

# PUBLIC SERVICE COMMISSION STATE OF MONTANA

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## MEMORANDUM

TO: Energy & Telecommunications Interim Committee

FROM: Public Service Commission

SUBJECT: Public Service Commission's 2017 Legislative Proposals

### PURPOSE

This memo provides summaries of the Public Service Commission's (Commission's) legislative proposals for the 2017 session. The Commission's legislative proposals fall into two categories: those that the Commission supports and are ready for bill drafting, and those that have Commission-acknowledged conceptual merits but which are subject to discussions between NorthWestern Energy and Commission staff, and, therefore, are not ready for bill drafting. The Commission looks forward to the review of these proposals by the Energy & Telecommunications Interim Committee (ETIC).

### LEGISLATIVE PROPOSALS (ready for bill drafting)

The following legislative proposals are supported by the Commission and are ready for bill drafting if the ETIC decides to request a bill on behalf of the Commission.

#### **1. Increase maximum allowable fines**

Mont. Code Ann. (MCA) § 69-3-209, through reference to § 69-3-206, authorizes the Commission to impose a financial penalty of up to \$1,000 per day if a public utility violates provisions of Montana public utility law or refuses to obey any lawful requirement or order made by the Commission. The financial penalty amount appears to have been set in 1969 or earlier and has diminished in value and effect over time. A

more reasonable penalty for public utility violations would be up to \$10,000 per violation per day.

The Commission proposes that the legislature modify MCA § 69-3-209 to include penalties of up to \$10,000 per violation per day.

## **2. Repeal property tax tracker**

MCA § 69-3-308 authorizes public utilities to annually adjust rates to account for changes in Montana state and local taxes and fees, except state income tax. The statute requires that adjusted rates “automatically go into effect on January 1 following the date of change in taxes paid on an interim basis.” The Commission has 45 days from receipt of a utility’s amended rate schedule to determine whether the schedule includes any errors.

The property tax tracker represents a single-issue rate adjustment that violates the matching principle applied to determine rates in a comprehensive general rate case. Single-issue rate adjustments are generally limited to those expenses that are: 1) significant relative to a utility’s overall cost of service; 2) subject to significant volatility during a reasonable time period between general rate cases; and 3) not within the utility’s control. It is not clear that property taxes meet these criteria.

The property tax tracker distorts incentives to control, to the extent possible, property tax assessments. The existence of a property tax tracker may allow a utility to defer filing a general rate case by making adjustments for increased costs without making offsetting adjustments for costs that have decreased.

The Commission proposes that the legislature repeal MCA § 69-3-308(2).

## **3. Repeal community renewable energy project (CREP) requirements**

MCA §§ 69-3-2004(3) and (4) require public utilities to purchase the renewable energy credits and the output from CREPs as part of their compliance with the overall renewable energy standards. The total public utility CREP requirement, effective January 2015, is 75 MW.

The CREP requirements have been difficult for NorthWestern Energy, the state’s largest utility, to implement and have produced several Commission dockets that resulted in CREP waivers for NorthWestern. The CREP statutes have been the target of several amendatory legislative attempts, some of them enacted into law, since Montana’s renewable portfolio standard was established in the 2005 legislative session.

The Commission proposes that the legislature repeal CREP provisions within the renewable energy standards in Title 69, Chapter 3, Part 20.

#### **4. Completely deregulate passenger transportation service**

Title 69, Chapter 12 addresses motor carrier regulation. In 2015, the legislature allowed for greater competition in the area of passenger transportation service through new provisions for transportation network carriers (Class E). The legislature also loosened entry requirements with the creation of certificates of compliance for passenger carriers such as charter and taxi carriers (Class A and B). The Commission proposes that the legislature completely deregulate passenger transportation service by repealing statutory requirements for all passenger motor carriers such as charter and taxi carriers. This will remove the inconsistent regulatory scheme between Class E passenger carriers and all other passenger motor carriers.

#### ADDITIONAL LEGISLATIVE PROPOSALS (not ready for bill drafting)

The following legislative proposals have Commission-acknowledged conceptual merits, but are the subject of ongoing discussion between NorthWestern and Commission staff in an effort to determine whether a compromise is possible. The Commission welcomes the ETIC's discussion of the potential legislative proposals, but feels they are not yet ripe for bill drafting.

#### **5. Repeal electricity cost tracker**

MCA § 69-8-210(1) requires the Commission to establish an electricity cost recovery mechanism that allows NorthWestern Energy to fully recover prudently incurred electricity supply costs, as defined in § 69-8-103(8).

The Commission has historically relied on its general regulatory authority to implement cost tracking, where appropriate. Examples include MDU's fuel and purchased power cost tracking mechanism and NorthWestern's natural gas supply cost tracking mechanism. The Commission has sufficient authority to implement an appropriate cost tracking mechanism for NorthWestern's electricity supply activities without MCA § 69-8-210(1).

The electricity supply cost tracker in MCA § 69-8-210(1) was originally designed for a restructured "poles and wires" utility with a default supply obligation in a retail choice environment. That environment no longer exists and there is no reason for Montana law to include a NorthWestern-specific cost tracking mechanism. The statutory mechanism does not provide the Commission sufficient regulatory flexibility to adjust the mechanism in response to NorthWestern's changing circumstances, or design a

mechanism that both accomplishes the objectives of a tracker while also imposing reasonable cost control incentives.

## **6. Repeal preapproval of electricity supply resources**

MCA § 69-8-421 authorizes NorthWestern Energy to request that the Commission approve the acquisition of an electricity supply resource before it is procured. The law imposes specific time constraints on the Commission's evaluation and decision and requires the Commission to make certain findings before granting such a request. If the Commission approves the acquisition of new (constructed after January 1, 2007) natural gas-fueled generating plants it must require NorthWestern to implement cost-effective carbon offsets.

Like the electricity supply cost tracking mechanism, the preapproval process in MCA § 69-8-421 was designed for NorthWestern as a default supplier in a retail choice environment. At the time, long-term power purchase contracts were seen as a way to stabilize default supply prices in the face of volatile wholesale electricity prices, but entering such arrangements imposed risks on NorthWestern without a corresponding opportunity to profit.

Opposition to regulatory commission preapproval of utility resource acquisition decisions generally stems from the following concerns: (1) it insulates utility management from the consequences of bad decisions, which reduces incentives to analyze alternatives with the same rigor that it would without preapproval; (2) regulatory commissions generally have less information and fewer resources available and, therefore, cannot effectively offset the effects of number (1); (3) Because of (1) and (2), preapproval shifts risks from utility managers/shareholders to utility customers who are not in a position to manage such risks; (4) it blurs the line between the utility's management and its regulators—preapproval encroaches too far into management decision-making and insulates management from the proper incentives.

## **7. Repeal chapter 8 resource planning and procurement provisions**

MCA §§ 69-8-419 and 69-8-420 address resource planning and procurement. These statutory provisions were initially adopted to govern the unique resource planning and procurement duties of a default supply utility operating in a retail choice environment. MCA § 69-3-1201 through 1205 address integrated least cost planning for vertically integrated electric utilities.

NorthWestern is no longer a default supply utility, and there is no reason it should operate under a special resource planning and procurement statute. NorthWestern

should operate under the same integrated resource planning statute as MDU, Montana's other vertically integrated electric utility.