



**MONTANA**

**Public Service Commission**

**CHAIRMAN'S REPORT**

**2015**

**Dear Montanans,**

The past year at the Montana Public Service Commission included some of the most substantial changes to Montana's utility landscape that our state has experienced in recent years, with the initiation and conclusion of multiple high profile dockets, prompting significant policy adjustments. The PSC has been working diligently to achieve our primary goal of efficient and effective regulation of utilities in our state to ensure the best outcome for consumers. With that goal in mind, the decisions made by this Commission, though rarely easy, must be made with a broad perspective in order to avoid adverse impact to our state.

My first year on the Commission was, in my opinion, a year of successes for Montana consumers, and I was grateful to be a part of it. Although there are many challenges on the horizon for energy policy in Montana, I am confident that strong leadership from our state's policymakers can provide a positive path forward. We have already laid the groundwork for that path over the past year at the Public Service Commission, and this report will outline some of the highlights of 2015.

Although the five members of the Commission don't always agree on every issue, I strongly believe that each individual currently serving has the best interests of their constituents in mind with every vote that they take. I am humbled and honored to have the opportunity to work with such fine public servants, and I look forward to the opportunities ahead of us to serve the people of Montana.

This report is by no means a comprehensive compilation of the Commission's work over the past year, however, it does summarize many of the "high level" issues and dockets that the PSC tackled in 2015. We have a lot on our plates in the coming months that will require tenacious attitudes, and watchful eyes, but I am confident that this Commission will continue to serve Montana consumers with the quality that they deserve.

**Sincerely,**

  
Chairman Brad S. Johnson

**DISCLAIMER:** This document is distributed as a communication from PSC Chairman Brad Johnson, and does not necessarily reflect the views of the other commissioners. PSC staff contributed objective information and research to this report, and any normative statements are a communication from the Chairman.



# Table of Contents

<b>By the Numbers</b>	<b>3</b>
<b>Major Investor Owned Utility Rates for 2015</b>	<b>3</b>
<b>Pipeline Safety Annual Review</b>	<b>5</b>
<b>Modernizing the Public Service Commission</b>	<b>7</b>
<b>Top Issues 2015- Electricity</b>	<b>10</b>
<b>Top Issues 2015- Telecommunications</b>	<b>27</b>
<b>Top Issues 2015- Transportation</b>	<b>30</b>
<b>Connect with the Montana PSC</b>	<b>36</b>



# By The Numbers:

Total Dockets Opened in 2015: **94**

Total Dockets Completed in 2015: **49 of 94**

Total Budget Fiscal Year 2016: **\$4,133,777**

Total FTE Count: **38.44**

## 2015 Rates for Montana's Largest Investor-Owned Utilities

(As of the 1<sup>st</sup> day of each month)

	NWE Gas (therm)	MDU Gas (dkt)	EWM Gas (ccf)	NWE Electric (kwh)	MDU Electric (kwh)	Big Sky Gas (therm)
<b>January</b>						
Total Rate	\$.8022567	\$7.1875	\$.62265	\$.108404	\$.076186	
Supply	\$.42459	\$5.932	\$.3463	\$.067335		\$.39
Rate	\$7.30/month	\$.23/day	\$7.25/month	\$5.25/month	\$.02646	
Service Chg					\$.18/day	
<b>February</b>						
Total Rate	\$.7587567	\$6.5695	\$.62818	\$.109362	\$.076006	
Supply	\$.38109	\$5.314	\$.35186	\$.068293	\$.02628	\$.3332
Rate	\$7.30/month	\$.23/day	\$7.25/month	\$5.25/month	\$.18/day	
Service Chg						
<b>March</b>		**				
Total Rate	\$.7327067	\$6.321335	\$.61587	\$.113811	\$.076016	
Supply	\$.35504	\$4.951	\$.34069	\$.067964	\$.02629	\$.3245138
Rate	\$7.30/month	\$.25/day	\$7.25/month	\$5.25/month	\$.18/day	
Service Chg						
<b>April</b>		**				
Total Rate	\$.7299667	\$6.156335	\$.50325	\$.113387	\$.077166	
Supply	\$.3523	\$4.786	\$.2349	\$.06754	\$.02744	\$.345
Rate	\$7.30/month	\$.25/day	\$7.25/month	\$5.25/month	\$.18/day	
Service Chg						
<b>May</b>		**				
Total Rate	\$.7012867	\$5.661335	\$.48989	\$.113418	\$.074876	
Supply	\$.32362	\$4.291	\$.22184	\$.067571		\$.32
Rate	\$7.30/month	\$.25/day	\$7.25/month	\$5.25/month	\$.02515	

Chairman's 2015 Report

Supply Rate					\$ .18/day	
Service Chg						
<b>June</b>						
Total Rate	\$ .7025447	\$5.5835	\$ .51995	\$ .113004	\$ .093736	
Supply	\$ .32362	\$4.204	\$ .25198	\$ .067157	\$ .02404	\$ .32
Rate	\$7.30/month	\$ .26/day	\$7.25/month	\$5.25/month	\$ .18/day	
Service Chg						
<b>July</b>						
Total Rate	\$ .7191124	\$5.8905	\$ .49012	\$ .108876	\$ .092956	
Supply	\$ .34001	\$4.511	\$ .22203	\$ .067498	\$ .02326	\$ .32
Rate	\$7.30/month	\$ .26/day	\$7.25/month	\$5.25/month	\$ .18/day	
Service Chg						
<b>August</b>						
Total Rate	\$ .7043724	\$5.8905	\$ .50415	\$ .109396	\$ .092296	
Supply	\$ .32527	\$4.511	\$ .23588	\$ .068018	\$ .0226	\$ .36
Rate	\$7.30/month	\$ .26/day	\$7.25/month	\$5.25/month	\$ .18/day	
Service Chg						
<b>September</b>						
Total Rate	\$ .7024424	\$5.8905	\$ .50418	\$ .109417	\$ .094706	
Supply	\$ .32334	\$4.511	\$ .23541	\$ .068039	\$ .02501	\$ .36
Rate	\$7.30/month	\$ .26/day	\$7.25/month	\$5.25/month	\$ .18/day	
Service Chg						
<b>October</b>						
Total Rate	\$ .6977124	\$5.4185	\$ .49209	\$ .108878	\$ .076306	
Supply	\$ .31861	\$4.039	\$ .22306	\$ .068153	\$ .02658	\$ .30
Rate	\$7.30/month	\$ .26/day	\$7.25/month	\$5.25/month	\$ .18/day	
Service Chg						
<b>November</b>						
Total Rate	\$ .6699204	\$5.4185	\$ .49759	\$ .109143	\$ .075496	
Supply	\$ .290818	\$4.039	\$ .22842	\$ .068418	\$ .02577	\$ .275
Rate	\$7.30/month	\$ .26/day	\$7.25/month	\$5.25/month	\$ .18/day	
Service Chg						
<b>December</b>						
Total Rate	\$ .6564604	\$5.0795	\$ .50449	\$ .106293	\$ .075126	
Supply	\$ .277358	\$3.70	\$ .23543	\$ .065568	\$ .0254	\$ .264
Rate	\$7.30	\$ .26/day	\$7.25/month	\$5.25/month	\$ .18/day	
Service Chg						

**NOTES AND DISCLAIMERS:**

*This document shows the tariff-verified rates for each utility as of the first day of the month. Mid-month changes are not reflected here.*

*MDU's electric power supply costs consist of fuel used in its generating stations, energy purchases from MISO and a seasonal capacity contract.*

*NWE's electric supply rate includes the cap-ex rate base value of its owned generation.*

*NWE's electric supply rate includes Federal production tax credits for wind resources.*

*NWE's gas cost includes the Battle Creek, Bear Paw, and Devon revenue requirements (update 11/2013).*

*Gas supply rates for each company may include transportation and storage costs from other parties.*

*The supply rates as shown on this document do not include any deferred supply rates.*

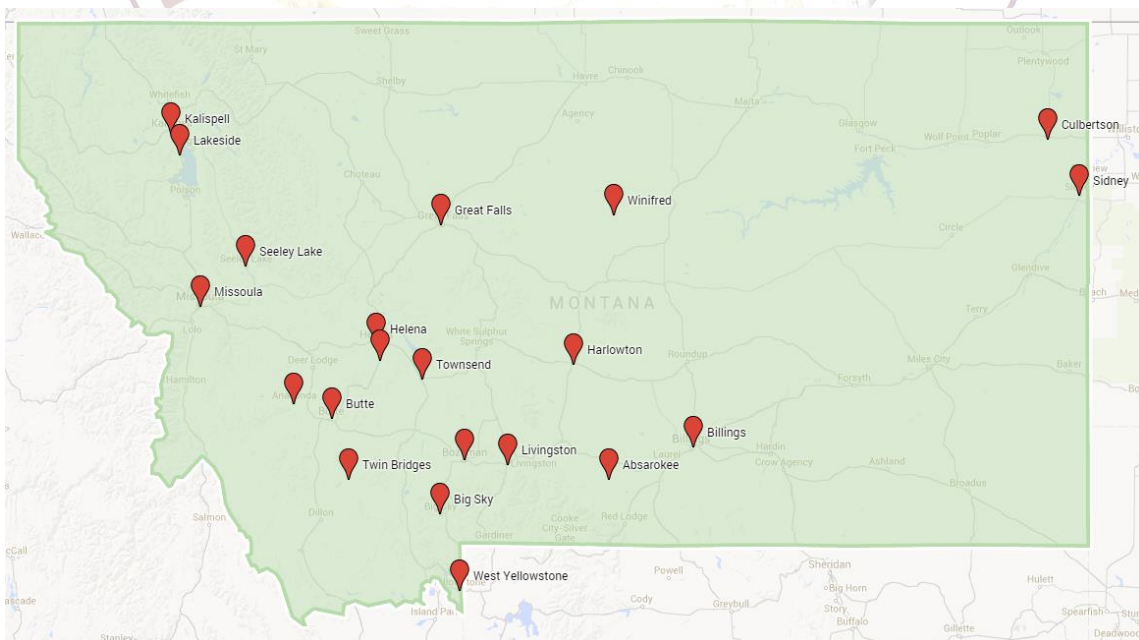
**\*\* - MDU's gas rate includes an interim rate adjustment of 9.65% on the delivery charge and the basic service charge. On a customer's bill the rate is not shown in this manner. MDU charges the pre-interim rate, and then has a separate line item where they take the total delivery for the month and the total service charge for the month and apply the 9.65% interim adjustment.**

## Pipeline Safety Annual Review

Inspections: **157** days in the field

2015 Total Budget: \$ 282,000, **80%** of final expenditures are refunded through Federal Pipeline Safety Grant.

### Places Visited by PSC Inspectors in 2015



## Incidents

There were no incidents in 2015

Of the three reports of possible incidents received by the Commission, all three incidents were later determined to be outside 'incident' definition. Those reports were rescinded.

A Reportable Incident is:

- i. A Death or an Injury requiring hospitalization
- ii. Property Damage greater than \$50,000
- iii. Unintentional Gas Loss of 3 Million cu.ft. or more

*Anaconda, March 19*

House explosion, no injuries. Gas plumbing inside house was improperly abandoned.

*Harlowton, April 30*

Wheel loader in gravel pit, hit 4" transmission line. No injuries, NWE maintained gas service to Harlowton.

*Missoula, November 7*

Motor vehicle went through station fence and impacted the station heater unit. No injuries reported and damaged amounted to less than \$50,000

On March 22, 2016, the Commission assessed a fine of \$11,000 on Five Valley's Gas for a 2014 safety violation that resulted in the injury of two people.

## Inspection Goals

- Inspections (goal to reach 190 Inspection Days)
- Only 15 days of Training Scheduled
- Continue to work w/ and Reduce # of Master Meter Operators

Federal and Regional NAPSRS Meetings

St. George, UT & Indianapolis, IN



# Modernizing the Montana Public Service Commission

At the beginning of calendar year 2015, the PSC initiated an agency-wide "modernization" effort to improve the efficiency and effectiveness of the Commission's workflow. This included improving Information Technology functions, as well as staff re-organization efforts.

## Information Technology Upgrade

The Information Technology section (IT) of the PSC falls under the Centralized Services Division. The ultimate goal of IT at the PSC is to facilitate the agencies objective to provide the best possible services and support to commissioners, staff, and the citizens of Montana in a timely, efficient and cost effective manner, as well as to continually review new technologies and ideas to ensure that we are meeting the needs of everyone that we serve.

IT is integrated into nearly every function of the agency; from the creation and storage of digital content, to receiving and delivering services and data. IT provides user administration, support, and system and application development and is responsible for planning, development, implementation and maintenance of comprehensive internal and state-wide IT solutions to better provide services to the PSC staff and to the public.

In deviating from past practice, our servers are now currently being hosted by the State Information Technology Services Division (SITSD) at the State of Montana Data Center (SMDC), with the exception of one server that we use for live streaming our weekly business meetings. Our transition to the SMDC took place roughly a year ago.

Like all other state agencies, the PSC is totally dependent on IT, not just to support and enhance our business, but also to enable it. The task of IT is to support the PSC mission by developing, delivering, and facilitating the use of IT services and resources; the primary contributions being:

- The need to continue the existing focus on e-Services and system upgrades;
- The need to rewrite our PSC intranet and public facing web application systems;
- The need to provide fast and easy access to materials in hearings and business meetings;
- The need to enhance the use of video to promote participation from remote areas; and
- The need to increase customer and user capabilities;

Our strategy is to continue utilizing State Information Technology Service Division, Department of Administration (SITSD) services to help free up IT staff time to be able to work on the above items.



Many of PSC IT principles coincide with the Montana Information Technology Act, as well as the State of Montana Information Technology Strategic Plan. Resources and funding will be allocated to IT projects that contribute the greatest value and benefit to partakers, and duplication of processes will be minimized by sharing data, systems, and applications within agency divisions. Information technology will be used to provide educational opportunities to staff, enable business continuity, and provide privacy and security of data.

IT resources will be used in an organized, deliberative and cost-effective manner, and IT services will provide delivery channels that allow citizens to determine when, where, and how they interact with state agencies. Elimination of risks is a priority to protect individual privacy, and the privacy of systems information and service offerings will incorporate security controls based on both state and federal security standards.

The PSC is increasingly dependent on our information systems and needs. Managing how the agency uses and leverages technology is crucial. In today's evolving technology environment, effective IT governance can be the difference between success and failure. Governance for PSC IT service delivery function stems from commissioner decisions in a business meeting setting with guidance from the Centralized Services Division Administrator, Communications Director and Computer Systems Analyst.

## IT Goals and Objectives

### **Goal:** New PSC Website

#### *Supporting Objective/Action*

Ensure trusted and resilient systems and information

#### *Supporting Objective/Action*

User security awareness and training

Develop and implement the National Institute of Standards and Technology (NIST) based Security Standards to ensure the confidentiality, availability, and integrity of PSC data and systems

### **Goal:** Document Availability

Develop a way for commissioners and staff to have quick electronic access to documents in business meetings and hearings.

#### *Supporting Objective/Action*

Support and organize data relating to dockets in one secure location.

#### *Supporting Objective/Action*

Provide Commissioners and staff the equipment needed of access the information quickly and easily from on site or remote locations.

**Goal: Move to Electronic Storage**

*Supporting Objective/Action*

Update and develop a new process of better organizing our records (internal documents and retention schedules).

*Supporting Objective/Action*

Scan and store information in an organized manner that is helpful and usable to commissioners and staff.

**Goal: Case Management System**

*Supporting Objective/Action*

Research various case management systems, participating in demonstrations when possible.

*Supporting Objective/Action*

Review costs and compare with what systems other state agencies are using to help avoid unnecessary duplication, when possible.

*Supporting Objective/Action*

Narrow down a system that is cost effective yet beneficial to all divisions within the agency.

**Staff re-organization**

The Public Service Commission is currently conducting a comprehensive assessment to evaluate organizational structure and objectives, staffing, and human resources practices to ensure that we effectively support our mission and our goals.

The assessment will be a collaborative process involving the Commission, managers, and staff to develop specific human resource administration recommendations in alignment with best practices and policy, and legal requirements, as well as to allow us to shape our culture and team to meet the needs of our staff and constituents. The assessment will also allow for better services associated with knowledge transfer and succession planning, which are critical considerations given the fact that the scope of knowledge associated with the topics that we cover at the PSC are very specific and unique.

The staff re-organization will be conducted through calendar year 2016, and it is the goal of the Commission to be completed by the end of the year.

# Top Issues in 2015

## Electricity

### The Clean Power Plan: Pushing back against poor public policy

In response to the August 3<sup>rd</sup>, 2015 release of the EPA's finalized version of the Clean Power Plan, a rule to regulate carbon emissions from power plants, the Montana Public Service Commission raised several concerns as to the plan's practicality and effectiveness, as well the negative impact it will have on the state's economy.

Speaking to the Commission's concerns, Chairman Brad Johnson, R-East Helena, said,

"The federal government is again asking Montanans to pay the price for its continued onslaught of centralized regulatory schemes. Not only will this rule destroy thousands of quality jobs in Montana's coal industry, the double digit increase in electricity rates that will likely result constitute nothing less than a new tax on energy, and there is no tax that places a more disproportionate burden on middle and lower income Montanans than a tax on energy. I will be encouraging the Commission to explore every option available to us to effectively push back against this blatant federal overreach."

Addressing the practicality of the rule's implementation, Vice Chairman Travis Kavulla, R-Great Falls, said,

"The EPA has taken a proposal that was difficult and expensive for Montana, and has made it much worse."

The Commission continues to evaluate the 1560 page regulation. However, it is particularly concerned with several elements on the proposed rule:

- The final rule is much more stringent than the proposed rule. The EPA reports that, in 2012, the average emissions rates for Montana's power plants was 2,481 pounds of CO<sub>2</sub> per megawatt-hour. The proposed rule set a state emissions mandate of 1,771. That number in the final rule is 1,305, or an emissions rate reduction of 47%.
- The rule plays favorites with states. The State of Washington, for instance, is allowed to increase its carbon emissions by 46%, even while Montana is required to cut its emissions.

"The Clean Power Plan is yet another example of top-down regulations from Washington, DC that fail to take into account the specific circumstances of individual states," said commissioner Bob Lake, R-Hamilton. "In addition to destroying one of the base industries in our state's economy, the EPA's rule also



punishes energy exporting states like Montana by forcing them to pay the price for emissions created by another state's energy demand. The EPA's Clean Power Plan is terrible public policy that will result in significant increases to residential electricity rates."

District 3 commissioner Roger Koopman, R-Bozeman, believes the time has come for Montana to take the lead in resisting what he terms "blind-sighted federal overreach."

"Obama's EPA has become a rogue agency that thinks it can ramrod anything it wants down the throats of the states, as if executive agencies somehow have unlimited power and the Constitution is irrelevant. These latest rules -- more draconian than ever -- could eventually double the cost of electricity in America, crippling our economy and giving a major competitive edge to countries like China. All of this is based on the scientifically dubious claims of climatic catastrophe, and the hysterical voices of opportunistic politicians that drown out the calmer call for a reasonable and rational debate," Koopman said.

The Commission had previously submitted a lengthy set of comments to the EPA on its proposed rule, identifying technical problems with the way the state goals had been calculated. "The EPA has done almost nothing to correct the problems we identified," said Kavulla.

"Moving forward, the PSC hopes to work with Montana's governor, attorney-general, and legislature in deciding how the state should respond to the regulation," said Chairman Johnson.

To view the Clean Power Plan, visit: <http://1.usa.gov/1lf7nt2>

## Montana-Dakota Utilities Rate Case

On June 25, 2015, the Montana Public Service Commission received a request from Montana-Dakota Utilities for an \$11.8 million, or 21.1%, rate increase for its approximately 26,000 customers in eastern Montana.

The increase to the average MDU ratepayer resulting from the original request was estimated to be about \$14.80 per month. The Montana PSC must by law issue an order on the rate case within 270 days after MDU filed the request. MDU's last general electric rate review was in 2011, when the Montana PSC approved an increase of just over 6%.

"The increasing regulation of energy production proposed by the federal government has concerned me ever since I was elected to the Commission," said PSC District 2 Commissioner Kirk Bushman. "Utilities like MDU will have to continue to invest millions to meet new federal requirements, and I expect utilities will continue to request larger rate increases than they have in years past as a result of these costly regulations. The Montana PSC will most assuredly review the proposal by Montana-Dakota Utilities to

determine if it meets all the necessary standards, including providing long-term benefit to Montana-ratepayers.

Public Service Commission Vice Chairman Travis Kavulla represents northeastern Montana, including Sidney, Glendive, Plentywood and Wolf Point where MDU electric customers are located. He said, "We will review the request to determine if the utility took the most cost effective approach to supply their customers with energy."

MDU's original application asked the Commission to authorize a 10% return for the capital invested by the company's shareholders. In addition to increasing the per-kilowatt-hour charge for energy, the original request would have also increase the fixed monthly charge. MDU is also asked the Commission to approve additional "rate riders" on customers' bills related to environmental and transmission costs. It also included a proposed revision to the net metering tariff under which customers who generate their own electricity are credited for excess production.

To view Montana-Dakota Utilities' news release regarding the rate increase request, visit <http://www.montana-dakota.com/utility-menu/news>

With a 4-0 vote on December 15, 2015, the Commission rejected a \$10.9 million interim electricity rate increase requested by Montana-Dakota Utilities. The rate increase was requested as an interim adjustment that is part of their original 21.1%, \$11.8 million increase that was under review in a contested rate case before the Commission at that time.

The Commission held a hearing on the MDU electricity rate case February 9 & 10, 2016 in Glendive, MT.

On March 22, 2016, the Commission issued an order approving a settlement between Montana-Dakota Utilities, the Montana Consumer Counsel and the Large Customer Group.

One day prior to a hearing in Glendive in February, MDU and the consumer advocates reached a settlement, reducing the rate increase to 13.3% to be phased in over two years. The total rate increase for MDU's roughly 26,000 customers in eastern Montana equals approximately \$7.4 million.

In approving the stipulation, the Commission expressed skepticism of the utility's proposal to include two combustion engines installed in Sidney, Mont., into customer rates, leaving the decision to include the units in rates for a future rate proceeding. The Commission noted that the plant was not providing economic energy supply for customers at this time, and had not been certified as a capacity resource at the time of the hearing.

Additionally, the Commission clarified its position on environmental upgrades, noting that utilities should not charge customers for pollution control technologies until emissions standards are actually in effect

and enforceable. The company has paid for upgrades to the Lewis & Clark Station in Sidney, Mont., and the Big Stone Plant in South Dakota.

"Customers should pay only for power plants that are actually used and useful in providing utility service. If a plant isn't providing value to customers, then customers should not be paying for it," said Travis Kavulla, R-Great Falls.

Although the settlement presented by MDU and the consumer advocates did not state an established return on equity (ROE), the Commission found a range of 9.0-9.5% to be an acceptable return on the equity investment by MDU's shareholders, down from the last-approved ROE of 10.25%.

"It's always positive when the parties can come together in a constructive manner and craft a solution to a complex proceeding such as this," said PSC Chairman Brad Johnson, R-East Helena. "Although a settlement was reached, that does not relieve the Commission of our responsibility to ensure transparency of the process, and that's why we required clarification of this agreement before signing off on it."

The Commission's clarification of the settlement does not change the rate increase, but it still must be agreed upon by the various parties before it is finalized.

The first phase of the rate adjustment is a \$3 million increase, which goes into effect April 1, 2016. The second phase of the rate adjustment is a \$4.4 million increase that goes into effect April 1, 2017.

The Commission approved the order including conditions on a 4-1 vote, with Commissioners Johnson, Kavulla, Lake and Koopman voting in favor, with Commissioner Kirk Bushman, R-Billings, opposed.

"I commend the parties for their efforts regarding the stipulation reached in this docket," Commissioner Bushman said. "The MDU rate application gives a preview of the challenges that Montana utility companies face, as it demonstrates the difficulty and exposes the flaws associated with trying to predict the energy future. I am very concerned about the impacts of overreaching federal regulations that will dramatically increase the cost of utilities' services in Montana."

To view the MDU rate case docket, visit: <http://1.usa.gov/1QmjxDH>

## MT Judge Upholds Order on Dave Gates Outage

Following nearly two years of litigation, Montana District Court Judge Brad Newman affirmed on August 17, 2015 a 2013 order issued by the Montana Public Service Commission rejecting a request by Northwestern Energy to increase electricity rates for unforeseen outage costs and so-called "lost revenues" attributable to NorthWestern's efficiency programs.



The decision is in response to a lawsuit filed by Northwestern Energy against the Commission that involved two issues: The Commission's decision to disallow replacement power costs related to a 2012 outage at NorthWestern's Dave Gates Generating Station at Mill Creek, as well as the Commission's decision to attribute fewer savings to NorthWestern's energy efficiency programs than claimed by the Company, which reduced certain costs that customers currently pay through their electricity supply rates.

In affirming the PSC's order in his decision, District Court Judge Brad Newman stated that, "The Commission's disallowance of replacement regulations costs and exclusion of claimed lost revenues was proper in order to ensure reasonable and just rates." Judge Newman went on to write, "The agency appropriately utilized its experience, technical competence, and specialized knowledge and based its decision on substantive evidence."

"I am very pleased with the Court's decision in this matter as it is a huge win for consumers across Montana," said PSC Chairman Brad Johnson, R-East Helena. "Private utilities must shoulder some of the risk when making business decisions as it is not the role of the PSC to act as a rubber stamp and allow all unforeseen costs to be passed on to consumers."

"Past commissions may have more routinely allowed these kinds of expenses to be passed through to the customers," said Commissioner Roger Koopman, R-Bozeman, "but the current PSC puts a very sharp pencil to every request that impacts power bills. That's the PSC doing its job. We require the utilities to prove their case, and in this instance, NorthWestern did not."

PSC Vice Chairman Travis Kavulla, R-Great Falls, said "This litigation represented a utility company's attempt to socialize all of its risk to a captive set of consumers, even while continuing to reap a large profit. No business in a free market would have the ability to do that, and utilities should not either."

The Commission's order resulted in approximately \$4.2 Million being credited to all of Northwestern Energy's electric customers across the state.

## **Creating Tax Transparency in Customers' bills**

Voicing concerns of the effect that a state law regarding utility taxes has on consumers, the Montana Public Service Commission voted 4-1 on January 25, 2016 to require NorthWestern Energy to create a proposal for increasing the transparency of taxes in customers' monthly bills.

Throughout discussion during a work session on the issue, the Commission criticized a Montana law that allows taxes for Northwestern Energy to automatically pass through to their customers with very little PSC input, and also criticized the Montana Department of Revenue's method of calculating NorthWestern Energy's tax bill.

NorthWestern Energy's 2015 tax bill increased by over \$22 million from last year, due in large part to the 2014 purchase of 11 hydroelectric dams from PPL. Montana law allows NorthWestern energy to automatically recover their tax bill from their customers without any approval from the PSC, less a deduction for its income-tax impacts.

In the 2015 legislative session, HB 190 would have ended the automatic pass through of NorthWestern's taxes to their customers. The Commission unanimously supported the bill, but it failed to pass.

In an effort to better inform customers of the portion of their bill attributed to taxes, the PSC's order requires NorthWestern Energy to create a proposal to calculate the specific dollar amount that each customer pays in taxes on their bill every month, as well as create a proposal to remove recovery of taxes out of fixed rates and include all taxes in a single volumetric rate.

The PSC's decision followed a roundtable discussion held in December with Northwestern Energy and Department of Revenue officials. At the roundtable, the Commission probed DOR on their valuation methods, as well as NorthWestern Energy on their efforts to reduce their tax bill and their methods of disclosure to customers.

To view the Commission's order, visit: <http://1.usa.gov/1Qaj98h>

## Ending the Lost Revenue Adjustment Mechanism (LRAM)

The Montana Public Service Commission voted 5-0 on October 16, 2015 to discontinue a mechanism known as the Lost Revenue Adjustment Mechanism (LRAM), which allowed NorthWestern Energy to increase electric and gas supply rates to account for reduced sales volumes attributed to its energy efficiency programs. Next year alone, the discontinuation of the LRAM is estimated to result in a \$16 million reduction in the amount collected from NorthWestern Energy's customers.

The 19-page final order approved by the Commission details the rationale for its decision.

Speaking to the historical context of the LRAM, PSC Vice Chairman Travis Kavulla, R-Great Falls, said,

"This policy was developed when NorthWestern earned no profit on energy sales and was merely a pass-through entity that owned poles and wires. Today, that reality has changed fundamentally and so should this program. With this policy repealed, I look forward to the opportunity to consider alternatives that make more sense both for the utility and consumers."

In motioning to repeal the LRAM, Commissioner Roger Koopman, R-Bozeman, said,

"Raising rates on consumers when they respond positively to energy conservation is one of the worst ideas policymakers have ever come up with. Once again, this commission has shown the courage to challenge existing bad policy, and to stand up for the consumer who has been paying dearly for it."

"The LRAM has only adjusted rates upward for NorthWestern Energy customers since it was put in place a decade ago." said PSC Chairman Brad Johnson, R-East Helena. "In addition to continual upward pressure on rates, the LRAM mechanism also promotes ratemaking on a single issue, discouraging comprehensive analysis of electricity rates as a whole, with the consumers ultimately paying the price for this inferior regulatory practice."

"Discontinuation of the LRAM will simplify electricity rate calculation, and improve the Commission's ability to ensure that rates are just and reasonable for NorthWestern Energy customers," said Commissioner Bob Lake, R-Hamilton. "Simplifying rate calculation as a result of the LRAM discontinuation will ultimately benefit the entire state, as rates will become more transparent, and better reflect the true costs of service."

"It just doesn't make sense for public policy to allow an electric company to encourage their customers to save money on their monthly bill by conserving energy, and then turn around and increase electricity rates on everybody to recover that lost revenue," said Commissioner Kirk Bushman, R-Billings.

The lost revenue adjustment mechanism was originally established in Montana as a result of a MPSC order in 2005.

To view the Commission's final order on the LRAM repeal, visit: <http://1.usa.gov/IX9oIRU>

## NorthWestern Energy Hydro-Compliance Docket

On December 9, 2015, NorthWestern Energy (NWE) filed a Hydroelectric Facilities Purchase Compliance Filing (Hydro Compliance Filing) with the Public Service Commission (PSC). In 2014, the PSC ordered NWE to make "a final compliance filing in December 2015 to reflect post-closing adjustments, the future conveyance of Kerr to the CSKT, and the actual property tax expense for the Hydroelectric Facilities." Order 7323k, Dkt. D2013.12.85, ¶ 190 (Sept. 25, 2014). It also ordered NWE to "track revenue credits on a portfolio basis through the electricity supply cost tracker." *Id.* ¶ 191.

NWE proposed the following adjustments, which increase the Hydros' revenue requirement by \$24,465,682: A decrease of (\$20,604,912) for expenses associated with Kerr; an increase of \$41,820,651 to account for lower forecasted sales volumes and market prices resulting in lower revenue credits; an increase of \$3,208,800 for state and local property taxes; and an increase of \$41,142 for other post-closing adjustments. Additionally, over a twelve-month period, NWE proposes to refund (\$6,925,834) for Kerr fixed costs collected since Kerr was transferred, and to collect \$14,103,153 for revenue credits that



it has over credited since the Hydros were acquired. These adjustments result in a total revenue increase of \$31,643,001.

On January 19<sup>th</sup>, 2016, the Commission approved the interim rate increase requested by NorthWestern Energy. A final decision on the compliance docket will be made by the Commission in the first half of 2016.

## Calculating Colstrip Operating Costs

**Variable Expenses for Colstrip Energy Production, 2014**

	Puget Units 1&2	Puget Units 3&4	NWE Unit 4	PacifiCorp Units 3&4	PGE Units 3&4	Avista Units 3&4
Fuel Expenses (\$/MWh)	\$19.92	\$16.61	\$16.46	\$15.53	\$16.24	\$14.68
Total Production Expenses, incl. Fuel (\$/MWh)	\$27.20	\$28.20	\$24.10	\$22.30	\$24.30	\$23.40
NWE Fuel from 2015 Tracker (\$/MWh)*			\$15.11			

\*This calculation incorporates the total fuel expenses for Colstrip 4 for July 1, 2014-June 30, 2015, as reported in D2014.7.58 (NWE electric supply tracker), and net generation in 2014 from NWE's 2014 FERC 1 form. The fuel expense can be found in D2014.7.58, NorthWestern Energy's 2015 Electric Supply Tracker and Pre-filed Direct Testimony, p. FVB-4 <http://psc.mt.gov/Docs/ElectronicDocuments/pdfFiles/D2014-7-58IN15052951973AP.PDF>

All other figures in this table are derived from 2014 FERC Form 1

### NOTES:

- 1) PSC staff calculated two different values for "variable" costs: one is based only on fuel costs (row entitled "Fuel Expenses" in above table), and the other on the costs of fuel and other operational expenses, such as steam and electric expenses, and various categories of maintenance (row entitled "Total Production Expenses" in table). Why two values of variable expense? Staff reasoned that a fuel-only variable cost would be useful in judging whether a unit is economical to run in a short-term market (when most non-fuel operational costs would continue), while a comprehensive variable cost would be useful in judging economical value over a longer term, e.g., when a unit is retired and most operational costs are discontinued or decreased.

- 2) Puget's FERC Form 1 data reveal a measurable difference in fuel costs between Units 1&2 and Units 3&4. That difference may be attributable to the age, operational, and capacity differences between Units 1&2 (older and smaller) and Units 3&4 (newer and larger).
- 3) Most of the fuel expenses for Units 3&4 from the respective utilities are similar, in the \$15.50-\$16.60/MWh range, with the exception of Avista, which reports \$14.68. We don't have the data behind the reported figures, so we can't explain the difference. However, Avista's figure for total production expenses for Units 3&4 falls toward the lower end of the range of total production expenses.
- 4) Staff is not sure why the two approaches for calculating NWE's fuel expenses for Unit 4 yielded somewhat different results. Because the tracker data does not include net production numbers, staff used the fuel expense figures from the tracker with the net generation from FERC Form 1 to develop the tracker-based calculation. It could be that NWE used different generation figures in those two data sources.

**Questions:**

- 1) Is permission of other co-owners required when ownership changes hands of another unit?
- 2) What about when a unit is closed?
- 3) Is there any provision for decreased dispatch to reflect the desire of one of the co-owner's to 'retire' their share?
- 4) Are there option-to-buy provisions in any case?
- 5) When A&G costs that have been absorbed by the older units are no longer being defrayed by them, do they automatically re-allocate to the newer units' co-owners, or are they absorbed by the older units' owners?

**Response:**

- 1) No. See Section 24 on pages 26-28. Transfers and assignments of any and all interest of each Owner may be transferred and assigned based on the provisions of subsections (a) through (g). Interest/ownership and obligations/duties are all required to be transferred or assigned together, where one entity cannot control the interest while another entity is responsible for operational requirements, for example.

- 2) Not discussed in the Ownership & Operation Agreement. The only provision is in Section 31, titled "End of Project" on page 30. This section discusses the sale of the unit being taken out of service to the highest bidder, and whether to sell as a whole or in parts for the largest profit.
- 3) Not discussed in the Ownership & Operation Agreement.
- 4) Yes. See Section 24(f) on pages 27-28. This subsection states that the interest can be transferred or assigned to any person, provided that it is first offered to the other project users at an amount offered by any other buyer.
- 5) Not discussed in the Ownership & Operation Agreement.
- 6) No other relevant information discussed in the Ownership & Operation Agreement.

## Analyzing the Northwest Power & Conservation Council Draft 7<sup>th</sup> Power Plan

The Northwest Power Act (of Congress) of 1980 established the Pacific Northwest Electric Power and Conservation Planning Council ("Council") and directs the Council to adopt a regional energy conservation and electric power plan and a program to protect fish and wildlife on the Columbia River and its tributaries. The Power Act defines the Pacific Northwest area as the states of Oregon, Washington, Idaho, and the portion of Montana west of the Continental Divide (as well as small Columbia-basin areas in Nevada, Utah, and Wyoming). The Council is governed by an eight-member group comprising two appointed representatives from each of the four principal states in the region.

The Council updates both the fish and wildlife plan and the 20-year power plan every five years. The power planning effort must fulfill the purposes of the Power Act, which include:

- To assure the Northwest of an adequate, efficient, economical, and reliable power supply;
- To encourage conservation and efficiency in the use of electric power and the development of renewable resources in the Northwest;
- To provide for the participation of states, local governments, consumers, tribes, and other regional constituencies in the planning process; and
- To protect the fish and wildlife of the Columbia River and its tributaries.

The Council released the Draft 7<sup>th</sup> Power Plan in October 2015. On June 30, 2015, Montana's two members of the Council met with the Public Service Commission to discuss the power planning process. In early November, the Council held hearings in Kalispell and Missoula to collect public input on the Draft 7<sup>th</sup> Plan.

The Council has set a deadline of December 18, 2015, for public comment on the Draft 7<sup>th</sup> Plan.

## Structure of Draft 7<sup>th</sup> Plan

The Council applies an integrated resource planning strategy and philosophy (also called least-cost planning). This approach recognizes load uncertainty, emphasizes risk management, and reviews all available and reliable resources to meet current and future needs.

The Draft Plan includes five parts: "Executive Summary," "Resources Strategy and Action Plan," "Demand and Price Forecasts," "New Resource Potential," "Developing a Resource Strategy," and "Other Plan Elements" (transmission planning, environmental methodology, and fish and wildlife program). The parts are made up of 20 chapters.

The Draft Plan includes 15 appendices, which address financial presumptions, various forecasts (electricity prices, fuel prices, economic, and energy demand), conservation and generating resources, modeling methods, and climate change impacts. Numerous technical data sources are also provided with the Draft Plan.

## Overview of Draft 7<sup>th</sup> Plan

Based on modeling used to test how different resources would perform under a range of future conditions, the Draft Plan finds that "energy efficiency consistently proved the least expensive and least economically risky resource." Acquiring that energy efficiency is the Draft Plan's primary action for the next six years.

The Draft Plan's second priority is to develop demand response resources or rely on increased market imports to meet the Northwest's power system capacity needs under critical hydro and weather conditions. It's likely that in low water periods, the region will need additional winter peaking capacity to maintain system adequacy.

After efficiency and demand response, the next most cost-effective resource option for the region is new natural gas-fired generation. Together, efficiency, demand response, natural gas generation, and new renewable energy (required by renewable portfolio standards, which exist in three of the region's four states), make up the principal components of the Draft Plan's resource portfolio.

Figure 1-2, from the "Executive Summary" of the Draft Plan and reproduced on page 8 of this memo, shows the average resource development across all futures modeled by the Council. (Demand response, considered as a resource for addressing peak demand, is not included in average capacity calculations.)

The projected contributions in 2035 from significant (new) resources include:

- Energy efficiency    4,558 MW
- Natural gas            320 MW



- Solar	128 MW
- Wind	<u>96 MW</u>
TOTAL	5,102 MW

In presenting its anticipated resource portfolio, as well as making the consumption, development, economic, and policy projections that underlie it, the Council emphasizes that its Draft Plan provides regional guidance and that individual utilities have varying needs and access to markets and may make singular investments in resources to meet their adequacy and reliability needs. As a result, new natural gas generation may be required by a particular utility, even if that utility pursues efficiency and demand response.

Key Projections

- Loads: increase 2,200-4,800 aMW by 2035 (110-240 aMW/year)
  - o Growth = 0.5-1.0%/year
- Peak load (winter): from 31,000 MW in 2015 to 32,000-36,000 MW in 2035
  - o Growth = 0.4-0.8%/year
- Wholesale electricity price (Mid-C): from \$32.50 in 2014 to \$33-\$60 in 2035 (2012 dollars)
- Natural gas: \$3.50/MMBtu in 2015 to \$3.00 (low-range) or \$10 (high-range) in 2035
- Demand response: 1,500 MW available at less than \$25/KW peak capacity/year
- Generation resources (see Figure 1-4, page 8)
  - o Efficiency \$ 18-\$30 (per MWh)
  - o Nat. gas/CCCT \$ 75
  - o Solar PV/base \$ 99
  - o Wind/Colum. \$115
  - o Nat. gas/recip. \$142
  - o Nat. gas/aero \$145

System Trends and Changes

- **System shift:** Several factors, including increased reliance on variable-energy resources and the balancing of fish and power needs in the hydro system, have made the Northwest more capacity-constrained and less energy-constrained. This is a large and ongoing change from the traditional state of the regional system.
- **Imported power:** Past regional power plans placed no reliance on power imported from external markets (Canada, California, and the Southwest). In this plan, the Council modeled a scenario in which such imports of peak power were found to be less costly and economically risky than demand response.

- **Renewable slowdown:** Renewable energy development, especially wind, is not expected to proceed as rapidly as in the recent past because the region currently has an energy surplus, yet faces challenges in meeting peak loads. Renewables contribute energy, but offer little value in providing winter peak capacity.
- **Natural gas:** Across the Draft Plan's modeling scenarios, the need for new natural gas generation varied widely. Local situations may require new natural gas facilities, but from a regional aggregate basis, the need for additional new natural gas generation is very limited through 2021. By 2026, the probability of gas development rises to 80% in scenarios where existing coal plants and less efficient gas-fired generation are retired to lower carbon emissions.
- **Coal:** The Draft Plan anticipates no new coal-fired generation development, but recognizes the announced retirement of 550 MW of coal generation at Boardman (OR) in 2020, 670 MW (Unit 1) and 670 MW (Unit 2) at Centralia (WA) in 2020 and 2025, respectively, and 522 MW at North Valmy (NV, partially serving ID) by 2025, as well as the *de facto* retirement of 172 MW at J.E. Corette (MT) in 2015.
- **Fish and wildlife:** Between 1980 and the early 2000s, fish and wildlife policies shifted reservoir storage and release patterns in the Columbia River hydro system, which has lost about 1,100 aMW (10%) of generating capability and 5,000 MW of peaking capability. Since the 6<sup>th</sup> Power Plan, increased reliance on the hydro system to provide within-hour balancing needs for wind generation has also diminished hydro peaking capability.
- **Climate change:** Long-term climate change will alter precipitation, river flows, and hydro generation, and policies enacted to reduce greenhouse gases will affect future resource choices. The Council is not tasked with resolving those uncertainties, but has investigated possible effects of climate change on the region's power system.

### Carbon Cost

One of the major uncertainties examined in the modeling that underlies the Draft Plan (in addition to electricity demand, hydro production, and market prices of electricity and natural gas) is carbon dioxide policy. Because state compliance plans for the Clean Power Plan are not scheduled to be completed before adoption of the final 7<sup>th</sup> Power Plan, the Council tested alternative carbon emission reduction policies--both with and without carbon costs--to assess their impact on the cost and risk of alternative regional resource strategies.

Several results of the Council's carbon modeling may be examined in tables and figures from the Draft Plan reproduced on page 9 of this summary. From its analysis, the Draft Plan offered this conclusion:

- Although compliance with the Clean Power Plan is a state responsibility, all of the Draft Plan's scenarios resulted in average annual carbon emissions below the EPA regional limit, i.e., the sum of state mass-based emission goals. "*From a regional perspective* [emphasis in original]," according to the Draft Plan, "compliance with EPA's carbon emissions rule should be achievable without adoption of additional carbon reduction policies in the region."

#### Proposed Actions (a selection from 46 listed actions)

- Achieve goal for cost-effective conservation acquisition (4500 aMW by 2035);
- Expand regional demand response infrastructure and market transformation;
- Adaptive and ongoing assessment and management;
- Provide continued support for NEEA;
- Encourage strengthening of efficiency codes and model conservation standards;
- BPA: analyze operating reserve requirements; mitigate oversupply conditions;
- Encourage various initiatives for resource adequacy standards, reserve margins, and system capacity issues;
- Participate in and monitor WECC activities;
- Improve forecasting methodologies (sales, loads, emerging markets, etc.).

#### Comparison of Planning Expectations for the Council and for Montana Utilities

In evaluating the quality of the Draft Plan, the Commission may find it useful to consider how the planning requirements and goals of the Northwest Power Act of 1980 resemble—or differ from—those placed on Montana utilities by PSC administrative rules.

Both the Power Act and PSC rules emphasize the importance of cost effectiveness, implementation plans, analysis of reliability and reserves, forecasts (economic, demand, load shape, fuel prices, etc.), a long-term planning horizon, risk quantification and management, technology assessment, environmental responsibility, and opportunity for public involvement. The respective planning expectations differ, however, in matters of geography/jurisdiction (the Council prepares a regional plan that aggregates data, while the PSC considers plans as submitted by individual utilities). Another significant difference is that PSC planning objectives emphasize rate design, while the Council does not possess ratemaking authority.

Though the Northwest Power Plan is built upon a foundation that differs in a couple of significant ways from what the PSC is familiar with, the Draft Plan appears to have fulfilled the planning requirements of the Power Act.

### Topics/Issues of Importance to Montana PSC

- The Draft Plan estimates that the average energy from distributed energy (mostly rooftop solar) will be 80-220 aMW. This contribution, however, has little impact on winter system peak, but more impact on summer peak. The Draft Plan accounts for distributed energy in its load forecast, but not as a generation resource.
- Fish and wildlife impacts on the hydro system have been significant (see page 4), however the 2014 Columbia River Basin Fish and Wildlife Program has already been adopted, so the impact of integrating that document into the final 7<sup>th</sup> Power Plan appears to be unalterable by comment offered on the Draft Plan.
- Certain elements of the Columbia River Treaty, the U.S.-Canada agreement executed in the early 1960s that addresses flood control and power optimization in the Columbia Basin, expire in 2024. The treaty's provisions do not change automatically in 2024, however, and they are now the subject of negotiations between the U.S. and Canadian governments. The Council admits that the uncertainty surrounding any future international agreement is significant, but discussion of that uncertainty and its potential ramifications is minimal in the Draft Plan.

### Staff Assessment of the Draft Plan

The Draft Plan appears to have fulfilled its statutory obligations. It is well organized, clearly written, and amply documented. Although we did not have the time or resources to dig deeply into the Draft Plan's modeling tools and methodologies, the Draft Plan explains that those tools and methodologies have not substantially changed since adoption of the previous power plan. The scope of forecasting in the Draft Plan is broad, and conclusions reached in the Draft Plan are supported by reasonable analysis and a sensible blend of projection and risk.

The Draft Plan analyzed a robust set of scenarios. It evaluated over 20 scenarios and sensitivities against 800 alternative future conditions for load, hydro generation, natural gas prices, wholesale electricity prices, and CO<sub>2</sub> costs (including no CO<sub>2</sub> cost). By way of comparison, NorthWestern Energy's 2013 Electricity Supply Plan, as supplemented, evaluated six scenarios against 100 alternative future conditions.

The Council's scenarios define structural conditions that impact the type and timing of resources its planning model selects to achieve a least-cost, least-risk supply strategy. For example, a scenario might assume that a major existing resource is shut down to see how the model replaces that resource under 800 alternative future conditions. To continue the above comparison, NorthWestern's planning scenarios all defined which specific resources would be acquired and the timing of those resources. NorthWestern's model evaluated the cost of each scenario under 100 alternative future conditions.



Though we have made a few questioning observations about the Draft Plan, we believe that, taken as a whole, it reflects a serious organizational effort that will become, upon final adoption, a useful tool for understanding and informing power management in the Pacific Northwest.

Figure 1 - 1: Seventh Plan Resource Portfolio<sup>1</sup>

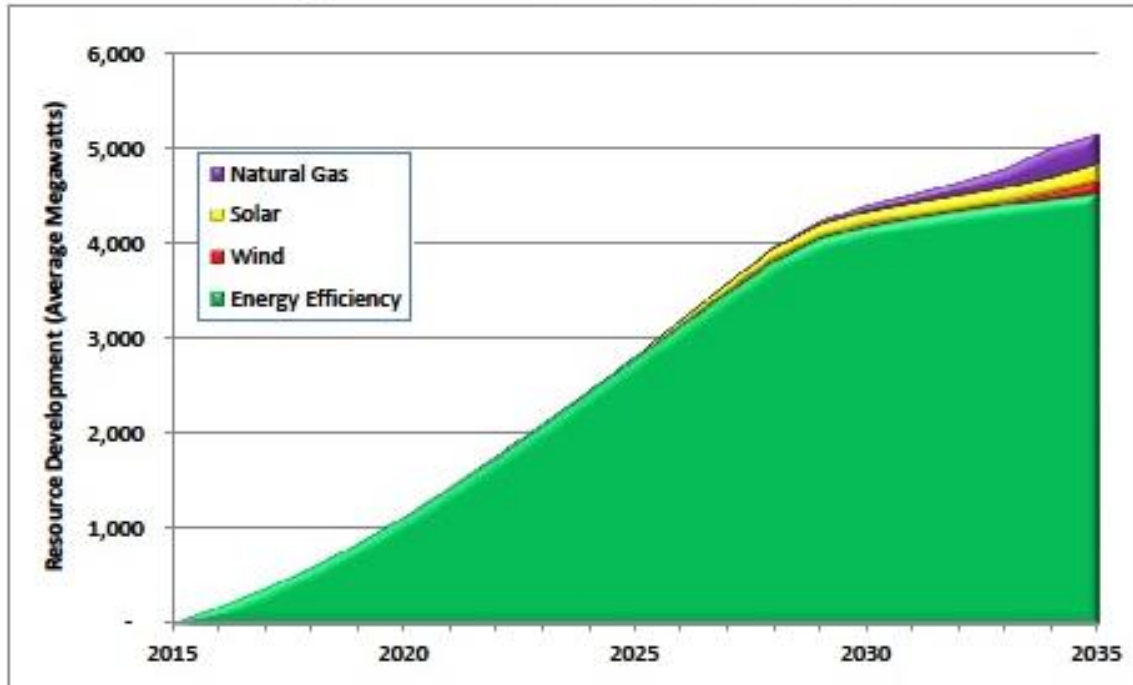


Figure 1 - 4: Energy Efficiency and Generating Resource Cost Comparison

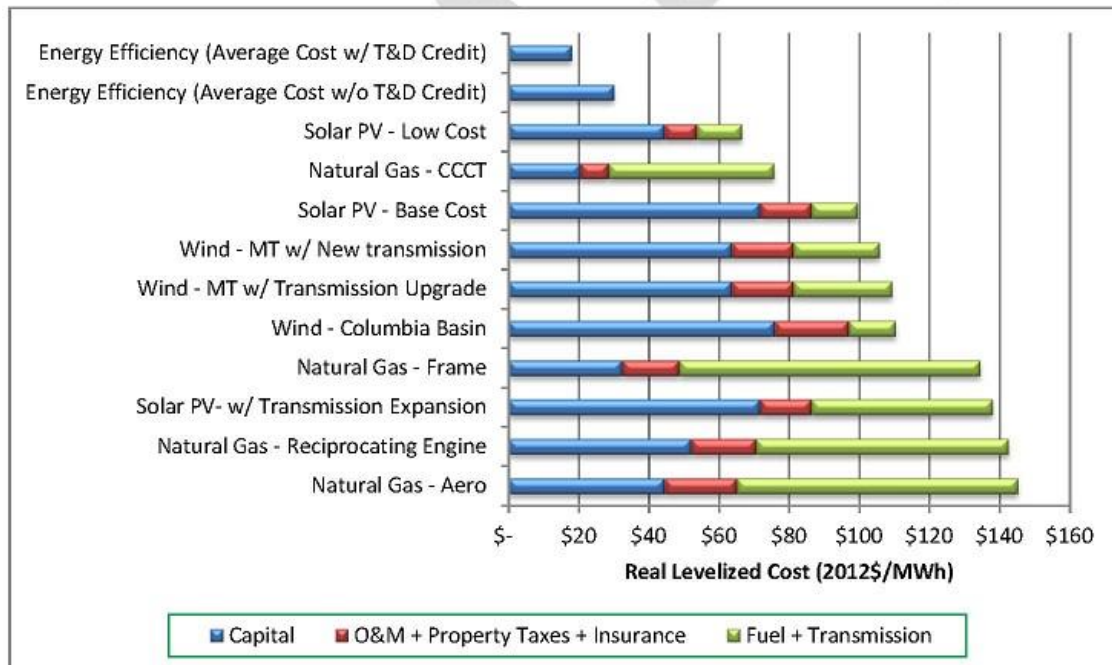


Figure 15 - 15: Average Annual Carbon Dioxide Emissions for Least Cost Resource Strategies by Scenario for Generation Covered by the Clean Power Plan and Located Within Northwest States

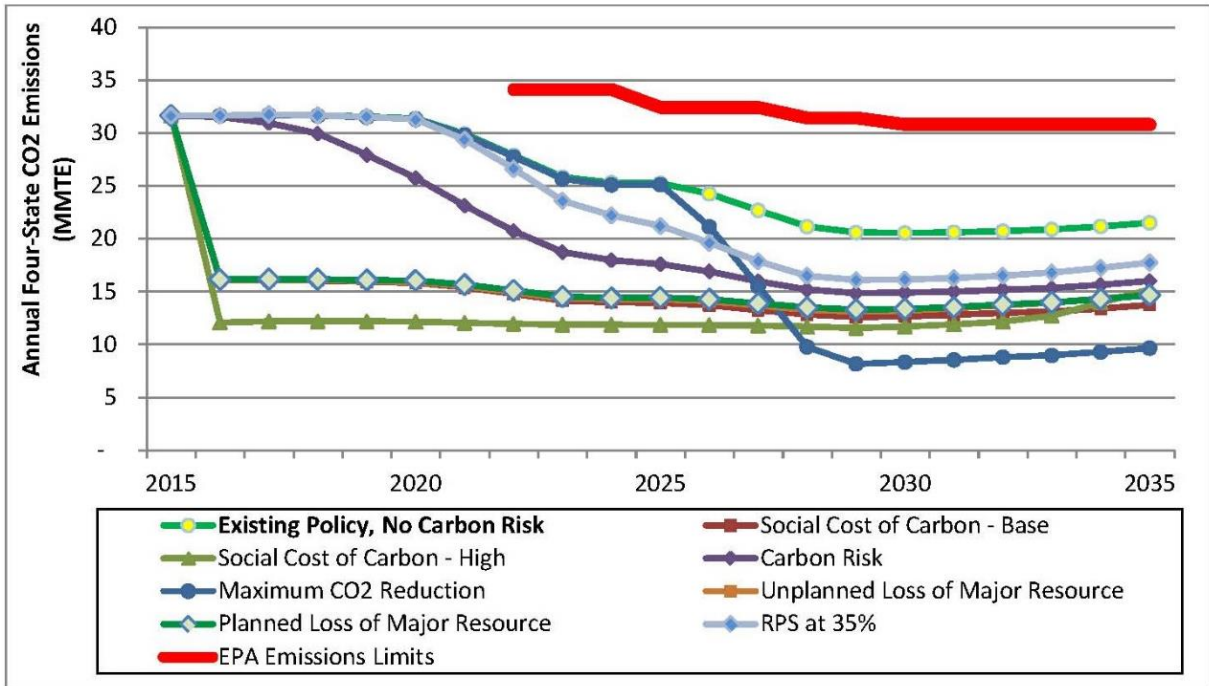
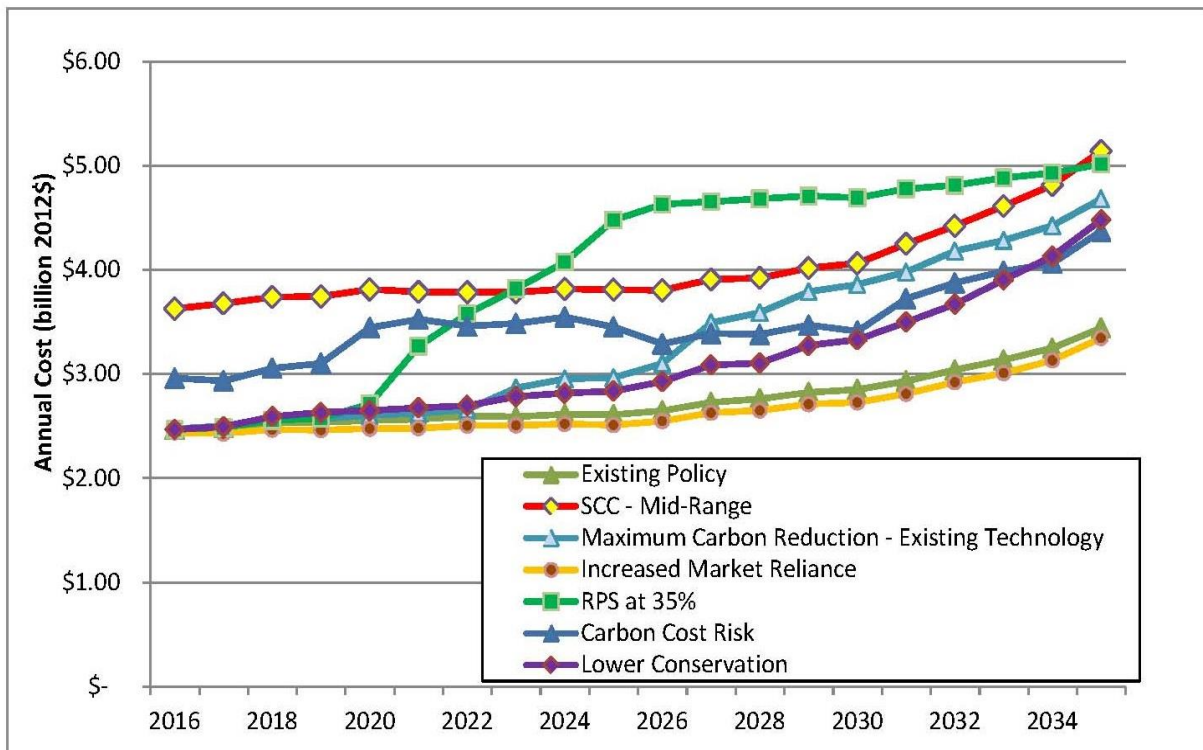


Figure 15 - 17: Annual Forward-Going Power System Costs, Including Carbon Costs



# Telecommunication

## Holding Telecommunication companies accountable: CenturyLink Service Quality

The Montana Public Service Commission voted unanimously on July 22, 2015 to file a complaint in Montana District Court seeking implementation of penalties against telecommunication provider CenturyLink QC, for failing to meet minimum service quality standards on a statewide basis.

After extensive investigation into the case, the Commission found that CenturyLink QC was in violation of Admin. R Mont. 38.5.3371, which requires that 90% of out of service reports across the state be fixed within 24 hours. CenturyLink's out of service repair rate within 24 hours for Montana over the past 3 years was 58% in 2013, 49% in 2014, and 69% in 2015.

In addition to filing the complaint against CenturyLink QC in Montana District Court, the PSC also voted unanimously to investigate the use of the Federal Communications Commission Universal Service Fund High-Cost Support subsidies received by CenturyLink QC. Specifically, the PSC will investigate the possibility of not certifying CenturyLink QC to the FCC to receive additional high-cost support, or directing CenturyLink QC in how they use the high-cost support funding.

With a 4-0 vote, the Montana Public Service Commission approved a settlement agreement on August 25, 2015 with telecommunications provider CenturyLink QC to address service quality violations across Montana. The settlement agreement was in response to the Commission's decision a month earlier to file a complaint in Montana District Court.

As a stipulation of the settlement, CenturyLink QC has agreed to accept approximately \$91 million over the next 6 years from the Federal Communications Commission's Connect America Fund phase II for broadband infrastructure investment in rural Montana. CenturyLink QC also stated that they will 'augment' the CAF II funding with investments of their own to amplify the effects of the federal funds.

"It is a matter of public safety that all Montanans have access to reliable telecommunication services, and the agreement with CenturyLink is a major step in that direction," said PSC Chairman Brad Johnson, R-East Helena. "In addition, the investment in broadband system development required by CenturyLink as a result of this agreement will connect thousands of rural Montanans to a modern communication infrastructure, a vital component to economic success in the 21<sup>st</sup> century.

"A modern broadband network is absolutely necessary to enable economic growth in this day and age," said Commissioner Bob Lake, R-Hamilton. "This agreement is an important move towards bringing much

needed broadband deployment to rural Montana, opening the door to opportunity for significant economic benefits in communities across the state."

"Broadband infrastructure investment remains to be a very challenging issue in Montana due to our large geographical area and low population, which leaves a lot of economic potential around the state untapped," said Commissioner Kirk Bushman, R-Billings. "Our hands are tied in how the FCC distributes these funds, but we will continually look for opportunities within our purview to improve broadband networks across Montana."

The settlement agreement was signed by the Missouri River Residents for Better Telecommunications Service, PSC Advocacy staff, and CenturyLink. The Montana Consumer Counsel was an active party to the proceeding, but declined to sign the settlement.

In addressing the key components of the agreement, PSC Vice Chairman Travis Kavulla, R-Great Falls, said, "This settlement is not perfect, but it accomplishes two objectives. First, it puts needed controls on a runaway program of federal subsidies. Second, it directs more than \$90 million to rural areas where phone service has deteriorated over the years and the internet has been virtually non-existent."

The central components of the settlement agreement are:

- CenturyLink has agreed to accept the Federal Communications Commission Connect America Fund (CAF) Phase II offer. CenturyLink in Montana will receive over \$91 million over the next six years to deploy 10 megabit per second down and 1 megabit per second up broadband to over 33,000 rural high cost locations in Montana. CenturyLink anticipates that the requirement to build out to 33,000 or so customers will allow them a jumping off point to serve approximately 60,000 additional consumers.
- As part of the agreement CenturyLink has agreed to prioritize the Cascade and Missouri River Canyon areas for broadband deployment.
- CenturyLink also agreed to implement a service improvement plan in Wibaux and Wolf Creek to fix chronic service problems in those areas.
- The Commission has agreed to close its CenturyLink Service Quality Investigation and to not pursue fines in District Court

Commissioner Roger Koopman, R-Bozeman, abstained in the vote, saying that "The marketplace, not subsidies, are the best way to address broadband needs in the long run, with pricing that reflects true



cost. Personally, I'm not of the opinion that just because you want something, government should force everyone else to pay for it."

To view the service quality docket, visit: <http://1.usa.gov/1JvrCEV>

## ETC Certification

The Montana Public Service Commission voted 5-0 on September 22, 2015 to certify 26 companies and affiliates as eligible telecommunications carriers (ETCs) for 2016, opening the doors for approximately \$100 million dollars in broadband investment funds to be utilized across Montana over the following year. The funds that each ETC is eligible to receive come from the FCC's Universal Service Fund to improve communication infrastructure in unserved and underserved areas across the country.

The FCC's Universal Service Fund includes four components: Connect America Fund, Low Income Assistance (Lifeline), E-Rate (schools and libraries), and Rural Healthcare, totaling approximately \$100 million available for broadband investment in Montana over the next year to the 26 certified ETC's. Ratepayers in Montana contribute approximately \$28 million to the USF annually.

All 26 ETC applicants met the requirements to receive universal services funding set by the Federal Communications Commission and the Montana Public Service Commission.

As a stipulation for accepting the high-cost support resources from the Universal Services Fund, ETCs are required to invest those resources in networks capable of both broadband and voice service in unserved and underserved parts of the state, primarily in rural areas. In addition to fiber infrastructure, the USF funds are also used to improve cellular and traditional phone line services in underserved parts of Montana.

## Extending the life of the "406" area code

The Federal Communications Commission announced on October 27<sup>th</sup>, 2015 that actions taken by the Montana Public Service Commission has extended the life of 406 as the exclusive area code for the entire state of Montana.

With population increases and correlating phone number growth in the state, the exhaustion of the 406 area code will eventually force the state of Montana to adopt an additional three digit area code. The original projection released by the FCC in 2013 predicted exhaustion of the 406 area code by 2019. The Montana PSC took immediate action in an effort to delay that exhaustion forecast by requiring mandatory number pooling by phone service providers in the state.

The FCC's updated forecast for exhaustion of the 406 area code as a result of the PSC's actions is now projected in the year 2022. The FCC requires planning for a new area code to begin three years in advance of the forecasted area code exhaustion date.

In response to the FCC's updated forecast, PSC Commissioner Roger Koopman, R-Bozeman, said,

"We are very pleased to find out that our actions have kept the whole state of Montana 'the 406' for a while longer, and we are looking for any way possible to extend the exhaustion deadline out even further. It's likely that the state will eventually have to adopt an additional three digit area code to accommodate growth, but we hope to push that off for as long as possible, as we know our single area code is a matter of pride for many Montanans."

A key part of the extension of the forecasted exhaustion deadline is cooperation from Montana telecommunications providers with access to numbering resources, which have been very helpful in the number pooling process

Montana is one of twelve remaining states with a single area code.

To view the PSC's 2013 order requiring mandatory number pooling, visit: <http://1.usa.gov/INDJXQs>

## Transportation

### Implementation of Senate Bill 396

Following weeks of public comment analysis, the Montana Public Service Commission on August 4, 2015 unanimously approved the final version of regulations to allow ride sharing companies to operate in Montana. The rules implement Senate Bill 396, which passed the legislature during the 2015 session.

Approval paves the way for ride sharing companies, known as Technology Network Carriers (TNCs), to apply for a license to operate in Montana. The final rules create a new regulatory designation to operate under a Class-E license.

Additionally, the rules implement a change in the standard the PSC uses to determine whether passenger services may operate. Previously, a business had to prove it was "needed" in the market and that it would not compete against other businesses in the market. Today, after SB 396's passage, the PSC only is required to determine that the business is fit to operate in order to grant a certificate.

"Moving forward with this rulemaking process encourages innovative businesses to provide new and useful services in Montana," said PSC Chairman Brad Johnson, R-Helena. "There will be some wrinkles to

iron out once this rule is put into practice, but the Commission will continually look for ways that we can improve these regulations to ensure an even playing field for transportation services in Montana."

## UBER

On December 15, 2015, The Commission approved the license of Rasier-MT, LLC (Uber) on a 4-1 vote, making them the first Technology Network Carrier (TNC) transportation company authorized to operate in Montana.

"By embracing advancing companies like Uber, Montanans not only have another option to get from one place to another, but there is now an additional incentive for existing transportation companies to improve as well," said PSC Chairman Brad Johnson, R-East Helena.

Senate Bill 396, which was drafted in part by PSC Vice Chairman Travis Kavulla, was passed by the 2015 Montana Legislature this past spring, opening the door to app-based ride sharing companies like Uber to operate in Montana. Rasier-MT, LLC (Uber) is currently the only company to have applied for a Class-E TNC license under the new law.

"Before this legislation, the PSC was required to determine whether the public needed a new service. That is a question properly answered by consumers themselves and not a government agency. It's exciting to see more choices for customers in the transportation marketplace," said PSC Vice Chairman Travis Kavulla, R- Great Falls.

During the 20 day protest period last month the PSC received one protest of Uber's application, which was from the Montana Authority Holders Association. Upon issuance of a deadline by the Commission for a Notice of Appearance, the protest was withdrawn, allowing the Commission to move forward with the approval of Uber's application without a contested hearing.

In dissenting on the approval, Commissioner Bob Lake, R-Hamilton, said,

"The Commission's actions today gives one type of business model within the transportation industry a special exception that provides an unfair advantage to compete with existing businesses, and we are not doing consumers any favors by doing so. Uber will operate without any oversight from a Montana based agency. This will have a detrimental effect on the current license holders, and by approving this license we are throwing a bunch of people under the bus."

The approval of Rasier-MT, LLC's (Uber's) license is effective immediately and allows the company to begin operating right away.

## Improving Rail Safety in Montana

In October 2015, The Legislative Audit Division of the State of Montana published a performance audit, "Railroad Safety," which evaluated the operations of three state agencies, including the Montana Public Service Commission ("Commission"). On November 3, 2015, in a regularly scheduled work session, the Commission established an investigative docket concerning railroad safety. On November 5, 2015, the Legislative Audit Committee discussed the railroad safety audit and its several recommendations for the Commission.

In order to appropriately address the legislative audit and related railroad safety issues, the Commission scheduled and held a public roundtable on railroad safety in the Commission meeting room on January 20, 2016.

### Agenda

The roundtable agenda included these topics:

- Introduction
- Overview of railroad safety docket (N2015.11.84)
- Risk assessment, safety goals and objectives, state safety plan
- Engagement with state and federal agencies, emergency planning
- Railroad crossings
- Additional Commission safety inspector staff positions
- The Commission's continued role in railroad safety oversight
- Conclusion

### Participation

The roundtable was presided over by Commission Chairman Brad Johnson, who was accompanied by Commissioners Koopman, Lake, and Bushman. Attendees included representatives of the Legislative Audit Division, Federal Railroad Administration ("FRA"), Montana Rail Link ("MRL"), Burlington Northern Santa Fe Railroad ("BNSF"), Montana Department of Environmental Quality ("DEQ"), Montana Department of Military Affairs/Disaster and Emergency Services Division ("DES"), Northern Plains Resource Council, Roosevelt County Commission, and Brotherhood of Locomotive Engineers and Trainmen ("BLET"), as well as Commission staff employees and members of the public.

### Introduction

Chairman Johnson initiated the roundtable at 9:30 a.m., asked participants to introduce themselves, and reviewed the agenda. He said that the roundtable would end at 12:00 noon. Commission staff attorney Jeremiah Langston provided background information and a chronology of events for the roundtable.



### Summary of legislative audit

Ken McCormick, lead author of the railroad safety audit, summarized the audit and its recommendations. With regard to the Public Service Commission, the audit's principal recommendations are:

- Increase involvement in the National Association of State Rail Safety Managers;
- Conduct a state rail safety risk assessment and a state rail safety plan;
- Actively engage with Montana Disaster and Emergency Services and other state and federal agencies to ensure the rail safety program is proactively addressing risk.

### Risk assessment, safety goals, and state safety plan

Ken Naylor, FRA Chief Inspector and based in Billings, provided a general picture of railroad safety operations in Montana, explained FRA activities and state plans, and responded to questions regarding Commission involvement. He said that FRA is adding federal inspectors in Glendive, Great Falls, and Bozeman. As for the level of state-based inspection activity in Montana, he said that "Montana was pretty equal" to the activities of neighboring states.

MRL and BNSF representatives described in some detail their respective company-based safety programs, which include track inspectors, advanced technology and equipment, and data collection.

When asked by the Commission for their positions on whether the Commission should develop a state rail safety plan, representatives of the legislative auditor, FRA, the rail companies, and the engineers' union all answered in the affirmative. BNSF observed that some states, including Washington, Oregon, and Iowa either have or are developing state rail plans; the state of Iowa hired a contractor and produced a good plan. Legislative auditor McCormick said that the National Association of State Rail Safety Managers has published risk assessment guidelines in its manual of best practices.

On the question of what the scope of the Commission's involvement in rail safety programs should be, most commenters agreed that the Commission should focus on a preventative and inspection role, and not one of incident response. Bonnie Lovelace of DEQ urged the Commission to set the scope of its investigation, especially in terms of focusing on pre-incident or post-incident response.

### Engagement with federal and state agencies; emergency planning

Ms. Lovelace described DEQ's role in predominantly in the hazard/incident category, supported ongoing planning and preparation processes within the agency. She suggested that the Commission examine existing geographic response programs, which exist at the county level in Montana. She emphasized the particular importance of waterways, and said DEQ would be interested in identifying vulnerable locations in any risk assessment undertaken.

Delila Bruno, representing DES, said her agency was involved in developing Pre-Disaster Mitigation ("PDM") plans. She described the State Emergency Response Commission ("SERC") as a cross-section of emergency planners, and suggested that the Commission become involved with SERC to become aware of emergency response plans in Montana. Ms. Lovelace of DEQ also identified SERC as an important forum for rail safety information and involvement.

Commissioner Kirk Bushman initiated questions and a subsequent discussion about what particular expertise or resources the Commission might contribute to DES programs. Several of the responses—from DES, DEQ, FRA, and the rail companies—centered on the idea of information exchange and increased participation of the Commission, but no more specific responses were given.

#### Public comment

At 11:00 a.m., Chairman Johnson invited comment from members of the public who were present. Kate Campbell and Jan Holme, both of Missoula, spoke of the risk of accidents rising with increased rail transport of oil through Montana and urged the Commission to get more involved with rail safety and oversee stronger efforts to develop plans and prevent accidents.

#### Blocked rail crossings

The Commission addressed the agenda topic of blocked rail crossings. The Commission had received written comments from residents of Miles City who described high train speeds and crossing issues in that community. A discussion ensued about federal track classifications and associated train speed limits. No specific resolution or action plan resulted from the discussion.

#### Additional safety inspectors

Roundtable participants then discussed the idea of adding inspectors to the Commission staff. Dave Jackson, a current inspector for the Commission, described how a staff of four full-time equivalent inspectors, with one serving as a supervisor, could strengthen Commission capability from the existing staff of two inspectors and a part-time supervisor. Chairman Johnson stated that the Commission was willing to execute any mandate from the Legislature regarding rail safety, with the caveat that sufficient resources for executing increased workload accompanied any mandate. Commissioner Roger Koopman stated his agreement with Chairman Johnson, and observed that, because the Commission staff was currently lean, the agency's current budget did not allow for increased rail inspection staff.

Chairman Johnson said that a central question for him was, "Where is state government should railroad safety responsibility reside?" He said that rail safety was not related to other Commission work and that Commission involvement with rail safety was a vestige of past requirements of the Commission.

### Conclusion of roundtable; public comment

Chairman Johnson concluded the roundtable at 11:52 a.m. and invited additional public input. A resident of Missoula, expressed concerned about increasing rail transport of oil through Montana and stated his support for increased public spending on rail safety in the state.

Jerry McDonald, a Roosevelt County commissioner, described his concern for a rail crossing in the town of Bainville, which he described as "a poster child for blocked crossings." He said that rail traffic through Bainville often blocked any kind of vehicular traffic, including that needed for emergency services.

### Summary of suggested actions

Here are some of the suggested actions to be taken by the Commission that were discussed during the roundtable (in addition to those from the legislative audit and summarized at the outset of the roundtable):

- Execute a risk assessment and state rail safety plan;
- Participate in incident planning, particularly SERC meetings;
- Develop a contact list that can be distributed by DES to first responders;
- Add staff inspectors;
- Evaluate changes in work schedules and division of duties of current inspection staff;
- Seek additional resources from the Legislature for rail safety work;
- Consider transfer of rail safety activities to other state agency(ies).
- The performance audit of the Montana Legislative Audit Division, "Railroad Safety," may be viewed at: <http://leg.mt.gov/content/Publications/Audit/Report/14P-13.pdf>
- Comments to the Commission on rail safety may be viewed at the website for the Commission's rail safety docket:  
<http://psc.mt.gov/Docs/ElectronicDocuments/getDocumentsInfo.asp?docketId=11705&do=false>

PSC staff is currently engaging in the state Safety and Energy Response Committee meetings, and the rail competition council to remain actively engaged with various stakeholders on issues of rail safety in Montana.

The Commission expects to make a decision by November, 2016 regarding any possible proposal that may need to be brought to the 2017 legislature to address any of the concerns presented in the legislative audit.

## Connect with the Montana PSC:

 Montana Public Service Commission

 @MT\_PSC

Website: [WWW.PSC.MT.GOV](http://WWW.PSC.MT.GOV)

Contact:

Eric Sell- Communications Director  
MONTANA PUBLIC SERVICE COMMISSION

[esell@mt.gov](mailto:esell@mt.gov)

W: 406.444.5772

C: 406.202.5326

