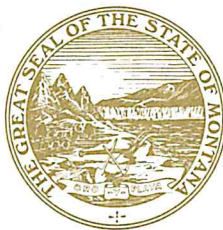


Montana Public Service Commission



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

March 13, 2018

The Honorable Representative Tom Jacobsen
Chairman Revenue and Transportation Interim Committee
521 Riverview Dr. E
Great Falls, MT 59404

RE: Taxes Paid by Public Utility Customers

Dear Chairman Jacobsen,

The members of the Montana Public Service Commission ("PSC" or "Commission") write today to request that the Revenue and Transportation Committee undertake comprehensive reform of the process for centrally-assessing property taxes to public utilities in Montana. Draft legislation from this committee is urgently needed to provide tax relief to regulated customers, while bringing a measure of stability and predictability to an otherwise volatile and seemingly subjective assessment process.

It's often repeated that public utilities such as NorthWestern Energy are among the largest taxpayers in Montana. While technically true, this statement bears further explanation. In reality, public utilities are not the largest "taxpayers" in the state, they are one of the largest "tax collectors." Ultimately, it is consumers who pay the taxes levied on utility property by the Department of Revenue.

Those taxes have been rising rapidly. Between 2012 and 2016, taxes on NorthWestern's electric utility increased 63 percent.¹ Today, state and local property taxes equal nearly 30 percent of NorthWestern's operating expenses and they make up a growing portion of every customer's monthly bill. For example, property taxes now account for 14 percent of the average bill for electric customers in Montana and 16 percent of the average bill for customers using natural gas service. Comparatively, in NorthWestern's South Dakota territory, property taxes represent 2 percent and 1 percent of the average bill for electric and gas service, respectively.

¹ Annual Report of NorthWestern Energy Electric Utility 2012 at 16:3(2012), available online at: http://www.psc.mt.gov/Docs/AnnualReports/2012_NWE_Elec.pdf (accessed March 3, 2018).
Annual Report of NorthWestern Energy Electric Utility 2016 at 16:3(2016), available online at: <http://psc.mt.gov/docs/AnnualReports/2016AnnualReports/NWE%20-%20Electric.pdf> (accessed March 3, 2018).

The high tax burden on regulated utility customers in the state is driven by two primary factors:

- The volatile and seemingly subjective nature of the Montana Department of Revenue (“DOR”) assessment process; and
- The highly punitive 12 percent tax rate on transmission and distribution facilities.

While all businesses in a competitive economy pass on some portion of their tax expense to customers, Montana’s unique “Tax Tracker,” codified at § 69-3-308 Mont. Code Ann., allows utilities to automatically pass-through tax increases each year directly to ratepayers in a rapid proceeding with little input from the PSC.² This unique law reduces the incentive for utilities to actively work to lower their property tax bill. The incentive is further diminished by the political repercussions that a company faces as the result of delaying funds to schools and local governments through a formal tax protest.

The property taxes that utility customers pay through their bills each month are, in fact, a sales tax on energy. It is also one of the most regressive taxes imaginable. The households who use the most energy to heat their homes during Montana’s bitter cold winters are often the ones who can least afford a high utility bill.

NorthWestern Energy has worked with DOR in recent years to negotiate down its tax bill for the benefit of consumers. For example, in 2016 the utility prevailed in reducing its tax bill to \$136.2 million, down from the initial \$163.7 calculated by DOR. Notably, over the course of the negotiation process, DOR lowered the initial assessment of NorthWestern’s property from \$2.987 billion to \$2.425 billion, a staggering \$562 million reduction.³ Given such a dramatic swing in one year, it’s reasonable to wonder what these numbers are based on in the first place. Unfortunately, DOR declined to provide NorthWestern with the underlying work papers it used to arrive at a market value for the negotiated settlement.

While the DOR assessment process is deserving of the Committee’s attention, the legislature should also provide relief to consumers by revisiting the highly punitive 12-percent tax rate on transmission and distribution related property. To offer one example that illustrates the disproportionate share of Montana property taxes that are paid by regulated utility customers, the Commission learned during its annual proceeding to adjust rates for Montana-Dakota Utilities that “MDU pays \$84,000 per million dollars of investment in pipe, while Walmart pays

² The “tax tracker” statute limits the PSC’s review to 45 days, compared to the 270 days afforded to the Commission for typical rate reviews. Unusually, the utility’s rate proposals *automatically* become effective under this law, even without the Commission’s approval.

³ Prefiled Direct Testimony Mayne M. Hitt at 5:18, Dkt. D2016.12.97 (Dec. 20, 2016), available online at: <http://www.psc.mt.gov/Docs/ElectronicDocuments/pdfFiles/D2016-12-97IN16122047088AP.PDF> (accessed March 3, 2018).

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\$14,000 per million dollars of investment.”⁴ It’s worth noting that it’s not just the residential and business customers of NorthWestern and MDU who pay these taxes. Property tax expense is also passed through to large customers who take transmission service from regulated utilities, including most rural electric cooperatives throughout the state.

We appreciate the Committee turning its attention to utility property taxes in Montana amidst all of the other issues on your agenda. Though this issue may not receive a lot of attention, the taxes imposed on utility customers by the State of Montana are a significant burden for many working families. Please let us know if there is any way that the PSC can aide your efforts as you study this important topic.

Respectfully,



⁴ *In re MDU's Application for an Automatic Tracking Adjustment for Montana and Local Taxes and Fees*, Dkt. D2016.12.96, Evidentiary Hearing at [102:19] (Mont. Pub. Serv. Comm'n, Jan. 6, 2017), available online at: <http://www.psc.mt.gov/Docs/WorkSessions/WorkSessionVideo/?year=2018> (accessed March, 8, 2018).