

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 38.5.1902 pertaining to) PROPOSED AMENDMENT
qualifying facilities)

TO: All Concerned Persons

1. On November 18, 2011, at 10:00 a.m., the Department of Public Service Regulation will hold a public hearing in the Bollinger Room at 1701 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Service Regulation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Service Regulation no later than 4:00 p.m. on November 16, 2011, to advise us of the nature of the accommodation that you need. Please contact Aleisha Solem, Department of Public Service Regulation, 1701 Prospect Ave., Helena, Montana, 59620; telephone (406) 444-6170; fax (406) 444-7618; TDD/Montana Relay Service (406) 444-4212; or e-mail asolem@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

38.5.1902 GENERAL PROVISIONS (1) through (4) remain the same.

(5) All purchases and sales of electric power between a utility and a qualifying facility shall be accomplished according to the terms of a written contract between the parties or in accordance with the standard tariff provisions as approved by the commission. A long-term contract for purchases and sales of energy and capacity between a utility and a qualifying facility greater than ~~40MW~~ 2MW in size shall be contingent upon selection of the qualifying facility by a utility through ~~an all-source~~ a competitive solicitation conducted in accordance with the provisions of ARM 38.5.2001 through 38.5.2012 and 38.5.8201 through 38.5.8229. Between competitive solicitations, purchases, and sales of energy and capacity between a utility and a qualifying facility greater than ~~40MW~~ 2MW in size shall be accomplished in accordance with the short-term standard avoided cost tariff approved by the commission or through negotiation of a short-term written contract. The utility shall recompute the short-term and long-term standard tariffed avoided cost rates following ~~public review and comment on each submission of its least cost plan filing, ARM 38.5.2001 through 38.5.2012, or procurement plan filing, ARM 38.5.8201 through 38.5.8229~~. The recomputed avoided cost rates should reflect any amendments to the plan due to the comments of the commission and the public. If the qualifying facility is not selected, or does not participate, in the first available competitive solicitation, purchases and sales of energy and capacity shall continue

only according to the terms of a newly negotiated short-term written contract or in accordance with the newly computed, short-term standard tariffed avoided cost rates. Long-term contracts for purchases and sales of energy and capacity between a utility and a qualifying facility ~~10MW~~ 2MW or less may be accomplished according to standard tariffed rates as approved by the commission. The contract shall specify:

- (a) the nature of the purchases and sales;
- (b) the applicable rate schedule or negotiated rates for the purchases and sales;
- (c) the amount and manner of payment of interconnection costs;
- (d) the means for measurement of the energy or capacity purchased or sold by the utility;
- (e) the method of payment by the utility for purchases, and the method of payment by the facility for utility sales;
- (f) any installation and performance incentives to be provided by the utility to the qualifying facility;
- (g) the services to be provided or discontinued by either party during system emergencies;
- (h) the term of the contract;
- (i) applicable operating safety and reliability standards with which the qualifying facility must comply;
- (j) appropriate insurance indemnity and liability provisions.

(6) All purchases and sales of electric power between a utility and a qualifying facility shall be compatible with the goal of the commission's integrated least cost resource planning and acquisition guidelines, ARM 38.5.2001 through 38.5.2012, and the commission's procurement plan guidelines, ARM 38.5.8201 through 38.5.8229.

AUTH: 69-3-103, 69-3-604, MCA

IMP: 69-3-102, 69-3-602, 69-3-603, 69-3-604, MCA

REASON: Pursuant to the Public Utility Regulatory Policies Act of 1978 regulations issued by the Federal Energy Regulatory Commission, state commissions are required to set rates for purchases from small qualifying facilities that are equal to the avoided cost of the utility. 18 C.F.R. § 292.304. State commissions have the discretion to increase or decrease the limit on design capacity but may not set the design capacity below 100KW. 18 C.F.R. § 292.304(c)(1) and (2). The commission has adopted and incorporated these federal regulations in its administrative rules. ARM 38.5.1901.

Amendment to ARM 38.5.1902 is reasonably necessary because certain provisions are inconsistent with federal and/or state laws and rules and need to be updated for economic and public policy reasons.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Aleisha Solem, Department of Public Regulation, 1701 Prospect Ave.,

Helena, Montana, 59620; telephone (406) 444-6170; fax (406) 444-7618; or e-mail asolem@mt.gov, and must be received no later than 5:00 p.m., November 25, 2011.

5. The commission, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in #4 above or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Dennis Lopach
Dennis Lopach
Rule Reviewer

/s/ Travis Kavulla
Travis Kavulla
Chairman
Public Service Regulation

Certified to the Secretary of State October 17, 2011.