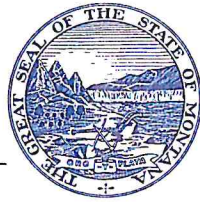


Montana Consumer Counsel



Robert A. Nelson
Consumer Counsel

Jason T. Brown, *Attorney*
Lawrence P. Nordell, *Economist*
Paul Schulz, *Rate Analyst*
Suzanne Snow, *Office Manager*
Jaime Stamatson, *Economist*

Telephone: (406) 444-2771
Fax No: (406) 444-2760
111 North Last Chance Gulch
Suite 1B
PO Box 201703
Helena, Montana 59620-1703

September 4, 2020

Energy and Telecommunications Interim Committee
PO Box 201706
Helena, Montana, 59620-1706

Re: Comments of the Montana Consumer Counsel in Support of PD-0008
(Preapproval Repeal)

The Montana Consumer Counsel appreciates the opportunity to comment on the preapproval repeal bill currently under consideration by ETIC. The option of requesting “preapproval” from state regulators prior to constructing or acquiring a power plant should be repealed from State law because it shifts normal business risk from shareholders to captive consumers.¹ The preapproval statute only applies to one utility, NorthWestern Energy (NorthWestern”).² It is a relic of Montana’s deregulation era that puts regulators in the position of making utility procurement decisions that utility managers are in a much better position to make.

¹ PSC Order 7395d, Dkt. D2015.2.18, ¶ 17 (Apr. 24, 2015) (“The Commission has found that ‘the presumption against preapproval of utility cost recovery. . . is fundamental to utility regulation.’”).

² § 69-8-201(4)(a), MCA.

When preapproval was first legislated in 2003, it was limited to power purchase agreements with third parties.³ In 2007, the concept was expanded to utility-owned plants.⁴ Even assuming this policy made sense during NorthWestern's transition back into a vertically-integrated utility, it no longer makes sense now that NorthWestern owns or controls most of its power supply and is once again vertically-integrated. Montana-Dakota Utilities Company routinely invests in new power plants without the benefit of statutory preapproval. Least cost planning rules and subsequent rate cases impose cost discipline incentives, while also ensuring the utility has an opportunity to earn a reasonable return on its investments. Partly because NorthWestern now earns a rate of return its own power plants, it no longer needs preapproval to make sound procurement decisions, which are a normal part of the business of providing electric service.

When a regulated company must raise and spend its own money to acquire or build a new power plant, it hones the mind of managers and generally results in better outcomes. When managers can propose to acquire a plant without making any financial investment in that decision, on the other hand, then their due diligence tends to focus more on getting their proposal preapproved by regulators than the merits and timing of the proposal itself. Preapproval shifts the up-front risk of making procurement decisions to regulators and ratepayers, lessening the cost discipline on the utility. There are no compelling reasons to continue this policy.

³ Senate Bill 247, 58th Reg. Sess. (2003).

⁴ House Bill 25, 60th Reg. Sess. (2007).

Effective July 1, 2020, House Bill 597 tethered a new competitive solicitation requirement to a utility's decision to seek preapproval under § 69-8-421, MCA.⁵ Because that statute only applies to NorthWestern, however, this new competitive solicitation requirement only applies to NorthWestern. ETIC can preserve this requirement as it exists today by simply requiring a competitive solicitation anytime a utility *subject to Title 69, Chapter 8* intends to acquire or construct a power plant. The exceptions in subsection (5) for opportunity resources and short-term resources (which remain unchanged) already provide plenty of leeway to avoid the new competitive solicitation requirement. Thus, this change would have minimal impact.

PD-0008 also preserves a reference to seeking approval from the Commission for the acquisition or construction of a power plant, which undermines the very purpose of this bill draft. To fully repeal preapproval while preserving the new competitive solicitation requirement, the following language in PD-0008:

“a public utility that intends *to seek approval by the commission* for the acquisition, construction, or purchase of an electricity supply resource....”

should be replaced with:

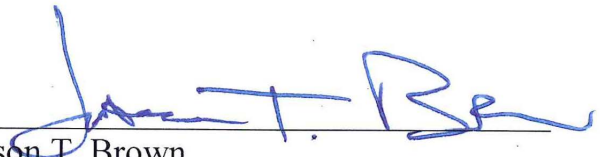
“a public utility subject to the provisions of Title 69, Chapter 8 that intends to acquire, construct, or purchase an electricity supply resource....”

⁵ § 69-3-1207(1), MCA.

(emphasis added).⁶ With this minor amendment, PD-0008 would both repeal the preapproval statute and preserve the new competitive solicitation requirement.

The Montana Consumer Counsel supports this effort to repeal Montana's preapproval statute and encourages ETIC to propose PD-0008 as a committee bill with the aforementioned amendment.

Respectfully submitted September 4, 2020.



Jason T. Brown
Attorney
Montana Consumer Counsel
PO Box 201703
111 North Last Chance Gulch, Suite 1B
Helena MT 59620-1703

⁶ This language proposed in PD-0008 would amend § 69-3-1207(1)(a), MCA.