

MINUTES
of the
LEGISLATIVE CONSUMER COMMITTEE

September 3, 2009

State Capitol, Room 172, Helena, MT

COMMITTEE MEMBERS PRESENT

Senator Terry Murphy, Chairman

Representative Pat Noonan, Vice Chairman

Senator Joe Tropila

Representative Tom Berry

STAFF PRESENT

Robert A. Nelson, Consumer Counsel

Mary Wright, Attorney

Paul Schulz, Rate Analyst

Mandi Shulund Hinman, Secretary

VISITORS PRESENT

Dave Gibson, Qwest

Sonja Nowakowski, Energy and Telecommunications Interim Committee

Bob Rowe, NorthWestern Energy

Bonnie Lorang, Montana Independent Telecommunications System

John Hines, NorthWestern Energy

Jason Williams, NorthWestern Energy

John Fitzpatrick, NorthWestern Energy

Curt Pohl, NorthWestern Energy

John Kasperik, NorthWestern Energy

Mike Cashell, NorthWestern Energy

CALL TO ORDER

The meeting was called to order by Senator Tropila.

SELECTION OF CHAIR AND VICE CHAIR

MOTION: Senator Tropila moved to nominate Senator Murphy as Chair and Senator Murphy moved to nominate Representative Noonan as Vice-Chair.

VOTE: The motions passed unanimously.

MINUTES OF THE PREVIOUS MEETING

MOTION: Senator Murphy moved approval of the October 3, 2008 meeting minutes.

VOTE: The motion passed unanimously.

MOTION: Senator Murphy moved approval of the January 8, 2009 meeting minutes.

VOTE: The motion passed unanimously.

Bob Rowe, NorthWestern Energy

Senator Murphy introduced Bob Rowe, President and CEO of NorthWestern Energy (NWE). Mr. Rowe introduced NWE staff members present at the meeting and handed out a packet of information. Mr. Rowe gave an overview of NWE, which serves approximately 656,000 customers in Montana, Eastern South Dakota and Nebraska and has close to 1,400 employees. NWE has eight directors. Dr. Lynn Draper is the Chairman and Mr. Rowe is the only inside director. NWE's total assets are \$2.8 billion and they pay \$75 million in property taxes. NWE's current financial overview has both good and bad aspects. NWE has run into the same problems as other companies have in the present economy, but have also had

positive outcomes with strong safety performance for customers, good reliability, pension funding and ratings agency assessment. On the down side, there has been significant job loss in Montana since the recession began. NWE's first quarter contained pension funding and expenses pertaining to the Bozeman incident, plus revenues fell particularly on wholesale and transmission and curtailment among some of the industrial customers and that trend increased significantly in the second quarter. NWE had been in a strong growth situation but lately a significant fall off in percentage growth of customers has occurred. But because of this, NWE has been able to reallocate some capital, particularly in Montana, for growth and maintenance projects. Senator Murphy asked what NWE has seen in terms of electric and gas usage per residential customer and asked if they had a percentage of how much customers were cutting back. John Hines answered that growth right now is relatively flat and that there has been much more investment in conservation and demand side management programs that are starting to produce a downward trend in customer usage. Mr. Rowe added that NWE is serious about efficiency as a resource and MCC has been participating in a stakeholder group that is addressing that issue. NWE has substantially increased spending in pension funding over what was planned for employees and will work with the Public Service Commission (PSC) on shaping the recovery. The PSC also wants to see NWE manage towards an appropriate balance of debt and equity, although the less value there is in equity as a result of share depreciation the more pressure there is on the debt side. Regarding operations, in Montana there is a very rural network that NWE would like to invest in much more. On the electric side, NWE would break down analysis of the electric system into a more urban system, then a mixture of urban and rural, and then a rural system. NWE is working with other utilities in the region on a smart grid pilot program using one section of rural line. The Helena area has a nice mixture of customers and the network is in appropriate condition to accommodate smart grid technology. Wind is an attractive resource in Montana, but one challenge there is how to price an intermittent resource such as wind on new transmission. NWE's supply department is responsible for rebuilding the supply portfolio and both the PSC and MCC have played an important part in the rebuilding of that portfolio that includes the Colstrip plant. NWE is also going ahead with the Mill Creek Plant for a regulation resource, designed to keep the system in balance. NWE has a Request for Information (RFI) currently out in hopes to find new renewable resources, preferably resources that could be

rate based. Other suppliers are the Qualifying Facilities (QF's). There are many dockets at the PSC dealing with QF's that have certain rights under the Federal and State Public Utility Regulatory Policy Act (PURPA). NWE feels that MCC has a critical role in these QF Cases. NWE is rethinking its approach to QF's and is trying to work through relationships with some of the wind based QF's. NWE is trying to focus not only on the balancing of interests in contested cases, which is important, but also the long term of alignment of interests. MCC has been a good voice for the customer and the stakeholder group on public policy and energy efficiency. Soon NWE will be rolling out a similar group that will focus on infrastructure and has contracted with Liberty Consulting, the firm that NWE worked with during the bankruptcy, to work with internal employees and external stakeholders. NWE has a group that kicked off this month that is looking at the costs of integration. NWE has much going on and has a strong obligation to be very substantive and as open as possible in communications with stakeholders. Representative Berry asked how NWE was going forth with retirement for employees and Mr. Rowe said that the defined benefits plan has been closed and a conversion to a defined contribution plan is now in place. Mr. Rowe thanked MCC for allowing him the time on the agenda.

BOB NELSON PROVIDED THE FOLLOWING HIGHLIGHTS OF CASES CURRENTLY PENDING:

Bob began by giving the committee a description of the PSC case processing activities in a typical rate case, and then provided the following status of cases pending.

NorthWestern Energy

D2008.6.69-Application for Approval of Interest in CU4 as an Electricity Supply Resource under Certain Terms and Conditions Including Certain Treatment of Net Operating Losses-This case involved the application to include Colstrip 4 as an electric supply resource in rate base and a Final Order was issued on 11/13/2008 approving the application. MCC filed a Motion for Reconsideration on 11/23/2008 which the PSC summarily rejected.

D2008.4.36-Petition of MCC for Investigation Concerning Compliance with Affiliate

Transaction Requirements of Order 6505e-This case concerned MCC's petition for an investigation of NWE's compliance with the bankruptcy stipulation requirements in Commission Consent Order 6505e and is related to the Colstrip 4 case. MCC was a very active participant in the bankruptcy proceeding which resulted in the entry of a stipulation that was adopted as part of a PSC consent order and contained so called ring fencing provisions to try to protect consumers from future financing activities of the utility and its non-utility enterprises. Also Included in that consent order in the bankruptcy stipulation were limitations on the use of utility financing for non-utility purposes, which was implicated in the companies' acquisition of Colstrip, subsequently included in rate base. MCC's initial concern was that NWE had used utility funds for acquiring Colstrip 4, triggering rate payer interest in that asset. The PSC issued Final Order 6906g on 12/24/08 concluding that in many respects MCC's interpretation of the stipulation was correct and that on many occasions in several different ways NWE had violated the bankruptcy stipulation. The PSC found 765 violations, each subject to \$1,000 fine, but directed the PSC staff to seek the fines in District Court because the PSC, in most instances, doesn't have authority to assess fines. MCC sought reconsideration of that order because, although the PSC had agreed with MCC with respect to the existence of violations, the remedies MCC had requested differed from the PSC's. NWE also filed a Motion to Reconsider and the PSC denied both motions.

Case No. ADV 2009-148 NWE v PSC-Petition for Judicial Review of Final Order

6906g-NWE filed a petition in District Court in Helena for judicial review of Final Order 6906g. This case is still pending.

D2007.7.82-Application for Increased Gas and Electric Delivery Service Rates-NWE

NWE applied for increased gas and electric rates in 2007. A settlement was entered into, which the PSC approved. Rate increases were implemented but were offset by other benefits, notably an agreement to include Colstrip 4 power in rates at a favorable price. Phase II of this docket dealt with how those revenues should be split among customer classes, in other words, allocated cost of service and rate design. The filing had initially included a request for an

increase of about 5.1% for the residential customer class, a decrease for general service or business customers between 2.8%-9.7%, and an increase for irrigation customers of about 10%. The filing also proposed a rate design change which would have increased the customer charge or the fixed component of bills, from roughly \$5.00 to \$15.00. MCC filed testimony of Dr. John Wilson on 7/18/09. His testimony concluded that NWE had not established the basis for allocation changes and that NWE incorrectly proposed to charge 65% of its revenue through customer charges that don't reflect marginal costs. MCC also filed testimony of George Donkin, whose testimony was similar in the natural gas part of the case. After discussions with the parties, NWE filed a motion to vacate the hearing because there was an interest in further discussing the allocated cost of service studies and rate design. The PSC issued Order 6852i vacating the hearing and approving that settlement process. Since then, MCC and several other parties have been actively engaged in discussions with NWE, which are still ongoing. NWE expects to file a new case on 9/30/09 that will include its proposals for allocated cost of service and rate design.

D2008.8.95-Application for Approval to Construct and Operate the Mill Creek

Generating Station to Supply Regulation Service-This is NWE's application for approval of the construction of the Mill Creek Generating Station. Prior to about 4 years ago, this kind of application wouldn't have occurred because at that time, the PSC didn't pre-approve NWE's resources. NWE made its own decisions in choosing resources and brought those in for inclusion in the rate base. This process has changed, at least for NWE, and in turn prompted a new type of case such as the pre-approval of Mill Creek and pre-approval of inclusion of Colstrip 4. MCC filed testimony of Dr. John Wilson on 11/14/08 and he commented on the significant increase in costs that would be involved and potentially other alternatives he felt should be explored prior to commitment to these increases in costs. A hearing began 2/25/09 and Final Order 6943a was issued on 5/20/09 approving the inclusion of Mill Creek in rates. Although the PSC recognized the possibility of all of the alternatives that were raised by MCC as well as other intervenors in this docket, the PSC found that MCC had not presented specific cost and availability information for those alternatives including DSM, wind ramping and dynamic scheduling. To the PSC, the key issue boiled down to what the cost of Mill Creek is compared to similar supply resources. The PSC found that the cost

estimates that had been presented were reasonable but they only pre-approved the costs that were firmly set, that being about \$81 million related to the turbine contracts, and noted that the rest of the costs would be scrutinized for their prudence as they were brought in for approval and inclusion in rates.

D2008.12.143-2009 Electric and Natural Gas Tax Tracker-This docket is the 2009 Electric and Natural Gas Tax Tracker. Before Tax Trackers were implemented through legislation, roughly six years ago, the PSC basically only tracked gas supply costs. Utilities of Montana were statutorily authorized to file tax trackers so the focus is only on the one expense change. With these tax trackers, the PSC has interpreted the statute to require an expedited review process. Final Order 6967a was issued on 1/26/09 and adjusted NWE's request to account for some over-collections and reductions in tax expenses.

D2005.6.106-Investigation of USB-This item is the PSC's investigation of Universal System Benefits (USB) programs and charges. Several years ago there was a significant increase in gas costs and at that time, the low income discount was 10%-15%. In this docket, the PSC issued Interim Order 6679a on 11/2/05 to shift funds from several USB programs to the low income discount, increasing those to 25% for electric and 30% for gas, which MCC supported. The allocation of those funds persisted for two more years after that through subsequent interim orders. The PSC became interested in reallocating those funds because some electric funds were shifted to the gas low income discounts. And, at the same time, a shift was going on in the electric utility as DSM programs and renewable, which are funded through the USB program charges, became cost effective. MCC and several other parties advocated, and the PSC agreed, that those programs should be funded through default supply charges and included in base rates rather than USB programs, so that increased other sources of funding for those same programs and freed up money that could be applied to the low income purposes through the USB charges. HB 427 in the 2007 legislative session allowed the PSC to adjust gas USB charges to take into consideration the gas usb programs. The PSC came to believe that it was inconsistent with that statute to transfer funds from the electric to the gas programs costs. MCC took a different position in that case and argued they could continue those transfers and that not doing that would increase gas rates by a couple of

million dollars. The PSC ultimately issued order 6679e on 12/18/08, ordering NWE to cease the transfer of those funds and to fully fund all of the itemized gas USB purposes that were listed in statute. NWE filed compliance budgets and tariffs in 4/09 and the result was a \$2.3 million increase in the gas charges.

D2007.12.147-Complaint of the City of Great Falls-The issue here is whether limitations in HB25 on customer choice applied to customers or meters, or in other words, whether Great Falls and its utility could expand service to customers through additional meters, which NWE refused service to. The PSC issued Order 6954 on 12/15/08 agreeing with NWE's interpretation, concluding the statutory restrictions applied to meters and/or points of delivery and that those meters could not switch electric suppliers at that point. The city has filed a petition for review of that order in district court. MCC monitored this docket but did not actively participate.

Cause No. CDV-2009-127-City of Great Falls, et.al., v PSC and NWE-The City of Great Falls filed a Petition for Review (of PSC Order 6954 in the previous case) in District Court.

D2007.11.131-Compliant of Whitehall Wind-This is a complaint from a wind QF under PURPA about whether NWE had to file annual updates in data to calculate avoided costs. NWE felt they didn't because of a change in regime several years ago to more competitive markets. The PSC ultimately concluded that they did have to continue filing that information.

D2008.12.146-Application for Approval of Avoided Cost Tariff for New Qualifying Facilities-This application was filed on 12/31/08 for approval of avoided cost tariffs for new QF's. There is a long history of disputes about QF's and avoided cost rates which was a significant element of NWE's so called stranded costs during restructuring 1997. MCC and NWE agreed at the time that there would be a fixed volume and cost from those existing QF's, and believe that would resolve that issue because the PSC then required all large QF's, any QF over three megawatts, to participate in the competitive bidding process. This has not been the case and the PSC continues to deal with establishment of avoided costs because many developers are still interested in taking advantage of the QF provisions and selling

power to NWE under the avoided cost provisions of PURPA. The PSC has raised the three megawatt ceiling to ten megawatts so that has opened up more participation from QF's. An important issue here, since a majority of these QF's are wind developers is the integration costs which are primarily regulation costs that put QF's on equal footing with other resources and those QF's are imposing regulation costs on NWE that, MCC feels, should be taken into consideration when the PSC sets avoided cost rates. Taking those integration costs into account is how rate payers can be held indifferent to whether NWE is purchasing from QF's or other resources, which is a requirement of PURPA. In this case, NWE proposed a set avoided cost rate, essentially on the basis of Colstrip 4 (C4) costs. Larry Nordell, MCC Economist, filed testimony on 4/7/09. Larry stated that C4 shouldn't be used to set the QF rates because C4 is no longer a marginal resource to NWE and the PSC should direct NWE to calculate its rate base on a portfolio analysis of marginal resources. Larry also stated that the PSC should set shaping costs to be deducted from the energy rate paid to wind QF's based on a calculation of its marginal regulation contracts or the cost of Mill Creek if it is approved by the PSC. The PSC requested that NWE file testimony on additional issues. MCC filed response testimony agreeing about performing a comprehensive technical wind integration study but disagreeing on how that study should be conducted. Larry also urged the PSC to keep the 10 megawatt limit.

D2009.7.95-2009-Avoided Cost Compliance Filing: Schedule QFLT-1-This QF docket is an annual avoided cost compliance filing for the QFLT-1 rate. This is the rate that relates to annual adjustments to the QF rates that were fixed for retail customers in the restructuring docket. MCC is typically not too involved in these proceedings.

D2009.5.78-BPA Exchange Credit Filing-This filing is a Bonneville Power Administration (BPA) Exchange Credit Filing which is a benefit that NWE and their rate payers receive through Northwest Power Act that distributes benefits of the Northwest hydro system.

N2008.12.138-Natural Gas Biennial Procurement Plan-The next several dockets are gas related. While there has been a process for participation in NWE electric supply planning for quite some time, that hasn't always existed in the gas utility side. 5-6 years ago there was a

case before the PSC where NWE's requested costs were higher than market costs. Some Commissioners questioned whether there should be a disallowance because there was evidence of contracts that the state had entered into that were at lower cost. MCC witness Mr. George Donkin concluded that he didn't believe NWE had been imprudent at the time they entered into those contracts but the PSC did disallow a substantial amount of gas purchase costs. NWE sought judicial review of that decision. MCC proposed, in the next filing, a process for reviewing gas purchase acquisitions similar to the electric side, not to shift risk to customers but to reduce overall risks to NWE by informing them of MCC views on gas purchasing practices. This ultimately developed into the biennial procurement plan filing for the gas utility which is supposed to be a generic review of purchasing practices and not a request for recovery of any expenditures that NWE has made. There have been a few procurement plans filed that MCC has reviewed and filed comments on. The PSC said that these procurement plan filings were not contested cases and there would be no hearing. MCC disagreed with that approach because then when MCC didn't like the purchase practices that lead into the annual trackers the PSC would say our issues are not appropriately raised in the tracker because MCC wasn't actually requesting any disallowance of cost so those issues needed to be in the biennial procurement plan but no hearing was held.

D2008.5.44-Annual Natural Gas Tracker Filing-This is the 2008 Annual Tracker. MCC filed testimony of Mr. George Donkin that indicated because of NWE's procurement guidelines that were in place and the procurement plan that had been approved by the PSC, NWE was buying gas that cost too much and was consistently incurring costs that were above market. A stipulation was submitted to the PSC and Final Order 6930d was issued on 2/11/09 closing this docket and offering MCC an opportunity for a hearing in the procurement plan docket. Since that time MCC has participated in several discussions with NWE and Mr. Donkin has prepared a white paper analysis of views of gas procurement hedging practices.

D2008.8.94-Monthly Gas Trackers-In the monthly gas trackers the rate fluctuates quite a bit depending on market rates available at the time to the extent that NWE hasn't hedged those prices. Those prices are trued-up and addressed in the annual trackers.

D2009.5.63-Annual Gas Tracker-The next annual tracker was filed on 6/2/09 projecting significantly lower gas prices at \$5.76 per dekatherm and very little in terms of unreflected accounts. NWE stated that beginning in November 2009 30% of its needs would be met by purchases made 1-3 years earlier and NWE projected costs would increase by a little over \$13 million during this tracking period. NWE also include a request for recovery of Demand Side Management (DSM) expenses of about \$4 million and lost revenues related to that DSM of roughly \$1 million. Bob handed out a graph tracking the monthly fluctuations in overall gas prices for NWE, Montana-Dakota Utilities (MDU) and Energy West Montana (EWM).

D2008.7.75-Monthly Electric Trackers-Gas trackers have been in place for 30 years but the electric trackers were instituted just 4 years ago. There are monthly and annual electric trackers to review and true-up expenses that are approved on an interim basis.

D2009.5.62-Annual Electric Tracker-NWE filed the 2009 annual electric tracker on 5/29/09 requesting the reflection of a significant over collection of about \$22 million and including a request for DSM costs of \$6.6 million. NWE projected a tracker decrease of about \$2.35 per month for typical residential customers. The reduction included changes in the CTC-QF and the BPA exchange credit at \$3.36 per month. Inervenor testimony is due on 9/18/09.

D2008.12.142-Propane Rate Increase-This is a filing for a propane rate increase for NWE's propane system in Townsend. Initially a significant increase was requested to be phased in. One reason the request was so high was because for many years NWE didn't adjust rates and may have been losing money in the Townsend operation. Senator Murphy asked Bob to explain the propane program. Bob explained that several years ago NWE decided to put in a distribution system to bring in propane to serve customers. In this case, the PSC began a three step phase in and because propane prices went down NWE requested just two steps and the second phase was close to the rates that were already in place after the first phase. The PSC held a hearing 6/25/09 and no order has yet been issued.

Dockets 07-73256 and 07-73547-MCC v FERC, Petition for Review of FERC Order-

This case has been a significant effort for MCC for many years. This case relates to the charges NWE pays PPL for the power that Montana Power Company sold to PPL and PPL is now selling back to NWE through the dams and Colstrip plant. Although that generation was taken out of the purview of state commission regulation through restructuring and the sale to PPL, The Federal Energy Regulatory Commission (FERC) retains the obligation to regulate that as a wholesale sale under the Federal Power Act (FPA), which requires just and reasonable charges. FERC for the last several years has determined that where the competitive market can be established, just and reasonable rates can be achieved through market based charges. FERC requires triennial reviews from sellers such as PPL to prove that the market continues to be competitive. MCC believes that PPL's claim that there was a competitive market was false and that FERC should be setting cost based rates for PPL rather than allowing them to exercise market power and charge market rates to NWE. Initially the FERC staff agreed and issued an order requiring additional information from PPL. There were indications that FERC itself was going to also take a similar position however the membership of FERC changed and an order was issued finding that PPL had met their market tests. MCC had also been involved in all of the rulemakings about what those market power tests should look like. FERC ultimately issued an order finding that PPL did not exercise market power and was authorized to charge market based rates. MCC appealed that decision to the 9th Circuit Court. The case was argued 10/22/08, and on 6/8/09 the Court issued its decision. The decision stated several times that FERC's determination would be afforded great deference and the Court determined that FERC's policy choices were not arbitrary and capricious. MCC had claimed that FERC incorrectly used historical information to determine what the market looked like and used short term market analysis when NWE had to purchase power in 2006 and 2007 through long term contracts. But the 9th Circuit found no error in using that historic information. The Court said it would not second guess FERC's reasons to support its presumption that a spot market is a good proxy for long term future markets.

Montana Dakota Utilities

D2006.1.2-Investigation and Direction on Electric and Natural Gas USB-As with NWE, the PSC had an investigation of MDU's USB programs and charges that had been pending for quite some time. This involved several parties, including MCC. A stipulation was filed with several of those parties and MDU on 4/9/08, agreeing to a USB charge and allocation of those charges. The PSC then requested briefs on three issues of whether USB funds could be transferred from electric to gas, whether MDU had to fund all programs listed in statute to the full extent and whether MDU could rely on funding from other sources to achieve these purposes. MCC took the same position as in the NWE docket in responding to the PSC inquiries. The PSC issued Order 6727b on 8/5/08 without a hearing. There was a provision in the stipulation that said that if the PSC did not adopt the stipulation a hearing was requested. The PSC issued Order 6727b without hearing and adopted most of the elements of the stipulation for one year and required MDU to subsequently comply with the determinations that the PSC would make in the NWE docket.

Docket ADV-2008-809-MDU v PSC- Complaint and Petition for Judicial Review of Order 6727b-MDU sought judicial review of the decision in the previous case, and MCC and the parties who participated in the stipulation intervened. MDU stated their view of that HB 427 did not prohibit the use of electric USB charges for gas USB programs. MDU also said that the proper scope of USB programs is vested in the Department of Revenue. The District Court issued an Order on 8/5/09 reversing and remanding the Order back to the PSC. The determinative issue was the PSC's failure to hold a hearing after a hearing was requested.

D2009.4.47-Application to Implement Conservation Tracking Adjustment for Natural Gas Conservation Programs-This is a relatively new tracker in the category of those approaches that are meant to remove disincentives for conservation expenditures. What this does is annually track MDU's conservation expenditures and lost revenues calculated as a result of those expenditures.

D2009.4.56-Electric Cost of Service and Rate Design Filing-MCC entered into a stipulation with MDU which the PSC approved in Final Order 6846f on 4/23/08. This filing is part of that order. The commission required MDU to address several issues and file a new Cost of Service and Rate Design case one year after that order was filed. This filing was submitted 4/27/09 and MDU addressed the issues. One of those issues was decoupling, another mechanism meant to remove disincentives for energy efficiency investments. MDU's filing recommended no decoupling at the present time and in MDU's prefiled testimony stated that lack of decoupling had not reduced MDU's promotion of customer conservation. Another item MDU addresses is carbon taxes. The PSC is interested in those because to the extent carbon taxes affect energy costs as opposed to their capacity costs, it can affect allocation of MDU's costs as among customer classes depending on whether they rely on capacity or energy. The PSC also inquired about inverted block rate designs, which is a rate design where the unit costs increase as consumption increases as an attempt to spur conservation. Another prehearing conference is scheduled for 9/14/2009 to determine the next step in this docket.

D2008.9.112-Monthly Gas Trackers-MDU also submits gas monthly trackers and has annual true-ups.

D2009.6.87-July Electric Cost Tracker and Annual True-Up for 5/08-4/09-Electric cost trackers were just implemented for MDU as a result of the settlement in MDU's last general rate case so this would be MDU's first annual electric and purchased power cost tracker. MCC intervened on 8/7/09.

D2009.7.102-2009 Avoided Cost Updates Power Purchase Time Differential Rate 93- Like NWE, MDU has to file avoided cost updates.MCC will monitor this case but probably won't get too involved.

Energy West

D2008.8.61-2009 Annual Gas Tracker True-Up-Energy West Montana (EWM), formerly Great Falls Gas Company, is the third largest gas company in the state. EWM also files monthly gas trackers and an annual gas tracker true-up. This annual true-up is for 2008. MCC reviewed the application and determined not to file testimony.

D2009.6.88-Annual Gas True-Up-This is the 2009 annual tracker true-up and MCC intervened 8-7-09.

D2008.3.27-Joint Application of Energy West and Cut Bank Gas for Approval of Acquisition of Cut Bank Gas by Energy West Montana-EWM has been acquiring other companies and changing their corporate structure and the next several cases relate to these changes. This case is a joint application for EWM to acquire Cut Bank Gas Company (CBG). The total purchase price was \$970,000, and EWM requested there be a 5 year non-gas cost rate freeze and that the rate base should be established at \$650,000. MCC filed testimony of Mr. George Donkin on 12/15/08 stating that if the PSC approves this sale then should reject the 5 year rate freeze and proposal to establish the \$650,000 rate base at the end of 5 years. Mr. Donkin recommended instead that the PSC require a general rate case within 60 days of closing so the costs and expenses and revenue requirement could be determined. Mr. Donkin pointed out several other issues. MCC participated in discussions with EWM and other intervenors. Eventually a settlement was reached agreeing that EWM be permitted to acquire CBG pursuant to the stock purchase agreement as amended resulting in a slight reduction of the purchase price in recognition of other expenses that EWM had to incur on behalf of CBG. Also, the non-gas portion of rates would be frozen for three years and at that time CBG would file a general rate case with no predetermined rate base value. One more important point was that CBG gas production properties would remain with CBG so they could continue in rate base and customers would pay the expenses associated with production and CBG would get benefits of that production. EWM filed a Motion for Approval of that stipulation 7/16/09 and the PSC held a hearing 8/28/09.

D2008.5.57-Petition for Order Approving Corporate Reorganization to Create Holding

Company Structure-MCC filed testimony of Dr. John Wilson 1/29/09. Dr. Wilson said that this filing of the holding company was related to EWM ‘s other application to acquire gas utilities in Ohio and Pennsylvania at a significant premium to what would be included in rate base, which raises concerns about ring fencing. So, as in NWE, Dr. Wilson proposed ring fencing measures to insulate EWM from the parent holding company and the financing activities of other subsidiaries. Dr. Wilson was MCC’s witness and was very heavily involved in the development of the ring fencing provisions in the bankruptcy stipulation and NWE bankruptcy and this case is similar to those NWE cases. Dr. Wilson also expressed concern about double leveraging and recommended a rate case be completed for EWM. After the filing of Dr. Wilson’s testimony, MCC entered into a joint proposal and stipulation with EWM, resulting in the approval of the reorganization and the ring fencing measures proposed with some clarification. A hearing was held 4/22/09 and Final Order 6960a was issued on 6/25/09 approving the stipulation and authorizing the reorganization subject to the provisions in that stipulation.

D2008.11.132-Application for Approval of Acquisition of Three Utilities-This is an application for EWM to acquire several properties in Ohio and Pennsylvania. MCC again filed testimony of Dr. John Wilson and he raised the same concerns as in the previous docket. After the stipulation was approved in the reorganization docket, EWM ultimately submitted a Motion to withdraw this application because the transactions they had in mind would be consummated now by the holding company, not by EWM. The PSC granted that motion to withdraw in 7/24/09.

D2009.5.66-Application to Convert Cascade Propane System to Natural Gas and Adjust Rates-This application is to convert the Cascade Propane System to natural gas. The PSC issued Interim Order 7003 6/18/09 authorizing EWM to begin the conversion process. MCC has reviewed this filing and didn’t have any concerns but will continue to monitor this case.

D2009.6.90-Application to Approve Reconciliation of USB Account and Continue USB

Charge-EWM also has USB Charges, mandated by state law, for USB programs. Last year MCC entered into a stipulation with EWM and other parties agreeing that all USB programs should be condensed into one charge, which was approved. A 1.25% charge was set and this is an application is to continue that charge which is tracked and trued-up annually. MCC intervened in 8/7/09 and will be monitoring this case.

D2009.6.91-Application for Continuation of Environmental Surcharge-This is an application for continuation of an environmental surcharge, which is a charge that was implemented in 1994 relating to environmental remediation costs that EWM incurred for a gas processing plant they were running. EWM ultimately incurred significant environmental costs and instituted a surcharge that should be paid off within 3-6 months.

Cut Bank Gas Company

D2007.11.130-Application to Implement Gas Cost Tracking Mechanism-This application is from CBG related to a tracking mechanism but due to EWM being in line to acquire CBG, this application has been withdrawn.

Havre Pipeline Company

D2009.8.106-Application to Decrease Rates to Rural Farmstead Customers-Havre Pipeline (HPL) is a successor to Northern Natural Pipeline who had an agreement with several rural customers along its transmission pipeline to provide gas at discounted rates. Years ago an agreement was made that provided a formula for HPL charges those customers. These filings are made on an annual basis to update those charges.

Miller Oil Company

D2009.1.5-Annual Propane True-up-Miller Oil (MOC) runs a stand-alone propane system in Culbertson. MCC had previously been involved in a docket where MOC requested an increase in their non-gas cost component. An agreement was made as to what the increase

should be but MCC found that they had not properly tracked their actual propane costs and owed customers about \$96,000 for that over collection so the increase, which would have been allowed at about \$39,000, was delayed pending the payment of that over collection. That payment is done and Final Order 6989a was issued in 7/2/09 approving this request.

Five Valleys Gas

D2008.8.96-Annual Tracker True-up-Five Valleys Gas (FVG) is a stand-alone propane system in Seeley Lake that has annual trackers and true-ups that MCC reviews.

D2008.8.97-Application to Increase Rates-This application is to increase base rates. FVG initially requested additional revenues of \$38,000 and MCC entered into a stipulation to reduce that request to \$24,000 based on a 10% return on equity. Interim Order 6957a was issued 5/21/09 adopting the service charge component of that stipulation and a hearing is scheduled for 9/30/09.

Mountain Water Company

D2008.9.113-Power Cost Tracker-Mountain Water Company (MWC) is a large independent water company that provides service in the Missoula area. MWC has a large power cost component to their rates and that was agreed to be put into a power cost tracker and is reviewed annually.

D2008.9.119-Rate Increase Application-MWC files regular rate cases and this item is a request for a rate increase filed 9/26/08. MWC requested a \$2.5 million increase and MCC engaged in discussions with MWC that led to a stipulation being filed. MWC agreed to an increase of about \$2 million and agreed that the power cost tracker should be maintained through at least 2010 and accepted the allocated cost of service study and rate design proposal. Interim Order 6954b was issued 2/23/09 authorizing that level of additional revenues. A hearing was held on 3/31/09 and Final Order 6954c was issued 8/18/09 approving that stipulation.

HLH, LLC

D2008.10.12-Water Rate Increase-This is an application for a water rate increase for the Big Sky service area. HLH filed a request of \$442,000 which is over 100%. Interim Order 6972a was issued 4/17/09. MCC analyzed the cost information that HLH filed. Often times MCC will perform a discovery audit in cases like this and may file testimony.

AquaFlo, LLC

D2009.1.9-Water and Sewer Rate Increase-This is another water rate increase for customers in the Helena area. Frank Buckley, MCC Rate Analyst, filed testimony 5/13/09 recommending a \$24,000 increase as opposed to the \$35,000 requested in the application. Larry Nordell also filed testimony with respect to an elasticity adjustment that AquaFlo had proposed. MCC has engaged in discussions with AquaFlo and this case is pending.

Virginia City

D2009.4.52-Complaint of Concerned Citizens of Virginia City-Municipal water and sewer companies are deregulated as far as the PSC is concerned but this is a unique case based on user complaints. The people in Virginia City found a provision in law that requires the PSC, upon complaint, to review those complaints.

Wettington Acres Water District

D2008.7.85-Application to Implement Increased Rates-Wettington Acres Water District (WAW) is a service area in Kalispell and MCC is monitoring and analyzing this application.

Stillwater Utilities, LLC

D2009.1.3-Petition to Transfer Ownership of Water System-Stillwater Utilities is also in Kalispell and the PSC approved that reorganization 5/20/09.

Boeing Company

D2009.6.79-Petition for Declaratory Ruling-Boeing Company (Boeing) is near Glasgow and wants to provide water through a subsidiary it owns at Glasgow Air Force Base to a water authority at Culbertson. In doing this Boeing doesn't want to become regulated so a declaratory ruling from the PSC was requested, finding that Boeing would not be regulated. MCC has determined there is no need to take a position in this case.

Salish Shores Utility Corporation

D2006.10.146-Amended Application to Increase Water Rates-Salish Shores Utility (SSU) is a utility with service territory in Thompson Falls and filed an application to increase water rates by 160%. This would be an average annual increase for customers exceeding \$300.00. MCC is reviewing this application.

Utility Solutions, LLC

D2005.11.163 and D2005.11.164-Amended Application to Increase Water and Sewer Rates-Utility Solutions (US) is a subdivision in Gallatin County and requested a 171% increase for water and 106% increase for sewer. MCC is reviewing these applications.

United Materials of Great Falls

D2009.1.4-Petition to set Terms and Conditions for Existing QF-United Materials (UMGF) owns a QF project known as Horseshoe Bend near Great Falls and sells most of their power to Idaho Power but, in the summer, there is no contract in place so UMGF is looking to sell that power. Initially NWE was not interested so UMGF is trying to do this under the QF provisions. MCC did not file in this docket.

MISCELLANEOUS

N2009.4.49-Consideration of Adoption of Energy Independence and Security Act of 2007 Standards Regarding Integrated Resource Planning, Energy Efficiency, Rate Design Modifications, Smart Grid Investments and SmartGrid information-This docket is the PSC consideration of certain energy standards that they were required to review pursuant to amendments to PURPA. The PSC requested comments on the amendments which included integrated resource planning (IRP), rate design modification to promote energy efficiency investments, smart grid investments, smart grid information and energy efficiency integration in resource planning. MCC filed comments of Larry Nordell on 6/26/09. Larry said that IRP and least cost planning have been in place in Montana for many years and no additional action is required. Larry added that the PSC has already considered these issues and has adopted a lost revenue adjustment mechanism (LRAM) which concerns lost revenues relating to energy efficiency investments, and universal system benefits systems that address energy efficiency. The PSC has also adopted the expensing of efficiency investments, addressing quick recovery of these investments that was a concern of this federal legislation, and further consideration of recovery of those efficiency investments should occur in individual utility proceedings. Larry stated that MCC supported rates that convey marginal energy cost information, and that smart grid standards are implicit in IRP requirements and no further action would be required in response to the federal statute and that preapproval of smart grid investment in its entirety would be inappropriate.

NASUCA

NASUCA Model RTO Governance-NASUCA is National Association of State Utility Consumer Advocates which includes MCC. NASUCA was requested by John Wellinghoff, who is now the Chairman of FERC and formerly the Nevada Consumer Advocate and a member of NASUCA, to provide FERC with a model for Regional Transmission Organization (RTO) governance. RTO's are entities that FERC tried to establish on a regional basis for transmission entities to participate in on a coordinated basis. They have been organized in several areas of the country. There were several efforts in the Northwest to

organize an RTO that failed. Mr. Wellinghoff was interested in a model governance document, which is a NASUCA took on and Larry Nordell participated in. In 6/09 NASUCA adopted a resolution supporting a model corporate governance for RTO. Bob believes this was a worthwhile effort and hopefully something that will have some impact at FERC since Commissioner Wellinghoff showed interest. NASUCA also filed comments on a Securities and Exchange Commission (SEC) proposal to adopt some International Financial Reporting Standards (IFRS) as opposed to Generally Accepted Accounting Principles (GAAP) that are currently used. There was a concern that if the SEC starts requiring utilities to use IFRS instead of GAAP that there would be expenses and problems for consumers. NASUCA comments state that the SEC probably doesn't understand how important these financial statements are to current regulation and regulatory practices. MCC did participate in the review of these comments because they are important to regulatory practices in Montana.

NERC

North American Electric Reliability Corporation (NERC) Member Representatives

Committee (MRC)-FERC is responsible for electric system reliability and has made the North American Electric Reliability (NERC) the body responsible for establishing guidelines and practices related to reliability and electric reliability planning. The mission of NERC is to insure reliability of the bulk power system in North America, so it also affects Canada. NERC develops and enforces reliability standards and monitors the bulk power system. Larry Nordell was elected one of the two small customer representatives on the Members Representative Committee that oversees the board of NERC and he was supported by NASUCA for that position.

NWE Advisory Committees

Electric Technical Advisory Committee (ETAC)-There are several advisory committees and collaboratives that Bob Rowe described relating to NWE, and the Electric Technical Advisory Committee (ETAC) is the longest existing. ETAC was a committee that was supposed to be providing input to NWE with regard to resource planning and acquisition

processes and the objective initially was to reduce risks by providing that input to NWE. Larry participates actively in that committee.

NWE Transmission Advisory Committee (NTAC)-NWE Transmission Advisory Committee (NTAC) has been established for NWE and is dedicated to transmission planning issues.

Public Policy Stakeholder Group-This is a public policy stakeholders group that NWE established this year and that Bob Nelson has been participating in. Decoupling was a topic recently discussed and NWE may be considering a decoupling proposal that would be included in the September 30, 2009 filing.

Wind Integration Working Group-This is NWE's Wind Integration Working Group (WIWG). The first meeting was held recently and the group is looking at the issues of the cost of wind integration and regulation. Larry had urged the PSC and NWE to rely more on a technical study possibly with some input from other parties rather than the collaborative approach, but NWE started this collaborative working group which Larry has participated in.

Northern Tier Transmission Group (NTTG)- The Northern Tier Transmission Group (NTTG) is involved in regional transmission planning. There were failed attempts to establish an RTO under FERC regulations for the Northwest with the last major effort falling apart several years ago. As a result, some utilities formed the Northern Tier Transmission Group and others formed Columbia Grid. These groups now often work together but remain two separate groups. NTTG is a voluntary organization of transmission owning utilities, including NWE, Idaho Power, PacifiCorp and Deseret. The organization looks at ways to improve the efficiency of the transmission grid, as well as regional transmission plan issues. Larry is a member of the NTTG Steering Committee and is also on the management committee and cost allocation committee.

MARY WRIGHT PROVIDED THE FOLLOWING HIGHLIGHTS OF TELECOM CASES CURRENTLY PENDING:

D2008.9.111-Investigation of Compliance with ETC Designation Requirements, Alltel Communications, Inc-This case is an investigation started by the PSC into Alltel Communications. The question here is whether Alltel has complied with a coverage requirement that was imposed as a result of PSC approval of Eligible Telecommunications Carriers (ETC) status for Western Wireless. Western Wireless and Alltel completed a merger in 2005 and as a result the coverage condition was transferred to Alltel and the question remains of whether Alltel is complying. The ETC carrier status was created in the 1996 Federal Telecommunications Act as a means to get universal service funding with state commission approval to competitive carriers. So Western Wireless got that approval and Alltel took it over after the merger. MCC intervened but did not file testimony. A hearing was held on 7/16/09 and a Final Order is pending.

D2009.5.74-Verizon, AT&T, and Sprint Petition for Waiver of Regulations Requiring the Filing of Tariffs or Price Lists for Intrastate Interexchange Services-Verizon, AT&T and Sprint (IXC's) in their capacity as Intrastate Interexchange Carriers filed for a waiver of the PSC's requirements that they file price lists and tariffs whenever they change their rates for instate long distance service. MCC and Montana Telecommunications Association (MTA) intervened and prehearing conferences have been held to discuss the issues and how to proceed. It has been decided the petitioners would file affidavits or other documentation affirming the accuracy of their information in supporting this waiver and to make a specific statement that they were not seeking to be deregulated by the PSC. MCC hasn't taken a position yet but will review IXC's information.

N2009.8.113-Southern Montana Telephone Company Application for Authority to Increase Rates-Southern Montana Telephone (SMT) is headquartered in Wisdom, Montana and serves exchanges in Divide, Wisdom, Wise River, Jackson, and Grant, Montana. This application proposes to increase local service rates from \$11.50 to \$13.75 for 877 residence customers and increase the local business rates from \$13.50 to \$16.75 for their 170 business

subscribers. SMT claims they are not earning their authorized return and although these increases wouldn't actually get them there, SMT wants to take an incremental approach. SMT, under the statute, is a small telecommunications provider and if a small provider wants a rate increase they simply file a notice of rate increase. If within 60 days of filing 10% of customers request the PSC review the proposed rates, then the PSC will begin a review.

Qwest

These three cases have been resolved since the last meeting,

D2008.1.6-PSC Investigation of Qwest Corporation Regarding the Justness and Reasonableness of Rates, Schedules and Terms and Conditions of Service-In 2003 the PSC launched an investigation of Qwest's rates based on their annual reports that showed Qwest may be over earning. Qwest resisted which ended up provoking two separate court cases. The District Court ruled in Qwest's favor, that the PSC could not request the information needed for its investigation. Eventually, the Montana Supreme Court reversed the District Court decision and said that the PSC could collect whatever information needed from a public utility to carry out the statutory duties. Shortly after that the PSC issued an order requiring Qwest to file all the information needed in a rate case but also gave them an alternative. Under Montana law, telecommunications companies can file an alternative form of regulation (AFOR), provided that MCC agrees. Some very productive negotiations have taken place and a hearing was held on 11/5/09. Eventually the PSC approved the AFOR plan that MCC entered with Qwest. Rate reductions to consumers of approximately \$16 million per year were implemented on 5/1/09.

D2005.6.105-PSC Investigation and Direction on Use of Federal Universal Service

Funds-This is the PSC's investigation into Qwest's use of Federal Universal Service Funds (USF). In this effort, PSC staff was split into advocacy and advisory roles. MCC filed testimony advocating that USF's should be treated as customer contributed capital. The procedural schedule was suspended because AFOR discussions in the previous docket ended up merging the two cases. Qwest and MCC entered into a stipulation for the same period as

for the AFOR providing that Qwest will treat USF's as customer contributed capital. That stipulation and the AFOR were approved by the PSC at the same time.

D2006.10.146-Complaint of Russell L. Doty and Qwest Customers-A number of Qwest customers filed a rate complaint with the PSC alleging that Qwest was over earning. This case eventually was suspended so the issues in this case could be included in the AFOR discussions. The complainants participated in negotiations. Senator Tropila asked if customers of a small telecommunication provider are aware that they have the right to petition, as in the SMT case. Mary said that SMT sent a notice out with the bills informing the customers of SMT's plan and what the rights of the customers are.

Financial Report

The legislature sets MCC's appropriation level and the Department of Revenue calculates a tax rate based on that appropriation. The tax is applied to the gross proceeds from regulated activities and that mechanism is established every year. The tax rate right now is 8 hundreds of 1%. Bob handed out two budget reports. The report dated 7/25/09 is the year-end report for fiscal year 2009. Personal Services ended the year at 78% of the budget spent, mainly because of vacant positions. In contracted services we anticipated spending 100% of budget and did spend an additional 33% of the contingency funds. For 30 years MCC has had a contingency fund, which is not expected to be used, for unanticipated cases and workload. This has been at \$250,000 for the past six years. One other item of interest is travel which ended the year at 53%. Again this is due to position vacancies and can fluctuate depending on workload. The report dated 9/09 shows activity for the first two months of fiscal year 2010. MCC had a disappointing legislative session with respect to the budget. During this last session our budget request was reduced by \$375,000 per year or \$750,000 over the biennium. Senator Tropila asked Bob if the budget went before the Appropriations and Finance Committee and if they understood what the contingency was used for. Bob said that the budget was discussed with the House Appropriation Joint Sub-Committee and passed the House. The amendments were made in Executive Action on the Finance Committee so there was less opportunity to explain at that point. Senator Murphy asked Bob how he felt the

office would be able to operate. Bob said that caseload fluctuates from year to year and decisions are going to have to be made more carefully what to participate in. Senator Murphy asked Bob about the letter that Commissioner Ken Toole sent Bob about not intervening in the Craig/Qwest situation. Bob said this is an unusual situation because it was a non-docketed event and no hearing notice was issued. The PSC has meetings frequently with customers and other parties that MCC doesn't typically participate in unless requested to do so.

HIRING OF EXPERT WITNESSES

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

D2009.5.63/N2008.12.138-NWE Natural Gas Annual Tracker and Biennial Procurement Plan: George Donkin

D2009.5.62-NWE Electric Annual Tracker: John Wilson

D2008.6.61/D2009.6.88-Energy West Montana, Natural Gas Annual Trackers: George Donkin

D2008.9.111-PSC Investigation of Alltell Communications Compliance with ETC Designation Requirements: Al Buckalew

D2009.5.74-Verizon/AT&T/Sprint Petition for Waiver of Regulations requiring price list and tariff filings: Al Buckalew

D2009.8.113- Southern Montana Telephone Rate Increase Application: Al Buckalew
D2008.12.140-Petition of Cable & Communications Corporation for Approval of Cost Data Pursuant to the Federal Communications Commission CETC Cap Order: Al Buckalew

Embarq Century-Al Buckalew

D2008.5.57/D2008.11.132-Energy West Incorporated Reorganization and Application to Acquire Brainard Gas Corporation, Great Plains Natural Gas Company, Lightening Pipeline Company, Inc., and Membership Interest in Great Plains Land Development Co., Ltd.: John Wilson

D2009.4.56-MDU Electric Cost of Service and Rate Design filing-John Wilson

D2009.6.87-MDU Annual Electric Cost Tracker and Trueup-John Wilson and Al Clark

D2009.9.129- NWE Electric and Gas Cost of Service and Rate Design filing due 9/30/09-John Wilson and Al Clark

VOTE: The motion passed unanimously.

PAY PLAN IMPLEMENTATION

MCC is not part of the pay plan but does receive pay plan appropriations and the committee approves any pay changes for MCC staff. Bob requests approval of a \$450.00 lump sum, one-time payment for employees under \$45,000 annual salary, in line with the state wide pay plan.

MOTION: Representative Berry moved approval of the \$450.00 lump sum, one-time payment for Mandi.

VOTE: The motion passed unanimously.

Public Comments

Based on HB94 requirements, a public comment period was offered. Sonja Nowakowski, staff of the Energy and Telecommunications Interim Committee (ETIC) wanted to inform the committee that ETIC, due to the passage of SB 290, is currently reviewing state energy policy for potential revision. In August, ETIC requested public comments on three topics which were: rebuilding and extending transmission lines, wind integration, and maximizing state land use for energy generation. 50 public comments were received and are available on the ETIC website. The next ETIC meeting is September 24, 2009.

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 _____, 2009

_____, Chairman