

Service Date: November 22, 2017

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

IN THE MATTER OF the Petition of                    ) REGULATORY DIVISION  
the Montana Consumer Counsel to                    )  
Amend ARM 38.5.2527 through                    ) DOCKET NO. N2017.9.76  
38.5.2528    )

**NOTICE OF COMMISSION ACTION**

On September 25, 2017, the Montana Consumer Counsel (MCC) petitioned the Montana Public Service Commission (Commission) to initiate a rulemaking proceeding in accordance with Mont. Code Ann. § 2-4-315 (2017), to amend or repeal Mont. Admin. R. 38.5.2527 through 38.5.2528 (Standard Rate Rules). The MCC is the agency charged with representing consumer interests before the Commission and may institute appropriate proceedings on behalf of Montana’s consuming public or substantial elements thereof, including proceedings to review Commission decisions or failures to act by the Commission. Mont. Code Ann. § 69-2-202(2); Mont. Const. art. XIII § 2; *see also* Mont. Code Ann. § 69-2-201. The MCC argues that the Standard Rate Rules do not necessarily serve their stated purpose, cause perverse incentives for utilities, and conflict with substantive and procedural statutes. Therefore, the MCC proposes to replace the Standard Rate Rules with a simplified process based on minimum filing requirements which will achieve the goal of the lowest reasonable rates for ratepayers.

On October 2, 2017, the Commission issued a *Notice of Petition and Opportunity for Comment and to Request a Hearing*, inviting the public to submit comments related to the Petition and the opportunity to request a hearing no later than October 23, 2017. The Commission gave notice that if a hearing was requested, it would be held on November 7, 2017. The Notice stated that concerned persons could submit their data, views, or arguments either orally or in writing at the hearing, and that written data, views, or arguments could be mailed or emailed to the Commission and must be received no later than October 23, 2017, in order to be discussed at the potential hearing.

The Commission received comments from the MCC, Holmberg Village Water Co., LLC, Circle H Water, a water consultant, and Alpine Pacific Utilities. On October 27, 2017, the Commission issued another Notice of Public Hearing confirming a public hearing at the Commission offices at 1701 Prospect Avenue, Helena, Montana, to consider the proposed amendment of Mont. Admin. R. 38.5.2527 through 38.5.2528. At the MCC's request, the Commission held a public hearing for comments on November 7, 2017, and received public comment from representatives of small water and sewer utilities, a water consultant, and the MCC.

At a regularly scheduled work session on November 16, 2017, the Commission discussed whether or not to accept the MCC's petition for rulemaking. The Commission voted to accept the MCC's petition to amend the small water Standard Rate Rules and to initiate rulemaking proceedings in accordance with the Montana Administrative Procedures Act (MAPA). *See* Mont. Code Ann. § 2-4-315; Mont. Admin. R. 1.3.307 through 1.3.312. Pursuant to Mont. Code Ann. § 2-4-315, the Commission is initiating rulemaking proceedings in accordance with Mont. Code Ann. §§ 2-4-302 through 2-4-305. The Commission will be conducting informal conferences and meetings with interested persons in the upcoming weeks as a means to obtain the viewpoints of a variety of interested persons with respect to the requested rulemaking as permitted by § 2-4-304. The Commission will then bring back for Commission approval a notice of proposed amendment and file it with the Secretary of State by January 16, 2018. The Commission's decision was based upon the following reasons:

- MCC's petition proposes further refinement of the Commission's Standard Rate Rules. The current rules were an attempt to streamline small-water utility regulation, as first codified in 2014. The MCC's petition seeks to further refine the process, attempting to create as efficient and streamlined process as possible, while still ensuring rates that utilities charge are just and reasonable.
- The Commission disagrees with the MCC that the Standard Rate Rules should be removed in their entirety. The Standard Rate Rules should at least exist for new utilities that lack sufficient financial data to adequately determine rates, however, this petition presents an opportunity to determine whether the Standard Rate Rules are appropriate for utilities that have sufficient financial information upon which to determine rates.
- The Commission tends to agree with the MCC that some Optional Minimum Filing Requirements for Small Water and Sewer Utilities could make the process more efficient. Additionally, filing standards, such as those proposed by MCC's Petition, should be tailored as much as possible to the unique issues presented by small-water utilities.

Commission staff will develop proposed rules that substantively address the issues discussed above and raised in public comments to the petition and may include alternate rules proposed by the Commission for comment during the rulemaking process. These proposed rules will proceed through the MAPA rulemaking process as required by law including: filing a notice of the proposed rules with the Secretary of State, allowing opportunity to comment from interested parties, Commission review of the comments, and a Commission determination of whether to adopt the final rules, and if so, in what form. The Commission finds that based upon the evidence in the record, initiating a rulemaking for small water and sewer rules is appropriate.

BY THE MONTANA PUBLIC SERVICE COMMISSION

BRAD JOHNSON, Chairman  
TRAVIS KAVULLA, Vice Chairman  
ROGER KOOPMAN, Commissioner  
BOB LAKE, Commissioner  
TONY O'DONNELL, Commissioner