



Energy and Telecommunications Interim Committee

62nd Montana Legislature

SENATE MEMBERS
ALAN OLSON--Chair
VERDELL JACKSON
JIM KEANE
CLIFF LARSEN

HOUSE MEMBERS
TONY BELCOURT--Vice Chair
ROBYN DRISCOLL
HARRY KLOCK
AUSTIN KNUDSEN

COMMITTEE STAFF
SONJA NOWAKOWSKI, Lead Staff
TODD EVERTS, Staff Attorney
DAWN FIELD, Secretary

MINUTES

January 13, 2012

Room 172, State Capitol
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. To the left of each section in these minutes is a time designation indicating the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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Hard copies of the exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

COMMITTEE MEMBERS PRESENT

SEN. ALAN OLSON, Chair
REP. TONY BELCOURT, Vice Chair

SEN. VERDELL JACKSON
SEN. JIM KEANE
SEN. CLIFF LARSEN
REP. ROBYN DRISCOLL
REP. HARRY KLOCK
REP. AUSTIN KNUDSEN

STAFF PRESENT

SONJA NOWAKOWSKI, Lead Staff
TODD EVERTS, Staff Attorney
DAWN FIELD, Secretary

AGENDA & VISITORS' LIST

Agenda, Attachment #1.
Visitors' list, Attachment #2.

COMMITTEE ACTION

The Energy and Telecommunications Interim Committee:

- approved the November 17, 2011, meeting minutes as written;
- agreed to change the meeting location of the May meeting; and
- voted to retain the current reporting requirement as noted in HB 142.

CALL TO ORDER AND ROLL CALL

00:00:01 SEN. OLSON called the meeting to order at 9:00 a.m. The Secretary noted the roll, all members were present (Attachment 3).

00:01:11 SEN. OLSON commented briefly on the intent of the Energy and Telecommunication Interim Committee's request to hear from Southern Montana Electric Generation and Transmission Cooperative, Inc. (SMEG&T).

SOUTHERN MONTANA ELECTRIC GENERATION AND TRANSMISSION COOPERATIVE, INC.

SEN. OLSON provided the Southern Montana speakers with a list of questions to consider in advance of the meeting. He also provided copies of a Great Falls Tribune article related to the issue and a staff report on residential electric costs comparisons for Montana utilities and rural electric cooperatives (EXHIBIT 1).

00:02:42 **Doug Hardy, Central Montana Electric Power Cooperative**, discussed a PowerPoint overview of Montana rural electric cooperatives' service areas, including a general perspective on power purchases and scheduling (EXHIBIT 2).

00:18:57 SEN. OLSON noted that **Electric City Power, Bob Jones, Great Falls, and SMEG&T** were invited to the meeting but did not attend. (EXHIBIT 3).

00:19:27 SEN. KEANE and SEN. OLSON expressed their displeasure that information requests from the ETIC had been ignored by certain entities. Both agreed that because this issue is of such great importance, the ETIC would consider using subpoenas as a tool to encourage participation at future meetings.

00:20:58 **Arlene Boyd, Beartooth Electric Cooperative (BEC), Southern Montana Electric Generating and Transmission Cooperative trustee**, gave a PowerPoint presentation outlining the BEC's struggle to deal with the SMEG&T bankruptcy (EXHIBIT 4).

00:55:22 **Scott Sweeney, General Manager, Fergus Electric Cooperative (FEC), Lewistown**, discussed Fergus Electric's organizational structure, membership, and FEC's opinion of how and why the SMEG&T bankruptcy occurred (EXHIBIT 5).

01:05:18 SEN. OLSON noted that **Mid-Yellowstone Electric Cooperative** declined the ETIC's invitation to the meeting.

01:05:28 **Keith Bales, Otter, President, Tongue River Electric Cooperative (TRECO) Board of Trustees**, discussed his thoughts regarding SMEG&T's financial and

litigation problems. Mr. Bales submitted and discussed documents listing the City of Great Falls' kilowatt usage for 2010 and 2011 (EXHIBIT 6) and a list of TREC assets minus depreciation and other financial information (EXHIBIT 7). Mr. Bales said his opinion is that the SMEG&T gas plant is still a viable opportunity and that he has been instructed by the TREC Board to do all he can to bring SMEG&T out of bankruptcy.

01:23:33 **Dave Kelsey, Board Member, Yellowstone Valley Electric Cooperative (YVEC), Billings, and SMEG&T Board Member**, gave a historical perspective of how and why the SMEG&T bankruptcy came to be, board governance issues, safeguards that could have prevented the situation, the power purchase agreement and power plant project, and goals and recommendations for the future (EXHIBIT 8).

01:38:01 **Terry Holzer, retired board member, Yellowstone Valley Cooperative (YVEC), Billings**, noted that even though he retired recently, he plans to remain on for several months to help extricate YVEC from the SMEG&T situation. Mr. Holzer discussed major costs, an expense analysis, cost of purchased power, SME rate increases to member systems, and other relevant information (EXHIBIT 9).

01:57:04 SEN. OLSON recessed the ETIC for a break at 11:00 a.m.

BREAK

02:11:40 SEN. OLSON called the meeting back to order at 11:16 a.m.

Public Comment

02:12:22 **Aart Dolman, Great Falls**, testified as a private citizen adversely affected by Southern Montana Electric Generation and Transmission and Electric City Power, City of Great Falls. Mr. Dolman read from a Great Falls Tribune article written about the SMEG&T bankruptcy and also submitted into the record exhibits relating to his testimony (EXHIBIT 10) and his statement to the ETIC (EXHIBIT 11), which included four recommendations for changes.

02:27:45 **Richard (Dick) Nolan, Chair, Fixed BEC Committee, Beartooth Electric Cooperative**, discussed SMEG&T's Board of Trustee's lack of due diligence and ensuing issues. He said that the lack of transparency is the core of the problem as well as the disconnect between the trustees and who they were representing.

02:32:48 **Travis Kavulla, Chairman, Public Service Commission (PSC)**, explained why the PSC thinks it is necessary to be involved in the SMEG&T bankruptcy proceedings, saying that PSC intervention is not an attempt to regulate the cooperatives but to advocate for a particular outcome and the public good.

02:39:30 Commissioner Kavulla discussed his personal views on the SMEG&T bankruptcy issue.

02:45:49 Commissioner Kavulla discussed a graph depicting SMEG&T's supply versus demand (EXHIBIT 12) and how rates contributed to the bankruptcy.

- 02:51:12 **Allen Ruby, Kalispell, Flathead Electric Cooperative, President of Montana Electric Cooperatives Association (MECA)**, commented on MECA's education courses and programs available to cooperatives.
- 02:52:57 **Dave Peterson, Board Director, Beartooth Electric Cooperative**, said that as legislators, the ETIC must monitor rates and protect people from the secrecy and sky rocketing rates that have occurred.
- 02:53:52 **Richard Leibert, Great Falls**, submitted a letter into the record regarding his concerns about the SMEG&T bankruptcy (EXHIBIT 13). He said that he supports the cooperative structure but that transparency, accountability, and oversight must be a part of that structure. He agreed with SEN. KEANE's comments about subpoenaing certain officials in order to get their testimony. He discussed several specific issues of concern, particularly the City of Great Falls' role in the situation.
- 02:59:17 **John Fitzpatrick, NorthWestern Energy (NWE)**, said that NWE supports PSC participation in the SMEG&T bankruptcy and that Commissioner Kavulla accurately described imbalance requirements and how NWE's ratepayers may be significantly affected by the bankruptcy. Mr. Fitzpatrick also remarked on a number of statements made by Mr. Bales.
- 03:07:07 Doug Hardy commented that cooperatives can build generation efficiently and cautioned the ETIC to not "paint with too broad a brush" when considering what action may be necessary.

ETIC Questions and Discussion

- 03:07:42 REP. DRISCOLL asked Mr. Bales to elaborate on the instruction from the TREC Board to help SMEG&T out of bankruptcy and remain in operation. Mr. Bales said that SMEG&T will have to come up with a reorganization plan, with elements to address the power contract with PPL, the Prudential bonds, and financial viability; but that no decisions have been made. REP. DRISCOLL asked if plans would include a restructuring of SMEG&T board members. Mr. Bales said he did not know but suspected that board reorganization would be likely.
- 03:11:03 REP. DRISCOLL said that cooperatives have opposed being regulated due to the excessive costs. She asked Mr. Sweeney to comment on how those costs would compare to the excessive costs of the legal fees incurred by the SMEG&T bankruptcy. Mr. Sweeney said that the costs would probably be a wash.
- 03:12:04 SEN. LARSEN asked if liquidation of assets was considered as a solution. Mr. Bales said that he is not an SMEG&T board member so could not respond specifically but said he would guess that liquidation probably was discussed. He said that extenuating circumstances may have prevented liquidation.
- 03:13:49 SEN. KEANE noted that cooperatives have been an organized and powerful lobby group in Montana. He asked Mr. Hardy to comment on the testimony given, the image of cooperatives, and the potential damage to rate payers. Mr. Hardy said the cooperatives are very concerned for their integrity and their members and they will be straightforward and work with legislators on solutions.

- 03:17:38 SEN. KEANE thanked Ms. Boyd for her research and information. He suggested looking to 35-18-318, MCA, - long-term indebtedness -- membership approval, as a potential source for solutions. Ms. Nowakowski provided copies of the statute (EXHIBIT 14).
- 03:18:52 SEN. OLSON asked Mr. Sweeney, Mr. Holzer, and Mr. Bales, to respond to questions related to load forecasting and if inaccurate forecasts may have contributed to SMEG&T's bankruptcy. Mr. Sweeney said his cooperative uses historical data on which to base its load forecasts. He said that FEC's forecasts were provided to SMEG&T, reviewed at the board level, approved, and did not contribute to the excess power supply.
- 03:21:45 Mr. Holzer said that the forecasts may have been high and perhaps should have been redone. Mr. Holzer noted that regardless, the PPL contract purchases were not a wise decision.
- 03:23:46 Mr. Bales said that the TREC board approved the forecast and that he was certain that TREC's manager alerted SMEG&T about delays. He said that TREC's load forecast could have contributed to the oversupply and explained. He said that mistakes were made but that the question becomes how to correctly forecast for future needs.
- 03:27:46 SEN. OLSON said that the PPL contract, signed in June of 2009, happened much later than some of the historical factors discussed by Mr. Bales. Mr. Bales said that certain factors, such as coal bed methane, were still in play; and figured into the decisions made.
- 03:29:27 SEN. OLSON asked if individual cooperative boards were given the load forecasts for approval and if they were informed about the power contracts and costs; in order to allow their representative on the SMEG&T board to make informed decisions. Mr. Bales said he didn't know about other cooperatives but explained how TREC was involved. He agreed that more due diligence should have been done but said that the TREC board representative to SMEG&T was comfortable with the proceedings at the time.
- 03:31:52 REP. BELCOURT stated that it frustrated him that two of the biggest players chose not to attend the meeting. He asked if the ETIC has any authority to bring them to the table to discuss the situation. **Todd Everts, Staff Attorney, LSD**, explained that interim committee duties include policy development and monitoring existing implementation of law, and as such, the ETIC has subpoena powers that may be exercised for purposes of information gathering for policy development. REP. BELCOURT asked that the ETIC consider the use of subpoenas in order to gather needed information. SEN. OLSON said the committee would discuss that later in the meeting. Ms. Nowakowski said she would so note the request and place it under the "directions to staff" portion of the agenda.
- 03:36:14 SEN. KEANE noted that he would be absent for a portion of the afternoon meeting and was placing his proxy with REP. DRISCOLL for any votes taken on

the SMEG&T issue. He said the SMEG&T issue has been very painful for many and that policy decisions are needed to ensure that it can't happen again. He said he is looking to the cooperatives to come up with solutions.

03:39:08 SEN. OLSON said, referring to 35-18-318, MCA, he would like the ETIC to consider language to amend the statute. He suggested striking "nuclear" and adding, after the last sentence, " Load forecasts for generation and transmission cooperatives must be reviewed and approved by individual member cooperative boards. Long-term energy contracts exceeding load forecasts by a generation and transmission cooperative must be approved by individual member cooperative boards". He said additional language dealing with supermajority approval of debt could be drafted also. He said that staff would create draft language and background information for consideration by the ETIC and the public.

03:40:33 SEN. OLSON recessed the meeting for lunch at 12:45 p.m.

LUNCH BREAK

04:27:57 SEN. OLSON called the committee back to order at 1:32 p.m. Joe Kolman , Legislative Research Analysts, Legislative Environmental Policy Office, introduced Jason Mohr as a newly-hired research analyst. Mr. Mohr said he was looking forward to working with the legislators.

Hydrogen and the Environment "The Quest for Alternative Fuels"

04:29:49 **Professor John Peters, chemistry and bio-chemistry, Montana State University, Bozeman**, discussed hydrogen as a component of an integrated balanced energy portfolio (EXHIBIT 15).

04:42:04 SEN. JACKSON asked about using hydrogen to heat homes or operate cars. Dr. Peters said the technology is there but that there are barriers to implementation. SEN. JACKSON and Dr. Peters discussed technology needed to power cars and what is being done.

04:46:04 SEN. LARSEN asked for more explanation on hydrogen's volatility and explosiveness. Dr. Peters said that hydrogen has obvious safety concerns. He said that it may be a misconception to believe that hydrogen is an answer to supplant the use of fossil fuels and that energy from many different sources will be needed to meet energy demand. Dr. Peters noted that there is a potential for combining hydrogen with other materials in order to make it safe for use in automobiles. At SEN. LARSEN's request, Dr. Peters discussed other practical applications using hydrogen.

Public Comment

04:51:28 No public comment was given.

ONE-CALL UPDATE

04:51:40 Doug Hardy, MECA, reported on stakeholder work on the one-call bill draft (EXHIBIT 16).

04:54:34 **John Aike, MDU Resources**, discussed the issue and MDU's position as a member of the stakeholder work group. He said that MDU thinks the wisest course of action is to wait to see what the federal Department of Transportation comes up with.

Public Comment

No public comment was given.

04:59:28 Mr. Hardy clarified that stakeholders did agree that pipelines would be treated differently in any potential one-call legislation.

Committee Questions

05:00:43 There were no committee questions.

PSC ORGANIZATIONAL STRUCTURE

05:01:16 Ms. Nowakowski said that the ETIC began its consideration of the issue of whether the commission should be an elected or appointed body at the November 17, 2011, meeting. She asked the members how the ETIC wished to proceed.

05:04:01 SEN. JACKSON said there appeared to be little demand for changing the current structure of elected commissioners.

05:05:21 REP. DRISCOLL agreed with SEN. JACKSON's evaluation but said she thought it was important that the ETIC took comment and reviewed the issue. SEN. OLSON also agreed that there appeared to be little interest in changing the current PSC structure. He commented on the role of the PSC and said that while he favors an elected commission, it might be good to remove partisan labels and to require qualifications. SEN. OLSON said the issue would stand as is.

Public Comment

05:10:38 No public comment was given.

AGENCY OVERVIEW PRESENTATION

05:10:56 **Travis Kavulla, Chairman, Public Service Commission (PSC)**, discussed a PowerPoint presentation (EXHIBIT 17) regarding potential areas of reform, which included motor carrier registration, small water regulation, clean up of renewable portfolio standard provisions, specific authority to review proposed mergers and acquisitions of Montana utilities, and issues of concern to the Legislature.

Public Comment

05:36:26 No public comment was given.

Committee Questions and Discussion

05:36:36 SEN. OLSON asked Mr. Everts to confirm that the 2003 ring fencing legislation applied only to electric utilities. Mr. Everts said that was correct. SEN. OLSON asked to discuss that at the next meeting.

- 05:37:48 SEN. OLSON commented on HB 25, saying that the City of Great Falls became involved in the renewable portfolio standard (RPS) issue at its own request. He encouraged Commissioner Kavulla to work with staff on his issues of concern and said that the ETIC would address the ambiguities remaining in HB 25 at the next meeting.
- 05:38:35 Ms. Nowakowski asked if the expectation was to have draft legislation prepared. SEN. OLSON said he would like to have draft legislation prepared for RPS clean up and for ring fencing.
- 05:40:39 SEN. JACKSON discussed concerns related to water utilities and regulation. SEN. OLSON said that the Water Policy Interim Committee (WPIC) is addressing this issue and could provide a report to the ETIC on its work.
- 05:43:01 REP. BELCOURT asked if the PSC gets involved with sewer rates. Commissioner Kavulla said it does. REP. BELCOURT said it is of growing importance, particularly in communities such as Sidney. He asked that the ETIC look at the issue.
- 05:44:08 Ms. Nowakowski said she would work with the PSC staff on: ring fencing, acquisition issues, clean up language for the RPS, and other clean up related to HB 25 from 2007. She also said she would consult with the WPIC staff on its work related to subdivision and update the ETIC and meet with the PSC on its remaining legislative proposals as discussed before the ETIC. SEN. OLSON said the ring fencing legislation would probably address the acquisitions concerns.

ENERGY RESOURCE DEVELOPMENT

Update on HB 642 efforts

- 05:45:39 Ms. Nowakowski updated the ETIC on HB 642, Select Committee on Efficiency in Government (SCEG). She said the SCEG formed a Natural Resources Subcommittee, which will meet in February to discuss how best to narrow the focus of the study.

Public Comment

No public comment was given.

ETIC Questions and Discussion

There were no committee questions.

OTHER BUSINESS

Approval of November 2011 meeting minutes

- 05:47:59 **REP. KLOCK moved to approve the November 17, 2011, meeting minutes.** SEN. LARSEN noted that a numeral is missing in the adjournment time. So noted, and it will be corrected. **The motion passed on a unanimous voice vote.**

Rule Review

- 05:48:40 There was no rule review.

HB 142 Required Reporting

05:48:54 Ms. Nowakowski referred members to a staff memo regarding HB 142 requirements of the ETIC (EXHIBIT 18).

- **USB Reports**

SEN. LARSEN moved to keep universal systems benefits programs reporting requirements as is. The motion passed on a unanimous voice vote.

- **Geothermal Research**

05:51:22 **SEN. JACKSON moved to keep the geothermal reporting requirement as is. The motion passed on a unanimous voice vote.**

- **Hydro Development**

05:53:09 **SEN. LARSEN moved to keep the reporting requirement as is. The motion passed on a unanimous voice vote.**

- **Energy Credits**

05:55:46 **SEN. JACKSON moved to keep the reporting requirement as is. The motion passed on a unanimous voice vote.**

05:57:52 Ms. Nowakowski said she would prepare the report for the 2013 Legislature that the ETIC considered each report and approved retaining all four reports.

Instructions to Staff/May meeting

05:58:48 SEN. OLSON asked to change the location of the May meeting from Great Falls to one meeting day in Butte and one meeting day in Helena. He said he would like the ETIC to see PPL's trading floor and NWE's transmission scheduling center because it would help the ETIC have a better understanding of energy issues in Montana. After a brief discussion, it was agreed that the first meeting day could be in Helena and the second day in Butte.

06:04:00 SEN. LARSEN said he was disappointed at the decision because holding an ETIC meeting in Great Falls would have been a means to promote hydropower and to hear from PPL about its expansion of hydropower projects. SEN. OLSON said he thought that PPL could report on its hydropower projects at the Butte meeting and that he expects that hydropower and the RPS will be addressed again by the 2013 Legislature.

06:05:33 Ms. Nowakowski reviewed the list of May agenda items. She said if members have other topics, to please let her know. SEN. OLSON asked if a conference call meeting could be scheduled before the May meeting, should the ETIC need to deal with an urgent issue. Mr. Everts said it could be, providing proper public notice is given.

ADJOURNMENT

06:08:40 With no further business before the Energy and Telecommunications Interim Committee, SEN. OLSON adjourned the meeting. The next meeting is scheduled for May 17 and 18, 2012, in Helena and Butte.

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