

MONTANA PUBLIC SERVICE COMMISSION UPDATE TO
THE ENERGY & TELECOMMUNICATIONS INTERIM COMMITTEE
STATUS OF LITIGATION

July 16-17, 2024

1. *Families for a Livable Climate, et al., v. Montana Department of Public Service Regulation, Cause No. DV-24-525 (Montana Fourth Judicial District Court)*
 - This case concerns the interpretation of the Montana Administrative Procedure Act (“MAPA”) and the procedures available to an agency in response to a petition for rulemaking.
 - The Petitioners assert that the informal rulemaking procedures of MAPA (Mont. Code Ann. § 2-4-304) are not available to an agency responding to a petition for rulemaking under MAPA (Mont. Code Ann. § 2-4-315). The Petitioners asked the Court to issue an order, known as a writ of mandamus, directing the Commission to take further action on their petition for rulemaking.
 - The Commission maintains that Mont. Code Ann. § 2-4-315 expressly allows agencies to initiate informal proceedings under Mont. Code Ann. § 2-4-304 in response to a petition for rulemaking, and that informal rulemaking procedures are particularly important when the proposed rule is broad in scope and likely to generate significant public interest.
 - The District Court declined to grant the Petitioners’ preliminary request for an order directing the Commission to immediately take further action on their petition for rulemaking. Instead, the Court directed the Commission to file a response explaining its interpretation of the law and its process. The Court further ordered the Petitioners to explain why they have refused to answer the Commission’s questions about their proposed rule.
 - The Commission filed its response on July 10, 2024.
 - A hearing on the Petitioner’s request for a writ of mandamus is scheduled for July 18, 2024.

2. *Noland v. State of Montana, et al., Cause No. DA 24-0369 (Montana Supreme Court)*
 - This case concerns the constitutionality of the statutory system of motor carrier regulation as it applies to garbage haulers. Plaintiff alleges that the statute and Commission precedent governing the issuance of certificates of public convenience and

necessity unconstitutionally interferes with the plaintiff's ability to start a garbage hauling business.

- The Montana Department of Justice is representing the State, including the Commission, in this case, which was filed on November 15, 2022.
- On February 8, 2024, the District Court granted summary judgment to the State.
- On June 12, 2024, Noland filed a Notice of Appeal. Noland's opening brief is expected in the coming weeks.

3. *Held v. State of Montana, Cause No. DA 23-0575 (Montana Supreme Court)*

- The Montana Department of Justice is representing the State, including the Commission, in this case, which was filed on March 13, 2020.
- This case concerns the constitutionality of the state energy policy at Mont. Code Ann. § 90-4-1001 (now repealed) and the Montana Environmental Policy Act at Mont. Code Ann. § 75-1-201, however, the Commission is not involved in the implementation of Mont. Code Ann. § 75-1-201.
- After the 2023 Montana Legislature repealed Mont. Code Ann. § 90-4-1001 (effective March 16, 2023), the Court granted the State's motion to dismiss claims based on that statute.
- No witnesses from the Commission or Department of Public Service Regulation were called during the trial in June 2023. The District Court's order recognized that the Commission is exempt from MEPA.
- The case is now fully briefed on appeal to the Supreme Court. Oral arguments were held on July 10, 2024.

4. *Jawbone Holdings LLC v. Mont. Dep't of Public Serv. Reg., Cause No. DA 24-0395 (Montana Supreme Court)*

- The case arises from the petition of a qualifying facility ("QF") developer asking the Commission to set the terms and conditions of a power purchase agreement between the developer's QF and NorthWestern Energy.
- The developer asked the Court to modify or reverse the Commission's decision on the price of energy and other terms of the power purchase agreement. This case involves a variety of issues, including:
 - The assigned avoided cost of energy in hours when NorthWestern has more energy than it needs to serve load;
 - The weight of the evidence supporting NorthWestern's market price forecast;
 - The weight of the evidence supporting the use of four years of market forwards in the calculation of avoided costs;
 - The use of NorthWestern's proposed market basis differentials;

- The Commission’s authority to allocate network upgrade costs between QFs and utilities;
- The assignment of network upgrade costs to the QF; and
- Questions about whether a QF can deliver firm energy to a utility with only non-firm transmission rights.
- Oral arguments were presented to the District Court on September 29, 2022.
- Following a motion from the developer to disqualify the judge who heard oral arguments, a new judge assumed jurisdiction on November 1, 2022.
- On April 30, 2024, the District Court issued its decision and largely affirmed the Commission’s decision. The District Court remanded the case to the Commission to reconsider evidence on NorthWestern’s market price forecast and determine the proportional allocation of network upgrade costs following the *CED Wheatland* case, which was decided while this case was pending before the District Court.
- On June 27, 2024, Jawbone filed a notice of appeal. Jawbone’s opening brief is currently due at the end of the month.

5. [*Montana Environmental Information Center v. Mont Dep’t of Public Serv. Reg., et al., Cause No. DA 22-0436 \(Montana Supreme Court\)*](#)

- Originally filed in the Montana Eighth Judicial District Court in 2018, this case is a petition for judicial review of the Commission’s decision in an administrative contested case. The case arises from the Commission’s decision to grant a waiver to NorthWestern Energy concerning certain community renewable energy project (“CREP”) standards, which were repealed by the Montana Legislature in 2021.
- When the CREP standards were repealed, the case was pending on appeal before the Montana Supreme Court. Without reaching the merits, the Montana Supreme Court remanded the case to the District Court to consider whether the repeal of the statute mooted the litigation.
- After briefing from the parties, the District Court concluded that the repeal did not moot the case and ordered NorthWestern to pay an administrative penalty for noncompliance with the former CREP standards.
- NorthWestern and the Commission appealed that decision and renewed the merits of the prior appeal, which the Montana Supreme Court had not yet decided.
- The Montana Supreme Court issued its opinion on March 19, 2024, which concluded that the retroactivity clause in the bill that repealed the CREP standards applied, but did not moot the case. The Court held that NorthWestern was liable for a noncompliance penalty for the year 2015, and could be liable for a penalty for the year 2016. The Court remanded the case to the Commission for further proceedings.
- The parties have asked the Commission to wait to issue a procedural schedule for the case on remand.