

HB 503

EXHIBIT 9
DATE 2/16/2011
HB 503

TESTIMONY OF GARY WIENS

MONTANA ELECTRIC COOPERATIVES' ASSOCIATION

BEFORE THE HOUSE FEDERAL RELATIONS, ENERGY &
TELECOMMUNICATIONS COMMITTEE

Mr. Chairman, members of the Committee, thank you for the opportunity to testify on HB 503.

Montana Electric Cooperatives' Association represents 24 retail electric distribution cooperatives and 3 wholesale power cooperatives. More than 400,000 Montanans receive their power from our customer-owned utilities serving in all 56 Montana counties and owning thousands of miles of buried power line in our state.

Our electric cooperatives have indicated their overwhelming opposition to this legislation. Recently, we distributed a draft of this bill to our membership, asking them to give us their comments. The draft they read was nearly identical to HB 503 as introduced.

Here is a sampling of what co-op managers, line superintendents and other field personnel had to say about the bill:

- ***"More government control; more expense; added regs;***
- *"This bill would create a board that is self funding. To that end, the bill mentions that underground utility owners would pay fees. These fees are never defined in the bill.*
- *"The board would also be funded by fines, potentially causing the board to levy fines for the purpose of maintaining its existence.*
- *"The bill would require incident reporting for every dig-in. This reporting would essentially be the "policing" aspect of the board; the utility would be reporting on itself or others so that the board could fine the utility or the excavators involved.*
- *"In section 10(2)(b) the bill exempts homeowners except where their underground facilities are in the public right of way. This is onerous for members of rural electric cooperatives that own meter pedestals and loops that may be located in the public*

right of way because the member's service would also extend into the public right of way placing the member under the provisions of this law. May require a change in how REC does business in order to protect the member."

- *"In section 11(4)(b) the bill states that "an excavator is not responsible for damages to an underground facility that cannot be located by the underground facility owner". This is open to interpretation, but may be a loophole that would allow any excavator in any dig-in to call into question the locates provided.*
- ***"More regulation will require more expense to comply with reporting, tracking, monitoring. More fees and fines in complying."***
- *"This will also impose additional work load on the Utilities for coordination with architects and engineers in drafting their drawings showing the location of all of the underground facilities.*
- *"This is an unfunded task that will also fall on the utility's staff possibly requiring more than a cursory review of the project. Montana Law already requires that the locate be called in two days prior to excavation and has means available to discourage non compliance with a fine schedule already in place. The only accurate way to locate underground facilities is to field locate them, not put a line on a set of plans. Once again, please oppose this legislation as written.*
- ***"Flathead Electric has a functioning one-call system in Northwest Montana that works fine; we don't see a need to double up by creating another state bureaucracy."***
- *Flathead Valley enjoys local control of our one-call system; An FEC employee is on the board.*
- *"We see the creation of a state board as a loss of local control and at a higher cost than we presently experience.*
- ***"We would lose the opportunity to settle differences on damage costs with local people and a local board."***
- *"We would have to pay a fee in order for the state board to administer its responsibilities.*
- *"Natural gas is treated more importantly under the proposed fine schedule in the bill.*
- ***"Our biggest concern is the loss of local control and the creation of another state bureaucracy that will cost our members more money."***

Other co-op managers talked about how this bill pits our consumer-owners against their own co-op because it would force fines to be levied against these people, many of whom provide co-op utility power line easements across their land at no charge.

Here are a few of our other concerns about HB 503:

- 1) It adds new layers of regulation and government red tape.
- 2) It is designed to address worries about a problem that has little to do with underground power lines;

3) It calls for major changes to a notification and locate law that our co-ops tell us is working well, a law which was greatly improved just a few sessions ago with our support.

Moreover, it is arguable as to whether this bill is needed now. In that regard, we want to emphasize that we are willing to work with a broad group of stakeholders over the interim to earnestly explore possible changes in this law. However, we believe the shortage of time at this point in the legislative session does not lend itself to the development of a sound bill that does not over-reach, as does HB 503.

HB 503 is not the answer. Montana Electric Cooperatives' Association urges a do-not-pass on this bill.