

PUBLIC SERVICE COMMISSION STATE OF MONTANA

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October 3, 2013

Senator Cliff Larsen
Chair, Energy & Telecommunications Interim Committee
State Capitol
PO Box 201704
Helena MT 59620-1704

Dear Chairman Larsen:

The Energy & Telecommunications Committee (ETIC), at its September 13 meeting in Harlowton, took two actions in regard to the Public Service Commission's (PSC) proposed rule to amend ARM 38.5.1902 pertaining to qualifying facilities (QFs). (The proposed rule would reduce the size threshold at which a QF is eligible for a long-term contract with a utility under a standard rate tariff from 10 MW to 100 KW.) First, pursuant to § 2-4-305(9), MCA, the ETIC objected to the rulemaking notice because the proposed amendments did not consider a 3 MW cap. ETIC's counsel notified the PSC by letter dated September 17 of the objection. Second, the ETIC determined that the PSC's Economic Impact Statement (EIS) on the proposed rule was insufficient because it did not consider a 3 MW cap. Although § 2-4-405(4), MCA, states that, in the event of an insufficiency determination, "the committee may return it to the agency .. and request that corrections or amendments be made," the ETIC has not done so.

The PSC discussed the ETIC's objection and the proposed rule at a work session on October 1 and decided that the QF size threshold in the final rule to be adopted next month will be 3 MW, not 100 KW as initially proposed. In order to adopt the rule within the statutory six-month timeframe, which expires on November 23, the PSC's rule adoption notice must be published in the November 14th Montana Administrative Register. The Secretary of State's deadline for agencies to submit notices for November 14 publication is November 4. The ETIC's next meeting is currently scheduled for November 8.

In light of the PSC's decision to adopt a size threshold of 3 MW in the final rule, the PSC requests that the ETIC, at its earliest opportunity, either: (1) reconsider its determination that the EIS was insufficient and find it sufficient; or, (2) provide direction to the PSC as to whether it is necessary to devote PSC staff time and resources to amending the EIS. In either case, the PSC must publish a notice and summary of the EIS in the Montana Administrative Register. In the latter circumstance, the EIS notice and summary likely would be published separate from, and later than, the rule adoption notice because it does not appear to be possible to submit a corrected EIS to the ETIC and for the ETIC to determine its sufficiency before the November 4 deadline.

PSC letter to ETIC

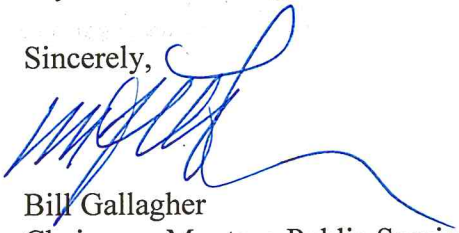
October 3, 2013

Page 2

for rule notices to be filed with the Secretary of State for publication in the November 14 register.

I look forward to discussing issues related to the QF rulemaking with the members of the ETIC at your next meeting.

Sincerely,



Bill Gallagher
Chairman, Montana Public Service Commission

cc: Sonja Nowakowski