

SENATE BILL NO. 379

INTRODUCED BY S. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ENERGY AND BUSINESS LAWS; PROVIDING FOR THE CONTINUED OWNERSHIP AND OPERATION OF MONTANA COAL-FIRED GENERATING UNITS; PROVIDING FOR COST RECOVERY FOR UNDEPRECIATED BOOK VALUE AND ADDITIONAL INVESTMENT; PROVIDING A REBUTTABLE PRESUMPTION AGAINST DISALLOWANCES FOR REPLACEMENT COSTS; AMENDING SECTION 69-3-331, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, having sufficient energy available to deliver to homes and businesses is critical to the public health and the economy; and

WHEREAS, energy markets cannot be relied on to provide sufficient energy at all times at a reasonable cost; and

WHEREAS, having a sufficient and reliable source of energy in the state is critical to supporting the Montana electric grid; and

WHEREAS, Montana does not have sufficient in-state generation resources to ensure that all Montanans have access to energy whenever they need it and at a reasonable cost; and

WHEREAS, the continued operation of coal-fired generating units provides a reliable source of energy and capacity critical to helping meet the state's energy needs at all times and at a reasonable price; and

WHEREAS, the owners of Colstrip Units 1 and 2 closed those units in 2020; and

WHEREAS, the continued operation of coal-fired generating units is vital to Montanans having access to energy at all times and at a reasonable cost; and

WHEREAS, providing financial certainty to a utility that may be willing to acquire an additional ownership interest in coal-fired generating units promotes their continued operation.

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

1 **NEW SECTION. Section 1. Coal-fired generating unit -- continued operation.** (1)(A) To
2 encourage the continued operation of coal-fired generating units as defined in 75-8-103, the commission shall
3 MAY allow an electric utility ~~regulated in accordance with this chapter that is already a joint owner of a coal-fired~~
4 ~~generating unit, that acquires~~ TO ACQUIRE an additional equity interest in, or ~~enters~~ TO ENTER into a lease or a
5 power purchase agreement to lease or purchase one or more coal-fired generating units after [the effective
6 date of this act].

7 (B) IF THE COMMISSION ALLOWS A UTILITY TO ACQUIRE AN ADDITIONAL EQUITY INTEREST IN OR TO ENTER
8 INTO A LEASE OR A POWER PURCHASE AGREEMENT, THE COMMISSION SHALL ALLOW THE UTILITY to fully recover the
9 utility's:

10 ~~(a)(i)~~ remaining undepreciated book value for ~~its~~ AN ownership interest ACQUIRED in the coal-fired
11 generating unit ~~that existed prior to~~ AFTER [the effective date of this act]; and

12 ~~(b)(ii)~~ share of applicable legal obligations as defined in 75-8-103 for decommissioning and
13 remediation required at a coal-fired generating unit established prior to [the effective date of this act] that
14 ~~existed by virtue of its ownership or~~ are acquired in accordance with this section after [the effective date of this
15 act].

16 (2) The commission shall also allow for a rate of return on an additional equity interest, lease, or
17 power purchase agreement. ~~The rate of return must be~~ COMMISSION MUST DETERMINE THE RATE OF RETURN based
18 on the value attributed to the additional interest, lease, or power purchase agreement ~~calculated to equal~~
19 ACCORDING TO the book value of the existing ownership interest prorated by size in megawatts.

20
21 **NEW SECTION. Section 2. Continued operation after acquisition.** (1) If an electric utility seeks
22 full-cost recovery in accordance with [section 1], the electric utility shall file a \$500 application fee with the
23 commission. The fee is not recoverable in an electric utility's rates.

24 (2) (a) An electric utility granted cost recovery and a rate-of-return in accordance with [section 1] shall
25 continue to operate the coal-fired generating units until the commission issues an order finding that closure of
26 the units is in the public interest.

27 (b) An order finding that closure of the units is in the public interest must be handled through the
28 Montana Administrative Procedure Act's procedures for contested cases.

1 (C) UNTIL THE UTILITY'S OWNERSHIP INTEREST IS FULLY DEPRECIATED, ONLY THE EXISTING OWNER OF AN
2 EXISTING OWNERSHIP INTEREST MAY FILE AN APPLICATION FOR CLOSURE OF THE UNIT.

3
4 NEW SECTION. **Section 3. Rebuttal presumption -- disallowance of replacement power costs.**

5 (1) If an operator of a coal-fired generating unit is obligated under contract or other requirement, including an
6 owner's agreement, to operate under a prudent utility practice, the commission shall apply a rebuttable
7 presumption that a utility's replacement power costs attributable to power outages, reduced generation,
8 operations, or maintenance and repair at coal-fired generating units are prudent.

9 (2) (a) "Prudent utility practice" means, unless defined otherwise in an owner's agreement, at any
10 particular time, any of the practices, methods, and acts engaged in or approved by a significant portion of the
11 electrical utility industry prior to practice or approval, or any of the practices, methods, or acts, which, in the
12 exercise of reasonable judgement in the light of the facts known at the time the decision was made, could have
13 been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety,
14 and expedition.

15 (b) The term is not limited to the optimum practice, method, or act to the exclusion of all others, but
16 rather to be a spectrum of possible practices, methods, or acts.

17 (c) The term also includes those practices, methods, and acts that are required in accordance with
18 applicable laws, final orders, or regulations by regulatory agencies with jurisdiction.

19
20 **Section 4.** Section 69-3-331, MCA, is amended to read:

21 **"69-3-331. Cost tracking and recovery.** (1) ~~Except as provided in [section 3],~~ if the commission
22 approves a cost-tracking adjustment for a public utility regulated in accordance with chapter 8 or under this
23 chapter, the cost-tracking adjustment must provide for:

24 (a) identical treatment of public utilities subject to chapter 8 or this chapter;
25 (b) 90% customer and 10% shareholder sharing of costs, if cost sharing is required; and
26 (c) full recovery of costs incurred by a public utility as a result of qualifying small power production
27 facility purchase requirements established in Title 69, chapter 3, part 6.

28 (2) A cost-tracking adjustment may not include a deadband.

(3) For the purposes of this section, "deadband" means a level of cost recovery variance, including levels of underrecoveries and overrecoveries to be borne by the public utility."

NEW SECTION. Section 5. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 69, chapter 8, and the provisions of Title 69, chapter 8, apply to [sections 1 through 3].

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

NEW SECTION. **Section 7.** **Effective date.** [This act] is effective on passage and approval.

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