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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 CO<sub>2</sub> 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.”<sup>1</sup>

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

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<sup>1</sup> 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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