

TRANSITION ADVISORY COMMITTEE

August 23, 2001

Room 317, State Capitol Building

Original Minutes with Attachments

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes and Exhibits are on file at the offices of the Legislative Services Division.

COMMITTEE MEMBERS PRESENT

Sen. Fred Thomas	Art Compton
Sen. Emily Stonington	Pat Corcoran
Rep. Stanley Fisher	Gene Leuwer
Rep. Jim Keane	Bob Nelson
Rep. Steve Gallus	Russ Ritter
Rep. Alan Olson	Kathie Roos
Sen. Alvin Ellis	Dave Wheelihan
Sen. Walter McNutt	Matt Brainard
Sen. Linda Nelson	Jerry Driscoll
Sen. Don Ryan	Dave Kinnard
	Kathy Rice

COMMITTEE MEMBERS EXCUSED

Rep. Roy Brown
Rep. Tom Dell
Paul Farr (Replaced by Dave Kinnard)

STAFF MEMBERS PRESENT

Jeff Martin, Legislative Research Analysts
Todd Everts, Legislative Attorney
Robyn Lund, Secretary

VISITOR'S REGISTRATION

Attachment 1

COMMITTEE ACTION

? Approved minutes for June meeting

I ROLL CALL AND OTHER BUSINESS

Roll call was taken, see **Attachment 2**.

Motion/Vote: SENATOR ELLIS moved that the minutes from the June meeting be adopted as presented. The motion passed unanimously.

II DISCUSSION OF PROVISIONS OF HB 474

? **Greg Petesch, Legal Director, Legislative Services Division**, summarized the provisions of HB 474. HB 474 provides incentives through low interest loans, using the Montana State Investment Act, for up to 450 megawatts of electrical energy for new generation in Montana, or for the purchase of up to 120 megawatts of electricity from existing, qualifying facilities in Montana.

HB 474 designates that the distribution services provider is the default supplier until statutorily changed by the legislature. It also requires the default supplier to provide for the full electricity supply for all default customers.

The bill directs the Public Service Commission (PSC) to establish procedures and terms under which customers can choose an electricity supplier other than the default supplier or may choose to opt back into services offered by the default supplier.

HB 474 expands the Universal Systems Benefit Program (USBP) and requires that up to 6% of the USBP funds be spent on irrigated agriculture, energy conservation, and efficiency programs.

The bill requires a public utility to offer a separately marketed renewable resource product that consumers can choose for their energy supply.

It provides for a consumer electricity support program and, in the event that the excess profits tax was enacted, it was the source of funding for the consumer electricity support program. That specific provision was the area of litigation that recently culminated in Helena district court where Judge Sherlock determined that the statutory appropriation was not funded and therefore the bill was the proper subject for a referendum petition.

The legislation also created the Montana Power Authority (MPA). The MPA is authorized to purchase, construct and operate generation facilities, transmission facilities and distribution systems, and to enter into joint ventures with private entities for those purposes. The MPA may request the Board of Examiners to issue up to 500 million dollars of revenue bonds. Proceeds of those bonds may be used to acquire or build facilities. The principle and interest on those bonds is payable from the profits from the sale of the energy or from the use of the facilities in the event that they were distribution facilities.

HB 474 involves provides for the full cost recovery of electricity cost by the distribution services provider. That bill statutorily defines electricity supply costs. It allows the distribution services provider to submit proposed contracts or competitive bidding proposals for the procurement of electricity to the PSC and it allows the PSC to comment on those proposed contracts or competitive bids. It is up to the default supplier whether they choose to submit the contract to the PSC and it is up to the PSC whether they choose to comment on it. It is required that the default supplier submit an electricity supply cost recovery mechanism to the PSC by July 1, 2001, and the PSC is required to have the cost recovery mechanism in place by March 30, 2001.

The default supplier is required to have a portfolio of energy supply in place to supply the needs of all the default supply customers. The PSC is required to conduct a prudency review of that portfolio and the elements making up the portfolio. The review is limited to facts and circumstances that were known or reasonably should have been known at the time that the contract or competitive bid was issued.

CHAIRMAN THOMAS asked if there is any specific contract for electricity mentioned, authorized or approved within HB 474 itself. **Mr. Petesch** said that there is not.

MR. WHEELIHAN asked, in regard to the bonding authority, if the reason that the bonds were to be backed by the electricity contracts was to protect the state's bond ratings. **Mr. Petesch** said that the bonds could have been issued as general obligation bonds backed by the full faith credit taxing powers of the state. In order to issue those kinds of bonds the Legislature needs to approve the bonding by a 2/3 vote. There was some concern as to whether a 2/3 vote could be reached. In addition, because of the magnitude of the bond issue contemplated and because the bonds could be issued as revenue bonds, it was considered that it would protect the state's bond rating and reduce the vote required to authorize those bonds.

SENATOR STONINGTON asked what was contemplated prior to the facilities being able to generate that much revenue. **Mr. Petesch** replied that the sale of the bonds to investors can be used to form the transition costs prior to the revenues being available to pay for the projects. SENATOR STONINGTON said that if the bonds are sold and then a facility is constructed, there is going to be a time gap between the time that the bonds are sold and when the facility is able to generate revenue to service the bonds. **Mr. Petesch** said that was true, but for example, if you issue 300 million dollars worth of bonds for a project, you are not going to use all of those bond proceeds at the same time. You use the bond proceeds to build the project and operate it until the revenue has come in to pay for it.

MR. WHEELIHAN asked if there was a date that the default supply portfolio had to be in place by. **Mr. Petesch** said that the date was at the end of the rate moratorium, June 30, 2002.

CHAIRMAN THOMAS asked if there is any provision in the law, either HB 474 or previous law, that allows for any profit or excess revenue above costs. **Mr. Petesch** said that, as written, HB 474 requires that, in setting the rates, the PSC has to allow for full cost recovery of electricity supply

costs. Information will have to be provided to the PSC documenting those costs for default supply. Profit for default supply is not provided for under current law. In former law it was in the discretion of the PSC as to how to set those rates, determining whether they considered it cost appropriate for recovery in a rate. CHAIRMAN THOMAS asked if it was right that there is no allowance for any profit or anything of that nature for a default supplier. **Mr. Petesch** said that his reading of the definition of electricity supply costs does not provide for that.

CHAIRMAN THOMAS asked how the default supply works in cooperative territories.

Mr. Petesch said that a regulated utility and a cooperative utility are entirely different entities. Cooperative utilities may either opt in or opt out of customer choice. Most of the cooperatives in the state opted out of choice. MR. WHEELIHAN responded that SB 390 required that cooperatives, as the incumbent utility for their customers, be the default supplier. What they recover in those costs is up to the local governing boards, but since cooperatives are non-profits, it is the costs associated with purchasing power.

SENATOR STONINGTON asked, other than low interest loans, expansion of the USBP, and the creation of the MPA, are there other facets of HB 474 that could not have been handled by the PSC without this bill. **Mr. Petesch** said that HB 474 extended the transition period beyond the time that SB 390 allowed the PSC to extend it. Also, having the default supply obligation from a single default supplier could not have been done by the PSC. SENATOR STONINGTON asked, if the referendum on HB 474 succeeds, what issues will the Legislature need to address in the 2003 session. Also, is it true that the MPA has not entered into any contracts? **Mr. Petesch** said that the state bond counsel has advised that, because of the referendum, a test case would be needed prior to the issuance of revenue bonds. They can't enter into a contract until they have financing available to pay for those contracts. SENATOR STONINGTON asked what other provisions of the law, if the referendum were to succeed, would create an urgency. **Mr. Petesch** felt that anything that creates an urgency is likely dependant upon market forces at the time that the referendum would be effective, which would be in November of 2002. It is virtually impossible to determine what action the Legislature may need or choose to take if HB 474 is not in effect.

SENATOR STONINGTON said that, regardless, the PSC will need to act on some portions of this because the residential rate cap expires in July 2002. Is it correct that there would be some action by the PSC and by the default supplier by then? **Mr. Petesch** said that it is correct, but it would revert to SB 390. Under SB 390 it will be possible to have multiple default suppliers. Default suppliers would not be required to provide a portfolio of energy for the full customer supply load. These issues would have to be addressed if HB 474 goes away. The responsibility of the utilities will also change. This will all happen in a very short time frame.

CHAIRMAN THOMAS asked, if the referendum is successful and there is not the MPA, would this mean that the cost of power would increase, considering that the purpose of the MPA is to help provide more lower cost power. **Mr. Petesch** said that the purpose of the MPA was to ensure that, in the

event that competition did not exist at a sufficient level for Montana consumers, an electricity supply was available so that market was reduced in terms of cost. The MPA could step in and, through the use of state financing and revenue bonds, the public could create the competition and this would be a market-based solution to competitive energy prices and the laws of supply and demand. CHAIRMAN THOMAS asked, if the three-year extension to the transition period removed, what is the potential to contract on long-term projects. **Mr. Petesch** said that the transition period is designed to be the period of time in which customers have to be given the opportunity to choose the electricity supplier other than the default supplier. The extension of the transition period in HB 474 was designed to coincide with the length of term of contracts at the time that HB 474 was drafted, which were producing the lowest rates for electrical energy at that time. The answer to the question depends upon where the market is at any point in time.

SENATOR RYAN asked, if a revenue bond fails to meet its obligation, what is the impact to the taxpayer. **Mr. Petesch** said that there is no legal obligation for the taxpayers to pay off the revenue bonds. It is the bond holder who is at risk. SENATOR RYAN asked if the default supplier is the supplier of last resort. If you can't find another supplier, the default supplier will always be there. **Mr. Petesch** said that under HB 474 there is a single default supplier; under SB 390 several entities could be licensed as a default supplier. SB 390 would allow customers to choose between default suppliers. SENATOR RYAN asked if that meant that a green power supplier could be out there for those customers who choose to buy green power and be off the default system. **Mr. Petesch** said that is correct, but that the default supplier is also required to offer green power as a supply option.

SENATOR ELLIS asked if bond counsel is unlikely to recommend the sale of bonds to investors unless the generator has a contract that protects that entity. **Mr. Petesch** said that his understanding of the bond counsel's position is that, in regard to the revenue bonds authorized in HB 474, because the referendum could make HB 474 go away and therefore the authority to issue those bonds would go away, the bond counsel will not issue a comfort letter to the Board of Examiners to allow them to issue those bonds unless they get a determination through a test case that says that those bond holders will be protected even if the law goes away.

REPRESENTATIVE FISHER asked what effect HB 474 has on Montana's cooperatives and MDU and their ability to deliver power to the customers that they serve. **Mr. Petesch** stated that he doesn't believe that HB 474 addresses cooperatives, other than the USBP provisions.

MR. WHEELIHAN asked if, in the absence of HB 474, the default supplier could be required to provide the default supply at a loss. **Mr. Petesch** didn't think that would be precluded in the absence of HB 474.

REPRESENTATIVE KEANE asked about the PSC's ability to look at the cost of the default supplier. Do they have any way to regulate the cost? **Mr. Petesch** replied that the PSC is still required to set rates for consumers. Under HB 474, the PSC has to allow for full recovery of electricity supply costs as

defined. The PSC is limited to a prudency review of the contracts that are entered into to meet that supply load demand. The review is limited to the things that were known or that should have been known by the default supplier at the time that the contract was entered into. REP. KEANE asked, if Montana Power Company (MPC) entered into a contract, does the PSC have the power to say no or do they have to accept that. **Mr. Petesch** replied that the PSC can always say no. They can say no by determining that a particular contract, based on the information available at the time the contract was entered into, was not prudent.

REP. KEANE asked if MPC could come back and say that they didn't accept that determination. **Mr. Petesch** said that MPC may challenge the PSC's determination in court.

SENATOR STONINGTON said that HB 474 contemplated the PSC reviewing an entire portfolio. Isn't that a limitation on the PSC's ability to help solve this problem incrementally? **Mr. Petesch** said that would be based upon a review retrospectively. Under HB 474 the PSC has the discretion to review and comment on any proposed contract. They are not required to comment. They are required, once the portfolio is in place, to set rates based upon the portfolio under the cost recovery mechanism.

CHAIRMAN THOMAS asked, if HB 474 is suspended or done away with, would the provision for relief for irrigators be wiped out. **Mr. Petesch** said that there would be no requirement in law that 6% of USBP would go to irrigated agriculture.

SENATOR STONINGTON asked if it would prohibit relief to irrigated agriculture. **Mr. Petesch** said that his understanding was that most of the benefits were allocated before HB 474. Some entities were already meeting the 6% requirement, but others were not. SENATOR STONINGTON asked if it would prohibit the use of USB funds for irrigators.

Mr. Petesch replied that it would not.

III PETITION TO REFER HB 474 TO ELECTORATE

? Representative Michelle Lee, HD 26, said that both she and Rep. Christopher Harris, HD 30, are carrying this referendum. The rationale is that every citizen in this state has the constitutional right to referendum. Article III, section 5 of our constitution says, "The people may approve or reject by referendum any act of the Legislature, except an appropriation of money. A referendum shall be held either upon order by the Legislature, upon petition signed by at least 5% of the qualified electors in each of at least 1/3 of the legislature representative districts... A referendum petition shall be filed with the Secretary of State no later than 6 months after the adjournment of the Legislature which passed the act."

Reps. Lee and Harris have gone through litigation as to whether or not there was an appropriation involved in this bill and received a court ruling favorable to them. The signature gathering has been going for almost two weeks. Rep. Lee believes that HB 474 is a defective product of the legislative process because there was not enough public scrutiny. There are parts that are perhaps unconstitutional. She feels that any significant bill addressing energy issues for the state of Montana should have input from

everybody and it should be a consensus process.

Rep. Lee stated that, in its final form, few legislators had read the bill and even fewer understood it. This is not the way that the Legislature should craft energy policy. In the bill's amended form, there was never a full legislative hearing. There are also issues with the fiscal note that was presented on the House floor. These are the legislative points that Rep. Lee and Rep. Harris found offensive.

Rep. Lee also felt some concern about the way that the bill was pushed through on the 90th of the session. There is the image that this is a deal cut at the last minute because on 89th of the Legislature was informed by MPC and PPL in a press release that they had come to a deal and that everything was going to be okay. Specifically in the press release it says, "Does the agreement between MPC and PPL-M require any legislative action?" The answer is, "Yes, the agreement anticipates positive resolution on several issues being considered by the Legislature, including cost recovery for default supply costs, no new taxes on power generators and an end to attempt to re-regulate PPL-M power plants in Montana."

Rep. Lee said that a more cautious approach to the state's energy policy should have been taken. She stated that the minority voice is not always heard, therefore that voice has to use the tools given by the constitution in order to be heard and make sure that people are served by both sides of the argument.

REPRESENTATIVE OLSON asked what was unconstitutional about HB 474. **Rep. Lee** said that it had yet to be determined by a court. REP. OLSON asked what Rep. Lee thinks is unconstitutional. **Rep. Lee** replied that there are laws regarding fiscal notes and laws regarding legislative crafting that got blurred along the way. She also feels that there are delegation of authority issues and some public scrutiny issues that need to be clarified. REP. OLSON asked for the purpose of a fiscal note. **Rep. Lee** said that it is to give the proper fiscal impact to local government, whether or not it was included in the executive budget, dedicated revenue, long term impacts, technical concerns and family impacts. It allows legislators to be knowledgeable on the true fiscal impacts of a piece of legislation. REP. OLSON asked if Rep. Lee could show where it says anything about family impacts. **Rep. Lee** referred to where it says Family Impact Form attached on the fiscal note.

CHAIRMAN THOMAS asked what will have changed if the referendum is successful. **Rep. Lee** replied that the public will have been involved and there will have been a full public discussion. CHAIRMAN THOMAS asked what will be the result to ratepayers. **Rep. Lee** said that ratepayers will get a voice in the process and will be able to determine what the state's energy policy will be. CHAIRMAN THOMAS asked what will they have voted on that affects their utility bill and how specifically will it affect the ratepayer. **Rep. Lee** referred to the petition where it says, "Statement of fiscal impact is not possible to determine the financial impact of this proposal due to the uncertainties in the electricity and bond markets." CHAIRMAN THOMAS asked if Rep. Lee had written that. **Rep. Lee** said that she did not. CHAIRMAN THOMAS commented that he wanted to know what Rep. Lee thinks about how this will affect the ratepayer. **Rep. Lee** didn't feel that she was qualified to

answer that question because the market is an unknown. CHAIRMAN THOMAS asked if Rep. Lee's intent was to lower ratepayers' bills through this referendum.

Rep. Lee replied that she can't predict what will happen to rate payers' bills. CHAIRMAN THOMAS asked if it is fair to say that her efforts are not designed to raise or lower rates, but instead her efforts stem from the process and constitutional issues. **Rep. Lee** said that this is about protecting consumers and giving the people a voice. This will allow for the public to be involved.

MR. RITTER asked if there was a piece of legislation during the session that Rep. Lee felt answered the reasoning that she had used to present a referendum and, also, was there anything that she wanted to see amended into HB 474. **Rep. Lee** said that energy should have been dealt with earlier in the session so that there would have been more time for public disclosure. She commented that it would have been nice to consider ideas other than whose name is at the top of the page. Rep. Lee said that HB 474 originally started out as an increase in the Wholesale Energy Transaction (WET) tax and it turned out to be something much different. With that in mind, she wouldn't want anything else amended into HB 474. There was enough amended into it. MR. RITTER said that the question was not things that should be amended out, but things that she would want amended in. **Rep. Lee** said that HB 474 should have only been a WET tax.

REPRESENTATIVE OLSON asked which amendments Rep. Lee has problems with and why. **Rep. Lee** said that she has problems with the amendments that were brought forward on the 90th day of the session. Those amendments should have been disclosed and discussed much earlier than that. She also has a problem with the unfunded parts of the amendments that are included in the bill, such as the consumer energy support program.

SENATOR STONINGTON commented that Rep. Lee was doing an excellent job defending her actions. She asked if the effort that Rep. Lee is making is to say that the power companies had their chance to have a say, the Legislature had its chance to have a say and now it's the people's chance to have a say. **Rep. Lee** said that is correct. The people are not currently being listened to. SENATOR STONINGTON asked if the other part of what Rep. Lee is saying is that perhaps the provisions that are in HB 474 were not guaranteed in any way to be advantageous to the consumer and, in fact, may be detrimental to the consumer and that, without this bill, the PSC still has considerable authority in arranging for contractual agreements between the default supplier and the providers of energy to come up with contracts that benefit the consumer. **Rep. Lee** said that was correct. SENATOR STONINGTON stated that this is difficult for all of us. She has respect for the fact that the majority did the best that they could in taking their shot at it, but she also respects what Rep. Lee and Rep. Harris are doing in saying that they need their chance to take their best shot at it and this is the only opportunity they have.

SENATOR ELLIS thinks that most of the provisions in HB 474, with the exception of the USBP charges, are an effort to create more competition. It seems to him that we will be in a competitive field once SB 390 goes fully into effect. He asked if Rep. Lee was in attendance at the conference

committee hearings. **Rep. Lee** said that she didn't attend many of them. SENATOR ELLIS said that this bill was not crafted on the 90th day, they didn't even meet on that day. Legislators work on these energy issues throughout the whole process and then bring what they think are the best ideas together at the end. That is also the way it is with many issues other than energy. He asked if Rep. Lee had attended any of the energy hearings throughout the session. **Rep. Lee** said that she didn't because there wasn't much use. She didn't have a voice.

SENATOR McNUTT said that, as chair of the energy free conference committee, he didn't preclude anyone from addressing the issues. It wasn't just HB 474 that the conference committee worked on; there were 5 bills. He asked, if those were hurried so fast, why isn't there a referendum against SB 19, SB 521 and the other bills that came out of that free conference committee. **Rep. Lee** said that some of the bills are interactive. Rep. Lee and Rep. Harris felt that HB 474 was the most detrimental bill for the people that they represent. She also commented that just because she wasn't there doesn't mean that she wasn't paying attention.

SENATOR McNUTT said that, at the time, it was pretty sure that power costs were going to double or triple. Today, as we look back, the dynamics of the Northwest power situation are drastically different. We needed something in the law to prevent the situation where we could bankrupt the power supplier and drop that back on the taxpayers of the state of Montana. That is why the language was developed in HB 474. SEN. McNUTT said that it was a fair process. Everyone that wanted to had the opportunity to speak to the issues. In the last session the energy policy was on the top burner. It was not neglected and the public was not kept from the facts of what was going on in the energy situation.

REPRESENTATIVE FISHER asked what is being done by the petitioners to educate the public that sign this petition. **Rep. Lee** said that it is required that they have a full and complete copy of HB 474 attached. They also have the text of the bill on their web site and they encourage people to read it. In addition to that, there was a non-partisan committee that worked on the facts of HB 474. REP. FISHER asked if this information is presented to the person who is being asked to sign the petition and do they take the time to read it. **Rep. Lee** didn't know if they take the time to read it. REP. FISHER asked, since HB 474 doesn't affect cooperative or MDU customers, will they be asked to sign the petition. **Rep. Lee** said that this is a public referendum. Anybody can sign it. An increase in power bills, wherever they may be, will affect the economy, which will effect everyone in the state. REP. FISHER said that he doesn't believe that people are being told that this may have an impact on their power bill. **Rep. Lee** replied that there are statement of purpose, statement of fiscal impact and approve or reject language with the referendum.

REP. FISHER asked if that information pertains to the effect of the bill on a customer in Billings versus a customer in Kalispell. **Rep. Lee** said that she didn't see that in HB 474.

REPRESENTATIVE KEANE commented that legislators who weren't MPC customers voted on the bill and it affects the whole state. This is a public process. The people of Montana have the right to vote on it.

SENATOR FISHER said that he wouldn't take exception to that. When Representatives are sent to the Legislature they represent the people in their district. When they vote on a bill such as this, they vote on it in the best interest of the people of the state of Montana.

CHAIRMAN THOMAS asked if Rep. Lee had a concern with the USBP provisions of the bill. **Rep. Lee** said that if it were done independently, she would support it. CHAIRMAN THOMAS asked if she had problems with the rate relief and the relief for irrigated agriculture. **Rep. Lee** said that is part of the USBP. CHAIRMAN THOMAS asked if she had any trouble with the extension of the transition period. **Rep. Lee** does have a problem with that. She feels that if deregulation was such a wonderful idea we wouldn't need a transition period. CHAIRMAN THOMAS asked if she had problems with the MPA being enacted and helping to develop generation projects and lower costing energy. **Rep. Lee** did have a problem with that because we currently are exporting energy. CHAIRMAN THOMAS said that the MPA is specifically to fund power to Montana ratepayers. Does Rep. Lee have a problem with Montana ratepayers getting a benefit from those projects? **Rep. Lee** replied that they should already be getting a better deal.

CHAIRMAN THOMAS asked if she thinks that the default supplier, which existed before the last session, should continue to put together a load for Montana Power rate payers come July 1 of next year on a non-profit basis. **Rep. Lee** said that, realistically, she doesn't think that they can suspend HB 474 because they don't have 2/3 of the time necessary to gather signatures because of litigation. She can't speak for MPC. She thinks that if things were different and different types of policies are developed, maybe default supplier and those types of terms may not be necessary. We need to look at what we are doing and take a cautious approach to the state's energy policy. CHAIRMAN THOMAS asked, if we didn't put the load together to serve the ratepayers next July, we could just let them go for 6 months until the next legislative session and work it out then.

Rep. Lee said that she can't imagine why PPL wouldn't want to sell to Montana customers when Montana gives them so much energy and she can't imagine why MPC would quit using their lines and distribution services.

SENATOR STONINGTON commented that what the Chair was just asking is the crux of this whole discussion and the crux of HB 474. The issue is, did the Legislature trust the PSC to strike a fair deal or did it need to be put in statute to require full cost recovery. In her opinion, the PSC would have negotiated a rate that was fair to the power company and the ratepayer. She wonders if the Legislature needed to be in that discussion. A lot of this could be done in separate bills.

CHAIRMAN THOMAS said that nobody has pointed out what this bill does wrong. What is the point of going through this to put it before the voters and ask them to vote on something that most don't understand. These efforts will lead to higher costing power for Montana ratepayers and he has a real problem with that. SENATOR STONINGTON said that she doesn't feel that is necessarily true. All that we can say for sure, today, is that there are some angry legislators who felt that their only option was to take this statutory change to the voters. CHAIRMAN THOMAS replied that legislators have

every duty to attend and be active as things are going on in the session.

SENATOR ELLIS referred to Rep. Lee's comment that Montana exports a lot of energy and therefore more generation may not be needed. Montana also exports a lot of wheat, cattle, lumbar products, et cetera; is Rep. Lee also recommending that these businesses be limited to what we consume domestically? **Rep. Lee** replied that electricity is very important. That is why we have an economy. We have an economy because we consume electricity. The other industries that SENATOR ELLIS referred to depend on electricity to operate. SENATOR ELLIS asked if Rep. Lee sees electricity as more important than agriculture. **Rep. Lee** said that is not true.

COMMISSIONER BRAINARD asked if Rep. Lee voted for the House rules during the first days of the session. **Rep. Lee** said that she believed so. COMM. BRAINARD asked if the process of HB 474 violated those House rules. **Rep. Lee** said yes. COMM. BRAINARD asked if she had appealed that to the Rules Committee. **Rep. Lee** said that it was the 90th day. COMM. BRAINARD again asked if she had appealed it to the Rules Committee. **Rep. Lee** said that she did not. COMM. BRAINARD commented that the process was for the people. He feels tremendously saddened to think that there are legislators who will allow themselves to be muzzled in the process, to not stand up for the issues that they believe in during the time that the Legislature is in process. Their role is to stand up and speak, regardless of the issue and who was in favor of it. If people are looking at this referendum as a matter of process, then that means that every bill that goes through the Legislature should go through the referendum process and that isn't the way that it should be. To continually take reoccurring issues to the referendum tires out the voters and, in a sense, cheapens the representative process that we have in the Legislature.

REPRESENTATIVE GALLUS wanted to comment on the Rules Committee. The most important rule in the House was 58/42. Knowing what the end result of an appeal to the Rules Committee would be is perhaps why Rep. Lee didn't make that appeal on that day.

COMMISSIONER BRAINARD said that when he was a legislator he had seen things taken to the Rules Committee with significantly fewer people and they didn't care what day it was on. If you believe in something you fight it the whole way with the tools that you have.

Rep. Lee responded that she had done her research and she did spend a lot of time on energy issues. She may not have attended all of the hearings and the reason is because she felt stifled. It would not have mattered what she said. There is a difference in attending a hearing and delivering testimony and being listened to and knowing what you are saying is being considered thoughtfully.

CHAIRMAN THOMAS said that SENATOR McNUTT, who chaired the energy free conference committee, was very open and took all input. He pointed out that both Democrats and Republicans had bills pass last session and good ideas did pass.

IV FLATHEAD ELECTRIC COOPERATIVE (FEC) ENERGY SUPPLY CONTRACT WITH PACIFI CORP

? **Warren McConkey, FEC**, said that several months of intense negotiation resulted in a successful conversion of their Index-priced market contract with PacifiCorp to a fixed-priced market contract. The prices that they moved back and forth on were based on the western power market. The major variance that was negotiated into the contract was to get fixed prices. They have 5 one-year prices that they know what the price is. Year 1 is \$45.50 down to year 5, which is \$41.00. The big advantage is predictability. Getting a 5-year solution requires that FEC take some risk in the last years. There is the risk that they will be above the market price in years 4 and 5. They need their customers to be on contract for the full 5 years. They are currently looking at retail contracts.

The retail impacts of the settlement are real. There was a 6% retail increase last September, the second increase was 29% in March, and the final rate increase in October will be 12.5%. These increases are a result of changes in market over the last year and a half.

? **Tom Ebzery, PacifiCorp**, said that on August 1 PacifiCorp and FEC announced that they had come to terms on a 70 megawatt contract. The total load is 145 megawatts. The other 75 megawatts has been worked out with Bonneville Power Administration (BPA). This is a fair deal for all. This is firm power. If it doesn't come from Colstrip units 3 and 4, the power will come from the PacifiCorp system. The BPA has agreed to credit sleeve 54 of the 70 megawatts. This takes away a lot of the uncertainty that PacifiCorp had when they were talking about \$200 power on the Mid-Columbia Index. The industrial customers need to be a part of this arrangement because they represent a significant portion of the total load for FEC. The price that they worked out is fair to all. PacifiCorp is pleased to have this completed and they appreciate all of the assistance that they received during the negotiation process.

Mr. McConkey commented that that they intend to work on finding a better solution. They do have a fixed solution today, but that doesn't mean that they are giving up and not working on better things. The tool that they are working on would be a swap of the output or the asset of Colstrip. That does entail the utilization of the Montana Power Authority (MPA) bonding capabilities. They would like to see the utilization of MPA to build new generation.

SENATOR STONINGTON asked, if the supply from both BPA and PacifiCorp are firm contracts, how will conservation play into it. **Mr. McConkey** replied that conservation and load reduction is an extremely complicated issue. The BPA contracts are load-following contracts. The amount of power that FEC purchases from BPA can meet load growth or load reduction. If there is conservation it will reduce the overall load and come out of the BPA power supply. Conservation can be counterproductive for FEC. Currently the Flathead valley is going through enormous load growth that will most likely offset any conservation.

SENATOR STONINGTON asked if it was correct that PacifiCorp owns a portion of Colstrip. **Mr. Ebzery** replied that PacifiCorp owns 10% of units 3 and 4, which is about 121 megawatts. SENATOR

STONINGTON asked how much the transmission constraints in our region may play into PacifiCorp's interest in negotiating with Flathead. **Mr. Ebzery** said that transmission is a serious problem, particularly going into the northwest and into the PacifiCorp service territory. They are hopeful that FERC will pay as much attention to the transmission problems as they have paid to the need for new generation. Transmission constraints did have some bearing on the discussions with FEC.

SENATOR STONINGTON asked about load-following contracts. **Will Rosquist, PSC**, replied that the PSC recognizes that in any portfolio of resources that MPC puts together to serve the default load, some resources are going to be load following resources. It is the prudent way to put together a portfolio. They also will want some resources that are base load. SENATOR STONINGTON asked if the PSC or MPC had been approached by any supplier that has offered that type of contract and, if so, how that has been received. **Mr. Rosquist** wasn't aware of the PSC being approached by any supplier who would be offering that. Because MPC has not come to the PSC with a full portfolio, he is not sure where MPC is in terms of negotiating contracts.

V **STATUE OF ELECTRICAL ENERGY SUPPLY ARRANGEMENTS FOR LARGE INDUSTRIAL USERS**

MR. MARTIN referred to letters from some companies that were unable to attend the meeting. Those companies include Golden Sunlight, Exxon Mobil, Montana Refining, and Stimson Lumber.

CHAIRMAN THOMAS read from the letters. Montana Refining has a fixed contract with PPL for 5 years, see **Attachment 3**. Exxon Mobil is utilizing three separate generators for self generation, see **Attachment 4**.

MR. MARTIN said that the letter from Stimson Lumber talks about the power rate increases over the last few years from the low \$30s to \$65 per megawatt hour, based upon a long-term contract. Had they executed a short-term contract, the rates probably would have been twice as high as what they have been paying, see **Attachment 5**.

CHAIRMAN THOMAS referred to the letter from Golden Sunlight Mine. It indicates that they are currently under the Montana power pool and they have made a power contract with PPL for the next 3 quarters, see **Attachment 6**. MR. MARTIN added that the mine is not going to make an application to the power pool after October 1.

? **Ellen Porter, Louisiana Pacific**, said that they employ about 250 people in Missoula. They use approximately 7 megawatts of power. Currently none of that 7 megawatts is at risk through July 1. Starting July 1, all of it is at risk through the third quarter. Louisiana Pacific found that third quarter pricing was so high that if you contracted for the entire year it raised the price higher than what they could afford to pay. They entered into a 5-year contract for quarters 1, 2, and 4. They signed a 1 year contract for third quarter 2001, which has provided them the opportunity to stay in business. As of July 1, 2002, they will be without power again for the third quarter and that will continue through the 5 year

contract. Because of the high prices Louisiana Pacific laid off roughly 15 people last fall and they have not been brought back on yet. There are other market factors that played into this in addition to the price of power.

SENATOR RYAN said that when Ms. Porter testified during the session she had said that they would need power at the price of 10 cents in order to stay open. Were they able to get in that ball park? **Ms. Porter** said that they got it at less, however, since that time the cost that they can charge for their product has dropped, therefore the cost that they can afford to pay has gone down accordingly.

SENATOR ELLIS asked if Louisiana Pacific was able to renegotiate for the three quarters that they had already negotiated for or did they just fill in the gap. **Ms. Porter** replied that they filled in the gap for 1 year.

? **Pat Clevenger, Smurfit-Stone Container**, said that the Missoula mill has been operating at 50% production level since April. They have had to lay off 135 employees temporarily since April. It has been a combination of west coast energy prices, the purchasing strategy not going very well, and the fact that the cardboard market, especially in California, has diminished. They have incurred severe costs in the last 15 months. The liner board market is starting to pick up and they are planning to start one more of the machines and will be bringing 60 people back to work starting September 17.

They are currently self generating 8 megawatts and in July they receive 6 megawatts from the power pool, which will expire September 30. They have reapplied for the power from the pool, which continues to be the lowest cost power available today on a short-term basis. They are taking the portfolio approach to buying electricity. Today they have 2 five-year contracts. One for 25 megawatts and one for 10 megawatts. Their load will increase hopefully to 50 megawatts and as that happens they will look into more contracts or perhaps the spot market.

SENATOR RYAN asked if Smurfit-Stone bought from in-state or out-of-state producers.

Mr. Clevenger replied that their supplier is Enron. They negotiated with suppliers both in and out of state. Smurfit-Stone is very committed to open choice. They look at this market as long-term and there are a lot of short-term crises. They have learned a lot of lessons and are planning to move on.

SENATOR STONINGTON asked if Smurfit-Stone found that self generation was not cost effective.

Mr. Clevenger said that their self generation is the lowest cost power that they have. SENATOR STONINGTON asked if they would continue the self generation and just fill on top of that. **Mr. Clevenger** replied that they would.

REPRESENTATIVE GALLUS asked what Mr. Clevenger considered to be a competitive price in today's firm market. **Mr. Clevenger** replied that the market is volatile and each plant produces a different product and can afford to pay a different price for electricity. The long-term markets are below \$40 for firm power.

CHAIRMAN THOMAS asked for the top lesson that they have found. **Mr. Clevenger** said that would be risk management. CHAIRMAN THOMAS asked if that meant long-term contracts. **Mr. Clevenger** said that you can't have 100% of your power needs on the spot market. You need long-term contracts. CHAIRMAN THOMAS asked if it is energy prices that are keeping the remaining employees from coming back to work. **Mr. Clevenger** said that it is because the export markets are not there and the demand for liner board is terrible. They do not see the markets for cardboard boxes coming back anytime soon.

? **Dave Keck, Advanced Silicon Materials (ASiMI)**, said that they are one of the top consumers of electricity in the state. Their average load is about 65 megawatts. They have the capacity to consume 100 megawatts and plan to do that when the market returns. They have a contract with PPL for the next 18 months. They have also signed a long-term contract with PPL for the years 2003 to 2007. None of their power is currently at risk. They have always used long-term contracts to take out the highs and the lows of the market. Electricity is by far ASiMI's largest cost. Their competitiveness has been hurt some by the power prices. They have not laid off any employees and have no plans to.

SENATOR STONINGTON asked if the competitive power rates was part of the decision to locate in Montana. **Mr. Keck** said that it was. When ASiMI located in Butte they thought they would have low cost power for the long term. SENATOR STONINGTON asked if the loss of that competitive advantage will have an impact on ASiMI's ability to continue to operate in Montana. **Mr. Keck** said that they don't see a threat there, but it will most likely dampen their growth. They no longer have the cost advantage that they used to have.

REPRESENTATIVE GALLUS asked about the status of any previously planned expansion proposals and where they are at. **Mr. Keck** said that the second half of their plan, Phase II, is 90% installed, but not operational at this time. Part of this is due to the dramatic drop in their product market.

CHAIRMAN THOMAS asked if the first agreement with MPC that Mr. Keck spoke about was referring to regulated rates that everyone else paid, or was there a better deal negotiated at that time. **Mr. Keck** replied that it was close to the regulated rate, but it was not a regulated price. The rate was never approved by the PSC.

? **Dick Johnson, Ash Grove Cement**, said that they took a contract for 3 months, July, August and September, and they have now contracted power for 5 years forward starting July 1, 2002. That contract is decent, but what they are paying in the meantime is not. Ashgrove continues to struggle. They are currently operating at full capacity and the continue to enjoy a very strong market for cement. They are operating with fewer employees; there have been retirements and Ashgrove has chosen not to rehire at this time. Of the 9 Ashgrove plants in the US, the Montana plant is the most expensive right now by far. There are 5 plants in the Northwest and prior to deregulation the Montana plant paid the highest cost for electricity out of those 5 plants. The plant has lost in the neighborhood of 4 million dollars in power prices alone. They tried self-generation in February, March, April and May, but found

it not to be effective or reliable. In June they paid around \$190 per megawatt. Ashgrove is going to continue to lose money through July 2002, but there are no plans to shut the plant down. The price for power that they will be paying is 82% higher and they are being told that is a good price.

CHAIRMAN THOMAS reiterated that the Ashgrove plant is going to continue to operate.

Mr. Johnson said that they will continue to operate at a loss.

? **Ralph Denoski, Holnam Cement**, stated that they have a contract for 3 years for 7 megawatts of firm power. It is a workable contract based on what the market is. Their cost of electricity has more than doubled. Through attrition their workforce is down 3 or 4%. They are looking at lay-offs, but have not reached a decision yet. They are hoping that the electrical market becomes more favorable in the next 3 years.

REPRESENTATIVE KEANE asked for the number of employees at the plant. **Mr. Denoski** said that there are presently 94 employees.

CHAIRMAN THOMAS asked if it is correct that Holnam is contracted through 2004 and at that point they will be working on another contract. **Mr. Denoski** said that they will continuously be working on what they can do, perhaps through a timing sequence, portfolio, or other options.

? **Dennis Robinson, Plum Creek Timber**, said that they employ 1500 people in Montana. Their annual payroll is about 45 million dollars, plus benefits. They also employ about 1200 contractors. Their energy situation is that they are in bed with FEC. FEC has been Plum Creek's supplier since FEC purchased the PacifiCorp properties. They worked hard with FEC to help solve the energy problem in the Flathead Valley. Plum Creek uses about 35 megawatts, the majority of which comes through FEC. About 2 years ago Plum Creek invested about 70 million dollars in Columbia Falls to build another fiber board plant. It will increase their capacity about 70%, as well as add jobs to the valley. Considering that all of their product has to be exported out of the state, they need a competitive advantage to offset the cost of freight. That advantage used to be the cost of energy. Mr. Robinson pointed out that if you don't invest in your businesses in the future you don't have a healthy business economy.

SENATOR RYAN commented that FEC needs to know how much load they need to contract for.

Mr. Robinson said that Plum Creek has not signed a retail agreement yet. They are confident that they can put something together that will work for everyone.

REPRESENTATIVE FISHER said that if we lose the industry in the state of Montana, we are going to lose the jobs. Rates to the ratepayers is paramount, but unless the ratepayers have jobs, they are not going to be able to pay their bills. He would like to see as much attention paid to the industrial consumers as has been paid on the residential consumers.

SENATOR STONINGTON asked if the 35 megawatts that Mr. Robinson spoke of is for the MDF

plant only. **Mr. Robinson** replied that the total load is about 35 megawatts. The new MDF plant adds an additional 14 megawatts. SENATOR STONINGTON asked how that compares with the load of the Columbia Falls Aluminum plant and is there an option to contract with BPA or some other supplier. **Mr. Robinson** said that BPA won't contract directly with industry other than with the aluminum group. SENATOR STONINGTON said that one of the issues is the competitive advantage that has been lost. She hopes that the committee will further explore the transmission constraints and the possibility that those constraints may be an advantage in state and create a better market in the state.

Mr. Robinson commented that in the FEC situation, the local legislative group did a great job in helping deal with the situation with BPA and PacifiCorp. Also, the national delegation helped put pressure on BPA to help with the FEC situation, without that pressure this solution would never have come about.

? RUSS RITTER, Montana Resources (MRI), said that MRI shutdown its plant. Without deregulation, MRI would probably have shutdown much earlier than they did. The situation in Butte right now is that they are still unable to reopen the mine. They are looking at 64 cent copper, which is way down. They would like to keep the price of copper close to a dollar, so that they can make a profit. One of the lessons that they have learned is to never take electricity for granted. Electricity, other than labor, is the number one cost for MRI. They use about 46 megawatts when they are operational. With the current price of copper, the price for energy would have to be around 1.5 cents, which is not going to happen. They have 338 employees that are not working. People in MRI feel that we are not going to see a major change in the economy worldwide until possibly 2002. They are hopeful and are going to work at everything that they can do in order to get that mine going again. MRI is involved in trying to eliminate the severe dust problem in Butte caused by not being operational. They are doing everything that they can, working with DEQ and the EPA and are hopeful that by September they can have most of the area covered in such a way as to meet all of the standards that MRI is subject to as a result of the original permit.

CHAIRMAN THOMAS asked if MRI would need \$15 per megawatt hour to open today. MR. RITTER said that is correct. CHAIRMAN THOMAS said that is approximately half of the old regulated rate. MR. RITTER said that when MRI shut down the delivered power was \$34 per megawatt hour.

REPRESENTATIVE GALLUS told the Committee that when MRI ceased to operate it lead to a dust problem in Butte. With 12 to 13 mile an hour winds the tailings begin to blow. The company has made attempts to alleviate the situation. There are health concerns related to this. There are also perception concerns for Butte/Silverbow related to this.

REPRESENTATIVE KEANE asked if there is a price for copper at which MRI may reopen. MR. RITTER said that a goal would be to see copper at a dollar, but they don't have any control over it.

SENATOR ELLIS added that the US dollar has been going up in relation to other currencies and it recently turned and is now going down; this will make a difference in the price of copper and is a promising sign. He asked, when MRI was paying \$34 per megawatt, what relationship did those costs have to employee costs. MR. RITTER said that MRI paid 13 to 15 million dollars per year on energy based upon a \$34 delivered price.

CHAIRMAN THOMAS said that the committee had not heard from some of the companies that they had asked for responses from. Those companies are Conoco, Cenex, Montana Tunnels, and Stillwater Mining.

SENATOR ELLIS said that Stillwater Mining never left the system. They are still a MPC customer. **Don Quander** said that is correct.

VI UPDATE ON DEFAULT ENERGY SUPPLY PORTFOLIO

? **Bill Pascoe, MPC**, said that developing a portfolio is a process that they have been actively engaged in for less than 6 months, since the length of time that MPC will have the default supply obligation was clarified through legislation. In some ways, putting together the portfolio is like trying to put together a jigsaw puzzle. It has a lot of different pieces involved. Over the last couple months they have gotten to the point where they can start to group the pieces together a little bit.

MPC has to find between 1150 and 1200 megawatts of supply on a peak day. That includes 1050 megawatts of load and some reserve. They see that coming from three primary areas. About a quarter will come from new generation sources developed in Montana. Half will come from existing generation sources in Montana. The last quarter will come from market purchases. New in-state generation would be roughly 300 to 350 megawatts. Some of that will hopefully come from projects such as the Rocky Mountain Power project. Some of it will come from wind power. The plan is to buy 150 megawatts of wind generation; the prices there look attractive. The rest of the new generation will be made up of two other projects where MPC has agreements with the developers on the essential commercial terms and are in the process of reducing those agreements to contracts. The 50% that will come from in-state generation is 500 to 600 megawatts. MPC expects 100 megawatts of that to come from existing qualifying facility contracts. These are the contracts that were signed under purpose statute some years ago. The rest of that they expect to come from PPL-Montana. MPC is in active discussions with PPL-M and they continue to be optimistic that those discussions will work out; it is a natural partnership. The last quarter of the portfolio is 250 to 350 megawatts of market purchases. This will be shorter term purchases that will allow for a little more diversity in the portfolio and give MPC the opportunity to have some of the portfolio cost go down with market prices.

In April, the estimated overall portfolio cost was 6 cents per kilowatt hour. At that rate it would be a 50% rate increase to the consumers. Now the projection is that the default supply portfolio is going to be at about 4.5 cents per kilowatt hour. That is based on reasonable assumptions. This will mean a rate increase of about 30% for the typical customer.

CHAIRMAN THOMAS asked if Mr. Pascoe thinks that the possibility exists for the average portfolio price for the default supply to be at 4.5 cents or less and that is less than was assumed in April. **Mr. Pascoe** said that is correct.

SENATOR STONINGTON asked at what point will MPC take all of this to the PSC.

Mr. Pascoe said that is an issue that MPC continues to work on everyday. They need to provide more information to the PSC. The PSC has also indicated that they would like to see more of the portfolio at a time rather than piece by piece. There is also an issue about when the PSC actually approves agreements. SENATOR STONINGTON asked if MPC would take the 3/4 of the contracts that are not market based at one time to the PSC. Also, does MPC take contracts to the PSC before or after they are signed? **Mr. Pascoe** said that this is a delicate issue. They would like to take as much as they can to the PSC at one time. SENATOR STONINGTON asked if MPC is able to take pieces of the portfolio to the commission and ask for review and approval pending final arrangements on other pieces. **Mr. Pascoe** said that they are able to file what they think is appropriate with the commission. What they are trying to do is get an understanding of what more information means and what is needed. The idea of bringing the entire portfolio is difficult because parts of it will be market purchases and those won't be ready to go until possibly next April or May.

CHAIRMAN THOMAS asked if MPC has gotten a better feel for what the PSC wants them to bring in and when and how. **Mr. Pascoe** said that they have. The PSC's order made it clear what was unacceptable and MPC is trying to respond to the requests for more time and more information.

CHAIRMAN THOMAS asked if just bringing in the new generation package is being considered. **Mr. Pascoe** said that MPC's preference would be to bring in as much of the portfolio at one time as is possible. CHAIRMAN THOMAS said that there is a lot of discussion as to whether or not Montana needs new generation in the state. Is the reason that we are looking at the new generation projects is because they are offering better prices that MPC can accomplish through their RFP or market prices? **Mr. Pascoe** said that the costs of those new resources are competitive with anything else MPC has found. CHAIRMAN THOMAS asked if it doesn't matter if Montana produces more electricity now than we use, MPC can contract with the new providers at better rates than otherwise. **Mr. Pascoe** said that was correct. CHAIRMAN THOMAS asked if there is any contemplation that there would be any profit involved in the electrical supply to the power company. **Mr. Pascoe** said that there is not. He thinks that legislation precludes making any profit on being the default supplier.

MR. DRISCOLL asked if MPC will have a contingency as part of the contracts that will be for approval from the PSC. **Mr. Pascoe** said that is correct. MR. DRISCOLL asked if there isn't really a contract until the PSC says that there is. **Mr. Pascoe** said that they would have a contract that was contingent upon sufficient assurance of cost recovery.

MR. RITTER asked if there was a contract signed in April with PPL or is that contingent on the PSC accepting the big package. **Mr. Pascoe** said that the agreement that was reached in late April has been characterized as an agreement in principle. By mid-June, when PPL had signed the contract, the power

prices had moved down to where \$40 per megawatt hour was not substantially better than market. At that point, MPC no longer felt that the other conditions in the contract were appropriate and MPC chose not to sign that contract. Since then prices have continued to drop. PPL and MPC are now working on a new deal that will work for both entities.

MR. RITTER asked if the results of waiting and analyzing were better because we are going to get a better power price now. **Mr. Pascoe** said that a good portion of the drop in the portfolio price is due to the non-PPL portions of the portfolio.

SENATOR RYAN asked, when MPC went out for bids in March they got a base load price, what was that price. **Mr. Pascoe** replied that, at the time, the original price that PPL bid into that RFP was about \$60 per megawatt hour and that was in the range of 10% better than any other offers MPC got at that time. SENATOR RYAN asked Mr. Pascoe to address the PSC's ability to assert their authority over the rates and set the cost-based power through the additional 2 years of the default supply, and also, if HB 474 is repealed and the default time period is not 5 years, what will that do to the contract negotiations. **Mr. Pascoe** said that the PSC's authority is certainly in MPC's mind. MPC is very aware that the PSC has asserted that they have the authority to hold the line based on what cost-based rates were before restructuring occurred in Montana. MPC is working under the belief that HB 474 won't be repealed. One of the things that makes it possible for MPC to do contracts of sufficient length to get new generation on line and achieve a reasonably priced supply portfolio is having the default supplier identified and having their obligation identified for that length of time.

SENATOR RYAN asked if qualifying facilities had about 150 megawatts that MPC was contracted with right now. **Mr. Pascoe** said that the total amount of contracted capacity from qualifying facilities is a little less than 100 megawatts. SENATOR RYAN asked for the average price of power from the qualifying facilities. **Mr. Pascoe** said that they have an obligation under SB 390 to do what they can to mitigate the costs of those contracts and they have worked hard to find others who would take the cost of those contracts off of their hands. They are going to continue to do that and continue to try to find ways to lower that cost. In the event that MPC is unable to lower those costs, they believe that those contracts should be put in the default supply mix at the market price for what they are worth today. The difference between the market price and the price of those contracts could be recovered as a transition cost.

REPRESENTATIVE FISHER asked what influences external power prices have, both now and in the future, on what we can expect in Montana. **Mr. Pascoe** said that is difficult to answer with any degree of certainty because different states are at different stages of restructuring.

SENATOR ELLIS asked what percentage of the Western Systems Coordinating Council (WSCC) market is California. **Mr. Pascoe** replied that it is between a third and a half. SENATOR ELLIS asked to what extent does the industry believe that the increase cost that they have had to pay resulted in conservation and then a lower price in power today. **Mr. Pascoe** said that certainly part of the reason power prices are lower this summer has to do with demand and response. There is less load and that

has come from closing industries, voluntary actions by customers and temperate weather. It is hard to measure how much conservation has come from voluntary actions.

REPRESENTATIVE OLSON asked, prior to restructuring, how much of MPC's energy was generated by company-owned assets. **Mr. Pascoe** said that the majority would have been. Roughly 1/6 of the power was purchased. REP. OLSON asked, if that purchasing had continued today, would there have been some sizable increase in rates even under a regulated market.

Mr. Pascoe said he would have to speculate on whether the power would have been bought short term or long term and how much excess there might have been during some hours. However, you can look at other utilities that are struggling with the situation. As an example, Seattle has increased their rates 37% since January to deal with increasing wholesale rates. REP. OLSON asked then, the 2.6 cent rate that MPC is paying today is not a realistic price and would not have been there had regulation continued.

Mr. Pascoe said that they did have a rate decrease in January last year because of proceeds from selling the generating plants. The other thing that has happened through the restructuring period is, because there has been a rate freeze in place, MPC's costs for qualifying facilities has increased every year, but the haven't been able to flow that through to the customers. If you were to adjust for those 2 things, the 2.6 cents becomes about 3 cents.

REPRESENTATIVE KEANE asked if it was correct that when we were under a regulated system, MPC never lost any money. **Mr. Pascoe** would agree that MPC regulated utility business made money. REP. KEANE said that at 2.6 cents, MPC was still making money. **Mr. Pascoe** said that is correct.

VII REPORT FROM MONTANA POWER AUTHORITY

? **Lt. Governor Karl Ohs, MPA Chair**, referred to a handout, see **Attachment 7**. The Montana Power Authority was established in HB 474. There are 7 members, appointed by the Governor. The MPA can purchase, construct and operate electrical generation facilities or transmission facilities in the state of Montana. MPA can enter into joint ventures to finance construction of new generation. MPA can sell electrical energy to any distribution facility provider. It can participate in regional transmission organizations in compliance with FERC orders. All of this can be financed by asking the Board of Examiners to sell up to 500 million dollars in revenue bonds. The proceeds of the power will be used to pay off the bonds. The idea behind this is to provide cost-based power to the Montana consumers. This is a way for the state to make sure that there is competition in the power market.

MPA has met twice since they were appointed. The first meeting was organizational. The second meeting they heard from Rocky Mountain Power. Also, at this time the referendum was underway, they received the advice from the bond counsel that there were some problems because of the referendum. It places a cloud over any bonds that MPA may issue. MPA made a motion to ask the attorney general to rule on the constitutionality issue included in the referendum. Attorney General McGrath said that the lawsuit had been dropped and was not an issue, but that it could be raised again.

It is unclear what MPA can move forward and do. As this situation moves forward and the market comes around, maybe there will be no need for MPA to do some of what was laid out in HB 474. They are continuing to communicate with all MPA members and are waiting to hear from the bond counsel on what MPA can and can't do.

CHAIRMAN THOMAS asked, given the current projects, would MPA have been involved in all of them. **Lt. Governor Ohs** replied that it was hard to say. They had been approached by one of the projects for financing assistance, but because of the way the law was structured and because of the referendum, the project went out and got independent financing. CHAIRMAN THOMAS asked if MPA could have been involved in the other 2 projects. **Lt. Governor Ohs** said that they could have been, but he didn't believe that any specific discussions had taken place. CHAIRMAN THOMAS asked, if they were able to utilize the state bonding, generating the interest cost at less money, the lesser cost would have been passed onto ratepayers. **Lt. Governor Ohs** said that was correct.

SENATOR RYAN had heard that the plants that were to be built in Great Falls planned to use MPA for some of their revenue; is there any truth to that? **Lt. Governor Ohs** said that there is not. He feels that is a misunderstanding about how bonds work.

SENATOR STONINGTON said that the statute says that the bonds are "revenue obligations in which the net revenue from the sale of the electrical energy produced ... is pledged for repayment of the principle and interest." Does that mean that's built into the rate structure and consumers will be paying more for the electricity in order to repay those bonds? **Lt. Governor Ohs** said that we would not be paying more. As you build these facilities, you build in the cost of generating electricity, the cost of construction, the cost of operation, that is what the bonds are meant for. As that electricity was sold to consumers, that money would be paid to MPA and would then be used to pay back the bonds.

SENATOR STONINGTON asked if it was correct that you would factor into the price of the generated electricity the cost of construction, operation, et cetera, including the interest on the bonds. **Lt. Governor Ohs** said that is correct. SENATOR STONINGTON said then, in fact, the ratepayer will be paying the interest on the bonds. **Lt. Governor Ohs** said that is correct. SENATOR ELLIS added that it is less because the interest is cheaper because the state endorses the project. SENATOR STONINGTON said that the fact remains that the ratepayer incorporates that cost. **Lt. Governor Ohs** said that is the case with any new generation. SENATOR STONINGTON then asked if what SENATOR ELLIS is saying is that because the interest rates are less on the bonds that it factors in at a lesser interest rate. SENATOR ELLIS said that was correct. **Lt. Governor Ohs** said that there are 3 things that enter into making the price cheaper to the consumer: the lower interest rate; the bonds are tax free and therefore can be sold at a better price than can be bought on the market; and the MPA doesn't have to make a profit. With all of those put together there is a significant savings to the consumer. SENATOR STONINGTON asked for his understanding of the cloud that is over the bonds. **Lt. Governor Ohs** said that because there is a question of whether this referendum may pass, it creates a question about the viability of the bonds and people aren't as willing to purchase those bonds.

CHAIRMAN THOMAS asked if it was correct that there are 2 issues, the one with the referendum and the one with the lawsuit about the constitutional question. **Lt. Governor Ohs** wanted to make it clear that the Attorney General has said that the suit has been lifted.

VIII DISCUSSION OF ATTENDING NCSL ENERGY INSTITUTE 2001

CHAIRMAN THOMAS asked that committee members get back to MR. MARTIN soon as to what topics they would like to delve into at the educational meeting. One at the top of the list is transmission.

REPRESENTATIVE GALLUS would like to know more about national legislation and what FERC is doing.

MR. DRISCOLL would like to see a report about the actual capacity for generation in the state and what is available.

SENATOR ELLIS wants to know more about what is happening in the WSCC, including new generation coming on line.

CHAIRMAN THOMAS referred to **Attachment 8**, which is the Dow-Jones Mid-Columbia Electricity Index from June through August.

SENATOR RYAN thinks that we need to keep in mind that when you produce energy it comes from three different sources: hydro, coal and gas. Gas prices have a strong effect on what electricity will be available and at what price. He would like to know about what is going on in the gas markets.

SENATOR STONINGTON thinks that one thing that will continue to instructive for the committee is how California is resolving its issues.

SENATOR McNUTT would like to look at the increase in wind energy, which seems to be a growing part of energy production. SENATOR STONINGTON agreed.

IX DESCRIPTION OF COMMITTEE WEB SITE

? MR. MARTIN showed some printouts of the pages of the web site and how to get to the web site, see **Attachment 9**. Included on the web page are several related links that may be helpful to Committee members. Information from the last interim is also available.

X ADJOURNMENT

There being no further business, the meeting was adjourned.

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