



Here the Commission did not do that. Instead, staff, on what appears to be an ad hoc basis, has crafted its own proposal without gathering necessary information.

If the Commission is considering overhauling the existing termination rule – as it appears to be – it needs to understand what is going on with respect to shutoffs. So, for example, and most basically, the Commission needs facts, for each utility and customer class, on how many customers are being shut off. The Commission also needs to know things like when shut-offs occur, how many shut-offs are avoided as the termination process moves from step to step, unpaid balance amounts, and how the medical exception provision of the rule is utilized and what happens to unpaid accounts of those that utilize the medical exception. In short, there is much information that should be gathered in order to evaluate the operation of the existing rule and to determine what changes, if any, it is advisable to make.

## 2. The Commission's Proposal

District XI offers the following comments on the Commission's proposal. These comments are not intended to be exhaustive. Unfortunately, process problems embodied in the Commission's approach (of which the lack of a factual underpinning for the proposed revisions is one) are reflected in the proposal, specifically its deficiencies.

- Section 1401(2)<sup>1</sup> deletes the word “residential” from the definition of customer, apparently in order to make it clear that the termination rule applies to all classes of customers. But, section 1401(10) revises the definition of “termination of service,” to mean “a cessation of *residential* service,” adding the word “residential,” suggesting that

---

<sup>1</sup> The proposal is somewhat sloppy. At times it renumbers paragraphs consistent with its revisions. In section 1401 it does not do so, i.e., that the proposal does not renumber section 1401(2) to take into account the fact that it has stricken section 1401(1).

the termination rule is specific to the residential class. Sections 1401(3) and 1405(1) further confuse things.

- Section 1401(5) deletes the word “handicapped,” yet the proposed rule retains the use of this word. *See* sections 14014(1) (f) 1406(1)(f). Regarding this section, District XI also has concerns about the use of the word “disability” since that word is a term of art under the Social Security Act and it is not entirely clear how that term would be applied by entities other than the Social Security Administration. In addition, it is not clear what will be required for a person with a disability to be “certified” or how such a requirement will work.
- Section 1401(7) strikes language concerning poverty level, with the effect that the proposed rule makes the definition of “person unable to pay” entirely dependent on whether that person receives “public assistance.” However, the term “public assistance” might itself need defining. For example, is a customer that takes advantage of utility bill discount program receiving “public assistance?” What about a customer that receives or has received funds from Energy Share? District XI also notes that the language of the proposed (and existing) rule applies only to one who is a “purchaser.” Accordingly, a household in which a child received the benefit of a publicly funded nutritional program, regardless of whether or not that was deemed to constitute “public assistance” would not bring that household within the definition since the child wouldn’t be the “purchaser” of the utility service.

- Assumedly, 1401(5)(c)'s,<sup>2</sup> requirement for notice to the Commission is intended to apply to landlord customers but that reading is not entirely clear, particularly since subparagraph (c) is linked to paragraph (2), which is about notice generally.
- 1405(3) is unclear. Is a second written notice still required? What about the requirement for personal or telephonic notice or posting?
- In section 1410(1), leaving aside issues related to the proposal's change in the length of the winter period and striking the requirement for Commission approval of shut-offs (both of which are premature in light of facts indicating that such changes are advisable), the basis for the \$200 minimum or the 33% pay down is unclear.<sup>3</sup> In addition, how exactly does a customer "establish" that he or she is unable to pay or to pay only in installments? Finally, if service termination is going to be subject to certain factors or conditions, shouldn't a customer be informed what those factors are so they can make the requisite showing?

Those are just a few of the issues District XI has with the proposed draft. It would not be efficient to discuss the termination rule in great detail here and now. Like the Commission, interested parties, including District XI, require more information on how the termination process is operating before staking out positions on rule language. Moreover, District XI wishes to be informed by the views of all stakeholders. In short, it is premature to begin to rewrite the rule.

---

<sup>2</sup> In this section the paragraph numbers have been adjusted. 1401(5)(c) refers to new 1401(5)(c).

<sup>3</sup> This lack of explanation is, of course, another significant problem with the process the Commission has embarked on. It is difficult, to say the least, to provide meaningful comments on the proposed rule changes without an understanding of why the Commission thought the change necessary and without an explanation of why, say, \$200 was used and not some other number.

### 3. Recommendations of District XI

Operating on the premise that the May 5<sup>th</sup> roundtable will occur as planned,<sup>4</sup> District XI makes the following recommendation. After the roundtable the Commission should convene stakeholder meetings, including staff, to discuss the termination rule. The first of these meetings would be dedicated to a discussion and determination of what information is necessary in order to make reasoned decisions about the termination rule, namely how the rule is operating and what changes, if any, are necessary. With facts concerning termination and the termination process in hand, a determination can be made about whether or not there should be more than one stakeholder group. For instance, issues related to shut-offs of residential customers are likely to be very different than issues related to shutting off commercial customers.<sup>5</sup> In any event, the stakeholder group can then turn to whether and how to revise the existing regulation. To the extent that the stakeholder group can come to agreement, efficiency will be promoted for it will mean that the formal rulemaking process will proceed much more smoothly than it would if the Commission issues a proposed rule not broadly agreed to. Such a process, entailing direct discussion among those that are most knowledgeable about those customers susceptible of having unpaid account balances and about the termination process, will also result in a better product than would be the case were the Commission simply to take what it hears at the roundtable and write a rule.

The purpose of having termination procedures is to avoid the need to terminate a customer's utility service. Consequently, if termination procedures are well-designed, if they are effective,

---

<sup>4</sup> District XI intends to participate in the May 5<sup>th</sup> roundtable, assuming it is held, but suspects that it will not be of much value – for the parties or the Commission – since, as discussed repeatedly above, necessary information is lacking and the setting will not lead to a productive discussion between the participants.

<sup>5</sup> Whether commercial shut-offs present a problem is unknown, at least to District XI.

they are of great value: for the Commission, for utilities, for entities that serve elderly and low and moderate income Montanans, and most of all for Montanans that get into trouble paying their utility bills. Accordingly, this is an important rule-making and the Commission should do all it can to devise a process that results in the best possible rule.

Charles Magraw

On behalf of Human Resource Council, District XI

April 29, 2016