

**MINUTES**  
of the  
**LEGISLATIVE CONSUMER COMMITTEE**  
March 13, 2012  
State Capitol, Room 137, 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  
Larry Nordell, Economist

**VISITORS PRESENT**

Cathy Duncan, Legislative Fiscal Division  
Bonnie Lorang, Montana Independent Telecom Systems (MITS)

**CALL TO ORDER**

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

**MINUTES OF THE PREVIOUS MEETINGS**

**MOTION:** Representative Noonan moved approval of the December 12, 2011 meeting minutes.

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

**VOTE:** The motion passed unanimously.

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

**D2011.5.41- NWE - Application for Preapproval of Acquisition of Spion Kop Wind Project** – After the Committee's last meeting, a hearing was held and in February the Commission issued a final order approving this wind project and its

inclusion in NWE rate base. They found that preapproval would be consistent with the public interest, which is one of the standards required for preapproval. There is discussion in the order about how it is difficult to reach that public interest conclusion because that involves the comparison of cost and benefits, and there is a lot of uncertainty associated with both cost and benefits. In this case, the Commission pointed out uncertainties related to the long term energy output of the project. If the output is less than anticipated, per unit costs will go up, and there is no way to know exactly what the output of the project is going to be. There is uncertainty related to integration costs, natural gas costs, and CO2 costs which would form the basis for costs that they might face if they chose other alternatives. The Commission looked at a range of alternative possibilities and concluded that within those ranges this was a project that would be consistent with the public interest. They concluded that if NWE had just purchased the power and entered into a purchase power agreement, the risk of performance would be on the provider of the power. In this case, however, when you own your own project the risk of that project performance is on the Company. In this case, because it is a regulated utility, those risks would be generally shifted to the rate payers rather than to the producer. To create an incentive structure, the Commission said that if the three year average energy output was less than 118,000MW hours then NWE must reduce its rate by a percentage that is the amount of the average energy output less the 118,000. In addition, they approved the cost of capital stipulation that we had entered into, and required biennial Spion Kop filings if no general rate case is filed by December 31, 2014.

**D2011.8.68 – NWE – Petition of Hydrodynamics to Set Terms and Conditions for Flint Creek**

– This is a QF project that was formerly owned by Montana Power and 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. NWE denied that they had requested the curtailment. After the last round of testimony was filed in January, Hydrodynamics filed a motion to dismiss saying that it had resolved its issue with NWE. We are expecting a final order and that the QF project will go online.

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

– NWE has filed a request for certification that the new Gordon Butte Wind Project would qualify under the Community Renewable Energy Project (CREP) standard. The Commission issued an order at the end of December granting this petition, determining that this project is eligible as a community renewable energy project.

**N2011.12.1.3 – NWE – Electricity Supply Resource Procurement Plan** – NWE filed its 2011 Electricity Supply Resource Procurement Plan which is filed every other year as required by state statute. It is a general planning document that allows other parties to be involved in the resource planning process and allows NWE to receive comments and concerns from other parties. The notice of the filing was issued in January and comments will be due toward the end of April. We will be reviewing and filing our comments. Since this is typically not a contested case, the Commission issues comments but does not issue any order or requirements for NWE to follow.

**D2012.1.3 – NWE – Application for Approval of Avoided Cost Tariff Schedule QF-1** – This is NWE's annual filing to set its QF rates. It was filed in January. It is based on their Procurement Plan. To establish their QF rates they are using a "blended rate" which for the first several years relies on market rates and then for the later years they used combined cycle gas plants as their avoided resources. They use this because that was the approach that was previously approved by the Commission in the last QF docket. They are using the market forecast for the period of 2012 through 2018 and a combined cycle combustion turbine for the years 2018 through 2036, assuming that this is the resource they would build and use if a QF did not come online. That produced a 25 year levelized avoided cost of \$.05597/kwh, then that is broken down into various rates depending on the types of resources that are attempting to become QFs. NWE also proposed a Wind Integration tariff in this docket which had a slightly reduced rate of \$1.48/kw month, and a Contingency Reserve tariff. They reaffirmed that they believe their wind regulation requirement is 18% of installed capacity based on the GENIVAR study or, in other words, for every 100MW of wind that they acquire, they would claim that they need 18MW of regulation capacity. The Notice of Application was issued in January. We intervened and are in the discovery phase. A hearing is set for August.

**D2011.5.38 – NWE – Annual Electric Supply Cost Tracker** – This was filed in May of 2011 for the year of July 2010 through June of 2011. It also includes projected costs for 2011 through 2012. The net change was a fairly small impact on residential customers. We did some discovery in this case and decided not to file testimony. Since the Committee's last meeting we filed a stipulation with NWE stipulating that all of the prefiled testimony should be submitted and waiving the hearing in this case.

**D2011.7.59 – NWE – Monthly Electric Trackers**

**January Electric Tracker** - Filed December 16, 2011. Residential Commodity rate increase to \$.060895/kwh (0.42%) \$1.5 million annualized revenue requirement.

**February Electric Tracker** – Filed January 16, 2012. Residential Commodity rate decrease to \$.060867/kwh (0.05%) \$.2 million annualized revenue requirement.

**March Electric Tracker** – Filed February 15, 2012. Residential Commodity rate decrease to \$.060429/kwh (0.72%) \$.25 million annualized revenue requirement.

**D2012.1.14 – NWE – Residential Smart Grid Demonstration Time-of-Use Tariff**

– This was filed January 30, 2012. NWE is requesting approval of a tariff for two years during the Pacific Northwest Smart Grid Demonstration Project. This tariff will affect up to 200 volunteers in Helena and will establish three price levels with the on-peak 3 times the off-peak rate. Notice of Tariff Filing and Intervention Deadline was issued in February. We have filed a Petition for Intervention but have not decided if we will be filing comments or submitting discovery.

**D2011.12.97 – NWE – 2012 Electric and Natural Gas Tax Tracker** – This was filed December 7, 2011. A hearing was scheduled January 11, 2012. We intervened and did some discovery but did not file testimony. A final order was issued January 18, 2012 approving the requested changes.

**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. The projected costs in this annual tracker have gone down following the trends in the natural gas markets. We filed testimony of George Donkin and 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 a few years back. We ended up entering into a stipulation with NWE in February and waiving a hearing in this docket.

**D2011.7.58 – NWE – January Gas Tracker** – Filed in December 2011, shows gas cost decrease from \$4.93 to \$4.79 and Residential Rates from \$8.26 to \$8.12.

**D2011.7.58 – NWE – February Gas Tracker** – Filed in January 2012, shows gas cost decrease from \$4.79 to \$4.62 and Residential Rates from \$8.12 to \$7.84.

**D2011.7.58 – NWE – March Gas Tracker** – Filed in February 2012, shows gas cost decrease from \$4.62 to \$4.50 and Residential Rates from \$7.84 to \$7.73.

**D2011.3.26 – NWE – Annual Gas USBC Tracker** – These are charges that relate to support for low income subsidies and renewable resources. This tracker involved a modest reduction. We looked at the filing but did not file any testimony. We

entered into a stipulation with NWE and the other parties in the case stipulating to admission of all prefiled testimony and waiving a hearing. As a result the Commission issued an order on February 22 that approved the rates on a final basis.

**D2011.6.45 – NWE – Annual Propane Supply Tracker** – As mentioned at the last Committee meeting, 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 its last study on the cost effectiveness of bringing natural gas to Townsend. NWE's last study was conducted a couple of years ago. 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 agreed with NWE to have a separate proceeding on Townsend Propane so that the Commission could act on the underlying propane tracker rates in this docket. The Commission just issued an order approving the tracker rates and bifurcating the docket, indicating that they wanted to further assess the possibilities of providing natural gas service to Townsend.

**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. There was an interim order issued toward the end of December.

**D2011.6.47 – MDU – January Electric Cost Tracker** – Filed 12/15/11. Decrease from base of .131¢/kwh primary – total fuel and purchased power in tariff is \$0.02188/kwh.

**D2011.6.47 – MDU – February Electric Cost Tracker** – Filed 1/13/12. Increase from base of .178¢/kwh primary – total fuel and purchased power in tariff is \$0.02215/kwh.

**D2011.6.47 – MDU – March Electric Cost Tracker** – Filed 2/14/12. Increase from base of .223¢/kwh primary – total fuel and purchased power in tariff is \$0.02280/kwh.

**D2011.9.77 – MDU – February Gas Cost Tracker** – Filed 1/11/12. Decrease of \$.54/dk, residential and general service (gs). Residential rate \$5.69/dk.

**D2011.9.77 – MDU – March Gas Cost Tracker** – Filed 2/9/12. Decrease of \$.53/dk, residential and gs. Residential rate \$5.16/dk.

**D2011.9.77 – MDU – April Gas Cost Tracker** – Filed 3/12/12. Decrease of \$.13/dk, residential and gs. Residential rate \$5.02/dk.

**D2010.9.90 – EWM – General Rate Increase Application** – This is related to a general rate case filed by Energy West at the end of 2010. The reason they filed the case was because they had a previous case that involved consolidating some divisions and we were interested in looking at how their costs might have changed. We thought that their costs may have decreased and that their rates may not be reflecting current costs. EWM requested a \$362,000 increase. Paul Schulz recommended a \$589,000 decrease as opposed to the increase requested by the Company. A large part of the difference was driven by the Cost of Capital recommendation of Dr. Wilson. The Commission issued a Final Order in November, 2011. The order approved a 55% equity capital structure and a 10.5% ROE. Both of these were an increase from what they had been. We felt that that move was in the wrong direction and that everything instead of increasing should have actually decreased somewhat. The Commission had based its return authorization in our view on a study that EWI had done of average equity returns for many other utility companies over a 10 year period, so a lot of those returns were not reflecting current information and also did not reflect the unique operations of Energy West. The net result was a revenue decrease of about \$209,000. We filed a Motion for Reconsideration and our position in the motion was that the PSC should modify its provisions relating to the capital structure and return on equity. The Commission issued its Order on Reconsideration at the end December and they denied our Motion for Reconsideration and also a Motion that Energy West had filed requesting increases.

**D2012.3.20 – EWM – Application for Limited Waiver of Certain Ring-Fencing Requirements** – In this case EWM filed a request to refinance a 30 million dollar credit line and to issue a senior unsecured debt in the amount 15 million dollars. The institutions involved in the refinancing require that the subsidiary operation in Energy West in Maine and North Carolina not be separated from the operations of Montana as these ring-fencing provisions would contemplate. Energy West has requested a limited waiver of the ring-fencing requirements. This was just filed, and we are reviewing. We do have some questions and concerns on what the impact may be on the utility operations in Montana.

Senator Tropila asked what kind of effect can this have on Montana when we are bound to issue new debt or approve these new credit lines based on states like Maine and North Carolina where we really do not have any jurisdiction over their financial solvency. Does that put Energy West or other utility companies in Montana at a certain risk or ultimately the rate payers? Bob stated that he believes it can. We saw that happen first hand with the NorthWestern bankruptcy, there were company assets that were Montana utility assets needed for Montana utility operations that were pledged for securities that were used to finance operations that did not relate to Montana utility operations. If there isn't some kind of protection like this and separation we are obligated to allow non-utility subsidiary operations to have an impact on rates and services here in Montana.

**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 submitted some data requests in January and have been reviewing this case. We are satisfied with the responses and will not be filing testimony in this docket. The hearing is set for May.

**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 taken a look at this and done some discovery and decided not to file any testimony.

**D2000.10.176 – EWM – January Gas Tracker** – Filed 12/20/11. Residential Rate decrease to \$5.94/Mcf.

**D2000.10.176 – EWM – February Gas Tracker** – Filed 1/25/12. Residential Rate decrease to \$5.88/Mcf.

**D2000.10.176 – EWM – March Gas Tracker** – Filed 2/28/12. Residential Rate decrease to \$5.66/Mcf.

**D2012.1.12 – BHP – Petition for Short-Term Waiver from CREP Requirements** – Filed in January. Black Hills has 36 customers in Montana. Most of the customers are oil pumps. They filed a request for waiver of CREP, stating that they had been unable to contract for such a small facility because their piece of the requirement is .5 MW and they could not find an entity to contract because they were so small. A facility of this size would not be able to provide cost effective power. A Notice of Petition and Intervention Deadline was issued in February. We will not be taking a position or participating in this docket.

**D2012.2.16 – BHP – Application for Approval of Contract Rate** – Filed February 3, 2012. This is a request for approval of a contract rate for a new pipeline compressor. We will not be participating in this docket.

**D2011.4.32 – Cut Bank Gas – Annual Gas Tracker** – This is their true-up for the period of January 1, 2010 through December 31, 2010. This was filed in April of 2011. We filed a Petition to Intervene on June 15, 2011. We submitted data requests and determined not to file testimony.

**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 ECP did not take all reasonable steps to procure Renewable Energy Credits and assessed an administrative penalty of \$132,234. In February, the Commission accepted ECP's settlement offer of \$99,120 to be paid to the Universal Low-Income Assistance Fund.

**D2008.10.123 – HLH – Water Rate Increase** – This is in the Big Sky service area. This was filed in October 2008. We had entered into a stipulation with HLH in late 2009. A hearing was held in March of 2010, and in August of 2010 the Commission decided that it was going to deny the stipulation because they felt that it did not have adequate information. The procedural schedule was restarted. In the meantime, the Company did file a notice with the Commission in early 2011 that they were self implementing the rates that were at the level that was in our stipulation, which they are entitled to do if the Commission does not act within 9 months after a filing of a rate increase application. A Notice of Public Hearing was issued on February 6 of this year. A hearing was held February 27 and no action has been taken since the hearing. Once a Proposed Order is issued, the parties will be able to file briefs on the proposed decision.

**D2009.12.156 – Aquanet – Application for Initial Water Rates** – This utility provides service in the Billings area. We entered into a stipulation with the Company. Initially, there was an interim order that authorized a \$50 a month charge. The company was requesting a 91% increase with flat monthly rates at about \$96. During the discovery process, the Company increased that to a \$103 flat rate. The stipulation that we entered into with them would result in an \$80 flat rate, or about a 60% increase as opposed to the 105% increase. A technical hearing was held in December and the Commission on March 7<sup>th</sup> issued an order denying that stipulation and resetting the procedural schedule. The Commission said that they felt that they did not have enough information in the stipulation with respect to rate

base and cost of capital issues. We are not sure what information they felt was lacking. This is one of the very few examples where the Commission has denied a stipulation, with both of those occurring within the last year or two. In the past the Commission has been able to ask questions and do discovery to determine what information it felt was necessary to assess these stipulations and the rates that were being proposed. The process now will be that the Company will file rebuttal testimony in which they might take issue with the testimony that we have filed and then we will go through a discovery process and a hearing in this case.

Senator Tropila asked if there were any reasons why in the last year there have been denials in stipulations. Bob stated that in the past some Commissioners have been very comfortable with stipulations and viewed them as in the interest of all parties working out the results for themselves. However, some Commissioners have felt that it diminishes their authority and takes away their ability to look at some details. This has been debated off and on for many years but it hasn't been until recently that we have seen these stipulations denied. Mary Wright noted that one goal is to keep litigation costs down.

**D2010.9.93 – Wetington Water District, Inc. – Application to Implement**

**Increased Rates** – This district is in the Kalispell area and involves a rate increase of about 22%. This case has been pending for a little while; we intervened towards the end of 2010. There was a hold up based on discovery issues and the Company's failure to respond to data requests. This has since been resolved and a procedural order was recently issued and our testimony is due in a week.

**D2011.4.34 – AquaFlo - Application to Increase Water and Sewer Rates** - This application involves about a 25% increase. It is a small utility with only 143 customers. There was discovery dispute that slowed down the processing of this case. An order was recently issued resolving the dispute so we expect a procedural schedule will be reinstated soon.

**N2012.2.17 - PSC – Proposed Adoption of Electric Line Extension Tariff Rules**

– The Commission issued a Notice of Request for Informal Comments and we are in the process of preparing some brief comments on those proposed rules.

**FINANCIAL REPORT**

The report provided to the Committee was dated March 1, 2012 for the end of February. Bob stated that we are right on track in almost all of the categories and unless things change drastically in the next couple of months we should have some surplus in the contracted services fund and not need to use the contingency fund this year.

## **HIRING OF EXPERT WITNESSES**

Bob described the following dockets and requested hiring the following expert witnesses:

D2012.1.3 – NWE Application for Approval of Avoided Cost Tariff Schedule: *John Wilson*

D2012.3.25 – NWE Battle Creek: *George Donkin*

D2011.9.76 – Annual EWM Gas Cost Tracker: *George Donkin*

**MOTION:** Representative Noonan moved approval to hire the services of the expert witnesses.

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

**VOTE:** The motion passed unanimously.

## **PUBLIC COMMENTS**

Representative Cuffe gave a brief overview of the problems that Tobacco Valley Communications (TVC) has been having trying to receive the local ABC station out of Missoula instead of Spokane. This is an FCC issue and the parties involved are talking at the federal level now. Bonnie Lorang, General Manager of Montana Independent Telecom Systems said that for about 40 years TVC has been getting its local programming through NBC, CBS and ABC out of Missoula through retransmission agreements with the networks. This year when TVC tried to renegotiate the agreements, there was no problem with CBS and NBC stations. However, when they went to the local ABC station in Missoula they were told that Missoula would really like to renegotiate, but can't get the authority from Spokane. If the ABC affiliate in Spokane would give Missoula the go ahead then they could continue the retransmission. The problem that they ran into was that Spokane told them they could run the transmission through Missoula but then TVC would also need to take the Spokane transmission resulting in TVC having to pay twice for the ABC station. This is unaffordable to TVC and the rate payers in Lincoln County. The FCC has a provision that allows "out of DMA broadcasts" for cable systems with less than 1,000 subscribers which would include TVC. Mr. Wilson, General Manager with TVC is in Washington DC speaking with the FCC and trying to get this waiver. If this matter isn't resolved by March 20, the ABC programming on the TVC network will go dark. TVC, Bonnie Lorang (MITS) and Representative Cuffe would like the Committee to write a letter to KXLY, the ABC television station in Spokane, Washington, asking for a minimum of a 30-day extension to allow time for a FCC determination of the DMA Market Modification to keep the Missoula ABC network

airing in Lincoln County. They are hoping that if it has the Committee's backing they may have a better chance of getting the waiver.

MOTION: Representative Cuffe moved that the Committee draft a letter to KXLY ABC in Spokane Washington.

SECOND: Senator Tropila seconded the motion.

VOTE: The motion passed unanimously.

**NEXT MEETING**

The next meeting will be scheduled for June.

**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.