

PSC 2011 Legislative Proposal Summaries

July 22, 2010

1) **Revise § 69-3-603(2) to limit the ability of potential qualifying facilities (QFs) to seek rates other than those provided for in tariffs and to adjust the 120-day decision period.**

Under current state law, when a QF and a utility are unable to mutually agree on a contract for the utility's purchase of electricity produced by the QF, either party may request the PSC to determine the contract rates and conditions. The PSC has implemented this law by setting standard tariff rates in contested rate proceedings (consistent with federal regulations). The PSC proposes to amend this statutory provision to clarify that the utility and QFs to whom the tariffed standard QF rates apply must accept those rates rather than seek different rates from the PSC on an individual-case basis, with the exception that petitions will be allowed if a QF is able to demonstrate in a complaint filed pursuant to § 69-3-321 that the current QF standard rates are unreasonable. In addition, the PSC proposes to increase the time period for rendering a decision on a petition from 120 days to 180 days. The PSC's experience with these contested cases is that procedural delays and disputes make it extremely difficult to address and resolve the issues in just four months.

2) **Revise § 69-3-604(4) to conform to federal law.** Under current state law, the PSC may set QF rates by using: (a) the avoided cost over the term of the contract; (b) the cost of production for the QF plus a just and reasonable rate of return; or (c) any other method that promotes the development of QFs. Federal regulations, however, require that QF rates be set based on the purchasing utility's avoided costs. The PSC proposes to amend § 69-3-604(4) to eliminate its subsections (b) and (c), which allow the PSC to set QF rates using methods that do not conform to federal law.

3) **Revise § 69-3-2003(11) to clarify the definition of "local owner," particularly "entities composed of Montana residents" and "Montana small businesses."** The PSC has found that these two categories of local owners are so undefined and broad that it is possible for entities and businesses to meet the definition of "local owner" with *de minimis* representation of Montanans in the entity or business. The PSC proposes amending these two categories in the definition of "local owner" to establish minimum levels of Montanans' participation in these entities or businesses and criteria to qualify as a small business in order to meet the definition.

4) **Revise § 69-8-201 to address the issues in *Electric City Power v. MPSC*.** Section 69-8-201(2) created two mutually exclusive options for retail customers. The PSC has learned that some businesses have meters that are supplied by a public utility and meters that are supplied by an electricity supplier. The PSC interpreted customer to be a point of delivery, but a District Court rejected that interpretation. The PSC proposes clarifying the statute to limit purchases from an electricity supplier to those meters (and their replacements) that were being supplied by an electricity supplier on October 1, 2007.

5) **Repeal § 7-13-4208, the procedure to challenge municipal sewer system rates.** The legislature eliminated PSC jurisdiction over municipal water and sewer utilities years ago, but somehow this provision was left in the statute. Under this provision, if at least 25 electors of a municipality complain to the PSC that their town's sewer charges are unreasonable or

discriminatory, the PSC must conduct a contested case proceeding to decide the issue and may overrule the town's rate decision. The PSC believes it was an oversight that this provision remains in the statute and seeks repeal of it.

6) **Amend § 69-12-203, relating to “supervisor of motor carriers.”**

7) **Amend § 35-19-107(2) of the membership section of the *Electricity Buying Cooperative Act* to eliminate the option of small customers being assigned to a buying cooperative by the PSC pursuant to PSC rule.** This provision was enacted when Montana's original electricity restructuring statute was in place and it was envisioned that small customers would choose their electricity suppliers. The provision has been obsolete since House Bill 25 was passed by the 2007 Legislature and it should be removed from statute.