

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 38.5.2501, 38.5.2527, and) PROPOSED AMENDMENT
38.5.2528, pertaining to small water)
utility rules)

TO: All Concerned Persons

1. On March 13, 2018, at 1:30 p.m., the Department of Public Service Regulation will hold a public hearing in the Bollinger Room, 1701 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Service Regulation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Service Regulation no later than 5:00 p.m. on March 6, 2018, to advise us of the nature of the accommodation that you need. Please contact Rhonda Simmons, Department of Public Service Regulation, 1701 Prospect Avenue, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; TDD/Montana Relay Service (406) 444-4212; or e-mail rhonda.simmons@mt.gov.

3. The rules as proposed to be amended by one of the two proposed alternatives provide as follows, new matter underlined, deleted matter interlined:

Rule Amendment Option 1:

38.5.2527 SIMPLIFIED REGULATORY TREATMENT OPTIONS (1) Two simplified regulatory treatment options are available to a small water or sewer utility that allow it to ~~establish or propose~~ changes to its rates by a method other than filing a rate application in accordance with the minimum rate case filing standards of ARM 38.5.101, et seq. The options are:

(a) ~~adoption of the commission-approved standard rate tariff to establish rates as~~ filing a rate application in accordance with the minimum filing requirements described in ARM 38.5.2528; or

(b) filing a rate application in accordance with the operating ratio methodology as described in ARM 38.5.2529.

(2) A small water or sewer utility is not required to ~~establish or change its rates using~~ elect either of the simplified regulatory treatment options. It may elect to file a rate application in accordance with ARM 38.5.101, et seq.

(3) If a utility's election of either of the two simplified regulatory options described in ARM 38.5.2527(1)(a) or (1)(b) would result in increased rates to customers, it may request, or the commission may require the utility to implement the rates in increments over a reasonable time period.

(4) An existing small water or sewer utility must be in compliance with 69-3-203, MCA (annual report requirement), in order to elect either of the simplified regulatory treatment options or to request authorization for a reserve account as provided in ARM 38.5.2531.

AUTH: 69-2-101, 69-3-103, 69-3-301, MCA

IMP: 69-2-101, 69-3-103, 69-3-301, MCA

REASON: Amendment of ARM 38.5.2527, as proposed in option one, will allow the commission to consider minimum filing requirements for a rate application which is described in ARM 38.5.2528. In the current rule, minimum filing requirements are very limited and not spelled out in detail.

38.5.2528 STANDARD RATE TARIFF OPTIONAL MINIMUM FILING REQUIREMENTS FOR SMALL WATER AND SEWER UTILITIES (1) A small water or sewer utility may ~~establish its rates by adopting the commission's standard rates for small water or sewer utilities or by adopting its own rates if they are lower than the applicable standard rates. The standard rate tariff forms to be submitted for commission approval by the utility are available from the commission upon request or by obtaining them from the commission's web site at www.psc.mt.gov.~~

~~(2) The standard rates for small water and sewer utilities that choose to establish rates using this simplified regulatory option are:~~

~~(a) a flat charge of \$50 per connection per month for a water utility that provides water to its customers on an unmetered basis;~~

~~(b) a monthly service charge of \$40 per connection, plus a usage rate of \$2.00 per 1,000 gallons for customer usage in excess of 10,000 gallons, for a small water utility that provides water to its customers on a metered basis;~~

~~(c) a flat charge of \$30 per connection per month for a small sewer utility.~~

~~(3) Other terms and conditions of service are those provided in the commission's standard rate tariff forms and in ARM 38.5.2501, et seq.~~

~~(4) A person who seeks to challenge (2)(a), (b), or (c) may submit a complaint pursuant to ARM 38.2.2101, et seq. request simplified regulatory treatment by filing a rate application that contains, at a minimum, the following information:~~

~~(a) the full legal name and title of the owner of the utility, its principal place of business and mailing address, the date that it began providing service to customers, and contact information (i.e., name, address, telephone number, and email) of the individuals representing the utility before the commission;~~

~~(b) a detailed description of the utility system and its potential for expansion, including the number of wells, feet of main, and filtration system;~~

~~(c) the total number of existing water service connections and meters and existing sewer service connections and meters, and the billing frequency for each type of service;~~

~~(d) the total number of potential water service connections and meters and potential sewer service connections and meters;~~

(e) the number of existing and potential multi-residence dwellings (e.g., apartments or condos) served by a single service connection or meter, and the number of units in each multi-residence dwelling;

(f) the current rates being charged for each type of service, when the current rates went into effect, and whether the current rates have been approved by the commission;

(g) the rate proposed for each type of service;

(h) the date that utility assets were first placed in service, the date of any sales or transfers that have occurred since utility assets were first placed in service, and the full legal name and title of any previous owner(s);

(i) the original cost of utility plant in service, an accounting of any capital improvements made, the amount of depreciation that has been taken on plant in service, and the depreciation schedule(s) used for the different utility asset accounts;

(j) two years of income statements and balance sheets, separately for water and sewer utilities, indicating how these statements were prepared (i.e., cash basis or accrual basis) and who prepared them;

(k) a list of any revenue generated during the two years referenced in (j) from sources other than the rates charged to customers, including the source and amount of revenues;

(l) a list of each transaction that occurred with an affiliate or related party during the two years referenced in (j) involving more than \$750, the amount paid, the service(s) provided, and counterparty;

(m) the job title, job description, average hours worked per week, and average compensation of each utility employee;

(n) a copy of the most recent annual report filed with the commission; and

(o) an affidavit from an owner or manager of the utility attesting to the accuracy of the information provided.

(52) A small water or sewer utility that intends to adopt the standard rates file a rate application that meets these minimum filing requirements must notify the commission and every customer in writing of its intention at least 30 days in advance of the proposed effective date of the standard rate tariff adoption upon filing its rate application.

(63) The customer notification must be mailed to each customer's billing address. The notification must inform customers of the standard proposed rates, provide information that shows the typical bill impact of the application of the standard proposed rates to the utility's average level of customer usage, and provide contact information for the utility, the Montana Consumer Counsel, and the commission.

(74) The commission notification rate application must include the standard proposed rates in tariff form, a copy of the notification provided to customers, and verification that all customers were mailed a notice of the proposed rate change. A small water or sewer utility must, if applicable, include in its commission notification rate application a complete copy of the information regarding the utility's financial capacity that the utility provided to the Montana Department of Environmental Quality as part of that agency's public water system review process.

(85) The commission will act on the request to adopt the standard rate tariff determine whether a rate application requesting simplified regulatory treatment

satisfies the minimum filing requirements in (1)(a) through (o) no later than 45 days after it is received by the commission. If the commission determines, following an opportunity for interested persons to submit comments, that the rate application satisfies the minimum filing requirements in (1)(a) through (o), then it will allow discovery pursuant to ARM 38.2.3301 and set a deadline for additional comments and requests for further process. If no party files comments or requests further process, then the proposed rates may be implemented following approval by the commission. If the commission determines that a rate application fails to satisfy the minimum filing requirements in (1)(a) through (o), then it will identify the specific minimum filing requirements that the utility failed to satisfy, and dismiss the rate application without prejudice.

~~(9) The standard rate tariff adopted by a small water or sewer utility expires three years after its effective date, unless the commission approves an extension. At least three months prior to the expiration of the standard rate tariff, the utility must notify the commission whether it will file a request for an extension of the standard rate tariff option, a rate application in accordance with the minimum rate case filing standards of ARM 38.5.101, et seq., or an application in accordance with the operating ratio methodology pursuant to ARM 38.5.2529.~~

~~(406) The commission may deny the adoption of the standard rate tariff by a small water or sewer utility a rate application requesting simplified regulatory treatment if the utility has been operating pursuant to commission-approved rates and the commission determines, based on comments or requests for further process, that it would be unjust and unreasonable to approve adoption of the standard rate tariff for allow simplified regulatory treatment or approve the rates proposed by the utility. If the commission denies a rate application requesting simplified rate treatment, then it may request that parties attend a prehearing conference pursuant to ARM 38.2.2701 and confer regarding voluntary settlement pursuant to ARM 38.2.3001.~~

~~(447) Nothing contained in these rules shall be construed to limit the statutory and constitutional authority of the Montana Consumer Counsel to participate and represent the interests of the utility ratepayers in these proceedings.~~

AUTH: 69-2-101, 69-3-103, 69-3-301, MCA

IMP: 69-2-101, 69-3-103, 69-3-301, MCA

REASON: Amendment of ARM 38.5.2528, as proposed in option one, will remove the standard rate process and replace it with a utility rate application. The rule sets out the minimum filing requirements for that rate application. The minimum filing requirements will help ensure that the commission and interested persons have sufficient information to review during the rate application process. The rule also sets out the process followed to review that filing for completeness and how it will be processed following a complete application being received by the commission.

Rule Amendment Option 2:

38.5.2501 GENERAL RULES FOR PRIVATELY OWNED WATER UTILITIES (1) and (2) remain the same

(3) All privately owned water utilities must have commission-approved tariffs filed with the commission, pursuant to Title 69, MCA, and its corresponding administrative rules, including penalties as provided by statute. The commission will prioritize supervision of management and rate regulation of privately owned water utilities based upon complaints received from consumers.

AUTH: 69-3-102, MCA
IMP: 69-3-102, MCA

REASON: Amendment of ARM 38.5.2501 is proposed as part of option two to allow the commission to consider including in the rule a prioritization of rate regulation and supervision based on consumer complaints. The commission has limited resources and is considering whether the rule should clarify that the commission may prioritize regulatory oversight based on consumer complaints.

38.5.2527 SIMPLIFIED REGULATORY TREATMENT OPTIONS (1) ~~Two~~ Three simplified regulatory treatment options are available to a small water or sewer utility that allow it to ~~establish or~~ propose changes to its rates by a method other than filing a rate application in accordance with the minimum rate case filing standards of ARM 38.5.101, et seq. The options are:

(a) filing a rate application for the adoption of the commission-approved standard rate tariff to establish rates as in accordance with the minimum filing requirements described in ARM 38.5.2528; ~~or~~

(b) filing a rate application in accordance with the operating ratio methodology as described in ARM 38.5.2529; ~~or~~

(c) filing a rate application requesting adoption of the Montana Department of Natural Resources and Conservation's most recent water and sewer rate study's monthly water average and/or monthly wastewater average for populations less than 500.

(2) A small water or sewer utility is not required to ~~establish or change its rates using~~ elect any of the simplified regulatory treatment options. It may elect to file a rate application in accordance with ARM 38.5.101, et seq.

(3) If a utility's election of either of the ~~two~~ three simplified regulatory options described in ARM 38.5.2527(1)(a) or (1)(b) would result in increased rates to customers, it may request, or the commission may require the utility to implement the rates in increments over a reasonable time period.

(4) An existing small water or sewer utility must be in compliance with 69-3-203, MCA (annual report requirement), in order to elect either of the simplified regulatory treatment options or to request authorization for a reserve account as provided in ARM 38.5.2531.

(5) The commission may find good cause to waive any privately owned water utility rules, if the utility successfully petitions the commission for a waiver of rules pursuant to ARM 38.2.305.

AUTH: 69-2-101, 69-3-103, 69-3-301, MCA
IMP: 69-2-101, 69-3-103, 69-3-301, MCA

REASON: Amendment of ARM 38.5.2527, as proposed in option two, will allow the commission to consider minimum filing requirements for a standard rate application which is described in ARM 38.5.2528. In the current rule, minimum filing requirements are very limited and not spelled out in detail. The commission has learned through the implementation of the current rules that additional utility information should be submitted with a rate application. Amendment of this rule will establish minimum filing requirements for a standard rate application which will be beneficial to both the commission and any interested persons who review the information. Amendment of the rule also adds one additional option for the simplified regulatory process. A utility can also request approval to charge rates consistent with the Department of Natural Resources and Conservation's most recent water and sewer rate study. The rule also indicates that a utility can request waiver of these rules with good cause shown.

38.5.2528 STANDARD RATE TARIFF (1) A small water or sewer utility may file an application to establish its initial commission-approved standard rates by adopting the commission's standard rates for small water or sewer utilities or by adopting its own rates if they are lower than the applicable standard rates. If the utility has previously had rates on file with the commission it is not eligible for initial standard rates. The standard rate application and tariff forms to be submitted for commission approval by the utility review are available from the commission upon request or by obtaining them from the commission's web site at www.psc.mt.gov. The rate application shall contain, at a minimum, the following information:

(a) The full legal name and title of the owner of the utility, its principal place of business and mailing address, the date that it began providing service to customers, and contact information (i.e., name, address, telephone number and email) of the individual(s) representing the utility before the commission;

(b) A detailed description of the utility system and its potential for expansion, including the number of wells, feet of main, and filtration system;

(c) The total number of existing water service connections and meters and existing sewer service connections and meters, and the billing frequency for each type of service;

(d) The total number of potential water service connections and meters and potential sewer service connections and meters;

(e) The number of existing and potential multi-residence dwellings (e.g., apartments or condos) served by a single service connection or meter, and the number of units in each multi-residence dwelling;

(f) The current rates being charged for each type of service, when the current rates went into effect, and whether the current rates have been approved by the commission;

(g) The rates proposed for each type of service;

(h) The date that utility assets were first placed in service, the date of any sales or transfers that have occurred since utility assets were first placed in service, and the full legal name and title of any previous owner(s);

(i) Two years of income statements and balance sheets, separately for water and sewer utilities, indicating how these statements were prepared (i.e., cash basis or accrual basis) and who prepared them;

(j) A list of any revenue generated during the two years referenced in (i) from sources other than the rates charged to customers, including the source and amount of revenue;

(k) A list of each transaction that occurred with an affiliate or related party during the two years referenced, involving more than \$750, the amount paid, service(s) provided, and counterparty;

(l) A copy of the most recent annual report filed with the commission;

(m) Copies of any water rights owned or leased by the utility, percentage usage of the available water right, and any documentation from the Department of Natural Resources and Conservation involving water right usage or violations; and

(n) An affidavit from an owner or manager of the utility attesting to the accuracy of the information provided.

(2) The standard rates for small water and sewer utilities that ~~choose~~ apply to establish rates using this simplified regulatory option are:

(a) a flat charge of \$50 per connection per month for a water utility that provides water to its customers on an unmetered basis;

(b) a monthly service charge of \$40 per connection, plus a usage rate of \$2.00 per 1,000 gallons for customer usage in excess of 10,000 gallons, for a small water utility that provides water to its customers on a metered basis;

(c) a flat charge of \$30 per connection per month for a small sewer utility.

(3) Other terms and conditions of service are those provided in the commission's standard rate tariff forms and in ARM 38.5.2501, et seq.

~~(4) A person who seeks to challenge (2)(a), (b), or (c) may submit a complaint pursuant to ARM 38.2.2101, et seq.~~

~~(5) (4) A small water or sewer utility that intends files an application to adopt the standard rates must notify the commission and every customer in writing of its intention at least 30 days in advance of the proposed effective date of the standard rate tariff adoption within ten days of filing its application with the commission.~~

~~(6) (5) The customer notification must be mailed to each customer's billing address. The notification must inform customers of the standard proposed rates, provide information that shows the typical bill impact of the application of the standard proposed rates to the utility's average level of customer usage, and provide contact information for the utility, the Montana Consumer Counsel, and the commission.~~

~~(7) (6) The commission notification rate application must include the proposed standard rates in tariff form, a copy of the notification provided to customers, and verification that all customers were mailed a notice of the proposed rate change. A small water or sewer utility must, if applicable, include in its commission notification rate application a complete copy of the information regarding the utility's financial capacity that the utility provided to the Montana Department of Environmental Quality as part of that agency's public water system review process.~~

~~(8) (7) The commission will act on the request to adopt the standard rate tariff no later than 45 days after it is received by the commission determine whether a rate application requesting simplified regulatory treatment satisfies the minimum filing requirements in (1)(a) through (n) no later than 30 days after it is received by the commission. If the commission determines that the rate application satisfies the minimum filing requirements it will notice it to the public for comment or protest. If~~

either the Montana Consumer Counsel or 20 percent of the utility's customers protest the application, the commission will make a decision on the application following any additional process established by the commission.

(98) The A standard rate tariff adopted by a small water or sewer utility application approved by the commission expires three calendar years after its initial effective date, unless the commission approves an extension. Extensions will only be granted in limited circumstances. The three-year calendar time period begins at the time the commission grants any portion of the standard rate, even if the rate is implemented in phases. Standard rates shall be considered interim or temporary rates subject to rebate or surcharge pending a decision made in a rate application in accordance with the minimum rate case filing standards of ARM 38.5.101, et seq., a rate application for the adoption of the Montana Department of Natural Resources and Conservation's average rates, or in accordance with the operating ratio methodology pursuant to ARM 38.5.2529. At least three months prior to the expiration of the standard rate tariff, the utility must notify the commission whether it will file a request for an extension of the standard rate tariff option, a rate application in accordance with the minimum rate case filing standards of ARM 38.5.101, et seq., or an application in accordance with the operating ratio methodology pursuant to ARM 38.5.2529.

~~(109) The commission may deny the adoption of the standard rate tariff by will not grant standard rates to a small water or sewer utility if the utility that has been operating pursuant to commission-approved rates and the commission determines it would be unjust and unreasonable to approve adoption of the standard rate tariff for the utility previously. The commission may deny a rate application requesting simplified regulatory treatment or only grant it in part if the commission determines, based on comments or protest, that it would be unjust or unreasonable to allow simplified regulatory treatment or approve the rates proposed by the utility.~~

(10) A small water or sewer utility's standard rate tariff may be revoked if the utility is not in compliance with the Commission's annual report requirement.

(11) Nothing contained in these rules shall be construed to limit the statutory and constitutional authority of the Montana Consumer Counsel to participate and represent the interests of the utility ratepayers in these proceedings.

AUTH: 69-2-101, 69-3-103, 69-3-301, MCA

IMP: 69-2-101, 69-3-103, 69-3-301, MCA

REASON: Amendment of ARM 38.5.2528, as proposed in option two, will retain the standard rate process but require minimum filing requirements for that rate application. The minimum filing requirements will help ensure that the commission and interested persons have sufficient information to review. Option two shortens the list of minimum filing requirements from option one to help reduce the regulatory burden for utilities establishing their initial commission rates. The rule clarifies that only utilities that do not have rates on file with the commission can take advantage of the standard rate process. The rule also clarifies that the standard rate will only be approved by the commission for up to three calendar years and the timeframe begins to run once any approval of a rate is made by the commission. The rule also

sets out the process followed to review that filing for completeness and how it will be processed following a complete application being received by the commission.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Rhonda Simmons, Department of Public Service Regulation, 1701 Prospect Avenue, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; or e-mail rhonda.simmons@mt.gov, and must be received no later than 5:00 p.m., March 23, 2018.

5. The commission, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will significantly and directly impact small businesses. The small businesses that will be affected significantly and directly are the small water and sewer utilities that are subject to department jurisdiction. These small utility businesses will benefit from amendment of the proposed rules because the amended rules update the simplified regulatory options that will reduce the burden and cost of the ratemaking process when compared to filing rate cases under existing department rules. Past rate cases before the department involving small water and sewer utilities have resulted in rate case expenses for the utilities (that were passed through to ratepayers) of up to \$30,000. The majority of the rate case expense in those cases was the cost of hiring legal and financial professionals in order for the utilities to present their cases. If the proposed rules are amended and if a small water or sewer utility takes advantage of the new regulatory options, it may not be necessary for the utility to engage professional services to support the ratemaking process. The department is unaware of any significant and direct adverse impacts that amendment of the proposed rules will have on other small businesses.

/s/ JUSTIN KRASKE
Justin Kraske
Rule Reviewer

/s/ BRAD JOHNSON
Brad Johnson
Chairman
Department of Public Service Regulation

Certified to the Secretary of State January 16, 2018.