



Energy and Telecommunications Interim Committee

59th Montana Legislature

SENATE MEMBERS
GLENN ROUSH--Chair
JEFF ESSMANN
DAVE LEWIS
GREG LIND

HOUSE MEMBERS
ALAN OLSON--Vice Chair
ROBYN DRISCOLL
HARRY KLOCK
GARY MATTHEWS

COMMITTEE STAFF
CASEY BARRS, Lead Staff
TODD EVERTS, Staff Attorney
DAWN FIELD, Secretary

MINUTES

April 20 & 21, 2006

Room 137, State Capitol
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

COMMITTEE MEMBERS PRESENT

SEN. GLENN ROUSH, Chair
REP. ALAN OLSON, Vice Chair

SEN. JEFF ESSMANN
SEN. DAVE LEWIS

REP. ROBYN DRISCOLL
REP. HARRY KLOCK

COMMITTEE MEMBERS EXCUSED

SEN. GREG LIND - April 20, 2006
REP. GARY MATTHEWS - April 20 & 21, 2006

STAFF PRESENT

CASEY BARRS, Lead Staff
TODD EVERTS, Staff Attorney
DAWN FIELD, Secretary

COMMITTEE ACTION

The Energy and Telecommunications Interim Committee:

- approved the January 19, 2006, minutes as written;
- approved drafting a bill to allow counties to participate in the CREB Program;
- approved sending a letter to BOR and to DEQ requesting that the federal mercury emission standards be adopted and that copies of the letter be sent to the Governor's Office, the Environmental Quality Council, and to the Economic Affairs Interim Committee;
- approved an amendment to LC4144 adding the language requested by MidRivers Telecommunications;
- approved drafting a bill to include pipeline used for transporting carbon dioxide for sequestration into the common carrier statutes;
- drafting a bill to establish that equipment used for upstream carbon sequestration purposes would be exempt from property taxes;
- approved entering two letters from Mike Strand, Montana Independent Telecommunications Systems, into the official meeting record; and
- amended LC0037 to include recommended language from MDU, as requested by John Alke.

CALL TO ORDER & APPROVAL OF MINUTES

SEN. ROUSH called the meeting to order. The secretary noted the roll, SEN. LIND and REP. MATTHEWS were excused, all other members were present. The January 19, 2006, minutes were approved as written on a unanimous voice vote.

REVIEW OF USBP REPORTS

Casey Barrs, Research Analyst, Legislative Services Division (LSD), said that annual reports from NorthWestern Energy (NWE) (EXHIBIT #1), Montana-Dakota Utilities (MDU) (EXHIBIT #2), and Montana Electric Cooperatives' Association (EXHIBIT #3) have been filed with the Department of Revenue.

SJR 36: DISTRIBUTED ENERGY GENERATION

Mr. Barrs discussed his report, *Distributed Energy Generation: Benefits, Barriers, and Best Practices* (EXHIBIT #4). He reviewed that at the January 19, 2006, meeting, members identified topics for further investigation:

- Safety and interconnection issues -
 - ▶ to determine if research persuasively suggests that there are solutions for safety and interconnection concerns attached to distributed energy generation (DEG),
 - ▶ consideration of a legislative proposal to provide funding for a university-based research and development pilot project for DEG; and
- Investigation of DEG in other states, particularly how short term costs and benefits compare to long term costs and benefits.

Mr. Barrs reviewed the results of his research, as contained in his report (Executive Summary, Pages 6 - 15, EXHIBIT #4).

SEN. ESSMANN commended Mr. Barrs for his thorough research but recommended, due to a lack of support for DEG legislation, that the Committee complete its study of SJR 36 by means of a white paper report.

REP. OLSON asked to have qualifying facilities (QFs) also be included in the study of DEG, referring to a list of QFs that was mailed out to members (EXHIBIT #5). He noted that there can be a high cost associated with small generation projects and that, while there will be continued interest in these projects, who has to pay for these projects must be kept in mind.

SEN. ROUSH asked SEN. ESSMANN to work with Mr. Barrs on a white paper report on SJR 36, for review at the September meeting.

PANEL: PURCHASING, REFINEMENT, AND MARKETING OF CRUDE OIL IN MONTANA

Dave Galt, Executive Director, Montana Petroleum Association, introduced members of the Association and members of the Northern Montana Petroleum Association appearing as panelists: Bruce Brodie, Plant Manager, Exxon-Mobile, Billings, Montana; Pat Kimmet, Plant and Refinery Manger, Cenex - Harvest States, Laurel, Montana; Tad True, True Pipelines, Wyoming; and Patrick Montalban, Cut Bank?, Northern Montana Petroleum Association.

Bruce Brodie, Plant Manager, ExxonMobile Refinery, Billings, extended an invitation to Committee members to tour the refinery. He presented information and statistics relating to the Billings facility (EXHIBIT #6):

- operations history and production capability;
- product line and distribution area;
- a crude oil supply map;
- a product distribution map;
- ExxonMobile's plan for capital investments, covering years 1993 - 2010;
- components and factors affecting gasoline prices; and
- product value chart covering years 1980 - 2005.

In response to questions by REP. DRISCOLL, Mr. Brodie said that the pipeline diameter ranges from 8" to 18" and that two separate pipeline systems are required - one for raw crude oil and the other for refined oil products.

REP. OLSON asked if there were internal changes that could be made that would result in increased gasoline production. Mr. Brodie said that there are small projects that could be done to increase production capacity but that the challenges of environmental regulations and permitting are often too arduous and costly to justify the changes.

REP. OLSON asked how the state permitting process compare to federal permitting requirements. Mr. Brodie said that some of the state permitting requirements are much more stringent than the federal requirements. REP. OLSON asked Mr. Brodie is he would agree that any incentive to increase production is taken away because of the prohibitive costs of the upgrades. Mr. Brodie agreed, saying that capacity has crept up in areas where there is economic justification but that the economic threshold limits the upgrades that are made.

SEN. ESSMANN asked if the refinery has the capacity to accept railroad shipments of crude oil. Mr. Brodie said that the refinery cannot accept rail shipments of crude oil but does have the ability to receive a small amount of light crude via truck. He said that even though trucked oil is much more labor intensive than piped crude, several eastern Montana producers have been working with the refinery on a trial basis to bring in additional trucks to see what the impact the additional processing will have.

SEN. ESSMANN asked what amount of capital would be needed to build facilities to receive rail shipments. Mr. Brodie said that \$2 million dollars is a very gross number and guessed that the amount could be as high as \$6 million.

Pat Kimmel, Plant Manager, Cenex - Harvest States (CHS) Refinery, Laurel, discussed the components the CHS facility, saying that CHS (EXHIBIT #7):

- is a diversified energy, grains, and food company;
- is owned by farmers, ranchers, and cooperatives from the Great Lakes to the Pacific Northwest, ranging from the Canadian border to Texas;
- provides products and services ranging from grain marketing to food processing, to meet the needs of customers around the world;
- is also the largest cooperative refiner in the nation and is a significant wholesaler of refined fuels, primarily marketed under the flagship brand of Cenex;
- operates petroleum refineries and pipelines and markets and distributes Cenex-brand energy products, along with agronomic products to rural America.

Dave Galt, ConocoPhillips, distributed and discussed handouts outlining its Montana operations (EXHIBIT #8). Topics discussed by Mr. Galt included:

- a global outline of the ConocoPhillips Company;
- an outline of ConocoPhillips operations in Montana, including transportation issues, number of employees, production capacity, product line, and economic impact;
- a Big Sky Economic Development Authority study of the economic impact of the Billings ConocoPhillips refinery to Yellowstone County;
- work done in conjunction with the Billings Citizen Advisory Council; and
- maps indicating the pipelines and terminals located in the Rocky Mountain Region.

Mr. Galt also distributed a table of ConocoPhillips crude oil prices for April 2006 (EXHIBIT #9).

TAPE 2 - SIDE A

Tad True, True Pipelines, Wyoming, presented information relating to the geographical factors that determine crude oil prices in the Rocky Mountain region. He displayed a map of True pipelines and pointed out that the pipelines run from the Canadian border in northern Montana to Guernsey, Wyoming. He noted that Clearbrook, Minnesota, and Guernsey, Wyoming are the two major trading hubs for eastern Montana crude. He provided detailed information on the flow of his pipeline, saying that it is currently operating at less than capacity but has the capacity to move as many as 96,000 barrels of oil per day to Guernsey, Wyoming.

Mr. True also discussed:

- the geographical market risk of oil produced in the Rocky Mountain regions;
- the current market restraints due to the lack of available pipeline;
- oil production in North Dakota and how it influences Montana producers' ability to market their oil;
- the two Rocky Mountain exits for crude oil pipeline - Enbridge pipeline from North Dakota to Clearbrook MN and the Platte pipeline from Guernsey, WY to St. Louis, MO;
- that reality that North Dakota, Montana, and Wyoming all use the same pipeline, so they must work together to find solutions;
- oil production statistics in North Dakota, Montana, and Wyoming;

- how Canadian oil complicates the issue further; and
- short term and long term solutions to the pipeline access issue and how True Pipeline can assist in both types solutions.

Patrick Montalban, Northern Montana Oil & Gas Association, agreed that Montana has been struggling with pipeline access issues for many years and that the access issue is one of his association's biggest concerns. Mr. Montalban said another issue of great concern to his association is the price paid at the well head. He discussed the historic and significant price spread of \$33 between the West Texas Intermediate price and the current price being paid at the well head to Montana producers.

Other topics discussed by Mr. Montalban were as follows:

- small producers in Montana generate a significant amount of revenue for the State of Montana;
- how the price spread between well head prices first appeared in Montana in the 1970s;
- the impact of the oil boom of the 1980s;
- the price fluctuations that occurred in the early 1990s;
- a historical overview oil industry and oil prices from the late 1990s through 2005;
- the importance of Canadian oil to the United States oil markets; and
- even though this is a great time to be in the oil industry, the possibility of the industry becoming regulated is being discussed and restrictions resulting from regulation will badly hurt the industry.

REP. OLSON expressed concern that some independent producers in central Montana are experiencing difficulty getting their product on the pipeline and are not getting a fair price for their oil. He discussed several specific examples and said that it is important that the small producers in Montana and the United States be looked after, as well as the Canadian producers. REP. OLSON asked what the current market price is for Canadian crude. Mr. Montalban said that when the price correction for Canadian dollar is factored in, it is very similar to the price producers in northern Montana are receiving. **TAPE 2 - SIDE B** He said that the problem could be solved by increasing pipeline capacity and that at a recent meeting, Canadian producers indicated that their production could increase by 18,000 barrels per day within the next six months. Mr. Montalban said while this would cause some problems, he did not support the idea of involving government in the issue.

REP. OLSON said that the government may have to be involved if pipeline is going to be built, if for no other reason than obtaining permits for the new pipeline. Regarding the problems being experienced by central Montana producers, REP. OLSON said that he thought that eventually a terminal will have to be built in order to allow producers to deliver oil to refineries at a reasonable price.

Mr. Montalban said that at the recent energy forum meeting, he learned that Wyoming has set aside over \$3 billion for construction of pipeline infrastructure and that he was amazed by Canada's announcement that it has a production goal of 2.5 million barrels per day by 2010. He said that this kind of flow will drastically increase pipeline issues but that he believes that industry will take care of it.

Mr. True said that the Wyoming Pipeline Authority was created many years ago and recently changed its name from the Wyoming Natural Gas Pipeline Authority to the Wyoming Pipeline

Authority. It was established to promote the infrastructure needed to transport energy materials from Wyoming throughout neighboring states. Currently, the Wyoming Pipeline Authority has attracted the attention of crude producers and has bonding capability of \$3 billion. He said that the authority may not be the ultimate funding source for new projects but would be a catalyst for the projects.

REP. OLSON said that Wyoming, North Dakota, and Utah have all created transmission authorities but that to date, Montana has chosen not to. He said that he hoped there will be another bill introduced in the 2007 Legislature to create a transmission authority and that the Montana authority could join efforts with Wyoming in the building of pipeline. Mr. True said that Montana's assistance would be welcome and that this type of authority is very important, not necessarily to fund the projects, but to serve as the vehicle to attract investors.

SEN. ESSMANN asked how, specifically, the Wyoming authority would begin the process of attracting investors. Mr. True said that the Authority has contracted with an engineering firm to estimate the cost of converting the existing pipeline from natural gas service to crude oil service and for construction of new pipeline from Guernsey to Cushing. Simply by doing that, pipeline companies have taken note that the state is leading the way.

Mr. Montalban said that the short tem pipeline access problem was discussed thoroughly at the recent conference and that it was stated that the shortage affecting central Montana could be addressed simply by increasing the pressure in the Enbridge pipeline and installing new pumps. Also discussed was that Wisconsin and Illinois were complicating the matter because of regulatory concerns in those states. Mr. Montalban said that it appeared to him that the industry is working diligently to solve the problem. REP. OLSON stated that he remains concerned about the small producers in central Montana.

UPDATE ON PPL MARKET-BASED PRICING

Casey Barrs provided an update on the PPL market-based pricing issue. At issue is the rising costs of PPL power and whether or not PPL should be required to move from its current market-based pricing to cost-based pricing. The dispute arose between PPL and NWE, two major components of the former Montana Power Company (MPC). Mr. Barrs reviewed the history of the disposition of MPC. He noted that PPL was granted market-based authority but since then, PPL pricing has steadily increased, which has brought that authority into question. PPL's market-based rate authority is subject to review by the Federal Energy Regulatory Commission (FERC) every three years. Both the Montana Consumer Council (MCC) and PPL have filed documents with FERC in support of their respective positions. FERC has not made a decision at this time.

ENHANCED 9-1-1 STATUS REPORT

Becky Berger, reported on the status of the new 9-1-1 network, saying that Blaine County is the first county operating on the new 9-1-1 network, with several other counties to follow soon. She reported that there has been much attention from the media, which indicates the interest and demand from the public for these emerging technologies.

Ms. Berger explained the legislative efforts of the 9-1-1 Advisory Council and of the Subcommittee, saying that the Subcommittee has met frequently to address issues such as allowable costs and non-allowable costs for wireless carriers to recover their costs, projected revenues, and the needs and demands across the state. She noted that the wireless carriers

met recently to discuss possible legislation and that the goal is to have a consensus bill ready for the 2007 legislative session.

Ms. Berger distributed and discussed:

- three potential legislative proposals to update current 9-1-1 statutes (EXHIBIT #10);
- a spreadsheet of jurisdictions (highlighted in yellow) benefitting from the sunset provisions discussed in the legislative proposals (EXHIBIT #11);
- a sample of impact to counties if the sunset provision is not extended (EXHIBIT #12); and
- the proposed language changes for each of the three potential legislative proposals (EXHIBIT #13).

SEN. ROUSH asked if the 50-cent surcharge on telephone bills fund both the 9-1-1 and the enhanced 9-1-1. Ms. Berger said that the surcharge is divided evenly between both 9-1-1 services.

INFORMATION ON TAX CREDIT RENEWAL ENERGY BOND PROJECTS

Claud Matney and Mike Constanti , Matney-Frantz Engineering (MFE), Bozeman, addressed the Committee members regarding the Clean Renewal Energy Bonds (CREBs) Program initiated by Senator Max Baucus. Mr. Matney said that the program has been so well received that he is traveling to Washington D.C. to personally deliver 29 applications for interest free bonds to build wind turbines for local governments' energy needs. Mr. Matney distributed and discussed a Power Point overview of CREBs (EXHIBIT #14). Topics discussed included:

- an overview of Matney-Frantz Engineering;
- CREB basics;
- CREBs in Montana;
- MFE's CREB approach;
- MFE's CREB projects; and
- the scope, budget, and timeline for MFE's CREB projects.

Mae Nan Ellingson, Dorsey & Whitney Law Firm, Missoula, explained that:

- unlike cities, counties currently have no authority to issue revenue bonds except for very limited purposes;
- enabling legislation is needed to for the counties to issue revenue bonds; and
- the municipal revenue bond law needs to be changed also, changing it from a competitive process to a negotiated sale process because of the limited market of interest for tax credit bonds. **TAPE 3 - SIDE A**

In response to a question from SEN. ROUSH, Ms. Ellingson said that a pure revenue bond pledges only the revenues generated from the facility, and that the cities or counties probably would not back the bond with their full faith and credit and taxing power. Because the market may not accept pure revenue bonds, more information will be gathered before more specific recommendations are drafted.

SEN. ESSMANN asked if there is a corresponding state tax credit available for the CREB bonds. Ms. Ellingson said that there is not. SEN. ESSMANN asked if establishing a state tax credit to correspond with the federal credit has been considered as part of the legislation. Ms. Ellingson said that she would not recommend that because the Montana market may not be the

place where these bonds would be sold, but that it became evident that a Montana tax credit would help, that would be reported to the Committee

REP. OLSON **moved** to draft legislation to allow counties to participate in the CREB Program and to change the municipal revenue bond law from a competitive process to a negotiated sale process. He asked Ms. Ellingson to work with the staff on the exact wording of the bill.

Ms. Ellingson agreed to work with staff and said that meetings would be scheduled with the Montana League of Cities and Towns and with MACo to request their ideas and input.

SEN. LEWIS asked if the federal tax credit covers the interest payments and if the local entity pays the principal. Mr. Matney said that was correct and explained the mechanics of the program.

SEN. LEWIS said that many local governments could potentially end up with excess power available but no market to sell it to. He asked how this would be addressed. Mr. Matney said that the current plan is to either sell it locally or through bilateral contract sales and that efforts would be coordinated with NWE to include bond projects in its renewable portfolio standards.

Mr. Matney said that the application deadline is April 26, 2006 and that he expected to receive notification from the IRS 60-90 days after that. He added that while there is a five-year time limit to implement the project, the bonds have to be floated by December 31, 2007.

In response to a question by SEN. LEWIS regarding risk to local governments, Mr. Matney said that the main focus should be to get the interested entities into a position that would allow them to act quickly and that the only risk would be losing the \$500 application fee.

REP. DRISCOLL asked who is obligated if a bond can't be repaid. Ms. Ellingson said that if bonds are sold as revenue bonds and that the only thing that is pledged is the revenues, then the bond purchaser takes the risk. REP. DRISCOLL asked for clarification that a city or county could not be held responsible for a loan. Ms. Ellingson said that if it is determined that the market won't accept pure revenue bonds, then some other type of bond may have to be authorized and issued.

REP. DRISCOLL asked who is responsible if the investor declares bankruptcy. Ms. Ellingson said that the investor is liable but that she will work to make sure that cities and counties will not be held liable. One issue of concern is that if a city or county defaults on a revenue bond, it may affect its credit rating or other rating. Ms. Ellingson said that she would look into this and include it in the legislation.

The motion passed 6-1 on a voice vote, with REP. MATTHEWS voting "aye" by proxy (SEN. ROUSH) and REP. DRISCOLL voting no.

DAY ONE - PART TWO TAPE 3 - SIDE A

ENERGY PROJECT UPDATES

00:01:10 **Mark Jacobson, Invenergy Wind LLC**, updated the Committee on the Judith Gap wind farm. Mr. Jacobson discussed (EXHIBIT #15):

- the project location and size;

- the contribution to the local economy;
- the justification of wind as a fuel/energy source;
- the economics of wind energy;
- a state-by-state comparison of wind projects and how Montana measures up; and
- the next steps for Montana: a renewable portfolio standard (RPS), transmission corridors, and policy and legislation.

00:12:40 REP. OLSON said that generators need to identify markets and asked if Invenenergy has done this. Mr. Jacobson said that new markets have been identified, including several out of state.

00:14:43 REP. OLSON asked if working on this from a regional perspective with multiple utilities would work for Invenenergy. Mr. Jacobson said that it could work and suggested siting projects throughout the state, in order to provide a market and geographic diversity.

00:16:24 REP. OLSON asked if a production profile is available. Mr. Jacobson said that some of this information is confidential but that he would provide information that would give a good overview of Invenenergy's current production.

TAPE 3 - SIDE B

00:18:09 **Doug Peoples, Basin Creek Power Services**, discussed a Power Point presentation (EXHIBIT #16):

- the formation of Basin Creek Power Services;
- roadblocks and problems encountered;
- its history with MEIC, NWE, and PSC.
- a pictorial review of the site showing the progression of construction;
- engine and megawatt capacity; and
- Basin Creek's contract with NWE, effective July 1, 2006.

00:31:25 SEN. ESSMANN asked how Basin Creek is acquiring the natural gas used to generate electricity. Mr. Peoples said that Basin Creek is paid by NWE to be available, so NWE purchases the gas. SEN. ESSMANN asked if NWE is banking the gas. Mr. Peoples said that he did not know.

00:32:33 REP. OLSON asked how much gas one engine can burn at peak operating capacity. Mr. Peoples said that it would depend on the heat rate of the plant and that he would get more specific information for REP. OLSON.

00:33:13 SEN. LEWIS asked how the price for the power is figured. Mr. Peoples said that Basin Creek has four payments: a capacity payment to cover the cost of capital, a facility payment to pay for the interconnect to the utility, a fixed Operations and Maintenance payment, and a variable Operations and Maintenance payment.

00:34:55 On behalf of **Bill Connors, Vice President, Centennial Power**, Casey Barrs read an official statement into the record (EXHIBIT #17).

- 00:38:53 **Dexter Busby - Montana Refining Company, Incorporated, Great Falls, Montana**, distributed a Montana Refinery Company fact sheet (EXHIBIT #18) and a Connacher stockholder 2006 first quarter report (EXHIBIT #19). Mr. Busby reviewed the fact sheet and discussed the business plan for Montana Refining Company, Inc.
- 00:44:02 REP. OLSON asked Montana Refining Company ships any of its refined product by pipeline. Mr. Busby said that all products are shipped by truck or train.
- 00:44:34 SEN. ROUSH asked if construction of new pipeline has been considered. Mr. Busby said that it has been discussed.
- SEN. ROUSH asked if the change in ownership impacted employees. Mr. Busby said that no changes were made in employment.
- 00:50:21 **Montana Alberta Tie, Ltd. (MATL), Bob Williams and Jan Van Acre, Alberta, Canada**, gave a Power Point update on the project:
- the Montana Alberta Tie, LTD., corporate philosophy;
 - an overview of the MATL project:
 - the status of the MATL project; **TAPE 4 - SIDE A**
 - benefits of the MATL; and
 - company initiatives.
- 01:13:37 SEN. LEWIS said his constituents would like to know if MATL is planning to extend southward. Mr. Williams said that MATL is always willing to consider new opportunities.
- 01:15:28 SEN. ESSMANN asked if MATL has considered the possibility of hydroelectricity with NWE. Mr. Williams said that possibility has not been explored yet but that hydroelectricity may be an option.
- 01:16:25 SEN. ESSMANN asked if the project will have the capability to increase capacity in the future. Mr. Williams said that issue has been discussed but that no decisions have been made at this time.
- 01:16:56 SEN. ESSMANN asked Mr. Williams to provide a written comparison of the permitting processes between Canada and Montana. Mr. Williams said he would do that and said that he has been very impressed to date by the permitting process in Montana.
- 01:18:35 REP. DRISCOLL asked if Montana workers will be hired. Mr. Williams said active labor groups have contacted the MATL and that he fully expects that Montana laborers will be hired.

Southern Montana Electric Generation & Transmission Cooperative (SME),

- 01:20:36 **Candace Payne** presented a progress report and discussed issues that will be of interest to SME during the 2007 legislative session (EXHIBIT #20).

- 01:32:08 REP. OLSON reported that the Board of Environmental Review (BOR) and the Department of Environmental Quality (DEQ) are acting on a petition from the Montana Environmental Information Center (MEIC) to adopt mercury emission standards. REP. OLSON said that the Committee is aware of industry concerns regarding the use of sound science and proven technology for establishing emission standard and that in his opinion, the DEQ proposed standards are not reasonable or attainable. The only fair thing to do would be to adopt the federal standards. The federal standards, set down by the EPA, are applied evenly across the country, which would give Montana the same competitive edge as every other state. He asked to have a Committee letter sent to the DEQ and the BOR requesting that the federal standards be adopted and that a letter of concern regarding this issue be sent to the Environmental Quality Committee (EQC), the Governor's Office, and to the Economic Affairs Interim Committee.
- SEN. LEWIS said that he supported REP. OLSON's suggestion.
- 01:36:01 SEN. ESSMANN said that he has been trying to learn more about this issue and that he has not found much factual information. He said that he would like more information before making a decision. He suggested that a study be conducted in the Colstrip area to determine if there are increased mercury levels and if so, determine if the increased levels created a health risk.
- 01:38:23 REP. OLSON supported SEN. ESSMAN's suggestion, saying that he is not aware of any mercury studies ever being conducted in southeastern Montana. He said that until it has been shown that there is a problem, there is no reason to adopt stringent rules.
- 01:39:30 REP. OLSON **moved** to send letter to the BOR and the DEQ requesting that the federal mercury emission standards be adopted and that copies of the letter be sent to the Governor's Office and to the Economic Affairs Interim Committee because of the potential impact such rules may have on economic development in Montana. **The motion passed on a unanimous voice vote.**
- Mr. Everts said that the public comment period will be held from May 4 through July 6, 2006, and that hearings will be held in Great Falls (May 31) and Billings (June 1). The BOR will make its final decision on September 29, 2006.
- 01:41:37 SEN. ROUSH reported that the Committee has been invited to meet with the Canadian Consulate located in Denver, Colorado. He introduced Paul Hinman, Member of the Legislative Assembly (MLA) of Alberta, Canada. He said that Alberta's Legislative Assembly is the equivalent of the Montana Legislature.

TAPE 4 - SIDE B

- 02:09:37 Referring to the earlier action taken by the Committee to request the BOR and the DEQ to adopt federal mercury emission standards, REP. OLSON asked if the BOR is subject to Montana Environmental Protection Act (MEPA) requirements, given the magnitude of the proposed rules. Mr. Everts said that he would make that determination and report back to the Committee.

GOVERNOR'S OFFICE: REGIONAL ENERGY PARTNERING & PLANNING INITIATIVE

02:10:58

Evan Barrett, Governor's Office of Economic Development, discussed current initiatives:

- energy development is a primary focal point of the Governor's economic development agenda;
- the Governor's Office is actively engaged in this issue and sees its role as a catalyst to drive private sector investments;
- transmission issues are a top priority and work is ongoing on a number of projects;
- the Governor recently attended a meeting regarding the Frontier Line and requested that the MOU between several western states to provide power to California be amended to include Montana as part of the project which, unfortunately, was rejected;
- the Governor's Office has been working extensively with NorthernLights, a Canadian firm, to finalize a transmission line from Townsend, Montana, to Las Vegas, Nevada, and possibly into California markets as well;
- the Governor has made it clear that he is pursuing all options and is looking for the quickest and cheapest rate for moving power;
- the oil pipeline access issue is of interest to the Governor and he is aware of the ongoing activity at the Cedar Creed Anticline;
- work is being done with other companies who are expanding because expansion equates into jobs and revenue for the State of Montana;
- a meeting was held in Billings to discuss the influence of Canadian crude oil and the inescapable fact that more pipeline is needed;
- inland refining capacity needs to be developed in order to mitigate the effects of hurricane zones and tropical storms;
- issues such as "value added" oil, increased refining and transmission capacity, and transmission of electricity are all of concern to the Governor and he will be staying apprised on all fronts;
- an energy policy for the State of Montana is close to becoming a reality and will be made available to the Committee when it is finalized;
- "clean power" is of great interest to the scientific community as well as to the public so the use of the Integrated Gas Combined Cycle process(IGCC), by which coal is converted to gas, is in demand by many states and is a requirement for companies who wish to provide energy to California;
- the Roundup coal project and the Circle West project at Nelson Creek are the projects most likely to incorporate this technology first in Montana and the Governor's Office is working with and encouraging both projects to consider pursuing IGCC technology; and
- there is much advancement being made in coal to liquids technology;
- several international companies are looking at Montana as future projects for coal to liquid production;
- a \$15 million grant was recently received to advance the development of biodiesel, biofuel, and biolubricant economic development cluster in a 32 county area of eastern Montana.

Mr. Barrett concluded his remarks by reiterating that renewable resources are at the very top of the priority list of Montanans, as is economic development, and the Governor is very optimistic Montana's economic future.

- 02:45:37 **Tom Kaiserski, Governor's Office of Economic Development**, commented about the IGCC process, saying that this process costs about 50% less to capture Co2 than a pulverize coal plant and costs only about 10% to 15% more to build, so is an economical method to use.
- Mr. Kaiserski also commented on the following:
- construction of transmission lines is an expensive proposition and suggested that competitors work together in order to minimize the expense;
 - Governor Schweitzer was the keynote speaker at the Frontier Line conference in California and made it clear it would benefit other states to include Montana in their energy planning; and **TAPE 5 - SIDE A**
 - printed marketing materials are being developed to promote to the use of coal to liquid technology in Montana and will be provided to the Committee members.
- 02:48:47 REP. OLSON asked for additional explanation regarding comments made by both Mr. Barrett and Mr. Kaiserski regarding a westerly route for transmission lines. Mr. Barrett said that his comments referenced the upgrading of the existing BPA corridor and how construction of a southern transmission line could influence western transmission issues.
- 02:50:32 REP. OLSON said that transmission possibilities have been extensively examined for years and that western development has been ruled out every time. Mr. Barrett agreed that additional western corridors are difficult and that the first priority will be whatever project offers the straightest shot, such as the NorthernLights project.
- 02:52:59 REP. OLSON referred to comments made by Mr. Barrett regarding the involvement of state government in transmission issues and asked if the Governor still feels that the state should not be involved in a transmission authority. Mr. Barrett acknowledged that the Governor has not supported this concept in the past but said that the Governor would review the new language regarding a transmission authority. The main reason the Governor does not support funding transmission line construction is because of the financial risk to public money but he remains open to assisting in other ways.
- 03:03:59 REP. OLSON asked Mr. Barrett if he has seen the report from Sandia Labs on the proposed rules regarding coal bed methane production. Mr. Barrett said that he would review the report.
- 03:05:07 SEN. LEWIS said that he is very interested in the coal-to-liquid technology and asked how the large project being developed in Canada will impact potential projects for Montana. Mr. Barrett discussed several factors, saying that an equilibrium will be reached eventually and that the fact that Canadians can produce it a lower price is not of concern.
- 03:10:45 SEN. ROUSH distributed two articles on alternative energy: *THE GAS BILL* (EXHIBIT #21) and *COAL CONVERTERS* (EXHIBIT #22).

- 03:18:19 **Mark Bisom, Bureau Chief for Montana Department of Commerce**, discussed the Montana-Canadian Provinces Advisory Council created by the executive order and provided copies of the Executive Order establishing the Council (EXHIBIT #23), the *Memorandum of Understanding and Cooperation Between the Government of the State of Montana, United States of America and the Government of the Province of Alberta, Canada, Respecting the Montana/Alberta Bilateral Advisory Council* (MABAC) (EXHIBIT #24) and the *Intergovernmental Accord on Cross-Border Relations Between the State of Montana, United States of America and the Province of Saskatchewan, Canada* (EXHIBIT #25). Montana appointees to the Advisory Council are Lieutenant Governor John Bohlinger (Chair), Senator Trudi Schmidt, Senator Sam Kitzenberg, Representative John Musgrove, Representative Wayne Stahl, and Representative Hal Jacobson. Department official and representatives of the public will be appointed to serve in an ad hoc capacity. The purpose of the meetings of the Advisory Council will be to maintain open communication and to promote further exchange of information between Montana and the Canadian provinces.
- 03:21:55 REP. OLSON encouraged Mr. Bisom to contact the Pacific NorthWest Economic Region (PNWER) delegates in order to avoid miscommunication because they are working on the same issues with the same provinces. Mr. Bisom agreed to do this.

PUBLIC COMMENT

- 03:22:56 **Bud Clinch, Executive Director, Montana Coal Council**, thanked the Committee for its position on and action taken regarding the mercury emissions issue. He agreed that this is a very critical issue and that the Committee should be aware that two new projects in Montana will be unable to come on line, should the proposed rules be adopted. Mr. Clinch said that he particularly supports SEN. ESSMANN's request for scientific documentation of mercury levels in Montana and that adopting more stringent standards than those of the federal government would have a chilling effect on energy development in Montana.
- 03:24:56 **Doug Hardy, Montana Electric Cooperatives Association**, said that he appreciates both the Committee's acknowledgment that cooperatives are different and its reluctance to pass legislation that would cause additional costs to cooperative members. Mr. Hardy said that the cooperatives have an official position on the proposed mercury rules and supports the Committee's decision to request that federal mercury emission standards be adopted.

FRIDAY APRIL 21, 2006 -- DAY TWO - PART ONE

TAPE 6 - SIDE A

SEN. ROUSH reconvened the meeting to order at 9:08 a.m. The secretary noted the roll, REP. MATTHEWS was excused, all other members were present.

LC0038 -- STATE TRANSMISSION AUTHORITY

- 00:01:50 REP. OLSON presented LC0038, a bill draft for the creation of a state transmission infrastructure authority to assist in planning, facilitating, and coordinating efforts to construct transmission in the state (EXHIBIT #26). REP. OLSON said that the 2005 version (HB 389) of LC0038 was strongly supported by the industry and pointed out that the Wyoming version of a transmission authority has been key in the expansion of pipeline capacity, which will benefit Montana producers when it is complete.
- 00:03:25 SEN. ESSMANN offered a revised version of LC0038 containing his suggestions (EXHIBIT #27). SEN. ESSMANN discussed several of the major revisions:
- Section 2(6) - page 2 - board authority -- changing the word "development" to "economic analysis", saying that this would better describe the activities of this authority;
 - Section 4 - page 3 - board composition -- since this authority will deal with energy production and transportation issues, the board should be composed of people who have a background and/or experience in the major areas of renewable electrical energy, conventional electrical energy, oil and natural gas, renewable and synthetic liquid fuels, and surface transportation by railroad and highways; and
 - Section 3(1) - page 2 - department oversight -- this is mainly a transportation issue revolving around the issue of linear right-of-ways so the authority should be assigned to the Montana Department of Transportation (MDT).
- 00:09:52 SEN. LEWIS agreed with SEN. ESSMANN, saying that the authority shouldn't be attached to the DEQ due to the conflict it would create, since the DEQ would then be responsible for both regulating and promoting the same activity. He recommended that oversight be assigned to the Department of Commerce.
- 00:11:22 SEN. LIND noted that SEN. ESSMANN's revisions contained some fundamental changes, most notably in the composition of the board. He asked SEN. ESSMANN what his rationale was for excluding agricultural and other interested parties from the board. SEN. ESSMANN said that he was not seeking to exclude any particular group but he thought it very important that board members be knowledgeable, experienced, and to have a good understanding of the process.
- 00:13:06 SEN. LIND said that he would prefer to have a broader range of representation on the board and that board members could easily be educated.
- 00:13:48 REP. OLSON also supported a broader makeup of the board and said that he would like to have two members be from the general public.
- 00:16:41 REP. OLSON said that he may agree to placing the authority with the Department of Commerce but had reservations about placing it with the MDT.
- 00:18:09 SEN. ESSMANN said that he sees the role of the authority as gathering and evaluating concepts, performing economic analysis on potential projects, and project management.

- 00:19:01 SEN. LIND asked how broadly or narrowly "economic analysis" would be defined. SEN. ESSMANN gave the example of the Wyoming transmission authority, which acted as a catalyst for analyzing constraints on the pipeline transmission of oil and gas products out of Wyoming.
- 00:20:22 SEN. LIND said that he would like the economic analysis to be defined broadly enough to include impacts on access to public lands and recreational opportunities as well.
- 00:20:43 REP. OLSON said that he understands SEN. LEWIS' concerns about placing the authority with DEQ but that he still feels that DEQ is the best place because it deals with siting and permitting .
- 00:22:41 SEN. LEWIS suggested that REP. OLSON discuss the issue of departmental oversight with Governor Schweitzer because he will make the final decision.

PUBLIC COMMENT

- 00:23:49 **Bill Pasco, Great Northern Power Development**, said that he supports LC0038 and that its passage would send a clear message to markets in other states that Montana is serious about energy development.
- 00:27:01 **Bob Raney, Pubic Service Commissioner**, said that he would neither promote nor oppose LC0038 but did have several issues to discuss:
- conventional pulverized coal plants have reached their end time and coal gasification will be the method of choice very soon for the purpose of sequestration of Co2, which will require construction of pipelines;
 - if this authority is established, it will serve as the champion of energy, so must be designed correctly;
 - the Montana University System should be a part of this process because of all of the research going on regarding carbon sequestration and other relevant issues;
 - issues of concern, such as the need for pipeline, how to deal with the disposal of Co2, eminent domain, and environmental concerns must be addressed.
- Commissioner Raney said that it would be wise to appoint board members who are knowledgeable and experienced in the various areas involved. He said that there is much to be considered yet and that great care must be taken when making decisions.
- 00:30:16 SEN. ROUSH said that staff would work with the committee members to rewrite the bill and that final action would be taken on LC0038 in September.

INTRODUCTION OF CANADA GUESTS

- 00:33:24 SEN. ROUSH referred to the Montana/Alberta Bilateral Advisory Council (MABAC) presentation given at the previous day's meeting and introduced **Mark Bouchee, Counsel for General Relations, Canadian Consulate, Denver, Colorado, & Member of the Legislative Assembly (MLA) Paul Hinman, Alberta, Canada.**

Mr. Bouchee thanked the Committee for the invitation to address the Committee but noted that his diplomatic status prevented him from making public comments to legislative committees.

SEN. ROUSH read a biography of MLA Paul Hinman. Mr. Hinman said that it had been educational and inspirational to see what is going on in Montana. He said that maintaining a good relationship between the governments is important that he hopes the current standing can be maintained. Mr. Hinman said that like Montana, Alberta has a lot of resources and is struggling with how best to develop them. **TAPE 6 - SIDE B**

PUBLIC SERVICE COMMISSION UPDATE

00:42:24

Greg Jergeson, Chairman, PSC, reported on issues of interest to the PSC:

- Vertical integration of a default electricity supplier in Montana:
 - ▶ Commissioner Jergeson distributed working draft copies of the PSC's amended version of 69-8-101, MCA, Chapter 8 reform (EXHIBIT #28). He emphasized that it is still a working draft and that like LC0037, introduced in the 2005 Legislature as HB 388, both drafts have the common goal of creating a utility structure that will best service consumers. Commissioner Jergeson said that these bills should not be considered a mechanism to go back to the old days of MPC power prices.
 - ▶ The goal must be a system that is stable durable, and provides the best value for the consumer.
 - ▶ This issue is generating a great deal of national attention.
 - ▶ Questions and concerns raised by the opposition will be delved into and addressed before the final bill draft is written.
 - ▶ It is the intention of the PSC to provide the best product possible for consideration by the 2007 Legislature.
- Renewable energy standards -- the PSC is required by SB 415 to adopt rules relating to renewable energy standards and the process has been started. The PSC is gathering feedback and input before beginning the strict confinements of the rule making process. A number of comments have been received about the proposed rules and the issue of cost caps has generated a considerable divergence in opinion. Rather than the PSC making a determination of what is intended by the bill, it will let the Legislature make the determination on how utilities are meeting statutory cost cap provisions (EXHIBIT #29).
- PSC work on regional transmission issues -- The PSC is not responsible for siting transmission or facilities but has been asked to participate in regional transmission forums. Based on the fact that decisions will be made that will affect Montana customers, the Montana PSC made the decision to join Gridwest, a proposed RTO for the northwestern part of the United States. However, due to a great deal of contention surrounding Gridwest, the Montana PSC has since decided not to proceed. The PSC will wait to see what happens and will continue to be interested in engaging in whatever emerges.
- Eastern interconnection status -- MISO states cover a 14-state area and has developed "seam agreements" with PJM to address with

geographical boundary issues. The original purpose of regional transmission organizations was to eliminate congestion so the grid could operate properly and reliably. This does not seem to be the focus of the RTOs and there is increasing skepticism of the current direction of the RTOs and of the activities of the MISO board.

- Telecommunications issues -- Telecom providers are selling information about customers to other entities. This may not be happening in Montana but has created an uproar in other states and rightfully so. Congress has taken notice and a bill has been introduced to protect consumer privacy. Many other states' public service commissions are interested in the goals and intention of the federal bill. There are some problematic areas of the bill and the Montana PSC voted to send a message to its Congressional delegation to change or eliminate the section containing the problematic language.
- ETIC's consideration of Qwest's legislative proposal -- The PSC opposed Qwest's bill last session and has reservations about its current proposal, LC 0044. The PSC will continue to work with the stakeholders but it cannot support the current bill draft.
- PSC workload -- The utility division ended 2005 with 125 active dockets. Since the beginning of 2006, it has concluded 53 of the cases, most of which were minor. Fifty-six new cases have been initiated since January 1, 2006. Rapid movement on several issues is anticipated, including decisions on NWE and MDU gas tracker issues. **TAPE 7 - SIDE A**
- Emerging issues -- The Cut Bank Gas Company situation will be dealt with in early June.

01:20:47

Bob Raney, Commissioner, PSC, reported that he is attending the Integrated Gasification Combined Cycle with Carbon Sequestration Work Group, sponsored by nonprofit organizations from Minnesota, Wisconsin, North and South Dakota, and the province of Manitoba. The purpose of the work group is to convey the full recognition that climate change is occurring and that coal must be consumed in a different manner in the future. The work group is traveling to Europe in July to look at new technology being deployed in Europe. There are many ideas on the best way to gasify coal and to capture and sequester the carbon. Recommendations on logical locations for sequestration projects will be formulated within a year. The projects will not be located in Montana but will likely use Montana coal, so it important for Montana to remain involved.

Commissioner Raney reminded the Committee that Congress is planning to tax Co₂, which must be a consideration when building a new plant. He concluded his comments by saying that this is time of great change, that other states have already begun implementing new technologies, and that Montana must change as well.

01:25:04

SEN. ROUSH discussed a memo from the PSC to the ETIC regarding feedback of LC0037 and LC0038 (EXHIBIT #30). Commissioner Jergeson said that he couldn't provide additional comment at this point.

- 01:27:22 SEN. ROUSH asked Commissioner Jergeson to prepare a worksheet to go with the PSC bill draft explaining the proposed changes. Commissioner Jergeson said that he would do that.
- 01:29:48 REP. OLSON thanked Commissioner Jergeson for presenting the PSC proposal for Chapter 8 reform. He said that much of it would be incorporated into the Committee draft legislation.
- 01:32:40 SEN. ESSMANN listed several situations, such as captive market FERC proceedings and the recent emergence of NWE from bankruptcy, and wondered if the 2007 legislative session would be too soon to make decisions regarding the establishment of an integrated vertical utility. Commissioner Jergeson said that the Legislature and the PSC need to find ways to answer some of the questions regarding a default supplier. He said that the current model is not working and has created an almost untenable operating situation. He said that he thought there was enough time remaining to properly address the issue.

SB 415 -- RENEWABLE ENERGY STANDARDS

- 02:00:54 SEN. ROUSH said that the members had received the memo issued by the PSC regarding the public comment on SB 415 (EXHIBIT #29). He asked if there were any additional comments or questions from the Committee.
- 02:01:50 REP. OLSON thanked PSC for holding off on adopting the final rules until the ETIC had the opportunity to discuss the issue. He said that the 2005 Legislature should have clarified the cost cap amendment but that the legislative committee discussion did center around costs. He said that he would support the rule as drafted but cautioned the Commission, when dealing with contested rate cases, to keep in mind that the cost caps do apply to the renewable energy credits.
- SEN. ROUSH reiterated that the public comment period ends May 4, 2006, and that comments must be submitted in writing to the PSC.

LC0037 -- NWE VERTICAL INTEGRATION

- 02:05:07 REP. OLSON asked that LC 0037 (EXHIBIT #31) - the vertical integration of NWE - be brought forward for public comment. REP. OLSON said that he would ask to amend LC0037 to include much of the input received from the PSC.
- 02:10:08 **Brad Molnar, Commissioner, PSC**, said as a member of the National Association of Regulatory Utilities Commissioners (NARUC), he asked to be placed on the Natural Gas Committee. He said that Alberta's natural gas production is down and that price increases can be expected if this remains the case. This, combined with increased oil consumption in Alberta, is a concerning situation. Montana must either make up the difference or plan to pay a lot more for natural gas.

DAY TWO - PART TWO

PANEL: TITLE 69, CHAPTER 8 REFORM

00:00:01

Todd Everts, Staff Attorney, introduced the panelists and provided a historical context of the deregulation issue, discussing years 1997 through the present:

- he was assigned to draft the bill to deregulate electricity in early 1997;
- a Senate Tax Committee hearing was held on March 13, 1997;
- approximately seven or eight days later, the Committee took executive action and adopted 67 amendments to the bill;
- on March 26, 1997, the Senate voted to pass the bill on a 36-14 vote and transmitted the bill to the House;
- the bill was assigned to the House Appropriation Committee;
- on April 7, 1997, the Appropriations Committee assigned the bill to a subcommittee;
- between April 7th and 11th, the subcommittee recommended 51 amendments;
- on April 11, 1997, the Appropriations Committee passed the bill to the House;
- on April 16, 1997, the House passed the bill;
- it was signed into law on May 2, 1997, taking only 34 days from start to finish; and
- over 260 amendments were drafted by Mr. Everts;
- since 1997, there have been over 200 bills drafted to deal with energy issues; and
- the 2001 Legislature created two standing committees just to deal with energy issues related to the passage of the bill.

Mr. Everts recounted other significant events related to the deregulation issue:

- December 9, 1997 - the Montana Power Company announced that it planned to sell its generation assets;
- December 17, 1999 - MPC closed the sale of its generation assets to Pennsylvania Power and Light (PPL);
- March 28, 2000 - MPC announced that it planned to sell its natural gas and electric utility properties;
- October 2, 2000 - MPC announced the sale of its natural gas and electric utility companies to NorthWestern Energy;
- May 5, 2001 - enactment of HB 474;
- November 5, 2002 - Montana citizens reject HB 474 in a referendum;
- April 2003 - HB 509 is passed;
- September 14, 2003 - NWE filed for bankruptcy; and
- October 19, 2004 - NWE gets its request for reorganization approved by the bankruptcy judge.

Mr. Everts said that the policy shift that occurred in 1997 was cataclysmic and as committee legal counsel, cautioned the Committee to be very careful in its deliberations. He noted the risk of creating unintended consequences when making policy changes and the need to be careful of obligations created in the restructuring act. **TAPE 7 - SIDE B**

00:11:19

Don Quander, Montana Large Customer Group, provided a slide show history of the issue, to give a perspective of industrial power in Montana and why it supported deregulation in 1997. Mr. Quander said the perspective would include

the context of which large customers became involved with the 1997 legislation and their perspective today after living with deregulation. Mr. Quander's presentation included the following:

- a national map of average cost of residential electricity ranging from 11 cents per kilowatt hour to less than 7 cents per kilowatt hour, indicating that in 1995, Montana's residential power costs were higher than all surrounding states;
- industrial electricity prices by utility comparison between Pacific and Mountain regions indicating that MPC had the highest rates;
- EEI "typical bill" data - ratio of cost of industrial power to cost of power to residential customers - Montana had the highest ratio in the entire region and had especially high prices for industrial customers;
- a comparison of power costs for a representative industrial load between MT, WY, ND, SD, and ID;
- a daily market price data for Mid-Columbia , peak and non-peak rates from July 1998 through May 2000;
- 2004 rates for residential average retail price of electricity by state;
- 2004 rates for industrial comparison of average retail price of electricity by state;
- average retail price of electricity to ultimate customers end use figures;
- summary information indicating that large customers like choice but want it to be competitive, which has not been the case; and
- a MPC general service rate tariff summary from May 1978 to 1994.

Mr. Quander concluded his comments by saying that large customers support reregulation but do have concerns.

00:32:36

Bob Nelson, Montana Consumer Council, agreed that this is a very complicated issue and that he hoped this legislation would be viewed as an opportunity. Mr. Nelson discussed three points:

- why revisions to Chapter 8 are needed;
- the difference between the limited approach of LC0037 versus the more general rewrite version presented by the PSC; and
- specific items that may become issues with potential legislative changes.

TAPE 8 - SIDE A

00:52:41

Commissioner Jergeson pointed out that there is broad consensus that the current situation is not working, which is what convinced him of the need to return to vertical integration. He said that he did not have with him the amendments that MDU has requested to the bill draft and that he will provide them to the Committee.

00:59:36

Chuck McGraw, Renewable Northwest Project, said that one of the lessons learned from deregulation is that portfolio management responsibility is a critical function of sound planning. This function can't be performed without regulatory oversight. Mr. McGraw suggested retaining those guidelines in whatever new model is chosen.

- 01:01:50 Mr. McGraw said that in order to conduct sound management, a utility needs certainty and a secure service territory. He emphasized that part of responsible portfolio management is for a utility to acquire all cost effective conservation.
- 01:03:26 **John Hines, NWE**, said that:
- there is general agreement that the current system isn't working;
 - Chapter 8 reform may sound innocuous but in reality, would entail some fundamental and significant changes but taking no action will not resolve the issue either; and
 - it is up to the Legislature to implement new policy.
- 01:06:39 Mr. Hines also discussed his historical perspective of the deregulation, saying that the 1997 legislation:
- required the distribution utility to serve as the default supplier;
 - permitted customers to look at other alternative suppliers, which caused problems for the default supplier;
 - required the utility to remove its generation from the rate base, which removed a lower cost tool for customers; and
 - defined what the utility could recover in rates.
- Mr. Hines said that he thought that rate payers would significantly benefit from Chapter 8 reform and that while substantive changes may be needed, the changes must be made thoughtfully and carefully.
- 01:12:50 Mr. Hines also said that while NWE supports the concept of preapproval and thinks that it should be carried forward in any new legislation, it would like it to apply to not only power purchase contracts but also to equity owned purchases. He also said that the 2007 Legislature will be facing some fundamental policy decisions and it should be debated whether utility customers will benefit from utility-owned resources that are then provided to customers at cost plus a rate of return. The rate of return will be regulated by the PSC.

COMMITTEE QUESTIONS & DISCUSSION

- 01:18:18 REP. OLSON said the Mr. Hines made several good points to support preapproval on generation assets and asked Mr. Nelson why he did not support allowing NWE preapproval on utility-owned generation assets. Mr. Nelson said that is the current arrangement for third party providers of generation and that he was not convinced the current arrangements were beneficial to rate payers. The MCC resisted the preapproval approach, including for third party providers, but did finally agree to a compromise which placed limitations on it. Mr. Nelson said that the down side still exists for utility-owned generation as it does for third-party providers, which is the shift of the risk and the potential shift of cost to consumers. He said that his view is that utilities don't necessarily need preapproval. Mr. Nelson also discussed traditional financing for third party providers.
- 01:21:21 REP. OLSON said that he is concerned about out-of-state utility activities and asked Mr. Nelson to determine if other states are allowing preapproval authority to pick up generation assets. Mr. Nelson said that the MCC is already looking

into that and would share its results with the Committee. REP. OLSON asked if Mr. Nelson was still willing to negotiate on this issue. Mr. Nelson said he was.

01:23:14 SEN. LIND asked Mr. Quander to discuss cost allocation and that he would like to know what Mr. Quander's clients think would be an appropriate cost allocation in an absolute sense, rather than a relative sense; and how much of that is based on cost and how much is based on policy. Mr. Quander said that traditionally, industrial customers, including those in Montana up to the time of the restructuring, all thought that the cost allocation should be based on the cost of providing service to a customer group. It was the position of Mr. Quander's clients that by 1995, due to a series of cases, this was no longer the case and had not been for some years. There was a tendency to select a method of cost allocation which caused industrial customers to pay more than it cost to serve them, in order to subsidize residential customers. Some attributed that to the fact the PSC members were elected and not appointed, and some attributed it to the fact that large industrial customers had no alternative, other than self-generation. Different states and different commissions pursued very different theories as to how cost allocation should be done and that many years have been spent arguing the respective opinions. Large customers, from their perspective, were paying a disproportionate share of utility costs - far more than the cost to serve them, which placed them at a competitive disadvantage with surrounding states. Mr. Quander agreed that there is no simple formula.

01:26:07 SEN. LIND asked if the 27% discount wasn't an appropriation and if it should have been a 50% discount. **casey - wasn't sure what he meant by this...** Mr. Quander said there was no discount and explained that the ratio of what industrial customers were paying was set just above what residential customers were paying at that time. Mr. Quander said the formula should be what the cost of serving the respective customers is and that the utility should assign the costs accordingly. He pointed out that one of the last full-blown cost of service cases (1993, MPC) determined, for purposes of allocation, that no cost would be assigned to distribution costs. The formula would disregard the fact that small customers had distribution costs. This resulted in a shift of a large amount of the cost responsibility to the large customers. The parties were so taken aback by that approach that the large customers started meeting in collaboratives and agreeing to stipulating to settlements, ??which we would then present in a common front to the PSC. This approach was not effective.

01:28:06 SEN. LEWIS asked Mr. Hines to recall if the pitch for deregulation in 1997 was that if deregulation was passed, that the market would respond by increasing supply, resulting in lower costs. Mr. Hines said that one of the concepts of why electricity was going to be so cheap was that natural gas would continue to fall. Electricity would be generated from natural gas units located all over the nation and generation costs would be substantially lower than the average cost of the existing generation base. That turned out not to be the case and a lot of money that was put into companies to develop those natural gas turbines either defaulted or substantially consolidated the amount of generation base, resulting in a weak alternative independent power producer market. Invenergy is a good example of the way the market is working now. Invenergy needed a guaranteed

revenue stream to take to the bank that show that there would be money to pay off of the debt. In order to get a guaranteed revenue stream, NWE went to PSC and said it was good resource, presented costs and operating plan because it did not want to sign a contract without the blessing of the PSC. The PSC, after a detailed review and a formal public hearing, said that it did think it was a good idea and a proper resource for the portfolio. The contract was signed and Invenergy took that contract to the financial market and said that through the regulatory process, it had a guaranteed revenue stream and that it wanted financing based on that. **TAPE 8 - SIDE B** Mr. Hines said that NWE has the same problem if it tries to do an equity component. Absent a revenue stream, it will be much more difficult to obtain financing.

- 01:31:36 SEN. ESSMANN asked Mr. Nelson if NWE had the option to own generation, if that would cause potential suppliers to be willing to enter long-term contracts at fixed rates. Mr. Nelson said that suppliers, such as they are, and the current market will respond to whatever competitive circumstances exist and would be a possibility if the nature of the competition is changed.
- 01:32:47 SEN. ROUSH asked Mr. Quander how rates will be reduced and how the cost shift will be compensated for. Mr. Quander said that in his opinion, changing or not changing the current structure will have little or no impact on rates, but if new generation had been built into Montana, the outlook would be very different. The perspective he presented on behalf of the large customers was that the rates in the 1980s were not a good deal for them. The large customers feel that if there is an interest in returning to a utility rate base where their load would be beneficial, they would have to be convinced that they wouldn't fall into the same trap.
- 01:36:44 Commissioner Jergeson commented that no one should have the expectation that Montana will return to a traditional model and that almost any technology will have costs associated with it that would prevent rates being lowered. He said that the goal must be to create durability, stability, and long term value.
- 01:38:39 SEN. ROUSH asked Mr. Hines to comment on if NWE was allowed to become vertically integrated and generate even 50% of its power, if that would be more cost effective than continuing to purchase power. Mr. Hines said that it would be difficult to predict without knowing what prices will do over the next 20 years. In reviewing contracts for the next several years, it appears that new generation would likely be cheaper.
- 01:41:44 REP. OLSON asked what the average cost of power is in the portfolio, without the QFs factored in. Mr. Hines said it is around 4.3 cents per kilowatt hour and includes the QFs at 90 megawatts at 3.3 cents a kilowatt hour. He pointed out that 50% of NWE's portfolio expires on July 7, 2007, and that these contracts were relatively low cost.
- 01:43:43 SEN. ROUSH said that Chapter 8 reform will be substantial piece of legislation. He recommended, if a bill draft is presented to the 2007 Legislature, that public forums be held to help educate the citizens before the bill is discussed in the

legislative session. Commissioner Jergeson said that he anticipated that the public would be very involved through out the process.

01:47:20 REP. OLSON said that individual Committee members were going to write letters regarding the rule making. He suggested the PSC send copies of the referenced administrative rules to the members in order that they have a full understanding of the issue. Commissioner Jergeson agreed to do that.

REVISION OF TELECOMMUNICATION LAWS - LC4144

02:02:38 Tom Ebzery, Qwest, updated the Committee regarding LC4144 (EXHIBIT #32):

- LC4144 is not the same bill as introduced in the 2005 session (HB 539);
- the principal difference is that HB 539 limited regulation by PSC to one business line and one home line.
- The PSC will continue to regulate all land lines for both commercial and home lines.
- The land line business has been weakened by the increased use of cell phones.
- Several minor changes have been made, mostly regarding how various companies price things.
- The bill draft does not impact current telecom statutes for regulation regarding service quality, discrimination, disconnection, or service complaints.
- The principal focus of the proposed bill is to relieve providers of regulated telecommunications of the obligation of having to broadcast promotions 30 days in advance of offer. This requirement allows competitors who are not regulated to have the advantage of making better promotion offers;
- The bill draft makes the definition of "regulated communication service" more specific and would exempt vertical features (call waiting, caller ID, call forwarding, three-way calling) from the definition.
- Concerns have been heard about price undercutting. so a safety net provision was added to prevent that.
- There is an investigation being conducted in other states where Qwest operates to see if Qwest has questionably priced something.

Mr. Ebzery discussed the provisions of LC4144 and concluded his comments by asking the Committee to support the proposed legislation at its September meeting.

02:12:56 REP. OLSON referred to comments submitted to the Committee by Mike Strand, Montana Independent Telecommunications Systems, (EXHIBIT #33 and EXHIBIT #34) regarding rates Qwest charges for intercarrier compensation in Montana and asked if that issue was addressed in LC4144. Mr. Ebzery said that there is no provision in the bill for intercarrier compensation. **Mary Wright, Attorney, Montana Consumer Council**, said that, as with any large policy change, unintended consequences must be considered. Ms. Wright said that while she has not discussed this particular provision with Mr. Strand, she is of the opinion that the proposed legislation may cause many unintended consequences. REP. OLSON asked if she could predict that there were specific problems with intercarrier compensation. Ms. Wright said that she would look into that but could not comment further until she read Mr. Strand's comments.

- 02:16:19 **Chuck Evilsizer, Ronan Telephone Company**, briefly addressed the issue, saying that in subsection 10, "regulated service" is redefined, which would result in every thing else being deregulated. There are other provisions in the bill draft that address the Commission's authority to arbitrate interconnection agreements, so this may be a gray area.
- 02:17:17 REP. OLSON said that he had an amendment to LC4144, (page 6) and recommended adding language to Section 3(5): "(c) is designated by the FCC as an incumbent local exchange carrier under section 251 (8)(2) of the Telecommunications Act of 1996". REP. OLSON said his proposed amendment was the only comment he had received from MidRivers Communications. He asked Mr. Ebzery to explain. Mr. Ebzery said that MidRivers has a filing with the Federal Communication Commission (FCC) about being designated the incumbent exchange carrier in Terry, Montana. If this is approved, that will increase revenues for MidRivers. He recommended including the amendment in the bill, allowing MidRivers to defend it, and for public comment to be taken.
- 02:20:32 REP. OLSON **moved** to add his amendment. SEN. LIND said that he was uncomfortable voting on an amendment that no really understands the impacts of. He asked if there was anyone present at the meeting who could explain the amendment in more detail. REP. OLSON said that it was his intention, in moving the amendment, to allow public comment and that the amended bill draft would be voted on at the September meeting.
- 02:21:56 REP. OLSON asked **Chris Dimock, 180 Communications**, if Qwest should have the same opportunities as 180 Communications on regulated versus unregulated services. Mr. Dimock said that Qwest has a guaranteed rate of return and that his company does not, which is a challenge to his company because 180 Communications is dependent on the competitive market share for customers. **TAPE 9 - SIDE A** Mr. Dimock went on to say that even if Qwest loses a customer to a company such as 180 Communications, Qwest still makes revenue from that customer because of the infrastructure owned by Qwest that is leased out to other telecommunication companies. The already very slim profit margin for smaller companies and the fact that Qwest already has a substantial number of advantages over other carriers is the concern.
- 02:26:08 REP. OLSON asked how 180 Communications is able to compete with Qwest. Mr. Dimock said in part because they don't bring promotions viewed as anti-competitive and that the PSC keeps a tight hold on promotions.
- 02:27:15 REP. OLSON asked how 180 Communications compete with Bresnan. Mr. Dimock said that his company offers commercial services and that Bresnan offers residential services, so there is little competition.
- 02:28:01 REP. OLSON asked what keeps Bresnan out of the commercial market. Mr. Dimock said that commercial service is a complicated service to provide. Mr. Dimock provided several examples, such as the rate loop issue.

- 02:29:27 REP. OLSON asked Ms. Wright if Qwest is in competition with Bresnan for the same market. Mary Wright said that it is her understanding that Bresnan is offering residential service, which Qwest also provides. REP. OLSON asked if Bresnan is regulated. Ms. Wright said not to her knowledge. REP. OLSON asked if it is fair that Bresnan is not regulated and Qwest is, even though both companies are providing the same services. Ms. Wright said there are other reasons for regulating Qwest.
- 02:30:50 REP. OLSON's motion to amend LC4144 **passed 6-1** on a voice vote, with SEN. LIND voting no.
- 02:32:37 SEN. ESSMANN said that he would like to know if South Dakota has deregulated telecommunications and if so, how it has worked. Mr. Barrs said that he would find out.
- 02:33:34 REP. OLSON **moved** to enter Mr. Strand's letters (EXHIBIT #33 and EXHIBIT #34) to the ETIC into the meeting record. REP. OLSON's **motion passed** on a unanimous voice vote.
- 02:36:48 REP. OLSON said that he had several conceptual bill drafts that he would like the Committee to approve for drafting in order for them to be put out for public comment and placed on the agenda for the September meeting. REP. OLSON **moved** to include pipeline used for transporting carbon dioxide for sequestration in to the common carrier statutes. He explained that some of the potential development in Montana for carbon sequestration will require construction of pipeline to move the Co2 to where ever it will be used. Currently, the common carrier statutes include only crude oil pipelines and coal slurry pipelines and any products thereof.
- SEN. LIND asked why the Co2 pipeline would be placed in the common carrier statutes rather than in the natural gas pipeline statutes. Mr. Everts read the common carrier statute and said that the statute did not address natural gas.
- SEN. LIND asked if the regulatory structure for natural gas is significantly different than the common carrier statutes. Commissioner Jergeson referred to the case in which Westech Energy applied to the PSC to be placed under the common carrier statutes. After examining the legislative history and PSC history, the Commission voted 3-2 that natural gas is a crude petroleum and approved Westech's request. So far, there has been no challenge to that ruling but the Commission has not applied it to any other company yet, so there may be some uncertainty about the application of common carrier statute to natural gas.
- 02:42:33 SEN. ESSMANN asked if the common carrier statutes would assist in the financing or construction of these pipelines. REP. OLSON said that the most important factor would be that under the common carrier statute, eminent domain can be used to negotiate right-of-way for pipeline construction and would also allow access to state highway and county road right-of-ways.

02:44:02 SEN. LEWIS said that he is supportive of carbon sequestering but is very concerned how eminent domain rights are used.. REP. OLSON said that the key is that access is allowed through county road right-of-way. SEN. LEWIS said that he would support moving forward with a draft bill but would revisit this issue at the next meeting.

02:45:39 REP. OLSON's **motion passed** on a unanimous voice vote.

02:45:50 REP. OLSON **moved** to establish that equipment used for upstream carbon sequestration purposes would be exempt from property taxes and would include the necessary equipment at a plant needed to collect the carbon dioxide, to compress it, and to transport it through the pipeline.

SEN. ROUSH asked why an exemption should be provided for one industry and not for other similar industries. REP. OLSON said that if someone wanted to request a bill to allow such an exemption, they should request it.

The **motion passed 4-3** on a show of hands vote with: REP. KLOCK, SEN. LEWIS, SEN. LIND, and REP. OLSON voting yes and REP. DRISCOLL, SEN. ESSMANN, and SEN. ROUSH opposed. SEN. ROUSH said that he would not vote Rep. Matthew's proxy on this issue because he had not heard the discussion.

PUBLIC COMMENT

02:49:19 Commissioner Molnar said, regarding the reregulation bill, LC0037 (EXHIBIT #30), that he thought that there was a great deal of misinformation and lack of information driving interest in the bill. He discussed recent newspaper articles written about reregulation and the rebuttals that he had written to correct the misinformation in the articles. He said that the main point he was trying to make was that legislation would not be able to make drastic changes in the cost of energy because much of this issue lays out of state control. He explained that if the west coast states are separated out from the other western states, it shows that Montana residential customers pay only 2 cents per day difference. Commissioner Molnar said that NWE, designated to replace PPL, cannot afford to build new generation, that wind energy is too unreliable, and that natural gas is very expensive. Commissioner Molnar said that there are other factors that should be considered before looking to reregulation, such as the model of long term contracts.

02:57:27 **John Alke, MDU Utilities**, said that as a potential purchaser of NWE power, MDU strongly supports passage of LC0037. Mr. Alke said that NWE would not have to actually build generation to get the benefit of the provision because it would give NWE leverage when negotiating in the market. Mr. Alke said that MDU also supports preapproval for company-owned generation, saying that it is very unfair to ask a company to launch into a billion dollar endeavor and not approve or allow them to recover the costs. Mr. Alke distributed copies of proposed language to be added to LC0037 regarding MDU's service territory and the right to choose an alternative supplier (EXHIBIT #35) and asked that the Committee amend LC0037 to include the proposed language

- 03:03:45 REP. OLSON **moved** to include the language in LC0037. The **motion passed** on a unanimous voice vote.
- 03:04:51 Mr. Quander expressed concern that if a large changes are made in the structure of regulation, financing opportunities, generation construction, or generation owned by NWE, they would have a large impact on the market, including for MDU. He discussed how granting preapproval to one company and not others or if different preapproval standards are created could create difficulties in the future. **TAPE 9 - SIDE B**

WRAP UP AND INSTRUCTIONS TO STAFF

- 03:08:41 SEN. LIND asked to publically apologize to his constituents in SD 50 on his absence at the previous day's meeting and said that had he been present, he would have vigorously dissented to the Committee's decision to oppose the rule before the Board of Environmental Review regarding mercury emissions. He asked that his statement be on the record. He said that he would be submitting a minority report.
- SEN. ROUSH said that the next ETIC meeting is scheduled for September 7, 2006.
- 03:11:37 Mr. Barrs provided a recap of the Committee's proposed legislation:
- LC0037 - NWE vertical integration, LC0038
 - LC0038 - state transmission authority;
 - LC4144 - telecommunications reform;
 - enhanced 9-1-1 legislation;
 - tax credit renewable energy bonds legislation;
 - Co2 common carrier statute revisions; and
 - Co2 equipment property tax exemption legislation.
- Mr. Barrs recapped issues discussed at the meeting and actions to be taken as a result:
- to complete SJR 36 as a white paper report on distributed generation;
 - an information request from SEN. LEWIS for information on energy deregulation in Ontario, Canada;
 - an information request from SEN. ESSMANN for information on telecommunication deregulation in South Dakota;
 - an ETIC letter to the Board of Environmental Review, the Department of Environmental Quality, the Governor's Office, and the Economic Affairs Interim Committee regarding mercury standards; and
 - a legal opinion to determine if the Board of Environmental Review's rule making process on the mercury rules is subject to Montana Environmental Policy Act (MEPA).
- 03:14:06 SEN. ESSMANN asked to include Idaho in Mr. Barrs' research of telecommunication deregulation. Mr. Barrs said that he would include Idaho.

03:14:25 SEN. LIND asked that his dissent be noted in the ETIC letter that is going to be distributed on the mercury issue. SEN. ROUSH asked SEN. LIND to discuss that with Mr. Barrs.

ADJOURNMENT

03:14:59 With no further business before the Committee, SEN. ROUSH adjourned the meeting at 4:18 p.m. The next meeting of the Energy and Telecommunications Interim Committee will be held on September 7, 2006, at the Capitol.

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