

**FREEMAN MATHIS & GARY**  
A LIMITED LIABILITY PARTNERSHIP

100 Galleria Parkway  
Suite 1600  
Atlanta, Ga. 30339-5948

Tel: 770.818.0000  
Fax: 770.937.9960

[www.fmglaw.com](http://www.fmglaw.com)

**Robert B. Baker**  
Partner

Writer's Direct Access  
770.818.4240

[bbaker@fmglaw.com](mailto:bbaker@fmglaw.com)

November 14, 2011

Energy and Telecommunications Interim Committee  
P.O. Box 201706  
Helena, Montana 59620-1706

Re: Montana PSC Organizational Structure

Dear Committee Members:

Thank you for the opportunity to offer my opinion regarding the benefits of preserving an elected Public Service Commission for the State of Montana. My comments are based on 18 years of service on the Georgia Public Service Commission and three statewide elections. After serving three terms on the Georgia Public Service Commission I decided not to run for reelection in 2010.

Today the State of Georgia is one of the reddest of red states in the country, but twenty years ago the political landscape was completely different. In 1991 there wasn't one Republican elected or appointed official in any statewide office, and Newt Gingrich was the lone Republican in our congressional delegation. Both branches of the legislature were overwhelmingly controlled by Democrats.

In 1992 I ran as a Republican for a seat on the Public Service Commission and was honored to be elected by the voters after a run-off election. On November 24, 1992, I became the first Republican elected to a state constitutional office since Reconstruction. Would I have had a chance to be appointed to the PSC back in the early 1990s? Absolutely not. But I did have a chance to be elected and I was with 57% of the vote.

Election of commissioners will not guarantee the citizens of Montana a better Public Service Commission, but it will allow them to decide who they want to represent them on that important public body. The PSC candidates will have to be accountable for their record on the commission or tell the voters what they will or won't do as their elected public servants. Voters will be able to select their representative. Voters in the southeast elect public service commissioners in Louisiana, Mississippi, Alabama, Virginia and Georgia.

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If commissioners are appointed by your governor, I seriously doubt that any Montana voter is going to stop and think what their vote for governor will mean regarding who serves on the Montana PSC. Montana voters will select a gubernatorial candidate based on their positions regarding the budget and taxes, education, crime, environment and economic development, not who they might appoint to the Montana Public Service Commission.

Arguments are constantly made that appointment of commissioners will take politics out of the process. That's impossible. Changing the process of selection from election to appointment merely changes the size of the electoral base. While an elected commissioner is sensitive and responsive to the opinions of many constituents, an appointed commissioner will be sensitive and responsive to the opinion of the governor. The elected officials of this committee understand the importance of not ignoring your constituent base whether it is tens of thousands of voters or just one.

Commissioners in Montana run from districts which is different than Georgia where you have to run statewide, but reside in a certain geographical area. The utility issues I dealt with on the Georgia PSC were rarely limited to a confined geographical area of the state. A Georgia Power Company rate case affected ratepayers throughout the state. The deregulation of local telephone service and natural gas service had a statewide, not local impact.

While I appreciate Professor Jim Lopach's opinions in favor of an appointed Public Service Commission there are other options to consider to enhance the professionalism and expertise of the Montana PSC. My experience on the Georgia Commission made me appreciate our professional staff. I counted on them to provide an impartial and professional analysis of the cases before the Commission. In complex cases the Georgia PSC staff was divided into the Advocacy Staff which acted as an independent advocate in the case, and the Advisory Staff which only advised commissioners on the technical issues and arguments presented by the parties in the case. Commissioners were prohibited from any communication with members of the Advocacy Staff during the pendency of a case.

If you want to attract trained professionals to serve on the Montana Public Service Commission you need to pay them a competitive salary. In these difficult financial times I realize there is a great deal of reluctance to increase salaries, but unless an individual is independently wealthy someone who is a certified public accountant, attorney, engineer or financial analyst may be taking a significant reduction in pay to be a public servant. The quid pro quo for increasing the salary level for commissioners would be to prohibit them from having any outside employment and require that they devote all their time to the duties of their office. No part time jobs, no consulting and no honoraria.

When I left the Georgia PSC I was making approximately \$117,000 per annum with benefits (insurance coverage). Commissioners received pay increases along with all other state employees.

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Finally, the Committee might consider setting minimum qualifications for public service commission candidates. Residency, age and educational requirements could be considered. I would assume there is a residency requirement in Montana, but you could also add a minimum educational requirement that a commission candidate hold a bachelor's degree and be at least a certain age, such as, 25 or 30. The complex and economically important decisions the Montana Public Service Commission considers have a great impact on individual and business consumers in your state. A minimum level of education and life experience is essential to performing the duties of a commissioner.

I hope my thoughts regarding the benefits of an elected commission and some ideas on how to improve the operation and professionalism of the Montana Public Service Commission may be helpful to you. In eighteen years of public service and hearing hundreds of contested cases I saw what worked and what didn't. I appreciate the opportunity to share my opinions and wish you success in your efforts to improve the Montana Public Service Commission.

Very truly yours,

FREEMAN MATHIS & GARY, LLP

Robert B. Baker, Jr.

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