MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ALAN OLSON**, on January 10, 2005 at 3:00 P.M., in Room 455 Capitol.

ROLL CALL

Members Present:
Rep. Alan Olson, Chairman (R)
Rep. Dennis Himmelberger, Vice Chairman (R)
Rep. Robyn Driscoll (D)
Rep. George G. Groesbeck (D)
Rep. Robin Hamilton (D)
Rep. Hal Jacobson (D)
Rep. Harry Klock (R)
Rep. Mark E. Noennig (R)
Rep. Diane Rice (R)
Rep. Wayne Stahl (R)
Rep. Karl Waitschies (R)
Rep. Brady Wiseman (D)

Members Excused: Rep. Dave Gallik, Vice Chairman (D)
Rep. John Parker (D)

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Cynthia Peterson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed. Tape counter stamps appear after testimony.

Committee Business Summary:
Hearing & Date Posted: HB 106, 1/5/2005; HB 43, 1/5/2005; HB 199, 1/6/2005
Executive Action: None.

HEARING ON HB 106

Opening Statement by Sponsor: **REP. WAYNE STAHL (R), HD 35, Saco,** opened the hearing on HB 106, PSC approval of plant acquisition or transfer. **REP. STAHL** explained HB 106 would limit asset transfers to $500,000 or 15 percent of the public utility, whichever is greater.

Proponents' Testimony:

Greg Jergeson, Chairman, Montana Public Service Commission (PSC), submitted written testimony in favor of HB 106. **Commissioner Jergeson** also submitted proposed amendments to HB 106.
EXHIBIT(feh06a010.PDF)
EXHIBIT(feh06a020.PDF)
{Tape: 1; Side: A; Approx. Time Counter: 4.8 - 11.9}

John Fitzpatrick, Northwestern Energy, testified that discussion of the PSC's authority over asset transfers has been a regular part of conversations between utilities and the PSC. **Mr. Fitzpatrick** testified that previous proposed legislation failed because it attempted to grant very broad authority to the PSC. **Mr. Fitzpatrick** suggested HB 106 is a good compromise piece of legislation because it reserves the right of the PSC to take a look at transactions that could likely affect the ratepayers of Montana. At the same time, the legislation will not allow the PSC to micro-manage a utility. **Mr. Fitzpatrick** cautioned that $500,000 is not much money when you are talking about public utilities.

Tom Ebzery, representing Qwest, believed existing statutes have served the industry well. **Mr. Ebzery** stated Qwest has a number of long-term capital leases they use to obtain services from other telephone companies and occasionally sells their portion as business needs change or they build their own facilities, and those leases are often more than $500,000. **Mr. Ebzery** read excerpts from the September meeting of the Energy and Telecommunications Interim Committee (ETIC), which indicated passage of the language "$500,000 or 15 percent of the public utility whichever is greater." **Mr. Ebzery** stated he would resist the PSC's proposed amendments.

Ron Ostberg, Montana Independent Telecommunications Systems (MITS), submitted a proposed amendment to HB 106. **Mr. Ostberg** suggested the intent of the legislation was not directed toward smaller utilities. **Mr. Ostberg** supported HB 106 with his proposed amendment.

EXHIBIT(feh06a030.PDF)
{Tape: 1; Side: A; Approx. Time Counter: 21.3 - 23.8}

John Alke, Montana Dakota Utilities (MDU), testified that he supports HB 106 without any amendments. **Mr. Alke** explained that MDU is not a holding company with utility subsidiaries; rather, the utility is the parent company. **Mr. Alke** further stated less than 12 percent of MDU Resources Group, Inc., is a regulated public utility and the PSC has jurisdiction over only three percent of the company. **Mr. Alke** stated he would oppose the bill if it is amended and urged the Federal Relations, Energy, and Telecommunications Committee(FRET) to reject any amendments. **Mr. Alke** directed the committee to Subsection (2) and noted it would be possible to construe that section as saying the PSC could claim the power to decide whether MDU could merge with another company. **Mr. Alke** believed the proposed amendments were not in the spirit of compromise.

Phil Maxwell, Three Rivers Communications, testified that he supports the bill as written.

Geoff Feiss, Montana Telecom Association, agreed with **Mr. Fitzpatrick** that $500,000 does not buy much in utility or telecom businesses. **Mr. Feiss** supported the bill as drafted and opposed the PSC amendments. **Mr. Feiss** stated he would support the amendment offered by MITS.

Ed Eaton, AARP, submitted written testimony in support of HB 106. **EXHIBIT(feh06a040.PDF)**

Bob Nelson, Montana Consumer Counsel, appeared in support of HB 106 with the amendment proposed by the PSC. **Mr. Nelson** suggested the PSC has always had oversight over transactions that affect rates and services as long as the affect is established through a fact-based proceeding that is on the record. **Mr. Nelson** stated that process is time consuming, so HB 106 is an attempt to streamline the process. In addition, HB 106 places parameters on the PSC's existing authority. **Mr. Nelson** pointed out that transactions occurring within the normal course of business would be exempt from the PSC's authority to review. **Mr. Nelson** suggested the language in HB 106 should be changed to "whichever is less." **Mr. Nelson** stated a $500,000 transaction could have a huge impact on consumers especially in relation to smaller utilities. **Mr. Nelson** supported passage of HB 106 with the amendments that establish more modest limitations on the PSC's authority.
{Tape: 1; Side: B; Approx. Time Counter: 2.4 - 7}

David Hoffman, PPL Montana, also supported HB 106 with the proposed amendment. **Mr. Hoffman** suggested the legislation would clarify the definition of a public utility and stated the process would not apply to an exempt wholesale generator that is regulated by the Federal Energy Regulatory Commission (FERC).

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

REP. HAL JACOBSON asked for AARP's position on the amendments proposed by the PSC and MITS. **Mr. Eaton** stated AARP supports the bill as drafted by the ETIC, but could not speak to the amendments.
{Tape: 1; Side: B; Approx. Time Counter: 8.4 - 10.1}

REP. DIANA RICE asked if under NWE's bankruptcy, subsidiaries were still being sold off. **Mr. Fitzpatrick** replied all non-utility assets were eliminated during NWE's bankruptcy.

REP. BRADY WISEMAN asked **Commissioner Jergeson** for examples of transactions that the PSC would not be able to oversee if the proposed legislation were passed. **Commissioner Jergeson** identified a company selling half of its natural gas utility in a particular area as an example. **Commissioner Jergeson** replied such a transaction could have a huge affect on the ratebase of the remaining customers. **Commissioner Jergeson** suggested such a transaction should not be exempt from PSC review. **Commissioner Jergeson** stated the PSC is not interested in reviewing every transaction of a public utility, but would like to review those transactions that could affect the fiscal health of the utility and could ultimately affect ratepayers. **Commissioner Jergeson** agreed transactions that occur during the normal course of business should be exempt from PSC review.

REP. MARK NOENNIG asked **Mr. Alke** why he is resistant to the amendment proposed by MITS. **Mr. Alke** explained that his greatest difficulties occur from being in the shadow of The Montana Power Company (MPC). **Mr. Alke** noted every utility is different and, therefore, cookie cutter bills affect utilities differently. **Mr. Alke** stated that the parties had worked hard to develop language that would assist in addressing the problems experienced with NWE, but that the amendments being proposed would have an adverse affect on MDU.

Mr. Fitzpatrick commented he did not fully understand the PSC's reason for the LLC reference and offered to have his staff attorney research the amendment.

REP. JACOBSON asked **Mr. Nelson** to elaborate on his statement that small transactions would not be micro-managed by the PSC. **Mr. Nelson** explained the PSC has not regulated day-to-day transactions in the past, even though the PSC believes that it has the authority to do so. **Mr. Nelson** suggested the PSC would attempt to establish rules in determining whether a transaction would be considered in the ordinary course of business. **Mr. Nelson** admitted the PSC's established authority to review all transactions has been subject to debate, and that it would be advantageous to have the PSC's authority spelled out in law. ***{Tape: 1; Side: B; Approx. Time Counter: 22.5 - 24.9}***

CHAIRMAN OLSON asked if the PSC reviewed the sale of MPC. **Mr. Nelson** replied the PSC did review and approve the sale of MPC to NWE.

Closing by Sponsor:

REP. STAHL requested the FRET pass HB 106 in its entirety in the form it was presented to the committee. **REP. STAHL** submitted amendments HB010601.ate and HB010602.ate to the FRET for consideration.
EXHIBIT(feh06a050.PDF)
EXHIBIT(feh06a060.PDF)

{Tape: 2; Side: A}

HEARING ON HB 43

Opening Statement by Sponsor: **REP. JOHN MUSGROVE (D), HD 34, Havre**, opened the hearing on HB 43, which would require gas producers to itemize charges. **REP. MUSGROVE** stated the purpose of HB 43 is to provide more transparency into the process of paying royalty and working interest owners. **REP. MUSGROVE** submitted amendment HB004301.ate and reviewed the amendments with the FRET.
EXHIBIT(feh06a070.PDF)

Proponents' Testimony:

James Warburton, a rancher from **Chinook**, submitted his written testimony in support of HB 43, as well as written testimony from

Kristi Warburton, David Warburton, Lora Warburton, and Jeff Warburton.
EXHIBIT(feh06a080.PDF)

Jim Vosen, Havre, submitted written testimony in favor of HB 43.
EXHIBIT(feh06a090.PDF)

Ralph Montgomery, Blaine County, submitted written testimony in favor of HB 43.
EXHIBIT(feh06a100.PDF0)

Arnold Hokanson, Big Sandy, submitted written testimony in favor of HB 43.
EXHIBIT(feh06a110.PDF1)
{Tape: 2; Side: A; Approx. Time Counter: 12.2 - 14.7}

Dale Williams, Chinook, submitted written testimony in favor of HB 43.
EXHIBIT(feh06a120.PDF2)

Kelly Flaherty Seville, a rancher from **Canyon Creek** and a **member** of the **Northern Plains Resource Group,** believed as a landowner she has a right to know what the deductions from her payments are for.

Herbert Vasseur, Chinook, submitted written testimony in favor of HB 43.
EXHIBIT(feh06a130.PDF3)

Doug Kaercher, Hill County Commissioner, testified he could see both sides of the issue, and stated he supports passage of HB 43.
{Tape: 2; Side: A; Approx. Time Counter: 19.4 - 20}

Rep. Bob Bergren, HD 33, Havre, agreed with previous testimony and asked to be placed on the record as supporting HB 43.

Opponents' Testimony:

Gail Abercrombie, Executive Director of the Montana Petroleum Association (MPA), submitted written testimony from John B. Kiser and Colby Branch, as well as a copy of 82-10-103, MCA. **Ms. Abercrombie** noted 82-10-103 is not printed in the bill, but she wanted to bring this section to the attention of the committee members. **Ms. Abercrombie** suggested that a contractual relationship exists between the oil and gas producer and the general owner. **Ms. Abercrombie** believed HB 43 would require a spreadsheet to be sent out with each check and could result in

liability for the operator if the reporting was incorrect. **Ms. Abercrombie** also had questions about the "per violation" language and wondered if it would apply to each check erroneously sent out. **Ms. Abercrombie** stated the role of the MPA is to keep the business climate in Montana good and fair for oil and gas production, so companies will want to do business in Montana. **Ms. Abercrombie** did not believe HB 43 would be consistent with MPA's role in Montana.

Bruce Williams, Fidelity Exploration and Production Company, testified Fidelity issues approximately 1,200 checks per month to royalty owners, and the only deductions from those checks are for taxes, and the deductions are indicated on the check as required by law. **Mr. Williams** stated the ability to describe how the assessment is calculated is problematic since it is not easy to automate that information. **Mr. Williams** questioned the value of having government define what should be on checks between private parties.
EXHIBIT(feh06a140.PDF4)
EXHIBIT(feh06a150.PDF5)

Todd Ennenga, Devon Energy, submitted a list of frequently asked questions and a detailed statement of oil and gas payments. **Mr. Ennenga** identified alternative methods where royalty owners could obtain the information, including the Devon's royalty hotline and Devon's website.
EXHIBIT(feh06a160.PDF6)

Cole Chandler, Klabzuba Oil and Gas, Inc., submitted written testimony in opposition to HB 43.
EXHIBIT(feh06a170.PDF7)
{Tape: 2; Side: B}

Jerome Anderson, Encore Acquisition Company, submitted written testimony in opposition to HB 43.
EXHIBIT(feh06a180.PDF8)

Stan Kaleczyc, Burlington Resources Oil and Gas, testified that Burlington Resources does not understand what the bill requires and, therefore, does not know how to comply. **Mr. Kaleczyc** testified that Burlington Resources does not believe the bill or the amendment is necessary.

Patrick Montalban, Northern Montana Oil and Gas Association, submitted a gas field map and copy of the monthly Canadian and U.S. natural gas price summary. **Mr. Montalban** suggested the problem lies not with the producers, but with the gatherers. **Mr.**

Montalban stated the HB 43 is asking the producer to furnish information they do not even receive from the gatherers. **Mr. Montalban** stated most of the contracts are well-head contracts and suggested the legislation was brought because most of the royalty owners do not feel the well-head price is fair. **Mr. Montalban** testified the producers have not control over the well-head price and that most royalty owners do not understand the price difference. **Mr. Montalban** explained the reasons for the price difference between the well-head price and the production price. **Mr. Montalban** identified issues of distrust between the royalty owners and the gas company. **Mr. Montalban** was uncertain how all the information from the well-head price could be placed on a check. **Mr. Montalban** would like to see the relationships between oil producers and royalty owners improve.
EXHIBIT(feh06a190.PDF9)
{Tape: 2; Side: B; Approx. Time Counter: 2.5 - 9.8}

Informational Testimony: None.

Questions from Committee Members and Responses:

Rep. Jacobson reviewed the sample check contained in Exhibit 16 and asked if the bill seeks to address the revenue adjustment and other pay adjustments catalogued on the sample check and include the enumerated items contained in HB 43. **Rep. Musgrove** responded **Rep. Jacobson** was correct.

Upon question from **Rep. Jacobson, Mr. Anderson** replied that Encore Acquisition Company has not issued a royalty check since it acquired Shell Oil Company in 1999.

Rep. Jacobson addressed **Ms. Abercrombie** and asked whether it was typical for a gas company to issue a check using the format contained on Exhibit 16 and asked for a general explanation of the revenue adjustment. **Ms. Abercrombie** stated samples of the check with the explanation are provided to royalty owners and noted the sample covers required items in other states that are not required in Montana. **Ms. Abercrombie** identified the hotline as a resource to obtain detailed information regarding revenue adjustment since it varies from state to state.

REP. JACOBSON asked if items such as revenue adjustment would be enumerated in the contract. **Ms. Abercrombie** deferred the question to **Patrick Montalban**, who explained royalty checks are really rather simple. **Mr. Montalban** suggested the difficulty lies between the gatherer and the well-head owner.

REP. STAHL asked about the category "other deductions" listed on Exhibit 16 and suggested that could be a problem area. **Mr. Ennenga** replied there would always be a discrepancy, and the producers do not always have access to that information and "other deductions" could relate to a number of things. **Mr. Ennenga** reiterated the royalty owners could call the hotline for an explanation of "other deductions" on their particular check. **REP. STAHL** stated that "other deductions," could be indicative of an operational cost from the well head.

CHAIRMAN OLSON commented that the check depicted in Exhibit 16 was for a working interest ownership rather than a royalty interest.
{Tape: 2; Side: B; Approx. Time Counter: 27.6 - 28.2}
{Tape: 3; Side: A}

CHAIRMAN OLSON noted working interest payments are subject to deductions that royalty interests are generally not subject to. Mr. Montalban agreed the sample is for a working interest and explained the difference between a working interest and a royalty interest.

REP. NOENNIG asked if the 12.5 percent is measured from the price after delivery. **Mr. Montalban** explained there is a difference between the gathered price and the well-head price. **REP. NOENNIG** asked if the difference between the gathered price and the well-head price is an expense paid by the oil company. **Mr. Montalban** explained the cost is paid by the company that creates the gathering system which creates the market for the well-head owner. **Mr. Montalban** suggested the royalty owners are seeking the gathered price and are seeking to eliminate the deduction. **Mr. Montalban** stated there is no deduction because the contract is at the well-head, and the bill seeks to interfere with the contract between the producer and the royalty owner.

CHAIRMAN OLSON clarified if there is a $4 price at the well-head, and it costs $2 for gathering, compression, and transmission, the 12.5 percent is paid to the royalty owner on the remaining $2.
{Tape: 3; Side: A; Approx. Time Counter: 7.1 - 9.8}

REP. GEORGE GROSBECK asked if he received a royalty check that indicated something other than what he was expecting, whether he would be able to call and find out if he was paying for production, gathering, and transportation costs. **Mr. Montalban** stated someone was always available to answer questions presented by royalty owners.

Mr. Montalban suggested the royalty owners and producers should meet to discuss the problems rather than try to solve their differences legislatively. **REP. GROSBECK** stated the testimony indicates there are problems and concerns with the royalty checks. **REP. GROSFIELD** commented that if a person could call in and get the information they were seeking, the company should be able to place that information on the check. **Mr. Montalban** agreed information is the answer to all problems, and the royalty owners should be able to have the information, but added the producers cannot, at this time, provide the information.

Mr. Vasseur informed the committee that the distrust began in 1995. **Mr. Vasseur** referred to e-mails which were sent to the FRET committee secretary and was told by the committee secretary that the e-mails had not been received. The committee secretary agreed to check on the status of the e-mails. **Mr. Vasseur** stated when he calls in to ask questions about his royalty payments, he is given the run around, but admitted there are good companies and bad companies.

REP. WISEMAN asked **Mr. Dale Williams** if the problem was limited to his geographic area and to explain why he believes he is being charged for items he should not be charged for. **Mr. Williams** responded he did not believe the problem was limited to his area and that Wyoming and Oklahoma have implemented similar legislation. **Mr. Williams** stated the royalty owner's price at the well-head is supposed to be free and clear of transportation costs.
{Tape: 3; Side: A; Approx. Time Counter: 21.4 - 23.9}

CHAIRMAN OLSON asked what in HB 43 could alter a contract if the contract states the producer is not to hold out charges for gathering, transmission, and compression. **Mr. Williams** replied there would be a penalty if the producer failed to report to the royalty owner what those deductions are for. **CHAIRMAN OLSON** identified the issue as contractual rather than statutory.

REP. WISEMAN suggested the proponents' position is they are being charged for gathering, transmission, and compression, but cannot identify how much they are being charged. **Mr. Williams** agreed.

REP. STAHL asked **Bruce Williams** if costs are itemized between Fidelity and its affiliates. **Mr. Williams** replied Fidelity does not pay costs associated with transportation, but seeks third-party contracts for gas at the well-head, and that is what royalty payments are based on. **Mr. Williams** stated the gathering charges are unregulated, and the interstate gas

pipeline charges are regulated by FERC. **Mr. Williams** was certain Williston Basin and Bittercreek keep an accounting of charges they bill to people to transport gas on their system.
{Tape: 3; Side: A; Approx. Time Counter: 26.7 - 29.3}

Rep. Waitchies asked about the penalty being assessed per incident and was curious how the penalty would be applied. **Rep. Musgrove** stated the penalty would be applied per violation as identified in his proposed amendments but was unable to provide any more specificity.
{Tape: 3; Side: B}

REP. WISEMAN suggested more research should be done to determine how the penalty would be applied.

Ted Solomon, Montana Mineral Owners' Association, is also a small producer and royalty owner. Mr. Solomon stated the operator has to work with the dollar he receives at the well-head after transportation, and he agreed royalty owners are missing out on pertinent information.

CHAIRMAN OLSON asked if the reference in subsection (g) to "cubic feet of gas" should reference a million BTUs instead of cubic feet since the industry is moving away from cubic feet. **Mr. Solomon** replied everything is calculated on million cubic feet and could not say which would be better. **CHAIRMAN OLSON** added that gas production is reported in thousand cubic feet, but is sold measured in decatherms. **Mr. Solomon** cautioned not to overburden the operator since the operator has to work within the parameters of the market.
{Tape: 3; Side: B; Approx. Time Counter: 3.2 - 14.4}

Closing by Sponsor:

REP. MUSGROVE closed by stating it was evident a communication problem exists. **REP. MUSGROVE** requested the FRET to hold off on executive actions and invited the proponents and opponents to meet and discuss the issue.

HEARING ON HB 199

Opening Statement by Sponsor: **REP. ALAN OLSON (R), HD 45, Roundup,** opened the hearing on HB 199, which would revise laws related to energy policy. REP. OLSON explained the proposed legislation came out of the ETIC, which was created by the 2003 Legislature and vested the ETIC with statutory oversight and

policy development powers for energy issues. The 2003 Legislature left the Environmental Quality Council's (EQC) energy policy development authority in statute. HB 199 would eliminate the duplication between statutory interim committees and invest the statutory authority with the ETIC.

Proponents' Testimony: None.

Opponents' Testimony:

Brad Mulnar, a Public Service Commissioner speaking solely on behalf of himself, testified the public is better served when there is broad-based input on matters of extreme public policy. **Mr. Mulnar** testified Montana does not have a stated energy policy. **Mr. Mulnar** had concerns about the ETIC consisting of newly appointed members every two years. **Mr. Mulnar** suggested having both the EQC and the ETIC would provide balance.

Informational Testimony: None.

Questions from Committee Members and Responses:

REP. WISEMAN asked **Mr. Mulnar** to explain what is set forth in statute in terms of how energy policy is supposed to be made. **Mr. Mulnar** identified the Department of Environmental Quality (DEQ) as primary, as well as the PSC. In addition, EQC is a good, well-rounded body since some members are elected and others are appointed.
{Tape: 4; Side: A}

REP. WISEMAN asked **REP. OLSON** to speak about the different agencies involved in developing Montana's energy policy. **REP. OLSON** replied that because of state resources and the need to focus intensive effort on specific issues of importance, the development of a comprehensive state energy policy must occur on an incremental basis. As the need arises, the DEQ in cooperation with the appropriate state agency and with extensive public involvement, shall identify and recommend to the council specific components of a state energy policy for development under the consensus process described in Section 3. **REP. OLSON** suggested these would become the duties of ETIC. **REP. OLSON** testified that during the past interim, the ETIC encouraged public involvement and involvement from other agencies, including the PSC, Montana Consumer Counsel, and the EQC.

REP. WISEMAN commented the bill represents a major change to how Montana will develop its energy policy. **REP. OLSON** disagreed and

stated the major decision was made in the 2003 Legislature when the ETIC was created and assigned its duties.

Closing by Sponsor:

REP. OLSON closed the hearing on HB 199.

ADJOURNMENT

Adjournment: 5:53 P.M.

_____
REP. ALAN OLSON, Chairman

_____
CYNTHIA PETERSON, Secretary

AO/CP

Additional Exhibits:

EXHIBIT(feh06aad0.PDF)