

SENATE COMMITTEE ON TAXATION  
TESTIMONY IN SUPPORT OF S.B. 217

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January 24, 2007

Mr. Chairman and Members of the Committee:

My name is Mary Wright, and I am an attorney with the Montana Consumer Counsel (MCC). As you know, MCC is the constitutional office charged with representing ratepayers of public utilities before the Public Service Commission and federal agencies and in the courts.

We support S.B. 217, which would eliminate the automatic rate adjustment for changes in State and local taxes and fees. S.B. 217 would return state law to where it was before the 2003 Session enacted H.B. 642. The tax tracker law is unbalanced as between utilities and their customers, and amounts to single-issue ratemaking, which we oppose and which is not favored in utility ratemaking.

Public utilities are constitutionally entitled to recover in rates all their reasonable costs of providing service, including taxes, and also to an opportunity to earn a reasonable return on their prudent investment, but no more. Prudent utility management is responsible for seeking a rate increase when the utility is not recovering those costs and not earning the authorized rate of return. If the utility is earning its rate of return, the ratepayers are adequately compensating the utility for expense items included in rates, even if one cost (such as taxes) goes up between general rate cases, because other costs may go down and offset the increase. If the utility is earning in excess of its authorized rate of return, it can still increase its profits even further by taking advantage of the tax tracker. But because we can only look at tax expense, there is no way to tell whether there are offsetting cost decreases or revenue increases. And that is why single issue ratemaking is not favored.

Utility rates are set on what is called the matching principle. In a rate case, the utility presents all its costs of providing service and revenues for a recent historical period, the test year. Both expenses and revenues may be updated for known and

measurable changes, as long as there is an appropriate matching. With a tracker such as the tax tracker, the principle of matching is violated.

Let me give an example of how the Commission handled changed tax liability when the shoe was on the other foot, when the Tax Reform Act of 1986 lowered the utilities' tax rate from 46 percent to 34 percent. Then current rates were set using the 46 percent tax rate. Rather than ordering the utilities simply to reduce their rates to account for the lower 34 percent tax rate, the Commission invited the utilities to update their test year information specifically to see whether other financial changes might offset the reduced tax liability. In this process, both the utilities and their customers were treated fairly by allowing the matching principle to work. The tax tracker enacted in 2003 does not permit that kind of fairness.

The Commission has done a good job processing cases with the severe time limitation in the current law. So far, only two utilities have taken advantage of this process. But there are at least 50 regulated public utilities in Montana. If more utilities filed for the automatic adjustment, the Commission would have to process multiple cases at the same time during the same short period mandated by the current law.

In summary, we support Senator Elliot's proposal to eliminate this unbalanced law. We join with the Commission in asking the Committee to support this bill.

Respectfully submitted January 24, 2007.

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