utility and associated
25 federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit
26 customers.

27 (9) "Transmission facilities" means those facilities owned, controlled, and operated by a
28 transmission services provider that are used to transport natural gas from a gathering line or storage facility
29 to a distribution facility or other storage facility.

30 (10) "Transmission services provider" means a person controlling or operating transmission facilities.

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

3 (12) "Universal system benefits programs" means public purpose programs for cost-effective local
4 energy conservation, low-income weatherization, and low-income energy bill assistance.

5
6 **NEW SECTION. Section 3. Customer choice.** (1) A natural gas utility may voluntarily offer its
7 customers choice of natural gas supplier and provide open access to its transmission facilities, storage
8 facilities, or distribution facilities.

9 (2) If a customer choice offering results in transition costs and the commission allows those
10 transition costs to be recovered in separate identifiable charges to customers, then the natural gas utility
11 must have the opportunity but not the obligation to finance the fixed transition costs and related financing
12 costs using transition cost financing as provided for in [sections 3 and 31 of Senate Bill No. 390].

13
14 **NEW SECTION. Section 4. Licensing -- procedures -- commission rulemaking.** (1) The commission
15 shall license natural gas suppliers and enforce licensing provisions pursuant to this section.

16 (2) A natural gas supplier shall file an application with and obtain a license from the commission
17 to sell natural gas to customers in the state of Montana.

18 (3) A licensee shall:

19 (a) provide copies of all license applications to the commission and to all distribution services
20 providers; and

21 (b) update information and file annual reports.

22 (4) A license application becomes effective 30 days after filing with the commission, unless the
23 commission rejects the application during that period. If the commission rejects a license application, the
24 commission shall specify the reasons in writing and, if practical, shall identify alternative ways to overcome
25 deficiencies.

26 (5) The commission shall promulgate rules requiring licensing information that identifies the licensee
27 and ensures that the natural gas supply is provided as offered and is adequate in terms of quality, safety,
28 and reliability.

29 (6) The commission may require proof of a licensee's financial integrity and a demonstration of
30 adequate firm deliverability to meet load requirements.

1 (7) Pursuant to its own investigation or upon the complaint of an affected party, the commission
2 may institute a proceeding to revoke or suspend a license of a natural gas supplier for just cause.

3
4 **NEW SECTION. Section 5. Reciprocity.** (1) All natural gas suppliers are afforded the comparable
5 opportunity to compete.

6 (2) A natural gas distribution services provider or its affiliates may not use another natural gas
7 distribution services provider's facilities in the state of Montana to sell natural gas to customers in the state
8 of Montana unless the natural gas distribution services provider or its affiliates offer customer choice and
9 open access to their natural gas distribution facilities.

10
11 **NEW SECTION. Section 6. Universal system benefits programs -- establishing nonbypassable rate.**
12 (1) A natural gas utility shall implement, upon commission approval, a universal system benefits program
13 that considers existing universal system benefits programs in the state.

14 (2) The commission shall establish a universal system benefits charge that either all natural gas
15 transmission services providers or all distribution services providers, or both, in the state of Montana shall
16 charge to all end-use customers, taking into consideration similar costs imposed in other states. The method
17 of assessing those rates may not disproportionately burden a large transmission services provider's
18 customers. Within the universal system benefits charge, a natural gas utility's annual funding requirement
19 for low-income weatherization and low-income energy bill assistance is established at 0.20% of a natural
20 gas utility's annual revenue. A natural gas utility must receive credit for its internal programs or activities
21 that qualify as universal system benefits programs.

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

28
29 **NEW SECTION. Section 7. Saving clause.** [This act] does not affect rights and duties that
30 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this

1 act].

2

3 **NEW SECTION. Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are
4 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
5 applications, the part remains in effect in all valid applications that are severable from the invalid
6 applications.

7

8 **NEW SECTION. Section 9. Codification instruction.** [Sections 1 through 6] are intended to be
9 codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through 6].

10

11 **NEW SECTION. Section 10. Coordination instruction.** If Senate Bill No. 390 is not passed and
12 approved or as passed and approved does not include [sections 3 and 31], then [section 3(2) of this act]
13 is void.

14

15 **NEW SECTION. Section 11. Effective date.** [This act] is effective on passage and approval.

16

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0396, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act allowing natural gas utilities to provide for customer choice.

ASSUMPTIONS:


1. The Public Service Commission would implement the provisions of this act with its existing resources.
2. There is no fiscal impact to the Department of Public Health and Human Services.

FISCAL IMPACT:

There is no fiscal impact to the state.

TECHNICAL NOTE:

If SB 396 intended to use the same approach as SB 390 in financing the universal system benefits programs (Section 6) it appears there is a mathematical error. Instead of .20% it is believed the figure should be .4155%. This would use the same calculations as SB 390 which incorporated recommendations from the Governor's Low Income Energy Advisory Council recommendations.

 3-25-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 3/25/97
MIKE FOSTER, PRIMARY SPONSOR DATE

Fiscal Note for SB0396, as introduced

SB 396

SENATE BILL NO. 396

INTRODUCED BY FOSTER, SIMON, THOMAS, GRADY, BEAUDRY, HERTEL, KNOX, DEBRUYCKER,
PAVLOVICH, GRINDE, DENNY, RYAN, WILSON, QUILICI, KOTTEL, DOWELL, MCCARTHY,
HARRINGTON, SLITER

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING NATURAL GAS UTILITIES TO PROVIDE FOR
CUSTOMER CHOICE; ALLOWING NATURAL GAS UTILITIES TO USE TRANSITION BOND FINANCING FOR
TRANSITION COSTS; ALLOWING FOR FUNCTIONAL SEPARATION AND CONSUMER PROTECTION;
REQUIRING THE PUBLIC SERVICE COMMISSION TO LICENSE NATURAL GAS SUPPLIERS; ESTABLISHING
RECIPROCITY FOR ALL NATURAL GAS SUPPLIERS; REQUIRING THE REVENUE OVERSIGHT COMMITTEE
TO CONDUCT A TAX REVENUE ANALYSIS AND REPORT TO THE 56TH LEGISLATURE; PROVIDING FOR
UNIVERSAL SYSTEM BENEFITS PROGRAMS; 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:

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definitions apply:

(1) "Customer" means a natural gas customer or consumer of natural gas supply or natural gas
transmission facilities, storage facilities, or distribution facilities.

(2) "Distribution facilities" means those facilities that are not transmission facilities:

(a) by and through which natural gas is received from a transmission services provider and
transmitted to the customer; and

(b) operated by a distribution services provider.

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2 distribution of natural gas to the public.

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4 marketers, LICENSED BY THE COMMISSION that is offering to sell natural gas to retail customers in the
5 state of Montana.

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7 act] that provides natural gas services to the public.

8 (6) "Open access" means that a natural gas utility has made its transmission facilities, storage
9 facilities, or distribution facilities available to all natural gas suppliers, transmission services providers,
10 distribution services providers, and customers on a nondiscriminatory and comparable basis.

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12 offering storage service for natural gas and generally means any underground reservoir suitable for the
13 storage of natural gas and the facilities used to inject and withdraw natural gas into and out of that
14 underground reservoir.

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17 of capital, that become unrecoverable as a result of customer choice and open access. These costs include
18 but are not limited to:

19 (i) regulatory assets and deferred charges that exist as a result of current regulatory practices and
20 that may be accounted for up to the point in time that the commission issues a final order in a ~~transition~~
21 ~~plan filing~~ docket ADDRESSING TRANSITION COSTS, including all costs, expenses, and fees related to the
22 issuance of transition bonds;

23 (ii) the above-market costs associated with existing gas supply commitments;

24 (iii) other natural gas utility investments rendered uneconomic as a result of implementation of
25 customer choice and open access;

26 (iv) the costs associated with renegotiation or buyout of existing natural gas purchase contracts;
27 and

28 (v) the costs associated with the issuance of any related transition bonds authorized by the
29 commission pursuant to [section 3].

30 (b) the costs of refinancing or retiring debt or equity capital of the natural gas utility and associated

1 federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit
2 customers.

3 (9) "Transmission facilities" means those facilities owned, controlled, and operated by a
4 transmission services provider that are used to transport natural gas from a gathering line or storage facility
5 to a distribution facility ~~or other~~, storage facility, OR END-USE CUSTOMER.

6 (10) "Transmission services provider" means a person controlling or operating transmission facilities.

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

9 (12) "Universal system benefits programs" means public purpose programs for cost-effective local
10 energy conservation, low-income weatherization, and low-income energy bill assistance.

11

12 NEW SECTION. Section 3. Customer choice. (1) A natural gas utility may voluntarily offer its
13 customers choice of natural gas supplier and provide open access to its transmission facilities, storage
14 facilities, or distribution facilities.

15 (2) If a customer choice offering results in transition costs ~~and~~, the commission ~~allows~~ MAY ALLOW
16 those transition costs to be recovered in separate identifiable charges to customers, ~~then~~. UPON
17 COMMISSION APPROVAL, the natural gas utility must have the opportunity but not the obligation to
18 finance the fixed transition costs and related financing costs using transition cost financing as provided for
19 in [sections 3 and 31 of Senate Bill No. 390].

20

21 NEW SECTION. SECTION 4. FUNCTIONAL SEPARATION -- CODE OF CONDUCT -- EMERGENCY
22 SERVICES -- CUSTOMER PROTECTION. (1) A NATURAL GAS UTILITY THAT PROVIDES CUSTOMER
23 CHOICE AND OPEN ACCESS ON ITS SYSTEM SHALL:

24 (A) FUNCTIONALLY SEPARATE ITS NATURAL GAS PRODUCTION AND GATHERING FROM ITS
25 NATURAL GAS TRANSMISSION, STORAGE, AND DISTRIBUTION SERVICES AND REMOVE NATURAL GAS
26 PRODUCTION AND GATHERING FROM THE RATE BASE;

27 (B) ADOPT AND COMPLY WITH COMMISSION-APPROVED STANDARDS OF CONDUCT TO BE
28 INCLUDED IN A TARIFF TO GOVERN ITS NATURAL GAS TRANSMISSION, STORAGE, AND DISTRIBUTION
29 SERVICES; AND

30 (C) PROVIDE EMERGENCY NATURAL GAS SUPPLY AND RELATED SERVICES TO THE EXTENT

1 NECESSARY TO MAINTAIN THE OPERATIONAL INTEGRITY OF THE TRANSMISSION SYSTEM AS
 2 DETERMINED BY THE COMMISSION.

3 (2) THE COMMISSION SHALL DEVELOP STANDARDS THAT PROTECT CONSUMERS AND
 4 NATURAL GAS SUPPLIERS FROM ANTICOMPETITIVE AND ABUSIVE PRACTICES.

5 (3) [SECTIONS 1 THROUGH 8] DO NOT REDUCE OR OTHERWISE CHANGE THE AUTHORITY OF
 6 THE COMMISSION TO REVIEW THE PRUDENCE OF NATURAL GAS PURCHASES MADE BY A NATURAL
 7 GAS UTILITY FOR ITS CUSTOMERS THAT DO NOT HAVE A CHOICE OR THAT HAVE NOT MADE A
 8 CHOICE OF NATURAL GAS SUPPLIERS OR HAVE NOT BEEN ASSIGNED A NATURAL GAS SUPPLIER.

9

10 NEW SECTION. Section 5. Licensing -- procedures -- commission rulemaking. (1) The commission
 11 shall license natural gas suppliers and enforce licensing provisions pursuant to this section.

12 (2) A natural gas supplier shall file an application with and obtain a license from the commission
 13 to sell natural gas to customers in the state of Montana.

14 (3) A licensee shall:

15 (a) provide copies of all license applications to the commission and to all distribution services
 16 providers; and

17 (b) update information and file annual reports.

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

22 (5) The commission shall promulgate rules requiring licensing information that identifies the licensee
 23 and ensures that the natural gas supply is provided as offered and is adequate in terms of quality, safety,
 24 and reliability.

25 (6) The commission may require proof of a licensee's financial integrity and a demonstration of
 26 adequate firm deliverability to meet load requirements.

27 (7) Pursuant to its own investigation or upon the complaint of an affected party, the commission
 28 may institute a proceeding to revoke or suspend a license of a natural gas supplier for just cause.

29

30 NEW SECTION. Section 6. Reciprocity. (1) All natural gas suppliers are afforded the comparable

1 opportunity to compete.

2 (2) A natural gas distribution services provider or its affiliates may not use another natural gas
3 distribution services provider's facilities in the state of Montana to sell natural gas to customers in the state
4 of Montana unless the natural gas distribution services provider or its affiliates offer customer choice and
5 open access to their natural gas distribution facilities.

6

7 **NEW SECTION. Section 7. Universal system benefits programs -- establishing nonbypassable rate.**

8 (1) A natural gas utility shall implement, upon commission approval, a universal system benefits program
9 that considers existing universal system benefits programs in the state.

10 (2) The commission shall establish a universal system benefits charge that either all natural gas
11 transmission services providers or all distribution services providers, or both, in the state of Montana shall
12 charge to all end-use customers, taking into consideration THE CURRENT LEVEL OF EXPENDITURE BY THE
13 NATURAL GAS UTILITY, COST-EFFECTIVENESS, AND similar costs imposed in other states. The method
14 of assessing those rates may not disproportionately burden a large transmission services provider's
15 customers. Within the universal system benefits charge, a natural gas utility's annual funding requirement
16 for low-income weatherization and low-income energy bill assistance is established at ~~0.20%~~ 0.42% of a
17 natural gas utility's annual revenue. A natural gas utility must receive credit for its internal programs or
18 activities that qualify as universal system benefits programs.

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

25

26 **NEW SECTION. SECTION 8. TAX REVENUE ANALYSIS. (1) THE REVENUE OVERSIGHT**
27 **COMMITTEE, AS PROVIDED FOR IN 5-18-102, SHALL ANALYZE THE AMOUNT OF STATE AND LOCAL**
28 **TAX REVENUE DERIVED FROM PREVIOUSLY REGULATED NATURAL GAS SUPPLIERS THAT WILL ENTER**
29 **THE COMPETITIVE MARKET AND SHALL REPORT TO THE LEGISLATURE ON HOW REVENUE TO THE**
30 **STATE OR LOCAL GOVERNMENT IS CHANGED BY RESTRUCTURING AND COMPETITION.**

1 (2) ON OR BEFORE NOVEMBER 30, 1998, THE REVENUE OVERSIGHT COMMITTEE SHALL
2 RECOMMEND TO THE 56TH LEGISLATURE LEGISLATIVE CHANGES TO ADDRESS THE ESTABLISHMENT
3 OF COMPARABLE STATE AND LOCAL TAXATION BURDENS ON ALL MARKET PARTICIPANTS IN THE
4 SUPPLY OF NATURAL GAS.

5

6 NEW SECTION. Section 9. Saving clause. [This act] does not affect rights and duties that
7 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
8 act].

9

10 NEW SECTION. Section 10. Severability. If a part of [this act] is invalid, all valid parts that are
11 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
12 applications, the part remains in effect in all valid applications that are severable from the invalid
13 applications.

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15 NEW SECTION. Section 11. Codification instruction. [Sections 1 through 6 8] are intended to be
16 codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through 6 8].

17

18 NEW SECTION. Section 12. Coordination instruction. If Senate Bill No. 390 is not passed and
19 approved or as passed and approved does not include [sections 3 and 31], then [section 3(2) of this act]
20 is void.

21

22 NEW SECTION. Section 13. Effective date. [This act] is effective on passage and approval.

23

-END-

1 SENATE BILL NO. 396

2 INTRODUCED BY FOSTER, SIMON, THOMAS, GRADY, BEAUDRY, HERTEL, KNOX, DEBRUYCKER,
3 PAVLOVICH, GRINDE, DENNY, RYAN, WILSON, QUILICI, KOTTEL, DOWELL, MCCARTHY,
4 HARRINGTON, SLITER

5
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8 TRANSITION COSTS; ALLOWING FOR FUNCTIONAL SEPARATION AND CONSUMER PROTECTION;
9 REQUIRING THE PUBLIC SERVICE COMMISSION TO LICENSE NATURAL GAS SUPPLIERS; ESTABLISHING
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11 TO CONDUCT A TAX REVENUE ANALYSIS AND REPORT TO THE 56TH LEGISLATURE; PROVIDING FOR
12 UNIVERSAL SYSTEM BENEFITS PROGRAMS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A
13 RETROACTIVE APPLICABILITY DATE."

14
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16 A statement of intent is required because this bill provides the public service commission with
17 rulemaking authority.

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 27 PRODUCTION AND GATHERING FROM THE RATE BASE;

28 (B) ADOPT AND COMPLY WITH COMMISSION-APPROVED STANDARDS OF CONDUCT TO BE
 29 INCLUDED IN A TARIFF TO GOVERN ITS NATURAL GAS TRANSMISSION, STORAGE, AND DISTRIBUTION
 30 SERVICES; AND

1 (C) PROVIDE EMERGENCY NATURAL GAS SUPPLY AND RELATED SERVICES TO THE EXTENT
2 NECESSARY TO MAINTAIN THE OPERATIONAL INTEGRITY OF THE TRANSMISSION SYSTEM AS
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4 (2) THE COMMISSION SHALL DEVELOP STANDARDS THAT PROTECT CONSUMERS AND
5 NATURAL GAS SUPPLIERS FROM ANTICOMPETITIVE AND ABUSIVE PRACTICES.

6 (3) [SECTIONS 1 THROUGH 8] DO NOT REDUCE OR OTHERWISE CHANGE THE AUTHORITY OF
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15 (3) A licensee shall:

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19 (4) A license application becomes effective 30 days after filing with the commission, unless the
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26 (6) The commission may require proof of a licensee's financial integrity and a demonstration of
27 adequate firm deliverability to meet load requirements.

28 (7) Pursuant to its own investigation or upon the complaint of an affected party, the commission
29 may institute a proceeding to revoke or suspend a license of a natural gas supplier for just cause.

30

1 **NEW SECTION. Section 6. Reciprocity.** (1) All natural gas suppliers are afforded the comparable
2 opportunity to compete.

3 (2) A natural gas distribution services provider or its affiliates may not use another natural gas
4 distribution services provider's facilities in the state of Montana to sell natural gas to customers in the state
5 of Montana unless the natural gas distribution services provider or its affiliates offer customer choice and
6 open access to their natural gas distribution facilities.

7
8 **NEW SECTION. Section 7. Universal system benefits programs -- establishing nonbypassable rate.**

9 (1) A natural gas utility shall implement, upon commission approval, a universal system benefits program
10 that considers existing universal system benefits programs in the state.

11 (2) The commission shall establish a universal system benefits charge that either all natural gas
12 transmission services providers or all distribution services providers, or both, in the state of Montana shall
13 charge to all end-use customers, taking into consideration THE CURRENT LEVEL OF EXPENDITURE BY THE
14 NATURAL GAS UTILITY, COST-EFFECTIVENESS, AND similar costs imposed in other states. The method
15 of assessing those rates may not disproportionately burden a large transmission services provider's
16 customers. Within the universal system benefits charge, a natural gas utility's annual funding requirement
17 for low-income weatherization and low-income energy bill assistance is established at ~~0.20%~~ 0.42% of a
18 natural gas utility's annual revenue. A natural gas utility must receive credit for its internal programs or
19 activities that qualify as universal system benefits programs.

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

26
27 **NEW SECTION. SECTION 8. TAX REVENUE ANALYSIS.** (1) THE REVENUE OVERSIGHT
28 COMMITTEE, AS PROVIDED FOR IN 5-18-102, SHALL ANALYZE THE AMOUNT OF STATE AND LOCAL
29 TAX REVENUE DERIVED FROM PREVIOUSLY REGULATED NATURAL GAS SUPPLIERS THAT WILL ENTER
30 THE COMPETITIVE MARKET AND SHALL REPORT TO THE LEGISLATURE ON HOW REVENUE TO THE

1 STATE OR LOCAL GOVERNMENT IS CHANGED BY RESTRUCTURING AND COMPETITION.

2 (2) ON OR BEFORE NOVEMBER 30, 1998, THE REVENUE OVERSIGHT COMMITTEE SHALL
 3 RECOMMEND TO THE 56TH LEGISLATURE LEGISLATIVE CHANGES TO ADDRESS THE ESTABLISHMENT
 4 OF COMPARABLE STATE AND LOCAL TAXATION BURDENS ON ALL MARKET PARTICIPANTS IN THE
 5 SUPPLY OF NATURAL GAS.

6

7 NEW SECTION. Section 9. Saving clause -- RETROACTIVE APPLICABILITY. (1) EXCEPT AS
 8 PROVIDED IN (2), [This THIS act] does not affect rights and duties that matured, penalties that were
 9 incurred, or proceedings that were begun before [the effective date of this act].

10 (2) [THIS ACT] APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO
 11 RESTRUCTURING FILINGS FILED WITH THE PUBLIC SERVICE COMMISSION AFTER JUNE 1, 1996.

12

13 NEW SECTION. Section 10. Severability. If a part of [this act] is invalid, all valid parts that are
 14 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
 15 applications, the part remains in effect in all valid applications that are severable from the invalid
 16 applications.

17

18 NEW SECTION. Section 11. Codification instruction. [Sections 1 through 6 8] are intended to be
 19 codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through 6 8].

20

21 NEW SECTION. Section 12. Coordination instruction. If Senate Bill No. 390 is not passed and
 22 approved or as passed and approved does not include [sections 3 and 31], then [section 3(2) of this act]
 23 is void.

24

25 NEW SECTION. Section 13. Effective date. [This act] is effective on passage and approval.

26

-END-

SENATE BILL NO. 396

INTRODUCED BY FOSTER, SIMON, THOMAS, GRADY, BEAUDRY, HERTEL, KNOX, DEBRUYCKER,
PAVLOVICH, GRINDE, DENNY, RYAN, WILSON, QUILICI, KOTTEL, DOWELL, MCCARTHY,
HARRINGTON, SLITER

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING NATURAL GAS UTILITIES TO PROVIDE FOR
CUSTOMER CHOICE; ALLOWING NATURAL GAS UTILITIES TO USE TRANSITION BOND FINANCING FOR
TRANSITION COSTS; ALLOWING FOR FUNCTIONAL SEPARATION AND CONSUMER PROTECTION;
REQUIRING THE PUBLIC SERVICE COMMISSION TO LICENSE NATURAL GAS SUPPLIERS; ESTABLISHING
RECIPROCITY FOR ALL NATURAL GAS SUPPLIERS; PROVIDING FOR OPTIONAL PERFORMANCE-BASED
RATEMAKING; REQUIRING THE REVENUE OVERSIGHT COMMITTEE TO CONDUCT A TAX REVENUE
ANALYSIS AND REPORT TO THE 56TH LEGISLATURE; PROVIDING FOR UNIVERSAL SYSTEM BENEFITS
PROGRAMS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY
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 ~~6-8~~ 9] may be cited as the "Natural Gas
Utility Restructuring and Customer Choice Act".

NEW SECTION. Section 2. Definitions. As used in [sections 1 through ~~6-8~~ 9], the following
definitions apply:

(1) "Customer" means a natural gas customer or consumer of natural gas supply or natural gas
transmission facilities, storage facilities, or distribution facilities.

(2) "Distribution facilities" means those facilities that are not transmission facilities:

(a) by and through which natural gas is received from a transmission services provider and

1 transmitted to the customer; and

2 (b) operated by a distribution services provider.

3 (3) "Distribution services provider" means a person controlling or operating distribution facilities for
4 distribution of natural gas to the public.

5 (4) "Natural gas supplier" means a person, including aggregators, market aggregators, brokers, and
6 marketers, LICENSED BY THE COMMISSION that is offering to sell natural gas to retail customers in the
7 state of Montana.

8 (5) "Natural gas utility" means a utility regulated by the commission on [the effective date of this
9 act] that provides natural gas services to the public.

10 (6) "Open access" means that a natural gas utility has made its transmission facilities, storage
11 facilities, or distribution facilities available to all natural gas suppliers, transmission services providers,
12 distribution services providers, and customers on a nondiscriminatory and comparable basis.

13 (7) "PERFORMANCE-BASED RATEMAKING" MEANS THOSE FORMS OF REGULATION THAT
14 INCLUDE BUT ARE NOT LIMITED TO THE USE OF REVENUE INDEXING, PRICE INDEXING, RANGES OF
15 AUTHORIZED RETURN, GAS COST INDEXING, AND INNOVATIVE USE OF UTILITY-RELATED ASSETS AND
16 ACTIVITIES, SUCH AS SYSTEM SALES OF EXCESS NATURAL GAS SUPPLIES, RELEASE OF UPSTREAM
17 PIPELINE CAPACITY, AND PERFORMANCE OF BILLING SERVICES FOR OTHER NATURAL GAS SUPPLIERS.
18 A PERFORMANCE-BASED REGULATION MAY ALSO INCLUDE A MECHANISM FOR AUTOMATIC ANNUAL
19 ADJUSTMENTS OF REVENUE TO PRICES TO REFLECT CHANGES IN ANY INDEX ADOPTED FOR THE
20 IMPLEMENTATION OF THE PERFORMANCE-BASED FORM OF REGULATION.

21 ~~(7)(8)~~ "Storage facilities" means those facilities that are owned, controlled, or operated by a person
22 offering storage service for natural gas and generally means any underground reservoir suitable for the
23 storage of natural gas and the facilities used to inject and withdraw natural gas into and out of that
24 underground reservoir.

25 ~~(8)(9)~~ "Transition costs" means:

26 (a) a natural gas utility's net, verifiable production- and gathering-related costs, including costs
27 of capital, that become unrecoverable as a result of customer choice and open access. These costs include
28 but are not limited to:

29 (i) regulatory assets and deferred charges that exist as a result of current regulatory practices and
30 that may be accounted for up to the point in time that the commission issues a final order in a transition

1 ~~plan filing~~ docket ADDRESSING TRANSITION COSTS], including all costs, expenses, and fees related to
 2 the issuance of transition bonds];

3 (ii) the above-market costs associated with existing gas supply commitments;

4 (iii) other natural gas utility investments rendered uneconomic as a result of implementation of
 5 customer choice and open access;

6 (iv) the costs associated with renegotiation or buyout of existing natural gas purchase contracts;
 7 and

8 (v) the costs associated with the issuance of any related transition bonds authorized by the
 9 commission pursuant to [section 3].

10 (b) the costs of refinancing or retiring debt or equity capital of the natural gas utility and associated
 11 federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit
 12 customers.

13 ~~(9)~~(10) "Transmission facilities" means those facilities owned, controlled, and operated by a
 14 transmission services provider that are used to transport natural gas from a gathering line or storage facility
 15 to a distribution facility ~~or other~~, storage facility, OR END-USE CUSTOMER.

16 ~~(10)~~(11) "Transmission services provider" means a person controlling or operating transmission
 17 facilities.

18 ~~(11)~~(12) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed
 19 on a customer to pay the customer's share of universal system benefits program costs.

20 ~~(12)~~(13) "Universal system benefits programs" means public purpose programs for cost-effective
 21 local energy conservation, low-income weatherization, and low-income energy bill assistance.

22
 23 NEW SECTION. Section 3. Customer choice. (1) A natural gas utility may voluntarily offer its
 24 customers choice of natural gas supplier and provide open access to its transmission facilities, storage
 25 facilities, or distribution facilities.

26 (2) If a customer choice offering results in transition costs ~~and~~, the commission ~~allows~~ MAY ALLOW
 27 those transition costs to be recovered in separate identifiable charges to customers, ~~then~~, UPON
 28 COMMISSION APPROVAL, the natural gas utility must have the opportunity but not the obligation to
 29 finance the fixed transition costs and related financing costs using transition cost financing as provided for
 30 in [sections 3 and 31 of Senate Bill No. 390].

1 **NEW SECTION. SECTION 4. FUNCTIONAL SEPARATION -- CODE OF CONDUCT -- EMERGENCY**
 2 **SERVICES -- CUSTOMER PROTECTION. (1) A NATURAL GAS UTILITY THAT PROVIDES CUSTOMER**
 3 **CHOICE AND OPEN ACCESS ON ITS SYSTEM SHALL:**

4 **(A) FUNCTIONALLY SEPARATE ITS NATURAL GAS PRODUCTION AND GATHERING FROM ITS**
 5 **NATURAL GAS TRANSMISSION, STORAGE, AND DISTRIBUTION SERVICES AND REMOVE NATURAL GAS**
 6 **PRODUCTION AND GATHERING FROM THE RATE BASE;**

7 **(B) ADOPT AND COMPLY WITH COMMISSION-APPROVED STANDARDS OF CONDUCT TO BE**
 8 **INCLUDED IN A TARIFF TO GOVERN ITS NATURAL GAS TRANSMISSION, STORAGE, AND DISTRIBUTION**
 9 **SERVICES; AND**

10 **(C) PROVIDE EMERGENCY NATURAL GAS SUPPLY AND RELATED SERVICES TO THE EXTENT**
 11 **NECESSARY TO MAINTAIN THE OPERATIONAL INTEGRITY OF THE TRANSMISSION SYSTEM AS**
 12 **DETERMINED BY THE COMMISSION.**

13 **(2) THE COMMISSION SHALL DEVELOP STANDARDS THAT PROTECT CONSUMERS AND**
 14 **NATURAL GAS SUPPLIERS FROM ANTICOMPETITIVE AND ABUSIVE PRACTICES.**

15 **(3) [SECTIONS 1 THROUGH § 9] DO NOT REDUCE OR OTHERWISE CHANGE THE AUTHORITY OF**
 16 **THE COMMISSION TO REVIEW THE PRUDENCE OF NATURAL GAS PURCHASES MADE BY A NATURAL**
 17 **GAS UTILITY FOR ITS CUSTOMERS THAT DO NOT HAVE A CHOICE OR THAT HAVE NOT MADE A**
 18 **CHOICE OF NATURAL GAS SUPPLIERS OR HAVE NOT BEEN ASSIGNED A NATURAL GAS SUPPLIER.**

19
 20 **NEW SECTION. Section 5. Licensing -- procedures -- commission rulemaking.** (1) The commission
 21 shall license natural gas suppliers and enforce licensing provisions pursuant to this section.

22 (2) A natural gas supplier shall file an application with and obtain a license from the commission
 23 to sell natural gas to customers in the state of Montana.

24 (3) A licensee shall:

25 (a) provide copies of all license applications to the commission and to all distribution services
 26 providers; and

27 (b) update information and file annual reports.

28 (4) A license application becomes effective 30 days after filing with the commission, unless the
 29 commission rejects the application during that period. If the commission rejects a license application, the
 30 commission shall specify the reasons in writing and, if practical, shall identify alternative ways to overcome

1 deficiencies.

2 (5) The commission shall promulgate rules requiring licensing information that identifies the licensee
3 and ensures that the natural gas supply is provided as offered and is adequate in terms of quality, safety,
4 and reliability.

5 (6) The commission may require proof of a licensee's financial integrity and a demonstration of
6 adequate firm deliverability to meet load requirements.

7 (7) Pursuant to its own investigation or upon the complaint of an affected party, the commission
8 may institute a proceeding to revoke or suspend a license of a natural gas supplier for just cause.

9
10 **NEW SECTION. Section 6. Reciprocity.** (1) All natural gas suppliers are afforded the comparable
11 opportunity to compete.

12 (2) A natural gas distribution services provider or its affiliates may not use another natural gas
13 distribution services provider's facilities in the state of Montana to sell natural gas to customers in the state
14 of Montana unless the natural gas distribution services provider or its affiliates offer customer choice and
15 open access to their natural gas distribution facilities.

16
17 **NEW SECTION. SECTION 7. OPTIONAL PERFORMANCE-BASED RATEMAKING FOR NATURAL**
18 **GAS UTILITIES -- COMMISSION RULEMAKING.** (1) **THE COMMISSION MAY, UPON APPLICATION AND**
19 **AFTER GIVING NOTICE AND CONDUCTING A HEARING AS PROVIDED IN 69-3-303, AUTHORIZE ANY**
20 **NATURAL GAS UTILITY TO IMPLEMENT AN OPTIONAL FORM OF RATE REGULATION USING A**
21 **PERFORMANCE-BASED RATEMAKING METHODOLOGY.**

22 **(2) THE COMMISSION MAY APPROVE A PERFORMANCE-BASED RATEMAKING METHODOLOGY**
23 **IF IT FINDS THAT THE METHODOLOGY:**

24 **(A) PRESERVES ADEQUATE SERVICE TO ALL CLASSES OF CUSTOMERS, INCLUDING**
25 **TRANSPORTATION-ONLY CUSTOMERS;**

26 **(B) DOES NOT UNREASONABLY PREJUDICE OR DISADVANTAGE ANY CLASS OF NATURAL GAS**
27 **UTILITY USERS;**

28 **(C) PROVIDES INCENTIVES FOR IMPROVED PERFORMANCE BY THE NATURAL GAS UTILITY IN**
29 **THE NATURAL GAS UTILITY'S PUBLIC DUTIES;**

30 **(D) RESULTS IN RATES THAT ARE NOT EXCESSIVE; AND**

1 (E) IS IN THE PUBLIC INTEREST.

2 (3) THE COMMISSION MAY, AFTER GIVING NOTICE AND CONDUCTING A HEARING AS
 3 PROVIDED IN 69-3-303, MODIFY OR DISCONTINUE A NATURAL GAS UTILITY'S PERFORMANCE-BASED
 4 RATEMAKING PREVIOUSLY AUTHORIZED UNDER THIS SECTION IF THE COMMISSION FINDS THAT:

5 (A) NATURAL GAS SERVICE TO ONE OR MORE CLASSES OF CUSTOMERS HAS DETERIORATED
 6 OR WILL DETERIORATE;

7 (B) ANY CLASS OF NATURAL GAS UTILITY CUSTOMER IS BEING UNREASONABLY PREJUDICED
 8 OR DISADVANTAGED;

9 (C) THE PERFORMANCE-BASED RATEMAKING IS NOT PROVIDING OR WILL NOT PROVIDE
 10 REASONABLE INCENTIVES FOR IMPROVED PERFORMANCE BY A NATURAL GAS UTILITY IN THE
 11 PERFORMANCE OF ITS PUBLIC DUTIES;

12 (D) RATES ARE EXCESSIVE COMPARED TO A NATURAL GAS UTILITY'S COST OF SERVICE;

13 (E) TERMS ORDERED BY THE COMMISSION IN CONNECTION WITH THE APPROVAL OF A
 14 NATURAL GAS UTILITY'S IMPLEMENTATION OF PERFORMANCE-BASED RATEMAKING HAVE BEEN
 15 VIOLATED; AND

16 (F) THE PERFORMANCE-BASED FORM OF REGULATION IS NOT IN THE PUBLIC INTEREST.

17 (4) THE COMMISSION SHALL PROMULGATE RULES FOR MONITORING A NATURAL GAS UTILITY
 18 THAT HAS IMPLEMENTED PERFORMANCE-BASED RATEMAKING TO ENSURE THAT THE NATURAL GAS
 19 UTILITY IS IN COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION.

20
 21 **NEW SECTION. Section 8. Universal system benefits programs -- establishing nonbypassable rate.**

22 (1) A natural gas utility shall implement, upon commission approval, a universal system benefits program
 23 that considers existing universal system benefits programs in the state.

24 (2) The commission shall establish a universal system benefits charge that either all natural gas
 25 transmission services providers or all distribution services providers, or both, in the state of Montana shall
 26 charge to all end-use customers, taking into consideration THE CURRENT LEVEL OF EXPENDITURE BY THE
 27 NATURAL GAS UTILITY, COST-EFFECTIVENESS, AND similar costs imposed in other states. The method
 28 of assessing those rates may not disproportionately burden a large transmission services provider's
 29 customers. Within the universal system benefits charge, a natural gas utility's annual funding requirement
 30 for low-income weatherization and low-income energy bill assistance is established at ~~0.20%~~ 0.42% of a

1 natural gas utility's annual revenue. A natural gas utility must receive credit for its internal programs or
 2 activities that qualify as universal system benefits programs.

3 (3) On or before July 1, 2002, the commission shall conduct a reevaluation of the ongoing need
 4 for universal system benefits programs and annual funding requirements and shall make recommendations
 5 to the 58th legislature regarding the future need for universal system benefits programs. The determination
 6 should focus specifically on the existence of markets to provide for any of the universal system benefits
 7 programs or on whether other means for funding those universal system benefits programs have developed.
 8 These recommendations may also address how future reevaluations will be provided, if necessary.

9

10 NEW SECTION. SECTION 9. TAX REVENUE ANALYSIS. (1) THE REVENUE OVERSIGHT
 11 COMMITTEE, AS PROVIDED FOR IN 5-18-102, SHALL ANALYZE THE AMOUNT OF STATE AND LOCAL
 12 TAX REVENUE DERIVED FROM PREVIOUSLY REGULATED NATURAL GAS SUPPLIERS THAT WILL ENTER
 13 THE COMPETITIVE MARKET AND SHALL REPORT TO THE LEGISLATURE ON HOW REVENUE TO THE
 14 STATE OR LOCAL GOVERNMENT IS CHANGED BY RESTRUCTURING AND COMPETITION.

15 (2) ON OR BEFORE NOVEMBER 30, 1998, THE REVENUE OVERSIGHT COMMITTEE SHALL
 16 RECOMMEND TO THE 56TH LEGISLATURE LEGISLATIVE CHANGES TO ADDRESS THE ESTABLISHMENT
 17 OF COMPARABLE STATE AND LOCAL TAXATION BURDENS ON ALL MARKET PARTICIPANTS IN THE
 18 SUPPLY OF NATURAL GAS.

19

20 NEW SECTION. Section 10. Saving clause. -- RETROACTIVE APPLICABILITY. (1) EXCEPT AS
 21 PROVIDED IN (2), [This THIS act] does not affect rights and duties that matured, penalties that were
 22 incurred, or proceedings that were begun before [the effective date of this act].

23 (2) [THIS ACT] APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO
 24 RESTRUCTURING FILINGS FILED WITH THE PUBLIC SERVICE COMMISSION AFTER JUNE 1, 1996.

25

26 NEW SECTION. Section 11. Severability. If a part of [this act] is invalid, all valid parts that are
 27 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
 28 applications, the part remains in effect in all valid applications that are severable from the invalid
 29 applications.

30

1 NEW SECTION. Section 12. Codification instruction. [Sections 1 through ~~6-8~~ 9] are intended to
2 be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through ~~6-8~~
3 9].

4

5 NEW SECTION. Section 13. Coordination instruction INSTRUCTIONS. If Senate Bill No. 390 is
6 not passed and approved or as passed and approved does not include [sections 3 and 31], then:

7 (1) [~~section~~ SECTIONS 2(9)(A)(V) AND (9)(B) AND 3(2) of this act] ~~is~~ ARE void AND THE
8 SUBSECTIONS OF SECTION 2(9) ARE RENUMBERED; AND

9 (2) THE BRACKETED LANGUAGE CONTAINED IN [SECTION 2(9)(A)(I) OF THIS ACT] IS VOID.

10

11 NEW SECTION. Section 14. Effective date. [This act] is effective on passage and approval.

12

-END-

1 SENATE BILL NO. 396

2 INTRODUCED BY FOSTER, SIMON, THOMAS, GRADY, BEAUDRY, HERTEL, KNOX, DEBRUYCKER,
 3 PAVLOVICH, GRINDE, DENNY, RYAN, WILSON, QUILICI, KOTTEL, DOWELL, MCCARTHY,
 4 HARRINGTON, SLITER

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING NATURAL GAS UTILITIES TO PROVIDE FOR
 7 CUSTOMER CHOICE; ALLOWING NATURAL GAS UTILITIES TO USE TRANSITION BOND FINANCING FOR
 8 TRANSITION COSTS; ALLOWING FOR FUNCTIONAL SEPARATION AND CONSUMER PROTECTION;
 9 REQUIRING THE PUBLIC SERVICE COMMISSION TO LICENSE NATURAL GAS SUPPLIERS; ESTABLISHING
 10 RECIPROCITY FOR ALL NATURAL GAS SUPPLIERS; PROVIDING FOR OPTIONAL PERFORMANCE-BASED
 11 RATEMAKING; REQUIRING THE REVENUE OVERSIGHT COMMITTEE TO CONDUCT A TAX REVENUE
 12 ANALYSIS AND REPORT TO THE 56TH LEGISLATURE; PROVIDING FOR UNIVERSAL SYSTEM BENEFITS
 13 PROGRAMS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY
 14 DATE."

15
16 STATEMENT OF INTENT

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

19
 20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21
 22 NEW SECTION. Section 1. Short title. [Sections 1 through ~~6-8~~ 9] may be cited as the "Natural Gas
 23 Utility Restructuring and Customer Choice Act".

24
 25 NEW SECTION. Section 2. Definitions. As used in [sections 1 through ~~6-8~~ 9], the following
 26 definitions apply:

27 (1) "Customer" means a natural gas customer or consumer of natural gas supply or natural gas
 28 transmission facilities, storage facilities, or distribution facilities.

29 (2) "Distribution facilities" means those facilities that are not transmission facilities:

30 (a) by and through which natural gas is received from a transmission services provider and

1 transmitted to the customer; and

2 (b) operated by a distribution services provider.

3 (3) "Distribution services provider" means a person controlling or operating distribution facilities for
4 distribution of natural gas to the public.

5 (4) "Natural gas supplier" means a person, including aggregators, market aggregators, brokers, and
6 marketers, LICENSED BY THE COMMISSION that is offering to sell natural gas to retail customers in the
7 state of Montana.

8 (5) "Natural gas utility" means a utility regulated by the commission on [the effective date of this
9 act] that provides natural gas services to the public.

10 (6) "Open access" means that a natural gas utility has made its transmission facilities, storage
11 facilities, or distribution facilities available to all natural gas suppliers, transmission services providers,
12 distribution services providers, and customers on a nondiscriminatory and comparable basis.

13 (7) "PERFORMANCE-BASED RATEMAKING" MEANS THOSE FORMS OF REGULATION THAT
14 INCLUDE BUT ARE NOT LIMITED TO THE USE OF REVENUE INDEXING, PRICE INDEXING, RANGES OF
15 AUTHORIZED RETURN, GAS COST INDEXING, AND INNOVATIVE USE OF UTILITY-RELATED ASSETS AND
16 ACTIVITIES, SUCH AS SYSTEM SALES OF EXCESS NATURAL GAS SUPPLIES, RELEASE OF UPSTREAM
17 PIPELINE CAPACITY, AND PERFORMANCE OF BILLING SERVICES FOR OTHER NATURAL GAS SUPPLIERS.
18 A PERFORMANCE-BASED REGULATION MAY ALSO INCLUDE A MECHANISM FOR AUTOMATIC ANNUAL
19 ADJUSTMENTS OF REVENUE TO PRICES TO REFLECT CHANGES IN ANY INDEX ADOPTED FOR THE
20 IMPLEMENTATION OF THE PERFORMANCE-BASED FORM OF REGULATION.

21 ~~(7)~~(8) "Storage facilities" means those facilities that are owned, controlled, or operated by a person
22 offering storage service for natural gas and generally means any underground reservoir suitable for the
23 storage of natural gas and the facilities used to inject and withdraw natural gas into and out of that
24 underground reservoir.

25 ~~(8)~~(9) "Transition costs" means:

26 (a) a natural gas utility's net, verifiable production- and gathering-related costs, including costs
27 of capital, that become unrecoverable as a result of customer choice and open access. These costs include
28 but are not limited to:

29 (i) regulatory assets and deferred charges that exist as a result of current regulatory practices and
30 that may be accounted for up to the point in time that the commission issues a final order in a ~~transition~~

1 ~~plan filing~~ docket ADDRESSING TRANSITION COSTS[, including all costs, expenses, and fees related to
2 the issuance of transition bonds];

3 (ii) the above-market costs associated with existing gas supply commitments;

4 (iii) other natural gas utility investments rendered uneconomic as a result of implementation of
5 customer choice and open access;

6 (iv) the costs associated with renegotiation or buyout of existing natural gas purchase contracts;
7 and

8 (v) the costs associated with the issuance of any related transition bonds authorized by the
9 commission pursuant to [section 3].

10 (b) the costs of refinancing or retiring debt or equity capital of the natural gas utility and associated
11 federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit
12 customers.

13 ~~(9)~~(10) "Transmission facilities" means those facilities owned, controlled, and operated by a
14 transmission services provider that are used to transport natural gas from a gathering line or storage facility
15 to a distribution facility ~~or other~~, storage facility, OR END-USE CUSTOMER.

16 ~~(10)~~(11) "Transmission services provider" means a person controlling or operating transmission
17 facilities.

18 ~~(11)~~(12) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed
19 on a customer to pay the customer's share of universal system benefits program costs.

20 ~~(12)~~(13) "Universal system benefits programs" means public purpose programs for cost-effective
21 local energy conservation, low-income weatherization, and low-income energy bill assistance.

22

23 NEW SECTION. Section 3. Customer choice. (1) A natural gas utility may voluntarily offer its
24 customers choice of natural gas supplier and provide open access to its transmission facilities, storage
25 facilities, or distribution facilities.

26 (2) If a customer choice offering results in transition costs ~~and~~, the commission ~~allows~~ MAY ALLOW
27 those transition costs to be recovered in separate identifiable charges to customers, ~~then~~, UPON
28 COMMISSION APPROVAL, the natural gas utility must have the opportunity but not the obligation to
29 finance the fixed transition costs and related financing costs using transition cost financing as provided for
30 in [sections 3 and 31 of Senate Bill No. 390].

1 NEW SECTION. SECTION 4. FUNCTIONAL SEPARATION -- CODE OF CONDUCT -- EMERGENCY
 2 SERVICES -- CUSTOMER PROTECTION. (1) A NATURAL GAS UTILITY THAT PROVIDES CUSTOMER
 3 CHOICE AND OPEN ACCESS ON ITS SYSTEM SHALL:

4 (A) FUNCTIONALLY SEPARATE ITS NATURAL GAS PRODUCTION AND GATHERING FROM ITS
 5 NATURAL GAS TRANSMISSION, STORAGE, AND DISTRIBUTION SERVICES AND REMOVE NATURAL GAS
 6 PRODUCTION AND GATHERING FROM THE RATE BASE;

7 (B) ADOPT AND COMPLY WITH COMMISSION-APPROVED STANDARDS OF CONDUCT TO BE
 8 INCLUDED IN A TARIFF TO GOVERN ITS NATURAL GAS TRANSMISSION, STORAGE, AND DISTRIBUTION
 9 SERVICES; AND

10 (C) PROVIDE EMERGENCY NATURAL GAS SUPPLY AND RELATED SERVICES TO THE EXTENT
 11 NECESSARY TO MAINTAIN THE OPERATIONAL INTEGRITY OF THE TRANSMISSION SYSTEM AS
 12 DETERMINED BY THE COMMISSION.

13 (2) THE COMMISSION SHALL DEVELOP STANDARDS THAT PROTECT CONSUMERS AND
 14 NATURAL GAS SUPPLIERS FROM ANTICOMPETITIVE AND ABUSIVE PRACTICES.

15 (3) [SECTIONS 1 THROUGH 8 9] DO NOT REDUCE OR OTHERWISE CHANGE THE AUTHORITY OF
 16 THE COMMISSION TO REVIEW THE PRUDENCE OF NATURAL GAS PURCHASES MADE BY A NATURAL
 17 GAS UTILITY FOR ITS CUSTOMERS THAT DO NOT HAVE A CHOICE OR THAT HAVE NOT MADE A
 18 CHOICE OF NATURAL GAS SUPPLIERS OR HAVE NOT BEEN ASSIGNED A NATURAL GAS SUPPLIER.

19
 20 NEW SECTION. Section 5. Licensing -- procedures -- commission rulemaking. (1) The commission
 21 shall license natural gas suppliers and enforce licensing provisions pursuant to this section.

22 (2) A natural gas supplier shall file an application with and obtain a license from the commission
 23 to sell natural gas to customers in the state of Montana.

24 (3) A licensee shall:

25 (a) provide copies of all license applications to the commission and to all distribution services
 26 providers; and

27 (b) update information and file annual reports.

28 (4) A license application becomes effective 30 days after filing with the commission, unless the
 29 commission rejects the application during that period. If the commission rejects a license application, the
 30 commission shall specify the reasons in writing and, if practical, shall identify alternative ways to overcome

1 deficiencies.

2 (5) The commission shall promulgate rules requiring licensing information that identifies the licensee
3 and ensures that the natural gas supply is provided as offered and is adequate in terms of quality, safety,
4 and reliability.

5 (6) The commission may require proof of a licensee's financial integrity and a demonstration of
6 adequate firm deliverability to meet load requirements.

7 (7) Pursuant to its own investigation or upon the complaint of an affected party, the commission
8 may institute a proceeding to revoke or suspend a license of a natural gas supplier for just cause.

9

10 **NEW SECTION. Section 6. Reciprocity.** (1) All natural gas suppliers are afforded the comparable
11 opportunity to compete.

12 (2) A natural gas distribution services provider or its affiliates may not use another natural gas
13 distribution services provider's facilities in the state of Montana to sell natural gas to customers in the state
14 of Montana unless the natural gas distribution services provider or its affiliates offer customer choice and
15 open access to their natural gas distribution facilities.

16

17 **NEW SECTION. SECTION 7. OPTIONAL PERFORMANCE-BASED RATEMAKING FOR NATURAL**
18 **GAS UTILITIES -- COMMISSION RULEMAKING.** (1) **THE COMMISSION MAY, UPON APPLICATION AND**
19 **AFTER GIVING NOTICE AND CONDUCTING A HEARING AS PROVIDED IN 69-3-303, AUTHORIZE ANY**
20 **NATURAL GAS UTILITY TO IMPLEMENT AN OPTIONAL FORM OF RATE REGULATION USING A**
21 **PERFORMANCE-BASED RATEMAKING METHODOLOGY.**

22 **(2) THE COMMISSION MAY APPROVE A PERFORMANCE-BASED RATEMAKING METHODOLOGY**
23 **IF IT FINDS THAT THE METHODOLOGY:**

24 **(A) PRESERVES ADEQUATE SERVICE TO ALL CLASSES OF CUSTOMERS, INCLUDING**
25 **TRANSPORTATION-ONLY CUSTOMERS;**

26 **(B) DOES NOT UNREASONABLY PREJUDICE OR DISADVANTAGE ANY CLASS OF NATURAL GAS**
27 **UTILITY USERS;**

28 **(C) PROVIDES INCENTIVES FOR IMPROVED PERFORMANCE BY THE NATURAL GAS UTILITY IN**
29 **THE NATURAL GAS UTILITY'S PUBLIC DUTIES;**

30 **(D) RESULTS IN RATES THAT ARE NOT EXCESSIVE; AND**

1 (E) IS IN THE PUBLIC INTEREST.

2 (3) THE COMMISSION MAY, AFTER GIVING NOTICE AND CONDUCTING A HEARING AS
 3 PROVIDED IN 69-3-303, MODIFY OR DISCONTINUE A NATURAL GAS UTILITY'S PERFORMANCE-BASED
 4 RATEMAKING PREVIOUSLY AUTHORIZED UNDER THIS SECTION IF THE COMMISSION FINDS THAT:

5 (A) NATURAL GAS SERVICE TO ONE OR MORE CLASSES OF CUSTOMERS HAS DETERIORATED
 6 OR WILL DETERIORATE;

7 (B) ANY CLASS OF NATURAL GAS UTILITY CUSTOMER IS BEING UNREASONABLY PREJUDICED
 8 OR DISADVANTAGED;

9 (C) THE PERFORMANCE-BASED RATEMAKING IS NOT PROVIDING OR WILL NOT PROVIDE
 10 REASONABLE INCENTIVES FOR IMPROVED PERFORMANCE BY A NATURAL GAS UTILITY IN THE
 11 PERFORMANCE OF ITS PUBLIC DUTIES;

12 (D) RATES ARE EXCESSIVE COMPARED TO A NATURAL GAS UTILITY'S COST OF SERVICE;

13 (E) TERMS ORDERED BY THE COMMISSION IN CONNECTION WITH THE APPROVAL OF A
 14 NATURAL GAS UTILITY'S IMPLEMENTATION OF PERFORMANCE-BASED RATEMAKING HAVE BEEN
 15 VIOLATED; AND

16 (F) THE PERFORMANCE-BASED FORM OF REGULATION IS NOT IN THE PUBLIC INTEREST.

17 (4) THE COMMISSION SHALL PROMULGATE RULES FOR MONITORING A NATURAL GAS UTILITY
 18 THAT HAS IMPLEMENTED PERFORMANCE-BASED RATEMAKING TO ENSURE THAT THE NATURAL GAS
 19 UTILITY IS IN COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION.

20
 21 NEW SECTION. Section 8. Universal system benefits programs -- establishing nonbypassable rate.

22 (1) A natural gas utility shall implement, upon commission approval, a universal system benefits program
 23 that considers existing universal system benefits programs in the state.

24 (2) The commission shall establish a universal system benefits charge that either all natural gas
 25 transmission services providers or all distribution services providers, or both, in the state of Montana shall
 26 charge to all end-use customers, taking into consideration THE CURRENT LEVEL OF EXPENDITURE BY THE
 27 NATURAL GAS UTILITY, COST-EFFECTIVENESS, AND similar costs imposed in other states. The method
 28 of assessing those rates may not disproportionately burden a large transmission services provider's
 29 customers. Within the universal system benefits charge, a natural gas utility's annual funding requirement
 30 for low-income weatherization and low-income energy bill assistance is established at ~~0.20%~~ 0.42% of a

1 natural gas utility's annual revenue. A natural gas utility must receive credit for its internal programs or
2 activities that qualify as universal system benefits programs.

3 (3) On or before July 1, 2002, the commission shall conduct a reevaluation of the ongoing need
4 for universal system benefits programs and annual funding requirements and shall make recommendations
5 to the 58th legislature regarding the future need for universal system benefits programs. The determination
6 should focus specifically on the existence of markets to provide for any of the universal system benefits
7 programs or on whether other means for funding those universal system benefits programs have developed.
8 These recommendations may also address how future reevaluations will be provided, if necessary.

9
10 NEW SECTION. SECTION 9. TAX REVENUE ANALYSIS. (1) THE REVENUE OVERSIGHT
11 COMMITTEE, AS PROVIDED FOR IN 5-18-102, SHALL ANALYZE THE AMOUNT OF STATE AND LOCAL
12 TAX REVENUE DERIVED FROM PREVIOUSLY REGULATED NATURAL GAS SUPPLIERS THAT WILL ENTER
13 THE COMPETITIVE MARKET AND SHALL REPORT TO THE LEGISLATURE ON HOW REVENUE TO THE
14 STATE OR LOCAL GOVERNMENT IS CHANGED BY RESTRUCTURING AND COMPETITION.

15 (2) ON OR BEFORE NOVEMBER 30, 1998, THE REVENUE OVERSIGHT COMMITTEE SHALL
16 RECOMMEND TO THE 56TH LEGISLATURE LEGISLATIVE CHANGES TO ADDRESS THE ESTABLISHMENT
17 OF COMPARABLE STATE AND LOCAL TAXATION BURDENS ON ALL MARKET PARTICIPANTS IN THE
18 SUPPLY OF NATURAL GAS.

19
20 NEW SECTION. Section 10. Saving clause. -- RETROACTIVE APPLICABILITY. (1) EXCEPT AS
21 PROVIDED IN (2), [This THIS act] does not affect rights and duties that matured, penalties that were
22 incurred, or proceedings that were begun before [the effective date of this act].

23 (2) [THIS ACT] APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO
24 RESTRUCTURING FILINGS FILED WITH THE PUBLIC SERVICE COMMISSION AFTER JUNE 1, 1996.

25
26 NEW SECTION. Section 11. Severability. If a part of [this act] is invalid, all valid parts that are
27 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
28 applications, the part remains in effect in all valid applications that are severable from the invalid
29 applications.

30

1 NEW SECTION. Section 12. Codification instruction. [Sections 1 through ~~6-8~~ 9] are intended to
2 be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through ~~6-8~~
3 9].
4

5 NEW SECTION. Section 13. Coordination instruction INSTRUCTIONS. If Senate Bill No. 390 is
6 not passed and approved or as passed and approved does not include [sections 3 and 31], then:

- 7 (1) [section SECTIONS 2(9)(A)(V) AND (9)(B) AND 3(2) of this act] is ARE void AND THE
8 SUBSECTIONS OF SECTION 2(9) ARE RENUMBERED; AND
9 (2) THE BRACKETED LANGUAGE CONTAINED IN [SECTION 2(9)(A)(I) OF THIS ACT] IS VOID.

10

11 NEW SECTION. Section 14. Effective date. [This act] is effective on passage and approval.

12

-END-