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

IN THE MATTER OF the amendment of
ARM 38.5.2501, 38.5.2527, and 38.5.2528,
pertaining to small water utility rules

REGULATORY DIVISION

DOCKET NO. N2017.9.76

COMMENTS TO PROPOSED RULE CHANGES

I am commenting on the proposed rules generally on behalf of various small water and sewer utilities affected by these proposed rules, as well as personally, as a practitioner who works with these particular rules. I don't necessarily agree that the rules need to be changed, but if the Commission intends to change the rules, I believe Option 2 is a better alternative than Option 1. As such, I will list my comments to Option 2, which is a more workable rule proposal if the Commission does amend the rules.

I. Rule 38.5.2501

Adding a subsection (3) to the rule does reiterate the requirement that privately owned utilities come into regulatory compliance, which seems fair to small utilities that are in compliance already. However, giving the Commission discretion and priority to supervise based on complaints from consumers still gives the Commission an out if it continues to ignore noncompliance issues. If the Commission intends to regulate small, privately owned water utilities, it should apply the rules uniformly to all small water and sewer utilities.

The policy reasoning behind the standard rate rules, as I understand it, is to make it easier for small water utilities to come into compliance. The more unpredictable and onerous the rules become, the less incentive there is for small water utilities to come forward, especially if there is no enforcement mechanism from the Commission.

II. Rule 38.5.2527

I believe the word “establish” should remain in the rule, as there may be cases where the utility would be establishing its rate for the first time.

I believe adding this third option to adopt the average rates from the DNRC study is a good idea. I would recommend adding some adjustment to the rates in the study for inflation, however, as there is no guarantee that the study will be regularly updated. I recall that the most recent study was done in 2014. To account for inflation, the rule could set forth that if the study has not been updated within a year of the application, the Commission could adjust the flat charge (in the case of flat rates) or the monthly service charge (in the case of metered rates) by increasing that charge according to the consumer price index or by adding a fixed percentage increase every year (e.g. 5% increase per year until a new study is published).

Also, it should be clarified that if the utility elects that third option, the utility would not need to file an application with all of the requirements set forth in Rule 38.5.2528. I believe that is implicit in the rule proposal, but it should be clarified. Otherwise, requiring a detailed application defeats the purpose of offering this new, simplified regulatory option.

III. Rule 38.5.2528

Proposed Revisions:

(i) Two years of income statements and balance sheets, if they exist and the utility has two years of financial data, separately for water and sewer utilities, indicating how these statements were prepared (i.e., cash basis or accrual basis) and who prepared them;

...

~~(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;~~

Comments: Some of the new filing requirements to ARM 38.5.2528 appear overly burdensome to small water utilities and unnecessary to establish rates. I understand that the Commission wants to clarify the contents of an application, and setting the requirements out should reduce battles between the Montana Consumer Council and the utilities. But there needs to be a balance.

I would thus suggest revising sub-section (i) as indicated above, as there may be scenarios where this financial information does not exist or the utility does not have ready access to it (e.g. if it is a new utility). After all, the standard rate rules were written in part to set rates until utilities obtain enough financial data to apply under an operating ratio methodology or a regular rate case.

I would further suggest deleting proposed sub-sections (k) altogether, as providing that information seems overly burdensome and should be already accounted for in any balance sheets or income statements.

I would also suggest explicitly adding a provision that allows for cost recovery if the Montana Consumer Council intervenes in opposition to the utility's application for rates pursuant to ARM 38.5.2528. There is some dispute whether cost recovery is allowed under the current rules, and this should be further clarified. Perhaps the new rule could set a bar on the amount of recovery (e.g. \$10,000 recoverable over three years), but it should allow for some recovery. Small water and sewer utilities do face considerable expense for consultants and attorneys when their application is challenged, and they should be able to pass this expense on to customers just as in a normal contested rate case.

Thank you for considering these comments.

DATED this 23rd day of March, 2018



Mac M. Smith
DONEY CROWLEY P.C.
P.O. Box 1185
Helena, MT 59624