



Energy and Telecommunications Interim Committee

65th Montana Legislature

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August 1, 2017

Chairman Brad Johnson
Montana Public Service Commission
1701 Prospect Ave
P.O. Box 202601
Helena, MT 59620-2601

Dear Chairman Johnson:

The Energy and Telecommunications Interim Committee (ETIC) respectfully requests the Public Service Commission reconsider Order No. 7500c concerning North Western Energy's Application for Interim and Final Approval of Revised Tariff No. QF-1.

During a July 31 meeting, ETIC members, who in accordance with 5-5-230, MCA, monitor the functions of the Montana Public Service Commission, expressed concerns about the commission's recent decisions in Docket No. 2016.5.39 and Docket No. 2016.12.103. The committee accepted extensive public testimony on the topic and after hearing from the public voted to request the commission reconsider its final order.

Concerns brought before the ETIC include, but are not limited to:

- The order inappropriately oversteps PSC authority and attempts to establish policy counter to existing statutes. The authority to set policy rests solely with the Legislature.
- Contract length, as well as the application of the contract limitations to all new generation assets, should have been addressed through administrative rulemaking and the Montana Administrative Procedures Act (MAPA). In *Southern Montana Telephone Company v. Montana PSC*, 2017 MT 123, the Montana Supreme Court held that the PSC failed to adopt administrative rules regarding public disclosure criteria imposed on utilities. Under the Court's reasoning, MAPA defines a "rule" as "each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy." The Court found that the PSC's disclosure criteria fit within that definition. Thus, the Court held that the PSC failed to follow MAPA and adopt administrative rules.
- The Public Utility Regulatory Policies Act of 1978 (PURPA) was enacted in part to encourage the development of small power production facilities. The commission order is inconsistent with PURPA, discourages development, and impedes developers' ability to obtain financing for projects.
- The extension of the order to all new generation assets runs counter to the intent of the Electric Utility Industry Generation Reintegration Act of 2007, raising concerns that

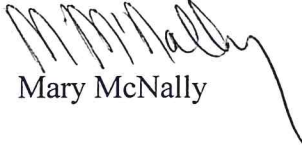
Montana is moving again toward deregulation. Financial services companies have responded to perceived regulatory risk and raised concerns in the market.

- The commission inappropriately applied the total avoided cost calculation and undervalued avoided costs for qualifying small power production facilities.
- Reduction in contract lengths to 10 years makes future development of qualifying facilities in Montana economically unfeasible. Eliminating the viability of these types of projects will have a negative economic impact in Montana.

The ETIC requests that you reconsider your order and appropriately address these concerns and others that have been raised by stakeholders in this matter. Thank you for your time and consideration.

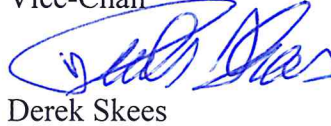
Sincerely,

Chair



Mary McNally

Vice-Chair



Derek Skees