Senate Energy & Telecomm.Comm.
Exhibit No. 7
Date 2.19.13
Bill No. SB 276

Testimony on behalf of Public Service Commission
by Commissioner Travis Kavulla (phone 444-6166)
In opposition to
Senate Bill 276
February 19, 2013

Chairman Olson and members of the Committee,

Although we fully appreciate the sponsor's legitimate concerns in bringing forth this legislation, the Public Service Commission unanimously opposes SB 276 as written.

The PSC encourages and expects the timely replacement by regulated utilities of aging infrastructure to ensure safe and reliable service, and we may even be able to support legislation that allows for implementation of a Distribution System Improvement Charge, or DSIC. However, SB 276 is not a bill the PSC can support in its present form.

The PSC's concerns about mandated DSICs generally include the following:

- A DSIC requires single-issue ratemaking related to a utility's cost recovery for distribution system improvements, without considering cost reductions or revenue increases that occur elsewhere on the company ledger. In contrast, during a full rate case the Commission reviews distribution infrastructure improvements together with all of a utility's operations and costs. Isolating just one aspect of the utility's expense ledger will lead to overcharging ratepayers.

- A DSIC reduces or eliminates incentives for a utility to control its costs and operate efficiently. Utilities would have less "skin in the game" because their expenses are automatically recovered in rates..

- A DSIC inappropriately shifts risk from the utility to ratepayers. Utilities enjoy the benefit of a monopoly and, in exchange, they have a duty to provide safe and reliable service by repairing or replacing aging infrastructure. Utilities earn a return because they take on risk. If risk is diminished, the return they are authorized to earn should also decline.

Specifically regarding SB 276, the bill would require the PSC to implement DSICs without providing an adequate review process. SB 276 would limit the Commission's ability to examine the prudence and reasonableness of the costs related to DSIC improvements. Once a DSIC is approved, SB 276 requires automatic rate adjustments with no further review unless the Montana Consumer Counsel files a complaint.

Other states and commissions that have implemented DSIC programs have included provisions to protect ratepayers. SB 276 does not include any ratepayer protections. The PSC might be able to support SB 276 if it were amended to include the following ratepayer-protection provisions:

- A utility may not file for a DSIC unless it has completed a rate case within past 5 years. DSIC approval expires after 5 years if the utility has not filed a general rate case in that time period.

- The DSIC is capped at no more than 5% of billed distribution revenues.

- The DSIC resets to zero after completion of a general rate case, or if utility is over-earning according to its annual report to the PSC.

- The PSC may terminate the DSIC if the utility is not complying with the approved plan.

- At least 45 days prior to each annual or semiannual adjustment date, the utility must submit a report that lists all eligible property that was improved or replaced in the previous adjustment period pursuant to the plan and the associated costs, and a detailed description of the facilities to be included in the upcoming period. There is no <u>automatic</u> rate adjustment. The PSC may initiate a review of the projects and costs submitted for recovery with the utility bearing the burden of showing they are prudent and reasonable.

- Depreciation expense and return on the undepreciated rate base of all distribution plant is tracked if a DSIC is implemented.

- Income tax benefits that accrue to the utility as a result of replacing aging infrastructure should flow through the DSIC to diminish its cost.

- Provide the PSC with rulemaking authority to implement the bill.

- In New Section 3, the definition of "distribution system improvement plan" should provide a more specific list of the information that must be included with the plan, such as: the types, age & location of eligible property; the need for the investment and how it benefits customers; a schedule or timeline for plan implementation and completion; estimated annual expenditures; an explanation of the cost-effectiveness measures that have been employed; and a proposed metric for measuring the improvements in system reliability caused by DSIC investments. The definition should clarify that only costs for plant that is used and useful to ratepayers, and that replaces aging infrastructure, may be recovered by the DSIC. In addition, the PSC objects to defining eligible improvements as including those that "enhance" existing infrastructure because "enhance" is so broad a term as to potentially include augmentations or additions to the system, such as smart grid equipment, that may not be appropriately included in a DSIC.

- In New Section 4, the PSC's approval of the DSIC should be discretionary ("may") not mandatory ("shall").

- In New Section 5, the contents of the application should also include a demonstration that the proposed DSIC projects are incremental to the utility's ongoing replacement program. A provision should be added to allow the PSC to require any other information it needs to consider the application. The PSC should be authorized to approve, modify or reject the DSIC and the infrastructure plan.

In conclusion, the PSC observes that SB 276 is very specific and prescriptive about what the PSC must do, but the bill lacks specifics as to what the utility must do or how ratepayers will be protected from paying excessive rates.

DSICs are in effect in several states, in various forms. A DSIC can be an effective tool to: promote timely infrastructure investment; disincentivize investment procrastination; improve service quality and reliability; provide rate stability; reduce service interruptions; increase safety; and decrease levels of unaccounted-for energy, water, or wastewater losses. While our list of conceptual amendments could be added to make SB 276 salvageable, a simpler and better way to do it might be to pass a short, two-paragraph bill that grants the PSC explicit authority to establish a DSIC and provides the PSC with rulemaking authority to implement the law.

Thank you for your consideration of these comments and suggested amendments.