

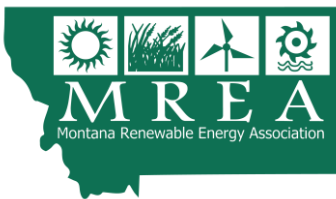


Understanding the Montana Public Service Commission

*A guide to the Montana PSC's important and influential
role in renewable energy development*

Disclaimer: *Understanding the Montana Public Service Commission* should not be used as a legal reference. This booklet was developed by the Montana Renewable Energy Association to serve as an educational tool. The purpose of this booklet is to help inform the public about the purpose and function of the Montana Public Service Commission, as an entity. MREA does not and is not endorsing any candidate(s) seeking election to the Public Service Commission.

About MREA



The Montana Renewable Energy Association is a 501(c)(3) nonprofit organization founded in 2000. MREA members are businesses, individuals, families, and advocates dedicated to expanding Montana's use of renewable energy in order to conserve natural

resources, create jobs, and increase the independence and resilience of our communities.

MREA's mission is to expand the use of renewable energy in Montana, to affect public policy in favor of renewable energy, and to educate and inform the residents of Montana of the benefits and uses of renewable energy. MREA's focus is on-site and community-scale renewable energy such as solar electricity, solar hot water, and small wind generation. Find out more at: montanarenewables.org

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Key Acronyms and Abbreviations

ETIC	Energy and Telecommunications Interim Committee (of the Montana Legislature)
FERC	Federal Energy Regulatory Commission
IOU	Investor Owned Utility
MCA	Montana Code Annotated
MCC	Montana Consumer Counsel
MDU	Montana-Dakota Utilities
NWE	NorthWestern Energy
PSC, MPSC	Montana Public Service Commission
PURPA	Public Utilities Regulatory Policy Act
QF	Qualifying Facility (or Facilities)
REC, Co-op	Rural Electric Cooperative (also, “Co-op”)

Introduction

The Montana Public Service Commission (PSC) is one of the most important influencers of Montana's energy future. The PSC's oversight includes rates for net metering customers (e.g. rooftop solar and small wind), utility purchases of energy from wind farms and large solar arrays, and more. In the past, the Public Service Commission has been a battleground for renewable energy development in Montana.

And yet, many people don't know about the PSC, don't quite understand what it does, and don't realize that they have the ability to get involved. The goal of this booklet is to help understand this important decision-making body, what it does, and give concrete examples of how it operates.

Chapter 1 will give an overview of the PSC, including a brief history and a description of key elements of its role and structure. Chapter 2 will focus on the PSC's role in energy-related issues, and specifically on three important electricity related responsibilities: creating customer classes and setting rates; overseeing long-term planning processes; and setting contract terms for Qualifying Facilities. Chapter 3 will focus on how advocacy groups and the general public engage with the PSC to ensure their voice is heard.

Chapter 1: What is the Montana Public Service Commission?

Where did the Public Service Commission come from?

The Montana Public Service Commission (PSC) dates back to 1907, when the Montana Legislature established a three-person Board of Railroad Commissioners. This Board was responsible for regulating the rail and transport industry in Montana. Similar to today's PSC, their charge was to ensure safe and dependable utility services (at this time, rails) at reasonable costs. In 1913, these three Commissioners became ex-officio members of the newly established Montana Public Service Commission. It's been suggested that the PSC was created out of a desire for a body that had more resources and expertise than the Legislature to oversee and regulate the railroad and other utilities. Over the years, more and more regulatory responsibility was added to the PSC. This included overhead electricity development (e.g. power lines; 1917) and common carrier pipelines for transporting petroleum products (1921).

In 1971, an organizational restructuring of the executive branch resulted in the elimination of the Board of Railroad Commissioners. In 1974, the Legislature changed the structure of the PSC to its current form.

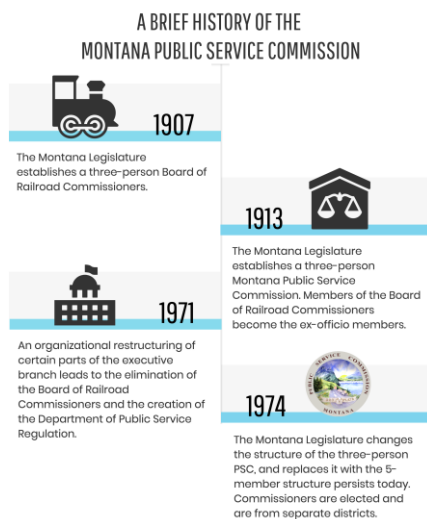


Figure 1 – A brief history of the Montana Public Service Commission

Who and Where is this Public Service Commission?

When many people refer to the Public Service Commission, they are often referring to the Commissioners themselves. The PSC has five commissioners representing separate districts around the state that are grouped by county, as seen in the image below. Commissioners are elected officials, who are elected to four-year staggered terms. They can serve a maximum of two consecutive terms and can serve no more than eight years in any 16-year period. They have a Chair, whom they elect from among themselves every other year at the first meeting of the year following a general election. Commissioner elections are also partisan, meaning candidates may choose a political party affiliation. There are no requirements for relevant professional experience or educational background in order to become a Commissioner. By contrast, some states require the commissioners to have experience or education in fields such as public or government administration, economics, utility regulation, consumer advocacy, engineering, law, etc. In many states, commissioners are appointed to their position by the governor. Montana is one of 11 states that elects their commissioners.

It is important to note the Public Service Commission is more than just the five commissioners themselves. The PSC includes support staff such as attorneys, economists, rate analysts, and more that advise the Commissioners and help them dissect and understand the complex issues they work on. The staff is organized into three divisions: regulatory, legal, and centralized services.

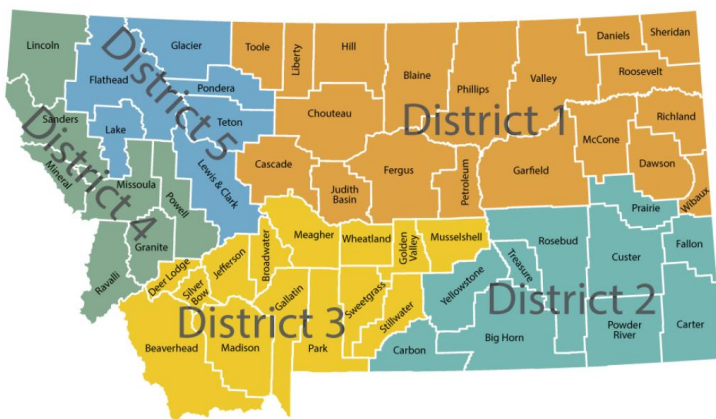


Figure 2 – Map of Montana Public Service Commission Districts (Montana PSC)

If the PSC is a regulatory body, who is regulating the PSC?

The PSC was created in the early 1900's as a separate entity from the Montana Legislature. The Legislature oversees the PSC. The relationship between the Legislature and the PSC is important to understanding key energy issues currently affecting Montana. The Legislature is the branch of government principally charged with creating policy. The PSC's duty is to execute those policies, specifically the ones relating to supervising and regulating public utilities, motor carriers, and telecommunications companies. In essence, the Legislature's role is to provide the framework under which the PSC executes its duties.

The PSC most often works with the Legislature's energy committees. During the interim between legislative sessions this is the Energy and Telecommunications Interim Committee (ETIC) – a bipartisan committee made up of four State Representatives and four State Senators. Upon request, the PSC will make presentations to the ETIC on relevant issues the Committee is researching and discussing. Generally, the PSC Chairman provides at least a short update at each of ETIC's regular meetings.

Why does the PSC regulate utilities, but not the electric co-ops?

There are two types of electricity providers in Montana: investor-owned utilities (IOU's) and rural electric cooperative (REC's, or "co-ops"). When referring to "utilities", one is most often referring to IOU's. Residential and small commercial customers in Montana do not get to choose who provides their electricity. Their electricity provider is determined by where they live or operate, with the IOU's providing electricity to most of the urban areas and the co-ops providing electricity to the rural areas. Importantly, this setup guarantees a monopoly on electricity service in geographical areas throughout the state for these electricity provider businesses.

The IOU business model is profit-based – like any other investor-owned business – and so without regulation there exists the opportunity for this guaranteed-monopoly company to charge as much for services as it likes. This is where the PSC regulation comes in. The PSC's duty is to ensure just and reasonable rates for utility customers, while still guaranteeing reasonable profits for the IOU. Through various functions that are described in subsequent sections of this booklet, the PSC is ultimately the one that determines the profit margins for the utility. Thus, this regulatory system seeks to protect customers (through

oversight of the monopoly business) while still incentivizing the utility to provide good service (through profit returns).

Investor Owned Utility	VS	Rural Electric Cooperative
Public Service Commission, subject to Montana Statute	REGULATION	Subject to direction from Board of Directors and Members
Mostly urban centers	SERVICE AREA	Mostly rural areas
For profit	BUSINESS MODEL	Non-profit, membership owned
2 (NorthWestern Energy, Montana Dakota Utilities)	QUANTITY	25 across the state

Figure 3 – Key differences between Investor Owned Utilities and Rural Electric Cooperatives

The co-ops, on the other hand, are not investor-owned; they are member-owned. This is more akin to a non-profit model and removes the potential for over-charging customers to generate larger profits. This negates the need for regulation as with the IOU’s.

Chapter 2: The PSC's Role in Renewable Energy

Creating Customer Classes and Setting Rates

The Public Service Commission is charged with creating customer classes for investor owned utilities and setting the electricity rates (i.e. prices) for those classes. Since utility customers use electricity and the grid differently, they may be grouped into different classes so they can be charged differently. Per Montana law, "Classifications may take into account the quantity [of electricity] used, the time when used, and any other reasonable consideration." (MCA § 69-3-306).

The PSC sets the monthly base charges (the amount paid regardless of how much energy a customer uses), the volumetric rates (the amount paid per kilowatt-hour of electricity used), and any other special charges such as "demand charges" [19]. The process of setting rates is complex and must take into account a long list of factors. The PSC describes the process on its website:

The PSC's rate-setting process is like the banker's loan process, although the PSC certainly doesn't lend money. Before the PSC sets a utility's rates, it analyzes the company's financial statements for accuracy, examines its operating practices to ensure efficiency, and reviews known future events that may affect the business.

There is a major difference between the PSC and the banker, however. The banker would be pleased if a loan applicant could make very high profits. By law, the PSC must allow only those profits that are just and reasonable. In other words, the PSC must allow utilities an opportunity to earn just enough profit so that utility owners will have the incentive to provide adequate service to customers. No more, no less. It is this public interest protection that makes the PSC unique.

When setting rates, the PSC must take into account the utility's total costs for doing business. The costs include everything from personnel, administrative costs, and paper and pencils to things like service vehicles, fuel for those vehicles, poles and wires, and supply resources. Rates are then designed to expect the utility to be able to recover their costs, along with the reasonable profit allowed to them as a for-profit company.



Setting rates is done through a **general rate case**, which is a legal proceeding akin to a court case. A rate case is usually initiated by a utility itself and can take up to 9 months to complete. Other entities – such as a public utility commission or advocacy groups – can

initiate a rate case, but it is very rare that they do. The entity that initiates the rate case must be able to justify why the rates should be changed using data and other information. This responsibility is called the “*burden of proof*.” This can be very challenging to do, which is why it is rare that a non-utility entity will initiate the rate case.

Most often, rate cases result in an increase in rates. Since rates are designed to take into account all costs associated with a utility’s business, then any increase in those costs could be reason enough to increase rates. For example, if the utility invests in additional infrastructure (like poles and wires) or expands its operations to bring on new staff to provide customer services then they may need to increase rates to cover those costs.

It is important to note that it is possible for rates to decrease as well. This is much less common, but it is possible. The same reasoning for an increase holds true for a decrease: if the utility’s total costs associated with provided services to customers decreases, then so should the rates. Examples of factors resulting in a decrease in rates are a decrease in operational expenses; technology improvements leading to efficiencies and/or lower than expected prices for equipment and infrastructure; or selling off an asset earlier than expected.

Rate cases are most often initiated in one of two ways. The first is that a state has laws that require periodic rate cases. The second is that a utility initiates a rate case itself, which is the most common reason for rate cases. Rate cases typically have a number of parties involved that are represented by attorneys. These include the utility, PSC staff, consumer advocates, large industrial or commercial customers, low income customer advocates, conservation organizations, and state agencies. Ratepayers may also participate, although this is generally

accomplished by submitting public comment instead of full involvement in the hearings. This is discussed further in Chapter 3.

Overseeing Long-Term Supply Resource Planning

The PSC oversees the long-term supply resource planning processes for investor owned utilities in the state (i.e. North Western Energy, “NWE”, and Montana-Dakota Utilities, “MDU”). Both investor-owned utilities (IOU’s) must submit a long-term plan that details what supply resources it plans on acquiring in order to meet the demand of its customers. A supply resource is a facility – such as a wind farm, solar farm, natural gas plant, hydro-dam, etc. – that generates electricity for the utility to provide to its customers.



Due to Montana’s experiment with deregulation of the utility sector, and the subsequent re-regulation of utilities, NWE and MDU are governed under different sections of Montana law. The planning processes are therefore slightly different, and the plans have different names. For NWE, the plan is called an “Electric Supply Resource Procurement Plan” and for MDU it’s called an “Integrated Least-Cost Resource Plan.” While there are key differences, it’s important to note that the processes are more similar than they are different. For detailed information on the history of resource planning and the impact of deregulation and re-regulation read Montana Legislative Services’ “Least-Cost Integrated Resource and Electricity Supply Resource Planning” that was prepared for the Energy and Telecommunications Interim Committee in January 2018 [22]. As described on page 2 of that report:

Both planning processes emphasize long-term planning that results in the lowest-cost, most reliable, and most efficient mix of generation resources. Both planning processes focus on:

- *the fundamental relationship between resource planning and procurement and ratemaking;*

- *the role of environmental and societal externalities in resource portfolios;*
- *the use of competitive resource solicitations;*
- *an evaluation of market uncertainty and risk;*
- *an assessment of the optimal mix of supply and demand;*
and
- *public involvement and stakeholder input.*

Both long-term plans must be submitted every two years for the PSC to review. In addition, there is an important technical advisory and public input requirement for both plans, which the PSC also monitors. By law, both plans must include a review process from stakeholders prior to submitting the plan to the PSC. In NorthWestern Energy's case, these stakeholders make up the Electric Technical Advisory Committee (ETAC). For Montana-Dakota Utilities, it is the Public Advisory Group (PAG). The goals of both committees are very similar: review the plan during and after its creation and provide general and technical stakeholder input to the utility. These committees are typically comprised of stakeholders such as PSC staff, consumer advocates, conservation advocates, economists, regulatory experts, and more. After the plans are submitted, the PSC is responsible for conducting a public input process in which the plans are made available for public review and comment. After this, the PSC reviews them and, by law, must provide their own comments. However, any comments provided do not automatically approve or deny the resource acquisition itself. That happens through an entirely different process.



If a utility would like to acquire a new resource, the PSC will assess their justifications for acquiring that resource and decide whether the justification is reasonable. This is based on a number of different factors, including: energy demand

forecasts, alternative options for meeting energy demand, environmental impacts, impacts on consumers, and more.

If the PSC determines a resource acquisition is prudent, it can approve the acquisition and the utility then has the ability to “rate base” the cost. Rate basing means that the utility will be allowed to recover the cost of the purchase or investment by including those costs over a period of time in the utility rates that the customers pay. A rate-based cost means

a utility will not only recover the cost of the purchase, but it will also earn a reasonable profit. Nationally, the average for a reasonable profit for utilities is around 10%. The idea behind this is that the PSC should be authorizing a rate of return that allows the utility to retain shareholders and attract investors. However, it should not be so high that it is a burden on their customers. This pre-approval process happens *before* the utility acquires the resource, which benefits the utility by removing much of the financial risk from the purchase. That risk still exists, but it has been shifted onto the ratepayers who will ultimately pay for the resource over time through their electricity rates.

If the PSC determines a resource acquisition is not prudent, it can deny the utility's ability to rate base the resource. This is to ensure that the utility is purchasing supply resources that are capable of providing energy that the utility needs, and that the need is truly there. If the PSC denies the ability to rate base an acquisition, the utility would need to decide whether or not to move forward with acquiring that resource. In other words, the utility can still acquire the resource, but they have no guarantee that they will be able to recover the cost through electricity rates.

The PSC has a critical role in determining if the resources a utility wants to acquire fit the planning guidelines established and align with stakeholder and public input. Renewable energy resources are now cost competitive with other supply resources, and it will ultimately be up to the PSC to ensure the utility is considering those resources in the long-term planning processes.

Setting Contract Terms for Qualifying Facilities

In 1978, Congress passed the "Public Utilities Regulatory Policy Act" (PURPA). Amidst the energy crisis of that decade, PURPA was designed to help reduce dependence on foreign oil by promoting energy conservation and domestic alternative energy development. In order to achieve this latter goal, states were directed to create special classes of generating facilities that would receive specific rates and contract lengths. These generating facilities are called "Qualifying Facilities" (QF's). In order for a project to qualify as a QF, it must meet certain criteria. It must be of a certain generation source (hydro, wind, solar, biomass, waste, or geothermal) or must be a co-generation facility (e.g. one that produces both electricity and thermal heat). QF's must also be less than 80 megawatts in size. Lastly, QF's must be owned by a non-utility entity.



Importantly, PURPA requires that regulated utilities purchase energy from these facilities, either at a negotiated rate or at a rate set by the state's regulatory commission (e.g. the PSC). According to PURPA, the compensation rates set for QF's must be equivalent to the utility's "avoided cost," or the costs the utility would have incurred would it have either purchased or generated that same energy itself. There are multiple methodologies of calculating the avoided cost. Generally, some of the various considerations that factor into the "avoided cost" value can include: a utility's demand for energy at different times of day and different times of year, cost or savings from line losses and other grid considerations, avoided environmental compliance costs, savings from deferred additions of other supply resources or infrastructure, and the price of energy on the open market. The federal definition of avoided cost is available via the Electronic Code of Federal Regulations [4].

According to Montana statute, a QF may receive a contract in two ways. The first option is that the QF project developer and the utility may negotiate contract terms themselves. If the parties can reach an agreement, then a power purchase agreement is signed, and the process is done. However, if the two parties cannot agree on contract terms, then they may go to the PSC to set the terms. The second option is for QF's that are 3 megawatts or smaller. These projects may elect to take a "standard offer" contract, the terms of which are periodically set by the PSC and available to any project up to 3 megawatts. The PSC can also set different standard offer contract terms depending on the type of generating facility (e.g. wind, solar, etc.) If the QF developer likes the terms of the standard offer, they simply agree to those terms and no negotiation is needed.

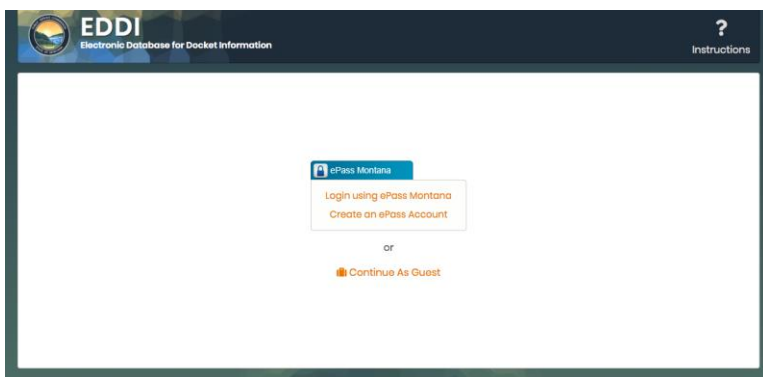
The rates and contracts lengths are an essential part of determining a project's feasibility. These terms will impact a developer's ability to

bring financing institutions to the table to help get the project off the ground. Since the PSC has the responsibility of setting those rates and contract lengths, it has a critical role in the development of these projects. Commission actions over the past several years in this area have created significant controversy. Renewable energy developers and advocates argue that the commission has set terms that are not conducive to QF development, and therefore violate PURPA. These discussions have gone on for years and continue to be covered by media around the state and have even garnered national attention.

Chapter 3: Involvement at the Public Service Commission

There are a number of ways of engaging with the PSC, and the method and number of opportunities to do so often depend on the specific issue being discussed. In general, there is usually an opportunity for public comment on issues before the PSC. However, the method, timing, and impact of providing that comment will vary depending on certain factors that are described below.

Members of the public can always contact their Commissioner, or commission staff, with general comments or questions directly by phone or email. These can be found on the PSC's *Contact Us* pages for Commissioners and for staff. When specifically looking for public comment on an issue, the PSC will usually post a "Notice of Opportunity to Comment" to the docket webpage. If you have a complaint about an issue under the PSC's jurisdiction, you can submit that complaint by going to the PSC website. Under the "Consumers" menu on the PSC homepage, click on "Request Assistance". After going to the "Request Assistance" webpage, you can click on a yellow box labelled "Request Customer Assistance". This will take you to the Electronic Database for Docket Information ("EDDI") website (see figure below).



EDDI homepage

By clicking on "Continue as Guest" you will have the option to select a comment type to submit: "Comment on a Proceeding", "Contact Your

Commissioner”, or “Request Customer Assistance”. You can also sign up for an ePass account to keep track of your interactions with the PSC if you would like, but it is not necessary for either of the three options noted.

Understanding Dockets

When the PSC looks into an issue, they do so by opening a docket. A docket, by definition, means “a formal abridged record of the proceedings in a legal action.” In short, dockets are the PSC’s way of keeping track of the issues they are discussing. When opened, dockets are assigned numbers. As an example, when the Commission was setting the minimum information requirements for the cost-benefit analysis of distributed generation, the docket was number “D2017.6.49” because it was filed in June of 2017 – the first four numbers are the year, the next is the month, and the last is an index.

Docket files are hosted on the PSC’s website. There is a searchable database that the public can use to look up documents (see figure below). You can get to the database by going to the PSC’s website. Under the “Documents & Proceedings” menu, click on “Search Documents”. Once there, you can search for a particular docket using the tracking number, tracking name, document type, or organization. If you want to download a specific file, you can click on its tracking name or document title.

MONTANA PUBLIC SERVICE COMMISSION							
Search	Date	Tracking Number	Document Type	Organization			
	6/16/2017	D2017.6.49	(All)	(All)			
Date	Tracking Number	Tracking Name	Document Type	Document Title	Supporting Doc Type	Supporting Doc Description	Organization
10/12/2018	D2017.6.49	In the Matter of Establishing Minimum L...	Other	NorthWestern Energy's revised public a...			NorthWestern Energy
10/5/2018	D2017.6.49	In the Matter of Establishing Minimum L...	Errata to Order	Protective Order Errata			
10/2/2018	D2017.6.49	In the Matter of Establishing Minimum L...	Protective Order	Protective Order			
9/28/2018	D2017.6.49	In the Matter of Establishing Minimum L...	Motion	NorthWestern Energy's Supplement to...			NorthWestern Energy
9/7/2018	D2017.6.49	In the Matter of Establishing Minimum L...	Motion	NorthWestern Energy's Motion for Prot...			NorthWestern Energy
3/30/2018	D2017.6.49	In the Matter of Establishing Minimum L...	Other	Net-Metering Benefit-Cost Analysis			NorthWestern Energy
6/9/2017	D2017.6.49	In the Matter of Establishing Minimum L...	Notice of Commission Action	Notice of Commission Action			
7/25/2017	D2017.6.49	In the Matter of Establishing Minimum L...	Comment	Comments of Dean L. Utterback received v...			Public Service Commission
7/7/2017	D2017.6.49	In the Matter of Establishing Minimum L...	Comment	Comments from the Energy Office at the...			Dept of Environmental Quality
7/7/2017	D2017.6.49	In the Matter of Establishing Minimum L...	Comment	Comments of the Joint Parties			Montana Environmental Informati...
7/7/2017	D2017.6.49	In the Matter of Establishing Minimum L...	Comment	Comments of the Montana Consumer Co...			Montana Consumer Counsel
7/7/2017	D2017.6.49	In the Matter of Establishing Minimum L...	Comment	NorthWestern Energy's Comments			NorthWestern Energy
7/7/2017	D2017.6.49	In the Matter of Establishing Minimum L...	Comment	Public Comment to the Montana Public S...			Northern Plains Resource Council
7/6/2017	D2017.6.49	In the Matter of Establishing Minimum L...	Comment	Comments of Christopher J. Preston re...			Public Service Commission
7/6/2017	D2017.6.49	In the Matter of Establishing Minimum L...	Comment	Environment Montana Research & Polic...			Environment Montana Research & S...
6/16/2017	D2017.6.49	In the Matter of Establishing Minimum L...	Notice of Opportunity to Comm...	Notice of Opportunity to Comment			

Example of an online docket listing on the PSC website

Rulemaking versus Contested Proceeding

The PSC will settle an issue and make its decision using one of two processes: 1) a rulemaking or 2) a contested proceeding.

A **rulemaking** is exactly what it sounds like – the PSC creating or modifying a rule that governs PSC processes. Rulemaking is similar to the process for a legislative bill. This is in comparison to a contested case, which is more like a court case. Rulemaking is less formal than a contested case, and generally affords easier access for direct public participation. This is partially, but importantly, because a rulemaking proceeding does not necessitate having a lawyer in order to participate.

Rulemakings are initiated on several types of issues, including procedural (how regulatory processes work), legislative (how utilities offer service to consumers), and interpretive (how utility issues may be viewed and treated in future discussions).

At a regular work session, the PSC Commissioners will initiate a rulemaking procedure on an issue. The PSC staff goes to work to put together a draft of the language for the new rule. Once the draft is complete, it is approved by the Commissioners to go out for public comment and is sent to the Secretary of State. The SOS will review the draft and then put out a public notice that includes the proposed language, and any important dates, such as public comment deadlines and public hearing dates. This is generally the first look the public will have at the proposed rule. The public comment period is at least 30 days, after which there is typically a public hearing which is overseen by a staff lawyer. This will be more like a hearing at the legislature on a bill than a formal hearing that involves attorneys, witnesses, and cross examination. For example, those interested in speaking on the issue are able to simply attend the hearing and present their input. After the public hearing, staff will analyze all of the input they have received and provide suggestions to the Commissioners. The Commissioners will decide to either adopt or amend the language. They can also decide to withdraw the rule. If they decide to make changes, and those changes are significant enough, they may start the process all over again from the very beginning. Once the final language is adopted, they will publish a notice of adoption, in which they will state the new rule and will also address the input and comments they received.

One examples of an issue that was addressed by a rulemaking was setting the minimum information requirements for the cost-benefit analysis of net metering that was conducted in 2017-2018. The PSC issued a notice of opportunity to comment to gather input from the public, and numerous stakeholders prepared and filed their comments and input (including MREA). After doing so, the PSC staff and Commissioners hosted work sessions to discuss the issue. The

Commissioners then issued their ruling which sent the utility to work on producing the study



The Bollinger Room—where hearings are held—at the PSC office in Helena

A **contested proceeding** is more akin to a court case. Parties involved in the case are subject to the formal procedures that govern the process. Those parties file testimony, provide evidence and witnesses, and are subject to cross examination. They are also subject to discovery, which is a process by which any party can make “information and data requests” of the other parties. This can be anything from actual data requests (like spreadsheets) to clarifying questions about someone’s testimony. Contested proceedings typically require a formal hearing. The general process for a contested case begins with applying to *intervene*, which is discussed below. The PSC will rule on allowing parties who have applied to intervene and will grant or deny them permission. Then, the parties begin moving through several phases of discovery, where they take turns making written requests for information from other parties. After several rounds of this, all of the parties will file pre-hearing testimony. Generally, in regulatory dockets all of these steps are done “on paper,” ahead of the hearing. The in-person hearing is then only used for cross examination. This reduces the length of time needed for hearings. After the hearing, parties file their briefs, which are a final summary of their arguments. The staff will review all of the information from the case and then make recommendations for the Commissioners, who will discuss and make their final decision.

To become formally involved in a contested proceeding, one must apply to *intervene* in the docket. Intervening means you are a formal party to the case and will have significant involvement. It is important to note that when applying to intervene, you must demonstrate that you are directly affected by the issue or have a strong vested interest. Intervening also means that the entity is restricted on certain activities while the case is on-going. For example, an intervenor cannot take part

in grassroots organizing to influence the outcome of the case. This is deemed as going outside of the legal process. For that reason, many times advocacy groups who are intervening have to be careful with their communications with the public and/or their members so as not to break this rule. Similarly, any intervening party is not allowed to engage with the Commissions on the issues in the case. This is called “ex parte” discussions and is illegal. This would be like the defendant or prosecutor trying to talk to a judge about the case before the judge has ruled. Importantly, this rule applies to the Commissioners as well. They are also restricted from engaging with intervenors on the issue (e.g. the judge talking to the defendant/prosecutor). Intervenors in a contested proceeding usually hire an attorney. While an attorney may not be required, intervenors generally always retain a lawyer in order to more effectively navigate the processes mentioned above.


Those who do not intervene in a contested case docket can still be involved, but to a more limited extent. There are usually opportunities for public comment. Just as with a rulemaking, any party can make public comment. Unlike a rulemaking, however, public comment is not part of the official written record for the hearing. It may still be reviewed by commission staff and/or the Commissioners themselves, but it is not something that should be used or referenced when a Commissioner is making their decision.

An example of a contested proceeding would be a rate case. In this process, the Commission begins by putting out a notice giving parties a deadline to request to intervene. In that notice, they often also include a deadline for any party who does not plan on intervening to provide their comments. Rate cases are particularly important, since they are guaranteed to affect the entire utility’s customer base. As such, there is an even more detailed and robust process.

The process of how to become aware of issues and dockets is described in more detail under “How to Stay Informed” on the following page.

The Montana Consumer Counsel

The Montana Consumer Counsel is a state government office and an important resource to the general public, so much so that it is enshrined in the state's Constitution. The purpose of the Consumer Counsel is to represent the public interests in key venues at the state and federal level. As mentioned above, certain dockets require legal counsel and take a very formal, court-like process. This can be prohibitive for members of the general public, who may not have the time, resources, or expertise to get involved in a docket. Thus, the Consumer Counsel is charged by state law with representing consumer interests in front of the PSC as well as other state venues such as the Legislature, either during a legislative session or during the interim. They may represent consumers at certain federal proceedings as well, including in front of the Federal Energy Regulatory Commission (FERC).



CONSUMER COUNSEL

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The Consumer Counsel office has a lead counsel, as well as several staff that includes economists, analysts and administrative staff. The head of the Consumer Counsel is appointed by the Legislative Consumer Committee, a four-person subcommittee of the Montana Legislature made up of two Senators and two Representatives. The Consumer Committee is required to meet quarterly to receive updates about staff activities and discuss any other matters relevant to the office of the Counsel. Those meetings are public and include time for public comment at the end of the meeting.

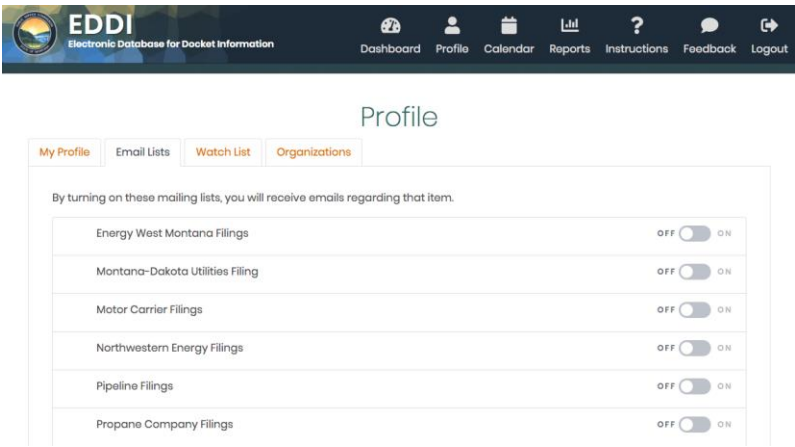
Currently, there is no robust process for the Consumer Counsel to gain public input on issues and proceedings. While there are opportunities for public comment at those quarterly meetings, there is no description on the Counsel's website or elsewhere that describes the process by which the Consumer Counsel determines its positions and gets input from the public.

The Consumer Counsel is based in Helena and can be contacted using information from the Legislative Consumer Committee Webpage.

How to Stay Informed

There are several ways to stay informed about PSC proceedings. This depends on the desired level of involvement. On the more involved end of the spectrum, the PSC has a number of email lists that you can sign up for [16]. There is one, for example, that sends email notifications every time a new docket is opened. You can even choose to get these initial filing notifications only for a specific energy provider. Another email list posts the PSC’s work session agenda for the upcoming week, detailing the issues that Commissioners will be discussing. Many of these lists cover everything under the purview of the PSC – from telecommunications, to energy, to water, etc. If you are only interested in certain topics, some of these lists may be too much information. However, it is also the best way to ensure you get the greatest amount of information. There are numerous other lists that are all listed on the sign-up page.

To sign-up for emails, go to the PSC website. Under the “Documents & Proceedings” tab, click on “PSC Email Lists”. This will take you to the Electronic Database for Docket Information ("EDDI") website. To subscribe to email lists, you have to have an ePass account. When you land on the EDDI page, choose “Create an ePass Account” (or log in). Once you are logged in, click on “Profile” at the top of the page and then on the “Email Lists” tab. This is where you will be able to see the different mailing lists and sign up for them.



Email lists on the EDDI website

Clicking on the “Instructions” tab offers guidance on how to create a “watch list” for rules and dockets. You can always contact PSC staff for further questions on ways to stay informed.

If you are more interested in hearing about only those dockets that are relevant to energy issues, the best method would be to stay informed through an advocacy group. Several advocacy groups in the state keep their members up to date on the most relevant issues the PSC is overseeing. Staying informed through an advocacy group (like MREA!) can also be beneficial since the organization may already be intervening in a given docket. This ensures that you are not only staying informed, but that your concerns have a voice when the PSC takes up an issue.

Thank you for reading!

We hope this guide helped you better understand the important role that the PSC has in Montana’s energy future. For more information about the Montana Public Service Commission and other renewable energy topics, visit MREA’s website: montanarenewables.org

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