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**MONTANA FOURTH JUDICIAL DISTRICT COURT
MISSOULA COUNTY**

FAMILIES FOR A LIVABLE CLIMATE,
BRIDGER BOWL SKI AREA, CITIZENS
FOR CLEAN ENERGY, INC., CLIMATE
SMART MISSOULA, GALLATIN VALLEY
SUNRISE, HELENA HUNTERS AND
ANGLERS ASSOCIATION, MONTANA
CHAPTER OF THE AMERICAN
ACADEMY OF PEDIATRICS, MONTANA
ENVIRONMENTAL INFORMATION
CENTER, NORTHERN PLAINS
RESOURCE COUNCIL, PARK COUNTY
ENVIRONMENTAL COUNCIL, and 350
MONTANA,

Petitioners,

v.

MONTANA DEPARTMENT OF PUBLIC
SERVICE REGULATION and MONTANA
PUBLIC SERVICE COMMISSION,

Respondent.

Dept. No. _____

Cause No. _____

**PETITION FOR ALTERNATIVE
AND PEREMPTORY WRIT OF
MANDAMUS**

1. On February 28, 2024, pursuant to Mont. Code Ann. § 2-4-315, over forty organizations and businesses submitted a Petition for Rulemaking to Respondent, Montana Public Service Commission (“Respondent”), requesting Respondent to initiate rulemaking under the Montana Administrative Procedures Act (“MAPA”) to consider harmful climate change impacts in its regulation of public utilities (the “Rulemaking Petition”). *See In the Matter of the Petition for Adoption of New Rule I and Declarations Pertaining to the Commission’s Consideration of the Adverse Climate Impacts of Greenhouse Gas Emissions*, Docket No. 2024.03.028. Respondent has failed to act on the Rulemaking Petition within 60 days as required by Mont. Code Ann. § 2-4-315.

2. With this action, Petitioners Families for a Livable Climate, Bridger Bowl Ski Area, Citizens for Clean Energy, Inc., Climate Smart Missoula, Gallatin Valley Sunrise, Helena Hunters and Anglers Association, Montana Chapter of the American Academy of Pediatrics, Montana Environmental Information Center, Northern Plains Resource Council, Park County Environmental Council, and 350 Montana (collectively “Petitioners”), seek to compel Respondent to comply with its mandatory legal obligation to issue a written decision to either deny the Rulemaking Petition or initiate rulemaking proceedings in accordance with MAPA.

JURISDICTION AND VENUE

3. Petitioners bring this action pursuant to Mont. Code Ann. § 27-26-102, providing for a writ of mandamus to compel performance of a mandatory legal duty. Respondent’s duties arise under Mont. Code Ann. § 2-4-315 (within 60 days after submission of a rulemaking petition, agencies “either shall deny the petition in writing or shall initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305”).

4. Venue is proper pursuant to Mont. Code Ann. § 25-2-126, as this action is against a state agency, and three Petitioners maintain their principal places of business in Missoula County. Additionally, because the Rulemaking Petition affects citizens and groups throughout Montana, it is a statewide issue, making Missoula County a proper venue.

PARTIES

5. Petitioner Families for a Livable Climate is a non-profit based in Missoula, Montana, representing over 2,000 Montana families across the State. Families for a Livable Climate engages families in community-oriented climate events, educational opportunities, advocacy, and leadership. Families for a Livable Climate advocates for an equitable and vibrant Montana, where families of all kinds advocate for resilient and connected communities, working together across differences to address the climate crisis and create durable solutions. Families for a Livable Climate is one of the petitioners who filed the Rulemaking Petition with Respondent.

6. Petitioner Bridger Bowl Ski Area has served skiing enthusiasts for over 60 years. It is a cornerstone for Bozeman, Montana's recreational community and a significant contributor to the area's vibrant winter tourism economy. Bridger Bowl is committed to environmental stewardship and recognizes climate change as a substantial threat to its operations and future. Bridger Bowl is one of the petitioners who filed the Rulemaking Petition with Respondent.

7. Petitioner Citizens for Clean Energy, Inc. is a non-profit grassroots organization made up of Montana citizens from Great Falls and North Central Montana. Citizens for Clean Energy, Inc.'s mission is to convince decision makers to use adequate, clean, and cost-effective energy sources that will not destroy citizens of Montana's health, lifestyle, environment, and heritage. Citizens for Clean Energy is one of the petitioners who filed the Rulemaking Petition with Respondent.

8. Petitioner Climate Smart Missoula is a community-based nonprofit organization based in Missoula, Montana with a mission to build and accelerate climate solutions for Missoula and beyond. Climate Smart Missoula works with local government and other partners to develop policies and programs to reduce greenhouse gas emissions and reach the goal of 100% clean electricity by 2030 for the Missoula urban area, which was jointly adopted by the City of Missoula and Missoula County in 2019. The Respondent's decision-making around utility energy resource planning directly impacts Climate Smart Missoula's ability to meet this goal. Climate Smart Missoula is one of the petitioners who filed the Rulemaking Petition with Respondent.

9. Petitioner Gallatin Valley Sunrise is a local, all-volunteer, autonomous hub of the Sunrise Movement, a national network of youth who are working to ensure a livable future and create good-paying jobs in the process. Gallatin Valley Sunrise is one of the petitioners who filed the Rulemaking Petition with Respondent.

10. Petitioner Helena Hunters and Anglers Association (“HHAA”) is an all-volunteer group dedicated to protecting and restoring fish and wildlife to all suitable habitats, and conserving all natural resources as a public trust, vital to our general welfare. HHAA promotes the highest standards of ethical conduct and sportsmanship and promotes outdoor recreation opportunities for all citizens to share equally. HHAA’s focus is public trust, fish and wildlife, and the wild habitat that supports both. HHAA is one of the petitioners who filed the Rulemaking Petition with Respondent.

11. Petitioner Montana Chapter of the American Academy of Pediatrics represents pediatric health professionals in Montana, with 165 members. Its mission is to advocate for activities, programs and policies that will promote the optimal health and well-being of children. The Montana Chapter of the American Academy of Pediatrics is concerned about the threat

climate change poses to human health. Children in Montana and worldwide are especially vulnerable to the effects of climate change, including extreme weather events, decreased air quality, changing disease patterns for certain infections, and food and water insecurity. The Montana Chapter of the American Academy of Pediatrics is one of the petitioners who filed the Rulemaking Petition with Respondent.

12. Petitioner Montana Environmental Information Center (“MEIC”) is a non-profit organization with a nearly half-century history of defending the public interest in protecting and restoring Montana's environment. With thousands of members across Montana, MEIC champions federal, state, and local policies that advance clean energy, improve air quality, and combat climate change, upholding Montana's Constitutional commitment to a clean and healthful environment. MEIC is one of the petitioners who filed the Rulemaking Petition with Respondent.

13. Petitioner Northern Plains Resource Council is a grassroots conservation and family agriculture group that organizes Montanans to protect water quality, family farms and ranches, and unique quality of life. Northern Plains Resource Council works to empower Montanans so their voices are heard when decisions that affect their lives are made. Northern Plains Resource Council is one of the petitioners who filed the Rulemaking Petition with Respondent.

14. Petitioner Park County Environmental Council has 4,000 members who rely on the health and beauty of the natural world for their livelihoods, recreation, and well-being. Respondent’s decisions that favor fossil fuels increase air and water pollution, harming members' health and enjoyment of the outdoors. Respondent's decisions also threaten sensitive ecosystems and wildlife, jeopardizing Park County's unique biodiversity. Climate change fueled by fossil fuels poses risks like increased wildfires, droughts, and floods, directly impacting the resilience of

rural communities and the very landscapes Park County Environmental Council strives to preserve. Park County Environmental Council is one of the petitioners who filed the Rulemaking Petition with Respondent.

15. Petitioner 350 Montana's mission is to reduce atmospheric CO₂ concentrations to 350 parts per million by implementing strategic actions and advocating policies to end fossil fuel burning. 350 Montana works to help achieve a 100 percent renewable global energy system using wind, water, and solar. 350 Montana is one of the petitioners who filed the Rulemaking Petition with Respondent.

16. Petitioners are harmed by Respondent's failure to timely resolve their Rulemaking Petition, which they filed to protect their organizational and/or business interests, as well as their members' interests in clean, affordable, and sustainable heating and electric systems and a healthy and productive environment, as set forth in the Rulemaking Petition.

17. Respondent Montana Department of Public Service Regulation is an executive agency organized under Mont. Code. Ann. § 2-15-2601. The Montana Public Service Commission, organized under Mont. Code Ann. § 2-15-2602, is the department head of the Department of Public Service Regulation and is "invested with full power of supervision, regulation, and control of such public utilities." Mont. Code Ann. § 69-3-102. This power includes broad rulemaking authority. *See, e.g.*, Mont. Code Ann. § 69-3-103(1). As a state agency, Respondent is subject to MAPA.

LEGAL BACKGROUND

18. MAPA provides that "an interested person ... may petition an agency requesting the promulgation, amendment, or repeal of a rule." Mont. Code Ann. § 2-4-315.

19. The rulemaking petition process provided by MAPA provides only two outcomes: “[w]ithin 60 days after submission of a petition, the agency either [1] shall deny the petition in writing or [2] shall initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.” Mont. Code Ann. § 2-4-315; *see also* Admin R. Mont. 1.3.308(3).

20. A rulemaking petition “shall be considered filed when received by the agency.” Admin. R. Mont. 1.3.308(2).

21. There can be no question as to whether rulemaking has been denied or initiated, because the statute requires that “[a] decision to deny a petition or to initiate rulemaking proceedings must be in writing and based on record evidence. The written decision must include the reasons for the decision.”

22. To initiate rulemaking under MAPA, an agency must “give written notice of its proposed action. The proposal notice must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the reasonable necessity for the proposed action, and the time when, place where, and manner in which interested persons may present their views on the proposed action. The reasonable necessity must be written in plain, easily understood language.” Mont. Code Ann. § 2-4-302.

23. When contemplating a rulemaking, an agency may engage in informal information gathering, including using “informal conferences and consultations as a means of obtaining the viewpoints and advice of interested persons.” Mont. Code Ann. § 2-4-304.

24. However, in the context of responding to a rulemaking petition, Mont. Code Ann. § 2-4-315 does not afford an agency discretion to engage in informal consultation under Mont. Code Ann. § 2-4-304 *in lieu of* making a decision on a petition beyond the 60-day decision window. Only in the event an agency makes a reasoned, written decision to initiate rulemaking in

response to a petition for rulemaking may the agency invoke MAPA’s additional information-gathering tools under Mont. Code Ann. §§ 2-4-302 through 2-4-305.

25. A two-part test applies to the issuance of a writ of mandate under Mont. Code Ann. 27-26-102. *Common Cause of Montana v. Argenbright*, 276 Mont. 382, 390, 917 P.2d 425, 430 (1996). “First, the writ is available when the party requesting it is entitled to the performance of a clear legal duty by the party against whom the writ is sought.” *Id.* If the answer to the first part is yes, a district court must issue the requested writ “if there is no plain, speedy, and adequate remedy available in the ordinary course of law.” *Id.*

FACTUAL BACKGROUND

26. On February 28, 2024, over 40 petitioners, including a diverse group of Montana organizations, businesses, and individuals concerned about the climate change impacts from greenhouse gas emissions associated with the operation of public electric and gas utilities in the state, filed the Rulemaking Petition requesting Respondent to initiate rulemaking and adopt rules to consider the adverse climate impacts of greenhouse gas emissions. Affidavit of Melissa Hornbein, ¶ 2, Ex. A.

27. The Rulemaking Petition seeks declarations from Respondent regarding the consideration of climate change and its harmful effects in Montana in the context of the Respondent’s regulatory duties.

28. As the regulator of Montana's public electric and gas utilities, Respondent has significant control over decisions by those utilities that lead to the burning of fossil fuels and the resulting climate change impacts of greenhouse gas emissions.

29. Climate change is already harming Montanans, affecting the environment and public health. This harm is exacerbated by the continued burning of fossil fuels for energy and

heating.

30. Respondent's supervision, regulation, and control of public utilities “directly affects the safety, well-being, and finances of Montanans from every corner of the state and all walks of life.”¹

31. Decisions by Respondent must be in the public interest and be based on applicable federal and state statutes, administrative law, and record evidence.

32. The Rulemaking Petition cites concerns about drought across the state, devastating floods, diminished snowpack, increased intensity and severity of wildfires, and increased air pollution that harms people's livelihoods and health, especially children and those at risk of respiratory or cardiovascular disease.

33. Public health and our environment are jeopardized by decision makers', including Respondent's, failure to protect present and future generations from the harm caused by fossil fuel production, transport, and combustion. Affidavit of Winona Bateman, ¶¶ 4, 8–10.

34. Petitioners submitted the Rulemaking Petition on February 28, 2024. Respondent held a public hearing on April 8, 2024.

35. Sixty days from the filing of the Rulemaking Petition elapsed on April 28, 2024.

36. At Respondent's weekly business meeting on April 30, 2024, Respondent failed to take action on the Rulemaking Petition and instead extended the public comment period to July 1, 2024. Hornbein Aff., ¶ 8, Ex. B

¹ MT PSC – Public Participation, available at: <https://psc.mt.gov/DocumentsProceedings/PublicParticipation#:~:text=The%20Montana%20Public%20Service%20Commission,administrative%20law%2C%20and%20record%20evidence.>

37. In doing so, Chairman Brown stated Respondent was not taking any final action either to reject the petition or to initiate rulemaking: “we are not taking any final action today on either accepting the proposed rule or rejecting it.” Hornbein Aff. ¶ 9.

38. Commissioner Bucacek moved to deny the Rulemaking Petition during Respondent's April 30, 2024 meeting and again on May 28, 2024. Hornbein Aff. ¶¶ 9, 13. Passage of either motion, although outside the statutory deadline, would have resolved the petition as required by Mont. Code Ann. § 2-4-315. However, Commissioner Bucacek's motions were not approved. As a result, the Rulemaking Petition remains in legal limbo.

39. Petitioners notified Respondent on May 9, 2024, that their actions violated Mont. Code Ann. § 2-4-315 rulemaking procedures, but as of the date of this action, Respondent has yet to act on the Rulemaking Petition.

40. Petitioners are entitled to a decision on their Rulemaking Petition. Petitioners have been harmed by Respondent's unlawful failure to comply with its mandatory legal duty to decide the Rulemaking Petition. Respondent's delay hampers Petitioners' work and advocacy, and further jeopardizes Petitioners' livelihoods, safety, and health.

CAUSE OF ACTION – WRIT OF MANDAMUS
(Violation of Mont. Code Ann. § 2-4-315)

41. Petitioners restate and reallege paragraphs 1-40 as though fully stated herein.

42. Mandamus lies to compel agency action when it commits “a clear abuse of discretion and ... failure to perform a clear legal duty.” *Kadillak v. Anaconda Co.*, 184 Mont. 127, 144, 602 P.2d 147, 157 (1979).

43. Respondent has a clear legal duty under MAPA, Mont. Code Ann. § 2-4-315, to comply with the rulemaking petition process, meaning that within sixty days after the submission of a petition, the Respondent shall either deny the petition or initiate rulemaking proceedings by

notice as required by Mont. Code Ann. § 2-4-302(1)(a).

44. Respondent has failed to perform its clear legal duty, as required by Mont. Code Ann. § 2-4-315, to issue a decision denying the petition or to initiate rulemaking proceedings within sixty days of the submission of a Rulemaking Petition as required by MAPA.

45. Petitioners have no other plain, speedy, adequate remedy in the course of the law to ensure Respondent complies with MAPA's rulemaking petition process. Mont. Code Ann. § 27-26-102(2).

46. Petitioners are entitled to alternative and peremptory writs of mandate requiring Respondent to rule on the Rulemaking Petition as required by Mont. Code Ann. § 2-4-315.

PRAYER FOR RELIEF

WHEREFORE, Petitioners seek the following relief:

1. Immediately issue an alternative writ of mandamus compelling Respondent's immediate compliance with the rulemaking petition process required by Mont. Code Ann. § 2-4-315;
2. Issue a peremptory writ of mandamus compelling Respondent's permanent compliance with Mont. Code Ann. § 2-4-315;
3. Award Petitioners their reasonable fees, costs, and expenses, including attorneys' fees, associated with this litigation; and
4. Grant Petitioners such additional relief as the Court may deem just and proper.

Respectfully submitted on this sixth day of June, 2024,

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MONTANA DEPARTMENT OF PUBLIC
SERVICE REGULATION and MONTANA
PUBLIC SERVICE COMMISSION,

Respondent.

Dept. No. _____

Cause No. _____

**[PROPOSED]
ALTERNATIVE WRIT OF
MANDATE**

A Petition for Alternative and Preemptory Writ of Mandate and Affidavits of Winona Bateman and Melissa Hornbein have been filed in the above-captioned action. Petitioners Families for a Livable Climate, Bridger Bowl Ski Area, Citizens for Clean Energy, Inc., Climate Smart Missoula, Gallatin Valley Sunrise, Helena Hunters and Anglers Association, Montana

Chapter of the American Academy of Pediatrics, Montana Environmental Information Center, Northern Plains Resource Council, Park County Environmental Council, and 350 Montana allege that Respondent Montana Public Service Commission has violated its clear legal duty under Montana Administrative Procedure Act, Mont. Code Ann. § 2-4-315, to issue a decision on the Petition for Rulemaking filed with Respondent by Petitioners and others on February 28, 2024. Specifically, Petitioners allege Respondent had a clear legal duty to issue a written decision to either deny the Petition for Rulemaking or initiate rulemaking within 60 days of its receipt of the Petition.

Mont. Code Ann. § 2-4-315 requires that Respondent, upon receipt of a petition for rulemaking, “either shall deny the petition in writing or shall initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305. A decision to deny a petition or to initiate rulemaking proceedings must be in writing and based on record evidence. The written decision must include the reasons for the decision.” By failing to issue a decision on the Rulemaking Petition submitted by Petitioners and others on February 28, 2024, Respondent has violated its clear legal duty under Mont. Code Ann. § 2-4-315. Further, as a result of Respondent’s delay, Petitioners lack “a plain, speedy, and adequate remedy in the ordinary course of law.” Mont. Code Ann. § 27-26-102(2).

Upon consideration of the Petition and accompanying affidavits, and good cause appearing therefore,

IT IS HEREBY ORDERED that:

(1) Respondent Montana Public Service Commission is commanded within __ days of receiving this Writ to:

a. Issue a written decision on Petitioners' Petition for Rulemaking in compliance with Mont. Code Ann. § 2-4-315; and

b. Withdraw its April 30, 2024 Notice of Extended Opportunity to Comment, and notify the public of its withdrawal of said Notice.

(2) In the alternative, Respondent Montana Public Service Commission is ordered to appear before this Court at _____ o'clock a.m./p.m. on the _____ day of June, 2024 and show cause why Respondent has not acted in conformity with the Court's command set forth above.

District Court Judge

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MONTANA DEPARTMENT OF PUBLIC
SERVICE REGULATION and MONTANA
PUBLIC SERVICE COMMISSION,

Respondent.

Dept. No. ____
Cause No. ____

**AFFIDAVIT OF MELISSA
HORNBEIN IN SUPPORT OF
PETITION FOR ALTERNATIVE
AND PEREMPTORY WRIT OF
MANDAMUS**

I, Melissa Hornbein, hereby declare:

1. I am an attorney with the Western Environmental Law Center and represent Petitioners in the above-captioned action.
2. On February 28, 2024, more than forty organizations, businesses, and individuals submitted a Petition for Rulemaking to Respondent, Montana Public Service Commission (“Respondent”), requesting Respondent to initiate rulemaking under the Montana Administrative Procedures Act, Section 2-14-315, MCA (“MAPA”), to require consideration of climate change impacts in its regulation of public utilities (the “Rulemaking Petition”).
3. Mont. Code Ann. § 2-14-315 provides for timely resolution of such petitions, stating that: “[w]ithin 60 days after submission of a petition, the agency either shall deny the petition in writing or shall initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305. A decision to deny a petition or to initiate rulemaking proceedings must be in writing and based on record evidence.”
4. In addition to requesting Respondent to initiate rulemaking pursuant to MAPA, the Rulemaking Petition requested declarations from Respondent acknowledging its legal duty and authority to consider the climate change impacts of its regulatory decisions and to take those impacts into consideration in carrying out its statutorily prescribed functions.
5. I have represented Petitioners and others who submitted the Rulemaking Petition from its inception. As a result, I have firsthand knowledge of the events and documents recounted and described herein. In my role as counsel for Petitioners I, along with co-counsel, drafted the Rulemaking Petition and Request for Declaratory Rulings, provided legal review of documents, and helped to finalize the Rulemaking Petition and associated exhibits. The Rulemaking Petition is attached hereto as Exhibit A.

6. Respondent held a public hearing on April 8, 2024. Eighty-two individuals testified during the public comment portion of the hearing, and as of the close of Respondent's public comment period initially scheduled to end on April 12, 2024, Respondent had, by its own account, received more than 500 public comments on the Rulemaking Petition.

7. As of April 28, 2024, sixty days from the filing of the Rulemaking Petition, Respondent had not taken action as required by Mont. Code Ann. § 2-14-315.

8. I attended Respondent's business meeting on April 30, 2024, at which Respondent formally extended the public comment period to July 1, 2024, and submitted a series of questions for Petitioners and the public to address by that date. Following the meeting, Respondent issued a "Notice of Extended Opportunity to Comment," which is attached hereto as Exhibit B.

9. At the same meeting, Commissioner Bukacek moved unsuccessfully to deny the Petition and Respondent clarified that in extending the public comment period and soliciting additional comment on the Rulemaking Petition, it had not and was not taking any action to deny or initiate rulemaking in response to the petition. This is demonstrated by the following exchange¹ between Respondent President Brown and Respondent legal counsel:

- **Question from President Brown to Legal Counsel:** "Are we in any way considering, today, the substance of the petition that has been filed?"
- **Answer:** "Mr. President, I would say that the Commission is considering asking questions about the substance of the petition, I would not say the Commission is moving forward with formal rulemaking, for example a notice of proposed new rule to be published with the Montana Secretary of State's Office."

¹ Transcribed from Respondent's public recording of the April 30, 2024 work session, available at: <https://www.youtube.com/watch?v=le8BHbK3tMM>. Transcribed content is between 00:23:43 and 00:28:03. For the sake of brevity, irrelevant content is not quoted.

- **Question:** “And so if the commission votes today to ask additional questions, are we adopting the proposed rule...?”
- **Answer:** “Mr. president you would not be adopting the proposed rule”
- **Question:** “What would be the process that we would use to adopt this rule if we were considering doing so?”
- **Answer:** “To begin the formal rulemaking process the commission would need to prepare, vote on, a notice of proposed adoption of a new rule. That notice would have to contain not only the content of the proposed rule but also the statement of reasonable necessity. For a rule like this I would also recommend that the Commission contemplate having a hearing on the proposed rule, so it would also schedule a time and place for a hearing and a deadline for the submission of comments to the commission about that notice of proposed rulemaking...”
- **Question:** “If we were to either vote to reject the proposed rule or to adopt a decision to move forward with formal rulemaking, that would as I understand it require us to properly notice, uh, the action that was to be taken and to allow further public on that as well, correct?”
- **Answer:** “Yes I would agree that before the Commission takes a specific action there is an obligation to publish an agenda with a description of the action that the Commission intends to take to provide a meaningful opportunity for public comment and participation.”
- **Question:** “So to reiterate, we are not taking any final action today on either accepting the proposed rule or rejecting it, correct?”

- **Answer:** “Correct, the agenda as published described the purpose of today’s work session, uh the consideration of additional written questions and the extension of the public comment period.”

10. These statements demonstrate that Respondent clearly understood what action it would need to take to act on the Rulemaking Petition and that it did not do so at its April 30, 2024, business meeting. The “Notice of Extended Opportunity to Comment” attached hereto as Exhibit B contains no reference to action on the Rulemaking Petition or to the requirements of Mont. Code Ann. § 2-4-315.

11. On May 9, 2024, Petitioners put Respondent on notice that its failure to act on the Rulemaking Petition within sixty days violated Mont. Code Ann. § 2-4-315, via “Petitioners’ Notice of Mandatory Rulemaking Procedures under Mont. Code Ann. § 2-4 315 and Objection to Commission Process,” filed in Respondent’s docket for the Rulemaking Petition and attached hereto as Exhibit C. In my role as counsel for Petitioners I assisted in the drafting and legal review of the Notice.

12. On May 24, 2024, Commissioner Bukacek circulated to participants in the docket a “draft Notice of Commission Action” which, if adopted by Respondent “would decide the petition for rulemaking on greenhouse gas emissions and direct staff to prepare an order pursuant to Mont. Code Ann. § 2-4-315.” The Draft Notice is attached hereto as Exhibit D. The draft Notice memorialized a vote to deny the petition and “directed staff to prepare a written order pursuant to Mont. Code Ann. § 2-4-315.” The draft Notice provided for continuation of the public comment period previously extended by Respondent.

13. On May 28, 2024, at Respondent's weekly business meeting, Commissioner Bukacek made a motion to deny of Rulemaking Petition and direct staff to prepare a written order to that effect.² The motion failed for want of a second, and no discussion was permitted.

14. Commissioner Bukacek's motion, though outside the statutory timeline, would have resolved the Rulemaking Petition as required by Mont. Code Ann. § 2-4-315.

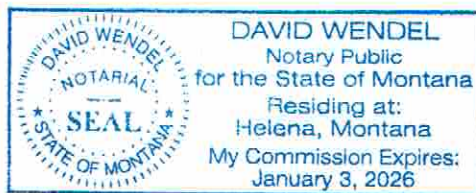
15. As of the date of this petition, Respondent has not acted on the Rulemaking Petition.

16. Petitioners are entitled to a decision on their Rulemaking Petition. Petitioners have been and continue to be harmed by Respondent's unlawful failure to comply with its mandatory legal duty to decide the Rulemaking Petition. Respondent's delay hampers Petitioners' work and advocacy, and further jeopardizes Petitioners' livelihoods, safety, and health.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 5th day of June, 2024, in Helena, Montana.

/s/ Melissa Hornbein
Melissa Hornbein
Attorney for Petitioners

NOTARY SEAL



State of MT
County of Lewis and Clark

Signed before me on June 5,
2024 by Melissa Hornbein.

David Wendel
David Wendel

² Available at <https://www.youtube.com/watch?v=V0t7JcDiPwc>, at timestamp 00:27:42-56.

Affidavit of Melissa Hornbein
EXHIBIT A

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

IN THE MATTER OF the Petition)
for Adoption of New Rule I and) Docket No. 2024.02._____
Declarations Pertaining to the) **PETITION FOR RULEMAKING**
Commission's Consideration of the)
Adverse Climate Impacts of)
Greenhouse Gas Emissions)
)

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INTRODUCTION

The science is clear that there are catastrophic harms to the natural environment of Montana and Plaintiffs and future generations of the State due to anthropogenic climate change. The degradation to Montana's environment, and the resulting harm to Plaintiffs, will worsen if the State continues ignoring [greenhouse gas] emissions and climate change.

Held v. State of Montana, No. CDV-2020-307 (Mont. First Jud. Dist. Ct. Aug. 14, 2023) (Findings of Fact, Conclusions of Law, and Order at 46).

Montanans have a “fundamental constitutional right to a clean and healthful environment, which includes climate as part of the environmental life-support system.” *Held* at 102. Greenhouse gas emissions from the burning of fossil fuels cause a climate-altering effect with dire implications within the State of Montana. *Held* at 19–24, 25–46. In its supervision, regulation, and control of Montana utilities, the Montana Public Service Commission (Commission) makes consequential decisions that can either deepen utility investments in climate-polluting fossil fuels or promote cleaner alternatives. Indeed, “[t]he current barriers to implementing renewable energy systems are not technical or economic, but social and political. Such barriers primarily result from government policies that slow down and inhibit the transition to renewables, and laws that allow utilization of fossil fuel development and preclude a faster transition to a clean, renewable energy system.” *Id.* at 84. The Commission’s decisions have long-term impacts on Montana’s environment, its citizens, and utility rates. Existing laws and regulations governing the Commission’s decision-making require that it account for adverse climate impacts of greenhouse gas emissions resulting from Commission policies and decisions affecting electric and gas resources.

Pursuant to Mont. Code Ann. § 2-4-315 and in accordance with Administrative Rules of Montana (ARM) 1.3.307 and 1.3.308, the undersigned Petitioners submit the following Petition for Rulemaking. Petitioners request the Montana Public Service Commission (Commission) to adopt the rule proposed herein to make explicit the need for the Commission to consider and act on information about the climate consequences of its decisions, including impacts on communities that are disproportionately harmed by greenhouse gas emissions or subject to historical inequalities.

In conjunction with this request for rulemaking, pursuant to Mont. Code Ann. § 2-4-501, Petitioners seek declarations from the Commission that: (1) the Montana Constitution imposes an affirmative obligation on the Commission to consider the harmful climate consequences of its decisions to prevent constitutional harm and protect Montanans’ fundamental right to a clean and healthful

environment; and (2) the statutory and regulatory framework governing the Commission's regulation of public utilities instructs it to make decisions in the public interest that ensure just and reasonable utility rates; these standards require the Commission to consider climate change and its harmful effects in Montana in the context of its regulatory duties.

To ensure that the Commission exercises its authority in a manner consistent with its constitutional and statutory obligations, Petitioners respectfully request that the Commission take the actions proposed in this Petition.

I. IDENTITY AND INTERESTS OF PETITIONERS

The Petitioners identified below include a diverse group of Montana organizations, businesses, and individuals concerned about the climate change impacts from greenhouse gas emissions associated with operation of public electric and gas utilities in the State. The interests of each Petitioner are set forth in Attachment A. Each Petitioner understands that the climate crisis impacts all Montanans, and that it is especially harmful to the most vulnerable who rely on the land for their livelihoods and traditions. All Petitioners are concerned about drought across the State, devastating floods, diminished snowpack, increased intensity and severity of wildfires, and increased air pollution that harms people's livelihoods and health, especially children and those at risk of respiratory or cardiovascular disease. Petitioners also believe that public health and our environment are jeopardized by decision-makers' failure to protect present and future generations from the harm caused by fossil fuel production, transport, and combustion.

Petitioners assert that the Commission – in the fulfillment of its constitutional and statutory obligations – must protect present and future generations from ongoing climate harm. Petitioners further assert that Commission decision-making regarding Montana's energy system must include considerations of equity in order to protect the most vulnerable from the harm caused by the fossil fuel industry.

Families for a Livable Climate, Winona Bateman

Gallatin Valley Sunrise, August Schuerr

Montana Environmental Information Center, Nick Fitzmaurice

Associated Students of Montana State University, Josie Kaufman

Big Sky Resort, Taylor Middleton

Blackfoot River Brewery, Bethany Flint

Bozeman Community Food Co-op, Rory Sandovac

Bridger Bowl Ski Area, Hiram Towle

Bridgercare, Stephanie McDowell

Campus Climate Coalition, Jackson Mundell

Citizens for Clean Energy, Inc., David Saslav

Climate Smart Glacier Country, Steve Thompson

Climate Smart Missoula, Abby Huseth

Earthworks, Bonnie Gestring

Environmental Defense Fund, Vickie Patton

Forward Montana, Kiersten Iwai

Helena Hunters and Anglers, Steve Platt

Helena Interfaith Climate Advocates, David R Hemion

Lander Busse, Plaintiff, *Held v. State of Montana*

Moms Clean Air Force, Michelle Uberuaga

Montana Associated Students, Melissa Ramirez

Montana Chapter of the American Academy of Pediatrics, Lauren Wilson

Montana Conservation Elders, Wayne Chamberlin

Montana Health Professionals for a Healthy Climate, Lori Byron

Montana Interfaith Power and Light, Caleb Koebble

Montana Public Interest Research Group, Hunter Losing

Montana Renewable Energy Association, Makenna Sellers

Montana Science Center, Faye Nelson
Montana Wildlife Federation, Frank Szollosi
Natural Resources Defense Council, Amanda Levin
Northern Plains Resource Council, Jack Leuthold
NW Energy Coalition, Diego Rivas
Park County Environmental Council, Sarah Stands
Parks’ Fly Shop, Richard Parks
Renewable Northwest, Kyle Unruh
Save Wild Trout, Wade Fellin
Sierra Club Montana Chapter, David Merrill
Stonetree Climbing Gym, Bob Goodwyn
Ten Mile Creek Brewery, Ethan Kohoutek
350 Montana, Jeff Smith
Upper Missouri Waterkeeper, Quincey Johnson
Yellowstone Valley Citizens Council, Michael Skinner

II. FACTUAL SUPPORT FOR PETITION

As regulator of Montana’s public electric and gas utilities, the Commission has significant control over decisions by those utilities that lead to the burning of fossil fuels and the resulting climate change impacts of greenhouse gas emissions. As described below, Montanans already experience harm from climate change on the environment and public health, which is exacerbated by continued burning of fossil fuels for energy and heating. As the Commission acknowledges, its supervision, regulation, and control of public utilities “directly affects the safety, well-being, and finances of Montanans from every corner of the state and all walks of life. Commissioners are bound to make decisions in the public interest that are

based on applicable federal and state statute, administrative law, and record evidence.”¹

A. Climate Change Causes Environmental and Societal Harm Globally and in Montana.

Climate change is having and will increasingly have significant environmental and economic impacts in Montana, the United States, and across the globe. These impacts are described in numerous studies and reports, including the most recent Intergovernmental Panel on Climate Change Sixth Assessment Report (AR6),² the U.S. Fourth and Fifth National Climate Assessments,³ the Montana Climate Assessment (MCA),⁴ and the Montana Climate Assessment Special Report: Climate Change and Human Health in Montana.⁵ Aided by the scientific literature that overwhelmingly confirms the negative impacts of greenhouse gas emissions, the Commission must account for the impacts of its decisions on climate change.

¹ MT PSC – Public Participation, available at: <https://psc.mt.gov/Documents-Proceedings/Public-Participation#:~:text=The%20Montana%20Public%20Service%20Commission,administrative%20law%2C%20and%20record%20evidence.>

² Intergovernmental Panel on Climate Change, AR 6 WGII Technical Summary and Summary for Policymakers (2022), available at https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_TechnicalSummary.pdf. Attached as Exhibit 1 (“IPCC AR6”).

³ U.S. Global Change Research Program, Fourth National Climate Assessment, Impacts, Risks, and Adaptation in the United States, Report-in-Brief, available at https://nca2018.globalchange.gov/downloads/NCA4_Report-in-Brief.pdf. Attached as Exhibit 2 (“NCA”); U.S. Global Change Research Program, Fifth National Climate Assessment, Impacts, Risks, and Adaptation in the United States, Report-in-Brief, available at <https://www.globalchange.gov/reports/fifth-national-climate-assessment-report-brief>. Attached as Exhibit 3.

⁴ Whitlock, C., *et al.*, Montana Climate Assessment: Stakeholder driven, science informed (2017) available at <http://live-mca-site.pantheonsite.io/sites/default/files/thumbnails/image/2017-Montana-Climate-Assessment-lr.pdf>. Attached as Exhibit 4 (“MCA”).

⁵ Adams, A., *et al.*, Climate Change and Human Health in Montana: A Special Report on the Montana Climate Assessment (2021), available at http://live-mca-site.pantheonsite.io/sites/default/files/thumbnails/image/2021_C2H2inMT_final.pdf. Attached as Exhibit 5 (“MCA: Climate Change and Human Health”).

1. Global Climate Change Impacts

In 2022, the Intergovernmental Panel on Climate Change (IPCC) completed and issued AR6, a massive 4-volume appraisal of recent scientific and economic literature cataloging the principal mechanisms by which human-caused greenhouse gas emissions are contributing to climate change and undermining critical human and natural systems. In AR6, the IPCC comprehensively analyzed such observed threats to ecosystems and human systems, and confirms that impacts are real and often severe, including that:

- Climate change has caused local species losses, increases in disease [], and mass mortality events of plants and animals [], resulting in the first climate driven extinctions [], ecosystem restructuring, increases in areas burned by wildfire [], and declines in key ecosystem services.
- Widespread and severe loss and damage to human and natural systems are being driven by human-induced climate changes increasing the frequency and/or intensity and/or duration of extreme weather events, including droughts, wildfires, terrestrial and marine heatwaves, cyclones [], and flood []. Extremes are surpassing the resilience of some ecological and human systems.
- Extreme events and underlying vulnerabilities have intensified the societal impacts of droughts and floods and have negatively impacted agriculture, energy production and increased the incidence of water-borne diseases. Economic and societal impacts of water insecurity are more pronounced in low-income countries than in the middle- and high-income ones.
- Over nine million climate-related deaths per year are projected by the end of the century, under a high emissions scenario and accounting for population growth, economic development, and adaptation.
- In many regions, the frequency and/or severity of floods, extreme storms, and droughts is projected to increase in coming decades, especially under high-emissions scenarios, raising future risk of displacement in the most exposed areas. Under all global warming levels, some regions that are presently densely populated will become unsafe or uninhabitable.
- Approximately 3.3 to 3.6 billion people live in contexts that are highly vulnerable to climate change[]. A high proportion of species is vulnerable to climate change []. Human and ecosystem vulnerability are interdependent.⁶

⁶ Bulleted statements from IPCC AR 6 (omitting confidence level assignments for ease of reading).

Specifically looking at the United States, the IPCC concludes that:

- Rising air, water, ocean and ground temperatures have restructured ecosystems and contributed to the redistribution [] and mortality of fish, bird and mammal species. Extreme heat and precipitation trends on land have increased vegetation stress and mortality, reduced soil quality and altered ecosystem processes including carbon and freshwater cycling []. Warm and dry conditions associated with climate change have led to tree die-offs [] and increased prevalence of catastrophic wildfire [] with an increase in the size of severely burned areas in western North America.⁷

Similarly, the IPCC observed that “careful statistical analysis shows that record-setting hot temperatures in North America are occurring more often than record-setting cold temperatures as the overall climate has gotten warmer in recent decades. The area burned by large wildfires in the western USA has increased in recent decades.”⁸ Greenhouse gas emission increases since 1750 now produce a climate-forcing equivalent to twice the preindustrial level of atmospheric CO₂ and is already and will continue to experience the consequences of this climate change.⁹

These impacts are aggravated by all incremental emissions, such as those from coal and gas resources in Montana. On this point, the IPCC recently explained:

Continued greenhouse gas emissions will lead to increasing global warming, with the best estimate of reaching 1.5°C in the near term in considered scenarios and modelled pathways. Every increment of global warming will intensify multiple and concurrent hazards []. Deep, rapid, and sustained reductions in greenhouse gas emissions would lead to a discernible slowdown in global warming within around two decades, and also to discernible changes in atmospheric composition within a few years.¹⁰

⁷ Intergovernmental Panel on Climate Change, Contribution of Working Group II to the Sixth Assessment Report, Ch. 14, 1932 (2022) (omitting confidence level assignments for ease of reading) (“AR6, Working Group II”), available at https://report.ipcc.ch/ar6/wg2/IPCC_AR6_WGII_FullReport.pdf. Excerpt of Full Report attached as Exhibit 6.

⁸ *Id.* at 1938.

⁹ Hansen, J. et al., *Global Warming in the Pipeline* (Dec. 8, 2022) available at <https://arxiv.org/abs/2212.04474>. Attached as Exhibit 7.

¹⁰ Intergovernmental Panel on Climate Change, Synthesis Report of the IPCC Sixth Assessment Report (2023). Attached as Exhibit 8.

Incremental increases in emissions push the global atmosphere toward tipping points that will lead to irreversible changes:

Some future changes are unavoidable and/or irreversible but can be limited by deep, rapid and sustained global greenhouse gas emissions reduction. The likelihood of abrupt and/or irreversible changes increases with higher global warming levels. Similarly, the probability of low-likelihood outcomes associated with potentially very large adverse impacts increases with higher global warming levels.¹¹

“The likelihood and impacts of abrupt and/or irreversible changes in the climate system, including changes triggered when tipping points are reached, increase with further global warming.”¹² This means that no one can stand on the sidelines; “deep” and “rapid” emissions reductions must come from all jurisdictions. To have even a moderate chance at avoiding the worst impacts of climate change and keeping warming to 1.5° or even 2° C, wholesale emission reductions must occur between now and 2030.¹³

2. Climate Change Impacts in the Northern Great Plains Region

Much like the United States in general, the number of days with hot temperatures is projected to largely increase across the Great Plains region even under scenarios in which greenhouse gas emissions are reduced. The number of days with temperatures over 100°F are projected to double in the north and quadruple in the south, with similar increases in nights with temperatures higher than 60°F in the north and 80°F in the south.¹⁴

The National Climate Assessment (NCA) contains a detailed analysis of regional impacts of climate change throughout the United States, including the

¹¹ *Id.* at 19.

¹² *Id.*

¹³ *Id.* (explaining current “gap” between emissions and reductions required to limit warming, which “make it likely that warming will exceed 1.5 C”).

¹⁴ Melillo, J.M., *et al.*, Climate Change Impacts in the United States: The Third National Climate Assessment (2014), available at https://nca2014.globalchange.gov/downloads/low/NCA3_Full_Report_19_Great_Plains_LowRes.pdf. Attached as Exhibit 9.

northern plains region.¹⁵ The NCA makes clear that the impacts of climate change are already being felt throughout the mountains and plains of Montana. Climate change is causing and is predicted to continue to cause warmer water temperatures in streams and rivers and low summer flows. Hotter temperatures and earlier spring snowmelt are also causing and expected to continue causing longer and more damaging wildfire seasons.¹⁶

These impacts to natural systems are, in turn, harming important sectors of Montana's economy, including agriculture and outdoor recreation.^{17,18} For example, higher temperatures and water shortages have harmed and are projected to worsen harms to the agricultural sectors of the state's economy. Climate change is also causing more frequent extreme weather events and flooding in the region.¹⁹

The energy sector in the northern plains region is a "significant source of greenhouse gases and volatile organic compounds that contribute to climate change and ground-level ozone pollution."²⁰ "Unless offset by additional emissions reductions of ozone precursors, these climate-driven increases in ozone forecast to cause premature deaths, hospital visits, lost school days, and acute respiratory symptoms."²¹

A climate assessment for Montana has also been conducted by Montana State University, the University of Montana, and the Montana Institute on Ecosystems. The Montana Climate Assessment (MCA) provides a more detailed look at the

¹⁵ U.S. Global Change Research Program, Fourth National Climate Assessment, Impacts, Risks, and Adaptation in the United States, Northern Great Plains (2018), available at https://nca2018.globalchange.gov/downloads/NCA4_Ch22_Northern-Great-Plains_Full.pdf ("NCA Northern Great Plains"). Attached as Exhibit 10 ("NCA Northern Great Plains").

¹⁶ *Id.*

¹⁷ Power Consulting Inc., The Economic Impact of Climate Change in Montana (Sept. 2023), available at https://montanawildlife.org/wp-content/uploads/2023/10/Economic-Impacts-of-Climate-Change-in-MT_Power-Consulting-Inc._Clean-Version_9-27-2023.docx.pdf?c6b026&c6b026. Attached as Exhibit 11.

¹⁸ Power, T., The Impact of Climate Change on Montana's Agricultural Economy, (Feb. 2016) available at https://legacy-assets.eenews.net/open_files/assets/2017/07/03/document_gw_01.pdf. Attached as Exhibit 12.

¹⁹ Ex. 5, MCA: Climate Change and Human Health in Montana at XIX.

²⁰ Ex. 2, Fourth NCA at 962.

²¹ *Id.* at 963.

impacts from climate change that are already being experienced across the state and impacts that are expected in the future.²² Changes include:

- Annual average temperatures, including daily minimums, maximums, and averages, have risen across the state between 1950 and 2015. The increases range between 2.0 and 3.0°F (1.1 and 1.7°C) during this period.
- Despite no historical changes in average *annual* precipitation between 1950 and 2015, there have been changes in average *seasonal* precipitation over the same period.
- Montana is projected to continue to warm in all geographic locations, seasons, and under all emission scenarios throughout the 21st century. By mid-century, Montana temperatures are projected to increase by approximately 4.5–6.0°F (2.5–3.3°C) depending on the emission scenario. By the end-of-century, Montana temperatures are projected to increase 5.6–9.8°F (3.1–5.4°C) depending on the emission scenario. These state-level changes are larger than the average changes projected globally and nationally.
- Across the state, precipitation is projected to increase in winter, spring, and fall; precipitation is projected to decrease in summer. The largest increases are expected to occur during spring in the southern part of the state. The largest decreases are expected to occur during summer in the central and southern parts of the state.²³

The Montana Climate Assessment also presented findings on climate impacts that Montana can expect in the future. Water resources are at risk from rising temperatures that will reduce snowpack, shift historical patterns of streamflow, and likely result in additional stress on Montana’s water supply, particularly during summer and early fall. Specifically:

- Montana’s snowpack has declined over the observational record (i.e., since the 1930s) in mountains west and east of the Continental Divide; this decline has been most pronounced since the 1980s. Warming temperatures over the next century, especially during spring, are likely to reduce snowpack at mid and low elevations.
- Historical observations show a shift toward earlier snowmelt and an earlier peak in spring runoff in the Mountain West. Projections suggest that these patterns are very likely to continue into the future as temperatures increase.

²² Ex. 5, MCA: Climate Change in Montana.

²³ Bullet points summarized from Ex. 5, MCA: Climate Change in Montana.

- Earlier onset of snowmelt and spring runoff will reduce late-summer water availability in snowmelt-dominated watersheds.
- Groundwater demand will likely increase as elevated temperatures and changing seasonal availability of traditional surface-water sources (e.g., dry stock water ponds or inability of canal systems to deliver water in a timely manner) force water users to seek alternatives.²⁴
- The MCA also found that rising temperatures will exacerbate persistent drought periods that have been a natural part of Montana's climate. Specifically:
 - o Multi-year and decadal-scale droughts have been, and will continue to be, a natural feature of Montana's climate; rising temperatures will likely exacerbate drought when and where it occurs; and
 - o Changes in snowpack and runoff timing will likely increase the frequency and duration of drought during late summer and early fall.²⁵
- The MCA also forecasts that climate change will negatively affect Montana agriculture.²⁶ Impacts include:
 - o Decreasing mountain snowpack will continue to lead to decreased streamflow and less reliable irrigation capacity during the late growing season. Reduced irrigation capacity will have the greatest impact on hay, sugar beet, malt barley, market garden, and potato production across the state; and
 - o Increases in temperature will allow winter annual weeds, such as cheatgrass, to increase in distribution and frequency in winter wheat cropland and rangeland. Their spread will result in decreased crop yields and forage productivity as well as increased rangeland wildfire frequency.²⁷

²⁴ *Id.*

²⁵ *Id.*

²⁶ Montana Climate Assessment, Agriculture and Climate Change in Montana (2017) available at <https://montanacclimate.org/sites/default/files/thumbnails/image/2017-MCA-Agriculture-Chapter-1r.pdf>. Attached as Exhibit 13.

²⁷ Bullet points summarized from Ex. 13.

B. Climate Change Harms Montanans' Health.

As shown in both the National and Montana Climate Assessments, all Montanans will experience environmental impacts from a changing climate. Building on the MCA, Montana State University, the Montana Institute of Ecosystems, and Montana Health Professionals for a Healthy Climate published *Climate Change and Human Health in Montana: A Special Report of the Montana Climate Assessment in January 2021*.²⁸ This report examines the connections between climate change impacts and the health of Montanans. The report focused on three aspects of projected climate change of greatest concern for human health in Montana: increased summer temperatures and periods of extreme heat; reduced air quality, as wildfires increase in size and frequency; and more unexpected climate-related weather events, including rapid spring snowmelt and flooding, severe summer drought, and more extreme storms.²⁹ The report concludes that these climate change impacts will adversely affect Montanans in myriad ways, including that:

- Increased summer temperatures and wildfire occurrence will worsen heat- and smoke-related health problems such as respiratory and cardiopulmonary illness.
- Earlier snowmelt will endanger lives and lead to more gastrointestinal disease due to contaminated water supplies as well as increased opportunities for other water-borne, food-borne and mold-related diseases.
- Increased summer drought will likely increase cases of West Nile virus, pose challenges to local agriculture, and result in decreased food availability and nutritional quality as well jeopardizing the safety and availability of public and private water supplies.
- Warmer temperatures and elevated carbon dioxide levels will lead to worsening allergies and asthma as a result of increased pollen levels.
- Climate change will also reduce the availability of wild game, fish, and many subsistence, ceremonial, and medicinal plants, which threatens food security, community health, and cultural well-being, particularly for tribal communities.³⁰

²⁸ Ex. 5, MCA: Climate Change and Human Health in Montana.

²⁹ *Id.* at XIX.

³⁰ Bullet points summarized from Ex. 5, MCA: Climate Change in Montana.

In light of these existing and projected impacts, the State of Montana has recognized that “urgent action [] is needed to address the increasing threats and impacts of climate change.”³¹

C. Montana’s Fossil Fuel Energy Sources and Gas Infrastructure Spur Climate Change and Its Harmful Impacts in Montana.

As a net energy exporter positioned with disproportionate access to untapped fossil fuel reserves, Montana is a significant contributor to anthropogenic climate change. According to the U.S. Environmental Protection Agency (EPA), nearly 75% of total climate-altering greenhouse gas emissions in the U.S. come from combustion of fossil fuels (including for energy production), namely coal, oil, and methane gas.³² Montana’s 2021 electric-sector greenhouse gas emissions, calculated as carbon dioxide-equivalent emissions, amounted to 12.5 million metric tons, with residential and commercial-sector greenhouse gas emissions (primarily from burning gas for heating and other purposes) adding 3.3 million metric tons.³³ As affirmed in the August 2023 *Held v. Montana* ruling and supported by broad scientific consensus, these greenhouse gas emissions cause a climate-altering effect with dire implications within the state of Montana. *Held* at 19–24, 25–46. Utilities regulated by the Commission develop, maintain, and utilize power from substantial fossil-fuel energy infrastructure that is responsible for these climate-altering emissions. This infrastructure includes coal-burning power plants, methane-gas burning power plants, petroleum-coke burning power plants, and methane gas pipelines and distribution systems.

D. Burning Coal and Gas in Montana Has Significant Environmental and Societal Costs.

Combustion of fossil fuels generates real economic harm in the state, which can be estimated using the Social Cost of Greenhouse Gases, discussed further below (SC-GHG). The SC-GHG is a metric that estimates the economic damage

³¹ Montana Climate Solutions Panel, Montana Climate Solutions Plan (Aug. 2020), available at https://deq.mt.gov/Files/DEQAdmin/Climate/2020-09-09_MontanaClimateSolutions_Final.pdf. Attached as Exhibit 14.

³² U.S. EPA, Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2021, Executive Summary, p. ES-9 (April 2023), available at <https://www.epa.gov/system/files/documents/2023-04/US-GHG-Inventory-2023-Chapter-Executive-Summary.pdf>. Attached as Exhibit 15.

³³ U.S. Energy Info. Admin., State energy-related carbon dioxide emissions, Table 3 <https://www.eia.gov/environment/emissions/state/>

caused by each additional ton of carbon dioxide, methane, and nitrous oxide emitted into Earth's atmosphere. While not the only climate-forcing greenhouse gases, these three gases account for the vast majority of global climate change, with carbon dioxide being the most prevalent in the atmosphere and methane and nitrous oxide comprising only a fraction of atmospheric greenhouse gases, but having far greater potency. The SC-GHG allows decision-makers such as utilities and the Commission to account for the costs of greenhouse gas emissions that were previously unquantified. In 2023, the U.S. EPA released its Final Report on the Social Cost of Greenhouse Gases, which calculated the Social Cost of Carbon at a rate of \$190 per ton of CO₂ emitted in 2021.³⁴ The Colstrip coal-fired power plant, Montana's largest point-source emitter of greenhouse gases, reported 10,740,663 metric tons of carbon dioxide-equivalent emissions to the EPA for 2022. At \$190 per ton, that is \$2,040,725,970 in annual economic damages from just a single emission source in Montana.³⁵

III. LEGAL SUPPORT FOR PETITION

A. **The Commission Must Consider the Climate Consequences of its Decisions to Prevent Constitutional Harm and Protect Montanans' Fundamental Right to a Clean and Healthful Environment.**

All Montanans enjoy the inalienable right to a clean and healthful environment under Article II, section 3 of the Montana Constitution. This is a fundamental right, and the Constitution imposes an affirmative obligation on the part of state agencies, including the Commission – in carrying out its statutory duties – to “maintain and improve a clean and healthful environment in Montana for present and future generations.” Mont. Const. Art. IX., sec. 1; *Montana Env't Info. Ctr. v. Dept. of Env't Quality*, 1999 MT 248, ¶ 63, 296 Mont. 207, 988 P.2d

³⁴ U.S. EPA, Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances (November 2023), available at https://www.epa.gov/system/files/documents/2023-12/epa_scghg_2023_report_final.pdf. Attached as Exhibit 16. The SC-GHG includes specific values for each climate-forcing greenhouse gas. As referenced, carbon dioxide has the greatest impact on global climate change as a result of its atmospheric abundance, but EPA has also established social costs for methane (CH₄), and nitrous oxide (N₂O) of \$1,600 and \$54,000 per ton, respectively.

³⁵ U.S. EPA, Greenhouse Gas Reporting Program (GHGRP), GHGRP Emissions by Location 2022, available at <https://www.epa.gov/ghgreporting/ghgrp-emissions-location>. This figure does not break down emissions by type or account for the higher social costs of methane and nitrous oxide. Thus, the actual social costs of Colstrip's greenhouse gas emissions are likely higher.

1236; *Held* at 96). The legislature’s duty under the Constitution is to “provide adequate remedies for the protection of the environmental life support system from degradation” and to “prevent unreasonable depletion and degradation of natural resources.” Mont. Const. Art. IX, sec. 1.

A stable climate is essential to and included within the all-encompassing environmental life support system. *Held* at 102. The protections afforded by the Constitution in Article II, section 3 and Article IX, section 1 must be read together; they are intended to “complement each other and be applied in tandem.” *MEIC*, ¶ 65. It is well-settled that the environmental protections in Montana’s Constitution compel state agencies to take action to realize those protections. Indeed,

[the Constitution’s] unambiguous reliance on preventative measures to ensure that Montanans’ inalienable right to a ‘clean and healthful environment’ is as evident in the air, water, and soil of Montana as in its law books. Article IX, Section 1, of the Montana Constitution describes the environmental rights of ‘future generations,’ while requiring ‘protection’ of the environmental life support system ‘from degradation’ and ‘prevent[ion of] unreasonable depletion and degradation’ of the state’s natural resources. This forward-looking and preventative language clearly indicates that Montanans have a right not only to reactive measures after a constitutionally-proscribed environmental harm has occurred, but to be free of its occurrence in the first place.

Park Cnty. Env’t Council v. Dept. of Env’t Quality, 2020 MT 303, ¶ 62, 402 Mont. 168, 477 P.3d 288, 304.

The degradation of Montana’s climate and natural resources as a result of Montana’s fossil-fuel-dependent energy system and its associated greenhouse gas emissions has caused and continues to cause constitutional harm to all Montanans. *Held* at 24 (“Every ton of fossil fuel emissions contributes to global warming and impacts to the climate and thus increases the exposure of Youth Plaintiffs to harms now and additional harms in the future.”). Climate change is causing catastrophic harm to Montana and to present and future generations of Montanans, and this harm will worsen if the Commission continues to ignore greenhouse gas emissions and climate change in its regulation of utilities. The Commission must consider climate change and greenhouse gas emissions to bring its regulation of Montana utilities in line with the constitutional mandate to “maintain and improve a clean and healthful environment for present and future generations.” Mont. Const. Art. IX., sec. 1.

B. The Commission’s Statutory and Regulatory Framework Requires the Consideration of Climate Change and its Harmful Effects in Montana.

By creating the Commission and vesting it with the “full power of supervision, regulation, and control of such public utilities,” the legislature endowed the Commission with ample authority to carry out its constitutional responsibilities. Mont. Code. Ann. § 69-3-102; ARM 38.1.101; *Montana-Dakota Utilities Co. v. Montana Dept. of Pub. Serv. Regulation*, 243 Mont. 492, 498, 795 P.2d 473, 477 (1990). Indeed, the Commission is mindful that it “has broad authority to act in the public interest to preserve the safe operation of utility systems it regulates.” *In the Matter of Sleepy Hollow Oil & Gas*, Docket No. 2022.04.051, Final Order 7833d, ¶ 21 (Sept. 20, 2022). The Commission’s statutory obligations to make decisions in the public interest and ensure just and reasonable utility rates and practices require it to consider the adverse climate change impacts of continued reliance on fossil fuels because those impacts directly affect both the public interest *and* long-term rates.³⁶ Further, the Commission’s existing statutory framework, when implemented in a constitutionally sound manner, requires it to act on considerations of climate harm in order to fulfill its mandate to “maintain and improve a clean and healthful environment for present and future generations.” Mont. Const. Art. IX., sec. 1.

The Commission therefore has a strong basis to incorporate considerations of climate change in furtherance of “just and reasonable rates” and the “public interest.” The legislature has defined the public interest expansively to incorporate environmental and statewide economic considerations. For example, as discussed below, the legislature established a state policy to “encourage utilities to acquire resources using a competitive solicitation process and in a manner that will help ensure a clean, healthful, safe, and economically productive environment.” *Id.* § 69-3-1202(1)(b). And in some cases, the legislature has specifically identified “(1)

³⁶ See Lazard’s Levelized Cost of Energy Analysis (April 2023), available at <https://www.lazard.com/media/20zoovyg/lazards-lcoeplus-april-2023.pdf>; Clack et al., Affordable & Reliable Decarbonization Pathways for Montana, Vibrant Clean Energy, LLC (Feb. 24, 2021), available at https://www.vibrantcleanenergy.com/wp-content/uploads/2021/05/VCE-MT-WISdomP_Final.pdf; see also NorthWestern Energy Group, Inc., 2023 Annual Form 10-K Filing to the Securities and Exchange Commission, Item 1A (Risk Factors) (Feb. 15, 2024), available at <https://www.sec.gov/ixviewer/ix.html?doc=/Archives/edgar/data/1993004/000199300424000006/nweg-20231231.htm>. NorthWestern disclosed that “[c]limate change and the costs that may be associated with its impacts have the potential to affect our business in many ways, including the cost incurred in providing electricity and natural gas, impacting the demand for and consumption of electricity and natural gas (due to change in both costs and weather patterns), and affecting the economic health of the regions in which we operate.” *Id.* at 30.

encourage[ing] private investment in renewable energy resources; (2) stimulat[ing] Montana’s economic growth; and (3) enhanc[ing] the continued diversification of the energy resources used in Montana” as aspects of “the public interest.” *Id.* § 69-8-601 (establishing net metering for rooftop-solar customers). Failing to account for the climate impacts of greenhouse gas emissions from coal and gas burning unjustly disadvantages cleaner generation sources even when they would advance Montanans’ interests. Conversely, considering the climate impacts of fossil-fuel resources would help reflect the true cost of utility coal and gas portfolios.³⁷ Such ends are proper pursuits of the Commission’s traditional utility-regulation functions.³⁸

The Commission’s decisions and policies significantly affect statewide greenhouse gas emissions. Generally, through its regulation and oversight of resource planning and procurement, resource compensation, and other aspects of utility rates, the Commission has the ability to either deepen long-term investments in carbon-intensive fossil fuels or to encourage Montana’s regulated utilities to pursue cleaner alternatives. These regulatory processes, implemented through the Commission’s existing statutory and regulatory framework, described below, require the Commission to incorporate environmental and societal considerations into its decision-making, and the proposed rulemaking is essential to make explicit the need to consider and act on information about the climate consequences of its decisions.

1. Resource planning

Utility resource plans provide the roadmaps for the state’s future energy supply, helping utilities and the Commission plan for future demand while foreseeing and mitigating potential risks. State law requires electric and gas utilities to prepare long-range resource plans to advance state policies of efficiency and to “help ensure a clean, healthful, safe, and economically productive environment.” Mont. Code Ann. § 69-3-1202(1). The Commission must adopt rules governing preparation and submission of resource plans, but the Legislature has adopted minimum standards for resource plans. *Id.* § 69-3-1204(2). Among other

³⁷ See, e.g., D. Timmons et al., *Global Devel. and Env’t Inst.*, Tufts Univ., *The Economics of Renewable Energy* 35 (2014), available at <https://www.bu.edu/eci/files/2019/06/RenewableEnergyEcon.pdf>; see also note 36, *supra*.

³⁸ See James C. Bonbright et al., *Principles of Public Utility Rates* 109–120 (2nd ed. 1988), excerpts attached as Exhibit 17; see also, e.g., *Affiliated Const. Trades Found. v. Pub. Serv. Comm’n of W. Virginia*, 211 W. Va. 315, 326, 565 S.E.2d 778, 789 (2002) (holding that “‘the public interest,’ to which the PSC is required to give attention, demands a fully developed concern for all citizens and business entities, be they ratepayers, taxpayers, or neither.”)

things, the plans must evaluate a range of cost-effective means for meeting future service requirements, including efficiency, increasing renewable energy resources, and demand-side management. *Id.* The Commission must additionally prescribe criteria for evaluating cost-effectiveness, which “may include externalities associated” with new resources. *Id.* § 69-3-1204(3)(a), (b).

Elements of the Commission’s current rules can help the Commission advance the State’s policy of promoting a clean and healthful environment. *Id.* § 69-3-1202(1)(b). Among other things, the rules require utilities to plan for a diverse resource mix, including demand-side resources, and to consider in their “cost-effectiveness” evaluations the “societal costs” of resource acquisitions. ARM 38.5.2020(2). Further, “[t]he rules identify ways for utilities to reduce and manage the risk of resource acquisition to shareholders, customers, and society.” ARM 38.5.2020(5). The rules acknowledge that meeting these goals may require utilities to abandon previously rate-based resources. ARM 38.5.2020(7). To aid in these decisions regarding utilities’ future reliance on existing resources, resource plans must disclose a range of performance metrics, including annual carbon dioxide emissions. ARM 38.5.2022(1)(d). Resource plans guide future utility resource-procurement processes. ARM 38.5.2024(1).

As one former commissioner observed over two decades ago:

The science and reality of climate change and human-induced CO₂’s contribution to it are no longer in doubt. The only questions are: how much, how fast, and where will temperatures increase and what will be the effects on world (and Montana) natural and managed ecosystems?

Adding coal to the resource mix would increase the exposure of the Montana environment and economy to climate change and expose the project developers, and perhaps NWE and its default customers, to the risk of future CO₂ emission controls or mitigation.

The Commission’s [integrated resource planning] rules require that resource selection should take environmental externalities into account.

In Re Montana Power Co., Docket No. D2001.10.144, Final Order 6382d, B. Anderson concurring opinion (June 21, 2002). Under this same rationale, the Commission’s effective implementation of its statutory and regulatory resource-planning responsibilities is vital to ensuring that resource planning processes satisfy the State’s policy of promoting a clean and healthful environment. Mont. Code Ann. § 69-3-1202(1). Although the Commission does not approve or disapprove resource plans, in its oversight role, the Commission must ensure that utilities provide complete and accurate information about the environmental and societal costs and benefits of existing and potential future resources, particularly with

respect to their climate impacts. *Id.* § 69-3-1204(6) (Commission may identify deficiencies with and engage independent consultants to scrutinize any plan). Past planning processes have omitted this critical information and left utilities and the Commission with an insufficient basis to understand and ameliorate the significant climate impacts of resource decisions. The proposed rulemaking would make explicit the need for climate-change considerations in this important process.

2. Approval of electric and gas resources

The Commission has significant existing authority over resource retirements and acquisitions that allows it to ensure timely replacement of existing fossil fuel power plants with clean, renewable and demand-side management resources, consistent with the public interest.

The Commission is authorized to place costs for utility resource acquisitions in customer rates only to the extent they are “consistent with [the state’s] policy” of “ensur[ing] a clean, healthful, safe, and economically productive environment.” Mont. Code Ann. § 69-3-1202(1)(b), (2)(a); *see also* ARM 38.5.2024(1) (“A utility’s resource procurement processes shall be guided by the policy in 69-3-1202[.]”). The Commission additionally may “pre-approve” utility electric resource investments only after finding they are “in the public interest.” Mont. Code Ann. § 69-8-421(6)(c)(i); *see also* ARM 38.5.8228(2)(c) (pre-approval application must “describ[e] the resource and stat[e] the facts (not conclusory statements) that show that acquiring the resource is in the public interest”). The legislature expressly conditioned utility investments in certain fossil fuel (gas and coal) electric resources on mitigation of carbon-dioxide emissions. Mont. Code Ann. § 69-8-421(6)(e), (8). Additionally, for methane-gas production and gathering resources, utilities must “stat[e] the facts (not conclusory statements) that show that acquiring the resource is in the public interest[.]” ARM 38.5.7101(1)(b); *see also* Mont. Code Ann. § 69-3-1415(5)(c) (public interest requirement for methane-gas production and gathering resources).

The Commission also makes decisions affecting the development of new renewable energy resources in Montana through its implementation of the Public Utility Regulatory Policies Act (PURPA), Pub. L. No. 95-617, 92 Stat. 3117. Congress enacted PURPA in 1978 “to reduce American dependence on fossil fuels, encourage renewable energy development, and promote increased energy efficiency.” *Vote Solar v. Montana Dept. of Pub. Serv. Regul.*, 2020 MT 213A, ¶ 4, 401 Mont. 85, 94, 473 P.3d 963, 966 (citations omitted). Under PURPA, the Commission sets rates and other contract terms for utility power purchases from “qualifying facilities,” or QFs, which are generally small wind, solar, and hydro generation facilities. *Id.* ¶ 5. Such rates are based on the utility’s avoided costs for energy and capacity (or the costs the utility would spend to acquire such energy or capacity itself, often through the construction and operation of fossil-fuel resources).

ARM 38.5.1905; *see also* *Vote Solar*, ¶ 6. Under 2021 Legislation, “[t]he commission may not approve a bonus or adder in the cost of a new resource acquired after April 28, 2021, to provide additional compensation for costs such as environmental externalities unless the bonus or adder is necessary to compensate for a real and actual cost required by existing regulation or existing law.” Mont. Code Ann. § 69-3-1206(3). However, the Commission may undertake rulemaking to clarify that the avoided environmental and societal costs of climate change from fossil fuel resources are “real and actual cost[s]” for which consideration is required to fulfill the Commission’s statutory and constitutional environmental obligations. *Id.*

While the Commission is currently required to consider the environmental and societal costs of climate change in its resource acquisition and retirement decisions, the Commission should undertake the proposed rulemaking to explicitly incorporate such considerations into its determinations with respect to the public interest and consistency with state policy.

3. Compensation for utilities’ capital and operating costs of electric and gas resources

Even after resources are included in a utility’s rate base, Commission decisions to require customers to pay for a utility’s capital and operating costs for electric and gas resources may significantly impact utility incentives to continue operating such resources. The Commission must ensure that climate considerations are incorporated into such compensation decisions to maximize rational, economic utility decision-making that reflects the public interest, advances state policy to promote a clean and healthful environment, and ensures the Commission is meeting its obligations to ensure “just and reasonable rates.” Considering the climate impacts of Commission decisions would generate economically beneficial, as well as environmentally beneficial, outcomes.³⁹

The Commission is charged with ensuring that utilities charge “just and reasonable” rates. Mont. Code Ann. § 69-3-330. The Commission must scrutinize and approve, modify, or disallow any changes to customer rates, and may itself initiate any proceeding to investigate utility rates. *Id.* §§ 69-3-302, 69-3-324. In general rate cases and cost trackers, the Commission may approve charges to customers only of *prudently* incurred costs. *NorthWestern Corp. v. Montana Dept. of Pub. Serv. Regul.*, 2016 MT 239, ¶¶ 32–33, 385 Mont. 33, 380 P.3d 787; *see also* *In the Matter of NWE’s Annual PCCAM Filing & Application for Approval of Tariff Changes*, Docket No. 2019.09.058, Final Order 7708f, ¶ 61 (Nov. 18, 2020). “Prudent” means “careful, sensible, practical, discreet, wise, or farsighted or, more apt in the regulatory environment, avoiding unnecessary risks.” *NorthWestern Corp.*, ¶ 33.

³⁹ *See supra* note 36, describing cost-effectiveness of renewable electric resources.

Compensating utilities for capital expenses to maintain aging power plants or fuel costs for increasingly expensive coal or gas that is burned at such plants may create incentives—effectively subsidies—to continue operating climate-polluting facilities that would otherwise retire. When making such compensation decisions, the Commission must determine whether such costs are prudent or, conversely, give rise to unnecessary risk, with due consideration of their climate impact. Through the proposed rulemaking, the Commission should make explicit such considerations of climate in setting just and reasonable rates.

4. Issuance of securities and bonds

The Commission may authorize utilities to issue securities and bonds for purposes of acquiring property and constructing or improving facilities, Mont. Code Ann. § 69-3-501, as well as to refinance the undepreciated debt of retiring electric infrastructure, *id.* § 69-3-1602. In the former instance, the Commission’s authorization could pave the way for life-extending fossil-fuel infrastructure investments, potentially increasing their overall greenhouse gas emissions. In the latter instance, the use of securitized ratepayer-backed bonds to lower a utility’s cost of financing the retirement or replacement of electric infrastructure could incentivize the timely retirement of aging coal plants, thereby lowering their overall greenhouse gas emissions. Additionally, bond proceeds may be directed toward investment in clean energy and other modern infrastructure, which can aid communities’ economic transition as aging coal-plants retire. *Id.* § 69-3-1602(2)(b). Both categories of Commission decisions on securities and bonds are to be guided by the public interest. *Id.* §§ 69-3-504(1), 69-3-1606(1)(b). Thus, the Commission must incorporate consideration of climate impacts into such decisions.

C. The Legislature has Granted the Commission Broad Rule-Making Authority to Carry out its Duties.

The Montana Constitution’s environmental protections form the foundation of the Commission’s authority to promulgate the proposed rule, which will effectuate its constitutional obligation to consider climate change in its regulation of Montana utilities in the public interest. The Commission’s authority to adopt rules to consider climate change in the supervision, regulation, and control of utilities is also grounded in the state’s police power to regulate utilities in a manner that protects the environmental life support system from degradation.

At its essence, utility regulation arises from the state’s police power to protect the health, safety, morals, and general welfare of its citizens. Utility regulation is “one of the most important of the functions traditionally associated with the police power of the States.” *Arkansas Elec. Co-op. Corp. v. Arkansas Pub. Serv. Comm’n*, 461 U.S. 375, 377 (1983). Further, the “adoption of the regulations by the state for

the protection of the environment is a reasonable exercise of its police power.” *W. Energy Co. v. Genie Land Co.*, 195 Mont. 202, 211, 635 P.2d 1297, 1302 (1981); *Seven Up Pete Venture v. State*, 2005 MT 146, ¶ 46, 327 Mont. 306, 114 P.3d 1009, 1023 (2005).

The legislature has granted the Commission broad rulemaking authority to implement its statutory functions, which unquestionably provides ample authority for the Commission to adopt the rule proposed in this Petition, including but not limited to:

- **Conduct of commission business.** The Commission “may adopt rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings . . . before it in the establishment of rates, orders, charges, and other acts required of it under the law.” Mont. Code Ann. § 69-1-110(3).
- **Rate cases.** The Commission “shall adopt such rules of practice and procedure for the filing, investigation, and hearing of petitions or applications to increase or decrease rates and charges of . . . public utilities as the commission finds necessary or appropriate to enable it to reach a final decision in an orderly manner.” *Id.* § 69-2-101.
- **Regulation of utilities in general.** The Commission “shall have power to prescribe rules of procedure and to do all things necessary and convenient in the exercise of the powers conferred by this chapter upon the commission.” *Id.* § 69-3-103(1).
- **Regulation of utilities – ratemaking.** The Commission “may adopt rules to implement” its ratemaking authority. *Id.* § 69-3-310.
- **Integrated least-cost planning.** The Commission “shall adopt rules requiring a public utility to prepare and file a plan every 3 years for meeting the requirements of its customers in the most cost-effective manner consistent with the public utility's obligation to serve . . .” The Commission “may adopt rules providing guidelines to be used in preparing a plan and identifying the criteria to be used in determining cost-effectiveness. The criteria may include externalities associated with the acquisition of a resource by a public utility.” *Id.* § 69-3-1204(1)(a), (3)(a), 3(b).
- **Natural Gas Utility Restructuring and Customer Choice Act.** The Commission “shall promulgate rules requiring licensing information that . . . ensures that the natural gas supply is provided as offered and is

adequate in terms of quality, safety, and reliability.” *Id.* § 69-3-1405.

- **Electric utility industry generation reintegration.** The Commission “may promulgate any other rules necessary to carry out the provision of this chapter.” *Id.* § 69-8-403.
- **Approval of electricity supply resources.** The Commission “shall adopt rules prescribing minimum filing requirements for applications filed pursuant to this part.” *Id.* § 69-8-421(10).

D. The Commission Must Provide for the Use of Up-to-Date and Widely Accepted Scientific Tools for Assessing Climate Impacts.

In evaluating the impacts of greenhouse gas emissions that will result from energy planning and procurement actions within the Commission’s jurisdiction, the Commission must ensure that it is using the best and most up-to-date quantitative and qualitative methods. Of the former, the primary tool for quantitative evaluation of an action’s climate impacts is the Social Cost of Greenhouse Gases discussed previously in section II.D: “The SC-GHG is the monetary value of the future stream of net damages associated with adding one ton of that GHG to the atmosphere in a given year.”⁴⁰ The SC-GHG, therefore, also reflects the societal net benefit of reducing emissions of the gas by one ton.”⁴¹ The value of the SC-GHG changes from year to year, representing the increasing costs associated with accumulating carbon dioxide equivalent in the atmosphere, and mimicking the effects of, and increasing costs associated with, continued climate change.

The economic valuation of a ton of carbon, as explained in EPA’s recently issued Report, represents “a comprehensive metric that includes the value of all future climate change impacts (both negative and positive), including changes in net agricultural productivity, human health effects, property damage from increased flood risk, changes in the frequency and severity of natural disasters, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services.”⁴² While the SC-GHG is theoretically an all-inclusive measure of costs associated with climate damage, in practice, data and modeling limitations prevent a truly comprehensive valuation of climate damages, with the result that application of the SC-GHG virtually always underestimates the actual costs of future climate damages. This is something decisionmakers should bear in mind when using the SC-GHG in any analysis of a proposed GHG-producing action.

⁴⁰ Ex. 16, EPA, Report on the Social Cost of Greenhouse Gases at 5.

⁴¹ *Id.*

⁴² *Id.*

The EPA’s recent valuation is, nonetheless, the most accurate tool available for estimating and assigning value to the future costs of present actions and, as such, the “appropriate value to use when conducting benefit-cost analyses of policies that affect GHG emissions.”⁴³

Originally developed to assist federal agencies in rulemaking proceedings, the SC-GHG is now routinely used to evaluate a range of government actions and decisions, from oil and gas leasing to budget development to procurement. The SC-GHG is also being used by at least fifteen states to evaluate laws and policies affecting sectors including environmental analyses, transportation, and procurement, in addition to their use by public utility regulators in those states for energy planning and regulation.⁴⁴ The tool has the benefit of being easily applied by government agencies and administrators to any project for which potential greenhouse gas emissions can be estimated.

In applying the SC-GHG, a discount rate is used to convert future damages to present day value. The discount rate determines how much value is placed on future impacts (or avoidance of impacts) versus the value of present costs and benefits. A high discount rate means that future effects are considered much less significant than the present-day value of a “business as usual” approach, whereas a low discount rate means that present and future values are closer to being equivalent, or, put another way, that the avoidance of future climate damages is valued more equally with present day resource uses. The discount rate also changes over time in response to the changing state of climate science, economics, and societal behavior. Most recently the EPA has recommended use of three near-term target rates of 1.5%, 2%, and 2.5%.⁴⁵ The most-commonly cited values, and those referenced above, are calculated using the 2% discount rate.

There is also a growing body of case law in which courts have faulted agencies for not employing tools such as the SC-GHG in the context of climate change analyses, thereby putting a “thumb on the scale” by trumpeting economic benefits while minimizing costs of a greenhouse gas producing project. See, e.g. *High Country Conservation Advocs. v. United States Forest Serv.*, 52 F. Supp. 3d 1174, 1191 (D. Colo. 2014) (it was arbitrary for an agency to quantify the benefits, but not the costs, of a proposed action); *Montana Env’t Info. Ctr. v. U.S. Off. of Surface Mining*, 274 F. Supp. 3d 1074, 1097 (D. Mont. 2017); *Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1198 (9th Cir. 2008).

⁴³ *Id.*

⁴⁴ See <https://costofcarbon.org/states> (last visited February 9, 2024).

⁴⁵ Ex. 16, EPA Report on the Social Cost of Greenhouse Gases at 70.

It is clear that the SC-GHG is the most easily applied and readily available quantitative tool to help government entities, including utility regulatory bodies such as the Commission, analyze the long-term climate costs of their actions. Economics forms the nexus of many Commission decisions, where consideration of ratepayer impacts is a foremost consideration.

IV. PROPOSED RULE

The rule as proposed to be adopted would provide as follows:

NEW RULE. CONSIDERATION OF ADVERSE CLIMATE IMPACTS OF GREENHOUSE GAS EMISSIONS.

In exercising its duties and powers with respect to electric and gas utility companies, the Public Service Commission shall consider the quantitative and qualitative impacts of its decisions on the environment and human health, including impacts on climate change. Relevant duties and powers involving electric and gas utilities include, but are not limited to, oversight of integrated resource planning; approval of electricity supply and gas resources, including purchases from qualifying small power production facilities (as defined in Mont. Code Ann. § 69-3-601(3)); decisions regarding ratemaking; and the issuance of securities and bonds and proceeds thereof. In making determinations regarding whether costs and actions pertaining to electric and gas utilities are reasonable, just, in the public interest, prudent, or otherwise approvable, the Commission shall, at a minimum:

1. Apply the higher of the social cost of greenhouse gases established by (a) the U.S. Environmental Protection Agency or (b) the federal Interagency Working Group on the Social Cost of Greenhouse Gases as of the time of the Commission's determination (except that in no case shall the costs of greenhouse gases be lower than those at a 2-percent near-term Ramsey discount rate from the U.S. Environmental Protection Agency's November 2023 "Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances," adjusted for inflation); and
2. Consider any adverse climate impacts of greenhouse gas emissions on communities that are disproportionately impacted by such emissions and/or subject to historical inequalities.

In making determinations regarding electric utilities and considering (1)–(2) above, the Commission must determine that short-term costs or direct costs of renewable energy generation that are higher than the short-

term costs or direct costs of alternatives relying more heavily on fossil fuels are reasonable, just, prudent, in the public interest, or otherwise approvable, if the adverse impacts resulting from the use of fossil fuels are larger than those from renewable energy generation.

V. REQUEST FOR DECLARATORY RULINGS

In its consideration of this Petition, and pursuant to Mont. Code Ann. § 2-4-501, the Commission is asked to declare that:

1. The Montana Constitution imposes an affirmative obligation on the Commission to consider the harmful climate consequences of its decisions to prevent constitutional harm and protect Montanans' fundamental right to a clean and healthful environment.

2. The following statutes—which require the Commission to regulate utilities in a manner that helps ensure a clean, healthful, safe, and economically productive environment; promotes the public interest; and ensures just and reasonable utility rates and practices—require considerations of climate change and its harmful effects in Montana:

- a. Mont. Code Ann. § 69-3-1202(1)(b) (“It is ... the policy of the state to encourage utilities to acquire resources using a competitive solicitation process and in a manner that will help ensure a clean, healthful, safe, and economically productive environment.”);
- b. Mont. Code Ann. § 69-3-1204(3)(a), (b) (authorizing consideration of “externalities” in evaluating cost-effectiveness of electric and gas resources);
- c. Mont. Code Ann. § 69-8-421(6)(c)(i) (authorizing Commission approval of electric resource investments that are “in the public interest”);
- d. Mont. Code Ann. § 69-3-1415(5)(c) (authorizing Commission approval of gas production and gathering resources that are “in the public interest”);
- e. Mont. Code Ann. § 69-3-330(1), (3) (requiring Commission to establish utility rates and practices that are “just and reasonable”);
- f. Mont. Code Ann. § 69-3-504(1) (authorizing the Commission to issue securities and bonds for purposes of acquiring property and constructing or improving facilities if they are in the “public interest”); and

- g. Mont. Code Ann. § 69-3-1606(1)(b) (authorizing the use of securitized ratepayer-backed bonds to lower the cost of financing the retirement or replacement of electric infrastructure if they are in the “public interest”).

VI. INTERESTED PARTIES

The following electric and gas utilities may have an interest in the proposed agency action:

Avista Corporation
1411 East Mission Ave.
P.O. Box 3727
Spokane, WA 99220

Black Hills Power, Inc.
P.O. Box 1400
Rapid City, SD 57709-1400

Energy West Montana
P.O. Box 2229
Great Falls, MT 59403-2229

Havre Pipeline Company
c/o NorthWestern Energy
11 E. Park St
Butte, MT 59701

Montana-Dakota Utilities Co.
400 North Fourth Street
Bismarck, ND 58501

NorthWestern Corporation d/b/a NorthWestern Energy
11 East Park
Butte, MT 59701

Additional utilities and persons may also have an interest in this petition.

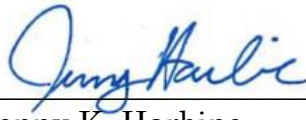
VII. REQUEST FOR HEARING

Petitioners request a hearing for expression of Petitioners’ and other interested persons’ views on the Petition.

CONCLUSION

In furtherance of the Commission's statutory and constitutional obligations, Petitioners request the Public Service Commission to consider the adverse climate impacts of greenhouse gas emissions in its decision-making by initiating rulemaking to adopt the rule proposed in this Petition. Further, Petitioners request the Commission to issue the requested declaratory rulings affirming its obligation to consider the adverse climate impacts of greenhouse gas emissions under the Montana Constitution and the statutory and regulatory framework governing its decision-making.

Dated: February 28, 2024



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ATTACHMENT A PETITIONERS

Families for a Livable Climate represents over 2,000 Montana families across the state. We organize families to get involved and take action on climate. The Commission's decisions greatly affect Montana families' everyday lives and our shared future. Day to day, families are facing more and more financial pressures, as well as environmental harms and related costs linked to climate change: impacts of extreme heat, drought, wildfires and wildfire smoke, floods, and more. The Commission's decision-making and planning affect the cost of energy when it greenlights expensive and outdated facilities and it affects the scale of carbon pollution and its harms, by failing to recognize climate change and its growing impact on our lives. Montana families simply can't afford more fossil fuel infrastructure: financially or otherwise.

Contact: Winona Bateman

Gallatin Valley Sunrise is a local, all-volunteer, autonomous hub of the Sunrise Movement, a national network of youth who are working to ensure a livable future and create good-paying jobs in the process.

Contact: August Schuerr

Montana Environmental Information Center ("MEIC") is a non-partisan, non-profit environmental advocacy group dedicated to ensuring clean air and water for Montana's present and future generations. MEIC was founded in 1973 by Montanans concerned with protecting and restoring Montana's natural environment. To protect and restore the land, air, water, and life-sustaining climate of Montana, MEIC advocates, educates, and empowers people in service of a clean and healthful environment for present and future generations. MEIC is dedicated to assuring that state and local governments comply with and fully uphold the laws and constitutional provisions that further the organization's goals and mission of protecting the environment for all Montanans to enjoy. MEIC has approximately 10,000 members and supporters, many of whom live, work, and recreate throughout the State and are impacted by the economic and environmental climate damages of Montana utilities' operations under the regulatory authority of the PSC.

Contact: Nick Fitzmaurice

The **Associated Students of Montana State University** ("ASMSU") is a student organization dedicated to representing the voice and interests of the student body at Montana State University. ASMSU is committed to enhancing the student experience both on and off campus at MSU by leading, organizing, and funding student-oriented programs and services. The PSC's decisions on fossil fuel infrastructure, energy resource planning, and climate change affect MSU students

in the university's goal to achieve carbon neutrality by 2040. ASMSU speaks for students living off campus who are affected by increased electricity bills resulting from utilities' energy resource planning under regulatory oversight of the PSC.

Contact: Josie Kaufman, Senator

Big Sky Resort is a world-class ski resort and destination. The livelihoods of our team members and their families, our mountain town community, and the greater Montana outdoor recreation industry, all depend on a stable and predictable climate that offers consistent winter snowfall and snowpack, and summers free of extreme flooding, drought, and wildfire. In 2021, we announced the ForeverProject, our goal to operate with net zero carbon emissions by 2030, and we are taking action to mitigate the effects of climate change, to ensure that future generations will have the opportunity to enjoy transformational mountain experiences. We are enhancing energy efficiency throughout our operations, utilizing alternative fuels, implementing green building designs, and installing on-site renewable energy systems. Despite our efforts, we know that we cannot mitigate the effects of climate change alone, and therefore are advocating for more utility-scale clean energy.

Contact: Taylor Middleton

Blackfoot River Brewery is an independent craft brewery founded in 1998, located in downtown Helena. We believe in making our handcrafted beers with only the finest traditional ingredients. We host community events supporting arts, culture, science, the environment, sports, social justice & health and wellness -- all part of the larger fabric supporting the needs and interests of our Helena patrons. Climate change will impact not only the water supplies upon which our business depends but also the lives and well-being of the community of the patrons we serve. Montanans have the right to a clean and healthful environment, and this consideration should be part of all state processes, including how we get our electricity.

Contact: Bethany Flint

Bozeman Community Food Co-op's Mission is to "Provide food and goods, promote sustainable practices, and follow co-op principles." We have over 22K members and are a democratically owned local for-profit business. The impacts of climate change and our ability to minimize them are important to our members. Joining the rulemaking petition aligns with our mission and our commitment to preserving Montana's natural state.

Contact: Rory Sandovac

Bridger Bowl Ski Area has served skiing enthusiasts for more than 60 years and is a cornerstone for Bozeman's recreational community and a major contributor to the area's vibrant winter tourism economy. Bridger Bowl has a longstanding

commitment to stewardship, maintaining a constant effort to reduce environmental impact of operations. Consideration of climate change is a significant part of our planning, vision, strategy, and economic performance outlook, an issue posing detrimental risk to the continued operation and vitality of the ski area. Specifically, Bridger Bowl can expect substantial snowpack reduction by midcentury, with projected temperature increases greatly reducing the ski area's ability to make and maintain snow. Warmer and more volatile weather patterns bring more winter precipitation such as rain, shortening the ski season and threatening to eliminate it all together. Decreased snowpack puts Bridger Bowl at ever higher risk of wildfire damage, driving up the cost of insurance. The actions of Montana utilities drive these impacts, which is why it is imperative that the PSC consider climate change in utility regulation.

Contact: Hiram Towle

Bridgercare has been providing sexual and reproductive healthcare and education in Montana since 1972. We have seen that the ability to make the best decisions about reproductive and sexual health requires many things, including a clean and healthful environment. From our staff to our patients and students in Montana - we know Montanans have intersecting identities. This means many of our neighbors feel the impacts of climate change more than others. Consequently, our patients, students, and community members are making decisions about their reproductive and sexual health not solely for personal reasons, but also based on the future and present impacts of climate abnormalities on all lives. The PSC can ensure that the choices available to Montanans are ones that prioritize their health and wellbeing.

Contact: Stephanie McDowell

The **Campus Climate Coalition** ("CCC") is a registered student organization consisting of students and faculty at Montana State University (MSU) with a goal of advancing general climate literacy on MSU's campus and beyond. United through values of intersectional justice and aspirations for institutional change, we strive to provide a platform for students, faculty, staff, and community members to learn more about the climate crisis and relevant solutions to combat it. As a group dominated by youth from across Montana and neighboring regions, we highlight the disproportionate and direct impacts climate change will have on us and other historically marginalized groups in the future. It is critical that the PSC evaluate and understand the impacts of increased fossil fuel expansion on climate change in Montana. As students, we urge immediate action and ask for the Montana PSC to consider climate change when conducting gas and electric oversight duties.

Contact: Jackson Mundell

Citizens for Clean Energy, Inc. ("CCE") is a 501(c)(3) non-profit grassroots organization formed in 2004 and made up of Montana citizens from Great Falls and

North Central Montana. Our mission is to convince decision makers we can have adequate, clean, and cost-effective energy sources without destroying our health, lifestyle, environment, and heritage. We also promote energy efficiency to help reduce the need for ever-increasing generation. In particular, we expect the PSC to consider the effects of climate change in its rule-making and decision-making processes and begin preparing for new, modern grids with integration of new technology. The PSC cannot continue to ignore climate impacts such as severe lack of snowpack, persistent drought affecting CCE's members in agriculture and quality of life. CCE members also are very concerned about diminishing aquifers and chaotic weather patterns of extreme weather shifts, ranging from sub-zero weather events to very hot, dry periods.

Contact: David Saslav

Climate Smart Glacier Country's mission is to address the challenges that a changing climate creates for water and food security, public health, and recreation in the Glacier National Park region. We engage the public to develop local solutions that will conserve resources, promote clean energy, and foster a thriving community for ourselves and future generations. We expect our elected representatives on the PSC to act in the public interest and in adherence to the Montana Constitution by fully considering the impact of its energy resource planning on Montana's climate future.

Contact: Steve Thompson

Climate Smart Missoula is a community-based nonprofit organization with a mission to build and accelerate climate solutions for Missoula and beyond. We do this through collaborative programs, advocacy, and catalyzing climate leadership. We work with local government and other partners to develop policies and programs to reduce greenhouse gas emissions and reach our community's goal of 100% clean electricity by 2030 for the Missoula urban area, which was jointly adopted by the City of Missoula and Missoula County in 2019. The Public Service Commission's decision-making around utility energy resource planning directly impacts our ability to meet this goal. NorthWestern Energy (NWE) is Missoula's largest energy provider. Up to this point, NWE's resource procurement plans have not considered the climate impacts of different energy sources. With the most recent court ruling in the *Held v. Montana* case, the PSC must consider the climate and greenhouse gas emissions impacts in its evaluation of NWE's proposed energy procurement. This could significantly increase the proportion of renewable energy in NWE's portfolio, thereby assisting our community in reaching our 100% Clean Electricity goal.

Contact: Abby Huseth

Earthworks is a nonprofit organization dedicated to protecting communities and the environment against the adverse effects of mineral and energy development

while seeking sustainable solutions. Our members who live, work, and recreate in Montana are harmed by the PSC's failure to consider climate effects in its decisions.

Contact: Bonnie Gestring

Environmental Defense Fund is a nonprofit and nonpartisan public interest organization dedicated to protecting public health, stabilizing the climate, and strengthening people's and nature's ability to thrive—based on solutions anchored in science, economics, and law. EDF has long had an office and numerous staff in the Rocky Mountain West, has worked to protect public health and the environment in Montana for decades, and has hundreds of thousands of members across the United States including in each of the 50 states.

Contact: Vickie Patton

Forward Montana is Montana's largest youth-led, youth-focused civic engagement organization. Forward Montana's mission is to build political power with and for young Montanans to create lasting change. The impacts of climate change are deeply concerning to young people; it is an issue that consistently rises to the top in our thousands of conversations over the past few years. Climate change will impact our members and their abilities to live, work, and play in Montana.

Contact: Kiersten Iwai

Helena Hunters and Anglers ("HHAA") is an all-volunteer group dedicated to protecting and restoring fish and wildlife to all suitable habitats, and conserving all natural resources as a public trust, vital to our general welfare. HHAA promotes the highest standards of ethical conduct and sportsmanship and promotes outdoor recreation opportunities for all citizens to share equally. Our organization's focus is public trust, fish and wildlife, and the wild habitat that supports both. Warmer temperatures, lower snowpack, and earlier runoff due to climate change are already having negative effects on wild trout and cold-dependent wildlife such as moose, lynx, and wolverine. In Montana, we have the right to a clean and healthy environment.

Contact: Steve Platt

Helena Interfaith Climate Advocates is comprised of members of 14 Helena congregations committed to taking action against threats to our environment. Our actions come from our concerns as people of faith for the well-being of all Montanans currently and those of future generations. The Public Service Commission must consider the impacts of fossil fuels and greenhouse gas emissions in order to protect the health of the people of Montana from the harm of air pollution and global warming.

Contact: David R Hemion

Lander Busse, *Held v. State of Montana* Plaintiff

It is imperative that the PSC consider climate impacts in order to abide by the international consensus of science and scientists and look after both current and future generations' safety and well-being in Montana. Both the plaintiffs' of *Held v. State of Montana* and the whole population of Montana's health and safety must be prioritized.

Moms Clean Air Force. Our mission is to protect children from air pollution and climate change. We envision a safe, stable, and equitable future where all children breathe clean air. We are a community of over 1.5 million moms and dads united against air pollution—including the urgent crisis of our changing climate—to protect our children's health. We fight for Justice in Every Breath, recognizing the importance of equitable solutions in addressing air pollution and climate change. Through a vibrant network of state-based community organizers, we work on national and local policy issues. Our moms meet with lawmakers at every level of government and on both sides of the political aisle to build support for equitable, just, and healthy solutions to pollution. We consider ourselves "Mompartisan." Protecting children's health is a nonpartisan issue.

Contact: Michelle Uberuaga

Montana Associated Students ("MAS") is a state-wide organization that governs and oversees over 40,000 students enrolled in the campuses of the Montana University System. The MAS council is made up of the two executives from each campus that work on initiatives and address issues that affect the students of Montana universities. Climate consideration and efficient energy planning affect all Montanans, including the students we represent. Our decision to join this petition reflects our dedication and responsibility to represent students in any initiative or issue that comes across our table, including those that affect our everyday lives such as climate considerations. We hope to continue supporting efforts like these and more, as we have a passion for improving the everyday lives of our fellow students and everyone living in the state of Montana through climate change and environmental awareness.

Contact: Melissa Ramirez

Montana Chapter of the American Academy of Pediatrics represents pediatric health professionals in Montana, with 165 members. Its mission is to advocate for activities, programs and policies that will promote the optimal health and well-being of children. There is ample evidence to show that climate change poses threats to human health. Pediatricians have recognized these impacts for some time and have advocated for policies that protect children from these threats. Children in Montana and worldwide are especially vulnerable to the effects of

climate change, including extreme weather events, decreased air quality, changing disease patterns for certain infections, and food and water insecurity. In fact, the World Health Organization estimates that more than 88% of disease burden attributable to climate change occurs in children under 5 years of age. We urge Montana to consider the health effects of decisions that lead to greenhouse gas emissions and take these impacts into consideration in formulating policy.

Contact: Lauren Wilson, President

Montana Conservation Elders recognize the existential threat that global warming is creating now, and that it will continue to threaten generations to come. Fossil fuel emissions, including methane, are major contributors to the ever-increasing effects of severe weather impacts. Montana is experiencing record droughts, with higher than normal temperatures that are already causing severe damage to our agriculture industry, as well as to our recreation industry; these are two essential economies for our state. The effects of increased levels of greenhouse gases are also causing significant health hazards, including from toxic particulates in the air from wildfires and other pollutants. The Montana Public Service Commission has a legal obligation to the residents of Montana, including our youth, to uphold our constitutional right to live in a clean and healthful environment. The Public Service Commission must take into account fossil fuel emissions when making determinations for proposed energy-producing projects. We join in petitioning the Public Service Commission urging the commission to take into full account the health and environmental impacts of all proposed fossil fuel projects.

Contact: Wayne Chamberlin

Montana Health Professionals for a Healthy Climate (“MTHPHC”)

As Montana health professionals, we address the causes and impacts of climate change to protect and enhance the health of all Montanans through education, advocacy, and leadership.

Contact: Lori Byron

Montana Interfaith Power and Light aims to inspire, organize, and mobilize people of faith and conscience to take bold and just action on the climate crisis. Many individuals and faith communities in our network consist of an older demographic, who are parents and grandparents. They are significantly concerned about climate impacts as a human-influenced issue, and its impact on their families and future generations. As people of faith, we have a call to act justly on behalf of our neighbors, the marginalized, and creation at large.

Contact: Caleb Koebble

Montana Public Interest Research Group (“MontPIRG”) is a student-run, nonpartisan organization dedicated to nurturing the next generation of civic leaders, advocating for community-wide issues, and defending the environment. Many of our members hail from Montana, and the impacts of the climate crisis not only threaten our own lives but also those of our families and friends. As residents of Montana, we assert our right to a clean and healthful environment. Therefore, it is essential for the PSC to prioritize climate change considerations in its decision-making processes. This ensures the preservation of current communities and safeguards the well-being of future generations.

Contact: Hunter Losing

Montana Renewable Energy Association (“MREA”) is a member-based 501c3 nonprofit expanding Montana's renewable energy economy and use of our state's robust clean energy resources. Through almost 25 years of education, advocacy, and industry engagement, MREA fosters energy cost-savings and resilience for businesses, families, and community groups across the state. MREA's membership also works directly in the distributed energy and utility-scale wind and solar sectors. MREA remains active in PSC proceedings and engages in opportunities as they pertain to ratemaking determinations, integrated resource planning, and electricity generation. This rulemaking would provide clarity to our membership by defining a process in which the PSC will evaluate the costs and impacts of greenhouse gas emissions related to electric and gas utility regulation.

Contact: Makenna Sellers, Executive Director

Montana Science Center was originally founded as the Children’s Museum of Bozeman in 2001 by a group of parents and community leaders who recognized that enriching, experiential learning opportunities are central to the education and growth of all children. The science center provides hands-on learning experiences in science and technology that inspire creativity, innovation, and lead to real-world application. Fossil fuel infrastructure can contribute to air pollution, affecting the health of children visiting the science center. Energy resource planning influences the availability of sustainable alternatives, impacting the center's operational choices. Climate change may alter weather patterns, affecting outdoor programs and creating educational opportunities to discuss environmental challenges with young visitors.

Contact: Faye Nelson, Interim Executive Director

Montana Wildlife Federation (“MWF”) is Montana’s oldest, largest, and most effective wildlife conservation organization. Our roots trace back to 1936 when hunters, anglers and other conservationists joined landowners to address the loss of Montana’s natural lands, healthy waters, and abundant wildlife. The decades of westward expansion prior to the 1930’s left wildlife populations decimated

throughout North America, and Montana was no exception. That year the first North American Wildlife Conference was held in Washington D.C. and wildlife conservation was thrust into the limelight. The National Wildlife Federation, Montana Wildlife Federation, and many other state wildlife organizations were formed. Since then, MWF has championed scientific wildlife management and fought to conserve the great natural resources found in this state and wildlife populations have rebounded. This legacy is maintained through our dedicated staff and volunteers. The droughts, fires and floods associated with climate change will have profound negative impacts on the Treasure State's world-class outdoor opportunities, which will ripple through the entire economy, according to a recent MWF study.

Contact: Frank Szollosi

Natural Resources Defense Council (“NRDC”) is a not-for-profit corporation dedicated to the preservation of the earth's natural resources, including its air, land, and water resources that are impacted by electric power production and delivery. NRDC maintains several offices in the United States, including one at 317 E. Mendenhall St., Bozeman, MT 59715. With 3 million supporters across the nation, including approximately 2,500 Montana members, NRDC has demonstrated a long-standing interest in protecting Montana's environment from degradation due to the production, transmission, and distribution of energy. For over three decades NRDC has been actively involved in issues related to utility procurement processes, the efficient use of energy, low-income energy services, and environmentally preferred renewable power generation in Montana and has been a party or participant in numerous formal and informal proceedings before the Commission.

Contact: Amanda Levin

Northern Plains Resource Council (“NPRC”) is a grassroots conservation and family agriculture group. We organize Montanans to protect our water quality, family farms and ranches, and unique quality of life.

Contact: Jack Leuthold

NW Energy Coalition is an alliance of over 100 organizational members, including civic, human service, and environmental organizations, as well as utilities and businesses, in Montana, Idaho, Washington, Oregon and British Columbia. Our members are keenly interested in advancing clean, affordable, and equitable energy policy and share a desire to see an emissions-free energy system that equitably meets the needs of people, brings economic value to communities, addresses the climate crisis, and preserves the region's natural resources. PSC decisions on utility resource acquisition are uniquely impactful to our members and our members' members in the form of costly energy bills and increasing risk to reliable energy service. Furthermore, reliance on fossil fuels perpetuates and compounds climate

change impacts that are harmful in their own right but also increasingly stress utilities' abilities to provide affordable and reliable energy.

Contact: Diego Rivas

Park County Environmental Council (“PCEC”)

The Montana Public Service Commission's decisions on fossil fuel infrastructure, energy resource planning, and climate change hold significant potential to impact PCEC members in numerous ways. As a place-based conservation organization dedicated to protecting Park County's people, environment, and wild landscapes, PCEC's 4,000 members rely on the health and beauty of the natural world for their livelihoods, recreation, and well-being. PSC decisions that favor fossil fuels increase air and water pollution, harming residents' health and enjoyment of the outdoors. These decisions also threaten sensitive ecosystems and wildlife, jeopardizing Park County's unique biodiversity. Additionally, climate change fueled by fossil fuels poses risks like increased wildfires, droughts, and floods, directly impacting the resilience of rural communities and the very landscapes PCEC strives to preserve. We are still recovering from a 500-year flood that was not supposed to happen in our lifetime, and our community and members are vulnerable to natural shocks and stressors that are more likely to happen because of the PSC's decisions favoring fossil fuels. Therefore, PCEC members have a vested interest in advocating for PSC decisions that prioritize clean energy, environmental protection, and sustainable development, ensuring a future where Park County's communities and natural wonders thrive.

Contact: Sarah Stands

Parks' Fly Shop is a sporting goods retailer and fishing outfitter. As such, our business depends on water quality, quantity, and temperature. Climate change is distorting all three and pushing toward conditions that are incompatible with continued existence of our cold-water fish species.

Contact: Richard Parks

Renewable Northwest is a non-profit representing over 80 members, including power marketers, purchasers, environmental NGOs, and most clean energy developers who operate in the Pacific Northwest. Since 1994 we have drawn on the deep expertise of our members to ensure socially and environmentally responsible advancement of clean energy projects across the region. PSC decision making on these issues is essential to determining whether energy development in Montana will be socially and environmentally responsible. Therefore, this issue is a primary concern for Renewable Northwest and our members.

Contact: Kyle Unruh

Save Wild Trout

If wild trout are to survive in Montana's rivers, it's now or never.

Contact: Wade Fellin

The **Sierra Club Montana Chapter** works locally, coordinating with partner organizations and Sierra Club national staff to create change on the issues important in our state. We carry out campaigns to protect public lands, wildlife and waters, as well as to address the climate crisis by supporting a just transition from fossil fuel energy to clean, renewable energy sources. Climate change is the greatest threat Montana has ever faced. Fossil fuel burning by far is the number one source of global warming. Continued fossil fuel burning and expansion of fossil fuel development exacerbate the climate threat. Our Montana members are experiencing higher incidence and severity of wildfires and increased drought and flood risk. Reduced snowpack is leading to reduced water in our streams and rivers. These developments are a grave threat to two of Montana's most important economic sectors: agriculture and the outdoor industry. It is essential that the Montana Public Service Commission consider climate change when assessing energy resources and renewable energy must be fairly evaluated.

Contact: David Merrill

Stonetree Climbing Gym is a community-oriented space that uses indoor rock climbing as a vehicle for engagement, empowerment, and life-long recreation interests. Joining the rulemaking petition aligns with Stonetree's commitment to preserving Montana's natural beauty and ensuring a sustainable future for our community. As advocates for outdoor rock climbing, we recognize the importance of clean air and water in maintaining the pristine environments we cherish. By supporting these efforts, we contribute to safeguarding these resources for future generations of climbers and outdoor enthusiasts.

Contact: Bob Goodwyn

Ten Mile Creek Brewery is a small craft brewery established in 2015 located in Helena, MT, and founded by three local Montanans. We produce high quality beer from a majority of Montana agricultural products, making a healthy climate extremely important for our business. We also support many types of community events and groups, ranging from environmental and science, sports and recreational, to artistic and cultural. A changing climate will have an impact on the ingredients and processes that we use to make our products, from crops to water, and also will affect the wellbeing of our valued community members. Montanans have a right that our leaders make scientifically sound decisions on our state's energy future, not only for the success of Montana businesses but also for the consumers and citizens in the state. A healthy climate will lead to a brighter future

and a more robust energy supply and this consideration should be used in all of the PSC's decisions.

Contact: Ethan Kohoutek

350 Montana works to reduce atmospheric CO2 concentrations to 350 ppm by implementing strategic actions and advocating policies to end fossil fuel burning with the greatest urgency. We envision a rapid conversion to a 100 percent renewable global energy system using wind, water, and solar. We work with the global grassroots climate movement to achieve these goals and safeguard Earth's life-support systems. The Montana Public Service Commission's job is to regulate monopoly utilities for the benefit of the people of Montana. Climate Change impacts each of our members directly through megafires, drought, dying rivers and streams, and extreme weather. NorthWestern Energy (NWE) is proposing a "net zero by 2050 plan" that misses the two key goals of climate science: keeping rising temperatures below 1.5 C (NWE's plan targets 2 C) and drastically curtailing the use of greenhouse gases by 2030 (NWE selects 2050). Instead, the company wants to continue to generate 12 million tons of CO2 a year until 2045. The EPA's current estimate of the "social cost of carbon" is \$200 a ton, meaning that, if NWE follows through with its plan – and if the PSC refuses to regulate the utility for the benefit of the people – 350 Montana's members will suffer more than \$50 billion in climate damage.

Contact: Jeff Smith, Co-Chair

Upper Missouri Waterkeeper leverages a combination of science, community action, and the law to defend fishable, swimmable, and drinkable water throughout the 25,000 square miles of Montana's Upper Missouri River Basin. Climate change impacts local water quality and quantity and threatens our members' and local communities' abilities to access clean water.

Contact: Quincey Johnson

Yellowstone Valley Citizens Council advocates for a healthy, inviting, and sustainable community by educating, mobilizing, and testifying to ensure citizens voices are heard in the decision-making process, and formulating bold visions of a healthy and sustainable community, working cooperatively to achieve them. Since our beginning more than 40 years ago we have worked for air quality free of pollutants caused by the fossil fuel industry. Now climate change threatens our health, agriculture, and outdoor recreational industries. The harms and costs of climate change are imposed on all citizens of Yellowstone County. These harms and costs are the social costs of carbon and should be quantitatively included in decisions of the PSC.

Contact: Michael Skinner

Affidavit of Melissa Hornbein
EXHIBIT B

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

In re the Petition for Adoption of New Rule I and Declarations Pertaining to the Commission’s Consideration of the Adverse Climate Impacts of Greenhouse Gas Emissions	Docket 2024.03.028 April 30, 2024
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Notice of Extended Opportunity to Comment

1. On February 28, 2024, various interested groups (“Petitioners”) filed with the Montana Public Service Commission (“Commission”) a Petition for Rulemaking (“Petition”) asking the Commission to adopt a proposed new rule requiring the Commission to consider the impacts of its decisions on the environment and human health, including impacts on climate change.

2. The Commission held a hearing in the above-captioned proceeding on April 8, 2024, where the Petitioners presented their Petition and proponents and opponents were given an opportunity to comment. To maximize the opportunity for public input, the Commission and its staff did not ask questions at the April 8 hearing. The Commission further allowed the Petitioners and the public to provide written comments on the Petition by April 12, 2024. The Commission has received over 500 comments in this proceeding.

3. The Commission has considered the Petition, the Petitioners’ presentation, the Petitioners’ comments, and public comments, and is left with several unanswered questions about the proposed rule. The Commission therefore invites the Petitioners and any other interested parties to respond to the following questions about the effect and implications of the proposed rule. As described below, the Commission will also reopen the public comment period to allow any other

interested parties to share their viewpoints and advice with respect to the proposed rule. Mont. Code Ann. § 2-4-304(1) (2023).

Commission Questions

4. The proposed rule would require the Commission to consider “quantitative and qualitative impacts of its decisions on the environment and human health, including impacts on climate change.” Petition 25. The proposed rule provides a quantitative method of measuring of the social cost of greenhouse gas emissions (“SC-GHG”). *Id.* Are any qualitative impacts of greenhouse gas emissions effectively quantified in the proposed sources of the SC-GHG? If not, how would specific qualitative impacts be accounted for in Commission decisions, if the proposed rule was adopted as written?

5. To the extent that the sources specified in the proposed rule for estimates of the SC-GHG (i.e., the U.S. Environmental Protection Agency (“EPA”), the federal Interagency Working Group (“IWG”)) provide calculations using a range of social discount rates, why does the proposed rule specify a particular discount rate of 2%? To the extent the sources identified in the proposed rule acknowledge uncertainty regarding the true social discount rate, would it be reasonable for any consideration of quantitative impacts inclusive of the SC-GHG to consider a range of potential discount rates?

6. The Petition asserts that the Commission must always use “the best and most up-to-date quantitative and qualitative methods.” Petition 23. As written, does subpart 1 of the proposed rule establish a floor on the SC-GHG of \$190 per ton, in 2023 dollars, regardless of future updates by the EPA and IWG on the SC-GHG? If so, why is adopting a floor reasonable?

7. What sources could the Commission and parties in contested cases use to identify communities that are disproportionately affected by the impacts of greenhouse gas emissions? What sources could the Commission and parties in contested cases use to identify communities that are subject to historical inequalities?

8. If the consideration of communities that are disproportionately affected by the impacts of greenhouse gas emissions and/or historical inequalities weighs against the selection of a least-cost resource, would the proposed rule require the selection of a more expensive resource?

9. As written, the proposed rule requires the Commission to “apply” the SC-GHG when making determinations of prudence. Petition 25. In economic terms, is it the intention of the proposed rule to require the Commission to internalize the SC-GHG, either in whole or in part, when setting utility rates?

10. The last sentence of the proposed rule creates a cost-benefit standard for the Commission to apply in decisions regarding electric utilities:

In making determinations regarding electric utilities . . . the Commission must determine that short-term costs or direct costs of renewable energy generation that are higher than the short-term costs or direct costs of alternatives relying more heavily on fossil fuels are reasonable, just, prudent, in the public interest, or otherwise approvable, if the adverse impacts resulting from the use of fossil fuels are larger than those from renewable energy generation.

Petition 25–26.

- a. Does the standard require the Commission to conduct cost-benefit analyses of utility actions that maintain and operate currently rate-based electric generating plants when setting rates? If so, would the cost of replacement energy and capacity be among the “adverse impacts” that the Commission must consider in the cost-benefit analysis of existing operations?
- b. By its terms, the standard applies only to determinations regarding electric utilities. When the Commission makes decisions regarding natural gas service, is it the intent of the proposed rule to require a cost-benefit test similar to the standard used in electric cases? If so, how would the Commission and parties in contested cases quantify the benefits of the natural gas delivery infrastructure and supply?

- c. The standard would require a comparison of the adverse impacts of two categories of resources: renewable energy generation and “alternatives relying more heavily on fossil fuels.” Petition 25–26. If the proposed rule requires the Commission to apply a similar test in natural gas cases, what alternative(s) to natural gas infrastructure and supply would the test consider? Would the alternative analysis need to assume and account for a conversion of appliances and infrastructure from natural gas to another resource, like electricity or propane?
 - d. The standard uses the terms “short-term” and “direct” to describe the costs considered in the analysis. Petition 25–26. Should the proposed rule define those terms and, if so, how should the terms be defined?
 - e. If, after applying the standard, the Commission was required to find a renewable energy generating resource prudent, would the Commission also be required to find a competing fossil-fuel resource imprudent?
 - f. If, after applying the standard, the Commission found that costs associated with a fossil-fuel resource were imprudent, would the proposed rule require the Commission to use the SC-GHG to calculate a disallowance?
 - g. If, after applying the standard, the Commission found that costs associated with a renewable energy generating resource were prudent, would a utility be entitled to recover the full cost of the resource, even if the resource was not the least-cost resource?
 - h. The standard appears to require the Commission to make a specific prudency finding, without regard to other factors relevant to resource selection decisions, like the availability of the resource to serve peak load, accredited capacity, proximity to load, and other considerations. Is that the intent of the proposed rule?
11. In cases concerning natural gas service, does the proposed rule require the Commission to disallow rate recovery of actual test-year costs of service if those

costs plus the SC-GHG exceed the benefits of natural gas service? If so, would the Commission need to adopt or establish a method of valuing the benefits of natural gas service at times when heat is required to prevent loss of life?

12. The Petitioners' comments state that:

[t]he Rule would only require the Commission to consider long-term societal costs it is constitutionally *required* to consider and constitutionally *prohibited* from ignoring. Such Consideration is not even outcome determinative—i.e. use of the SC-GHG does not require the Commission to take action based on that consideration, to pick one alternative over another, or to decide whether or not to allocate costs to Montana ratepayers based on such considerations. It would simply prevent the Commission from proceeding in ignorance of the true costs of a utility's planning and resource acquisition activities and would prohibit the *uninformed* allocation of those costs to Montana ratepayers.

Petitioners' Comments 4 (emphasis in original) (Apr. 12, 2024).

- a. If the proposed rule as written requires the Commission to make a finding of prudence or imprudence based on the SC-GHG, would that also require the Commission to take certain action “to pick one alternative over another, or to decide whether or not to allocate costs to Montana ratepayers based on such considerations”? *See* Petitioners' Comments 4.
- b. In the Petition, Petitioners asserted that “[i]t is well-settled that the environmental protections in Montana's Constitution compel state agencies to take action to realize those protections.” Petition 15. Is it the Petitioners' position that being *informed* of environmental impacts satisfies the Commission's constitutional obligations? Or is it the Petitioners' position that the Constitution compels the Commission to “pick one alternative over another, or . . . allocate costs to Montana ratepayers based on” environmental impacts? *See* Petitioners' Comments 4.
- c. If the purpose of the proposed rule is to avoid “uninformed” ratemaking decisions and the proposed rule is not “outcome determinative” as

asserted on page 4 of Petitioners' comments, why is the standard set in the last sentence of the proposed rule reasonably necessary?

- d. Intervenors in contested cases before the Commission routinely raise additional issues, including the impacts of greenhouse gas emissions. *See, e.g., In re NorthWestern Energy's Application for Authority to Increase Rates*, Dkt. 2022.07.078, 350 Montana Motion for Intervention (Aug. 31, 2022). Given that intervenors can already present arguments and information about greenhouse gas emissions in Commission proceedings, how is the proposed rule reasonably necessary to avoid uninformed ratemaking decisions?

13. Administrative rules are "out of harmony" with legislative guidelines if they "(1) engraft additional and contradictory requirements on the statute; or (2) if they engraft additional, noncontradictory requirements on the statute which were not envisioned by the legislature." *Clark Fork Coal. v. Tubbs*, 2016 MT 229, ¶ 25, 384 Mont. 503, 380 P.3d 771 (quotations and citations omitted). Is there any legislative history that supports the Petition's assertion that the requirements of the proposed rule were envisioned by the Legislature when it granted the Commission the rulemaking authority cited in the Petition?

14. Mont. Code Ann. § 69-8-421(7) limits the Commission's ability to disallow costs related to certain approved electricity supply resources. The Petition asserts that "[c]ompensating utilities for capital expenses to maintain aging power plants for increasingly expensive coal or gas that is burned at such plants may create incentives—effectively subsidies—to continue operating climate-polluting facilities that would otherwise retire." Petition 21. If the last sentence of the proposed rule requires the Commission to conduct a cost-benefit analysis of operating and maintenance costs for assets approved under Mont. Code Ann. § 69-8-421, and to potentially disallow costs, does the rule conflict with Mont. Code Ann. § 69-8-421(7)?

15. The Petitioners intend for the Commission to apply the proposed rule in cases where a utility seeks Commission approval to issue securities and bonds for

purposes of acquiring property and constructing or improving facilities. Title 69, Chapter 3, Part 5 of Montana Code Annotated governs certain securities issuances.

- a. Applications in these cases typically do not include a detailed explanation of planned acquisitions, construction, or improvements. Is it the intention of the proposed rule to create a heightened filing standard for these cases, so that the Commission and parties can apply the proposed rule's cost-benefit test? If so, does the application of the cost-benefit test in these cases create a type of pre-approval of planned acquisitions, construction, or improvements?
- b. Absent good cause for an extension, Mont. Code Ann. § 69-3-503 requires the Commission to render a decision on the application within 30 days of filing. Is it reasonable to expect that the Commission and any intervening parties would be able to adequately investigate and apply the proposed rule within the 30-day deadline?
- c. Mont. Code Ann. § 69-3-504 provides three grounds for denying an application to issue securities. How can the proposed rule be applied to these cases without engrafting new grounds for denying an application that the Legislature did not envision?

16. The Petitioners intend for the Commission to apply the proposed rule in integrated resource planning, which is governed by Integrated Least-Cost Resource Planning and Acquisition Act, Title 69, Chapter 3, Part 12 of Montana Code Annotated, and Mont. Admin. Rs. 38.5.2020–2025 (2024). Current rules on resource planning provide that “[t]he cost-effectiveness of all resource acquisitions will be evaluated with respect to long-term total costs, including scenarios based on societal costs.” Mont. Admin. R. 38.5.2020(2). “Societal costs” are defined as “all costs to a utility plus externalities.” Mont. Admin. R. 38.5.2021(14). Given the requirements of current rules, why is the proposed rule reasonably necessary to effectuate the purpose of the Integrated Least-Cost Resource Planning and Acquisition Act?

17. Footnote 44 of the Petition refers to a website with a list of states that use the SC-GHG.
- a. Of the states that use the SC-GHG, what discount rate does each state apply to the SC-GHG?
 - b. Of the states that use the SC-GHG, which states have rules similar to the proposed rule?
 - c. Of the states that use the SC-GHG in utility proceedings, is the use of SC-GHG required by a legislative act?
 - d. Of the states that use the SC-GHG in utility proceedings, is it used in all regulatory decisions, or just in select categories of cases, like resource planning and procurement proceedings?

Comment Deadline

18. Further written comment on the proposed rule, including but not limited to responses to the questions stated above, must be submitted to the Commission no later than **July 1, 2024**. Written public comments on this matter may be submitted to the Commission at 1701 Prospect Ave., PO Box 202601, Helena, MT 59620, or by email to pschelp@mt.gov. Public comments may also be submitted online in REDDI. Instructions for submitting public comments in REDDI are available at psc.mt.gov/reddi-help (select “Submit a Public Comment”).

19. The Commission’s jurisdiction over this matter is provided in Title 69 and Title 2, Chapter 4 of the Montana Code Annotated; Title 38, Chapters 2 and 5 of the Montana Administrative Rules; and any prior order of the Commission relevant to the issues presented.

DONE and DATED April 30, 2024, by the Montana Public Service Commission by a vote of 4 to 1.

JAMES BROWN, President
JENNIFER FIELDER, Vice President
TONY O’DONNELL, Commissioner
RANDALL PINOCCI, Commissioner
Dr. ANNIE BUKACEK, Commissioner, Dissenting

CERTIFICATE OF SERVICE

I certify that on the 30th day of April, 2024, a true and accurate copy of the foregoing document was served by email to the following:

EARTHJUSTICE
jharbine@earthjustice.org
For Earthjustice

WESTERN ENVIRONMENTAL LAW CENTER
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For Western Environmental Law Center

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EMAIL LIST(S):
Administrative Rules
Energy West Mailing List
Notification of Montana Dakota Utilities Filings
Notification of NorthWestern Energy Filings
PSC Hearing Notices

By: /s/ Tarin Slayton
Tarin Slayton
Montana Public Service Commission

Affidavit of Melissa Hornbein
EXHIBIT C

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

IN THE MATTER OF the Petition)
for Adoption of New Rule I and)
Declarations Pertaining to the) Docket No. 2024.03.028
Commission’s Consideration of the)
Adverse Climate Impacts of)
Greenhouse Gas Emissions)
)

**Petitioners’ Notice of Mandatory
Rulemaking Procedures under Mont. Code Ann. § 2-4-315 and
Objection to Commission Process**

Petitioners object to the Commission’s process in Docket No. 2024.03.028, as set forth in its April 30, 2024, Notice of Extended Opportunity to Comment—including the extended period for public comment and solicitation of further information from Petitioners—because it violates mandatory rulemaking procedures under Mont. Code Ann. § 2-4-315.

The petition process provided by the Montana Administrative Procedure Act, Mont. Code Ann. § 2-4-315 pursuant to which Petitioners submitted their petition, provides only two outcomes to a petition for rulemaking: “[w]ithin 60 days after submission of a petition, the agency either shall deny the petition in writing or shall initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.” *Id.* (emphasis added). The statute affords the Commission no discretion to extend the 60-day decision window and does not allow the Commission to extend public comment absent a decision to initiate rulemaking.

The Commission has not taken either available pathway under Mont. Code Ann. § 2-4-315 and is therefore violating that statute’s clear legal directive. Petitioners submitted their Petition on February 28, 2024. Sixty days elapsed on April 28, 2024. At the Commission’s weekly business meeting on April 30, the Commission moved to extend the public comment period to July 1. However,

Commission Chair Brown clearly articulated that in so doing, the Commission was not taking any final action *either* to reject the petition *or* to initiate rulemaking. The statute simply doesn't contemplate this third path, and the Montana Administrative Rules reinforce the binary nature of the options available to an agency once a rulemaking petition has been received by providing that "upon receipt of the petition," an agency "shall, within 60 days after submission of the petition, either: (i) issue an order denying the petition; or (ii) initiate rulemaking proceedings in accordance with MAPA." Admin R. Mont. 1.3.308(3)(b) (emphasis added).

While Petitioners support additional public participation and information gathering on this important issue, the Commission must first initiate the rulemaking process established by Mont. Code Ann. § 2-4-301 *et seq.* Should the Commission choose to initiate rulemaking, the statute affords multiple opportunities for additional comment, information-gathering, and fact-finding, as evidenced by Mont. Code Ann. § 2-4-302(4)-(5), as well as an informal information-gathering process under Mont. Code Ann. § 2-4-304. However, to avail itself of *any* of these opportunities, rulemaking must first have been initiated pursuant to Mont. Code Ann. § 2-4-302 and the written notice that statute requires.

The Commission's extended process not only violates MAPA, but it also prejudices the Petitioners' ability to vindicate their right to petition the Commission for action to redress ongoing harm from uninformed decisionmaking, Mont. Const. art. 2, § 6, which MAPA serves to implement. This is because timely action on the Petition is necessary to avoid the statutory deadline for rulemakings of October 1 preceding a legislative session. Mont. Code Ann. § 2-4-305(11). Petitioners submitted their petition more than 7 months before this deadline, and they are entitled to the Commission's timely decision to either deny the petition or initiate rulemaking.

To end the ongoing harm to Petitioners' interests from the Commission's unlawful delay, Petitioners respectfully request that on or before May 21, 2024, the Commission either issue a decision, in writing, rejecting their Petition, *or* initiate

rulemaking by notice, and proceed to take additional public comment, gather information, and engage in further factfinding as allowed by statute.

Dated: May 9, 2024

/s Jenny K. Harbine
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Attorneys for Petitioners

Affidavit of Melissa Hornbein
EXHIBIT D

May 24, 2024

MEMORANDUM

TO: The Public Service Commission
FROM: Commissioner Bukacek
SUBJECT: Docket 2024.03.028

Attached is proposed draft Notice of Commission Action (“Notice”) which, if approved by the Commission, would decide the petition for rulemaking on greenhouse gas emissions and direct staff to prepare an order pursuant to Mont. Code Ann. § 2-4-315. The Notice would leave the public comment period open through July 1, 2024.

I encourage you to support this draft Notice. I would be glad to discuss it with you at your convenience if you have any questions.

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

In re the Petition for Adoption of New Rule I and Declarations Pertaining to the Commission’s Consideration of the Adverse Climate Impacts of Greenhouse Gas Emissions	Docket 2024.03.028 May __, 2024
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Notice of Commission Action

1. On February 28, 2024, various interested groups (“Petitioners”) filed with the Montana Public Service Commission (“Commission”) a Petition for Rulemaking (“Petition”) asking the Commission to adopt a proposed new rule requiring the Commission to consider the impacts of its decisions on the environment and human health, including impacts on climate change.

2. The Commission held a hearing in the above-captioned proceeding on April 8, 2024, where the Petitioners presented their Petition and proponents and opponents were given an opportunity to comment. To maximize the opportunity for public input, the Commission and its staff did not ask questions at the April 8 hearing. The Commission further allowed the Petitioners and the public to provide written comments on the Petition by April 12, 2024. The Commission has received over 600 comments in this proceeding.

3. The Commission considered the Petition, the Petitioners’ presentation, the Petitioners’ comments, and public comments, and at its regularly scheduled business meeting on April 30, 2024, the Commission voted to extend the public comment period to July 1, 2024. The Commission invited the petitioners and any other interested parties to respond to several unanswered questions about the effect and implications of the proposed rule.

4. The Commission’s questions sought clarification from the Petitioners about the practical impact of their rule across a variety of cases that may be filed before the Commission. The Commission also asked the Petitioners to clarify whether the purpose of the rule was simply to avoid uninformed decisions, or to require the Commission to make certain findings and conclusions based on the proposed rule’s express balancing test. And, if the purpose was merely to avoid uninformed decision-making, the Commission asked Petitioners to explain how the rule was *reasonably necessary*, as required by the Montana Administrative Procedure Act (“MAPA”), “[g]iven that intervenors can already present arguments and information about greenhouse gas emissions in Commission proceedings.”

5. Instead of answering these questions, on May 9, 2024, Petitioners responded with a Notice of Mandatory Rulemaking Procedures under Mont. Code Ann. § 2-4-315 and Objection to Commission Process (“Notice and Objection”). The Petitioners allege the Commission’s decision to extend the public comment period violated rulemaking procedures under Mont. Code Ann. § 2-4-315, which require the Commission to either deny the petition or “initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.”¹ Petitioners requested “that on or before May 21, 2024, the Commission either issue a decision, in writing, rejecting their Petition, or initiate rulemaking by notice, and proceed to take additional public comment, gather information, and engage in further factfinding as allowed by statute.”

6. While the petitioners declined to answer the Commission’s detailed questions about how their proposed rule, multiple commentators, including legislators, have argued it is not within the jurisdiction of the Commission to take on environmental policy and law-making. These commenters cite Article IX section 1 of the Montana Constitution, which states that the Montana Legislature must provide “adequate remedies for the protection of the environmental life support

¹ Although the Commission has begun informal conferences and consultations to obtain the viewpoints and advice of interested persons, as provided in Mont. Code Ann. § 2-4-304, Petitioners evidently do not want the Commission to continue this process.

system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.”

7. Multiple public commenters compellingly argued adverse social costs would be devastating to Montanans if the rule was adopted as recommended by the Petitioners. Commenters included representatives of union and non-union workers. The representative of Montana AFL-CIO testified at the April 8, 2024 hearing that there would be “massive loss of jobs” leading to adverse social and tax base ramifications of that unemployment. Compounding that social cost, multiple public commenters argued Montana families would be faced with financial detriment in the form of higher power bills from the new rule. To quote one commentator, the new rule would bring with it “a price tag that would regressively impact Montana energy consumers and hurt those who can afford it least, the most.”

8. On May 28, 2024, at a regularly scheduled business meeting, the Commission voted to deny the Petition and directed staff to prepare a written order pursuant to Mont. Code Ann. § 2-4-315. The Commission is not persuaded that the rule as presented by Petitioners is well-crafted or workable in the wide range of decisions the Commission is statutorily required to make. The Commission lacks information and explanation required to prepare a formal notice of proposed rulemaking based on the Petitioner’s rule that satisfies MAPA. The Commission therefore has no choice but to deny the Petition.

9. The Commission continues to receive public comment on the proposed rule and the content of the Petition. The Commission directed its staff to prepare a written order based on the public comment received as of May 28, 2024, to comply with Mont. Code Ann. § 2-4-315.

10. This Notice is not a decision on the request for declaratory rulings. The Commission will take up the request for declaratory rulings at a later date.

11. The Commission will leave open the previously established public comment period. The Commission continues to encourage all interested parties, including the Petitioners, to consider and respond to the questions the Commission

previously posed in writing. The Commission may use these comments to inform future rulemaking.

DONE and DATED May __, 2024, by the Montana Public Service Commission by a vote of __ to __.

JAMES BROWN, President
JENNIFER FIELDER, Vice President
TONY O'DONNELL, Commissioner
RANDALL PINOCCI, Commissioner
Dr. ANNIE BUKACEK, Commissioner

DRAFT

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Attorneys for Petitioners

**MONTANA FOURTH JUDICIAL DISTRICT COURT
MISSOULA COUNTY**

FAMILIES FOR A LIVABLE CLIMATE,
BRIDGER BOWL SKI AREA, CITIZENS
FOR CLEAN ENERGY, INC., CLIMATE
SMART MISSOULA, GALLATIN
VALLEY SUNRISE, HELENA HUNTERS
AND ANGLERS ASSOCIATION,
MONTANA CHAPTER OF THE
AMERICAN ACADEMY OF PEDIATRICS,
MONTANA ENVIRONMENTAL
INFORMATION CENTER, NORTHERN
PLAINS RESOURCE COUNCIL, PARK
COUNTY ENVIRONMENTAL COUNCIL,
and 350 MONTANA, Petitioners,

v.

MONTANA DEPARTMENT OF PUBLIC
SERVICE REGULATION and MONTANA
PUBLIC SERVICE COMMISSION,

Respondent.

Dept. No. ____

Cause No. ____

**AFFIDAVIT OF WINONA
BATEMAN IN SUPPORT OF
PETITION FOR ALTERNATIVE
AND PEREMPTORY WRIT OF
MANDAMUS**

I, Winona Bateman, declare:

1. I reside in Missoula, Montana.

2. I am Executive Director of Families for a Livable Climate, a Missoula-based non-profit organization and a petitioner in the above-captioned action

3. Families for a Livable Climate represents over 2,000 Montana families across the state. Our vision is an equitable and vibrant Montana, where families of all kinds advocate for resilient and connected communities, working together across differences to address the climate crisis, and create durable solutions. We help families to get involved and take action on climate.

4. The Montana Public Service Commission's decisions regarding Montana gas and electric resources greatly affect Montana families' everyday lives and our shared future. Day to day, families are facing more and more financial pressures, as well as environmental harms and related costs linked to climate change: impacts of extreme heat, drought, wildfires and wildfire smoke, floods, and more. The Commission's decision-making and planning affect the cost of energy when it greenlights expensive and outdated facilities, and it affects the scale of carbon pollution and its harms by failing to recognize climate change and its growing impact on our lives. Montana families simply can't afford more fossil fuel infrastructure: financially or otherwise.

5. Members of our organization have consistently advocated over the past several years for decisions by the Commission and NorthWestern Energy that account for the harms of climate change, including in NorthWestern Energy's most recent rate case, and its 2022-23 and 2019 Integrated Resource Planning processes, among other related issues. Our staff and the parents and caregivers we serve have traveled to Helena countless times, called and submitted

comments to PSC staff, and, in 2021, gathered more than 1,000 signatures statewide on a letter to NorthWestern Energy's leadership calling on them to make a plan to exit fossil fuels.

6. Families for a Livable Climate joined 41 other organizations, businesses, and individuals to petition the Commission to account for the climate-change related costs of its decisions. Our organization and numerous of our members submitted comments in support of the petition, including at the Commission's public hearing on April 8, 2024. Consistent with the Commission's obligations under the Montana Administrative Procedure Act, we expected the Commission to make a final decision to either initiate rulemaking or deny the petition no later than April 28, 2024. The Commission's failure to take action by that date has caused and continues to cause Families for a Livable Climate to expend unnecessary resources to advise its members regarding their continued participation in an ill-defined public process.

7. Additionally, we are concerned that if the Commission does not resolve the rulemaking petition by October 1, 2024, it could be precluded from doing so by the legal deadline for rulemaking in advance of the legislative session. In that event, Families for a Livable Climate would be precluded from advancing our members' interests in the rulemaking. Additionally, our staff and members would be required to use their time and resources to continue to raise their concerns through comments in individual Commission proceedings, which takes their time away from other important activities to advance our mission.

8. I feel personally harmed by Commission decisions on Montana electric and gas resources that do not account for climate costs. Like many Montana families, my family is trying to do its part in reducing greenhouse gas emissions. We have incurred personal costs to add solar panels to our home, and move to electric vehicles and appliances, yet the PSC continues to rubber stamp utility plans that not only increase emissions, but dramatically increase our

electricity costs instead of reducing them long term. Given the historic availability of resources aimed at supporting utilities and communities to transition away from fossil fuels (under the Inflation Reduction Act and Bipartisan Infrastructure Law), the commission's disregard of this opportunity is confusing at best, and reckless at worst for all Montana families, especially those whom are struggling to make ends meet.

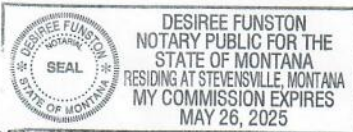
9. Rising temperatures are already having a massive impact on my family's physical and mental health, as well as our landscapes and lifeways. I spend more days indoors with my child in the summer due to extreme temperatures and increases in wildfire smoke. My husband has compromised lungs and his activities have been greatly impacted by more smoke in particular. Our family activities (hiking, camping, boating, fishing, hunting, skiing) have been diminished due to longer bouts of unseasonal and extreme temperatures, dangers from wildfire and wildfire smoke, floods and extreme weather. And, like all Montana families and especially children, we face a vastly uncertain future because of climate change. Montana has already warmed 2.5-3 degree F according to the Montana Climate Assessment. I can become extremely depressed when I consider this report's data on where Montana is headed: 4-6 degree temperature increases by mid-century (2040—only 16 years away) and 8-10 degrees of warming by 2075.

10. In 2040, my child will be in the prime of her life—as any parent, I have to consider, what kind of life will she have? What kind of life faces all of our children? We hold their futures in our hands. Our Montana Constitution agrees. Article IX, Section 1 begins, “The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.” My family and I are doing our part. I simply ask our elected officials to do the same.

11. I have reviewed the petition for alternative and peremptory writ of mandamus filed with this affidavit.

12. I verify that all of the allegations in the petition are true and correct to the best of my knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 5th day of June, 2024, in Missoula, Montana.



NOTARY SEAL

/s/ Winona Bateman
Winona Bateman

State of Montana
County of Missoula

Signed & sworn before me this 5th day of June
2024 by Winona Bateman.

Desiree Funston _____