



Energy and Telecommunications Interim Committee

63rd Montana Legislature

SENATE MEMBERS

CLIFF LARSEN--Chair
EDWARD BUTTREY
ROBYN DRISCOLL
ALAN OLSON

HOUSE MEMBERS

KEITH REGIER--Vice Chair
MIKE LANG
MARY MCNALLY
TOM STEENBERG

COMMITTEE STAFF

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

MINUTES LOG

November 8, 2013
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. CLIFF LARSEN, Chair
REP. KEITH REGIER, Vice Chair
SEN. ROBYN DRISCOLL
SEN. ALAN OLSON
REP. MIKE LANG
REP. MARY MCNALLY
REP. TOM STEENBERG

COMMITTEE MEMBERS ABSENT/EXCUSED

SEN. EDWARD BUTTREY

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 did not take official action on any topic at this meeting.

CALL TO ORDER AND ROLL CALL

00:00:01 SEN. LARSEN called the meeting of the Energy and Telecommunications Interim Committee (ETIC) to order at 8:30 a.m. The Secretary took roll, Sen. Buttrey was excused (Attachment 3).

FOLLOW-UP TO 9-1-1 ISSUES: 2013 LEGISLATION

• Introduction

00:01:06 **Sonja Nowakowski, Research Analyst, Legislative Services Division (LSD)**, reviewed an October 25, 2013, memo regarding 2013 telecommunications legislation (EXHIBIT 1) outlining the provisions of HB 575, which passed (EXHIBIT 2); and HB 509, which was vetoed (EXHIBIT 3).

• Stranded Funds HB 575 Implementation

00:03:02 **Quinn Ness Bureau Chief, Public Safety Communications Bureau, Department of Administration (DOA)**, discussed 9-1-1 Program issues relative to the 2013 legislation, specifically stranded funds and implementation of HB 575. Mr. Ness first briefly reviewed background information on 9-1-1 via a Powerpoint presentation (EXHIBIT 4). Mr. Ness also provided copies of a Consumer Guide to 9-1-1 Wireless Service from the Federal Communications Commission (FCC) (EXHIBIT 5).

• Stranded Funds -- HB 575 Outcomes

00:17:27 **Bonnie Lorang, General Manager, Montana Independent Telecommunications Systems (MITS)**, said that the legislation is working exactly as envisioned and thanked all who worked on it, the Legislature for approving it, and the DOA for its successful implementation. She offered additional details relating to past fiscal concerns about reallocation and distribution of 9-1-1 fees that have since been taken care of. She also said that while HB 575 was a good start to addressing public safety concerns in Montana, there is still work to be done.

• Prepaid Issues -- HB 509 Introduction

00:21:23 REP. REGIER, HB 509 sponsor, discussed his concerns that not all prepaid wireless providers are paying the monthly one-dollar 9-1-1 tax. He explained how HB 509 would have collected the tax, how the tax revenue would have been used, and the bill's support by both the House and Senate. He said that the bill was vetoed by Governor Bullock. In refuting Governor Bullock's explanation of why he chose to veto the bill, REP. REGIER distributed copies of a Montana Department of Revenue (DOR) Lodging Facility Sales and Use Tax form (EXHIBIT 6) and explained how a simple form could have been used to collect the 9-1-1 tax for remittance to the DOR. He said there seemed to be confusion about HB 509 in the 2013 Legislature and closed his remarks with two questions regarding the issue:

- Is the 9-1-1 fee being collected from wireless prepaid users?
- Is HB 509 a general sales tax, as stated by Governor Bullock?

• Prepaid Issues HB 509 Perspectives

00:26:06 **Chuck Denowh**, representing Trac phone wireless providers, explained that Montana's current statutory language was written before prepaid wireless was widely available and said that the statute needs to be updated to include "pay as you go" wireless users in the collection of 9-1-1 fees. He noted that 31 other states have enacted legislation to collect these fees at the retail level from prepaid subscribers and said that the veto of HB 509 left a hole in Montana statute, thus

allowing a significant amount of money to be left uncollected. He estimated that amount to be approximately \$1-2 million per biennium. Mr. Denowh said that the DOR is not able to adequately address this through administrative rule and that prepaid wireless providers want to make sure that all users pay their fair share of the costs and that the outdated statute is updated.

- **Prepaid Issues HB 509 Perspectives**

00:29:45 **Gene Walborn, Business and Income Tax Administrator, DOR**, discussed the DOR's concerns about HB 509 and why it would not have worked, saying that the DOR's main concerns were regarding the fee collection mechanism at the point of sale. He also reviewed the DOR's work with stakeholders to negotiate administrative rules and to draft rules to address third-party sales, which he said, was unsuccessful. Mr. Walborn then explained the administrative rules that were adopted by the DOR and responded to REP. REGIER's concerns. He said the real deficiency in HB 509 was that it was not placed in the tax code which made it technically very difficult for the DOR to work with.

- **Public Comment**

00:40:12 There was no public comment.

- **ETIC Questions and Discussion**

00:40:33 REP. LANG asked Mr. Walborn to clarify his comments regarding collection of fees. Mr. Walborn explained that the issue is with "third party transactions" in which "bundled" calling cards are sold to retail stores, which in turn sells them to consumers without collecting the fee. He said that HB 509 would have fixed that hole but that the DOR has given retailers a process through which the fee can be collected and remitted to the DOR but that retailers are not doing so. Mr. Walborn explained measures taken by the DOR to collect these taxes and to deal with noncompliance issues.

00:43:13 SEN. DRISCOLL said her 2007 bill, HB 27, established the *Wireless Enhanced 9-1-1 Wireless Provider Cost Recovery Account* and noted that the account has accrued a huge balance. She asked Mr. Ness what he would think about eliminating that fee until the balance is reduced to a certain level. Mr. Ness said that question would be better answered by the wireless providers and local governments. He explained further.

00:45:19 SEN. DRISCOLL asked Ms. Lorang to respond. Ms. Lorang said MITS believes that affected providers should be paying into the fund and that the fund should be managed appropriately. She discussed "next generation" issues and said that there are and will continue to be ongoing expenses. She said that just because there is a comfortable balance, one can't assume the need no longer exists.

00:48:53 SEN. DRISCOLL agreed with Ms. Lorang's comments but asked, if the fee was suspended, what a comfortable account balance would be before having the fee kick back in. Ms. Lorang said that a regression analysis has been done on the numbers and discussed the implications of what might happen under different scenarios.

- 00:51:22 REP. REGIER asked Mr. Walborn to clarify that third-party prepaid sales, by DOR administrative rule, are supposed to be paying the \$1 collection fee but that certain providers are not doing so. Mr. Walborn said that is correct and explained further. REP. REGIER asked when the DOR's administrative rules dealing with that issue were adopted. Mr. Walborn said they were adopted in March 2010.
- 00:52:20 REP. REGIER asked Mr. Ness to discuss further the \$9.5 million account balance in the *Wireless Enhanced 9-1-1 Wireless Provider Cost Recovery Account* (page 8, EXHIBIT 4). Mr. Ness referred to a graph on page 6 of his presentation (EXHIBIT 4) as part of his discussion of how certain trends could affect the balance of the account.
- 00:54:54 SEN. DRISCOLL asked Mr. Walborn to provide the fee amounts being collected from prepaid wireless by the DOR under its 2010 administrative rule. Mr. Walborn said he would provide as much information as he could but that some information is considered confidential.
- 00:55:50 REP. LANG asked if wireless companies who don't want to be a part of this have applied for recovery costs. Mr. Walborn said he did not know because the DOR only collects the tax.
- 00:56:32 REP. LANG asked Mr. Ness to respond to his question. Mr. Ness said that larger providers have not made cost recovery requests. REP. LANG asked if there is any intention of getting them to pay. Mr. Ness said he did not believe there is anything in statute that would put a sunset on a cost recovery request or that the Department of Administration has adopted rules that would create a sunset on a cost recovery request. REP. LANG asked what the time frame is for cost recovery. Mr. Ness said the process is set up on a quarterly basis.

- **ETIC Action, if necessary**

- 00:58:50 SEN. DRISCOLL said she would like to have telecommunications providers come to the ETIC's July 2014 meeting to discuss their future needs, and to continue discussion on the account balance question.
- 00:59:42 REP. STEENBERG said that he would like the discussion to also include public safety agencies. It was agreed that this topic would be placed on the July 2014 meeting agenda.

RULE REVIEW AND UPDATE ON QF EIS AND RULEMAKING

- **Introduction**

- 01:01:21 Mr. Everts said that there has been no rulemaking activity since the last meeting. Regarding the qualifying facility rules issue, Mr. Everts noted that after the ETC's October 21, 2013, conference call meeting, the PSC agreed to the ETIC's request to reconsider their proposed rules.

- **Public Comment**

- 01:02:19 There was no public comment.

- **ETIC Questions and Discussion**

01:02:26 SEN. OLSON thanked the Public Service Commission (PSC) for listening to ETIC's concerns regarding its administrative rules for qualifying facilities and for taking action accordingly. SEN. LARSEN agreed that it was a good outcome.

01:06:00 SEN. LARSEN recessed the meeting for a short break.

BREAK

01:33:19 SEN. LARSEN called the meeting back to order at 10:05 am.

RPS DISCUSSION ENVIRONMENTAL IMPACTS -- UTILITY DIVERSIFICATION

- **Introduction**

01:33:39 Ms. Nowakowski said that the RPS surveys were sent out shortly after the September meeting and that to date, only two utilities have responded. She encouraged those who have not responded yet to do so. She said that SJ 6 laid out three main points for study and discussed her staff report, *Environmental Impacts of Montana's Renewable Portfolio Standard* (EXHIBIT 7), which addressed those three points. She said that member input and comment would be taken after all of the presentations had been made, and that staff would also ask for direction at the conclusion of the presentations and discussion.

- **DEQ Introduction**

01:38:05 **Tom Livers, Deputy Director, Department of Environmental Quality (DEQ)**, noted that a number of DEQ staff was present and available for questioning.

01:40:05 **Garrett Martin, Energy Analyst and Planner, DEQ**, discussed DEQ's assessment of the environment benefits of Montana's Renewable Portfolio Standard (RPS) (EXHIBIT 8). He reiterated that while there are a number of positive effects resulting from RPS, the chief takeaway is that Montana is expanding its energy portfolio without degradation of the environment. Mr. Martin also reviewed a DEQ report on the environmental impacts of Montana's RPS (EXHIBIT 9).

- **NREL**

01:55:06 **Lori Bird, Senior Analyst, National Renewable Energy Laboratory (NREL)**, discussed a Powerpoint presentation outlining the potential benefits and costs of RPS (EXHIBIT 10).

- **Public Comment**

02:13:34 **Dr. Robert Shepard, retired physician, Helena**, commented as a private citizen on health issues associated with coal-fired power plants and the impact of smoke on human health. He said that anything that can be done to reduce the amount of coal-fired energy generation will have a positive effect on human health.

- **ETIC Questions and Discussion**

02:20:18 SEN. OLSON asked where the power production from petroleum generation, as discussed in Mr. Martin's presentation, are located. Mr. Martin said he was referring to electricity generated to operate refineries, not generation sold on the market.

02:21:34 SEN. OLSON asked Mr. Martin to clarify his reference to coal as nonbaseload generation. Mr. Martin explained how coal power can be used both for baseload and nonbaseload electricity generation in different markets.

- 02:22:46 SEN. OLSON commented, regarding avoided water consumption, on the enormous amount of water that evaporates from reservoirs; and cited 8 billion gallons evaporating from Fort Peck Reservoir annually as an example. He asked how or if that is factored into federal facilities, which are sometimes counted as a renewable energy resource. Mr. Martin said he did not have that information.
- 02:24:27 REP. REGIER asked if Ms. Nowakowski's RPS report (EXHIBIT 7) examined both the negative and positive effects of RPS on the environment. Ms. Nowakowski said that she looked at the environmental impacts in terms of benefits and costs and explained further. She said she would take a more in-depth look at costs, and asked REP. REGIER to offer his suggestions if additional information was needed. She said this was her first attempt at capturing the information.
- 02:25:41 REP. REGIER asked if Mr. Martin could identify the negative impacts of RPS. Mr. Martin said that negative impacts do exist but that they are significantly outweighed by improvements. REP. REGIER asked Mr. Martin if that was his personal opinion. Mr. Martin said it was.
- 02:26:53 REP. REGIER asked, regarding Mr. Martin's slide on potential avoided CO₂ (page 4, EXHIBIT 8), if the assumption is that CO₂ is a negative and if CO₂ is needed in the environment. Mr. Martin said CO₂ is critical to the environment to the extent that it is naturally occurring. REP. REGIER asked if there is a standard for the amount of CO₂ that should be in the environment. Mr. Martin asked that Mr. Klemp answer that question.
- 02:28:14 **David Klemp, Bureau Chief, Air Resources Management Bureau, DEQ,** said that while CO₂ is a regulated pollutant by the Environmental Protection Agency (EPA), no ambient standard has been identified for green house gases.
- 02:29:14 REP. REGIER said that the Potential Avoided CO₂ slide in the DEQ's presentation as a benefit should be removed from the presentation because some would argue that the presence of CO₂ in the environment is a benefit. He discussed his point further. Mr. Klemp said that for purposes of this presentation, the information was included because CO₂ is a regulated air pollutant.
- 02:30:35 SEN. OLSON asked how CO₂ emissions compare between a coal-fired power plant and a biomass power plant. Mr. Klemp said that on a per-energy basis, CO₂ emissions are higher for coal and offered to get specific numbers. SEN. OLSON said he would like the numbers to be based both on per ton of fuel and per megawatt hour. Mr. Klemp said he would do that.
- 02:31:38 REP. MCNALLY asked Dr. Shepard to respond to the comments made about CO₂ emissions and at what point there should be concern. Dr. Shepard said that the CO₂ content of the atmosphere does not have a direct impact on human health and that the avoidance of coal as an energy source has more to do with the known pollutants of nitrous oxides and sulphur dioxides. He stated that the more coal use is reduced, the better human health will be. Dr. Shepard said that CO₂ reduction is a good thing because higher CO₂ levels clearly and unquestionably contribute to planet warming.

02:33:09 REP. REGIER asked Dr. Shepard how he could quantify his comments. REP. REGIER said reports he has read indicate that CO₂ levels have risen and the earth's temperature has fallen over the last 12 years. Dr. Shepard referred REP. REGIER to a website, realclimate.org, and said there are very clear explanations there of the issue. He said that a climate scientist could provide a better analysis.

RPS DISCUSSION ENVIRONMENTAL IMPACTS -- UTILITY DIVERSIFICATION

- **Montana Dakota Utilities**

02:35:31 **John Alke, Montana-Dakota Utilities (MDU)**, said the question of whether Montana's RPS standard were or are responsible for MDU's diversification of its energy portfolio is difficult to answer. He then explained, in detail, MDU's structure and how it plans for future needs, and how it deals with the costs of new acquisitions. Mr. Alke's discussion also included MDU's acquisition of three wind energy facilities. He said that while MDU is fully compliant with the RPS standards, the RPS standards were more of a hindrance than a help and explained why. He said that it has to make economic sense for a utility to acquire renewable energy resources and such acquisitions shouldn't be because the utility is mandated to do so. He stated that if there is no mandate, the utility can decide what is best for customers, which forces the suppliers to compete in a fair and balanced market, which is much better for the consumer. He urged the ETIC to not change the RPS standards.

- **NorthWestern Energy**

02:44:50 **John Bushnell, Lead Supply Planner, NorthWestern Energy (NWE)**, discussed NWE's position via a Powerpoint presentation (EXHIBIT 11). Mr. Bushnell's presentation included information on NWE's RPS resources, a forecast of NWE's RPS compliance, and the impact of RPS on NWE's fuel mix.

- **Public Comment**

02:58:44 **Doug Hardy, Montana Electric Cooperatives Association**, commended the Legislature for its wisdom in treating cooperatives differently regarding RPS standards. He discussed several renewable resource projects being operated by cooperatives, including the amounts of power being generated by them. Mr. Hardy also discussed the negative impacts of buying wind power and said that overall, the cooperatives have done right by their customers but only because of unique circumstances. He explained further.

- **ETIC Questions and Discussion**

03:02:05 REP. REGIER said it was interesting to see the environmental impacts from the utilities' perspective. He asked if NWE has tried to quantify things like how many acres of land are needed per MW of wind produced, as compared to other sources of generation, for example. Mr. Bushnell said he didn't know if that has been looked at but could say that the RPS is not having a big impact in terms of actual fuel mix.

03:03:44 REP. REGIER asked Mr. Alke if he could say what the RPS has cost the average rate payer. Mr. Alke said he did not have those numbers but that it would be fair to say that the costs of the wind resources were relatively modest.

03:05:00 SEN. LARSEN asked Mr. Bushnell if NWE routinely includes alternative energy in its planning processes or if that is still a challenge. Mr. Bushnell said that prior to

NWE's announcement of its hydro acquisition, alternative energy/renewable energy was a challenge because of the cost effectiveness issue. He explained how decisions are made to include (or not include) renewable resources and that NWE is always watching out for the latest green technology to see if it can fit into NWE's plans. He discussed rate impacts and five contracts that will cost NWE approximately \$50-70 million more than if NWE could have waited.

03:09:12 Ms. Nowakowski asked the ETIC how it wishes to proceed on the RPS standard/environmental impact study issue. SEN. LARSEN said that REP. REGIER raised pertinent questions about the potential negatives and that while the ETIC heard lots of positives, it should also consider alternative perspectives.

03:10:59 SEN. DRISCOLL said this was a good time to "nudge" utilities to complete the surveys. Ms. Nowakowski said she would monitor the situation and knew that some surveys were still in progress and had been told that certain entities don't plan to respond. She said that much more information would be available at the first of the year.

03:12:58 SEN. OLSON said he would like information on "site" impacts, for example, the amount of land needed for a wind farm versus a coal-fired power plant. He said that as coal is displaced, other impacts must be considered, such as the impact on the state budget and the loss of revenue.

03:15:15 REP. REGIER encouraged the DEQ, as the "watchdog" for the state, to come up with a more balanced picture.

WORKING LUNCH: NORTHWESTERN ENERGY'S PURCHASE OF PPL DAMS

- **NorthWestern Energy**

03:36:07 **Bob Rowe, CEO, NWE**, discussed NWE's commitment to provide high quality, safe, and reliable utility service; and the importance of hydro as part of that utility service. He reviewed materials provided in a folder (EXHIBIT 12) and also discussed a Powerpoint slide presentation (EXHIBIT 13) regarding NWE's purchase of PPL Montana hydro facilities.

03:44:14 **John Hines, Vice President of Supply, NWE**, continued discussion of the NWE-PPL transaction highlights (EXHIBIT 13), including meeting customer demand, due diligence conclusions, residential customer bill impact, environmental stewardship, employee impact, and more.

03:53:25 Mr. Rowe reviewed the key points and benefits of the hydro acquisition (page 16, EXHIBIT 13) and also highlighted NWE's strong corporate governance (pages 17 & 18, EXHIBIT 13).

- **Public Service Commission**

03:59:50 **Bill Gallagher, Chairman, Public Service Commission (PSC)**, reviewed the procedure the PSC would use in determining whether it would approve NWE's acquisition of the PPL Montana hydro facilities (EXHIBIT 14).

- **Public Comment**

04:13:14 There was no public comment.

- **ETIC Questions and Discussion**

04:13:28 REP. REGIER asked what NWE's timeline is for payback of the acquisition. Mr. Hines explained how the timeline was calculated and predicted it will be about a 30-year payback period.

04:15:37 REP. REGIER asked, regarding tribal assumption of Kerr Dam, if NWE plans to negotiate with the Confederated Salish Kootenai Tribe (CSKT) to purchase the dam. Mr. Hines said that NWE is willing to discuss that issue with the CSKT. He noted that NWE had begun discussing this with the CSKT prior to the acquisition but that no discussions have been held since the acquisition.

04:17:02 SEN. OLSON discussed the legislative actions that resulted in deregulation and the impacts of that deregulation. He said that what happened in 2001 could happen again and stated that stability is needed, both for ratepayers and utilities. He urged support of NWE's acquisition of the hydro facilities and said that it would bring back a great deal of stability to Montana consumers.

04:21:27 SEN. OLSON said that he would like this issue to be on future ETIC meeting agendas. SEN. LARSEN said so noted.

- **ETIC Action, if necessary**

The committee agreed to continue monitoring the issue.

UNIVERSAL SYSTEM BENEFITS PROGRAM

- **Overview**

04:24:25 Ms. Nowakowski discussed the history and background of the USB program. Points included what are USB programs, the history of USB in Montana, the role of ETIC as it relates to USB, how USB works, and what happened with USB in 2012.

- **Public Service Commission**

04:38:30 **Bill Gallagher, Chairman, PSC**, discussed the PSC's role in the USB program (EXHIBIT 15). Chairman Gallagher discussed two possible legislative recommendations:

- provide for a waiver from USB participation for certain small utilities; and
- set a statutory natural gas USB rate similar in design to the statutory electric USB rate.

- **Northwestern Energy**

04:53:45 **Deb Young, Efficiency Plus (E+) Manager, NWE**, gave a brief summary of NWE's 2012 USB report (EXHIBIT 16).

- **Montana-Dakota Utilities**

04:59:44 John Alke, MDU, provided a detailed explanation of the differences between electric and gas USB programs, including how each is structured and the impact of *The Montana Electric Utility Industry Restructuring and Consumer Choice Act*. He said that the USB programs worked fairly well until 2007, when AARP filed a complaint with the PSC against MDU. Mr. Alke reviewed the AARP's concerns, how the PSC handled the complaint, and the ensuing court decisions. He said that the issue still has not been resolved. Mr. Alke said that there remains a great deal of difference of opinion regarding the intent and purpose of USB programs. He said his

recommendation regarding the USB program is to recognize that companies are different, statutes are different, and that businesses should be allowed to decide what is best for their customers. (MDU submitted its 2012 Final USB report in advance of the meeting, EXHIBIT 17).

- **Rural Electric Cooperatives**

05:12:01 Doug Hardy, MECA, explained how cooperatives participate in USB programs. Discussion points included cooperative concerns and complexities of the USB program. Mr. Hardy referred to the 2013 Final MECA USBP Pool Report during his comments (EXHIBIT 18).

- **Public Comment**

05:16:25 There was no public comment.

- **ETIC Questions and Discussion**

05:16:34 SEN. OLSON asked Mr. Hardy if his comments about bill drafting were in reference to the section about certain aspects of the law only applying to investor-owned utilities operating in the Columbia Basin. Mr. Hardy that would be one way to put a bill draft together. SEN. OLSON asked Mr. Everts to discuss language used in the deregulation bill language. Mr. Everts responded that certain terms concerning utility location were used to make distinctions in deregulation legislation.

05:18:14 REP. REGIER asked about the City of Troy USB report (EXHIBIT 19). Ms. Nowakowski said that municipal utilities are also required to meet USB requirements.

- **ETIC Action , if necessary**

05:19:19 There was no action suggested by ETIC members.

UTILITY COMPETITIVE SOLICITATION PROCESS

- **Introduction**

05:20:13 Ms. Nowakowski presented *A Summary of Montana Resource Planning and Procurement Options* staff report (EXHIBIT 20) and reviewed the recommendations and a draft rule for electric utility resource planning and procurement in Montana, as presented in the PSC's Morgan and Howard report (EXHIBIT 21). SEN. LARSEN briefly recessed the ETIC meeting until the panelists arrived.

- **Oversight Resources**

05:31:25 **Bryan Rogan, Gordon Butte Wind and Oversight Resources**, thanked the ETIC for visiting the Gordon Butte wind project in September. Mr. Rogan said that Oversight Resources is a management and development company that focuses mainly on utility companies operating in Montana. He discussed details of several companies operating under Oversight Resources and the procurement processes utilized by Oversight Resources. Mr. Rogan touched on a number of topics and concerns relating to the competitive solicitation process, including qualifying facilities, the request for proposal (RFP) process, Community Renewable Energy Projects (CREPs), economic feasibility issues, procedural and perception issues, and challenges facing developers. He said that the lack of feedback to utilities is a major impediment to improving bids. He said that he did not bring answers or solutions but only questions for further discussion.

- **Morgan and Howard Study - PSC**

05:49:02 **Will Rosquist, Economics and Rate Design Bureau Chief , PSC**, said his comments were intended to help the ETIC review NWE's resource procurement process by comparing and contrasting the PSC's existing regulatory framework to the framework recommendations contained in the Morgan and Howard study (EXHIBIT 21). Mr. Rosquist referred to two charts in his explanation of current administrative rules relating to resource planning and procurement (EXHIBIT 22- ARM 38.5.8201-8229) and changes to the process, as proposed by the Morgan and Howard study (EXHIBIT 23 - ARM 38.5.8201-8229, as amended).

- **Northwestern Energy**

06:00:05 **John Bushnell, Lead Supply Planner, NWE**, reviewed the history of the resource planning and procurement issue and how the Morgan and Howard study came to be. He then discussed a number of specific rule changes as proposed in the Morgan and Howard study that NWE objects to and said that NWE's position is that the current rules are working well.

06:10:49 Mr. Bushnell responded to several of Mr. Rogan's comments regarding NWE's competitive solicitation process.

- **Public Comment**

06:14:19 **Brian Goddard, Inverenergy, Operations Manager for Judith Gap Wind in Harlowton**, reviewed details relating to Inverenergy and its operations in North America and Canada. Mr. Goddard discussed the value that independent power producers (IPPs) bring to a full and open competitive procurement process. He said an independent binding RFP process with identified best practices would be an important step in the right direction. He discussed how that could be structured.

06:20:16 Mr. Goddard shared observations of successful processes as used in other states and described Inverenergy's participation in a bidding process in Minnesota. He said Inverenergy is very encouraged by the Minnesota Public Service Commission's desire to run a competitive and transparent bidding process.

06:22:28 **Travis Kavulla, PSC Commissioner**, commented on what first spurred the PSC's study of this issue. He discussed the benefits of an open and transparent bidding process and said that Montana, in comparison to other states, has the reputation of having a difficult and unfair bid process.

06:25:57 Commissioner Kavulla responded to several of Mr. Bushnell's comments and concerns regarding the rule changes recommended in the Morgan and Howard report.

06:28:54 **Charles Shawley, GAelectric**, discussed GAelectric's participation in the competitive solicitation process. Mr. Shawley suggested that NWE would run the process better by themselves, with oversight from the PSC. He said that would be fair and would keep the system moving.

06:32:32 **Jeff Fox, Montana Policy Director, Renewable Northwest Project (RNP)**, said that there is a much bigger issue at stake which is lowest cost resource acquisition for rate payers. He said that renewables can win those competitive solicitations if

they can compete in a competitive process. Mr. Fox distributed copies of RNP's principles of competitive solicitation (EXHIBIT 24).

06:36:17 **Bill Pascoe, Consultant, Butte**, said his clients want the competitive solicitation process to be predictable, transparent, and, in certain instances, to have independent oversight. Mr. Pascoe discussed the importance of each. He said that exceptions must be allowed for unique opportunities, such as NWE's hydro acquisition. He said that he didn't think reforming the competitive solicitation process is a substitute for a good PURPA standard offer process for smaller projects. He discussed why he holds that opinion and said that if the PSC doesn't move forward on the Morgan and Howard report, perhaps it would consider legislation similar to that which REP. MCNALLY proposed in the 2013 session.

06:39:59 **John Fitzpatrick, NWE**, commented in response to SEN. OLSON's review of deregulation in Montana and the events that led to the passage of HB 25 in 2007. Mr. Fitzpatrick then discussed flaws in the Morgan and Howard report and PSC bias against company-owned resources. He said that there are some problems with the efficiency of the competitive solicitation process but that it does work reasonably well.

- **ETIC Questions and Discussion**

06:43:49 REP. REGIER asked Commissioner Gallagher to discuss the PSC's thoughts on independent third party review. Commissioner Gallagher listed a number of issues the PSC would review, including the cost of hiring the third party, political or economic inclinations, decreasing the level of bureaucracy, and more.

06:45:06 REP. REGIER asked if Commissioner Gallagher would prefer to see the process left as is. Commissioner Gallagher referred to a contract discussed by Mr. Alke and pointed out that MDU runs its own RFP and does not use an independent evaluator, and that it doesn't appear to add or detract from their process. He said he isn't sure that independent element is necessary and might even agree that NWE is a bit of a victim. He said that while a third party review is a good faith effort to take politics and nepotism out of the process, it still doesn't prevent complaints from those who don't win the bid.

06:46:45 REP. MCNALLY said that she has concerns about making sure the process truly is competitive and transparent. She asked Mr. Rogan to further discuss his concerns about the scoring criteria and how it is used in the competitive solicitation process. Mr. Rogan said that he knows that price is at the top of the list but beyond that, there is no way to measure or weight the other factors.

06:48:12 REP. MCNALLY asked if that is what Mr. Rogan was referring to when he discussed "the black box" issue and his concerns about not being given any feedback as part of the process. Mr. Rogan said that is correct.

06:48:35 REP. MCNALLY asked Mr. Rosquist to discuss the possibility of making changes and still staying within current administrative rules. Mr. Rosquist said that he had suggested that perhaps the PSC could experiment, on a trial basis, with the review process and use of independent monitors without going through the rulemaking process.

- 06:50:18 Each of the three panelists commented briefly on the discussion. Mr. Rogan said that he learned new information as a result of the discussion and hoped that other panelists learned from his comments as well. He said that he strongly agreed with Mr. Fitzpatrick's comments about the importance of bidder accountability but that not all bidders do that, which is part of the problem and is why certain projects have not come to fruition.
- 06:51:11 Mr. Bushnell said that his conversations with the other panelists have been useful and insightful. He clarified previous comments made about Colstrip and Land's Energy and said he would apologize if he was misinformed.
- 06:52:11 Mr. Rosquist had no further comment but thanked the ETIC for the opportunity to discuss the issue.

- **ETIC Action , if necessary**

The ETIC took no action at this time.

AGENCY OVERVIEW PRESENTATION

- **PSC Overview**

- 06:53:16 **Bill Gallagher, Chairman, PSC**, presented an overview of the PSC (EXHIBIT 26). Items coming before the PSC include:
- the Thunder Spirit Wind project;
 - NWE's electricity supply tracker case;
 - Devon Energy Production Company's Bear Paw natural gas production and Havre Pipeline Co.;
 - the Mountain Water Company general rate case;
 - MDU's rate increase request;
 - NWE's filing requesting pre-approval and a request for a waiver for CREP requirement for 2013; and
 - miscellaneous other issues including a USB roundtable, a QF rule going into effect on November 14, 2013, and rules to create streamlined regulatory options for small water and sewer utilities.

- **Public Comment**

- 07:14:51 Commissioner Kavulla clarified the PSC's action regarding NWE's request for a CREP waiver. He said he would provide a copy of the order to the ETIC, if desired.
- 07:15:54 Jeff Fox, RNP, thanked PSC Chair Gallagher for his comments on wind. He commented on several different renewable energy contracts signed in Colorado. He also commented on NWE's proposal to purchase PPL Montana's hydro facilities.

OTHER BUSINESS

- **Instruction to Staff**

- 07:19:03 REP. MCNALLY asked to look more in depth at some of the health impacts of the RPS standards.
- 07:19:42 SEN. LARSEN said that REP. REGIER's concerns regarding the standards should also be looked at.

- 07:20:06 REP. MCNALLY said she would like more information on CO₂ levels, emissions, and climate change; and wondered if there would be any discussions to that end.
- 07:20:50 SEN. OLSON said the intent of SJR 6 is to deal only with the Montana's RPS. He said that as of today, none of what has been done has reduced emissions from existing power plants. He said that the discussion is about RPS as they pertain to Montana, not climate change or global warming.
- 07:21:55 REP. MCNALLY said that data presented at the meeting showed that RPS standards are preventing emissions from increasing so her request does have relevance to Montana. SEN. LARSEN said he will take the requests under advisement with staff and that if there is a way to weave all of the concerns in, he would work on that with Ms. Nowakowski.
- 07:23:17 Ms. Nowakowski said that the Environmental Quality Council (EQC) did a climate change study in 2007 and that it was extremely controversial. She said it would be better to make a decision at this meeting on how the ETIC wants to proceed. After additional discussion, it was agreed that Ms. Nowakowski would summarize the EQC's study and present it at the next ETIC meeting.

PUBLIC COMMENT ON MATTERS WITHIN THE JURISDICTION OF THE ETIC

07:25:38 There was no public comment.

ADJOURN

07:26:10 With no further business before the Energy and Telecommunications Interim Committee, SEN. LARSEN adjourned the meeting at 3:57 p.m. The ETIC is scheduled to meet next in March, 2014.

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