

**TESTIMONY IN SUPPORT OF SB 217
REPEAL UTILITY TAX TRACKER**

**Greg Jergeson
Chairman, Montana PSC
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Mr. Chairman and Members of the Committee,

The Public Service Commission unanimously supports SB 217, which would repeal a law that is bad public policy.

Section 69-3-308, MCA, permits a public utility to itemize taxes as a line item on bills and to file rate schedules with PSC to automatically adjust rates to reflect state taxes and fees paid by the utility. A utility taking advantage of the law tracks its tax expenses in order to collect in a subsequent year expenses incurred in a previous year. The law mandates a 45-day schedule for the Commission to notice an application, conduct discovery, hold a hearing and issue an order. SB 217 would repeal the tax tracker law. Reasons to repeal it include the following:

1. It mandates single-issue ratemaking. Single-issue ratemaking occurs when a utility's rates are adjusted in response to a change in a single cost item considered in isolation. Single-issue ratemaking could result in allowing a utility to increase rates to recover higher costs in one area without recognizing counterbalancing savings in another area. The resulting rates would be neither just nor reasonable. For this reason, single-issue ratemaking is not sound regulatory policy.

Under Montana's tax tracker law, customers' rates are changed based solely on a utility's tax costs while ignoring potentially offsetting changes in other factors. If there are such offsetting changes, the rates resulting from the consideration of taxes only might not accurately reflect the real financial needs of the utility. Even a utility that is earning more than its authorized rate of return is allowed to increase rates if its state and local taxes increase. This single-issue ratemaking approach is in contrast to the standard PSC rate review provided in a general rate case, where increases in one category may be offset by decreases or improved efficiencies in other categories.

Under the tax tracker law, even if a utility is experiencing cost decreases or improved efficiencies in other categories that more than offset the cost of the utility's tax liability, the PSC

does not have the ability to deny the rate adjustment and customers may end up paying unreasonable rates. In 2003 Energy West asked for a rate increase of 22% in its only tax tracker filing. The Commission allowed a 11% increase. The next year Energy West filed a general rate case and was granted a 16% increase including all disallowed tax expense. Clearly, a portion of the tax increase was offset by decreases in other expenses

2. The 45-day deadline for PSC review is inexplicably and unreasonably short. The procedure in a tax tracking case is as follows:

(1) Upon filing, the Commission examines the request to determine if the proposed schedules are in error. (So far every filing has contained errors.)

(2) The Commission issues a Notice of Application, Determination of Error, Intervention Deadline, Opportunity to Comment and to Request Public Hearing, and Provisional Notice of Hearing. Generally, the Commission gives interested persons 10 days to file a petition to intervene.

(3) The Commission and intervenors submit discovery to the utility.

(4) The utility answers the discovery.

(5) Intervenors may file comments.

(6) The Commission holds a public hearing.

(7) The Commission issues an order.

In the most recent NorthWestern tax tracker, the utility answered discovery 2 days prior to the hearing. I have with me here just the discovery responses to illustrate the problem: it's a stack of paper 6 inches high.

3. The tax tracker law has proven to be unworkable. Only two utilities, NorthWestern Energy and Energy West Montana, have taken advantage of this law since its enactment in 2003. Energy West made a tax tracker application, followed it with a general rate case, and has not made a tax tracker filing since. NorthWestern made tax tracker filings in November 2004, December 2005, and December 2006. Every application for automatic rate adjustments using the tax tracker mechanism has contained errors. For example:

- Every application failed to comply with § 69-3-308(2)(a)(i), MCA, which requires the adjustment for state and local taxes and fees assessed against the utility to include adjustments for the net change in federal and state income tax liability caused by the deductibility for state and local taxes and fees. NorthWestern has sued the PSC over this issue.

- Both Energy West and NorthWestern Energy have incorrectly included property taxes assessed on unregulated properties in their tax tracker applications. It is up to the PSC to ferret out these and other errors in the tax tracker calculation, which can be a difficult task given the complexity of the utility business and the extremely short time frame allowed by law for the PSC to identify errors and omissions in the application.
- In NorthWestern's case it appears that the increased valuation is attributable to the increased profits and cash flow associated with activities not regulated by the Commission. There is no way to allocate increased taxes according to activity.

4. Neither NorthWestern Energy nor Energy West are itemizing their taxes as a line item on their customers' bills. Proponents of the tax tracker bill, especially NorthWestern Energy, emphasized in their advocacy for the bill the consumer information importance of disclosing to customers the effect of taxes on their utility bills, yet neither utility is including a tax line item on their bills. If tax itemization on bills is important to a utility, repeal of this law would not preclude a utility from doing so, although the PSC would want to ensure the accuracy of the information.