

# Montana Public Service Commission



James Brown, Chairman  
Brad Johnson, Vice Chairman  
Tony O'Donnell, Commissioner  
Randall Pinocci, Commissioner  
Jennifer Fielder, Commissioner

January 12, 2021

Chairman Mercer, Vice-Chairman Howard, Members of the Joint Appropriations Subcommittee on Judicial Branch and Law Enforcement

Dear Chairman Mercer and Committee Members:

As requested in today's budget hearing for the Montana Public Service Commission ("Commission"), this letter provides a breakdown of the total number of dockets administered by the Commission in 2020 and number of cases in which a hearing examiner was appointed as contemplated in HB 597. The letter also offers some explanation as to the Commission's efforts to implement the hearing examiner portion of that bill.

The Commission opened 126 new dockets in 2020. This figure reflects the total number of dockets opened by the Commission in the past calendar year. Administration of those (and prior) dockets occurs on an ongoing basis. Therefore, this number isn't necessarily equivalent to the total number of cases administered to completion in a given year. However, it is likely a fair representation of that figure.

Of those dockets, the following seven had a hearing examiner appointed under Mont. Code Ann. § 69-2-103:

1. 2020.06.069 – EWM Gas Tracker
2. 2020.07.081 – Circle H Water
3. 2020.08.091 – NorthWestern PCCAM
4. 2020.10.100 – AquaFlo LLC
5. 2020.10.101 – MDU Tax Tracker
6. 2020.10.103 – MDU Rate 93
7. 2019.09.059 – NorthWestern QF-1 Rates

In response to Chairman Mercer's question regarding whether a percentage of the foregoing matters might involve solely legal determinations (as opposed to rate setting requiring factual and legal analysis), each of the above cases involved rate setting and so involved work by both the hearing examiner and regulatory staff assisting him in analyzing evidence.

In addition, some explanation of the Commission's efforts to implement § 69-2-103 is also appropriate. First, I must offer an apology for misrepresenting the number of cases I believed to have been handled in the past year by our hearing examiner. In hearing, I represented that number to be around 80. However, upon further investigation, it appears the 80 total hearing examiner cases which was discussed during

today's budget hearing was the number attached to the initial version of HB 597 which contemplated 14 additional FTE. The figure which was contemplated in the final version of the bill (which provided for 2.5 FTE) appears to be 40 hearing examiner dockets. Again, please accept my apology for any confusion in that regard.

The foregoing seven dockets in which a hearing examiner was appointed represents approximately 18% of the target 40 dockets set out as a goal in the final version of HB 597. However, it is important to note that the law did not become effective until July 1, 2020. In other words, the Commission has only been implementing that law for approximately six months. In addition, the attorney hired for our hearing examiner position also engaged in substantial work developing a preliminary system for implementation of a hearing examiner process. Likewise, the appointment of a hearing examiner in the foregoing seven cases were primarily for the purpose of testing the feasibility of those preliminary plans with the intent to use that experience to develop a robust hearing examiner process. acting as a trial balloon in a variety of dockets to assist us in developing that process. In addition, there was at least 1 case in which a hearing examiner appointment was contemplated, but, due to turnover in personnel toward the end of the year, never occurred.

Finally, ongoing litigation, specifically Mont. First Jud. Dist., Lewis and Clark Cause Nos. CDV-2020-27, *Broad Reach Power et al. v. PSC* and CDV-2018-318, *In re Application of Big Foot Dumpsters* each challenge, in varying ways, the Commission's decision-making process. Because these cases challenge Commission procedure (including, in theory, the procedure to be used in hearing examiner dockets) they have posed significant obstacles in implementation of the bill. In summary, the Commission has been hesitant to dive too deeply into the hearing examiner process while these dockets are pending in order to avoid the risk of additional litigation, and implementation of processes which potentially conflict with decisions ultimately made by the judiciary with regard to those cases.

We hope that this answers some of the questions posed during today's budget hearing, and we appreciate the opportunity to provide additional information on the topic. If further clarification is required, we are happy to do so upon request.

Sincerely,

/s/ James Brown

James Brown, Chairman (District 3)  
Brad Johnson, Vice Chairman (District 5)  
Tony O'Donnell, Commissioner (District 2)  
Randy Pinocci, Commissioner (District 1)  
Jennifer Fielder, Commissioner-Elect (District 4)