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

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IN THE MATTER OF the Petition of the Montana Consumer Counsel to Amend ARM 38.5.2527 and 38.5.2528	)))	REGULATORY DIVISION DOCKET NO. N2017.9.76

PETITION OF THE MONTANA CONSUMER COUNSEL TO AMEND ARM 38.5.2527 AND 38.5.2528

The Montana Consumer Counsel ("MCC") hereby petitions the Montana Public Service Commission ("Commission") to amend or repeal Mont. Admin. R. 38.5.2527 and 38.5.2528 ("Standard Rate Rules"). Any interested person "may petition an agency requesting the promulgation, amendment, or repeal of a rule." § 2-4-315, MCA. The Commission must either initiate a rulemaking or deny this Petition within 60 days. *Id.* It may conduct a hearing to develop a record and allow interested persons to present views. *Id.* "A decision to deny a petition or to initiate rulemaking proceedings must be in writing and based on record evidence." *Id.*

As the agency charged with representing consumer interests before the Commission, the MCC may institute appropriate proceedings on behalf of Montana's consuming public or substantial elements thereof, including proceedings to review Commission decisions or failures to act by the Commission. § 69-2-202(2), MCA; Mont. Const. art. XIII § 2; *see also* § 69-2-201, MCA (authorizing MCC to appear as the

representative of the consuming public on all matters "which in any way affect the consuming public").

FACTUAL AND LEGAL GROUNDS FOR RULEMAKING

The Commission has adopted the Attorney General's Model Procedural Rules ("Model Rules") concerning rulemaking. Mont. Admin. R. 38.2.101. According to the Model Rules, a petition for rulemaking must contain a detailed statement of "sufficient facts to show how petitioner will be affected by adoption, amendment, or repeal of the rule," and "facts and propositions of law in sufficient detail to show the reasons for adoption, amendment, or repeal of the rule." Mont. Admin. R. 1.3.308(1)(a).

Despite laudable motives for adopting the Standard Rate Rules, it has become increasingly apparent that they harm ratepayers by failing to serve their stated purposes, creating perverse incentives, and running afoul of statutory provisions. Through a simplified process, the goals of reducing regulatory costs, setting just and reasonable rates, and providing due process can be better balanced.

I. The Standard Rate Rules do not necessarily serve their stated purposes.

A. Regulatory costs may benefit ratepayers by resulting in lower rates.

The cost of a rate case may be beneficial for ratepayers, who are better off paying $40 per month with regulatory costs included than paying $50 per month with regulatory costs avoided. Although the Standard Rate Rules "were established to reduce the regulatory cost to ratepayers," they have not reduced ratepayer's actual rates.

The Commission has opined that "most small water and sewer utilities will not want to undertake a traditional cost of service rate case based on the substantial cost for rate consultants and legal assistance." Final Order 7537a, Dkt. D2017.1.5, ¶¶ 21, 23 (Aug. 31, 2017) (expressing concern about "the incentive to avoid establishing [C]ommission-approved rates because of the substantial regulatory cost"). When it adopted the Standard Rate Rules, however, the Commission recognized that regulatory costs could still exist if a request is challenged:

> If the proposed rules are adopted and if a small water or sewer utility takes advantage of the new regulatory options *and its election of one of the simplified methods is not challenged*, it will not be necessary for the utility to engage professional services to support the ratemaking process.

17 Mont. Admin. Reg. 1590 (Sept. 5, 2013) (emphasis added). In any case, since regulatory costs are generally paid for by ratepayers, it is not entirely clear how strongly such costs discourage utilities from filing rate cases. If anything, regulatory costs discourage MCC from contesting modest rate increases.[1]

The Commission apparently believes that the benefit of reduced regulatory costs "outweighs any potential benefits achieved by a more expensive, burdensome, and granular case-by-case ratemaking process intended for large utilities." Order 7537a ¶ 21. Without citing any authority that suggests the traditional ratemaking protections are only "intended for large utilities," the Commission presents this judgment as an absolute truth, ignoring the potential benefits of a "more expensive, burdensome, and granular case-by-case ratemaking process." *Id.*

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[1] In rate cases based on cost of service ratemaking, the MCC is very sensitive to regulatory costs, strives to minimize such costs, and has rarely (if ever) challenged such costs for small water and sewer utilities.

Since ratepayers may be better off paying lower rates that include regulatory costs than paying higher rates to avoid regulatory costs, it is not necessarily "a more productive use of limited agency resources" to avoid regulatory costs in all cases. *Id.* Although agency resources may be limited, those resources exist for the purpose of scrutinizing rates and affording due process to interested persons. Adopting one rate for all utilities, regardless of individual circumstances and opposition from parties, is an abdication of ratemaking responsibilities.

B. The Standard Rate Rules do not guarantee better information.

Another purpose of the Standard Rate Rules was "to establish initial rates in some manner *when utilities first start serving customers*. . . . because the small water and sewer utilities generally have limited financial information *prior to regulation and when they first start operating*," before "complete financial information is available." *Id.* ¶ 23 (emphasis added). However, many of the utilities that have requested standard rates have been operating for years, and the standard rates are available to utilities regardless of how long they have been operating. Moreover, a utility that has simply yet to comply with its statutory obligations does not operate "prior to regulation." *Id.* On the contrary, such utilities are subject to the Commission's ongoing authority to hear complaints, investigate, and inspect their books and papers.

Regardless of changes in ownership, any business that has been operating for years must have financial records. Just because a utility has not been charging Commission-approved rates does not mean that it lacks financial information. Since a utility must be in compliance with annual reporting requirements *before* requesting

standard rates, at least one year of financial information must be available for a standard rate request to even be made. Mont. Admin. R. 38.5.2527(4).

At the same time, not every company charging Commission-approved rates maintains complete financial information or files complete annual reports. Nothing in the Standard Rate Rules ensures that "the Commission will have three years of the utility's financial information to consider" when its standard rates expire. Order 7537a ¶ 25. As a result, there is no guarantee that any more financial information will be available after three years than before.[2] Under the simplified regulatory process proposed below, utilities will be more motivated to provide a minimum threshold of relevant information to avail themselves of simplified regulatory treatment.

II. The Standard Rate Rules create perverse incentives for utilities.

A. Standard rates only cause rates to increase.

The fact that the Standard Rate Rules have resulted in rate increases is not surprising. No rational utility will request standard rates when doing so will result in a rate decrease, since it remains free to file a rate case (and thereby ask to charge more than standard rates). As such, the Standard Rate Rules do not create utility winners and losers, but only utility winners, at the expense of ratepayers.

Offering utilities the option of either the standard rate or a rate case creates an inherent asymmetry. For any utility that could collect excessive revenues by charging

[2] In practice, the Commission has routinely extended standard rates beyond the three-year expiration, albeit on an interim basis, without considering whether relevant financial information has actually been provided. *See* Dkts. D2014.6.57, N2014.7.66, N2014.8.77.

standard rates, an incentive exists to seek standard rates. For any utility that would collect insufficient revenues by charging standard rates, the option of a general rate case remains (or the *de facto* option of continuing to charge higher rates without Commission approval). This incentive for utilities charging less than standard rates to request standard rates is even stronger if there is no need to justify the standard rates as just and reasonable. Standard rate will continue to lead to rate increases unless the Commission reforms its Standard Rate Rules.

B. Non-compliant utilities are still subject to regulation and complaints.

The Commission has found that standard rates function as an incentive "to bring small water and sewer utilities into compliance." *Id.* ¶ 24. However, an incentive should not be necessary for utilities to comply with their statutory and regulatory obligations under law. To the extent there are "a substantial number of water utilities currently operating without commission-approved rates," it is the utilities – not the Commission – flouting legal obligations. Moreover, there are better ways to transition utilities to cost of service regulation than by offering an arbitrary and potentially excessive rate as an enticement.

Public utilities are subject to regulation and the Commission's broad regulatory authority regardless of whether they comply with particular statutory obligations. The Commission has "full power of supervision, regulation, and control" of all such utilities, and possesses an ongoing "right to examine the books, accounts, records, and papers of any public utility for the purposes of determining their correctness and whether they are being kept in accordance with the rules and system prescribed by the [C]ommission."

§§ 69-3-102, 69-3-202(5), MCA. In addition to filing schedules "showing all rates, tolls, and charges which it has established and which are in force at the time for any service performed," utilities must file "a full annual report of the business of the utility." §§ 69-3-301, 69-3-203, MCA (allowing the Commission "at any time" to request information omitted from the reports "or not provided for in the reports").

Of critical importance is the fact that the Commission's doors remain open to complaints from customers or the MCC:

> The commission shall proceed, with or without notice, to make such investigation as it may deem necessary upon a complaint made against any public utility . . . that any of the rates, tolls, charges, or schedules or any joint rate or rates are in any way unreasonable or unjustly discriminatory....

§ 69-3-321(1), MCA. Moreover, "The [C]ommission may at any time, upon its own motion, investigate any of the rates, tolls, charges, rules, practices, and services" whether they are Commission-approved or not, and "order such changes as may be just and reasonable, the same as if a formal complaint had been made." § 69-3-324, MCA. For utilities operating without Commission-approved rates, the mere threat of these complaint procedures discourages excessive rate increases.

Given the existing protections afforded by complaint procedures and the Commission's broad authority to investigate, there is not necessarily a "need to establish rates with the Commission" simply for the sake of doing so. Ratepayers are better off paying lower rates that have not been approved by the Commission than paying higher rates that were approved without scrutiny. Any harm to ratepayers that might result from a utility's failure to comply with its regulatory obligations is outweighed by the harm that

results from automatically increasing rates under the Standard Rate Rules. To actively "bring small water and sewer utilities into compliance" simply for the sake of doing so is an exercise in needless oversight, and a poor use of limited resources.

Prior to the Standard Rate Rules, the Commission routinely issued interim orders granting whatever rates were proposed on an interim basis. While not set forth in rules, this process of establishing "Initial Rates" pending one or two years of operating information was well established in Commission decisions. This approach was used for brand new utilities "with no actual test year period upon which to base its interim rate request," as well as existing utilities. *See e.g.* Interim Order 6485, Dkt. D2003.2.24 (Mar. 11, 2003) (granting interim rates for a utility with 72 lots constructed, a growing customer base, and "all meter hookups targeted for 2007."); Pre-Notice Interim Order 6570, Dkt. D2004.4.61 (May 25, 2004) (granting interim rates for a one-year period "designed to generate . . . potential revenues of $86,482" from 35 customers); Pre-Notice Interim Order 6573, Dkt. D2004.5.74 (June 1, 2004) (noting the system "has previously been used by the subdivision residents," and granting interim rates for a one-year period "designed to generate . . . potential revenues of $79,735" from 110 customers); Pre-Notice Interim Order 6651, Dkt. D2004.8.129 (June 2, 2005) (granting interim rates and ordering the utility to "file a general rate case within one year of this order.").

The Standard Rate Rules are also inherently unfair to utilities that have 'played by the rules,' since the Commission "may deny the adoption of the standard rate tariff by a small water or sewer utility *if the utility has been operating pursuant to [C]ommission-approved rates* and the [C]ommission determines it would be unjust and unreasonable to

approve adoption of the standard rate tariff for the utility." Mont. Admin. R. 38.5.2528(10) (emphasis added). The Standard Rate Rules thus place utilities that have ignored the Commission's jurisdiction at an advantage, and utilities that have complied at a disadvantage. This provision rewards non-compliant utilities with automatic rate increases, and subjects compliant utilities to normal oversight and scrutiny. Such disparate treatment reinforces the purpose of standard rates as an enticement to meet existing legal obligations. This is patently unfair, not necessary given the statutory framework, and not an appropriate way to ensure that rates remain just and reasonable.

C. Standard rates encourage sales and transfers not in the public interest.

In both theory and practice, standard rates create an incentive for sales and transfers of public utilities that would not otherwise occur, at a price that would not otherwise be paid. *See e.g.*, Dkts. D2016.4.35, D2016.9.70, D2017.1.5 (standard rate requests following recent sales and transfers). Standard rates create a perverse incentive for buyers to act like speculators, purchasing utilities not based on any consideration of book value, but rather on any price that can be supported by the income stream expected under standard rates. Where a higher level of revenue is guaranteed, acquisitions are likely to be driven by value created simply by administrative rule, and any guarantee of additional revenue will drive up purchase prices above what they would otherwise be.

The purchase price for a public utility should reflect an anticipated revenue stream based on the reasonable costs of building and operating the utility, not the value that can be extracted based on an administrative rule. Such transactions must be in the public interest and not harm ratepayers. Under the Standard Rate Rules, however, the difference

between a reasonable rate and the standard rate represents a potential windfall opportunity to speculative buyers – at customers' expense. To the extent an acquisition premium is embedded in a standard rate request, ratepayers are harmed. Replacing the standard rates with a simplified process will neutralize this incentive to flip small utilities at inflated prices.

III. The Standard Rate Rules conflict with substantive and procedural statutes.

Applying the standard rates as an entitlement for any utility risks harm to ratepayers and results in potentially unjust and arbitrary outcomes. The Commission must ensure that public utility rates are just and reasonable, that its ratemaking decisions conform to the procedural requirements of the Montana Administrative Procedures Act ("MAPA"), and that the MCC's right to participate is protected.

A. A single set of rates cannot be just and reasonable for every utility.

Through its strict application of the Standard Rate Rules as a *de facto* entitlement, the Commission has abdicated its role of setting just and reasonable rates based on the actual cost of service. *See* Order 7537a. The Commission's administrative rules cannot supersede statutory standards contained in MAPA and Title 69 of the Montana Code. Through its "full power of supervision, regulation, and control," the Commission must ensure that public utility rates are "reasonable and just," as "every unjust and unreasonable charge is prohibited and declared unlawful." §§ 69-3-102, 69-3-201, MCA. No utility is entitled to charge excessive rates or earn exorbitant profits.

Because each utility's costs, revenues and circumstances are different, a single set of rates cannot be just and reasonable for all utilities. The Commission recently found "that the standard rates are not an 'arbitrary benchmark'" because they "are the result of a thoughtful and intentional public rulemaking process." Order 7537a ¶ 24. However, no rulemaking process can account for the unique costs and revenues of every utility. Simply averaging rate information available from other state agencies represents a gross departure from traditional ratemaking principles, as it fails to consider factors such as the original cost, age, and condition of each utility's system, as well as the number of customers served, types of customers served, and average use per customer.

Rates should be designed to collect appropriate revenues considering the actual cost of service of individual utilities, not an arbitrary amount fixed at an arbitrary point in time, or an average based on circular logic. A specific rate based on the best information available about a particular utility is less of an "arbitrary benchmark" than a one-size-fits-all rate based on an average of different utilities. *Id.* ¶ 24. In fact, determining the cost of service and what level of revenue is appropriate for each utility is precisely the reason that the Commission and its staff of accountants, economists, and engineers exists.

Because they fail to ensure just and reasonable rates, the Standard Rate Rules should be replaced with a standard process available to utilities that meet certain minimum filing requirements.

B. Rates must be determined on a case-by-case basis.

MAPA and Title 69 require the Commission to perform ratemaking through a fact-finding process. Ratemaking and price fixing must be accomplished through contested

case proceedings. § 2-4-102(4), MCA. The Commission must provide an opportunity for a public hearing before it may approve "any change increasing the rate or rates for utility service in a schedule generally affecting consumers" of a public utility. § 69-3-303, MCA. The hearing and final decision "must conform to the requirements of a decision in a contested case under [MAPA]." *Id.*

MAPA requires the Commission to provide notice and a meaningful opportunity to participate.[3] § 2-4-601, MCA. When a party such as MCC opposes a request for standard rates, then the decision to approve standard rates must be supported by substantive evidence. "Findings of fact must be based exclusively on the evidence and on matters officially noticed." § 2-4-623, MCA (requiring "findings of fact and conclusions of law, separately stated."). On a case-by-case basis, "A party shall have the right to conduct cross-examinations required for a full and true disclosure of facts." § 2-4-612(5), MCA. Any ratemaking decision can be reversed by a district court if it is "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." § 2-4-704, MCA.

Although the Commission has set certain procedural deadlines in standard rate dockets at the request of MCC, it has not necessarily treated these proceedings as contested cases, even when MCC has opposed the request. The Commission's most

[3] Initially, for standard rate requests filed in 2014 and 2015, the Commission published notice in its weekly agenda, but did not issue stand-alone notices in individual dockets, publish notice in local newspapers, or mail stand-alone notices to MCC. *See* § 69-3-303, MCA (requiring the Commission to "publish a notice . . . in one or more newspapers" and provide an opportunity for hearing before approving any change increasing rates for utility service); § 69-2-211, MCA ("In addition to all other forms of notice of hearings conducted by the [C]ommission provided for in this title, notices of all hearings shall be served upon the [MCC]." Providing such minimal notice undermined MCC's ability to participate and represent the interests of the utility ratepayers. Fortunately, the Commission has rectified its practice of noticing standard rate requests in recent dockets.

recent decision to grant the full standard rate – despite MCC's lower rate recommendation – was not supported by any evidence germane to that case. Although it found that the standard rate was "just and reasonable for Fox Hill Estates utility customers," it did not cite any evidence in support of this finding. Order 7537a ¶ 26. Instead, the only justification cited in support of the decision was the existence of the Standard Rate Rules and the rulemaking process that occurred over three years ago:

> The Commission finds that the standard rates are not an 'arbitrary benchmark' and are the result of a thoughtful and intentional public rulemaking process.... The Commission maintains a preferred practice to reevaluate the standard rate tariff should be conducted in a rulemaking proceeding which would allow the Commission to receive public comment before making any adjustment to the standard rate.

Id. ¶ 24.

As a matter of law, the Commission has an obligation to exercise its discretion in setting rates on a case-by-case basis. *See* 4 Mont. Admin. Reg. 399 (Feb. 27, 2014) (recognizing when it adopted the Standard Rate Rules that "the burden of proof is always on the utility in a rate proceeding"). Because the Standard Rate Rules are incompatible with MAPA's requirements for ratemaking, they should be replaced by a simplified process premised on meeting certain minimum filing requirements.

C. MCC's role is meaningless if participation cannot change the outcome.

The right to participate in ratemaking proceedings is meaningless if it cannot affect the outcome. Although the Standard Rate Rules purport to protect the authority of the MCC "to participate and represent the interests of the utility ratepayers," the mechanical application of preordained rates has negated this authority. Mont. Admin. R.

38.5.2528(11); *see also* § 69-2-203, MCA (recognizing the MCC's "investigatory powers" and authority to conduct discovery "in administrative contested-case procedure."). If the information gathered through MCC's efforts cannot influence the outcome of standard rate dockets – or even trigger a discussion of the justness and reasonableness of standard rates for a particular utility – then the Standard Rate Rules have effectively nullified the MCC's role as a party to such proceedings.

In Final Order 7537a, the Commission granted the full standard rate without addressing the substance of MCC's rate proposal. The Commission acknowledged that MCC recommended flat rates of $25 to $30 per month, but proceeded to grant the full standard rate of $50 per month without addressing the analysis supporting MCC's recommendation. Order 7537a ¶ 19. If MCC's reasoned rate calculation need not even be discussed, then its right to propose alternative rates is meaningless. Preordained ratemaking outcomes are a violation of due process and contrary to applicable law, under which the right to represent the consuming public is not a pointless exercise.

PROPOSED RULEMAKING

MCC proposes to replace the standard rates with a simplified process based on minimum filing requirements. MCC's goal is to achieve the lowest reasonable rates for ratepayers. We understand very well and agree with the concerns that led the Commission to consider some form of streamlined rate review for small water utilities. The stated purposes of the existing Standard Rate Rules – to reduce regulatory costs, gather information, and encourage utilities to comply with their regulatory obligations –

can be better served, however, through a streamlined process available as an alternative to filing a full rate case. Through a simplified process, ratepayer rights to review and contest rate proposals can be protected, and utilities can achieve statutory compliance with fewer regulatory costs by providing a certain threshold of basic information.

The MCC proposes the following amendments to the Standard Rate Rules, with proposed deletions interlined and proposed additions underlined:

38.5.2527 SIMPLIFIED REGULATORY TREATMENT OPTIONS

(1) Two simplified regulatory treatment options are available to a small water or sewer utility that allow it to ~~establish or~~ propose changes to its rates by a method other than filing a rate application in accordance with the minimum rate case filing standards of ARM 38.5.101, et seq. The options are:

(a) ~~adoption of the commission-approved standard rate tariff to establish rates as~~ filing a rate application in accordance with the minimum filing requirements described in ARM 38.5.2528; or

(b) filing a rate application in accordance with the operating ratio methodology as described in ARM 38.5.2529.

(2) A small water or sewer utility is not required to ~~establish or change its rates using~~ elect either of the simplified regulatory treatment options. It may elect to file a rate application in accordance with ARM 38.5.101, et seq.

(3) If a utility's election of either of the two simplified regulatory options described in ARM 38.5.2527(1)(a) or (1)(b) would result in increased rates to customers, it may request, or the commission may require the utility to implement the rates in increments over a reasonable time period.

(4) An existing small water or sewer utility must be in compliance with 69-3-203, MCA (annual report requirement), in order to elect either of the simplified regulatory treatment options or to request authorization for a reserve account as provided in ARM 38.5.2531.

38.5.2528 ~~STANDARD RATE TARIFF~~ OPTIONAL MINIMUM FILING REQUIREMENTS FOR SMALL WATER AND SEWER UTILITIES

(1) A small water or sewer utility may ~~establish its rates by adopting the commission's standard rates for small water or sewer utilities or by adopting its own rates if they are lower than the applicable standard rates. The standard rate tariff forms to be submitted for commission approval by the utility are~~

~~available from the commission upon request or by obtaining them from the commission's web site at www.psc.mt.gov.~~

~~(2) The standard rates for small water and sewer utilities that choose to establish rates using this simplified regulatory option are:~~

~~(a) a flat charge of $50 per connection per month for a water utility that provides water to its customers on an unmetered basis;~~

~~(b) a monthly service charge of $40 per connection, plus a usage rate of $2.00 per 1,000 gallons for customer usage in excess of 10,000 gallons, for a small water utility that provides water to its customers on a metered basis;~~

~~(c) a flat charge of $30 per connection per month for a small sewer utility.~~

~~(3) Other terms and conditions of service are those provided in the commission's standard rate tariff forms and in ARM 38.5.2501, et seq.~~

~~(4) A person who seeks to challenge (2)(a), (b), or (c) may submit a complaint pursuant to ARM 38.2.2101, et seq.~~ request simplified regulatory treatment by filing a rate application that contains, at a minimum, the following information:

(a) The full legal name and title of the owner of the utility, its principal place of business and mailing address, the date that it began providing service to customers, and contact information (i.e., name, address, telephone number and email) of the individual(s) representing the utility before the commission;

(b) A detailed description of the utility system and its potential for expansion, including the number of wells, feet of main, and filtration system;

(c) The total number of existing water service connections and meters and existing sewer service connections and meters, and the billing frequency for each type of service;

(d) The total number of potential water service connections and meters and potential sewer service connections and meters;

(e) The number of existing and potential multi-residence dwellings (e.g., apartments or condos) served by a single service connection or meter, and the number of units in each multi-residence dwelling;

(f) The current rates being charged for each type of service, when the current rates went into effect, and whether the current rates have been approved by the commission;

(g) The rates proposed for each type of service;

(h) The date that utility assets were first placed in service, the date of any sales or transfers that have occurred since utility assets were first placed in service, and the full legal name and title of any previous owner(s);

(i) The original cost of utility plant in service, the amount of depreciation that has been taken on plant in service, and the depreciation schedule(s) used for the different utility asset accounts;

(j) Two years of income statements and balance sheets, separately for water and sewer utilities, indicating how these statements were prepared (i.e., cash basis or accrual basis) and who prepared them;
(k) A list of any revenue generated during the two years referenced in (j) from sources other than the rates charged to customers, including the source and amount of revenue;
(l) A list of each transaction that occurred with an affiliate or related party during the two years referenced in (j) involving more than $750, the amount paid, service(s) provided, and counterparty;
(m) The job title, job description, average hours worked per week, and average compensation of each utility employee;
(n) A copy of the most recent annual report filed with the commission; and
(o) An affidavit from an owner or manager of the utility attesting to the accuracy of the information provided.

(~~5~~2) A small water or sewer utility that intends to ~~adopt the standard rates~~ file a rate application that meets these minimum filing requirements must notify ~~the commission and~~ every customer in writing ~~of its intention at least 30 days in advance of the proposed effective date of the standard rate tariff adoption~~ upon filing its rate application.

(~~6~~3) The customer notification must be mailed to each customer's billing address. The notification must inform customers of the ~~standard~~ proposed rates, provide information that shows the typical bill impact of the ~~application of the standard~~ proposed rates to the utility's average level of customer usage, and provide contact information for the utility, the Montana Consumer Counsel, and the commission.

(~~7~~4) The ~~commission notification~~ rate application must include the ~~standard~~ proposed rates ~~in tariff form~~, a copy of the notification provided to customers, and verification that all customers were mailed a notice of the proposed rate change. A small water or sewer utility must, if applicable, include in its ~~commission notification~~ rate application a complete copy of the information regarding the utility's financial capacity that the utility provided to the Montana Department of Environmental Quality as part of that agency's public water system review process.

(~~8~~5) The commission will ~~act on the request to adopt the standard rate tariff~~ determine whether a rate application requesting simplified regulatory treatment satisfies the minimum filing requirements in (1)(a) through (o) no later than 45 days after it is received by the commission. If the commission determines, following an opportunity for interested persons to submit comments, that the rate application satisfies the minimum filing requirements in (1)(a) through (o), then it will allow discovery pursuant to ARM 38.2.3301 and set a deadline for additional comments and requests for further process. If no party files comments or requests further process, then the proposed rates may be implemented following approval by the commission. If the

commission determines that a rate application fails to satisfy the minimum filing requirements in (1)(a) through (o), then it will identify the specific minimum filing requirements that the utility failed to satisfy, and dismiss the rate application without prejudice.

~~(9) The standard rate tariff adopted by a small water or sewer utility expires three years after its effective date, unless the commission approves an extension. At least three months prior to the expiration of the standard rate tariff, the utility must notify the commission whether it will file a request for an extension of the standard rate tariff option, a rate application in accordance with the minimum rate case filing standards of ARM 38.5.101, et seq., or an application in accordance with the operating ratio methodology pursuant to ARM 38.5.2529.~~

(~~10~~6) The commission may deny ~~the adoption of the standard rate tariff by a small water or sewer utility~~ a rate application requesting simplified regulatory treatment if ~~the utility has been operating pursuant to commission-approved rates and~~ the commission determines, based on comments or requests for further process, that it would be unjust and unreasonable to ~~approve adoption of the standard rate tariff for~~ allow simplified regulatory treatment or approve the rates proposed by the utility. If the Commission denies a rate application requesting simplified rate treatment, then it may request that parties attend a prehearing conference pursuant to 38.2.2701 and confer regarding voluntary settlement pursuant to 38.2.3001.

(~~11~~7) Nothing contained in these rules shall be construed to limit the statutory and constitutional authority of the Montana Consumer Counsel to participate and represent the interests of the utility ratepayers in these proceedings.

PERSONS INTERESTED IN THE PROPOSED RULEMAKING

The Model Rules require a statement of "any other person known by petitioner to be interested in the rule sought to be adopted, amended, or repealed." *Id.* at 1.3.308(1)(a)(i). The following persons are known to MCC to have an interest in the Standard Rate Rules:

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Fox Hill Utilities, LLC
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John D. Billmayer
Flathead Utility Company
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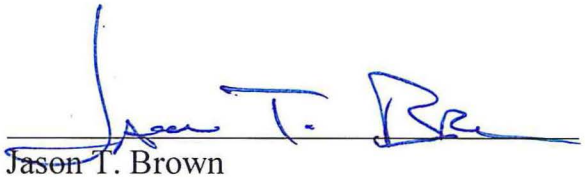
Respectfully submitted September 25, 2017.



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