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

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ENERGY &
TELECOMMUNICATIONS
INTERIM COMMITTEE 2019-2020

September 8, 2020 Exhibit 13

Energy and Telecommunications Interim Committee
("ETIC")
PO Box 201706
Helena, Montana, 59620-1706

Re: Comments of the Montana Consumer Counsel in Support of PD-0009 (Deadband Repeal)

The Montana Consumer Counsel ("MCC") appreciates the opportunity to comment on the deadband repeal bill currently under consideration by ETIC. Of all the provisions of Senate Bill 244, the prohibition on deadbands was probably the most harmful to consumers.[1]

A "tracker" is a ratemaking mechanism that singles out certain types of utility costs (often those that tend to increase over time) and ignores other types of utility costs (often those that tend to decrease). As such, trackers constitute single-issue ratemaking in violation of the matching principle, under which regulators are to

[1] Senate Bill 244, 66th Reg. Sess. (2019) ("SB 244").

examine *all* of a utility's costs, revenues and volumes over the same time period (i.e., an historic test year). Setting utility rates based on a *contemporaneous* set of costs, revenues and volumes (i.e., consistent with the matching principle) ensures they are just and reasonable to ratepayers. Trackers enable rate adjustments for certain categories of costs, however, while excluding other categories from the rate adjustment.

Since trackers thus violate the matching principle and shift risk to consumers, minimizing their scope and impact is beneficial. A deadband acts as a zone within which no annual tracking adjustments occur. Because many cost fluctuations are *de minimis*, routine and partially offsetting, it is appropriate for utilities to bear such changes year-to-year to avoid needless rate adjustments (promoting rate stability) and preserve scarce regulatory resources.

The history leading up to SB 244 dates to deregulation. Because NorthWestern Energy ("NorthWestern") owned no power plants during this era, it was allowed to pass through all prudently-incurred purchased power costs through a mandatory tracker mechanism adopted in 2003.[2] Prior to deregulation and this resulting statutory mechanism, there were no electric trackers in Montana.[3] Following the passage of House Bill 25 in 2007, NorthWestern began acquiring its

[2] Senate Bill 247, 58th Reg. Sess. (2003). NorthWestern sought recovery of outage costs through its tracker for a 2009 outage at CU4, a 2012 outage at the Dave Gates Generating Station, and a 2013 outage at CU4. A request for 90% recovery of costs resulting from a 2018 outage at CU4 is fully litigated and pending before the Commission.

[3] MDU requested its own tracking mechanism following the adoption of NorthWestern's 100% pass-through mechanism, which was approved under the Commission's general regulatory authority with some differences from NorthWestern's.

own power plants. After it repeatedly sought to recover costs related to unplanned outages at its own power plants through this mandatory, deregulation-era tracker, however, the Legislature repealed it in 2017.[4]

With newfound discretion to approve any kind of electric tracker (or no tracker at all), the Commission conducted a 19-month contested case proceeding to determine the best mechanism (if any) going forward. The MCC opposed any type of tracker for the reasons stated above, but supported a deadband (and 50/50 cost sharing outside of that deadband) *if* a tracker were to be approved. After hearing all the evidence presented by interested parties, the Commission approved a new tracker with a deadband (albeit half the size of the deadband proposed by MCC).[5] Unhappy with this new tracker, NorthWestern supported SB 244, which prohibited the deadband feature that the Commission had approved just a few months prior.

The details of tracker mechanisms should generally be left to the Commission. As the agency responsible for setting just and reasonable utility rates, the Commission should have latitude to limit trackers' impact, including through the use of deadbands, which are designed to reduce the amount of risk shifted to ratepayers. The Commission's decision to adopt a deadband was "closely related to whether tracking should continue at all, and … inexorably related to its decision to continue tracking in the first place."[6] The deadband ultimately approved by the

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[4] House Bill 193, 65th Reg. Sess. (2017).
[5] PSC Final Order 7563c, Dkt. D2017.5.39, ¶¶ 41-61 (Sept. 18, 2018) (attached).
[6] *Id.* ¶ 32.

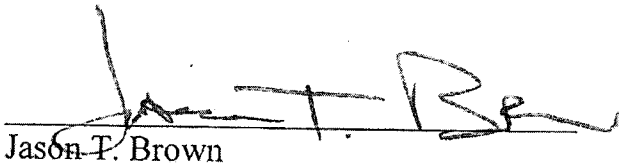
Commission reflected a careful balancing of consumer and utility interests following a lengthy public process:

> As explained above, the Commission will not discontinue tracking altogether, but views a deadband as an attractive midpoint between the initial positions of the parties. A deadband will, importantly, achieve the MCC's and NorthWestern's goal of simplifying a heretofore cumbersome tracker....
>
> [T]he Commission [also] expects that a deadband that precludes rate adjustments in certain years will substantially de-conflict these proceedings and place on the utility's management the responsibility to perform well in its overall cost management exercise rather than in its litigation strategy.[7]

This "midpoint" balance struck by the Commission was disrupted by SB 244's absolute prohibition on deadbands. Rather than prescribing the parameters of permissible deadbands, however, PD-0009 should be amended to simply strike subsection (2) of § 69-3-331, MCA. This would restore the discretion that the Commission had over deadbands prior to SB 244.

For these reasons, MCC supports PD-0009, which should be amended to simply strike § 69-3-331(2), MCA.

Respectfully submitted September 4, 2020.



Jason T. Brown
Attorney
Montana Consumer Counsel
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[7] *Id.* ¶ 47.