

# Montana Public Service Commission



August 16, 2018

The Honorable Mary McNally, Chair  
Energy and Telecommunications Interim Committee  
P.O. Box 201704  
Helena, MT 59620-1704

Brad Johnson - Chairman  
Travis Kavulla - Vice Chairman  
Roger Koopman - Commissioner  
Bob Lake - Commissioner  
Tony O'Donnell - Commissioner

Dear Madam Chair and Members of the Committee:

LCSMW2 and 3 will both accomplish the intended purpose. If we had our choice, we would choose LCSMW3.

Thank you so much for the opportunity to submit our comments regarding the revised version of LCSMW2 and the new LCSMW3. It's been a pleasure working with you on these bills, and we feel positive not only about the process, but about the result as well.

In 2017 we reported to you that somewhere between 200-500 small water and sewer companies were doing business as monopolies in Montana, but noncompliant with PSC regulatory standards.

Since then, we have modified our rules, and this committee has devoted many hours of effort to this subject. The end result, in our opinion, justifies the work. While we would in all likelihood support the current version of LCSMW2 in the 2019 Legislative Session, we believe the bill could be improved somewhat by striking out the following language: Section 1(e): "and, when applicable, in accordance with [sections 2 through 4]".

We believe that language is unnecessary. However, unnecessary is not the same as harmful, and we would probably still support the bill if that language remained the same.

We also support LCSMW3. We believe this is a clean, "single shot" method of achieving the change we believe is needed to implement our new small water rules.

If we had to choose between the two, we would choose LCSMW3. However, we support both, and would be happy with both coming to the session.

Thank you again for the time and effort you've put into these bills. The issue of small water and sewer company regulation is a serious one. It can slip by unnoticed right up until Montana consumers find themselves victimized by unjust rates from a company with which they have no choice but to do business. Then the issue becomes a major one for our constituents. Your proactive approach will give us the tools to prevent this problem. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Johnson", with a long horizontal flourish extending to the right.

Brad Johnson  
Chairman, Montana Public Service Commission

Date: August 19, 2018

To: Energy and Telecommunications Interim Committee

From: Leroy Beeby, Principle, Beeby Consulting LLC

RE: LCSMW02

Dear Committee:

The recent actions by the Montana Public Service Commission illustrate the critical need for the standard rate amounts for small water and wastewater utilities to be taken out of the Commission's purview.

ARM 38.5.2528(10) states "The commission may deny the adoption of the standard rate tariff...and the Commission determines it would be unjust and unreasonable to approve the adoption of the standard rate tariff for the utility." On July 24, 2018, the Commission, without any analysis to support its decision, is requiring five of the companies mentioned in my last comments to file its operating ratio method to establish rates by September 24, 2018. The Commission's decision contained no analysis, no reasoning and did not even mention that the present rates were "unjust and unreasonable." That action is not consistent with ARM 38.5.2528(10), the commissions own rules that were in effect at the time these companies filed. The commission subsequently has changed its administrative rules to cover that obvious transgression of its own rules. As you recall, the Commission changed the small water rules to be interim or temporary rates. That rule change negates the requirement of the Commission to do even a cursory review of the standard rates as now they are viewed as temporary.

The Commission unilaterally determined that in order to request rates under the standard rates, the companies must use Commission established ancillary charges. Ancillary charges are charges to customers that are not required to provide service. Examples of ancillary charges include late charges, irrigation charges and disconnect/reconnect fees. Their position is that if a company wants the standard utility tariffs, the companies must accept the standard ancillary charges. There is nothing in the administrative rules that dictate that. Again, this is a very arbitrary decision, though it its defense, the commission at least sought public input and stated that if a company wants anything different, it can file a general rate case.

Further, the Commission staff, without input or direction from the Commission, arbitrarily changed the operating ratio (O/R) from one calculation where depreciation and interest expense were allowed to be recovered to a different method that disallows those recoveries. This was done apparently without Commission approval and without any public discussion or input. The new O/R at this time of these comments is still a non-functioning model, and is unable to be printed. Sadly, the O/R creates a perverse disincentive to control costs. In addition, there are a number of legal questions that

need to be answered in order to proceed with the O/R. Those questions have yet to be answered.

The Montana Consumer Counsel (MCC) contrary to how it would like you to believe, is not interested in just and reasonable rates. It is interested in only the cheapest rates possible to the customers. In fact, its attorney believes that a company should only be reimbursed for its expenses. The MCC is doing zero compliance efforts to bring companies into regulation, even though its charge is to represent the consuming public before the commission. (69.2.204 M.C.A.) It holds the position that if there are no complaints, then it need not seek out non-registered regulated companies. The MCC's decision, to represent some members of the consuming public and not others, is solely based on if a company tries to become compliant with the PSC requirements. The MCC tactfully does not pursue non-registered companies and chooses rather to ignore its duty to represent the interest of the consuming public.

Unfortunately, these small water companies simply cannot afford the legal fees necessary to argue any of this in court so the both the Montana Public Service Commission and the Montana Consumer Counsel continue to act with impunity with zero regard to impacts on companies trying to become compliant. I'm not trying to disparage the Commission nor the MCC, I'm just trying to shed some light on what these small companies are up against. The companies are not trying to make a windfall, but simply trying to survive and provide good service. LCSMW2 goes a long way in helping to provide reasonable rates, rate stability, and also allows a company to actually run a utility as a business. It's not perfect as no piece of legislation is, but it is far and away better than what is in place now. I fully support LCSMW2.

Thank you for your time.

A handwritten signature in black ink, appearing to be the initials 'dy' or a similar stylized mark.

**Unofficial Draft Copy**

As of: ~~August 21, 2018 (12:49PM)~~ ~~July 24, 2018 (8:02PM)~~

LCSMW2

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

**REVISED DRAFT FOR DISCUSSION PURPOSES ONLY (JULY VERSION)**

A Bill for an Act entitled: "An Act revising the regulation of small sewer or water utilities by the public service commission; providing for standard rate tariffs for small sewer or water utilities by the commission; granting the commission rulemaking authority; providing a transition; amending section 69-3-101, MCA; and providing effective dates."

Be it enacted by the Legislature of the State of Montana:

**Section 1.** Section 69-3-101 , MCA, is amended to read:

**"69-3-101. Meaning of term "public utility".** (1) The term "public utility", within the meaning of this chapter, includes every corporation, both public and private, company, individual, association of individuals, and their lessees, trustees, or receivers appointed by any court that own, operate, or control any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal:

- (a) heat;
- (b) street-railway service;
- (c) light;

**Unofficial Draft Copy**

As of: ~~August 21, 2018 (12:49PM)~~ ~~July 24, 2018 (8:02PM)~~

LCSMW2

(d) power in any form or by any agency;

(e) except as provided in chapter 7 and, when applicable, in accordance with [sections 2 through 4], water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities or towns or elsewhere;

(f) regulated telecommunications service.

(2) The term does not include:

(a) privately owned and operated water, sewer, or water and sewer systems that do not serve the public;

(b) county or consolidated city and county water or sewer districts as defined in Title 7, chapter 13, parts 22 and 23;

(c) except as provided in chapter 7, municipal sewer or water systems and municipal water supply systems established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44; or

(d) a person exempted from regulation as a public utility as provided in 69-3-111."

{Internal References to 69-3-101:

15-72-104x	37-68-102x	69-3-111x	69-3-111x
69-3-113x	69-3-202x	69-3-1203x	69-4-520x
69-4-520x	69-4-520x	76-3-103x	76-3-622x}

NEW SECTION. **Section 2. Definitions.** As used in [sections 2 through 4], unless the context requires otherwise, the following definitions apply:

(1) "Customer" means an individual or entity supplied with water or sewer service by means of a water or sewer line that

**Unofficial Draft Copy**

As of: ~~August 21, 2018 (12:49PM)~~ ~~July 24, 2018 (8:02PM)~~

LCSMW2

connects a single building or living unit to a small sewer or water utility's water or sewer system. For purposes of [sections 2 through 4, each single building or living unit connected to the utility's system is one customer.

(2) "Small sewer or water utility" means a ~~privately~~ privately-owned sewer or water utility that serves the public and has 500 or fewer customers.

(3) "Standard rate" means a rate determined by the commission using the most recent and publicly available rate study of other similar small water and sewer systems in Montana.

**Commented [LB1]:** Should there be something about the PSC must publicly maintain their analysis in determining the rate and shall not be less than the average of the rate study? The Commission could theoretically use the mode or median and call that the standard rate or some other form of derivation of the rate.

NEW SECTION. **Section 3. Small sewer or water utility regulation -- standard rate.** (1) (a) Except as provided in subsections (3) and (4)(b), the commission shall grant a small sewer or water utility the standard rate.

(b) The standard rate is:

(i) just and reasonable to a utility's customers; and

(ii) in the public interest.

(c) If the standard rate will result in increased rates to customers, the small sewer or water utility may request, or the commission may require, the implementation of rates in increments over a reasonable time period not to exceed 3 years.

(2) (a) A small sewer or water utility shall file annual reports in accordance with 69-3-203.

(b) The commission may fine a utility up to \$50 per month for each full month the utility fails to file an annual report.

**Unofficial Draft Copy**

As of: ~~August 21, 2018 (12:49PM)~~ ~~July 24, 2018 (8:02PM)~~

LCSMW2

(3) (a) A small sewer or water utility may file a rate application with the commission, and the commission shall proceed with a rate case in accordance with part 3 of this chapter.

(b) If 25% or more of the customers of a small sewer or water utility that is eligible for the standard rate request that the utility file a rate application with the commission, ~~the utility shall file a rate application~~ and the commission shall proceed with a rate case in accordance with part 3 of this chapter.

**Commented [LB2]:** Should there be something that states a company cannot adjust its rates more than biannually.

(4) (a) [Sections 2 through 4] do not limit the commission's regulatory authority over small sewer or water utilities when service complaints or similar concerns are received.

(b) The commission is not required to grant the standard rate if:

(i) a company habitually fails to file an annual report in accordance with subsection (2);

(ii) the commission receives complaints or concerns pertaining to the utility's service, rates, or both, and the commission determines those complaints and concerns warrant additional review.

(c) If the commission does not issue the standard rate, those alternate rates remain in effect until the commission determines the complaints or concerns are resolved. When the commission determines the issues are resolved, the utility is

**Unofficial Draft Copy**

As of: ~~August 21, 2018 (12:49PM)~~ ~~July 24, 2018 (8:02PM)~~

LCSMW2

eligible for the standard rate.

NEW SECTION. **Section 4. Small sewer or water utility -- commission rulemaking authority.** The commission may adopt rules necessary to implement [sections 2 and 3]. The rules may include:

- (1) small sewer or water utility notice requirements to customers of small sewer or water utilities requesting the standard rate;
- (2) timelines for acting on requests for the standard rate;
- (3) procedures and timelines for extending the standard rate when requested by a small sewer or water utility;
- (4) establishment of standard rate tariffs;
- (5) petition requirements necessary for compliance with [section 3(3)(b)];
- (6) use of an alternative rate in accordance with [section 3(4)(b)]; and
- (7) other requirements necessary to implement and enforce the requirements of [sections 2 through 5].

NEW SECTION. **Section 5. Grandfather clause -- transition.** A small sewer or water utility operating under tariffs approved by the commission on or before July 1, 2019, may continue to operate under those approved tariffs until their expiration.



**Unofficial Draft Copy**

As of: ~~August 21, 2018 (12:49PM)~~ ~~July 24, 2018 (8:02PM)~~

LCSMW2

NEW SECTION. **Section 6. {standard} Codification**

**instruction.** [Sections 2 through 5] are intended to be codified as an integral part of Title 69, chapter 3, and the provisions of Title 69, chapter 3, apply to [sections 2 through 5].

NEW SECTION. **Section 7. {standard} Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 8. {standard} Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 9. {standard} Effective dates.** (1) Except as provided in subsection (2), [this act] is effective July 1, 2019.

(2) [Section 4] and this section are effective on passage and approval.

- END -

{Name : Sonja E. Nowakowski  
Title : Research Director  
Agency : LSD ORPA  
Phone : 406-444-3078  
E-Mail : snowakowski@mt.gov}



**Holmberg Village**  
WATER COMPANY

Sonja Nowakowski  
Research Analyst, Legislative Environmental Policy Office,  
Montana State Legislature  
Via email: [legresponse@mt.gov](mailto:legresponse@mt.gov)  
PO Box 20170  
Helena, MT 59620-1706

August 22, 2018

RE: Small water

Dear Sonja:

Thank you to you and the members of the Energy and Telecommunications Interim Committee for the opportunity to comment on these legislative proposals.

I favor LCSMW2.

I'll begin by saying that we're talking about irrigation water. This water is not necessary for showering or flushing. Your impulse toward a standardized rate is to be commended. A standard rate would lend predictability to the process and reduces business risk. It isn't only utility owners who want predictability; it is also consumers of water. If the standard rate becomes a floor, then it becomes a floor. It really isn't the end of the world. Having a minimum floor is a good thing. Consumers would still get ten thousand gallons of water for .004 cents per gallon. That's pretty cheap, given that Americans water lawns with drinking water!

Anna Miller with DNRC testified at the last ETIC hearing in July and made the point that small water and sewer utilities had different expenses. Drilling deeper or digging in granite is harder and takes more money. I would say that if a company needs more than the minimum of the standard rate to break even, then it could file a full rate case. That neatly resolves that concern.

I have a concern about the definition of 'Standard Rate' in Section 2. If there is no "recent" (2 years old?) water and wastewater study data, then perhaps the PSC could use data from the latest survey or study of Montana water and wastewater utilities and use the CPI or some other

guaranteed annual percentage increase or decrease to ensure the rate stays with inflation or deflation.

I would also point out the regressive nature of the rate. The regressive nature of the rates does not promote water conservation. Holmberg consumers were exceeding their water right. Many consumers in other systems use so much water the pumps pull in air rather than water (because the residents are irrigating), making the pumps overheat and creating the possibility of cavitating the pump. Cavitation forms air bubbles in the water, so that a pump with thousands of exploding air bubbles is just getting blasted away. Using more water gets cheaper if a consumer uses more, so that all subsequent thousands of gallons of water are half the cost. So, using another 10,000 gallons of water is only \$20.00. An increasing rate that tracks usage is also a tool regulators can use to curb overuse. While the first block of water may be \$X, succeeding blocks should be higher, so that another, additional block of water should cost more (\$XX).

Another problem is the operating ratio spreadsheet. That spreadsheet was arrived at in a closed process, and try as I might, I can't break down anything (including formulas) in that spreadsheet. A huge expense generally labelled "Depreciation" is not even set forth in the spreadsheet. I'm guessing most of the non-accounting majors (most of the folk that own and operate small water and sewer utilities) won't understand how it works or how to make it work, either. That doesn't mean they can't deliver safe water, but it does mean they won't understand the operating ratio spreadsheet.

If you have any questions, please call me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alan Kagle". The signature is fluid and cursive, written over the printed name below.

Holmberg Villlage Water Company, L.L.C.