



## Energy and Telecommunications Interim Committee

---

### 62nd Montana Legislature

#### SENATE MEMBERS

ALAN OLSON--Chair  
VERDELL JACKSON  
JIM KEANE  
CLIFF LARSEN

#### HOUSE MEMBERS

TONY BELCOURT--Vice Chair  
ROBYN DRISCOLL  
HARRY KLOCK  
AUSTIN KNUDSEN

#### COMMITTEE STAFF

SONJA NOWAKOWSKI, Lead Staff  
TODD EVERTS, Staff Attorney  
DAWN FIELD, Secretary

May 1, 2012

**TO:** Energy and Telecommunications Interim Committee (ETIC) members

**FR:** ETIC and Public Service Commission (PSC) staff

**RE:** Renewable Portfolio Standard (RPS), Ring Fencing, and Acquisitions

During the ETIC's January meeting, members asked staff to gather background information and to work with the PSC on potential draft legislation related to:

1. Clean-up to Montana's RPS;
2. Potential revisions to the RPS related to competitive suppliers and utilities; and
3. Ring-fencing, the PSC's authority to approve certain transactions of regulated utilities, and PSC authority over public utility acquisitions or transfers.

#### RPS Clean-up and Competitive Suppliers

Montana's RPS was enacted in April 2005. The RPS requires public utilities and competitive electricity suppliers to obtain a percentage of their retail electricity sales from eligible renewable resources according to the following schedule:

- 5% for compliance years 2008-2009 (1/1/2008 - 12/31/2009)
- 10% for compliance years 2010-2014 (1/1/2010 - 12/31/2014)
- 15% for compliance year 2015 (1/1/2015 - 12/31/2015) and for each year thereafter

Eligible renewable resources include wind; solar; geothermal; existing hydroelectric projects (10 megawatts or less); certain new hydroelectric projects (up to 15 megawatts installed at an existing reservoir or on an existing irrigation system that did not have hydroelectric generation as of April 16, 2009); landfill or farm-based methane gas; wastewater-treatment gas; low-emission, non-toxic biomass; compressed air; and fuel cells where hydrogen is produced with renewable fuels. Facilities must begin operation after January 1, 2005, and must either be located in Montana or located in another state and be delivering electricity into Montana.

Utilities and competitive suppliers can meet the standard by entering into long-term purchase contracts for electricity bundled with renewable-energy credits (RECs), by purchasing the RECs separately, or by a combination of both. The law includes cost caps that limit the additional cost utilities must pay for renewable energy and allows cost recovery from ratepayers for contracts pre-approved by the PSC. Before entering into a long-term contract to purchase RECs, with or without the associated electricity, a utility must petition the PSC to certify that the RECs were produced by an eligible renewable resource.

The Montana Legislature amended the RPS in 2007 (House Bill No. 681) to make competitive electricity suppliers subject to the RPS.

The PSC has provided four potential bill drafts that are incorporated into "LCet02" through "LCet05" outlining changes to the RPS. Some of the changes propose clarifications of statute and others represent policy changes. This information provides a brief overview. Specific questions concerning the draft proposals may best be answered by representatives of the PSC.

**"LCet02 -- General Revisions" proposes:**

**69-3-2003. Definitions**

- The definition of an "electricity supplier" is added. The definition is needed because of a reporting requirement proposed in 69-3-2005.
- The definition of "local owners" is amended to include voting interests directly owned by Montana residents.
- The definitions of "renewable energy credits" and "eligible renewable resource" are amended to clarify that the credits must be verified through a PSC-approved tracking system and the resource must be verified as renewable by the PSC.

**69-3-2004. Renewable resource standard -- administrative penalty -- waiver.**

- Subsection (5) is amended to clarify compliance with the overall standard.
- Subsection (6) is amended to allow a public utility or competitive electricity supplier 4 months, rather than 3 months, to comply with the standard or petition the commission for a waiver.
- Subsection (7) is amended to clarify REC requirements as they relate to the overall standard and the proposed change in definitions.
- Subsection (12) is amended to clarify the relationship between a waiver and the cost caps. The proposed change allows for a waiver, if the cost caps are exceeded.

**69-3-2005. Procurement -- cost recovery -- reporting.**

- Subsection (6) is amended to require all electricity suppliers, not just competitive electricity suppliers, to submit a report to the PSC. Electricity suppliers would be expected to submit a report stating that they are exempt from the requirement. This change allows the PSC to track all entities that could be subject.

**69-3-2007. Cost caps.**

- This clarifies that the public utility must demonstrate the reason for noncompliance.

**90-3-1003. Research and commercialization account -- use.**

- This is cleanup needed to address the change in definitions proposed in 69-3-2003.

**"LCet03 -- New Cost Cap" proposes:**

### **69-3-2007. Cost caps.**

- The new language in subsection (4) creates a cost cap related to RECs. Entities that can show that RECs cost more than \$10/per REC would not be obligated to procure RECs. Since any entity may use only RECs to comply, this could affect public utilities or competitive suppliers. To-date some entities have generally paid fines to the PSC rather than meeting the standard.

### **"LCet04 -- Eligible Resources" proposes:**

#### **69-3-2003. Definitions**

The definition of an "eligible renewable resource" is amended to:

- include hydroelectric pumped storage that does not require a new diversion as defined in 15-6-157(4)(e). The definition is "a process that converts electrical energy to potential energy by pumping water to a higher elevation, where it can be stored indefinitely and then released to pass through hydraulic turbines and generate electrical energy."
- revise the definition of compressed air storage to mirror that in 15-6-157(4)(b) and add the definition of flywheel storage and batteries.
- The definition of "renewable fraction of output" is added to address questions about appropriately accounting for the proportion of electricity output directly attributable to renewable resources, including compressed air and other storage options.

### **"LCet05 -- Credit Reporting" proposes:**

#### **69-3-2009 and 69-3-2010. Renewable energy credit reporting and exceptions.**

- The amendments made to 69-3-2009 are in response to the proposed repeal of 69-3-2010. Currently in statute, if a utility, a competitive electricity supplier, or an owner of an electrical generation facility required to file the report pursuant to 69-3-2009 buys or sells RECs in a market where the price is not publicly disclosed, the entity is not required to disclose the price. This exemption would be eliminated and all entities would be required to disclose the price.

**✓The PSC during a March 2012 work session agreed to pursue legislation related to revising the renewable portfolio standard. It will be up to the ETIC to decide if it would like to pursue the legislation as potential committee bills. If so, staff will need directions on what to include in the drafts, so they can be posted for a 30-day public comment period. If the ETIC does not pursue the draft legislation, the PSC may bring back some or all of the concepts in July, when the commission presents its agency legislation for ETIC review.**

#### Ring Fencing and Acquisitions

The 2003-2004 ETIC spent a portion of the interim discussing both ring fencing and acquisitions and brought two pieces of related legislation before the 2005 Legislation. This portion of the memo provides a snapshot of the work done by the interim committee.

#### Ring Fencing

Ring fencing legislation would give the PSC the authority to review actions taken by a public utility that may impact the fiscal integrity of the utility and grant the PSC some control over those actions. The key element is granting the PSC the authority to establish requirements for the corporate and financial separation of activities by a regulated utility into business that is regulated and business that is not regulated. The separation is intended to ensure that the actions of corporate affiliates does not negatively impact the financial integrity of the regulated public utility or its customers.

Ring fencing measures can take on different forms:

- PSC authority to restrict and mandate use and terms of sale of public utility assets.
- PSC authority to restrict dividend payments to a parent company to maintain financial viability of a utility.
- PSC authority to authorize loans, loan guarantees, engagement in money pools, and large supply contracts between the utility and affiliate companies.
- PSC authority over the establishment of a holding company structure involving a regulated utility.
- Expansion of PSC authority over security applications to include the ability to restrict type and use of financing.

The ETIC in 2005 brought forward legislation that clarified the PSC's authority to review and approve material affiliate transactions of regulated energy utilities. A "material affiliate transaction" is an affiliate transaction that has a significant potential impact on the financial stability of a regulated energy utility, including but not limited to:

- (a) dividend payments from a regulated energy utility to a corporate parent company if those payments would place the regulated energy utility's credit quality or property in jeopardy;
- (b) intercompany loans or other extensions of credit or advances of working capital between a regulated energy utility and an affiliate if those activities would place the regulated energy utility's credit quality or property in jeopardy;
- (c) the use of proceeds in issuing securities for which the assets of the regulated energy utility are pledged; or
- (d) external borrowing by a regulated energy utility with a term greater than 120 days if the loan would place the regulated energy utility's credit quality or property in jeopardy.

The material affiliate legislation was passed and approved (Chapter 220, Laws of 2005) and is now codified in Title 69, chapter 3, part 15. The law is specific to energy utilities.

#### Utility acquisition and transfer

The PSC under its general supervisory powers asserts its authority to review significant transactions involving the property of regulated public utilities. In a 2003 memo to the ETIC, the PSC noted, "Clarification of the PSC's authority over these transactions is advisable to avoid future disputes and litigation regarding PSC authority." The key elements of utility acquisition and transfer would include a requirement for prior PSC approval of public utility property sale, transfer, merger, disposition, etc. Most grants of authority also include exceptions for sales and

transfers in the ordinary course of business as determined by the PSC and sales and transfers that are not significant, as determined by law or rule.

The 2003-04 ETIC looked at draft legislation (HB 106) granting the PSC the authority to approve the transfer, acquisition, or lease of a plant or equipment owned by a public utility. The House Federal Relations Energy and Telecommunications Interim Committee discussed exceptions in terms of acquisitions of less than a certain value and what types of acquisitions or transfers should be subject to the PSC authority. The committee was unable to reach an agreement. The bill died in committee.

The difference between ring fencing and acquisition in the two drafts reviewed by the ETIC in 2003-04 is that the ring fencing concept attempted to ensure the financial integrity of a utility is protected, whereas the acquisition proposal tied back to the actual transfer of an asset.

**✓The PSC during a March 2012 work session opted not to pursue legislation related to acquisitions, explicit transactions authority, or ring fencing. It will be up to the ETIC to decide if it would like staff to prepare related draft legislation as a potential committee bill. If so, staff will need direction on what to include in the draft, so it can be posted for a 30-day public comment period.**

CI0429 2117slxe.