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# THE INTERIM

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NOVEMBER 2002      HELENA, MONTANA      VOL. XIII NO. 18

## LAW SCHOOL FOR LEGISLATORS

Popular Program Returns... Shortly before the 2001 Legislative Session, the Montana State Bar Association, in conjunction with the Legislative Council, held a condensed educational program for new and returning legislators that provided an overview of crucial legal concepts that every legislator needs to understand in order to effectively legislate. Based on the evaluations received from legislators, the law school was an overwhelming success.

Back by popular demand, the *Law School for Legislators: A Toolkit of Legal Basics* is scheduled for Nov. 20, from 1 p.m. to 5 p.m. in the House Chambers. The law school will be emphasizing the theme of legal tools for legislators. The program will be highly interactive and fun. Some of the presenters are still being finalized for the law school, but participants can look forward to the following program:

**Law School for Legislators  
A TOOLKIT OF LEGAL BASICS**

**Montana House of Representatives Chambers**

**Wednesday, November 20, 2002  
1:00 - 5:00 p.m.**

1:00 - 1:15 p.m. Welcome and Preview of the Toolkit

***Toolman of Ceremonies, Mark Noennig  
State Bar President, Andrew Suenram***

1:15 - 2:15 p.m. Hammering Home the Fundamentals of the Montana Constitution

***The Architect of Constitutional Interpretation, Professor Larry  
Elison***

2:15 - 2:45 p.m. Statutory Construction and Legislative Intent

***The Ultimate Tool Guy, Greg Petesch***

2:45 - 3:00 p.m. Take a Retooling Break

3:00 - 4:00 p.m. How Legislators Can Affect Agency Rulemaking - Developing a Blueprint and Working With the Builder to Make Your Dream Law a Reality

4:00 - 5:00 p.m. Who Wants to be Ethical?

*Join in the game show fun as "Egregious Toolbin" takes contestants through a series of ethical dilemmas. What would YOU do? Phone a friend? Poll the audience? Take a guess? It's anybody's game during "Who Wants to be Ethical."*

If you have any questions, please contact Lois Menzies at (406) 444-3066 or [lomenzies@mt.gov](mailto:lomenzies@mt.gov).

## NEW LEGISLATOR ORIENTATION

New Legislator Orientation Follows Law School for Legislators... The Legislative Council is once again sponsoring an orientation program for new legislators. The theme for the 2002 New Legislator Orientation is "A Journey of Discovery." The goal of the program is to provide new lawmakers with practical information and skills for navigating the foreign and often unpredictable waters of the legislative process.

The orientation program begins with registration at 6 p.m. on Wednesday, November 20 and concludes at 4:30 p.m. on Friday, November 22. The program is as follows:

**New Legislator Orientation  
Program  
(All sessions are in the State Capitol, Helena, MT)**

Wednesday, Nov. 20, 2002

6:00-7:00 pm Registration--Room 317, State Capitol  
7:00-8:30 pm Reception for New Legislators

Thursday, Nov. 21, 2002

8:30-8:45 am	Program Overview
8:45-10:00 am	The Montana Legislature: Perspectives From Leadership
10:00-10:15 am	Break
10:15-12:15 pm	Breakout Sessions ( <i>rotate after one hour</i> ) <ul style="list-style-type: none"> <li>• Pay &amp; Benefits</li> <li>• House &amp; Senate Facilities &amp; Staff</li> </ul>
12:15-1:30 pm	Lunch ( <i>on your own</i> )
1:30-3:45 pm	Breakout Sessions ( <i>rotate after 30 minutes</i> ) <ul style="list-style-type: none"> <li>Legislative Services           <ul style="list-style-type: none"> <li>• Research and Reference</li> <li>• Fiscal Information Resources</li> <li>• Legislative Audits</li> </ul> </li> </ul>
3:45-4:00 pm	Break
4:00-5:30 pm	Capitol Tour
5:30 pm	Recess for the Day

Friday, Nov. 22, 2002

8:00-8:05 am	Opening & Preview of Day
8:05-8:45 am	The Bill Drafting Process
8:45-12:00 pm	Breakout Sessions ( <i>rotate after one hour</i> ) <ul style="list-style-type: none"> <li>• Legislative Rules</li> <li>• Budget Basics</li> <li>• Bill Mechanics</li> </ul>
12:15-1:00 pm	Lunch ( <i>NCSL, CSG presentations</i> )
1:00-3:00 pm	Breakout Sessions ( <i>rotate after one hour</i> ) <ul style="list-style-type: none"> <li>• Lobbying &amp; Lobbyists</li> <li>• The Media</li> <li>• Handling Constituent Requests</li> </ul>
3:00-3:15 pm	Break
3:15-4:30 pm	Mock Committee Hearing & Floor Session
4:30 pm	Adjournment

The orientation program is open to all legislators; however, only freshmen legislators will be paid salary and expenses. If you have any questions, please contact Lois Menzies at (406) 444-3066 or [lomenzies@mt.gov](mailto:lomenzies@mt.gov).

## TRANSITION ADVISORY COMMITTEE

Federal Energy Regulatory Commission's Proposed Rules Hit the Fan...The Transmission Subcommittee met Sept. 13 in Helena. The subcommittee has spent considerable time reviewing the development of a regional transmission organization in the Pacific Northwest and other western states. Since the enactment of the federal Energy Policy Act of 1992, the Federal Regulatory Energy Regulatory Commission has been working to promote competition in wholesale electricity markets. In 1996, FERC issued Order 888 (affectionately referred to as the "mega-NOPR") and Order 889 that required utilities that sold electricity and owned transmission lines to provide open access to their transmission system by other power marketers on a nondiscriminatory basis. In 1999, FERC issued Order 2000 directing investor-owned utilities operating in the various regions of the country to form voluntary regional transmission organizations. The regional transmission system would be operated by a single, independent entity that would enhance the efficiency of wholesale electricity markets and would ensure that electricity customers in the region pay the lowest price possible for reliable service. Several private transmission owners, the British Columbia Power Authority, and the Bonneville Power Administration have formed a regional transmission organization known as RTO West.

FERC concluded that Orders 888 and 889 still allow a transmission provider to favor its own generation and is disappointed in the slow pace in the formation of regional transmission organizations. FERC recently released a new notice of proposed rulemaking on standard market design (fondly known as the "giga-NOPR") to address what it considers as the flaws in wholesale electricity markets, the resolution of which would eventually lead to competition and lower energy prices.

Jeff Martin, subcommittee staff, summarized FERC's rationale for developing standard market design and highlighted some of the major provisions of the new rules. The new rules would mandate the creation of independent transmission providers (ITP) that would administer a regional transmission system that would include real time and day ahead markets, ancillary services, and transmission rights, including congestion management. A transmission owner would be required to use an ITP regardless of whether the owner provides bundled services or is a member of an RTO. The ITP would be governed by an independent board of directors and would work with a regional state advisory committee on a variety of technical matters. The summary can be found on the TAC website at <http://www.leg.mt.gov/>. Follow the 2001/2002 Interim links to "Staff Reports."

Oddly, the new rules have not been warmly embraced by everyone. Gov. Grey Davis, probably still chafing from California's energy crisis, panned the plan, while several southern governors, whose constituents already benefit from low energy prices, told FERC, reading between the lines, "to go jump in a lake." Representatives of the Western Governor's Association suggested that maybe FERC should test the plan somewhere else.

During a teleconference presentation, Marilyn Showalter, Chair, Washington Transportation and Utilities Commission, discussed some of the negative aspects of the

new rules. According to Showalter, the supply of electricity is, in many respects, a political issue in the Pacific Northwest because most states in the region and the west have remained under cost-based regulation. The seemingly centralized aspect of FERC's order would reduce accountability at the state level. She pointed out that the new rules do not take into account the unique characteristics of the hydroelectric system in the region. In addition, many public power entities would have to turn over the operation of their transmission system to an ITP.

The **Back Page** in this month's issue of *THE INTERIM* discusses FERC's role in restructuring the electric utility industry.

Western Area Power Administration Presents Transmission Study Results... Ed Weber, Transmission Planning Manager, WAPA, presented the results of a study that analyzed the costs and feasibility of transmission upgrades in Montana. The Montana analysis was part of a larger transmission study, authorized by Congress, that included Montana, North Dakota, and South Dakota. Weber said that the Montana portion of the study looked at five potential generation sites in the state and the transmission line alternatives that may be necessary to export power to Denver, Salt Lake, or power markets in the Pacific Northwest. The project sites included Colstrip (1,000 MW from coal-fired generation), Great Falls (1,000 MW from gas-fired generation), Billings (500 MW of thermal energy), and Fort Peck (600 MW of wind energy). The study indicated mixed results depending on the location of the generation and the intended export market; some alternatives would not work or caused system instability. The study also estimated the costs of transmission alternatives, ranging from over \$300 million to just under \$600 million. An electronic copy of the study is available at <http://www.wapa.gov/ugp/study/default>.

Subcommittee Wants FERC to Slow Down... The subcommittee discussed the implications of FERC's timeframe for getting comments on standard market design and its aggressive schedule for implementing the rules if adopted. The subcommittee concluded that energy stakeholders in the Pacific Northwest should have the opportunity to participate more fully in the development of a wholesale energy market that better represents the unique characteristics of the region. Sen. Emily Stonington suggested that the subcommittee write a letter to Montana's congressional delegation requesting that they urge FERC to slow down on implementing the new rules. The letter was presented to the TAC Committee for its approval (see below).

Transmission Advisory Committee Considers Electricity Supply Options... Earlier this year the committee asked Matthew Brown, Energy Program Director, National Conference of State Legislatures, to conduct an assessment of the state's electric utility restructuring scheme. The purpose of the assessment was to look at the state's current policies and to offer policy options that may either fine-tune existing policies or offer new policies that will further the goals of Montana's restructuring legislation. Since then, Brown has been evaluating the characteristics of state's electricity industry and has been working with a wide variety of industry participants. At

the committee's Sept. 19 meeting, he presented a draft report that described the features of the state's electricity industry, the assumptions and lessons of small customer retail markets, both in Montana and other states, and electricity supply options within the context of certain policy goals. The draft report is available on the committee's webpage under "Non-Agency Reports". The policy goals identified by Brown included the following:

- provide incentives to participate in the retail market and leave all segments of the market open to choice;
- recognize that the transition to choice may take longer than expected and institute new aggregation-based approaches that may reduce market transaction costs for both the supplier and customer groups; or
- pull back from competitive markets and examine ways to involve government in the provision of retail electric service.

The committee discussed strategies used by other states under a longer transition period to customer choice. In Oregon, the utility offers a portfolio of products to its customers. A customer may select the standard offer, a market-based offer, including time-of-use metering, or a variety of renewable energy products. In Maine, the state's utility commission solicits bids to provide service by customer class. Bids are not subject to prudence review, but the marketer is required to deliver electricity at the bid price. Massachusetts and Ohio provide for "opt-out aggregation." Local governments are allowed to assemble the electrical load for customers within its jurisdiction. The customer is part of the local buying group unless the customer specifically opts out.

Committee Requests Bill Draft to Target Renewable Energy as Part of Portfolio... Sen. Emily Stonington asked the committee to request a bill draft that would require 7% the default energy supply come from renewable energy sources as defined in 90-4-102, MCA. The committee decided to set a target amount of 7% rather a required amount. The bill draft will be presented at the next meeting.

Other Topics... On June 21, 2002, the Public Service Commission issued its final order regarding NorthWestern Energy's proposal for the default energy supply portfolio. The PSC approved supply contracts with PPL Montana and Duke Energy, but did not approve other elements of the energy portfolio because it could not determine whether NorthWestern Energy acted reasonably in its selection of other sources for future procurement. Since then, NorthWestern Energy, the PSC, and other stakeholders have been working on guidelines for default energy supply procurement procedures. Pat Corcoran, NorthWestern Energy, said the purpose of the guidelines is to offer a set of instructions on energy procurement, resource planning, and integrated least cost planning. The guidelines are expected to be in place later this year.

The committee agreed with the Transmission Subcommittee that a letter be sent to Montana's congressional delegation asking that they persuade FERC to allow additional time to comment on the standard market design proposed rules and to encourage FERC to work with the Pacific Northwest in developing an energy market

structure that is appropriate to the region. Because a lot of pressure has been put on FERC to slow down, it has decided to delay until Jan. 10, 2003, the comment period for certain elements of the proposed rule.

Committee to Meet in November...The committee will meet Thursday, Nov. 21 at 8:30 a.m. in Room 303 (Old Supreme Court) of the Capitol. The committee will review bill drafts related to energy supply options and the renewable energy resource proposal discussed above. The committee will also review bill drafts related to HB 474. Other agenda items include updates on default supply procurement procedures and FERC's recent order on RTO West.

For more information about the committee, contact Jeff Martin at (406) 444-3595 or jmartin@mt.gov or Todd Everts at (406) 444-3747 or teverts@mt.gov.

## REVENUE AND TRANSPORTATION COMMITTEE

Committee to Adopt Preliminary Revenue Estimates in November...The Revenue and Transportation Interim Committee will hold its final meeting of the interim on Nov. 19. The committee will adopt the initial revenue estimates for the 2003 session. The committee's estimates will be contained HJR 2, the Legislature's revenue estimating resolution. The meeting is tentatively scheduled in Room 152 of the Capitol. More specific meeting information will be sent to interested persons in November.

If you have any questions about the committee's activities or the November meeting, contact Leanne Kurtz, RTIC staff, at 444-3593 or via e-mail at lekurtz@mt.gov.

## ECONOMIC AFFAIRS COMMITTEE

Committee Wraps-up Business for the Interim...The Economic Affairs Committee held its final meeting of the interim on Sept. 9. The committee reviewed an alternative leave plan for state fund employees and the results of full cost accounting pilot program, endorsed the SJR 22 Subcommittee recommendations, and wrapped-up other committee duties.

Montana State Fund Adopts Alternative Employee Leave Plan ...The Montana State Fund was authorized to adopt employee leave benefits different from the leave benefits offered to most other state employees. As a result of an in-house examination of State Fund employee leave patterns, the State Fund developed and implemented a personal leave plan for its union-exempt employees. The plan, implemented in FY 2002, was designed to improve upon and replace the traditional annual leave and sick leave programs afforded other state employees. The plan provides employees with the same number of days available for their use while providing them with a greater degree of

accountability. The State Fund determined that personal leave plans have many advantages over traditional leave plans, including:

- reducing a supervisor's need for counseling on and controlling sick leave use;
- reducing the number of unplanned absences resulting in better customer service;
- eliminating any "incentive" for inappropriate use of sick leave; and
- empowering employees to be accountable on how they use this benefit.

According to the State Fund, a major benefit of the plan is that it gives the employee the ability to "cash out" excess leave balances on an annual basis. It also provides for the accumulation of a leave category that can accommodate unplanned absences for an extended period of time, much like short-term disability leave.

Committee Reviews Full Cost Accounting Results...House Bill No. 73 (Ch. 489, L. 2001) required certain state agency programs to implement a full cost accounting pilot program. Full cost accounting was conducted for the following state programs:

- Central Stores Program within the Department of Administration;
- marketing unit of the Travel Promotion and Development Division within the Department of Commerce;
- nursery program of the Forestry Division within the Department of Natural Resources and Conservation;
- plan and specification review program of the public water supply section within the Department of Environmental Quality;
- Chemical Dependency Bureau within the Department of Public Health and Human Services;
- motor pool unit within the Department of Transportation;
- state hail program and State Grain Laboratory Bureau within the Department of Agriculture; and
- capital grounds maintenance program within the Department of Fish, Wildlife, and Parks.

Committee Revisits Rules on Certified Nurse Anesthetists...The committee suggested that the Board of Nursing and other interested parties, primarily anesthesiologists, work to reach agreement on the proposed administrative rules regarding certified nurse anesthetists and the matters that the rules address.

Committee Endorses Health Care and Health Insurance Recommendations...The SJR 22 Subcommittee met eight times during the interim and investigated a variety of problems related to health care or health insurance. Based on the subcommittee's work, the full EAC recommends to the 58th Legislature and the executive branch, the following:

- that the administration explore ways and means of increasing participation in the Children's Health Insurance Program, or CHIP, to maximize coverage for children in the program and the number of currently uninsured children. The EAC also encourages the administration to explore the possibility of expanding

eligibility for the CHIP, which expansion may include the parent(s) of CHIP-covered children.

- that the administration explore expanded use of purchasing pools, specifically to determine how the state can enter into multi-jurisdictional agreements for the purchase of prescription drugs for individuals other than just state employees and state retirees and their families, individuals committed to Montana institutions (e.g., the Montana State Prison or Montana State Hospital), and individuals participating in various human services programs, such as Medicaid. The EAC also suggests that the administration investigate the possibility of expanding the purchasing pool concept to include local government or school district employees and families, low-income senior citizens, senior citizens in general, and other reasonably well defined groups.
- that a state tax credit be established for low-income individuals and small businesses that purchase health insurance. The credit would vary according to the individual(s) or group being covered, primarily on the basis of age. As a pilot program, the aggregate amount of credit available would be limited to \$45 million annually (state general fund impact). The credit program would sunset in 4 years after implementation, giving future legislatures, individuals, small businesses and their employees, and others an opportunity to assess the impact of the program and the advisability of continuing the program.

Committee staff is preparing a draft final report on the committee's activities, including proposed legislation. The final report will be available prior to the convening of the 58th Legislature

For more information on the Economic Affairs Interim Committee or on the SJR 22 Subcommittee on Health Care and Health Insurance, contact Dave Bohyer by e-mail at [dbohyer@mt.gov](mailto:dbohyer@mt.gov) or by phone at (406) 444-3592.

## LAW AND JUSTICE COMMITTEE

Committee Looks at Impacts of Budget Reductions...The Law and Justice Interim Committee (LJIC) met a final time for the interim on Sept. 9. The main purpose of the meeting was to review expenditure reductions, special session impacts, and anticipated funding issues of the entities for which the LJIC has a liaison function. The committee also recommended the introduction of two legislative proposals. The agenda for the meeting included the items below.

Department of Corrections Discusses Budget Reductions...The Department of Corrections described the impacts of expenditure cuts ordered by the governor and appropriations reductions imposed during the August special session as follows:

- After the August special session, the DOC mitigated an additional \$900,000 in budget reductions above the \$2.3 million requested by the Governor.
- The biggest issue the DOC faced was the \$576,000 pay plan reduction that resulted in a reduction of five employees. It reduced the pay grade of another position and is holding open two positions.
- The personnel services savings were approximately \$300,000 and reductions to the DOC's operating budget were \$280,000.
- The DOC used its prerogative to move offenders to lower levels of supervision. As of Aug. 30, 2002, some 300 offenders had been identified that met the criteria for lower level status--151 had been approved (104 males and 47 females). This will result in an increased case load for probation and parole officers. The target is to move 500 offenders out of secure custody facilities and into community supervision.
- The DOC is negotiating with the Missoula Regional Prison to change its focus to a DOC-commit reception center for revocations up to 30 days. The intent is to have all DOC-commits in one location instead of several county jails and have a centralized screening process to enable the DOC to meet the commits' needs in the community.

DOC Director Bill Slaughter informed the LJIC about other issues the department must deal with, including:

- There has been a 9% growth in the incarceration rate--4% higher than budgeted. This could result in a \$9 million budget supplemental (general fund) in the 2003 session because of the increase in contract beds.
- The DOC needs to address how to prevent putting people back into the system at the high rate that it is and whether offenders are properly placed in prison. For example, when offenders are sentenced, they may be sentenced to prison or to the DOC. If sentenced to the DOC, the DOC has to put offenders in an appropriate program or facility. The DOC is looking at whether offenders could be better dealt with in a community setting. However, when the contract beds, ISP, and the prerelease beds filled up and the DOC realized an offender waiting list, it had to put offenders in prison--its most expensive bed.
- The DOC has decided that the state needs a reception center other than the MSP and a more appropriate evaluation and placement processes, i.e. lower-level supervision.
- The DOC's target is to redirect 450 offenders into the community corrections options rather than prison.
- The DOC has 50%-occupancy contracts with all of the regional prisons but there are no savings. The DOC is in partnership with the Corrections Corporation of America (CCA) which is the future of corrections according to Slaughter.
- The DOC and CCA will propose legislation to permit the placement of out-of-state prisoners in the Crossroads Correctional Center (CCC) in Shelby. If the proposed legislation is enacted, inmates would be placed under three conditions: (1) out-of-state prisoners will be isolated in the CCC at Shelby, (2)

the DOC will get to assess the offenders before they are placed in the system, and (3) if in fact, Montana's correctional system continues to grow and if the DOC is funded for every offender it puts into Shelby, out-of-state offenders must be moved out.

- If something unforeseen happens and the state loses Shelby for any reason, DOC has a huge problem. Montana needs to keep the CCC in Shelby viable and it needs to ensure that it is a for-profit company.
- The DOC knows that the offender population is going to grow but it does not know at what levels of funding the DOC will receive in the future.

Department of Justice Reports on Budget Issues...The attorney general and Department of Justice (DOJ) staff reported on the expenditure cuts ordered by the governor and the appropriations reductions imposed during the August special session, which were summarized as follows:

- Total reductions to the DOJ were approximately \$1 million not including cuts due to the hiring freeze.
- the DOJ's vacancy savings will be between 7% and 8%, which concerns the attorney general in terms of public safety.
- One issue that arose is how the hiring freeze is being implemented. If a position is critical, the DOJ submitted a request to OBPP for approval. Even if OBPP approves the position, it withholds 25% from the allocation for that position. This works fine for OBPP but it is a mess for an agency that is trying to comply with it. The DOJ would rather have OBPP give it a dollar figure and have the DOJ meet that figure. Taking 25% out of each position, does not make sense. OBPP does not need to micro-manage the DOJ.
- The DOJ is not looking at any major reductions for the next Legislature other than those that it has already taken.
- "Homeland Security" has been a major issue and the DOJ is still trying to find out what the federal government is going to do. The state will receive some federal funding, but the amount is unknown.
- In the 2001 session, the DOJ was authorized to borrow \$4.5 million from the Board of Investments to help pay for the motor vehicle filing system. So far, the DOJ has collected \$18 million, which has been deposited into the general fund. After the DOJ got into the filing process and it became clear that the state was going to have a deficit, the DOJ terminated the hardware for the program until it could ask the Legislature for instructions on how to proceed. The DOJ will eventually have to have a new computer system to realize all of the benefits. At the same time, the system cannot be put in place until the DOJ knows that the registration and drivers license portions of the program are going to be funded.
- The registration and drivers license system will cost an additional \$18 million. The DOJ proposed to fund the entire project by a \$2 increase in registration fees.

- There is a limit as to how much can be cut in the Legal Services Division. Any cuts made, particularly related to the Law Enforcement Academy, falls directly on local governments.
- Forensic science has become a major force in the way that crimes are investigated and convictions are achieved.
- Highway Patrol staffing is at 1976 levels and patrol officers' driving time has increased substantially.
- The Information Technology Service Division is critical to the DOJ's operation.

In short, the DOJ is not in a position to recommend any major expenditure cuts. It will up to the Legislature to decide whether some of the services that the DOJ delivers are not going to be considered a priority.

Tobacco Settlement Update...The attorney general reported on the settlement agreement with the major tobacco manufacturers. He said that the tobacco settlement master agreement continues to be enforced and Montana will receive revenue from it. The DOJ monitors the funds. The suit against the nonparticipating manufactures--the 38 companies in Montana that do business that are not major tobacco manufacturers--are proceeding. The DOJ is working with the Department of Revenue to allow for the electronic filing of information that the state requires to monitor nonparticipating manufactures. The Department of Revenue is requesting an auditor position to do this function.

The Attorney General also reported that the DOJ is also implementing an amber-alert system in Montana through the Homeland Security Task Force.

Supreme Court Reports on SB 176 and Other Matters...The Chief Justice of the Montana Supreme Court reported to the Committee on several matters, including:

- State assumption of district court costs under SB 176 was up and running July 1, 2003.
- The District Court Council, which meets monthly, has been working on proposed legislation to clarify provisions in SB 176 related to the allocation of expenses involved in voluntary commitments and youth court proceedings and to the exemption of independent contractor court reporters from the Montana Procurement Act. It is also working on additional proposals to revise other statutes to make them consistent with SB 176, including statutes related to water commissioners, water masters, and special masters.
- The council will approve legislative proposals at its next meeting and it will find legislative sponsors.
- The District Court Council will begin work on the resource allocation among the district courts.
- The judicial branch made voluntary reductions in its budget totaling \$365,000 with additional special session reductions of \$162,000, including the reduced funding for employee pay raises. It implemented duplex copying and e-mail strategies which will meet the office supply reductions.

- The Supreme Court is reviewing a lengthy list of other strategies to meet the reductions, but it does not anticipate any layoffs or reduction in force
- The Supreme Court does not believe that the hiring freeze applies to the judicial or legislative branches. However, the judicial branch intends to comply voluntarily.

Looking ahead to the 58th Legislative Session, Chief Justice Gray stated the following:

- the Supreme Court will not propose the Asbestos Court be refunded, but suggested that the Legislature should reestablish the Court in the 2003 Session and fund it.
- The Court will be asking for the restoration of other reduction amounts.
- The Court will not propose any permanent program eliminations because its programs are few and critical to the branch's constitutional duties.
- The Court completed the judicial branch's new classification and compensation plan (required under SB 176, 2001). As a result, the Court anticipates proposing increases to bring the approximately 35 FTE through state assumption up to minimum levels of compensation, and it also anticipates a proposal to fund the longevity plan for all state employees who came over under state assumption.
- The Supreme Court needs substantial additional funding for information technology because its IT cost increases were in excess of \$2 million as a result of SB 176. The judicial branch hopes to offset the largest percentage of the increase by increasing the (statutory) IT surcharge from \$5 to \$10 to all users.
- Changes resulting from SB 176 will result in a significant cost to counties, particularly for indigent defenses, in the amount of approximately \$6 million annually.
- Local clerks of the district court will also propose legislation to significantly increase the state assumed amount of civil jury trial expenses.

Committee Recommends Two Bills for Introduction...The LJIC requested and recommends the adoption of two draft bills. One of the drafts would eliminate some reporting requirements of the district court clerks and the clerk of the Supreme Court. The other draft would create a task force on correctional and sentencing policy, whose purpose would be to collaborate, in an objective, apolitical manner on criminal sentences and policy for the State of Montana.

## LEGISLATIVE FINANCE COMMITTEE

October Meeting Highlights...The Legislative Finance Committee (LFC) met on Oct. 3 and 4. Reports presented at the meeting can be found on the Legislative Fiscal Division (LFD) website at <http://leg.mt.gov/fiscal/index.htm>. The following are

highlights of the meeting. For further information, check out the LFD website or contact Clayton Schenck at [cschenck@mt.gov](mailto:cschenck@mt.gov) or at (406) 444-2986.

Fiscal 2003 Revenue Update ...Staff reported that information obtained from SABHRS as of Sept. 30 indicates that total general fund revenues are slightly ahead of collections for the same period last fiscal year. Because of legislative changes, aggregate comparisons do not accurately portray general fund collection trends. Combined collections from individual and corporation income taxes are on target with HJR 1 revenue estimates adopted by the Legislature during the August special session. However, even if these trends continue for the rest of the year, the \$250 million projected deficit for the 2005 biennium (see "Big Picture Report 2005 Biennium") would not change. This is because year-to-date trends support the revenue estimates adopted by the Legislature in the special session. For further information, contact Terry Johnson at [tjohnson@mt.gov](mailto:tjohnson@mt.gov) or at (406) 444-2986.

"Big Picture Report 2005 Biennium"...The "General Fund Preliminary Budget Outlook: 2005 Biennium" was presented to the LFC, and has been mailed to all legislators. Prior to release of this report, the LFD had been projecting a \$250 million deficit based on current (2003) biennium numbers. The publication, commonly referred to the "Big Picture Report", is a regular pre-session report presented to the LFC. This year's edition is the first comprehensive projection based on estimates of 2005 biennium revenues and expenditures. The report concludes that funding existing state services at the level authorized by the previous legislature (i.e., present law) will lead to a \$250 million shortfall. The analysis projects only \$54 million growth in revenues above the 2003 biennium, while increased costs of providing current services would grow by \$141 million (caseload, workload, prison population and student enrollment increases), and leaving a 2 percent ending fund balance reserve.

It is important to keep in mind that there are several issues that weren't included in the projections due to uncertainty or unknown fiscal impact. These include the effects of property tax reappraisal, decreases in federal support for TANF and other human services, the potential for additional district court funding, potential supplementals, fiscal impacts of voter approved ballot measures, pending lawsuits in education and human services, the potential impact of "triggering" the business equipment property tax rate reduction, and economic uncertainty. The occurrence of any of these events would, in most cases, increase the "present law" deficit, and there is a strong possibility that the deficit could exceed \$300 million.

2005 Biennium LFD Budget Analysis Planning...The LFA presented plans for the LFD budget analysis for the 2003 session, and sought feedback and comments from the LFC. The LFC provided helpful suggestions and advice and concluded that the budget analysis reports and services provided in past sessions met the needs of the Legislature, and that the LFD is encouraged to continue to provide the analysis in the same manner as in the past. If legislators have suggestions on ways to improve the LFD budget analysis, please contact Clayton Schenck.

Potential Cost Overruns... As part of the general fund outlook, staff presented a report on likely agency requests for additional general fund expenditures in fiscal year 2003. Some likely or known agency requests include fire suppression costs of \$7.6 million, Department of Justice litigation costs of \$0.3 million, and Department of Public Health and Human Services cost overruns of \$3.9 million. Two other potential cost overruns were discussed: (1) \$9.0 million in the Department of Corrections; and (2) \$2.1 million in the Department of Public Health and Human Services.

Information Technology Management Update ...Brian Wolf, Montana's Chief Information Officer, discussed actions taken and planned by his office to implement the Information Technology Act. The legislation (SB 131), enacted during the 2001 session, generally revised the laws governing information technology and established policies for state information technology. Wolf explained some of the processes his office has or will implement to strengthen the control and oversight of information technology projects, including accountability and best practices. Wolf provided examples of how statewide communication has enhanced cooperation among several agencies on pursuing joint projects instead of separate projects with similar functionality.

District Courts Financing Update...Senate Bill No. 176 (Ch. 585, L. 2001), enacted during the 2001 legislative session, provided for the state assumption of district court costs. State assumption began on July 1, 2002. Chief Justice Karla Gray and the Legislative Finance Committee engaged in a lively discussion regarding state assumption of district court costs. The main item of discussion was the judiciary's 2004-2005 preliminary budget request, which includes significant increases to fund the district courts. Lawmakers, facing a \$250 million plus general fund deficit in the next biennium, were informed that an additional \$15 million or more may be needed over the next two years to adequately pay for district courts now run by the Supreme Court. Current year funding is about \$18.4 million. Preliminary projections by the judiciary indicate about \$55 million is needed to run the new system over the next biennium. Part of the overall increase is related to the transition to full state assumption. In fiscal year 2003, counties are required to pay for certain costs above the amount appropriated by the Legislature, but they will not be required to do so after the end of the fiscal year. According to the judiciary, uncertainties about the variable costs related to indigent defense, juries, and expert witnesses are major factors contributing to the increased funding request. The request is in the early stages of the budget process and will likely undergo revisions.

Chief Justice Gray also briefed the committee on proposed legislation including a SB 176 cleanup bill, a court reporter procurement bill, a bill clarifying the payment of involuntary commitment and youth court proceedings, and a bill continuing the information technology surcharge that is due to expire at the end of this fiscal year. For further information, contact Lynn Zanto at lyzanto@mt.gov or (406) 444-5834.

Legislator Fiscal Training...Staff outlined planned fiscal training for legislators for committee comment. Staff plans three tiers of training: (1) state finance basics for new legislators to be presented during legislator orientation on Nov. 22; (2) budget and

appropriations training geared toward new members of the House Appropriations and Senate Finance Committees (HAC and SFC) and open to all interested legislators. This training will be provided during the first week of the legislative session at a time to be determined; and (3) further training for all members of HAC and SFC, as well as any other interested legislators, that focuses on how to make HB 2 (the general appropriations bill) a powerful public policy tool. This training will be provided in two installments in the first and second weeks of the legislative session at a time to be determined. For further information on training content or goals, please contact Taryn Purdy at tpurdy@mt.gov or at (406) 444-2986.

SB 162 Review of Revenues Dedicated to Local Government...Staff presented the final report of the SB 162 Subcommittee's interim work and described the proposed legislation to implement the subcommittee's recommendations. Because some of the issues raised by the subcommittee were resolved during the August 2002 special session, the proposed legislation would only address a couple of issues: (1) it would provide that 50% of Taylor Grazing Act funds, currently distributed to local governments and returned to the state general fund, be directly deposited in the general fund, a simplification of the accounting of these moneys; and (2) it would change the review process to emphasize that various agency staff will perform the ongoing review of dedicated revenue provisions in the course of their normal duties and report their findings to the Legislative Fiscal Analyst (LFA), who, in turn, will report to the LFC. The proposed legislation would retain a review process for ensuring compliance with the legislatively established criteria for the use of such provisions. The LFC approved the bill draft. For further information, contact Jon Moe at jonmoe@mt.gov or (406) 444-4581.

## HJR 1 MENTAL HEALTH SERVICES SUBCOMMITTEE

Subcommittee Makes Recommendations...The HJR 1 Public Mental Health Services Subcommittee held its last meeting Sept. 17 and 18. The subcommittee, made up of members from other interim legislative committees, has been studying public mental health issues and recommended to the Legislative Finance Committee that:

- five legislative proposals be introduced during the 2003 legislative session;
- the Department of Public Health and Human Services (DPHHS) present options to control the Montana State Hospital population to the LFC at its November meeting; and
- the Health and Human Services Joint Appropriation Subcommittee closely review DPHHS options to provide treatment to developmentally disabled individuals who may pose a threat or danger to others also receiving treatment at the Montana Developmental Center.

Summary of Draft Legislation...Because the LFC did not formally review and act on the HRJ 1 Subcommittee recommendations, the bills have not been requested.

The bills may be reviewed on the Internet by visiting [www.leg.mt.gov](http://www.leg.mt.gov). Click on the "Fiscal" tab at the top of the page, look under "Subcommittees", and then under "HJR 1" for discussion drafts. The bill drafts are summarized below:

- In response to the recent Montana Supreme Court decision in K.G.F., the subcommittee requested a bill draft to statutorily authorize counsel, after consultation with the client and when determined to be in the client's best interest, to seek expedited access to treatment in order to reduce the threat of injury to self or others.
- The subcommittee requested a bill draft to revise the statutory distribution of alcohol taxes allocated to DPHHS. The subcommittee recommended that 20% of the taxes be allocated to the state-approved chemical dependency programs and that 6.6% be used for services to treat persons who have a serious and disabling mental illness and who are chemically dependent. During the August 2002 special session, the Legislature temporarily diverted the state-approved program share of alcohol taxes for match of Medicaid costs for mental health services. As of July 1, 2002, and without changes recommended by the subcommittee, state-approved programs would receive alcohol taxes that remained after the Legislature had made its appropriations from the taxes allocated to DPHHS. (The Montana Association of Counties has endorsed a bill draft request (LC0576) that would earmark alcohol taxes.)
- The subcommittee discussed a bill draft, based on a Utah law, that would limit the period of confinement for individuals found not guilty by reason of insanity. Under this proposal, a person found not guilty but mentally ill could not be confined for a period longer than the maximum sentence that he or she would have received if found guilty of the crime. In Montana, a person found not guilty but mentally ill may be confined indefinitely.
- The subcommittee recommended that a bill draft be prepared for introduction regarding an involuntary mental illness commitment to the community be for a period of 3 months unless there is evidence of a previous involuntary commitment for inpatient treatment for which a community commitment may be made for no more than 6 months.
- The subcommittee requested that a bill draft be prepared for introduction to adopt an affirmative definition of "mental disease or defect" in response to the Montana Supreme Court decision in State v. Wooster. In that decision, the Court adopted a definition from New York.

Subcommittee Recommendation to Children and Families Committee...The subcommittee made a recommendation to the Children, Families, Health and Human Services Committee regarding its committee bill (LC0443) on criminal procedure and the developmentally disabled. The subcommittee recommended that the provision

prohibiting a seriously developmentally disabled person from being found fit to proceed in the legal system be removed to ensure that the person has full access to the courts.

If you have questions or comments about the subcommittee, please contact Lois Steinbeck (406) 444-5391 or Susan Fox (406) 444-5397.

## DISTRICTING AND APPORTIONMENT COMMISSION

Commission Schedule Highlighted...The commission will meet on Tuesday, Nov. 19 at 7 p.m. in the state Capitol. The commission will conduct a public hearing and an executive session on the pairing of the 100 House districts with 50 Senate districts. Senate districts are required to consist of two, contiguous House districts. The commission is meeting after the November elections in order to take into account the 25 holdover senators who will begin the first two years of the term under the existing plan and the final two years of the term under the new redistricting plan.

Suggestions for Senate pairings must be submitted to Susan Fox, c/o Legislative Services Division, by Nov 7. Written testimony and correspondence must be submitted by Nov. 18. Material will be copied and distributed to commission members for the Nov. 19 meeting.

The commission will also conduct a public hearing and an executive session on the entire plan, all 100 House districts and 50 Senate districts, on Friday, Dec. 6. It is likely to be an all day hearing. The starting time and room will be announced in the near future. The deadline for proposed amendments is Nov. 22 to receive staff support.

Regional maps of the proposals and adopted legislative districts for the entire state as well as reference and background information are available through the "Redistricting" link on the legislative website.

### Dates to Remember:

**Nov. 5** Election Day (1993 redistricting plan still in effect): **Please VOTE**

**Nov. 7** Deadline to submit suggested Senate pairings

**Nov. 19** Public hearing and executive session on pairing of House districts with Senate districts, 7 p.m., Capitol Building, Helena

**Nov. 22** Deadline for amendments to be submitted to receive staff support

**Nov. 27** Deadline for written testimony to be sent to commission in advance of public hearing

**Dec. 6** Statutorily required public hearing and executive session on all 100 House districts and 50 Senate districts, Capitol Building, Helena (time to be announced)

Please send all written testimony and correspondence to the Districting and Apportionment Commission, PO Box 201706, Helena MT 59620. Correspondence and testimony will be copied and sent to each commissioner and the originals retained in the commission's permanent file. Please check the commission's webpage for more information at the "Redistricting" link on the Legislative Branch website at [leg.mt.gov](http://leg.mt.gov). If you have questions or comments, contact Susan Byorth Fox at (406) 444-3064 or [sfox@mt.gov](mailto:sfox@mt.gov).

## BACK PAGE

### THE FEDERAL ENERGY REGULATORY COMMISSION'S ROLE IN RESTRUCTURING: WHO IS RUNNING THE SHOW, KARL MARX OR ADAM SMITH?

By Jeff Martin  
Legislative Research Analyst

*"I have yet to see any problem, however complicated, which, when looked at in the right way, did not become still more complicated."*<sup>1</sup> Poul Anderson

#### INTRODUCTION

Restructuring of the electrical utility industry is not for the impatient, the weak-kneed, or the fainthearted. Many states, including Montana, have adopted proposals to develop retail competition, but the transition to competitive markets in Montana and in other states has often been turbulent and unpredictable. At the same time, the electric utility industry has undergone significant changes that include the divestiture of generation plants by investor-owned utilities, mergers among electric utilities, and the emergence of power marketers, nonutility generators, and organizations that are managing the transmission systems in various parts of the country.

Montana thrust itself into the competitive arena during the 1997 Legislative Session with enactment of the Montana Electric Utility Industry Restructuring and Consumer Choice Act (Ch. 505, L. 1997). Although the new legislation had little immediate effect on small customers, large industrial customers were able in 1998 to obtain electrical energy from cheaper suppliers than the Montana Power Company. Otherwise, regulators, MPC, public interest groups, the Transition Advisory Committee, and others muddled through the arcana of transition plans, stranded costs, rules for the licensure of "can't wait to market in Montana" power suppliers, and the inevitable litigation. Except for noticing that our electricity bills detailed the separate costs of energy generation, transmission, and distribution, most of us were blithely unaware of the awesome choice awaiting us.

In mid-2000, a power crisis stunned the Pacific Northwest. The electricity restructuring debacle in California, high summer temperatures, inadequate water supply for the hydrosystem, higher demand for electricity, and rising natural gas prices all contributed to a dramatic increase in wholesale electricity prices. Enron and other power marketers

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<sup>1</sup>Thanks to Steve Vick, Montana Public Service Commission, for finding the quote. Some people automatically assumed that Anderson must work for FERC. The *literati* among us know that he is a science fiction writer, which begs the question: What's the difference?

and suppliers were suspected of gaming the California system to maintain high electricity prices.<sup>2</sup> In Montana, large industrial customers were exposed to higher prices because of the expiration contracts, as would be residential and commercial customers because of the expiring rate moratorium in July 2002. The 2001 Legislature considered a wide variety of energy bills to stave off the crisis. The most significant legislation enacted during the session was House Bill No. 474 (Ch. 577, L. 2001). The bill went through a variety of versions but finally settled on, among other things, extending the period for transition to customer choice until July 1, 2007, providing financing mechanisms (including low-interest loans and revenue bonds) for developing new generation in the state, specifying the default supplier (NorthWestern Energy), implementing a method for recovering electricity supply costs, and allowing customers to return to the default supply.<sup>3</sup>

Although energy prices have returned to their historic levels, supporters of retail competition maintain that wholesale energy markets have not sufficiently "matured" to allow deregulated retail markets to thrive. A significant component of wholesale energy markets is the ability to move a lot of power over transmission lines. In many parts of the country, including the Pacific Northwest, the transmission system is beyond mature and may more accurately be described as decrepit. For over 10 years, the Federal Energy Regulatory Commission<sup>4</sup> (FERC) has been promoting efficiency in the wholesale energy markets, including enhancement of transmission infrastructure and the establishment of independent operators to manage regional transmission systems. The purpose of this article is to provide a brief overview of the events that may have contributed to the movement toward competition in electrical energy markets and then to look at the increasing role that FERC is taking in the development of energy markets.

#### A BIT OF HISTORY<sup>5</sup>

The precursors to competition in electrical energy markets probably began in the early 1970s. In 1973, the OPEC oil embargo caused a threefold increase in the price of oil. In addition, new federal and state environmental regulations were being imposed on

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<sup>2</sup>An Enron employee has recently admitted complicity in the California energy crisis "in order to maximize profit for Enron."

<sup>3</sup>HB 474 has been referred to the voters who will have decided its fate on November 5.

<sup>4</sup>FERC is a five-member quasi-independent federal agency appointed by the president, and confirmed by the Senate, to staggered 5-year terms. No more than three members may be from the same political party.

<sup>5</sup>Much of the historical background was derived from Peter Navarro, "A Guidebook and Research Agenda for Restructuring the Electricity Industry," in Energy Law Journal, Vol. 16:347, 1995, pp. 347-354 and from "Restructuring the Electric Industry," in The CQ Researcher, Vol. 7, No. 2, Jan. 17, 1997, pp. 33-39.

American industries. Because oil fueled many generating plants, the cost of electricity soared. Many electrical utilities filed for an unprecedented number of rate hikes. Consumer protests caused public service commissions in many states to reduce the amount requested. As a result, electric utilities could not recover their costs of capital, and they scaled back the construction of new generating capacity. In the late 1970s, ambitious plans for the construction of nuclear power plants were obstructed by opposition on a variety of environmental, economic, and safety concerns. Regulatory and legal challenges often required expensive modifications to nuclear power plants.

The federal government attempted to address a number of energy and environmental issues through legislation. The Public Utility Regulatory Policies Act of 1978 was designed to encourage the development of alternative energy sources such as solar, wind, biomass, and other "environmentally friendly" energy sources. The Act required states to determine a "net avoided cost" as the price at which utilities would be required to purchase electricity from "qualified facilities".<sup>6</sup> Qualified facilities were allowed to provide alternative energy to electric utilities at a price equal to the so-called "avoided cost" of the utility or the amount that the utility could save by not generating its own power from conventional sources. Qualified facilities generally received a price higher than the utilities' true avoided cost because avoided cost was tied to long-range petroleum prices, which were forecasted to be \$100 a barrel by the late 1990s.<sup>7</sup> An unintended consequence of the Act was that utilities built qualifying facilities to cash in on the avoided cost subsidy.<sup>8</sup>

Although utilities relied increasingly on qualified facilities and other nonutility generators, any move toward competition was impeded by the fact that vertically integrated utilities controlled access to the transmission grid. Electric utilities could exact large transmission charges from other energy producers to effectively block competition. The control of transmission was radically altered with the enactment of the Energy Policy Act of 1992. The Act was designed to encourage competition in the wholesale electricity markets by authorizing FERC to order wholesale wheeling.<sup>9</sup> The Act also created a new class of exempt wholesale generators that can compete with fewer regulatory

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<sup>6</sup>William S. Pierce, *Economics of the Energy Industries*, (Westport, CT: Praeger Publishers, 1996) p. 200.

<sup>7</sup>Navarro, *op. cit.*, note 18.

<sup>8</sup>Navarro, *op. cit.*, p. 351.

<sup>9</sup>"Wheeling" is the transmission by a utility of electricity produced or owned by another entity. Wholesale wheeling is transmitting bulk power over the grid to power companies. The transmission grid serves as a common carrier. Retail wheeling provides power companies direct access to retail customers.

constraints in the electricity generation market. Wholesale generators do not operate within a specified service territory.

### HI, I'M FROM FERC, I'M HERE TO HE'P YOU

In 1996 FERC issued two notices of proposed rulemaking (NOPR--if you don't like acronyms, I suggest you avoid reading anything about energy transmission). The first rule (Order 888) required that electric utilities provide open, nondiscriminatory access to their transmission capacity.<sup>10</sup> Theoretically, vertically integrated utilities would no longer be able to use their transmission facilities to favor their own generation over the new class of wholesale generators. The order also provided that utilities could recover wholesale "stranded costs" on power plants if their customers moved to other suppliers. Stranded costs include generation-related and electricity supply costs that are unrecoverable as a result of competition. These costs include, among others things, regulatory assets and deferred charges; certain power purchase contracts, including QF contracts; and generation and supply commitments. The rationale for the recovery of stranded costs is that the utility cannot sell energy at a high enough price to recover prudently incurred costs because of lower-priced electricity under competition.<sup>11</sup>

FERC also asserted exclusive jurisdiction over rates, terms, and conditions of unbundled retail transmission in interstate commerce up to the point of local distribution<sup>12</sup> (applies to Montana). FERC allowed (as in "mighty big of them") state regulatory authorities or policymakers to maintain control over applicable generation costs, siting of new generation facilities and transmission lines, and service territories, and allowed them to determine whether the state decided to restructure its retail electricity markets.

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<sup>10</sup>FERC has jurisdiction over investor-owned utilities because the wholesale sale of electricity is considered as interstate commerce, regardless of whether electricity moves across state lines. The important factor is that the utility is connected to an interstate grid. FERC jurisdiction does not now apply to public utility districts, the Bonneville Power Administration, or the Tennessee Valley Authority.

<sup>11</sup>Under the FERC order, the recovery of stranded costs associated with retail competition would be resolved by a state's public service commission. The Montana Public Service Commission allowed recovery of stranded costs (or competitive transition charges) associated with MPC contracts for the purchase of electricity from qualified facilities (not to be confused with qualifying facilities or exempt wholesale generators). They are now an itemized cost on our NorthWestern Energy bills. These are the only stranded costs passed on to customers under Montana's restructuring scheme.

<sup>12</sup>"Commission Orders Sweeping Changes for Electric Utility, Requires Wholesale Markets to Open to Competition", p. 11, at [http://www.converger.com/fercnopr/888\\_889.htm](http://www.converger.com/fercnopr/888_889.htm). The title of the article hints at why Order 888 has been referred to as the "mega-NOPR".

FERC also issued a companion rule (Order 889) that required public utilities to post available transmission capacity on the Internet under the Open Access, Sametime Information System (OASIS). It also required that power marketers of the utility obtain information about available transmission capacity of the utility from OASIS. This functional separation of generation and transmission was intended to prevent the utility's power marketers from obtaining preferential access to transmission capacity.<sup>13</sup>

FERC recommended that regional utilities establish an independent system operator (ISO) as one way to effect functional separation and to promote competition. FERC set out principles for the creation of independent system operators that included system governance, operational control, transmission reliability, and transmission pricing.<sup>14</sup> One advantage of the ISO would be to eliminate multiple transmission charges, or pancaking, as electricity flows through different utilities' transmission lines.

### PLANS . . . GANG AFT ASTRAY

Shortly after the adoption of Order 888, transmission providers in California, in Pennsylvania-New Jersey-Maryland, New England, and New York, in the Midwest, and in Texas established ISOs in their respective "power pool areas". Except for Texas and California, the ISOs were established in relatively small geographic areas. In total, the ISOs encompassed about 25% of electrical generation capacity in the United States.<sup>15</sup> As such, most of the transmission facilities operated outside a regional organization. There was very little progress in the development of regional transmission systems during the years following the creation of the initial ISOs. Efforts to create ISOs in the Pacific Northwest (Independent Grid Operator), the Mid-American Power Pool, and the Southwest (Desert STAR) came to nought.

Disappointed in the progress in the development of ISOs, FERC decided a more focused approach was required to enhance the management of the nation's transmission systems and to promote competition in electricity markets. On May 13, 1999, FERC released a proposed rule on regional transmission organizations for the operation and expansion of the transmission system. FERC noted that the transmission system operates as a "single machine" and that the multiple management of the machine inherently leads to inefficiencies, at best, and system failure at worst. FERC also concluded that many utilities were less than diligent in providing open access to their transmission facilities.

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<sup>13</sup>"Commission orders" op cit., p. 3.

<sup>14</sup>Prepared Statement of Shelton Cannon, Director, Office of Electric Power Regulation, Federal Energy Regulatory Commission, before the Virginia General Assembly Joint Subcommittee, July 9, 1998, p. 2.

<sup>15</sup>Andrew Weissman, FERC 101/102: The Battle Over Open Access, Round 1 Vol. II, (Washington, DC, energybusinesswatch), p. 84.

On December 20, 1999, FERC adopted the proposed rule as Order 2000 (Docket No. RM99-2-000). The rule calls for the "voluntary" formation of regional transmission organizations (RTOs). Transmission owners would turn over the operation of their transmission facilities to the regional organization. The rules specified that an RTO would have responsibility for the operation and expansion of the transmission system under its control, maintaining short-term reliability, establishing and managing tariffs, and responding to requests for service (e.g., interconnection service).<sup>16</sup> The RTO would be also be responsible for eliminating rate pancaking (by imposing a single charge for using the transmission system) and for congestion management. The key characteristic of the RTO is that it would operate independently from market participants.

In the order, FERC stated that it expected utilities to voluntarily form RTOs. If they did not, FERC would "reconsider what further regulatory steps are in the public interest."

Eight utilities (Avista, Idaho Power Co., Montana Power Co. Nevada Power Co., PacifiCorp, Portland General Electric Co., Puget Sound Energy Co., and Sierra Pacific Resources) operating in eight states,<sup>17</sup> the Bonneville Power Administration (BPA), and British Columbia Power Authority formed RTO West and developed a proposal for complying with Order 2000. Because BPA owns about 80% of the transmission lines in the Pacific Northwest and about 50% in the RTO West service territory, its participation in the RTO proposal was critical. Whether BPA participates in the operation of the RTO depends on how it assesses the impact of the RTO proposal on its customers. On September 18, 2002, FERC approved many of the aspects of the RTO West proposal.

### WHAT DON'T YOU UNDERSTAND ABOUT OUR GOOD IDEAS?

The Commission's goal, which may be the only consistent feature of restructuring, is "to promote efficiency in wholesale electricity markets and ensure that electricity customers pay the lowest price possible for reliable service". Well, not quite true. FERC has consistently been disappointed with the implementation of its various orders, and Order 2000 was no exception. In March 2002, FERC issued a working paper<sup>18</sup> that detailed its concern about the slow pace of RTO development and what it intended to do about it. FERC still fretted over transmission owners favoring their own generation, the lack of regional coordination that contributed to congestion and to transaction curtailments, and

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<sup>16</sup>Hyde M. Merrill, "Regional Transmission Organizations: FERC Order 2000, IEEE Power Engineering Review, July 2000, p. 1.

<sup>17</sup>The states include all or part of Washington, Oregon, Idaho, Montana, Nevada, Utah, Wyoming, and a small part of California near the Oregon border.

<sup>18</sup>"Working Paper on Standardized Transmission Service and Wholesale Electric Market Design," Federal Energy Regulatory Commission. The working paper is available on the FERC website at <http://www.ferc.gov>.

the fact that market design flaws are evident in every region of the country. The solution: standard market design.

On July 31, 2002, FERC issued a notice of proposed rulemaking to implement standard market design. The goal of the new rule would be to establish a framework that promotes transmission system reliability and expansion, mitigates market control by an energy supplier, and increases choices for wholesale market participants. The new rule would require that any transmission owner must use an independent transmission provider (ITP) regardless of whether the transmission owner provides bundled services or is a member of an RTO. The rule would apply to "nonjurisdictional" public power entities owned, for example, by municipalities and counties. The new rule would also revise transmission pricing to encourage the sale of power from low-cost areas to high-cost areas. Congestion management would be handled through a locational marginal pricing scheme. It is beyond the scope of this article to describe the pricing scheme, but it would allocate transmission capacity to those who value it the most. FERC believes that price signals under standard market design would encourage short-term efficiency for wholesale energy markets and promote long-term efficiency for new generation, changes in demand response, and the development of transmission infrastructure.

Under the standard market design proposal, FERC would expand its jurisdiction well beyond what it has asserted in the past to all aspects of the electrical energy markets. In addition to establishing the legal framework within which electrical energy markets would operate, FERC is creating pricing mechanisms, getting involved in technical and engineering details, and perhaps, most important, limiting state public service commission regulatory authority. States in a region would be involved in the oversight of RTOs through regional state advisory committees. The advisory committees would be consulted on such things as resource adequacy standards, transmission planning and expansion, rate design, and market monitoring, but they would have no real legal authority.

#### **WHAT'S NEXT?**

The initial deadline for comments on the proposed rule was October 15, 2002. However, it didn't take that long for some state and federal officials to begin hurling epithets in FERC's direction. One commentator likened the proposed rule to economic planning in the Soviet Union. The chairman of FERC, Pat Wood, shot back, admonishing critics to read the "dang" rule before commenting on it. Naysayers aside, there is a lot of legitimate concern about the proposed rule. Representatives in low-cost states are worried that energy prices will go up under the new rule. Others are concerned about the effect on existing transmission contracts and the potential for cost-shifting. Many state public service commissions resent the apparent usurpation of their regulatory authority and argue that FERC is exceeding its statutory authority. Public pressure has caused FERC to delay the comment period until November 15 and to further delay the comment period on certain parts of the rule until January 10, 2003.

Representatives of RTO West are working on how to integrate standard market design with the recent FERC order approving many aspects of the regional transmission organization. Almost everyone is imploring FERC to slow down and work more closely with the various regions to devise a structure that will work in the respective regions. Gird yourself.



## INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED,  
ALL ROOM DESIGNATIONS ARE IN THE CAPITOL BLDG.

### NOVEMBER

November 5, General Election Day

November 19, Legislative Audit Committee, Room 137

November 19, Legislative Council, Room 172, 1 p.m.

November 19, Legislative Finance Committee, Room 102, 8 a.m. (tentative)

November 19, Revenue and Transportation Committee, Room 152, 8:30 a.m.

November 19, Districting and Apportionment Commission, 7 p.m.

November 20, Senate and House caucuses, morning  
House Republicans, Room 437

November 20, Law School for Legislators, 1 p.m., see agenda on page 1, this issue

November 20-22, New Legislator Orientation, see agenda on page 2, this issue

November 21, Transition Advisory Committee, Room 303, 8:30 a.m.