

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 38.5.2501, 38.5.2527, and)
38.5.2528, pertaining to small water)
utility rules)

TO: All Concerned Persons

1. On January 26, 2018, the Department of Public Service Regulation published MAR Notice No. 38-5-239 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 166 of the 2018 Montana Administrative Register, Issue Number 2.

2. The department has chosen to adopt Rule Amendment Option 2.

3. The department has amended the following rules as proposed in Rule Amendment Option 2, but with the following changes from the original proposal, new matter underlined, deleted matter interlined.

38.5.2501 GENERAL RULES FOR PRIVATELY OWNED WATER UTILITIES (1) and (2) remain as proposed.

(3) All privately owned water utilities must have commission-approved tariffs filed with the commission, pursuant to Title 69, MCA, and its corresponding administrative rules, including penalties as provided by statute. ~~The commission will prioritize supervision of management and rate regulation of privately owned water utilities based upon complaints received from consumers.~~

(4) All privately owned water utilities must file a rate application in accordance with the minimum rate case filing standards of ARM 38.5.101, et seq., or in accordance with the simplified regulatory treatment options rules of ARM 38.5.2527.

(5) As good cause appears and as justice may require, a utility may petition the commission to waive the application of any rule, pursuant to ARM 38.2.305.

(6) Nothing contained in these rules shall be construed to limit the statutory and constitutional authority of the Montana Consumer Counsel to participate and represent the interests of the utility ratepayers in these proceedings.

38.5.2527 SIMPLIFIED REGULATORY TREATMENT OPTIONS (1) ~~Three~~ Two simplified regulatory treatment options are available to a small water or sewer utility that allow it to propose ~~changes to its rates~~ by a method other than filing a rate application in accordance with the minimum rate case filing standards of ARM 38.5.101, et seq. Option (b) is only available to establish a utility's initial tariff rates with the commission; a utility that has previously had rates on file with the commission is not eligible for this rate. The options are:

~~(a) filing a rate application for the adoption of the commission-approved standard rate tariff in accordance with the minimum filing requirements described in ARM 38.5.2528; or~~

~~(ba) filing an operating ratio rate application in accordance with the operating ratio methodology as described in ARM 38.5.2529; or~~

~~(eb) filing a standard rate application requesting adoption of the Montana Department of Natural Resources and Conservation's most recent water and sewer rate study's monthly water average and/or monthly wastewater average for populations less than 500.~~

(2) remains as proposed.

(3) If a utility's election of either of the ~~three~~ two simplified regulatory options described in ARM 38.5.2527(1)(a) or (1)(b) would result in increased rates to customers, it may request, or the commission may require the utility to implement the rates in increments over a reasonable time period.

~~(4) An existing small water or sewer utility must be in compliance with 69-3-203, MCA (annual report requirement), in order to elect either of the simplified regulatory treatment options or to request authorization for a reserve account as provided in ARM 38.5.2531. A simplified regulatory treatment option rate application shall contain, at a minimum, the following information:~~

~~(a) The full legal name and title of the owner of the utility, its principal place of business and mailing address, the date that it began providing service to customers, and contact information (i.e., name, address, telephone number and email) of the individual(s) representing the utility before the commission;~~

~~(b) A detailed description of the utility system and its potential for expansion, including the number of wells, feet of main, and filtration system;~~

~~(c) The total number of existing water service connections and meters and existing sewer service connections and meters, and the billing frequency for each type of service;~~

~~(d) The total number of potential water service connections and meters and potential sewer service connections and meters;~~

~~(e) The number of existing and potential multi-residence dwellings (e.g., apartments or condos) served by a single service connection or meter, and the number of units in each multi-residence dwelling;~~

~~(f) The current rates being charged for each type of service, when the current rates went into effect, and whether the current rates have been approved by the commission;~~

~~(g) The rates proposed for each type of service;~~

~~(h) If known, the date that utility assets were first placed in service, the date of any sales or transfers that have occurred since utility assets were first placed in service, and the full legal name and title of any previous owner(s);~~

~~(i) In the event that the utility is not a new utility, two years of income statements and balance sheets, separately for water and sewer utilities, indicating how these statements were prepared (i.e., cash basis or accrual basis) and who prepared them;~~

~~(j) In the event that the utility is not a new utility, a list of any revenue generated during the two years referenced in (i) from sources other than the rates charged to customers, including the source and amount of revenue;~~

(k) In the event that a utility is not a new utility, a list of each transaction that occurred with an affiliate or related party during the two years referenced, involving more than \$750, the amount paid, service(s) provided, and counterparty;

(l) If a utility is requesting the standard rate tariff, it must file an annual report with the commission; if the utility is requesting the operating ratio tariff, it must file a copy of each annual report for the last three calendar years;

(m) Copies of any water rights owned or leased by the utility, percentage usage of the available water right, and any documentation from the Department of Natural Resources and Conservation involving water right usage or violations;

(n) An affidavit from an owner or manager of the utility attesting to the accuracy of the information provided;

(o) The original cost of utility plant in service, an accounting of any capital improvements made, the amount of depreciation that has been taken on plant in service, and the depreciation schedule(s) used for the different utility asset accounts; and

(p) A complete copy of the information regarding the utility's financial capacity that the utility provided to the Montana Department of Environmental Quality as part of that agency's public water system review process.

~~(5) The commission may find good cause to waive any privately owned water utility rules, if the utility successfully petitions the commission for a waiver of rules pursuant to ARM 38.2.305. Minimum filing requirement forms are available from the commission upon request or on the commission's web site at www.psc.mt.gov.~~

(6) The commission will determine whether a simplified regulatory treatment option application satisfies the minimum filing requirements in (4)(a) through (p) of this rule, no later than 30 days after it is received by the commission. If the commission determines that the rate application satisfies the minimum filing requirements, it will notice the public for comment or protest.

(7) The commission may deny a rate application requesting simplified regulatory treatment or only grant it in part if the commission determines, based on comments or protest that it would be unjust or unreasonable to allow simplified regulatory treatment or approve the rates proposed by the utility.

(8) A small water or sewer utility's simplified regulatory treatment tariffs may be revoked if the utility is not in compliance with the commission's annual report requirement.

38.5.2528 STANDARD RATE TARIFF (1) A small water or sewer utility may file an application to establish its initial commission-approved standard rates for small water or sewer utilities or by adopting its own rates if they are lower than the applicable standard rates. If the utility has previously had rates on file with the commission it is not eligible for initial standard rates. The standard rate application and tariff forms to be submitted for commission review are available from the commission upon request or by obtaining them from the commission's web site at www.psc.mt.gov. ~~The rate application shall contain, at a minimum, the following information:~~

~~(a) The full legal name and title of the owner of the utility, its principal place of business and mailing address, the date that it began providing service to customers,~~

and contact information (i.e., name, address, telephone number and email) of the individual(s) representing the utility before the commission;

~~(b) A detailed description of the utility system and its potential for expansion, including the number of wells, feet of main, and filtration system;~~

~~(c) The total number of existing water service connections and meters and existing sewer service connections and meters, and the billing frequency for each type of service;~~

~~(d) The total number of potential water service connections and meters and potential sewer service connections and meters;~~

~~(e) The number of existing and potential multi-residence dwellings (e.g., apartments or condos) served by a single service connection or meter, and the number of units in each multi-residence dwelling;~~

~~(f) The current rates being charged for each type of service, when the current rates went into effect, and whether the current rates have been approved by the commission;~~

~~(g) The rates proposed for each type of service;~~

~~(h) The date that utility assets were first placed in service, the date of any sales or transfers that have occurred since utility assets were first placed in service, and the full legal name and title of any previous owner(s);~~

~~(i) Two years of income statements and balance sheets, separately for water and sewer utilities, indicating how these statements were prepared (i.e., cash basis or accrual basis) and who prepared them;~~

~~(j) A list of any revenue generated during the two years referenced in (i) from sources other than the rates charged to customers, including the source and amount of revenue;~~

~~(k) A list of each transaction that occurred with an affiliate or related party during the two years referenced, involving more than \$750, the amount paid, service(s) provided, and counterparty;~~

~~(l) A copy of the most recent annual report filed with the commission;~~

~~(m) Copies of any water rights owned or leased by the utility, percentage usage of the available water right, and any documentation from the Department of Natural Resources and Conservation involving water right usage or violations; and~~

~~(n) An affidavit from an owner or manager of the utility attesting to the accuracy of the information provided.~~

(2) The standard rates for small water and sewer utilities that apply to establish rates using this simplified regulatory option are: set pursuant to ARM 38.5.2527(1)(b), as calculated by the commission staff.

~~(a) a flat charge of \$50 per connection per month for a water utility that provides water to its customers on an unmetered basis;~~

~~(b) a monthly service charge of \$40 per connection, plus a usage rate of \$2.00 per 1,000 gallons for customer usage in excess of 10,000 gallons, for a small water utility that provides water to its customers on a metered basis;~~

~~(c) a flat charge of \$30 per connection per month for a small sewer utility.~~

(3) remains as proposed.

(4) A Within ten days of filing its application with the commission, a small water or sewer utility that files an standard rate application to adopt the standard rates must notify the commission and every customer in writing of its intention within

~~ten days of filing its application and file a copy of the customer notification with the commission.~~

~~(5) remains as proposed.~~

~~(6) The notification rate application must include the proposed rates, a copy of the notification provided to customers, and verification that all customers were mailed a notice of the proposed rate change. A small water or sewer utility must, if applicable, include in its rate application a complete copy of the information regarding the utility's financial capacity that the utility provided to the Montana Department of Environmental Quality as part of that agency's public water system review process.~~

~~(67) The commission will determine whether a rate application requesting simplified regulatory treatment satisfies the minimum filing requirements in (1)(a) through (n) no later than 30 days after it is received by the commission. If the commission determines that the rate application satisfies the minimum filing requirements it will notice it to the public for comment or protest. If either the Montana Consumer Counsel or 20 percent of the utility's customers protest the application, the commission will make a decision on the application following any additional process established by the commission.~~

~~(78) A standard rate application tariff approved by the commission expires three calendar years after its initial effective date, unless the commission approves an extension. Extensions will only be granted in limited circumstances. The three-year calendar time period which begins at the time the commission grants any portion of the standard rate, even if the rate is implemented in phases increments pursuant to ARM 38.5.2527(3). Standard rates shall be considered interim or temporary rates subject to rebate or surcharge pending a decision made in a rate application in accordance with the minimum rate case filing standards of ARM 38.5.101, et seq., a rate application for the adoption of the Montana Department of Natural Resources and Conservation's average rates, or in accordance with the operating ratio methodology pursuant to ARM 38.5.2529. At least three months prior to the expiration of the standard rate tariff, the utility must notify the commission whether it will file a request for an extension of the standard rate tariff option, a rate application in accordance with the minimum rate case filing standards of ARM 38.5.101, et seq., or an application in accordance with the operating ratio methodology pursuant to ARM 38.5.2529. A utility may request an extension of the standard rate in limited circumstances and for good cause shown, including for an extension of time to allow the utility to meet its annual report requirements under these rules.~~

~~(8) Standard rates shall be considered interim or temporary rates subject to rebate or surcharge pending a decision made in a rate application in accordance with the minimum rate case filing standards of ARM 38.5.101, et seq. or in accordance with the operating ratio methodology pursuant to ARM 38.5.2529.~~

~~(9) The commission will not grant standard rates to a small water or sewer utility that has been operating pursuant to commission-approved rates previously. The commission may deny a rate application requesting simplified regulatory treatment or only grant it in part if the commission determines, based on comments or protest, that it would be unjust or unreasonable to allow simplified regulatory treatment or approve the rates proposed by the utility.~~

~~(10) A small water or sewer utility's standard rate tariff may be revoked if the utility is not in compliance with the Commission's annual report requirement.~~

~~(11) Nothing contained in these rules shall be construed to limit the statutory and constitutional authority of the Montana Consumer Counsel to participate and represent the interests of the utility ratepayers in these proceedings.~~

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: One commenter stated that the existing rules should remain in place and the rulemaking proposal should be denied.

RESPONSE 1: The commission disagrees the existing rules should remain in place as some updates are necessary. The commission determines that the rules as proposed in this Notice with amendments are appropriate.

COMMENT 2: One commenter objected to removing the language "establish its rates" and replacing it with "propose changes to its rates," arguing new utilities need to establish new rates.

RESPONSE 2: The Commission appreciates the comment and has changed the language to "that allow it to propose rates by a method other . . ." so the rule applies to brand new, recently acquired, and existing public utilities. Either a newly established utility or one currently operating that is coming into compliance with rate regulation is eligible for simplified regulatory treatment. The majority of the filings by small water utilities are from companies that have been operating for several years and now are coming into compliance.

COMMENT 3: One commenter stated Option 2 is the only viable option for small water utilities. Another commenter stated that Option 2 is preferable to Option 1.

RESPONSE 3: The commission appreciates the comments. The commission has adopted the minimum filing requirements in ARM 38.5.2527 as proposed in Option 2, as well as including current rate information, original cost, and depreciation information.

COMMENT 4: Several commenters objected to prioritizing regulation by number of complaints received. One commenter argued the commission should not proceed with "Option 2" if prioritization of regulation based on complaints is not included in the rule.

RESPONSE 4: The commission appreciates the comments. The commission removed the complaint prioritization provision from the rulemaking.

COMMENT 5: One commenter proposes the commission remove the language "for populations of less than 500" and replace it with "for all communities in Montana."

RESPONSE 5: The commission disagrees with the commenters' request for change in ARM 38.5.2527. The commission's jurisdiction is limited to "small water or sewer utility," defined in ARM 38.5.2526(4) which is not a rule under consideration in this rulemaking. Broadening the scope of the study is unnecessary and inappropriate.

COMMENT 6: Some commenters stated that if a recent DNRC study is not available, the rate shall be established using the last available study and then adjusted for inflation. One commenter suggested this adjustment be based on the Consumer Price Index.

RESPONSE 6: The commission appreciates this comment and has confirmed that the DNRC's Montana Statewide Water and Wastewater Rate Study in ARM 38.5.2528 is updated on a regular basis and offers a sufficient representation of small water and small sewer rates in Montana. An adjustment based on the Consumer Price Index is not necessary.

COMMENT 7: One commenter stated that utilities requesting DNRC rates should not need to meet the simplified filing requirements as identified in ARM 38.5.2528. Another commenter stated the DNRC rates should not have any procedural process, arguing they are "interim" and subject to refund.

RESPONSE 7: The commission disagrees. The simplified regulatory treatment process is not an automatically granted rate and all applicants will be subject to at least a minimum review. Receipt of the ARM 38.5.2527 minimum filing requirements upon application ensures the commission is able to review the application in an efficient and thorough manner.

COMMENT 8: One commenter proposes the DNRC rates replace the existing Standard Rates and include the consumer protections for standard rates.

RESPONSE 8: The commission agrees and has established that standard rates are determined by the most recent DNRC study, see ARM 38.5.2527, and has retained consumer protections in the standard rate rules in ARM 38.5.2528.

COMMENT 9: One commenter proposes that the DNRC rates be limited to a period of three years with no possibility for extension.

RESPONSE 9: The commission disagrees. Although the intention of ARM 38.5.2528 is to allow standard rates for only three years, the commission has created the flexibility to allow for rare instances where a limited extension may be warranted, upon commission approval.

COMMENT 10: One commenter stated that the PSC should petition the Legislature to put DNRC rates into statute as "just and reasonable."

RESPONSE 10: The commission disagrees as a "just and reasonable" interpretation varies by utility. However, a Legislative interim committee is currently discussing several bill drafts during the interim including one that could place DNRC rates into statute.

COMMENT 11: One commenter recommended amending the rule to allow a utility to submit an Annual Report in lieu of a standard rate application.

RESPONSE 11: The commission disagrees. A standard rate application is not automatically approved. The commission requires an annual report and minimum filing requirements in ARM 38.5.2527 as part of a simplified regulatory process, but all utilities are subject to regulatory review and the just and reasonable standard.

COMMENT 12: One commenter stated a utility should remain eligible for Standard Rates even if they have existing tariffs on file with the PSC.

RESPONSE 12: The commission disagrees. Because the small water and sewer utilities generally have limited financial information prior to regulation and when they first start operating, the best way to establish initial rates is to offer standard rates until complete financial information is available. If a utility has already been operating under tariffs with the commission that complete financial information is already available and rates can be set a cost of service basis.

COMMENT 13: Some commenters stated that the simplified filing requirements are unworkable since a new utility owner will not have records to file, and a new owner of an existing utility may not be familiar with the previous owner's financial books. These commenters propose removing the requirements to: submit information regarding affiliate transactions; system expansion, original cost, dates assets were placed into service, previous owner information, two years of financials, and supplemental revenues. This commenter suggests filing an annual report with the PSC is sufficient.

RESPONSE 13: The commission disagrees. A new owner of an existing utility should have access to the utility's previous financial records and books. If the new owner has some but not all of the minimum filing requirement documents required in ARM 38.5.2527, it may request a waiver of the missing documents as good cause appears or as justice may require per ARM 38.2.305.

COMMENT 14: One commenter stated the rule should include a provision to allow for the recovery of regulatory proceeding expenses.

RESPONSE 14: The commission disagrees. The purpose of the simplified regulatory treatment process is to simplify the process of filing for rates and minimizing the regulatory costs to ratepayers. If the utilities follow the standard rate application rules, the rate filing process will be streamlined. This saves on costs that would otherwise be incurred by the utility and ratepayers. If a utility determines that the ratemaking costs will be materially detrimental to the financial stability of that

utility, it may request recovery of these costs in an application for a general rate case proceeding.

COMMENT 15: The MCC states that the existing standard rates are unlawful and should not be available.

RESPONSE 15: The commission disagrees. However, the commission has adopted the DNRC's rates for small water and small sewer utilities, as analyzed in the DNRC rate study, as a fair representation of rates in Montana and appropriate for standard rates.

COMMENT 16: The MCC proposes amending the simplified filing requirements to require original cost and depreciation "if available."

RESPONSE 16: The commission agrees in part and has included these requirements in ARM 38.5.2527. If the utility does not have this information, it may seek a waiver from the commission of this requirement upon showing pursuant to ARM 38.2.305.

COMMENT 17: One commenter stated the Operating Ratio methodology has not been implemented yet, and should not be included in the rule.

RESPONSE 17: The commission disagrees. The Operating Ratio methodology is established and is available to utilities eligible for simplified regulatory treatment. The forms and information is available from the commission upon request or on the commission's web site at www.psc.mt.gov.

/s/ JUSTIN KRASKE
Justin Kraske
Rule Reviewer

/s/ BRAD JOHNSON
Brad Johnson
Chairman
Department of Public Service Regulation

Certified to the Secretary of State June 26, 2018.