

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 38.2.5031 pertaining to Public )  
Utility Executive Compensation )

TO: All Concerned Persons

1. On September 19, 2013, the Department of Public Service Regulation published MAR Notice No. 38-2-220 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1680 of the 2013 Montana Administrative Register, Issue Number 18.

2. The department has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

38.2.5031 INFORMATION TRANSPARENCY RULE (1) Any information held in the possession of the commission is open to the public for inspection and copying in accordance with 2-6-102, MCA, during regular business hours, as defined by 2-16-117, MCA, except for information listed in (2).

(a) Information includes: pleadings, petitions, applications, motions, communications, exhibits, reports, records, accounts, files, papers, and memoranda or other document(s); of every nature, ~~which may include utility compensation information; in whole or in part, whether individual or in aggregate, whether organized by job title or name, whether executive or otherwise.~~

(2) The following information is not open to public inspection:

~~(a) commission personnel files;~~

(ba) information for which the commission has issued a protective order pursuant to 69-3-105(2), MCA; and

(eb) internal commission non-utility information, or other information, required by law or requirements of personal privacy to remain confidential.

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-106, 69-3-201, 69-3-203, 69-3-330, MCA

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: One commenter questioned why the rule contains language specifically identifying utility compensation information which would be included in the definition of information nonetheless.

RESPONSE 1: The commission agrees with the commenter that it is unnecessary to single out just one specific category of information in the rule. The definition of

information contained in the rule states that documents of every nature are subject to this rule. The definition of information covers utility compensation information by any manner the commission receives it, whether by annual utility reports or in the form of a rate case filing. Therefore, the commission has removed the language singling out just one type of information, utility compensation information.

COMMENT 2: One commenter stated that the rule only needs to specify that information for which the commission has issued a protective order pursuant to 69-3-105(2), MCA, is the only information that should not be open to public inspection. The commenter initially believed that (2)(a) and (2)(c) were unnecessary. However, as the rulemaking hearing continued, the commenter became aware of the commission's privacy concerns about internal commission, non-utility information, such as utility customer information and commission personnel files. The commenter generally agreed that the commission may not be able to limit the rule to just (2)(a) and may need to expand the categories as set out in the rule.

RESPONSE 2: The commission generally disagrees with the commenter that the rule only needs to specify that information for which the commission has issued a protective order pursuant to 69-3-105(2), MCA, is the only information that should not be open to public inspection. In some cases, the commission is in receipt of utility customer information such as social security numbers, which the commission is required by law to maintain as confidential even without the existence of a protective order. In addition, the commission may be required pursuant to Montana law to keep confidential some commission personnel files, without the existence of a protective order. However, based on this comment, the commission has reworded the exceptions in (2) and combined two of those categories into one category.

COMMENT 3: One commenter discussed whether the rule language stating that information required by law or requirements of personal privacy to remain confidential could be used to allow a utility to argue that a protective order is not needed for some utility information. The commenter confirmed that the utilities he represents are well aware of the commission practice to only keep confidential, information that is subject to an approved protective order. The commenter proposed that the commission could add limiting language such as non-utility to further limit those exceptions.

RESPONSE 3: The commission appreciates these comments and has added the language "internal commission, non-utility" to (2)(b) of the rule. Therefore (2)(b) will now read, "internal commission, non-utility information or other information required by law or requirements of personal privacy to remain confidential." The commission agrees with the commenter and interprets (2)(b) to allow the commission to protect limited information such as commission personnel files and utility customer information, without the necessity of a protective order being filed and then processed by the commission itself. The long-standing process of utility protective orders will remain unchanged. If a utility is seeking to protect confidential information that it is required to file with the commission, then that utility must seek a protective order from the commission. The commission will then make a decision to

grant or deny the protective order request consistent with Montana law and the Montana Constitution.

/s/ JUSTIN KRASKE  
Justin Kraske  
Rule Reviewer

/s/ W.A. (BILL) GALLAGHER  
W.A. (Bill) Gallagher  
Chairman  
Public Service Commission

Certified to the Secretary of State on March 3, 2014