

Introduction

A universal system benefits (USB) charge is assessed on electricity and natural gas customers in Montana to pay for certain public purpose programs. During the 2003-2004 interim, the Energy and Telecommunications Interim Committee decided to evaluate:

- the amount of the charge;
- the use of the funds collected, including the allocation of funds among programs; and
- the disposition of collected universal system benefit funds.

This draft workbook presents background information and potential options. Additional options will be identified by committee members and interested parties.

Although the general purpose of the USB laws for natural gas and electricity are similar, the requirements governing the two programs are different.

The requirements for both programs were initially established in 1997. An evaluation of each program was required by July 1, 2002.

Evaluation of Electricity Programs

The transition advisory committee (TAC) on electric industry restructuring was required to conduct a reevaluation of the ongoing need for USB programs and annual funding requirements and make recommendations to the 58th Legislature regarding the future need for USB programs. The law required that the determination of need focus specifically on:

- the existence of markets to provide for any of the USB programs; and
- whether or not other means for funding USB programs have been developed.

The recommendations of the TAC are presented in Appendix A.

Evaluation of Natural Gas Programs

The Public Service Commission (PSC) was required to conduct an evaluation of the ongoing need for natural gas USB programs and annual funding requirements and make recommendations to the 58th Legislature regarding the future need for USB programs. The focus of the determination of need required by law was the same as for electricity programs.

- The PSC concluded:
- there are no other known markets for natural gas USB programs; and
- there are no other known existing sources of funding to accomplish the purpose of natural gas USB programs.

The PSC recommended that the natural gas USB program continue.

USB Charge

Electricity

Current charge

The USB charge is assessed on the customer at the meter. Except for large customers, the amount of the charge was derived as follows:

- The annual funding level is statutorily established at 2.4% of each utility's annual retail sales revenue in Montana for calendar year 1995.
- The PSC approved rates for regulated utilities based on this annual funding level.
- The governing boards of cooperatives establish rates sufficient to collect the required funds for cooperatives.

The rate for a large customer¹ is set statutorily at 0.9 mills per kilowatt hour, not to exceed \$500,000 each year.

The USB charges do not change on an annual basis. therefore, the revenue raised each year varies depending on the utility's demand, and the portion of the demand that is attributable to qualifying large customers.² The total funding available for USB programs may be more or less than the "annual funding level." Table 1 illustrates this point.

¹A "large customer" is a customer with an individual load greater than a monthly average demand of 1,000 kilowatts in the previous calendar year (69-8-103(18), MCA).

²A utility could file a revised charge if necessary to collect the funding levels established by law. Note that the charge originally terminated in 2003. In 2003, the charge was extended until Dec. 31, 2005 (HB 509).

Table 1. Annual USB Funding Level -- Regulated Electric Utilities

Electric Utility	Annual Funding Level	USB Funds Collected in 2002
NorthWestern Energy (NWE)	8,559,615	8,237,435
Montana-Dakota Utilities' Co. (MDU)	674,660	752,550

The vast majority of USB revenue from electricity customers is collected by NWE.

Under current law, the universal system benefits charge rates remain in effect through December 31, 2005.

History

The current formula for calculating the annual funding level for USB programs was established in SB 390 (1997). The annual funding requirement first went into effect in 1999.³

SB 390 created a transition advisory committee (TAC) on electric utility industry restructuring. (In 2003 HB 509 eliminated the TAC and the Energy and Telecommunications Interim Committee was created.) The TAC was required to report on various aspects of USB programs.

The TAC was required by law to make recommendations to the 58th Legislature to adjust the funding level to coincide with the related activities of the region at that time. In 2002, the TAC found that the current funding level was adequate. The TAC was presented with information regarding funding levels for USB programs in other states. None of the states adjacent to Montana had statutorily mandated USB programs. Two states – California and Oregon – were identified as being in the region and having USB programs. The average charge in California was 3% and the approximate charge in Oregon was 3.5% of retail revenue from electricity sales.⁴

Natural Gas

Requirements

The "Natural Gas Utility Restructuring and Customer Choice Act" (Ch. 506, L. 1997) required the

³MDU was not required to restructure, but is required to comply with the USB requirements. Following a PSC order directing universal system benefits compliance and subsequent orders, MDU began collecting the charge in 2000.

⁴Information presented to the committee regarding funding of USB programs by other states can be found in the TAC's December 2002 Report, *The Electrical Utility Industry Restructuring Transition Advisory Committee: A Report to the Governor and the 58th Legislature*, Legislative Services Division, Helena, Montana.

PSC to establish a universal system benefits charge to apply to end users of natural gas. (The law has not been amended since enactment.) The PSC adopted rules⁵ to implement this requirement. Key requirements of the statute and rules include the following:

- Natural gas utilities, distribution services providers, and transmission service providers are required to assess a charge per dekatherm or million cubic feet of gas delivered for end use to each end user.
- The statute does not establish an annual funding level for all programs, but requires that at least 0.42 % of a natural gas utility's annual revenue be applied to low-income weatherization and bill assistance (69-3-1408(2), MCA.).
- The law requires the PSC to establish the charge, taking into consideration the current level of expenditure by the natural gas utility, cost-effectiveness, and similar costs imposed in other states.
- The PSC rules require that the charge be sufficient to generate at least 1.12 % of the entity's annual revenue derived from natural gas services to end users. However, the rules authorize a utility that objects to the minimum funding level established by rule to file an alternative proposal.
- Entities that deliver gas for end use were required to file a USB program plan with the PSC by August 5, 1998. Utilities were required to propose tariffs reflecting changes to rates, if necessary to meet the required funding level.

In contrast to the USB charge imposed on electricity consumers, the funding level for USB natural gas programs changes annually.

Funding levels vary widely among gas utilities, ranging from 0.42 percent of annual revenue to 1.12% of annual revenue.

Comparison of Funding Levels – Gas v. Electric

The required charge for natural gas is much less than for electricity customers. Depending on the utility, the natural gas USB charge ranges from approximately 1/5 to 1/2 of the electricity charge.

Options

Electricity

1. No change to current law regarding current funding level, determination of rates, or sunset date.
2. Extend or eliminate the termination date for the USB charge.

⁵ARM 38.5.7020 through 38.5.7021

3. Revise funding levels for electricity programs. Must be combined with option 2.⁶
4. Request additional information related to funding levels.
5. Require that the USB charge be evaluated periodically and revised, if necessary, in order to maintain statutory funding levels. Must be combined with option 2.
6. Evaluate whether or not the difference in funding levels for electricity and natural gas USB programs is appropriate, taking into consideration who pays and who benefits.
- 7.
- 8.
- 9.

Gas

10. No change to current law.
11. Revise funding levels for natural gas programs.
12. Evaluate whether or not the difference in funding levels for electricity and natural gas USB programs is appropriate, taking into consideration who pays and who benefits.
13. Request additional information related to funding levels.
- 14.
- 15.
- 16.

⁶A bill passed by the 2005 Legislature becomes effective October 1, 2005, three months before the charge expires.

USB Programs

Electricity

Universal system benefits programs are public purpose programs for:

- cost-effective energy conservation;
- low-income weatherization;
- renewable resource projects and applications;
- research and development programs related to energy conservation and renewables;
- market transformation designed to encourage competitive markets for public purpose programs; and
- low-income energy assistance (69-8-103(38), MCA).

Department of Revenue (DOR) rules (Appendix B) flesh out the activities that qualify for credits or expenditures under each of these categories.

In 2002, the TAC's Universal System Benefits Program Subcommittee found:

- fledgling markets exist for certain types of energy efficiency and alternative energy applications; and
- markets do not exist for low-income energy assistance.

Natural Gas

Natural gas universal service programs are more narrowly defined to include public service programs for:

- cost-effective local energy conservation;
- low-income weatherization; and
- low-income energy bill assistance.

Options

Electricity

17. No change to programs authorized.
18. Revise the list of programs authorized.
19. Request more information on specific programs.
- 20.
- 21.

Natural Gas

- 22. No change to programs authorized
- 23. Revise the list of programs authorized.
- 24. Request more information on specific programs.
- 25.
- 26.

Disposition of USB Funds

Electricity

Allocation of Funds

The law requires that 17% of the annual funding requirement be dedicated to low-income energy and weatherization assistance.

Regulated utilities were required to submit a USB program plan. The PSC approved the plans, including the allocation of funds among programs. The Montana Power Company (predecessor of NWE) proposed to establish a group to advise the company on allocations and USB programs and the PSC agreed to this proposal.

Allocations approved by the PSC were significantly different for each electric utility.

Table 2. Initial Allocation of USB Funds by Electric Utility Pursuant to PSC Order (% of annual funding level)

Program	NWE	MDU
Low-income assistance	21	46
Energy efficiency	21	22
Market transformation	13	0
Renewable resource projects	13	0
Research and development	3	14
Large customer self-directed	29	18

The law provides that large customers must receive credit for their internal expenditures and activities that qualify. Large customers are allowed to "self-direct" funds, meaning they can allocate funds as they choose among USB programs.

Expenditures

Utilities and large customers are not required to spend money on USB programs. However,

utilities and large customers receive credit for eligible programs and expenditures. If the utility's total annual credits do not satisfy its annual funding requirement, the utility must make a payment to the state. Cooperative utilities are allowed to collectively pool their statewide credits to satisfy their annual funding requirements for USB programs and low-income energy assistance.

Utilities and large customers must submit annual reports including claimed credits to the DOR by March 1. Claimed credits are presumed to be acceptable unless proven otherwise by the challenging party.

Department of Revenue rules (Appendix B) address the types of expenditures that are eligible for credits as well as the timing of those expenditures. With respect to timing, the expenditure is considered to have occurred when resources or funds are financially committed by a utility or large customer to a program, project, or activity by payment, contract, or other obligation.⁷ The credited funds or resources must be expended by the end of the following year, unless the department grants an extension. The DOR has granted extensions to NWE with the result that in 2003, NWE had carried forward approximately \$3.4 million of collected USB funds from 2000-2002.⁸

Claimed credits may be challenged within 60 days of receipt of the annual report by the DOR. Upon receipt of the report, the department publishes a notice in the six major newspapers of general circulation in Montana. The notice must include the specific date by which challenges may be made. Department rules establish procedures for addressing disputes over challenged claims.

Two state funds have been established for deposit of payments from utilities that do not spend their annual funding level:

- a fund administered by the Montana Department of Public Health and Human Services to provide universal low-income energy assistance; and
- a fund administered by the Montana Department of Environmental Quality to provide for other USB programs. (69-8-412, MCA).

Natural Gas

The law requires that 0.42% of a natural gas utility's annual revenue be applied to low-income weatherization and bill assistance. The statute and rules do not otherwise specify how funds should be allocated among programs. Expenditures for types of USB programs were approved by PSC order for each utility.

Program Beneficiaries

⁷ARM 42.29.111

⁸The staff attorney for the Energy and Telecommunications committee has been asked to prepare a legal opinion regarding whether or not the DOR complied with the statute.

Electricity funds are not necessarily used for electricity-specific programs. For example, most utilities give money to Energy Share, which is a private nonprofit organization that exists to help Montanans faced with energy emergencies. Greg Groepper, Energy Share Director explained to the Governor's Consumer Energy Protection Task Force on August 27, 2003 that approximately 3/4 of the NWE customers helped by Energy Share are gas customers and that Energy Share does not receive funds collected from natural gas USB charges.

Options

Electricity

27. Revise the allocation of funds to low-income programs.
28. Require that funds collected from electricity customers be used for the benefit of electricity customers.
29. Require that utilities subject to the USB requirement keep funds collected from the USB charge in specifically identified USB trust accounts, subject to the following requirements:
 - a. money in the USB accounts must be used exclusively for USB purposes;
 - b. revenue from the USB charge may not be intermingled with any other funds or accounts;
 - c. interest accrued on the USB revenue must be credited to the USB trust account and used for USB programs; and
 - d. the funds in the USB trust account must be clearly identified as public purpose funds that are not the property of the utility.
30. Establish a date certain by which a utility is required to pay USB funds collected in excess of credits to the state universal system benefits fund.
31. Limit the ability to carry forward USB funds to subsequent years.⁹
 - a. Prohibit any carry forward of USB funds so the state can distribute the funds to programs.
 - b. Allow carry-forward for a specified period of time only when specific criteria are met (e.g., a contract has been signed that provides for expenditure of the funds for qualified programs within the next year.)
 - c. Specify a maximum dollar amount that may be carried forward to the next year.
 - d. Establish other standards or criteria.
32. Clarify in statute how the funds that are not expended and transmitted to the state should be allocated between the two types of state funds.
33. Conform statute to actual practice by requiring the utility to spend the USB revenue collected each year on USB funds or remit the remaining funds to the state. (Current law requires the utility to remit the difference between USB credits and the annual funding level.)
- 34.

⁹If the Legislature chooses to delegate to the DOR the authority to authorize carry forward of funds, under case law interpreting the separation of powers provision in the Montana Constitution, the Legislature must provide sufficient statutory standards and criteria to guide the DOR.

35.

Natural Gas

36. Request additional information on natural gas USB programs.
37. Require that funds collected from natural gas customers be used for the benefit of natural gas customers.
38. Require that utilities subject to the USB requirement keep funds collected from the USB charge in specifically identified USB trust accounts, subject to the following requirements:
 - a. money in the USB accounts must be used exclusively for USB purposes;
 - b. revenue from the USB charge may not be intermingled with any other funds or accounts;
 - c. interest accrued on the USB revenue must be credited to the USB trust account and used for USB programs; and
 - d. the funds in the USB trust account must be clearly identified as public purpose funds that are not the property of the utility.
- 39.
- 40.
- 41.

Combined Options

USB Charge

Electricity

1. No change to current law regarding current funding level, determination of rates, or sunset date.
2. Extend or eliminate the termination date for the USB charge.
3. Revise funding levels for electricity programs. Must be combined with option 2.¹⁰
4. Request additional information related to funding levels.
5. Require that the USB charge be evaluated periodically and revised, if necessary, in order to maintain statutory funding levels. Must be combined with option 2.
6. Evaluate whether or not the difference in funding levels for electricity and natural gas USB programs is appropriate, taking into consideration who pays and who benefits.
- 7.
- 8.
- 9.

Gas

10. No change to current law.

¹⁰A bill passed by the 2005 Legislature becomes effective October 1, 2005, three months before the charge expires.

11. Revise funding levels for natural gas programs.
12. Evaluate whether or not the difference in funding levels for electricity and natural gas USB programs is appropriate, taking into consideration who pays and who benefits.
13. Request additional information related to funding levels.
- 14.
- 15.
- 16.

USB Programs

Electricity

17. No change to programs authorized.
18. Revise the list of programs authorized.
19. Request more information on specific programs.
- 20.
- 21.

Natural Gas

22. No change to programs authorized
23. Revise the list of programs authorized.
24. Request more information on specific programs.
- 25.
- 26.

Disposition of USB Funds

Electricity

27. Revise the allocation of funds to low-income programs.
28. Require that funds collected from electricity customers be used for the benefit of electricity customers.
29. Require that utilities subject to the USB requirement keep funds collected from the USB charge in specifically identified USB trust accounts, subject to the following requirements:
 - a. money in the USB accounts must be used exclusively for USB purposes;
 - b. revenue from the USB charge may not be intermingled with any other funds or accounts;
 - c. interest accrued on the USB revenue must be credited to the USB trust account and used for USB programs; and
 - d. the funds in the USB trust account must be clearly identified as public purpose funds that are not the property of the utility.
30. Establish a date certain by which a utility is required to pay USB funds collected in excess of credits to the state universal system benefits fund.

31. Limit the ability to carry forward USB funds to subsequent years.¹¹
 - a. Prohibit any carry forward of USB funds so the state can distribute the funds to programs.
 - b. Allow carry-forward for a specified period of time only when specific criteria are met (e.g., a contract has been signed that provides for expenditure of the funds for qualified programs within the next year.)
 - c. Specify a maximum dollar amount that may be carried forward to the next year
 - d. Establish other standards or criteria
32. Clarify in statute how the funds that are not expended and transmitted to the state should be allocated between the two types of state funds.
33. Conform statute to actual practice by requiring the utility to spend the USB revenue collected each year on USB funds or remit the remaining funds to the state. (Current law requires the utility to remit the difference between USB credits and the annual funding level.)
- 34.
- 35.

Natural Gas

36. Request additional information on natural gas USB programs.
37. Require that funds collected from natural gas customers be used for the benefit of natural gas customers.
38. Require that utilities subject to the USB requirement keep funds collected from the USB charge in specifically identified USB trust accounts, subject to the following requirements:
 - a. money in the USB accounts must be used exclusively for USB purposes;
 - b. revenue from the USB charge may not be intermingled with any other funds or accounts;
 - c. interest accrued on the USB revenue must be credited to the USB trust account and used for USB programs; and
 - d. the funds in the USB trust account must be clearly identified as public purpose funds that are not the property of the utility.
- 39.
- 40.
- 41.

¹¹If the Legislature chooses to delegate to the DOR the authority to authorize carry forward of funds, under case law interpreting the separation of powers provision in the Montana Constitution, the Legislature must provide sufficient statutory standards and criteria to guide the DOR.

Appendix A

Finding and Recommendations of the Transition Advisory Committee (2002)

(The full TAC adopted the recommendations of the Universal System Benefits Program (USBP) Subcommittee, listed below, in April 2002.)

1. It is the finding of the Subcommittee that fledgling markets exist for certain types of energy efficiency and alternative energy applications. Markets do not exist for low-income energy assistance.
2. The Subcommittee finds that there is an ongoing need for USBP.
3. The Subcommittee finds that the current funding for USBP is adequate at 2.4%.
4. The Subcommittee supports the governor's recommendation that:
 - (a) any USBP funding money deposited in state special revenue accounts be expended in the utility service territory from which the money was received;
 - (b) in assessing USBP funding needs, the state departments administering the funds should be required to solicit utility and public comment from the utility service territory from which the money was received; and
 - (c) LC 93 implementing the governor's recommendations be adopted and requested by Committee.
5. The Subcommittee recommends that the USBP irrigation statutory allocation funding mechanism be revisited and made more flexible to meet the realistic needs of the utility and its customers.

Appendix B

TITLE 42: DEPARTMENT OF REVENUE
CHAPTER 29: UNIVERSAL SYSTEM BENEFITS PROGRAMS
SUB-CHAPTER 1: REVIEW PROCESS

42.29.101 DEFINITIONS

The following terms will be used in this chapter:

(1) "Cost-effective" means that the expected benefits accrued as a result of pursuing the action must exceed the expected costs associated with that action over some reasonable time period.

(2) "Department" means the Montana department of revenue.

(3) "Energy conservation" means the installation or implementation of an energy efficient measure or practice which results in a reduction of energy usage.

(4) "Internal activities or programs" are those activities or programs operated, developed, or organized within the organizational structure of a utility or large customer.

(5) "Internal expenditure" means financial commitments made by a utility or large customer to a qualifying activity or program.

(6) "LIEAP" means low income energy assistance program.

(7) "Low-income customer eligibility" means those households whose annualized income is 150% or less of federal poverty guidelines. Exceptions are subject to documentation on an individual basis.

(8) "Low-income customer weatherization" means a group of energy assistance measures targeted at improving energy efficiency and energy-related safety of low-income homes in the state of Montana.

(9) "Low-income energy assistance" means activities that better ensure affordable energy services on a continuing basis to low-income households in the state of Montana.

(10) "Market transformation" means coordinated activities, at the state, regional, or national level, that transform markets for the support of efficient technologies and practices or renewable resources. The intent of market transformation is to undertake activities that will increase the market share so that the activity will be sustained after incentives or other support is withdrawn.

(11) "Renewable resource projects and applications" means projects and applications that use various technologies to convert virtually inexhaustible energy sources to electricity or to perform useful work in some way.

(12) "Research and development programs" means universal system benefits programs related to a broad spectrum of activities which are intended to identify, evaluate, develop, and/or demonstrate techniques or technologies related to the acquisition of public purpose benefits.

(13) "Universal system benefits programs," means public purpose programs for:

- (a) cost-effective energy conservation;
- (b) low-income customer weatherization;
- (c) renewable resource projects and applications, including those that capture unique social and energy system benefits or provides transmission and distribution system benefits;
- (d) research and development programs related to energy conservation and renewables;
- (e) market transformation designed to encourage competitive markets for public purpose programs;

and

- (f) low-income energy assistance;

(History: Sec. 69-8-413, MCA; IMP, Sec. 69-8-402, MCA; NEW, 1999 MAR p. 2927, Eff. 12/17/99; AMD, 2002 MAR p. 209, Eff. 2/1/02; AMD, 2003 MAR p. 1352, Eff. 6/27/03.)

42.29.102 PURPOSE

(1) Universal system benefits programs (USBP) credit and expenditure rules are designed to help utilities, cooperatives, large customers, the state USBP fund administrator, and the general public ensure that money generated through a universal system benefits non by-passable charge produces public purpose benefits.

(2) There may be activities, programs or expenditures that are not addressed within the rules that qualify for credits or expenditures. Activities, programs or expenditures identified in the rules are not intended to be all inclusive. An omission in the rules in no way implies or intends to affect credit amounts.

(History: Sec. 69-8-413, MCA; IMP, Sec. 69-8-103 and 69-8-501, MCA; NEW, 1999 MAR p. 2927, Eff. 12/17/99.)

42.29.103 CLAIM PROCEDURE

(1) Annual reports required pursuant to 69-8-402, MCA, must be filed with the department on or before March 1 of each year. Credits claimed on annual reports filed after March 1 will not be allowed until the subsequent calendar year.

(2) Documents submitted by the credit claimant shall be subject to the department's protective orders regarding confidential or proprietary materials. A credit claimant claiming confidential or proprietary materials shall move the department for a protective order 30 days in advance of filing the annual report to allow an order to be issued prior to the annual report being filed. The motion for protective order must specify the material sought to be protected and the reason such materials should be considered confidential or proprietary.

(a) The department will grant or deny the motion within 30 days of receipt of the motion.

(b) Materials not subject to a protective order will be made available for public inspection and photocopying.

(3) The department shall publish a public notice listing:

(a) names of the claimants who have filed application for the credits as shown on the annual reports;

(b) when the annual report was filed; the specific date by which challenges may be made; and

(d) where to file the challenge.

(4) Publication will occur within 20 days of the department receiving the annual report. The department shall publish the public notice in the six major newspapers of general circulation for the state of Montana. Those newspapers are: Independent Record; Montana Standard; Billings Gazette; Missoulian; Chronicle; and Great Falls Tribune.

(5) Claimed credits shall be presumed to be acceptable unless proven otherwise, and the burden of proving ineligibility of a credit lies with the challenging party. If the department receives a challenge to a claimed credit, it shall promptly notify the credit claimant in writing of the challenge, and provide a copy

of the filed challenge with any supporting documents to the claimant.

(History: Sec. 69-8-413, MCA; IMP, Sec. 69-8-402 and 69-8-414, MCA; NEW, 1999 MAR p. 2927, Eff. 12/17/99; AMD, 2002 MAR p. 209, Eff. 2/1/02.)

42.29.104 CHALLENGE AND REVIEW PROCEDURE

(1) Any interested person may file comments challenging a claim. A challenge must include supporting documentation. A challenge of any claimed credit must be received within 60 days of the department's receipt of the credit claimant's annual reports. The 60 days does not begin to run until the department receives the claimant's annual reports or a motion for protective order is determined, whichever occurs later.

(2) If a challenge to a credit is filed, the department shall conduct an initial review of the claim. The review will be concluded within 30 days of the close of the challenge period. The purpose of the initial review shall be to determine the likelihood of the credit qualifying for universal system benefits programs. In performing its review, the department may seek additional information from the interested persons or from the claimant.

(a) After the initial review, if the department concludes that the credit qualifies, it shall dismiss the challenge and provide the interested person with a statement of reasons for the dismissal.

(b) If the department concludes that the challenged credit is not likely to qualify for universal system benefits programs, the department will forward the matter to the department's office of dispute resolution to schedule a formal review.

(3) If a formal review is conducted the department shall provide public notice of the opportunity to comment to the credit claimant and interested persons. The public notice shall include:

- (a) name of the credit claimant;
- (b) name of the interested parties challenging the credits;
- (c) time period for submitting comments;
- (d) where to file the comments; and
- (e) date of the initial conference.

(4) The department shall publish the public notice in the six major newspapers of general circulation for the state of Montana. Those newspapers are: Independent Record; Montana Standard; Billings Gazette; Missoulian; Chronicle; and Great Falls Tribune.

(5) The formal review process for a challenged credit shall be governed by the administrative rules found in chapter 2, sub-chapter 6 of the department's rules except that the department's final decision must be completed within 60 days of the public notice of the opportunity to comment on a challenged credit.

(History: Sec. 69-8-413, MCA; IMP, Sec. 69-8-402 and 69-8-414, MCA; NEW, 1999 MAR p. 2927, Eff. 12/17/99; AMD, 2002 MAR p. 209, Eff. 2/1/02.)

42.29.105 REQUIRED RECORD KEEPING

(1) In accordance with 69-8-402, MCA, a utility or large customer claiming a universal system benefits programs credit is responsible for developing and demonstrating appropriate documentation in support of its decisions relative to each application. Depending upon circumstances specific to such

application, a utility or large customer claiming the incremental or total cost of a program, project, or acquisition shall include an explanation of total or incremental costs claimed.

(2) A utility or large customer claiming credits or expenditures shall maintain such records and other appropriate documentation concerning such expenditures or portions of expenditures which qualify for meeting the utility's or large customer's universal system benefits programs requirements. Any record of decision, order, or other documentation of a federal power agency, the Montana public service commission, or other governmental agency which allocates the portion of the cost of power attributable to renewable energy or conservation-related activities shall be conclusive and shall be appropriate documentation for purposes of the record-keeping and documentation requirements of this rule. Such documentation shall be made available to the department if the department undertakes a review of such credits pursuant to ARM 42.29.104.

(History: Sec. 69-8-413, MCA; IMP, Sec. 69-8-402, MCA; NEW, 1999 MAR p. 2927, Eff. 12/17/99.)

42.29.106 CREDITS AND EXPENDITURES FOR COST-EFFECTIVE ENERGY CONSERVATION

(1) Subject to ARM 42.29.111, credits or expenditures permitted in support of cost-effective energy conservation include, but are not limited to:

- (a) energy audits;
 - (b) water heater programs;
 - (c) lighting efficiency conversions;
 - (d) motor efficiency conversions;
 - (e) consumer conservation education;
 - (f) demand side management programs;
 - (g) ground-source heat pumps used for energy efficiency savings;
 - (h) irrigation audits to reduce power requirements;
 - (i) programs such as super good cents;
 - (j) design/ construction assistance for energy-efficient construction;
 - (k) design/ implementation assistance for retrofits of existing loads;
 - (l) waste heat generation expenses;
 - (m) street lighting/security lighting upgrades for efficiency;
 - (n) incremental cost of distribution efficiency expenditures attributable to increases in energy efficiency above acceptable minimum industry standards that are documented and verified by an electrical engineer;
 - (o) peak-shaving devices applied in customer facilities for the purpose of reducing peak demands excluding interruptible service or payment for curtailment rates; and
 - (p) large customer conservation investments made pursuant to Title 69, chapter 8, MCA.
- (2) Credits and expenditures for cost-effective conservation shall include a cross-fuels analysis where appropriate.
- (3) Pure load building costs or expenses are not acceptable universal system benefits programs credit or expenditure activities.

(History: Sec. 69-8-413, MCA; IMP, Sec. 69-8-402, MCA; NEW, 1999 MAR p. 2927, Eff. 12/17/99.)

42.29.107 CREDITS AND EXPENDITURES FOR LOW-INCOME UNIVERSAL SYSTEM BENEFITS PROGRAMS

(1) Subject to ARM 42.29.111, credits or expenditures permitted in support of low-income energy assistance and weatherization activities include, but are not limited to:

- (a) outreach for LIEAP enrollment;
- (b) funds contributed to endowments that qualify for low-income universal system benefits programs purposes;
- (c) safety/repairs related to low-income energy issues;
- (d) energy-efficient equipment/ technologies that assist low-income households in paying the costs of home energy;
- (e) heating and energy crisis benefits, including payments toward recipient households' energy costs;
- (f) payment toward recipient household weatherization costs;
- (g) purchase and delivery of fuels used by recipient households for home energy;
- (h) purchase, delivery, and installation of weatherization materials;
- (i) purchase and delivery of blankets, space heating devices, equipment, and other tangible items that are provided to assist low-income households pay the costs of home energy;
- (j) discounted utility and bulk fuel prices for recipient households;
- (k) partial or full waivers of utility and other low-income home energy connection and reconnection fees, application fees, and late payment charges;
- (l) partial or full forgiveness of home energy bill arrearages;
- (m) discounts or reductions in the costs of home heating and weatherization materials;
- (n) services of paid staff donated by their employer to deliver fuel and other tangible items that assist low-income households pay the costs of home energy; and
- (o) purchase, delivery, and installation of energy efficient equipment/technologies that assist low-income households pay the costs of home energy.

(2) Low-income energy assistance and weatherization activities include a broad-based spectrum of services and benefits that provide affordable home energy services to qualifying low-income families in the state of Montana. Customers must comply with low-income customer eligibility requirements with documentation to support the exceptions.

(History: Sec. 69-8-413, MCA; IMP, Sec. 69-8-412, MCA; NEW, 1999 MAR p. 2927, Eff. 12/17/99.)

42.29.108 RENEWABLE RESOURCE PROJECTS AND APPLICATIONS

(1) Subject to ARM 42.29.111, credits or expenditures for renewable resource projects include, but are not limited to:

- (a) photovoltaic conversion;
- (b) solar thermal applications; geothermal projects;
- (d) wind power projects and applications; and
- (e) micro hydro projects that are on streams outside protected areas as defined by the northwest

power planning council or state or federal law, or that are irrigation ditch projects.

(2) The amount of credit that may be claimed for a purchase from another party of electric energy generated from a renewable resource is the difference between the cost to the credit claimant for the energy from the renewable resource and the cost of the next best alternative known to and available to the credit claimant at the time the credit claimant committed to purchase energy from the renewable resource.

(3) The amount of credit that may be claimed for a renewable resource developed by the credit claimant is the difference between net present value cost of the renewable energy and of the next best alternative for the provision of electric service known at the time of project inception and calculated over the expected life of the project.

(History: Sec. 69-8-413, MCA; IMP, Sec. 69-8-402, MCA; NEW, 1999 MAR p. 2927, Eff. 12/17/99.)

42.29.109 RESEARCH AND DEVELOPMENT ELIGIBILITY FOR CREDITS

(1) Subject to ARM 42.29.111, costs incurred in connection with research and development activities supporting public purpose investments and programs are also eligible for credits. Such expenditures must take technical feasibility, economic feasibility, and local applicability into account.

(History: Sec. 69-8-413, MCA; IMP, Sec. 69-8-402 and 69-8-414, MCA; NEW, 1999 MAR p. 2927, Eff. 12/17/99.)

42.29.110 MARKET TRANSFORMATION PROGRAMS

(1) It is possible for market transformation programs to overlap with low-income expenditures and credits, energy conservation, renewable projects and applications, and research and development activities. Consideration of market transformation expenditures is necessary to examine the issues of whether a given technology/process possesses a reasonable probability of becoming a normal practice without the incentive. Additionally, determining whether the use of codes and standards can or should be used to compel changes in practice, and whether certain market transformation changes are likely to remain in place over time will be considered.

(History: Sec. 69-8-413, MCA; IMP, Sec. 69-8-402 and 69-8-414, MCA; NEW, 1999 MAR p. 2927, Eff. 12/17/99.)

42.29.111 QUALIFYING EXPENDITURES AND TIMING

(1) A utility or large customer may be entitled to receive a credit against its universal system benefits obligation for the total cost of a qualifying expenditure. A qualifying expenditure by a utility or large customer shall be deemed to occur when resources or funds are financially committed by a utility or large customer to a program, project, or activity whether by payment, contract, or other obligation and such credited funds or resources shall be expended by the end of the following calendar year, unless the department grants an extension for good cause shown.

(2) Qualifying expenditures specifically include, but are not limited to an expenditure or financial commitment by a utility or large customer to a qualifying low-income energy assistance program such as

energy share of Montana or the state's low income energy assistance program.

(3) A qualifying expenditure by a utility or large customer includes a commitment of funds or resources to a universal system benefits program as defined at 69-8-103, MCA.

(4) When an expenditure is made as described in (1), it may qualify for the calendar year in which it is made. If, for example, a large customer expends funds to the state weatherization program any time prior to December 31, the expenditure may qualify as such a credit in that year. The state of Montana need not expend the funds by December 31 in order for the claimant to receive a credit for the expenditure.

(History: Sec. 69-8-413, MCA; IMP, Sec. 69-8-402 and 69-8-414, MCA; NEW, 1999 MAR p. 2927, Eff. 12/17/99; AMD, 2002 MAR p. 209, Eff. 2/1/02.)

42.29.112 JUDICIAL REVIEW OF DEPARTMENT DECISIONS ON CHALLENGED CREDITS

(1) A party that is aggrieved by a department decision on a challenged credit is entitled to judicial review of the decision. The petition for judicial review must be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office. Service of the petition must comply with the requirements of 2-4-702, MCA.

(History: Sec. 69-8-413, MCA; IMP, Sec. 69-8-414, MCA; NEW, 1999 MAR p. 2927, Eff. 12/17/99.)

UNIVERSAL SYSTEM BENEFITS PROGRAMS WORKBOOK

Prepared for the Energy and Telecommunications Interim Committee

November 9, 2003 Draft

**Prepared by
Mary Vandebosch
Research Analyst**



Legislative Services Division
PO Box 201706
Helena, MT 59620-1706
PHONE: (406) 444-3064
FAX: (406) 444-3036
<http://leg.mt.gov/>