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**DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA**

IN THE MATTER of the Public Service Commission's Proposed Rule Changes to the Gas and Electric Termination Rules	REGULATORY DIVISION
	DOCKET NO. N2016.4.32

Montana Legal Services Association (MLSA) appreciates the opportunity to comment on the PSC's proposed rule changes to the gas and electric termination rules in advance of the roundtable discussion on May 5, 2016. MLSA is a non-profit law firm that provides free legal assistance to low-income Montana residents statewide and has been providing civil legal services to Montana's most vulnerable citizens for fifty years.

MLSA has serious concerns about the proposed rule changes and their effect on Montanans living in poverty. If passed, the proposed rule changes would make it much easier for utilities to terminate the utility service of low-income Montanans, even when those customers have disabilities or have fixed incomes, and would reduce by two months the time period in the winter during which terminations are restricted. MLSA is not aware that there have been significant issues with the rules as they currently exist, and questions why any change to the

termination rules is necessary.

The 2010 census estimates that there are currently 1,015,165 Montana residents. According to the estimates used by the United States Census Bureau, 15.4% of Montanans live below the poverty level, trying to make ends meet with \$23,500 per year for a family of four. Rural poverty rates across the state can be much higher: 26.7% in Big Horn County and 33.7% in Glacier County, and ranging from 22.9% to 46.1% on Montana's Indian reservations.¹

MLSA's specific comments on the proposed rule changes are as follows:

1. ARM 38.5.1401 (2): DEFINITION: "Customer"

The proposed change to this definition expands application of the rule to services provided by a public utility to any business or commercial user. To the extent the proposed rule changes are motivated by the potential increased cost to a public utility as a result of expanding this definition, MLSA submits that protection of residential users as provided by the current rule should be preserved instead of broadening this definition.

2. ARM 38.5.1401 (7): DEFINITION: "Person unable to pay or to pay only in installments"

The proposed change to this rule would define "person unable to pay or to pay only in installments" in a very limited way – as a person who receives public assistance. The existing rule also includes in that definition a person who has an income at or below federal poverty guidelines. MLSA is concerned about this proposed change to the definition because many low-income Montanans who have incomes below the federal poverty guidelines do not

¹ See Montana State University, Extension Economics, *Montana's Poverty Report Card, Montana Poverty Study 2011 County & Reservation Data*, information regarding all Montana reservations available at <http://www.montana.edu/extensionecon/countydata/allreservations.pdf>.

receive any public assistance. For instance, a woman who has applied for SSI because of a disability may not have any income at all for several months while her SSI application is being processed, and may not receive any other kind of public assistance. Clearly, this person's income is below federal poverty guidelines and she should be considered as "someone who is unable to pay or to pay only in installments," but the proposed rule change would exclude her from coverage. The language "and/or has an income at or below federal poverty guidelines" should not be eliminated from the current rule. If this revision is permitted the definition of such a person rests solely on the definition of a "recipient of public assistance". The danger here is that "public assistance" is not defined and from MLSA's perspective this can encompass a myriad of individual benefits and/or interpretations. The current rule language at least gives an alternative that is based on a federal guideline that is readily ascertainable.

3. ARM 38.5.1405: "NOTICE PRIOR TO AND AT THE TIME OF TERMINATION"

The proposed rule change would allow a utility to terminate service upon verbal notice to the customer, and removes the requirement of written notice. 38.5.1405(3), ARM. This change is concerning because spoken words are much easier to misinterpret than words on a page. Plus, in this era of cell phones, a utility representative when calling about the termination would likely reach the customer's voicemail. This rule change would approve a termination of utility service based upon a voicemail message left on a customer's cell phone. What if the customer never checks her voicemail and doesn't get the message? She would have no advance notice of the termination of her utilities, and if she is a person with disabilities who relies on electricity for health aids (such as a CPAP machine), her life could be endangered by a surprise shut-off. Allowing verbal notice as the only means of notice

of termination would grant too much unilateral authority to the utility. It would severely erode the safeguards to customers that are present in a “written notice” and would lead to a one sided conversation on this topic (if the utility actually reaches the customer) when the actions of a utility are questioned.

4. ARM 38.5.1408: “CUSTOMER’S RIGHT TO DISPUTE A TERMINATION NOTICE”

The proposed rule eliminates the requirement that the utility issue a decision in writing after considering a customer’s dispute of the termination of service. The elimination of the written requirement should not be permitted. Every public utility is required to furnish reasonably adequate service and facilities. Mont. Code Ann. § 69-3-201. Such elimination severely erodes the safeguards of the written determination when a utility renders a decision against a dispute, especially with respect to tenants who have their utilities paid by a landlord in default of an obligation to pay a public utility. This written requirement should remain in place as an important procedural step in the dispute process. For example, a tenant qualifies as a purchaser within the definition of Customer, even if the landlord pays for utility service, by virtue of paying rent, and a tenant may choose to make payment to the public utility to avoid interruption in service. However, the lack of written notice would compromise the tenant’s right to reasonably adequate service under such circumstances. Uninterrupted utility service has been recognized as protected due process right. *Denver Welfare Rights Org. v. Public Utilities Comm.*, 190 Colo. 329, 334-37, 547 P.2d 239 (Colo. 1976). A person’s right to due process of law, guaranteed by the United States and Montana Constitutions, requires advance notice of an adverse action, the opportunity to be heard, and the right to be informed of the basis for the adverse decision. *Id.* at 338-40. The fundamental requirements for due process are “notice and opportunity for hearing appropriate to the nature of the case.” *In re*

Klos, 284 Mont. 197, 205, 943 P.2d 1277, 1281 (1997).

5. ARM 38.5.1410: CRITERIA FOR TERMINATION OF SERVICE BASED ON TIME OF YEAR OR WEATHER . . . “

The proposed rule changes shortens by three months the timeframe during which a utility’s authority to terminate service is restricted from November-April to December-February. MLSA believes that such a change is unwarranted. During the months identified in the ARM, whether it’s 5 months or 3 months, the utility still has the authority to terminate within the time period identified in the ARM, so the utility’s rights to collect arrears are still in full force. The ARM only puts restrictions on such terminations during the specified months, and the utility must strictly follow the requirements of the ARM before terminating. The existing ARM provides necessary protections for customers, and only minimal burdens on the utilities. The time period of this ARM’s applicability should not be reduced.

Subsection (1)(c) of the proposed changes refers to the person who is “unable to pay” as defined in ARM 38.5.1401(7). So, if the proposed rule changes are enacted, a customer must be receiving public assistance to qualify for the termination abatement in this ARM.

Subsection (1)(c) adds additional qualifiers to this ARM for persons who are at least 62 years old, or who have a disability. But, the hypothetical customer mentioned above who has 0 income and is waiting for SSI and doesn’t receive any public assistance would not benefit from this ARM unless she was at least 62 years old, or unless she had proof of her disability.

MLSA opposes the change reflected in subsection (3), which states that no termination of residential service can take place on any day, of any month, where the temperature will be below 20 degrees, or where the following day is forecast to be below 20 degrees. Previously, termination could not occur on any day when the temperature dropped below freezing.

Given the potential for harm to health and property damage on any day when the temperature drops below freezing, MLSA submits the threshold level should not change.

6. ARM 38.5.1411 “MEDICAL EXCEPTIONS”

The proposed rule changes would increase the amount that a customer has to pay initially, at the beginning of a monthly repayment arrangement – from 1/12 of the arrearage to 1/6 of the arrearage. The proposed rule would allow shut-off proceedings to begin if the account is \$300 or more in arrears, whereas the current rule requires at least \$500 in arrears. The revisions related to this section should not be made. The proposed revisions are adverse to Montanans who have low incomes and/or have disabilities. These provisions shorten the payment arrangement time frames and actually decrease the dollar amount for disconnect proceedings. These changes, against the back drop of continuing inflation, are unworkable and extremely harmful to Montana’s vulnerable populations.

7. ARM 38.5.1413: “METHODS OF TERMINATION”

MLSA has concerns about the proposed rule changes related to the actual act of termination. The proposed revisions essentially take the on-site utility employee out of any involvement with the termination other than “pulling the plug”. Often time persons with limited resources are able to gain access to even temporary monies to avoid shut-offs. This ability to pay the on-site person sent to shut off the utility is critical to Montana’s vulnerable populations.

MLSA supports the changes in subsection (1) to increase from one day to two the number of days’ notice the customer gets before the termination actually happens. MLSA opposes the other changes proposed in this section.

8. ARM 38.5.1414: “THIRD-PARTY NOTIFICATION AND CONTINUATION OF

SERVICE”

If the changes are made to 38.5.1405 to allow for verbal notice of termination, then MLSA questions how a utility that terminates service after only a verbal notice to a customer, would notify the customer’s designated third party of such termination. This ARM requires the utility to “forward a duplicate” of the notice to the third party, but if there is no written notice, there will be nothing to forward. Should the PSC approve “verbal notice” one can only imagine the chaos caused by “third party notifications” if same are also allowed to be verbal. Again this severely erodes the customers’ safeguards.

9. ARM 38.5.1415 “PAYMENT ARRANGEMENTS”

MLSA is unsure of the effect of the criteria on “reasonableness” but is against any provision that would give inequitable authority to the utility.

10. ARM 38.5.1416 “IDENTIFICATION OF LANDLORD CUSTOMERS”

MLSA opposes elimination of this rule to the extent it may lead to lack of actual prior notice of termination to affected tenants.

11. ARM 38.5.1417 “NOTICE TO COMMISSION OF TERMINATIONS AFFECTING TENANTS”

The proposed rule changes would repeal the current ARM that requires a utility before terminating service to a building with tenants residing there, to notify the Commission of such proposed termination. MLSA opposes this rule change. The current ARM provides an important protection to tenants – consider the hypothetical situation in which Mr. Owner owns an apartment building in Shelby, Montana with 30 tenant families residing there. The rental units are all-bills-paid -- Mr. Owner is responsible for paying all utilities. Mr. Owner defaults on payments, and the utility proposes a shut-off of utilities to the entire building.

The tenants in the building may get no notice of the proposed shut off (especially if written notice is eliminated as proposed), but at least under the current rule the utility would have to notify the Commission. The Commission could then act in the public interest, to take whatever action was necessary in such a situation. But if these rule changes are accepted, the Commission will get no notice of such a shut-off, and the tenants in this building, even those who may rely on life-supporting electrical equipment, will be surprised one day by their building's utilities being shut off.

12. MLSA COMMENTS ON "NOTES FOR CONSIDERATION"

MLSA Comment on ARM 38.5.1405(4). How long the utility has to reconnect the service is still under consideration, of course there must be some urgency to this situation and reconnection should occur promptly no matter the reason for termination of any utility service.

MLSA Comment on ARM 38.5.1410(1)(c). MLSA favors protections for families, especially as to young children.

MLSA Comment on ARM 38.5.1401(5). The variety of state and federal programs that "could" amount to a person being considered "a person with disability" makes addition of specific acronyms such as SSDA and VA Disability unwise and restrictive. The language of 1401(5) should not be tightened up, as proposed in this "Note." A medical service provider who certifies a person as having a disability is NOT required to give any details about what the disability is, to do so would violate the person's privacy rights. The definition should NOT be limited to only those who are 100% disabled – many customers with less than 100% disabilities are still unable to work, and have the same income limitations as those with 100% disabilities.

Thank you for your consideration of these comments.

Dated: April 29, 2015.

Respectfully submitted,

MONTANA LEGAL SERVICES ASSOCIATION

By:

A handwritten signature in black ink, appearing to read "Michael G. Black", is written over a horizontal line.

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