

**MINUTES**  
of the  
**LEGISLATIVE CONSUMER COMMITTEE**  
December 12, 2011  
State Capitol, Room 152, Helena, MT

**COMMITTEE MEMBERS PRESENT**

Senator Terry Murphy, Chairman  
Representative Pat Noonan, Vice Chairman  
Senator Mitch Tropila  
Representative Mike Cuffe

**STAFF PRESENT**

Robert A. Nelson, Consumer Counsel  
Heather Voeller, Secretary  
Paul Schulz, Rate Analyst  
Mary Wright, Attorney

**VISITORS PRESENT**

Cathy Duncan, Legislative Fiscal Division  
Geoff Feiss, MT Telecommunication Association (MTA)  
Chuck Evilsizer, Ronan Telephone  
Sandra Barrows, Barrows Consulting

**CALL TO ORDER**

The meeting was called to order at 1:00 p.m. by Senator Murphy.

**MINUTES OF THE PREVIOUS MEETINGS**

**September 28, 2011 Meeting**

**MOTION:** Representative Noonan moved approval of the September 28, 2011 meeting minutes.

**SECOND:** Representative Cuffe seconded the motion.

**VOTE:** The motion passed unanimously.

**FCC October 27, 2011 Report and Order and Further Notice of Proposed Rulemaking – Geoff Feiss, MTA**

Geoff Feiss with Montana Telecommunications Association was present to brief the Committee on the latest developments in telecommunications regulation. The FCC

on November 18<sup>th</sup> issued a 750 page “Transformation” Order implementing a number of rules that have been proposed for the last several years. The order reforms the federal statute that provides for a Universal Service mechanism. Universal service law and the Telecommunication Act of 1996 state that all Americans, no matter where they live, should have access to advanced telecommunications services at rates/service that’s comparable to urban areas. The provider’s side of the law states that Universal Service support should be sufficient and predictable to enable provision of affordable, comprehensive service. There are three main streams of revenue that keep telecommunication providers afloat: Rates paid by ratepayers, Universal Service paid by long distance revenue assessment, and Intercarrier Compensation which is paid by telecom company payments to originate and terminate traffic. Both the Universal Service and Intercarrier Compensation are part of the Universal Service Reform. The Order reforms the high cost portion of the Universal Service Law. This order makes broadband more accessible to more people. It also distinguishes between Rate of Return (RoR) companies, which generally are the rural phone companies around the country, and the larger companies known as Price Cap Carriers. The new rule proposes a 4.5 billion dollar budget for the high cost program. The budget is broken down into 5 sub funds, with \$2 million going to RoR companies, \$1.8 million to price cap carriers, \$500 million for a new “Mobility Fund”, \$100 million for a new Tribal Mobility Fund, and \$100 million to remote areas. For the price cap carriers, their support will be based on a forward looking model aimed at unserved areas. It creates reverse auctions, where you bid for the least amount of support. This concept has not been tested yet. The price cap carriers will also be subject to public interest obligations if they choose to receive universal service support. In cases where there is overlap in 100 percent of the area, the universal service support will go completely away. The mobility fund will come in two phases. The first phase is a onetime only funding for areas where there is a lack of broadband service at the 3G level. This funding will help close the gap. In this phase, \$300 million is reserved and \$50 million for Tribal wireless areas that do not have 3G. The second phase will be for on-going support and will consist of \$500 million (based on current demand) and \$100 million for the Tribal program. As part of the Intercarrier Compensation regime, there is some significant reform going on as adopted by the FCC’s reform proposals, the first regarding “Phantom Traffic.” All traffic should be indentified to enable end networks to charge for traffic on their lines. Originating networks have been able to mask the identifying information on calls so networks don’t see whom to charge for calls that end up on their network. It is like shoplifting and the FCC is finally after many years going to require all networks to identify the traffic that they send to other networks. Another thing in the Intercarrier Compensation area is that terminating charges will go to zero in 9 years. The states will have a large role in the future of this order and in the future of the Universal Service Program or what will soon be known as the Connect America Fund (CAF). The states will have to determine intrastate tariffs.

Interconnection agreements will also be opened up again for change of law, and states will have a role to play in reporting and certification of universal service eligible companies. States may also have oversight in the reverse auctions and the states will most likely have a strong role in determining where and under what conditions the competitive entry exists.

In summary, the good is that Rate of Return is maintained; the current funding of \$4.5 billion budget is maintained; there is a recovery mechanism for companies to recover their investments that they are losing through the intercarrier compensation reforms. On the bad side, there are a number of reductions that are being proposed in current support; the zero funding for intercarrier compensation does not include transport operations; build out requirements may be unfunded; wireless call area rules may be cost prohibitive; and phantom traffic rules may be ineffectual. There are already several petitions for review and several appeals that have been filed.

Mr. Feiss gave a brief overview of what is going on with call terminations. Since the letter that the Committee and PSC sent, nothing has happened. The FCC continues to do nothing about this problem. The PSC has since written another letter and they joined with Wyoming, South Dakota and a number of other states. Mr. Feiss himself has visited the FCC and still nothing has happened.

A couple more things in the Universal Service Area concern the need to not only address how universal service money is spent but how it is received. Also, the Lifeline Program is skyrocketing - the cost was around \$600 million for a number of years and is already up to \$2.5 billion and climbing and if that continues to climb it will have a negative effect on the other programs.

**BOB NELSON PROVIDED THE FOLLOWING HIGHLIGHTS OF CASES CURRENTLY PENDING:**

**D2008.8.95 – NWE - Application for Approval to Construct and Operate the Mill Creek Generating Station to Supply Regulation Service** - This case involves the construction of Mill Creek now known as the Dave Gates Generating Station. As discussed before, this plant has been approved and built. There was a compliance filing made as required by the Commission to update that final revenue requirement. The major issue in this case has turned out to be the allocation of the revenue requirements. A hearing was held in early November and we are in the briefing stage. Final briefs will not be filed until mid February and an order should be out by late March or early April.

**ER10-1138-000 – NWE - FERC Docket** - This is the FERC docket that relates to Dave Gates Generating Station. Settlement discussions have taken place but they did not come to fruition, so the FERC settlement judge established a procedural schedule for a hearing. Since the last meeting, FERC staff has filed its testimony and entered into an agreement with NWE with respect to the overall revenue requirement. The big issue is the allocation of costs, not only to the federal jurisdictional customers, but to regulation service in general, even though the Montana Commission approved this plant as a regulation service plant for matching loads and resources. FERC staff has come to the conclusion that NWE needs far less regulation capability than this plant would provide. FERC staff is talking about a ratio of 13/150; we and NWE are supporting about 60/105 or roughly 60% of the plant for traditional regulation purposes. The remaining 45% is for wind generation regulation. So out of the \$38 million revenue requirement that FERC staff agreed to for this plant, they would allocate \$3.3 million, or less than 10%, to schedule 3 regulation services under FERC jurisdiction so there is quite a big disconnect between what FERC staff would recommend and our view on what costs should be allocated. We filed cross answering testimony of Dr. Wilson last week and he responded to both FERC staff testimony and to the Large Customer testimony that was previously filed. He testifies that the cost of regulation service should be allocated to transmission service in all hours not just the twelve peak hours, which is how the company and the Large Customer Group proposed to allocate these costs, and that regulation rates should be based on the cost of providing that service to different customers. He also recommended that the cost of standing ready to serve customers who opt for third party services should be borne by those customers, relating to the issue of the Large Industrial Customers claiming that even though NWE built this plant to provide regulation service for its traditional load that they have the option under FERC tariffs to find someone else who can provide that service. That would leave part of this plant stranded, and costs that would have to be recovered in some other manner. So our proposal is that the customers that caused those costs to be ready on standby should somehow pay for that standby service. A hearing is scheduled in late January.

**D2011.8.68 – NWE – Petition of Hydrodynamics to Set Terms and Conditions for Flint Creek** – This is QF related and concerns a dam that Montana Power owned that was getting very old and required a lot of maintenance. It is now owned by Granite County which has refurbished it and is having Hydrodynamics get it operational again. They are operating it as a QF project and the output is going back to NWE. Hydrodynamics filed a petition asking the Commission to set the terms for it as a QF project because they believed that NWE was improperly proposing to have the ability to curtail deliveries of the power from that project under certain circumstances. This petition has been held in abeyance for awhile and a new procedural order has been issued. NWE has filed its testimony and states that

they have already removed that curtailment language from its proposed contract to Hydrodynamics because that curtailment language was only meant to apply to wind projects not to hydro projects. They state they are interested in acquiring the Flint Creek Project but they couldn't agree to what they believed were incorrect QF tariff rates that Hydrodynamics was requesting in its contract. We are reviewing testimony as it comes in to determine if we will be filing testimony.

**D2011.11.93 – NWE – Petition for Certification of Eligible Renewable Resource and Community Renewable Energy Project**

- NWE has filed a request for certification that a new Gordon Butte Wind Project would qualify under the Community Renewable Energy Project (CREP) standard. This petition was recently filed and comments were due December 9. We reviewed and did not have any concerns and no comments were filed.

**D2011.5.41- NWE - Application for Preapproval of Acquisition of Spion Kop Wind Project**

– Since the Committee's last meeting, we entered into a stipulation between our office and NWE. That stipulation concerned the cost of capital with respect to this project. It stipulates to a 10% ROE for calculating revenue requirement from the project. We also suggested that the Commission carefully review Invenergy's testimony about its complaints that it could have provided a more cost effective resource if NWE had entertained its proposals. However, Invenergy has withdrawn from that case and there is no testimony at this point in regards to this claim. That issue is moot as far as we are concerned. This stipulation would resolve the issues we had in the case. The hearing is set for December 14, 2011.

**D2010.7.74 – NWE – Monthly Electric Trackers**

**November Electric Tracker** - Filed October 14, 2011. Residential Commodity rate decrease to \$.060451/kwh (0.61%) \$2.1million annualized revenue requirement.

**December Electric Tracker** – Filed November 14, 2011. Residential Commodity rate increase to \$.060640/kwh (0.31%) \$1.1 million annualized revenue requirement.

**D2011.7.57 – NWE – Petition for Declaratory Ruling on Applicability of 18 C.F.R§ 292.304(f) and ARM 38.5.1903(1) to Contracts with QFs**

- NWE requests declaratory ruling that curtailment language in proposed QF contracts complies with FERC and PSC rules. NWE seeks to curtail deliveries when supply exceeds load. The Commission denied this request for declaratory ruling and NWE filed a motion for reconsideration. The Commission has since issued an order denying the request for reconsideration as well.

**D2010.7.77 Application for Approval of Revised QF-1 Rates-** Since the last meeting the Commission has issued a final order in this docket. In the order the Commission determined that NWE and the Commission are not required to rely only on cost data from the recent procurement plan. In the past, some QF's have argued that the Commission must use the information that is included in those filed plans, and nothing else. The Commission said in this order that it must consider the information, but does not have to rely on it. That is consistent with our position and the position of NWE. The reason it was important in this case was because those plans can get stale since they are only filed every couple of years and gas costs have changed quite a bit since the last procurement plan. Gas costs tend to drive market rates for electricity. The Commission determined it could look at updated gas cost data. They did however reject the data that we submitted and that NWE also submitted, and instead used a different forecast. In the order they also eliminated the Option 3 rate for QFs; that rate was a rate that was available only to wind generators and was new in last year's QFs order. The Commission also rejected the use of Spion Kop to determine avoided costs for wind. We had supported the use of Spion Kop as an indication of a recent contract that NWE had been able to enter into. The cost of the project was actually a little lower than the data that was in the record for setting avoided costs for wind projects. NWE filed a motion for reconsideration with respect to capacity credits for wind projects that would have reduced the capacity rates that the wind QFs get for providing capacity to NWE. The Commission denied NWE's motion for reconsideration.

**D2011.6.53 – NWE - Petition for Short-Term Waiver from Full Compliance with Community Renewable Energy Project Purchase Requirements** – NWE is obligated to acquire 44MW of these Community Renewable Energy Projects, but they state in their petition that they couldn't do so without exceeding the cost caps that are contained in the Renewable Portfolio Standard statues. We intervened and Larry Nordell filed testimony on our behalf last month supporting the request for the short term waiver concluding that NWE had made good faith efforts to comply with these requirements and the results were out of NWE's control as a result of bids they had received. Senator Tropila asked about the Community Renewal Projects NWE is currently using, and what are some of the projects that they have tried to bring in and couldn't because it would exceed cost caps. Bob stated that he would see if Larry could get that information for him.

**D2011.10.87 – NWE – In the Matter of Tariff QF-1, Revised Sheet No. 74** – This Docket concerns a tariff sheet that NWE has on file with the Commission that limits cumulative QF wind purchases to 50MW. The 50MW limitation stems from NWE's interpretation of a prior PSC order that established that level as a "trigger" for review of the methods that the company uses to acquire wind QFs. The Commission issued an order to show cause in this case to NWE because the Commission had

questions about whether there is such a strict limitation or whether that was simply a provision that would cause a review but would not necessarily be a cap that would limit the acquisition of those wind QFs. The Commission wondered if that provision is consistent with state and federal law. NWE filed a response in November that went through a lengthy review of the Commission orders and concluded that the 50MW “trigger” had been a hard cap based on the language in the orders. There has not been any further action taken at this time.

**D2011.6.54 – NWE – Avoided Cost Compliance Filing QFLT-1** – This is an annual compliance filing for the year ending June 30, 2012. These are QFs that relate to long term contracts that are grandfathered; this does not apply to new QFs. For the most part, these agreements do not affect us because settlement of the restructuring dockets fixed the cost for power from those QFs. MCC intervened in August but typically we do not file testimony in these cases.

**D2011.12.97 – NWE – 2012 Electric and Natural Gas Tax Tracker** – This was filed December 7, 2011. This is the tax tracker that NWE files under state statute to update state and local taxes excluding income tax. This shows a net change of about \$5.5 million decrease for electric and \$3.6 million for gas. NWE separately stated the decrease for Colstrip 4 at about \$400 thousand. These are fast moving dockets and we will be reviewing this and if we have comments they will be filed in January.

**D2011.5.36 – NWE – Annual Gas Cost Tracker** - This is the annual true-up of all the monthly trackers. This was filed in May of this year for the historic period July 2010 to June 2011 and for projected costs through June 2012. Since the last meeting, we filed testimony of George Donkin on our behalf and after reviewing the monthly trackers for the twelve month period his conclusion was that the purchased gas cost and the storage operations had been reasonable. He also determined that the hedging transactions were consistent with the stipulation that we had entered into with NWE and that he would reserve any opinion on the reasonableness of the Battle Creek cost of service to a filing that NWE expected to make by the end of this year relating to the company’s efforts to reacquire some gas producing properties and rate base those rather than purchasing all of its gas on the market.

**D2011.7.58 – NWE – November Gas Tracker** – Filed in October 2011, shows gas cost decrease from \$4.99 to \$4.89 and Residential Rates from \$8.33 to \$8.23.

**D2011.7.58 – NWE – December Gas Tracker** – Filed in November 2011, shows gas cost increase from \$4.89 to \$4.93 and Residential Rates from \$8.23 to \$8.26.

**D2011.6.45 – NWE – Annual Propane Supply Tracker** – Filed in June 2011. This is an operation that NWE owns in Townsend. NWE is claiming they had an under collection of about \$86 thousand. This will result in a “typical bill” increase of 16% in the summer and 14% in the winter. We filed testimony of George Donkin and his only comment was that propane service is relatively expensive and he suggested that with the change in natural gas and the market projection for propane, that NWE revisit and update their last study on the cost effectiveness of bringing natural gas to Townsend. NWE’s last study was conducted a couple of years ago and we reviewed it at the time and it seemed then to be not cost effective to provide natural gas service. There has been ongoing discussion of that previous study and we thought that with changes in the natural gas market and propane market projections that there is a possibility that natural gas service could be cost effective in the long term for Townsend. We suggested in the testimony that the Commission require that NWE revisit that study and update it.

**D2011.6.47 – MDU – November Electric Cost Tracker** – Filed October 2011. Increase of .110¢/kwh primary – total fuel and purchased power in tariff is \$0.02238/kwh

**D2011.6.47 – MDU – December Electric Cost Tracker** – Filed November 2011. Increase of .202¢/kwh primary – total fuel and purchased power in tariff is \$0.022261/kwh

**D2011.12.98 – MDU – Annual Electric Cost Tracker and True-Up** – Filed December 2011. This will roll in the past 12 months of electric cost trackers and project the cost of the following 12 months. MDU proposes a current adjustment of \$.00349/kwh; unreflected adjustment of \$0.00028/kwh, for net adjustment of \$.00321/kwh, which results in an annual increase of about \$246,000. We will be reviewing this docket to see if we have any concerns.

**D2011.9.77 – MDU – December Gas Cost Tracker** – Filed November 2011. Decrease of \$.22/dk, residential and gas residential rate of \$6.23/dk.

**D2010.9.90 – EWM – General Rate Increase Application** – The Commission issued a Final Order in November, 2011. The order approved a rate base of \$20.6 million dollars; allowed \$120,000 rate case expense which amortized over three years amounts to \$40,000/year; the Commission approved a 55% equity capital structure and a 10.5% ROE based on EWM’s average equity authorization study and a “small company” adjustment to NWE’s “approved” 10.25% ROE; overall ROR decreased to 8.7% (because debt cost decreased); total distribution revenue decrease of \$209,922 (2.4%); the order rejected EWM’s cost allocation proposals; allocated decrease so that percentage to residential was one-half decrease to other

classes; combined Great Falls and Cascade into single tariff; rejected straight fixed variable proposal, allocated 50% of residential class revenues to fixed monthly charge and eliminated declining block rate; required EWM to ensure credible bypass threat as condition for contract rate. We filed a Motion for Reconsideration on December 5, 2011. The basis for our motion is our belief that the Commission should modify the capital structure and ROE provisions; the Commission increased both at a time when money costs and risks have declined and a time when ROEs for others like NWE are declining; using EWM's average authorized return study and NWE 10.25% as a base for ROE was unreasonable; even that survey showed declining returns, so 10.27% previously authorized should be the cap.

**D2011.9.76 – EWM Annual USBC Tracker** - This was filed in September 2011 for the yearly period ending March 2011 to true-up the expenditures and revenues the company received from its surcharge for funding USB activities. We have recently intervened and will be reviewing their application.

**D2011.9.78 – EWM Annual Gas Cost Tracker** - This relates to the monthly trackers and is the annual true-up. It was filed in September and would result in a decrease of \$274,000 for unreflected amounts, resulting in a credit to customers. We have recently intervened in this tracker and will be reviewing this filing.

**D2000.10.176 – EWM – October Gas Tracker** – Filed in September and shows a residential rate decrease to \$6.28/Mcf.

**D2000.10.176 – EWM – November Gas Tracker** – Filed in October and shows a residential rate increase to \$6.34/Mcf.

**D2000.10.176 – EWM – December Gas Tracker** – Filed in November and shows a residential rate increase to \$6.38/Mcf.

**D2011.7.66 – Havre Pipeline Company (HPC) – Application to decrease rates to Rural Farmstead Customers** – This application was filed in July 2011 to decrease rates to rural farmstead customers. The total rate in this case would be about \$2.84/Mcf. We reviewed the filing and determined that we would not intervene. The Commission issued a final order in October approving the requested rates.

**D2011.6.46 – Electric City Power – Petition for Short-Term Waiver of Compliance with Montana Renewable Portfolio Standard (RPS)** – This petition was filed in May 2011. We did not intervene or participate in this docket. The hearing was recently held. As a competitive supplier, Electric City is also subject to RPS requirements that are set out by Montana statute. The Commission found that

EPC did not take all reasonable steps to procure Renewable Energy Credits and assessed an administrative penalty of \$132,234.

**D2011.1.8 Mountain Water Company (MWC) – Petition for Declaratory Ruling and Application for Approval of Sale and Transfer of Stock** – MWC is owned by Park Water Company (PWC), which is a company based in Los Angeles, CA. PWC entered into an agreement to be acquired by merger with Western Water which is a wholly owned subsidiary of Carlyle Infrastructure Partners. Under the agreement, MWC will remain a subsidiary of PWC and PWC will become a subsidiary of Western Water. MWC asked the Commission to disclaim jurisdiction over the sale of PWC's stock to Carlyle, or decline to exercise jurisdiction or to approve the sale. We intervened and filed testimony. Since our last meeting, we filed a stipulation with respect to the ring-fencing recommendations along with Mountain Water Company, the City of Missoula and Carlyle. The stipulation agrees that the PSC should approve the acquisition, conditioned upon specified ring-fencing conditions aimed at separating MWC finances from parent company financing and requiring Commission approval of significant utility property transfers.

**D2009.9.117 – Landmark Water Company – Application to Increase Rates** – The Commission has issued a final order that finalized the rates that had been approved in an interim order, and those are rates that we had suggested and agreed with in testimony that Paul Schulz filed in February of this year. We filed a motion for clarification of that order, requesting clarification of certain comments that the Commission made about how future Landmark Water Company filings would be processed, and also requesting that reference to the interim order be corrected in that docket. In October, the Commission did issue a clarification indicating that there would indeed, as required by law, be an opportunity to request a hearing on any subsequent rate changes.

**D2009.12.156 – Aquanet – Application for Initial Water Rates** – This application concerns a subdivision in Billings and was filed in 2009. Consumer Counsel entered into a stipulation with Aquanet in August. The stipulation would result in an \$80 flat rate or about a 60% increase. The Commission issued an order approving the stipulated amounts on a temporary basis. A public hearing was held in Billings the end of November. The technical portion of the hearing was held in Helena December 7. No action has been taken yet on this application.

**D2005.11.163 – Utility Solutions – Amended Application to Increase Water Rates and D2005.11.164 – Utility Solutions – Amended Application to Increase Sewer Rates** - These have been cases that have been pending for a long time; they were filed in June of 2009. Consumer Counsel entered into a stipulation with Utility Solutions in early 2010. In the stipulation, the company had agreed to the

recommendations that we made in testimony that Paul Schulz presented. The Commission had requested testimony on additional issues. They had concerns about the stipulation that we had entered into so this case had been held in abeyance for quite some time. The company had made a public records request to the Commission and the Commission in June of this year provided those requested records and in November did issue a final order approving the stipulation that we had entered into.

**PSC – Amendment of ARM 38.5.1902** – The Commission proposes in this rulemaking to reduce from 10MW to 2MW the size of QFs that do not have to participate in competitive solicitations. QFs larger than 2MW would participate in competitive solicitation. QFs smaller than 2MW would be eligible to avail themselves of the standard QF rates for long term contracts. The Commission believes that this proposal would result in more accurate QF rates and make it a more reasonable cost for consumers. A hearing was held November 18. We participated in the hearing and filed comments in late November consistent with comments supporting the proposed amendment from 10 to 2MW, and concluding that solicitations would be a useful check on estimating avoided costs rather than just doing modeling which the Commission typically does.

**Financial Report**

The report provided to the Committee was dated 12/1/2011 for the end of November. Bob stated that we are right on track in almost all of the categories and he does not see anything that is a cause for concern at this point.

**Public Comments**

There was no public comment.

**Next Meeting**

The next meeting will be scheduled for March.

**Adjournment**

There being no further business to come before the Committee, the meeting adjourned.

Respectfully submitted,

\_\_\_\_\_, Robert Nelson, Consumer Counsel

Accepted by the Committee this \_\_\_\_ day of \_\_\_\_\_, 2012

\_\_\_\_\_, Chairman.