

May 8, 2009

The Honorable Linda McCulloch  
Secretary of State  
State Capitol  
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill 403, **“AN ACT INCREASING THE TIME THE PUBLIC SERVICE COMMISSION HAS TO ACT ON A PETITION FROM A UTILITY OR QUALIFYING SMALL POWER PRODUCTION FACILITY; ALLOWING ELECTRICITY FROM AN ELIGIBLE RENEWABLE RESOURCE PURCHASED BY A PUBLIC UTILITY FROM A QUALIFYING SMALL POWER PRODUCTION FACILITY TO BE USED TO OFFSET REQUIREMENTS OF THE RENEWABLE RESOURCE STANDARD; AMENDING SECTIONS 69-3-603 AND 69-3-2004, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE.”**

Senate Bill 403 establishes a relationship between renewable energy credits (RECs) from electrical generation at qualifying facilities and Montana’s renewable energy portfolio standard. While there may be rate and public policy issues to be clarified about the transfer of RECs from qualifying facilities built in the future, the approach used in Senate Bill 403 threatens the integrity of Montana’s renewable portfolio standard with a questionable accounting device and dampens the prospects for construction of new renewable energy projects in the state.

Senate Bill 403 would reduce Montana’s official renewable portfolio standard by an amount that varies year to year based on the amount of electricity generated by renewable qualifying facilities. The bill would allow a utility to use the output from qualifying facilities to meet current goals for renewable energy generation without requiring the utility to actually purchase the RECs from those facilities. The bill’s proponents testified that Montana qualifying facilities would still have RECs to sell elsewhere. They deny that the bill would circumvent prohibitions against using the same REC twice. I disagree.

I have grave concerns that the double-counting sanctioned under Senate Bill 403 will not be acceptable to the voluntary or compliance markets for RECs, which hurts the value of renewable energy in Montana. Green-e Energy, which certifies the validity of RECs purchased voluntarily by individuals, already has informed my energy advisor that, were Senate Bill 403 to become law, it would no longer be able to certify sales of Montana qualifying facility RECs. The Western Renewable Energy Generation Information System (WREGIS), which certifies RECs for use in state-mandated compliance markets, such as Montana’s, will not rule on the validity of a REC until it is formally submitted. However

WREGIS has repeatedly emphasized that, as a general principle, it cannot and will not permit double-counting of RECs. The opinions expressed by the bill's proponents that this legislation would allow qualifying facilities to sell renewable energy to utilities and simultaneously allow the facilities to also sell their RECs elsewhere are clearly not opinions that are universally held.

Proponents of Senate Bill 403 have acknowledged there could be legal challenges to the bill, should it be signed into law, though they claim to be confident in the outcome. To the extent the State of Montana is drawn into the litigation, I have the added concern that Montana taxpayers would have to pay to defend these challenges.

To summarize, Senate Bill 403, if allowed to become law, would undermine the value of renewable energy generated in Montana, lower Montana's renewable portfolio standard, risk a determination that Montana's RECs do not comply with regional standards, and could result in litigation. Senate Bill 403 does not move construction of new renewable energy forward in Montana, and for these reasons, I have chosen to veto it.

I ask for your support in sustaining my veto.

Sincerely,

BRIAN SCHWEITZER  
GOVERNOR

cc: Legislative Services Division