

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF the Petition)
for Adoption of New Rule I and)
Declarations Pertaining to the) Docket No. 2024.03.028
Commission’s Consideration of the)
Adverse Climate Impacts of)
Greenhouse Gas Emissions)
)

**Petitioners’ Notice of Mandatory
Rulemaking Procedures under Mont. Code Ann. § 2-4-315 and
Objection to Commission Process**

Petitioners object to the Commission’s process in Docket No. 2024.03.028, as set forth in its April 30, 2024, Notice of Extended Opportunity to Comment—including the extended period for public comment and solicitation of further information from Petitioners—because it violates mandatory rulemaking procedures under Mont. Code Ann. § 2-4-315.

The petition process provided by the Montana Administrative Procedure Act, Mont. Code Ann. § 2-4-315 pursuant to which Petitioners submitted their petition, provides only two outcomes to a petition for rulemaking: “[w]ithin 60 days after submission of a petition, the agency either shall deny the petition in writing or shall initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.” *Id.* (emphasis added). The statute affords the Commission no discretion to extend the 60-day decision window and does not allow the Commission to extend public comment absent a decision to initiate rulemaking.

The Commission has not taken either available pathway under Mont. Code Ann. § 2-4-315 and is therefore violating that statute’s clear legal directive. Petitioners submitted their Petition on February 28, 2024. Sixty days elapsed on April 28, 2024. At the Commission’s weekly business meeting on April 30, the Commission moved to extend the public comment period to July 1. However,

Commission Chair Brown clearly articulated that in so doing, the Commission was not taking any final action *either* to reject the petition *or* to initiate rulemaking. The statute simply doesn't contemplate this third path, and the Montana Administrative Rules reinforce the binary nature of the options available to an agency once a rulemaking petition has been received by providing that "upon receipt of the petition," an agency "shall, within 60 days after submission of the petition, either: (i) issue an order denying the petition; or (ii) initiate rulemaking proceedings in accordance with MAPA." Admin R. Mont. 1.3.308(3)(b) (emphasis added).

While Petitioners support additional public participation and information gathering on this important issue, the Commission must first initiate the rulemaking process established by Mont. Code Ann. § 2-4-301 *et seq.* Should the Commission choose to initiate rulemaking, the statute affords multiple opportunities for additional comment, information-gathering, and fact-finding, as evidenced by Mont. Code Ann. § 2-4-302(4)-(5), as well as an informal information-gathering process under Mont. Code Ann. § 2-4-304. However, to avail itself of *any* of these opportunities, rulemaking must first have been initiated pursuant to Mont. Code Ann. § 2-4-302 and the written notice that statute requires.

The Commission's extended process not only violates MAPA, but it also prejudices the Petitioners' ability to vindicate their right to petition the Commission for action to redress ongoing harm from uninformed decisionmaking, Mont. Const. art. 2, § 6, which MAPA serves to implement. This is because timely action on the Petition is necessary to avoid the statutory deadline for rulemakings of October 1 preceding a legislative session. Mont. Code Ann. § 2-4-305(11). Petitioners submitted their petition more than 7 months before this deadline, and they are entitled to the Commission's timely decision to either deny the petition or initiate rulemaking.

To end the ongoing harm to Petitioners' interests from the Commission's unlawful delay, Petitioners respectfully request that on or before May 21, 2024, the Commission either issue a decision, in writing, rejecting their Petition, *or* initiate

rulemaking by notice, and proceed to take additional public comment, gather information, and engage in further factfinding as allowed by statute.

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