



Energy and Telecommunications Interim Committee

63rd Montana Legislature

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August 29, 2013

TO: ETIC Members

FR: Todd Everts, Staff Attorney

RE: ETIC Legal Responsibilities With Respect to Reviewing the Department of Public Service Regulation (DPSR) Economic Impact Statement (EIS) Regarding the DPSR's Proposed Amendments to the Qualifying Facility Rules

The purpose of this memorandum is to outline the ETIC's legal responsibilities regarding ETIC's review of the attached DPSR EIS.

On June 26, 2013, DPSR received a letter from 15 legislators, in accordance with section 2-4-405, MCA, requesting that the DPSR prepare an EIS regarding the proposed amendments to ARM 38.5.1902 pertaining to qualifying facilities (MAR Notice No. 38-5-218).

Section 2-4-405(1), MCA, requires that if the DPSR receives a request for an EIS, the DPSR must provide a copy of that request to the ETIC. The DPSR provided that copy of the request to ETIC staff on July 1, 2013, and ETIC staff e-mailed a copy of that request to ETIC members on July 8, 2013.

Section 2-4-405(3), MCA, requires that DPSR must file the EIS with the ETIC within 3 months of the request. The DPSR filed the EIS with ETIC staff on Thursday, August 22, 2013.

Upon receipt of the EIS, the ETIC is required to make a sufficiency determination pursuant to section 2-4-405(4), MCA. That section of law sets out the following procedural committee requirements:

(4) Upon receipt of an impact statement, the committee shall determine the sufficiency of the statement. If the committee determines that the statement is insufficient, the committee may return it to the agency or other person who prepared the statement and request that corrections or amendments be made. If the committee determines that the statement is sufficient, a notice, including a summary of the statement and indicating where a copy of the statement may be obtained, must be filed with the secretary of state for publication in the register by

the agency preparing the statement or by the committee, if the statement is prepared under contract by the committee, and must be mailed to persons who have registered advance notice of the agency's rulemaking proceedings. (2-4-405(4), MCA)

In order for ETIC to make a sufficiency determination, the committee must analyze the EIS in light of the content requirements provided for in section 2-4-405(2), MCA. That section of law provides that, unless waived via the request, the EIS must include:

- (a) a description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
 - (b) a description of the probable economic impact of the proposed rule upon affected classes of persons, including but not limited to providers of services under contracts with the state and affected small businesses, and quantifying, to the extent practicable, that impact;
 - (c) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenue;
 - (d) an analysis comparing the costs and benefits of the proposed rule to the costs and benefits of inaction;
 - (e) an analysis that determines whether there are less costly or less intrusive methods for achieving the purpose of the proposed rule;
 - (f) an analysis of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;
 - (g) a determination as to whether the proposed rule represents an efficient allocation of public and private resources; and
 - (h) a quantification or description of the data upon which subsections (2)(a) through (2)(g) are based and an explanation of how the data was gathered.
- (2-4-405(2), MCA)

The ETIC will be making its sufficiency determination at its upcoming September meeting. If you have any questions regarding this process, do not hesitate to contact me.