



Energy and Telecommunications Interim Committee

60th Montana Legislature

SENATE MEMBERS

GREG LIND--Vice Chair
JERRY BLACK
VERDELL JACKSON
DON RYAN

HOUSE MEMBERS

HARRY KLOCK--Chair
DUANE ANKNEY
ROBYN DRISCOLL
BRADY WISEMAN

COMMITTEE STAFF

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

MINUTES

January 24, 2008

Room 172, State Capitol
Helena, Montana

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

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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COMMITTEE MEMBERS PRESENT

REP. HARRY KLOCK, Chair
SEN. GREG LIND, Vice Chair

SEN. JERRY BLACK
SEN. VERDELL JACKSON

REP. DUANE ANKNEY
REP. ROBYN DRISCOLL
REP. BRADY WISEMAN

COMMITTEE MEMBERS ABSENT/EXCUSED

SEN. RYAN

STAFF PRESENT

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

AGENDA & VISITORS' LIST

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

COMMITTEE ACTION

The Energy and Telecommunications Interim Committee:

- approved the October 4 & 5, 2007, meeting minutes, as written;
- approved the November 9, 2007, meeting minutes, as written;
- approved reconsideration of and amending the September 5, 2007, minutes, at SEN. LIND's request;
- requested revisions to draft legislation addressing the USB sunset issue; and
- approved revisions to the electricity law handbook, including SEN. LIND's request to add the PSC timeline, as discussed by the ETIC.

CALL TO ORDER AND ROLL CALL

00:00:18 REP. KLOCK called the meeting to order at 8:04 a.m. The secretary noted the roll, SEN. RYAN was absent.

CARBON SEQUESTRATION DISCUSSION

00:01:14 **Sonja Nowakowski, Research Analyst, Legislative Environmental Policy Office, Legislative Services Division (LSD)**, discussed an overview of the Interstate Oil and Gas Compact Commission (IOGCC) model legislation regarding carbon sequestration using a PowerPoint presentation entitled, "*Interstate Oil and Gas Compact Commission Storage of Carbon Dioxide in Geological Formations: Analysis of Legal and Regulatory Guide for States and Provinces*" (EXHIBIT #1). Ms. Nowakowski also referred to an analysis of the model statutes, which was mailed out to the Committee prior to the meeting (EXHIBIT #2). Ms. Nowakowski said that Tom Richmond, Montana Board of Oil and Gas, and Bonnie Lovelace, Department of Environmental Quality would also address the Committee regarding the model statutes.

SECTION 1: JURISDICTION

Montana Board of Oil and Gas

00:09:01 In response to a question from Senator Lind about the history of the Commission, **Tom Richmond, Montana Board of Oil and Gas (BOG)**, said the Commission was created in the 1930s and that Montana has been a member of the IOGCC since the 1950s. When joining the Compact, the states agree to adopt statutes that address specific areas of conservation. Additionally, states could voluntarily adopt statutes to regulate market demand, which Montana did not do. Each state has authority to delegate an official representative, appointed by the Governor. The IOGCC has a number of standing committees that work on issues of concern and when the Compact meets, it deals with the resolutions. In the case of model statutes, a legal affairs committee deals with it. The model legislation is submitted to the full Compact for approval. If approved, it is presented to the Compact's states. The model legislation is not binding.

00:12:25 SEN. LIND asked what led to Mr. Bradshaw (Montana's delegate) to vote "yes" on the IOGCC legislation. Mr. Richmond said most of the debate took place in

committee, and there was not a lot of debate in the whole Commission. He said neither Mr. Bradshaw nor himself served on the committee.

00:13:33 Mr. Richmond continued his discussion, beginning with an explanation of the EPA Underground Injection Control (UIC) program.

00:19:03 **Bonnie Lovelace, Department of Environmental Quality (DEQ)**, discussed the role DEQ would play in carbon sequestration, saying that Montana's Water Quality Act will come into play if sequestration is not regulated by the BOG. She said that even if BOG does regulate sequestration, the industry has indicated that if a lot of sequestration occurs, the industry may not be able to use it all. At that point, the surplus product could be considered a waste and DEQ would enter the process to deal with the waste. She discussed additional DEQ concerns regarding carbon sequestration, such as underground reactions that may occur and long-term regulatory issues.

00:22:38 Ms. Nowakowski concluded discussion of Section 1 by saying that the Montana Climate Change Advisory Committee has recommended that fossil fuel-fired power plants should be required to file a plan with the DEQ that detail the facility's commitment to carbon capture and implement terrestrial and/or geological sequestration as part of operating plans and permits. If pursued, requirements would be established by rule, and formulated by the Montana Board of Environmental Review.

Committee Questions

00:24:38 REP. WISEMAN asked what other states have done regarding sequestration. Ms. Nowakowski said information from Wyoming and Washington was included in the member mailing packet. Wyoming will introduce legislation in February to grant oversight of all CO₂ to its version of DEQ, but the proposed legislation does include an exemption for enhanced oil recovery (EOR) because this technology is already being used in Wyoming. Washington has substantial rulemaking occurring.

SECTION 2: DEFINITIONS

00:27:02 Ms. Nowakowski said there are three important definitions to keep in mind through out the discussion: storage facility, storage operator, and geologic storage.

00:27:58 Ms. Lovelace said that if the model legislation moves forward, careful analysis and coordination will have to take place to make certain existing statute is not affected. She said there are significant gaps in the IOGCC model legislation that the State will have to fill in.

Committee Questions

00:29:27 There were no Committee questions.

SECTION 3: APPROVAL, RECORD OR ORDER, CERTIFICATE - GENERAL REQUIREMENTS & SECTION 4: STORAGE PROJECT PERMITTING -- PROTECTIONS

- 00:29:39 Ms. Nowakowski said sections three and four serve as the heart of the regulatory structure in the model statutes. She said the IOGCC would establish guidelines that authorize the state regulatory agency to enter into an order to approve a storage facility and to approve both horizontal and vertical boundaries. She discussed four findings that would be required by the regulating agency, and the process to be followed for approval.
- 00:32:33 Mr. Richmond said that ownership and siting issues in the model statute were based on written existing oil and gas law. He said part of the problem with regulating CO₂ under the UIC program is that it is well-specific, and does not focus on entire projects. The key to doing a successful project will be siting of that project, and consideration of what type of geography it is going to be injected into, and the physical geological constraints of that geology. Siting will be a key issue.
- Mr. Richmond discussed statutory requirements for the storage of natural gas as they would relate to carbon sequestration, BOG's role in regulation, storage facilities, storage rights and certificate of need for storage issues, eminent domain concerns, and compulsory unitization and cost distribution.
- 00:38:55 REP. DRISCOLL asked how one would decide if the state or federal process should be pursued for obtaining a certificate of need. Mr. Richmond said it would mainly depend on whether the project was an interstate or intrastate project.
- 00:41:20 SEN. LIND asked if the BOG has ever denied an application for a certificate of need to gain storage rights. Mr. Richmond said there have been four or five state-approved gas facilities in the state, but that they were voluntary and that eminent domain was not used.
- 00:42:40 SEN. LIND asked if BOG has taken action regarding gaining regulatory control over non enhanced oil recovery projects. Mr. Richmond said no, that the BOG is waiting to see what the State does.
- 00:43:34 Ms. Lovelace explained how water quality standards are applied and said the same concepts would be carried forward into dealing with carbon sequestration. She said there are three determining elements in applying standards: designated use of existing water, the standards themselves, and the requirement of nondegradation standards in cases involving high quality water.

Committee Questions on Sections 3 and 4

- 00:45:37 REP. WISEMAN asked if BOG has oversight of oil fields, once extraction is complete. Mr. Richmond said BOG has a bond process to cover the plugging, abandonment, and/or restoration of wells. Bonds are released only when an inspection has determined that restoration is acceptable. If lead is discovered later, BOG requests that the well be re-plugged. If the entity is out of business, the well is considered an orphan well and is listed as such with BOG, which is in the process of plugging wells on a priority basis.

00:49:36 SEN. LIND asked if there are statutes addressing "bad actors" in the metal mining industry and if there is anything in statute to prevent a limited liability company (LLC) from setting up shop, taking the benefits, and then walking away from the liability. Mr. Richmond said every well, including UIC wells, are required to have a bond to cover leaks and other restoration that may be needed. The BOG does keep a "black list" of those who come and don't follow requirements. Once a bond has been forfeited, that individual or entity will never get another bond. Additionally, a production management mitigation account is available in certain situations.

SECTION 5: EMINENT DOMAIN OR OTHER AUTHORITY

00:53:08 Ms. Nowakowski said the model statutes empower the storage operator to exercise the right of eminent domain. Discussion points also included underground storage, pipelines, and liability issues.

Committee Questions

00:55:13 SEN. LIND asked for clarification on who would be the decision making body to initiate eminent domain activities. Ms. Nowakowski said, under the model statutes, the storage operator has the power, but the operator has to have the approval of the regulatory agency.

SECTION 6: CARBON DIOXIDE STORAGE FACILITY TRUST FUND

00:55:34 Mr. Richmond discussed the production damage mitigation account (established 20 years ago), assessing of adequate fees, and time lines. Ms. Nowakowski said the amount of the fee would be determined by the state.

Committee Questions

There were no questions from Committee members.

SECTION 7: ADMINISTRATIVE EXPENSES

00:59:07 Mr. Richmond reviewed how administrative expenses would be paid, saying that the BOG currently is funded by licenses, a privilege tax (currently 30%), oil and gas fees, permitting fees for other activities, and water discharge fees.

01:04:01 Ms. Lovelace said the Water Quality Act has provisions for collecting fees but said she suspected changes may have to be made in order to accommodate sequestration. She said the authority is in place, but that the fee process may have to be adjusted.

Committee Questions

01:06:00 REP. WISEMAN asked if research has been done on the cost of monitoring a storage project for perpetuity. Mr. Richmond said he has not penciled it out and said the real key to a successful sequestration project is proper siting. If siting is done correctly, the possibility of long-term problems is greatly reduced.

01:08:28 SEN. LIND asked Mr. Richmond to provide a "best guess" on how many holes have been drilled in Montana. Mr. Richmond said about 40,000 holes have been drilled since 1915. SEN. LIND said it is critical to know of all wells that have been drilled and not capped appropriately. because if a stable formation is full of

holes, it could present problems. Mr. Richmond agreed, and said area review is part of the UIC permitting process for that very purpose. He repeated his statement that siting is the key to a successful project.

SECTION 8: LIABILITY RELEASE

01:10:17 Ms. Nowakowski read from the model law, and touched on the time line for liability, operator responsibilities, ownership transfer to the state, bond release, and long term monitoring efforts. Ms. Nowakowski said the intent of Section 8 is to allow for regulatory certainty.

Committee Questions

01:13:30 REP. KLOCK said, regarding the recently approved sequestration legislation in Wyoming, it appears to him that the injector is going to liable forever. Ms. Nowakowski said that is correct but that she has not had time to review the legislation. She said she would provide copies to the Committee very soon.

01:14:25 SEN. LIND said it appears to him that the amount of bonding for wells has not been sufficient to address orphan well costs. Mr. Richmond said most of the orphaned wells were drilled in the 1950s, before regulation. He said other instances may be due to reasons such as the death of the operator. He said that today, there are fewer than 200 orphan wells and that at one time there were over 600 orphan wells.

01:16:27 SEN. JACKSON recalled that oil and gas producers are required to pay a fee into the orphan well fund and that the fund is capped at \$100 million. He asked if the cap should be raised. Mr. Richmond said the fund referred to by SEN. JACKSON is the Resource Indemnity Trust, which is constitutionally required. He said it is not technically capped and explained that once the fund reaches \$100 million, the proceeds of the tax and interest can be spent. He said that the orphan well fund receives \$600,000 every biennium through two grants, taken from the proceeds of the revenues and interest of the Resource Indemnity Trust.

01:18:40 REP. DRISCOLL asked how much it costs to plug a well. Mr. Richmond said it depends on the depth and the condition of the well. He said it takes little effort and expense to plug a shallow well. He said the most expensive well plugging project totaled about \$250,000. He said most of the troublesome wells have been taken care of.

SECTION 9: COOPERATIVE AGREEMENTS AND SECTION 10: ENHANCED HYDROCARBON RECOVERY

01:20:39 Mr. Richmond said his primary interest is to protect EOR projects and that he wants to make sure it remains a viable and economic process. He said if CO₂ is classified as a waste product, it will affect how EOR projects operate.

01:25:54 Ms. Lovelace said difficult decisions must be made regarding how extensive a regulatory scheme the State wishes to pursue. She said that violations, response time, options for corrective actions, penalties, and choosing between an administrative or judicial process must all be considerations in deciding to what degree the State will be involved.

01:27:53 Mr. Richmond concluded his remarks by saying that even if the model legislation is not adopted, it is still valuable work because it is a starting point and focuses discussion on regulatory programs and what may or may not be needed within a regulatory framework.

Public Comment

01:30:46 **Scott Sweeney, Fergus Electric Cooperative, Lewistown**, said fees and liability must be kept at reasonable rates, if carbon sequestration is to be done in Montana.

ETIC POINTS TO CONSIDER

Ms. Nowakowski said the Committee can pick and choose which areas of the model legislation it wishes to pursue and noted that it is not obligated to take action at all. She said the Committee has the option to ask for alternative processes, additional research, or further study.

01:33:44 SEN. BLACK said the IOGCC legislation recommends that BOG would serve as the regulatory agency but that Wyoming elected to have its version of DEQ act as that state's jurisdictional agency. He asked what the advantage would be to have the BOG, rather than DEQ, as the regulatory agency. Mr. Richmond said Wyoming has primacy for all of the classes of wells and could jump into regulation of injection wells without needing additional authority. Montana does not have primacy over all of its wells.

01:36:06 Ms. Lovelace said an advantage of having DEQ as the regulatory agency is its extensive knowledge base regarding water and air quality standards, hazardous wastes, and the Montana Environmental Policy Act (MEPA).

01:37:17 SEN. BLACK asked if more or less regulation or legislation is needed to deal with siting requirements to ensure proper siting for facilities. Mr. Richmond said siting must be a part of whatever is done with CO₂. He said the difficulty would be in determining what that means practically, since this kind of project has never been done in Montana and that it may be necessary for several agencies to be involved in the siting process.

01:41:52 REP. ANKNEY asked if an estimate on the cost of permitting and fees for a sequestration project is available. Mr. Richmond said he does not have figures available on that and that until siting is decided, it would be difficult to make a determination. He said the biggest expense would be the MEPA analysis and the regulation of ground operations.

01:43:34 REP. ANKNEY said construction costs have not been addressed. He asked if there is an estimate available, for example, for the Highwood sequestering project. Mr. Richmond said he does not have any cost estimates but that a certain portion of a plant's output would have to be dedicated to collecting the CO₂, and could be as much as 30% to 40% of the plant's output.

01:45:20 SEN. LIND asked how to address the issue of pending federal rules. Mr. Richmond said ownership issues are very important, as is individual well

regulation. He said that Environment Protection Agency (EPA) draft rules will be available in the summer of 2008 and will be finalized in 2011. He said that federal regulations may change how Montana does business and that dual permitting may be an alternative. Ms. Lovelace said some dual permitting is already allowed in Montana, but is avoided whenever possible.

01:48:13 SEN. JACKSON said he has been researching injecting CO₂ and what the future impacts might be. He said he would like information on the following:

- what the longest injection project is;
- how it is cared for if breaks out, for example, if an earthquake occurs; and
- what data is available on how carbon sequestration may affect drinking water, or oil and gas reservoirs.

Mr. Richmond said operators have been injecting wells in Texas for approximately 30 years and that he is not aware of any major failures that have occurred there. He said CO₂ itself is fairly innocuous but that contaminants in the CO₂ waste stream may be hazardous. He said that leaks are usually short term situations and that if a project is properly sited, long term problems will not occur.

BREAK

COSTS/BENEFITS WIND POWER

Overview, Integration, and Transmission

02:13:49 **Elliot Mainzer, Bonneville Power Administration (BPA), co-project manager,** gave a PowerPoint presentation titled, "*Ten Lessons from the NorthWest Wind Integration Action Plan*" (EXHIBIT #3).

02:34:58 SEN. LIND asked if there is a pairing of demand side management features that work in concert with wind. Mr. Mainzer said that is the bleeding edge of the issue. Ultimately, as utilities need more and more flexibility, demand side will be an important side of the equation. Technical viability is one of the most important factors because the utility must have confidence that the power will be there when it is needed.

02:36:50 **Van Jamison, consultant, wind power developer, POWAIR, Inc.,** presented a PowerPoint slide show, "*Generation Interconnection*" (EXHIBIT #4).

02:52:33 **Larry Flowers, National Renewable Energy Laboratory,** presented a PowerPoint slide show, "*Wind Energy Update*" (EXHIBIT #5).

03:07:19 **Tom Kaiserski, Energy and Infrastructure Promotions Division, Department of Commerce,** presented a PowerPoint presentation, "*Montana Wind Power Variability Study*" (EXHIBIT #6).

03:20:51 In response to a question from SEN. JACKSON, Mr. Flowers said that much is being done to improve wind turbines, both for efficiency and safety.

03:22:55 REP. WISEMAN asked what research opportunities are open in this field currently. Mr. Flowers said that the NREL has implemented a wind application engineering program at six universities, including Montana State University

(MSU), and that plans are to add universities over the next few years to greatly expand the network. He suggested that REP. WISEMAN confer with MSU to see what legislative action would be useful.

- 03:24:58 **Mike Cashell, Chief Transmission Officer, NorthWestern Energy (NWE)**, presented a PowerPoint slide show detailing NWE's practical experiences regarding wind integration, the Judith Gap project, and regulating reserves (EXHIBIT #7).
- 03:46:10 **John Fitzpatrick, Director of Governmental Affairs, NWE**, discussed a press release of site selection and plans to move forward with a proposed electric generation site near Anaconda, Montana (EXHIBIT #8). He introduced Bill Rhodes as the project manager.
- 03:51:02 **John Alke, Montana-Dakota Utilities (MDU)**, updated the Committee on the Diamond Willow Wind Farm:
- the first turbine began operation in December of 2007, and by the end of January, all thirteen turbines will be operating;
 - Diamond Willow is a 19.5 megawatt facility and will expand incrementally to 30 megawatts;
 - Diamond Willow is the lowest cost wind option for MDU;
 - Diamond Willow is located on a transmission line in the middle of MDU service territory with significant customer load, so transmission and regulation costs will be minimal to MDU;
 - Diamond Willow will be 4.6 cents per kilowatt hour; and will be rate based and part of basic regulated cost of service;
 - as wind is developed, construction and production costs will increase rapidly; and
 - wind energy projects will not create a lot of jobs and will not dramatically impact economic development.
- 03:58:58 **Ed Weber, Transmission Planning Director, Western Area Power Administration (WAPA)**, said WAPA operates in two different interconnections and has over 1,400 miles of transmission in Montana. Mr. Weber updated the Committee on WAPA's involvement in wind development,:
- The Wind Hunter Project has been withdrawn for a number of reasons.
 - WAPA's west balancing area is quite small and if significant wind is added, more capacity would be necessary.
 - The east system currently has over 200 megawatts of wind and will have in excess of 400 megawatts by next year, from a variety of customers.
 - WAPA issued a request for proposal (RFP) in November, 2007, for 200 megawatts of firming power for its hydro-system and most of the responses were from wind power.
 - At this point in time, there is no wind connected to the west balancing area but two projects, one of which is significant, are in the queue.

Public Comment

No public comment was given.

LUNCH BREAK

05:26:50 The ETIC reconvened at 1:35 p.m.

PUBLIC POWER

- 05:27:08 **Ken Sugden, General Manager, Flathead Electric Cooperative, Kalispell,** said the Cooperative serves the Flathead area and Libby and about 300 customers in the Cooke City area. It has approximately 62,000 accounts, 3,850 miles of line, and is the largest cooperative in Montana. The Cooperative is growing by about 1,800 accounts per year, which creates a load growth of about 4%-5%. It has purchased all of its power from Bonneville Power Administration (BPA) since October, 2006, for 3 cents per kilowatt hour, and customer cost is about 6.5 cents. The power is all hydro power, so is a renewable resource. The contract with BPA will expire in 2011. At that point, BPA will allocate only up to a certain level, and publically owned utilities in the northwest will have to either provide their own load growth power or purchase it for a more expensive rate. Mr. Sugden discussed several projects underway, including recently awarded Conservation and Renewable Energy Bonds (CREBS) for a landfill gas project in Flathead County, two biomass renewable resource projects with wood products companies who want to replace their steam boilers with co-generation power, and collaborative efforts with other cooperatives to figure out how to get wind into the system.
- 05:36:29 Mr. Sugden discussed public utility districts (PUDs) in Washington, saying that there are 28 operating that offer electricity only, but that a few also offer water and sewer. He discussed the board structure of PUDs and his experience as serving as the manager of the Franklin PUD in Franklin County. He also discussed People's Utility Districts in Oregon.
- 05:42:21 REP. WISEMAN asked if a PUD is a governmental jurisdiction. Mr. Sugden said yes, that it has governmental powers, such as the authority to condemn property. REP. WISEMAN asked if it is typical for a PUD to have generating assets. Mr. Sugden said it is not typical, but that a few do. He discussed several examples.
- 05:45:42 SEN. JACKSON asked when the Cooperative's current contracts with BPA began. Mr. Sugden said they were signed in 2001 and that work is underway to have new 20-year contracts signed by the end of 2008. SEN. JACKSON asked if each contract is a different price. Mr. Sugden said prices are set by a rate case done every two years and that BPS has done a good job of keeping prices down.
- 05:47:27 REP. ANKNEY said he has read a lot about breaching the dams on the lower Snake and Columbia Rivers. He asked if the Flathead Cooperative has a contingency plan, if that happens. Mr. Sugden said most of the power comes from four dams on the lower Snake River, and that if that power was lost, it would have to come from another base load generation source. He said it was very unlikely that the dams would be breached.
- 05:49:01 SEN. BLACK asked if there is an estimate of what the new contract price will be. Mr. Sugden said the assumption is that it will be approximately 6.5 cents. He said the Cooperative is working to bring power in as economically as possible,

including buying or building resources at cost, but that load growth costs will double.

- 05:50:24 SEN. LIND asked for information on demand side management activities. Mr. Sugden said the Cooperation has several energy efficiency and conservation programs, such as a light bulb subsidy, conservation kits, working with commercial businesses to change lighting, and training with aggressive utilities on the west coast to bring back effective programs that will work in Flathead's service area.
- 05:52:11 **Scott Sweeney, Fergus Electric, Lewistown**, related his educational background and professional work experience. He said eastern Montana cooperatives are quite different than western cooperatives because of consumer density, for example, but that rising power supply costs, are issues for all cooperatives. He said Fergus Electric purchases its power from WAPA and BPA, but that BPA contracts begin to expire July 1, 2008, and will be completely gone by June 1, 2011. The loss of these contracts has been the main impetus for Southern Montana Electric Cooperative (SME) to build the Highwood generation station.
- 05:55:45 Mr. Sweeney said aging power plants, aging infrastructure, increases in construction costs, and sharp increases in the cost of poles and transformers are faced by all cooperatives, but that cooperatives operating in sparsely populated areas, such as in eastern and central Montana, have an even more difficult time dealing with these kinds of problems. Cooperatives in the eastern part of Montana are spread out over many counties, with thousands of miles of line to maintain, and fewer customers. The Fergus Electric Board of Trustees, and its employees, work hard to keep everything up and running and rate increases are carefully considered. Mr. Sweeney said the energy expansion in eastern Montana has been a bright spot for the Cooperative, and that the development of coal bed methane would further increase economic benefit.
- 06:04:26 **Gary Weins, Montana Electric Cooperatives Association**, provided a broad overview of Montana cooperatives and his discussion points included cooperative profiles, governance structures, current and future power supply issues, and transmission challenges (EXHIBIT #9).
- 06:13:28 **Jim Morton, Executive Director, Human Resource Council**, said the Council serves Missoula, Mineral, and Ravalli Counties; and works with consumers to obtain low cost power. He said there has been a great deal of interest in obtaining public utility districts for many years but that past efforts to establish them have failed. Other efforts included an attempt to create a citizen utility board to allow consumers a greater voice. Mr. Morton said the Committee has heard discussions from cities and towns for development of public power in certain jurisdictions and from small cooperatives wishing to build generation. Stable and affordable prices are critical, but consumers must convince public officials of the idea of public benefit. The issue of who would govern a public utility would have to be worked out, and it would best be approached by viewing it as a multi-jurisdictional system.

Public Comment

No public comment was given.

Committee Discussion

- 06:21:30 SEN. LIND asked for a summary of the state of public power programs in the nation. Ms. Nowakowski said the meeting materials included information provided by the American Public Power Association regarding recent activities in public power (EXHIBIT #10).
- 06:23:21 REP. WISEMAN asked for information about municipal owned utilities, such as what they are, who they are, and how they operate. Ms. Nowakowski said she could prepare that information and asked if REP. WISEMAN would like a speaker to address the Committee. He said he would.
- 06:24:40 SEN. JACKSON said he worked to create a 20-year energy plan for a private cooperative and that the plan was able to hold down costs for the entire 20 years. He said it would be wise to create similar plans on a state and nationwide level. Montana has an energy policy but lacks a clear plan of action. With the projected dramatic increase in electric prices, the cost of electricity could triple by 2020, if the State continues doing business the way it does now. SEN. JACKSON said energy production should be addressed first. He read from a copy of Montana's energy policy and said he is most concerned about costs and that he would like to promote energy policies that would help keep the cost of energy down.
- 06:27:57 REP. WISEMAN supported SEN. JACKSON's suggestion for an energy plan, saying that the current de facto state energy policy is to abandon its citizens to investment bank financed national grid inter-tied merchant power companies who will charge whatever they can get. No one has any moral obligation to provide Montana citizens with affordable power, and if the opportunity arises for a major power supplier to export power, they will take it. Montana needs an energy policy that recognizes that the State has abundant resources and that those resources ought to serve Montana's 900,000 citizens first. It is not just about developing new power supplies, but also learning to use less energy. He said it is also important to look at where the equity is in cash flow, who owns the business, and where the money goes. REP. WISEMAN said the reason he requested that the issue be an agenda item is to explore the notion of public power and, because the primary purpose of public power is to benefit citizens, he would like Montana citizens to have more control in the future.
- 06:31:07 SEN. LIND asked SEN. JACKSON to explain how he would move forward in creating an energy plan. SEN. JACKSON said a plan could be based on the one he created for the cooperative, in which the first emphasis was on the efficient use of electricity. He said other issues, such as building codes in new construction, biomass projects, energy audits and support of alternative energy sources such as windmills and solar panels, could also be included in an energy plan.
- 06:35:44 SEN. LIND asked how the Committee could craft a plan to present to the Legislature, given the differing opinions between members regarding global

warming. SEN. JACKSON said global warming would not have to be a consideration and that the goal would be increased energy efficiency and to use clean resources. He said at this point, global warming remains a theory and that he has not seen hard evidence to prove that humans have caused global warming.

- 06:38:35 **Todd Everts, Staff Attorney, LEPO**, said state energy policy statutory provisions provide ETIC with statutory authority to set up a process for energy development. He said he would provide copies of the statute.
- 06:39:39 REP. ANKNEY agreed with SEN. JACKSON's thoughts on global warming but agreed that the perception is that humans are responsible, which will make it difficult to build new generation facilities. He asked if the Committee has time to work on an energy policy or plan. Ms. Nowakowski said the work plan did not include energy policy revision, but that the Committee does not have to adhere strictly to the work plan.
- 06:41:05 SEN. LIND suggested forming a working group that would concentrate on areas of common ground to formulate ideas for creation of an energy plan for presentation to the full Committee. After input from staff regarding budgetary and staffing issues and additional committee discussion, it was decided that SEN. JACKSON and REP. WISEMAN would work on an ad hoc basis to list ideas, as opposed to a formal subcommittee.
- 06:45:45 SEN. BLACK said that as more energy is produced and exported, there is more demand from out of state, which raises the question of what that does to Montana rates. He suggested that a Montana preference program or incentives for Montana producers be created that would encourage Montana power to be purchased at reasonable rates. He asked for that issue to be included in discussion. SEN. JACKSON agreed.

UNIVERSAL SYSTEMS BENEFITS - USB

- 06:48:11 Ms. Nowakowski said public comment feedback was received at the November 8, 2007, meeting and that no additional feedback has been received since then. She said REP. KLOCK requested information on how USB funds are used for renewable energy projects and that NWE provided that information, which was included in the mailing prior to the meeting. Also, the Committee requested draft legislation to eliminate the sunset provision for review of the USB program. Ms. Nowakowski said a copy of the draft legislation was included in the mailing as well (EXHIBIT #11). REP. KLOCK said he brought this forth because he has heard that USB money is being misused. He said it is a good idea for ETIC to review this issue every two years, and that he does not think the sunset provision should go away. REP. WISEMAN said draft legislation could remove the sunset, but statutorily require the Committee to review policy. SEN. LIND agreed, saying that such legislation would provide predictability and would allow entities to plan for the long-term. SEN. BLACK also agreed. Ms. Nowakowski said the language in current statute could be tightened up to reflect the wishes of committee.

06:52:51 REP. WISEMAN **moved** to change the language in the draft legislation to reflect that the USB sunset provision will go away, but be replaced with a requirement for biennial review of the USB program by the ETIC. The **motion passed** on a unanimous voice vote.

ENERGY EFFICIENCY AND CONSERVATION

06:53:59 **Ben Brouwer, Alternative Energy Resources Organization (AERO), Helena**, asked that energy conservation and energy efficiency be a major focus of an energy plan or energy policy. Economics and science both indicate that a new way needs to be found to use our resources. Mr. Brouwer discussed a recent AERO report about the direction of Montana's energy economy and creating a more sustainable system (EXHIBIT #12).

07:13:02 SEN. JACKSON asked how this would be paid for. Mr. Brouwer said the USB program works very well in funding these types of programs. It is something that needs to be invested in. SEN. JACKSON asked Mr. Brouwer to explain how to track the amount of energy that would be saved and how it could be proved that the conservation measures were effective. Mr. Brouwer said a good accounting system would be needed and suggested that working with an economic consulting firm would be a good start.

RULE REVIEW

07:16:52 Mr. Everts discussed proposed rules regarding implementation of HB 25 (EXHIBIT #13). He said he plans to attend the hearing and will review the rules in detail. A summary of the hearing will be mailed out to Committee members. If members have concerns, they are to get in touch with Mr. Everts. He briefly discussed the three rules (see EXHIBIT #13).

ADMINISTRATIVE MATTERS

07:20:51 **Greg Jergeson, Commission Chairman, Montana Public Service Commission (PSC)**, provided an update of PSC rulings and issues:

- Regarding rulemaking, the PSC is determined to meet the deadline in HB 25. Comments have been received and ETIC input or questions are welcome.
- The Commission recently issued an order to Qwest Corporation to submit filing information justifying expenditures and costs, so that the Commission can make a determination on permissible rates of return. Commissioner Jergeson reviewed the history of the issue and said the recent Supreme Court ruling authorizes the PSC to request information from utilities for this purpose.
- Montana Dakota Utilities (MDU) and NWE have both requested rate increases and hearings will be held for the public to offer comments.

Commissioner Jergeson noted that the law of supply and demand is at play and that one cannot be considered without the other. He said the Commission has to work within that context and the full economic equation has to be considered.

More emphasis should be placed on smart grid, demand side management, and energy conservation and efficiency.

- 07:47:07 SEN. LIND asked if the Commission will request legislation dealing with decoupling. Commissioner Jergeson said he did not think a statutory change would be requested.
- 07:48:52 SEN. BLACK asked, regarding the Qwest rate increase, what the PSC considers a fair rate of return. Commissioner Jergeson said the rate approved in 1992 was about 10%. The year end reports filed by Qwest indicate its year end return is about double that.
- 07:53:16 **Tom Kaiserski, Program Manager, Energy and Infrastructure Policy Development Division (EIPD), Department of Commerce**, gave a PowerPoint presentation updating the Committee on the Division's activities (EXHIBIT #14).
- 08:10:41 SEN. LIND asked that the EIPD report to ETIC on a regular basis because he would like to be kept abreast of what the taxpayers are getting for their tax dollars. Mr. Kaiserski agreed to SEN. LIND's request. SEN. LIND said he is particularly interested in employment numbers, tax base information, and amount of state dollars put toward projects.
- 08:13:20 SEN. LIND asked who will be tracking the Montana Alberta Tie Line (MATL) to see if rates are raised for Montana customers as a result of that project. Mr. Kaiserski said the EIPD will track that to the best of its ability and that the Department of Revenue may be able to assist. He said he would have to research the best way to track the information.
- 08:15:18 SEN. JACKSON asked if biomass projects could access Forest Service slash piles. He referenced Glacier High School, which installed a biomass furnace and purchased a large amount of biofuel created by ground up slash piles. He asked if this type of activity could be expanded in the state. Mr. Kaiserski said the EIPD is very interested in biomass projects but is not involved in a particular project at this time. **Marty Tuttle, EIPD**, said Plum Creek has a burgeoning project using slash to create ethanol.
- 08:20:59 Commissioner Jergeson handed out invitations to the Western States Conference of Public Service Commissioners in June.

PUBLIC COMMENT

- 08:21:32 **Ben Brower, Aero**, asked Mr. Kaiserski if the Industry Day at Malmstrom Air Force Base is closed to the public. Mr. Kaiserski said the Community Day is open to the public and that the Industry Day is by invitation only. He said the same information will be presented on both days.
- 08:23:24 **Clayton Fiscus**, said, as a consumer, that he is concerned about the cost of green energy and asked if wind generation costs more for energy production.

- 08:24:35 **Bob Decker, Policy Institute**, said he sent a proposal to the Committee recently for creation of a Montana office of energy conservation. He said an excellent reference on the subject is the Governor's Committee on Climate Change and said that the economic numbers in the report are enormous. He estimated if Montana achieved the recommendations in the report, each Montana household would save \$2,000 over the next twelve years. He said a state office of energy conservation would help accomplish this. He encouraged the ETIC to continue its work to improve conservation efforts.
- 08:27:28 REP. DRISCOLL thanked Mr. Decker for the report and asked if he was aware of the Billings School District 2 contracting with Energy Education, Inc. on a biomass project. She provided information to Mr. Decker on the School District 2 project.

ADMINISTRATIVE MATTERS

- 08:28:27 The meeting minutes from the October 4 & 5, 2007, meeting were approved as written on unanimous voice vote. The meeting minutes from the November 8, 2007, meeting were approved on a unanimous voice vote.
- 08:29:11 Ms. Nowakowski said that SEN. LIND requested reconsideration of the September 5, 2007, meeting minutes, so that he is listed as being present at the meeting. SEN. LIND said the meeting was held during the September special session and that he came to the meeting room twice to check in. REP. WISEMAN **moved** to reconsider the minutes. The **motion passed** on a unanimous voice vote. REP. WISEMAN **moved** to amend the minutes to note SEN. LIND's presence. The **motion passed** on a unanimous voice vote.
- 08:31:09 Ms. Nowakowski said she has completed updating the electricity law handbook. She discussed the process and some of the changes that were made. She asked if the Committee had further additional revisions and, if not, said the Committee needs to approve the changes.
- 08:32:49 SEN. LIND asked to include the PSC time line (EXHIBIT #15) in the handbook and to have Ms. Nowakowski work with Will Rosquist, PSC Staff Attorney, to include appropriate information from the time line. SEN. LIND **moved** to accept the revised handbook with the additional information and send it forward for publication. The **motion passed** on a unanimous voice vote.
- 08:35:01 Ms. Nowakowski provided a budget update and said the Committee budget balance is \$18,000, not including this meeting. She reviewed the remaining meeting date schedule.
- 08:37:07 REP. WISEMAN thanked the IOGCC for its work done to create model legislation but said that there are opportunities for sequestration that don't involve EOR. Additionally, issues such as ownership, liability, and eminent domain are still of concern. He asked for a review of other statutes from other states to see how they have solved these problems. REP. KLOCK said copies of Wyoming and New Mexico legislation were provided to members. REP. WISEMAN asked Ms. Nowakowski to summarize each state's statutes regarding ownership, liability,

and eminent domain. REP. KLOCK said he would like to have a clearer understanding of ownership and asked where does surface owner stop.

08:41:38 SEN. LIND said the split estate issue is huge and that if the State doesn't address it, the courts will. Mr. Everts said he provided a legal opinion on split estates at the November meeting and that the preponderance of legal jurisdiction comes down on the side of the surface owner. He said he would provide further research if needed.

08:51:30 REP. WISEMAN asked to have a report on the Governor's Climate Change report. at the next meeting. SEN. LIND requested that NWE report on its plans regarding the 120 megawatts of power coming off contract in 2010. Ms. Nowakowski said she would send his request on to NWE.

08:53:43 Ms. Nowakowski asked what the Committee's wishes were regarding the wind generation issue. SEN. JACKSON said he would like more specific information on firming costs. Ms. Nowakowski said when the plan is complete, it will have more specific Montana numbers for integration costs and she would try to have copies available at the May meeting. She said there really isn't a firm number for ancillary services because of all the factors involved.

ADJOURN

08:56:50 With no further business before the Committee, REP. KLOCK adjourned the meeting at 5:05 p.m. The next Energy and Telecommunications Interim Committee meeting will be held on May 1 & 2, 2008, in Helena.

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