

MINUTES
of the
LEGISLATIVE CONSUMER COMMITTEE
June 18, 2003
State Capitol, Room 137– Helena, MT

COMMITTEE MEMBERS PRESENT

Senator Walter McNutt, Chairman
Representative Gary Matthews, Vice Chairman
Senator Debbie Shea
Representative Alan Olson

STAFF PRESENT

Robert A. Nelson, Consumer Counsel
Frank E. Buckley, Utility Analyst
Mary Wright, Attorney
Larry Nordell, Economist
Mandi Shulund, Secretary

VISITORS PRESENT

Chuck Evilsizer, Ronan Consumer Committee
Corwin 'Corky' Clairmont, Ronan Telephone Company Consumer Advisory Committee
Jay Wilson Preston, Ronan Telephone Company
Linda L. West, Ronan Telephone Company Consumer Advisory Committee
Mike Pichette, NorthWestern Energy
Mary Vandenbosch, Legislative Services Division
Geoff Feiss, Montana Telecommunications Association
Jerome Anderson, PPL-Montana
John Fitzpatrick, NorthWestern Energy
Pat Callbeck Harper, AARP Montana
E.J. Redding, MDU Resources

Call to Order

The meeting was called to order by Chairman McNutt.

Selection of Chair and Vice Chair

MOTION: Representative Olson moved to nominate Senator McNutt as Chair.

MOTION: Senator Shea moved to nominate Representative Matthews as Vice-Chair.

VOTE: The motions passed unanimously.

Minutes of the Previous Meetings

MOTION: Senator Shea moved approval of the minutes of the November 22, 2002 meeting.

MOTION: Representative Matthews moved approval of the minutes of the January 10, 2003 meeting.

VOTE: The motions passed unanimously.

Ronan Telephone Presentation

Chuck Evilsizer began by expressing his appreciation for the opportunity to address the Committee. Mr. Evilsizer introduced Corwin 'Corky' Clairmont, Chairman of the Ronan Consumer Advisory Committee, Linda West, Member of the Ronan Consumer Advisory Committee and the FCC Consumer Advisory Committee and Jay Wilson Preston, President of Ronan Telephone Company. Ms. West said that with the FCC Advisory Committee, she is on is the Consumer Outreach, Education, Complaints and Participation subcommittee and some of the issues they work with are the Do Not Call List, Truth in Billing and the Low-Income Telephone Assistance Program. Ms. West let the Committee members know that she would be glad to take their concerns before the FCC Committee. Senator Shea asked Ms. West if she had any idea what their agenda is on the Do Not Call List issue and Ms. West said that Governor Martz recently signed into law a Do Not Call List for Montana and the idea behind the National Do Not Call List is to combine the FCC and FTC's Do Not Call Lists. Currently the only rule is that telemarketers are required to identify themselves and that if you ask them not to call you, they shouldn't and there may come a time where consumers will be able to sue telemarketers who call people on Do Not Call Lists. Representative Matthews added that the legislation that Governor Martz signed basically allows Montana consumers to sign up via the Internet and the telemarketers had to purchase that list from the Montana Department of Administration, which will be available January 1, 2004. Representative Matthews asked Ms. West to find out more about the current Montana law at her next meeting. Senator McNutt commented that this problem is

not going to be easy to solve because there are many exceptions and this legislation did not ban the use of automatic dialers and Senator McNutt suggested that Ms. West take this issue to her next meeting. With regards to telemarketing numbers not showing up on caller ID, Mary Vandebosch stated that there is both State and Federal law that prohibits interference with caller ID by telemarketers and she encourages consumers to contact the Consumer Protection Office with the Montana Department of Administration about this. Pat Harper of AARP stated that in regards to the Federal Do Not Call List, that took effect July 1, 2003, the FTC will do their outreach for the first two weeks and then will allow the state levels to begin outreach. The number to call will be released by the FTC on July 1, 2003 for people to add their number to the Do Not Call List. Ms. Harper added that Cort Jensen with the Department of Administration hopes to have the Montana list ready to take effect January 1, 2004. Ms. Harper asked Ms. West to encourage the FTC and FCC to merge their lists so people do not have to sign up several times.

Corky Clairmont, Chairman of the Ronan Consumer Advisory Committee said that various issues and agreements have come through Montana Consumer Counsel to help better the services in the Ronan area but he felt that his Advisory group was not always heard. Mr. Clairmont discussed the Reciprocal Compensation Agreement between the Ronan Telephone Company and the Blackfoot Telephone Cooperative. Mr. Clairmont voiced concern that there is no mechanism in place to assist rural area consumers in getting their recommendations heard. Mr. Clairmont would also like to see the Confederate Salish Kootenai tribal reservation lands be open to local calling service. Senator McNutt stated that this issue has been before the Committee in the past and that it is not Committee policy to micro-manage MCC. Bob Nelson noted Mr. Clairmont's comments stemmed from a specific issue that the Committee has discussed in the past. He explained that MCC staff and expert witness, Al Buckalew, have met with the Ronan Consumer Advisory Committee. Bob felt that the differences on these issues have been fully discussed, but neither party has been convinced to change their positions. The PSC is the ultimate decision maker and after they heard both positions, the PSC found MCC's position correct based on PSC policy. There is a process set up for public participation, and Mary Wright added that with respect to the settlement that Mr. Clairmont referred to as being rejected, MCC opposed

parts of this agreement, and the PSC rejected parts of the agreement, but there were some very significant parts of the agreement that were in fact approved by the PSC, one being the very disparate rates that Blackfoot and Ronan will use to compensate each other. Mary also stated that MCC agrees that public participation is guaranteed by Montana law, but the Ronan Consumer Advisory Committee was not a party in the docket in which this settlement was filed. Had they been a party, the discussions may have been on a different level. Mary said that Ronan Telephone has appealed the PSC order in both State and Federal Court so MCC is continuing to follow and discuss this PSC Order. Mr. Clairmont voiced concerned about how Mr. Buckalew could speak on behalf of rural Montana consumers. Bob stated that Mr. Buckalew has worked for MCC in many telecommunication dockets and Bob feels that he has been very successful on Montana consumers' behalf in many areas. Senator McNutt felt that it was important that everyone understood that neither MCC nor the Legislative Committee were the decision makers. Mr. Preston reminded everyone that MCC is the constitutionally mandated representative of Montana consumers, and felt that he can't convince MCC to represent the consumers the way they want to be represented. Bob stated that comments have been made for quite some time about the role of the MCC office being compared to a private attorney for private customers. MCC does not have private clients and does not have attorney-client relationships or obligations that go with having private clients. MCC represents consumer interests as a public interest but does, however, take the charge to represent consumer interests very seriously. Unfortunately, there are times like these where broader consumer interests may conflict with localized consumer interests. Bob feels that Ronan Telephone's input was seriously considered by MCC and since both positions were presented to the PSC, their comments were not ignored. Senator McNutt said that MCC will continue to look at the greater public interest on all issues and knows that MCC makes serious attempts and serious time allotments to interact with consumers. Mr. Evilsizer feels, from his experience with MCC over the years, that MCC makes their decisions based on expert witness testimony long before there is any public input given. Bob discussed the process of preparing testimony, and noted that stated that the prefiled written testimony is usually not adopted as testimony that goes into the record until several months after it is filed, so there is plenty of time to provide for public input.

NorthWestern Energy – Discussion of Default Gas Supply

John Fitzpatrick of NorthWestern Energy (NWE) gave the committee an update on the natural gas situation. In the past 8 months, NWE has filed two separate natural gas tracking applications with the PSC. The tracking applications work in the way that the company forecasts a commodity price for the tracker by monitoring and recording the gross number of dollars received and then performs a true-up at the end of the tracking period. If over collections are made because the rate was higher than what actually occurred in the market, the customer would receive a refund during the next tracking period along with interest. The same would go for the opposite condition, where the company would ask to pick up under collected revenues in the next tracker period. Historically, the Montana Power Company (MPC) filed an annual tracker of October 1st through the following September. In October 2002, NWE filed a tracker for a 9 month period, requesting that the tracking period be changed from October to July with the intention that if gas price adjustments needed to be made, it would be best to have them happen in the summer. The request filed October 2002 was for a 35% adjustment in the commodity price and at the time this request was approved on an interim basis, the prices were set at \$3.37 a dekatherm, which was an increase from \$2.17 that had been in effect back to 2001. The PSC did grant the interim and a hearing was held recently but no final order has yet been issued. On 6/3/03 NWE filed the current tracker with the PSC, requesting a few different things. For the past 18-24 months, natural gas bills have contained a credit because there was an over collection in natural gas amounts that reach back to 2001. Unfortunately, as NWE looks into the next tracking year, there is an under collection from the last tracking period. Natural gas prices were well above the forecast price, so NWE is looking at a \$13 million under-collection for the tracker period beginning July 1, 2003. So the \$45 million increase that NWE is asking for in commodity, \$13 million of that is for under-collection for the last tracking year. Another request in the current tracker is an increase in the natural gas commodity price of \$3.37, which is currently contained in tariffs, to \$5.33. This is a very problematic increase for NWE to absorb and a very difficult increase for the customers to absorb as well. NWE, unlike MPC, does not have capped gas prices. NWE purchases their gas supply on the open market and enters these situations differently than MPC, even

after they sold the natural gas and oil assets with a buy back contract in place and gas at \$1.60/dkt, this had the effect of keeping the overall commodity price for consumers at an artificial low during the last several years, with that contract expiring in June 2002. NWE went into the natural gas market essentially to follow the model of Montana-Dakota Utilities (MDU), when contracts expire, basically they set their price. NWE is also asking to move to a monthly tracking period similar to that used by MDU and Energy West Montana (EWM). The annual tracking period makes sense given the cost and time involved in putting the tracker together when gas prices are stable. However, with volatility of gas prices, monthly trackers make more sense for both the company and the consumer, when rates are going up, they would go up in smaller increments.

BOB NELSON PROVIDED THE FOLLOWING HIGHLIGHTS OF CASES CURRENTLY PENDING:

NorthWestern Energy

History of Rate Cases: On a typical rate case, the procedure is that the utility files an application with the PSC and the PSC issues a Procedural Schedule. The first step of the schedule is intervenors submit questions to the utility about the application, and after a period of time, the utility responds to those questions. Then, intervenors have a period of time to prepare intervenor testimony and the utility asks us questions on intervenor testimony. Once we respond to those questions, the utility may file rebuttal testimony and at the same time, intervenors may file cross answering testimony to other intervenor testimony. Prehearing memos are submitted by all parties and the next step would be the hearing. At the hearing, parties can formally adopt their prefiled testimony and ask questions through cross examination of witness who are adopting that testimony and submit any other evidence at that time for the record. After a briefing period the PSC issues an order. This whole process could take up to 9 months.

D2002.12.159 – Authorization to consummate Credit Agreement and Issue Mortgage

Bonds: This application was filed on 12/23/02 for financing in the amount of \$390 million, which would replace the \$280 million issued 01/02. The PSC issued Final Order No. 6474a on 1/27/02 approving the issuance of \$390 million with conditions. One of the conditions

was the filing of a maintenance plan explaining how the company intends to continue offering safe and reliable service with the constraints it is currently operating under. A maintenance plan was submitted and Frank Buckley attended a meeting that was held in Butte to discuss questions from the PSC and MCC on the plan.

D2002.11.140 – NWE Gas Tracker Filing: Lately, the situations presented by these trackers are the most difficult that MCC has had to deal with for quite some time because of the magnitude of the increases and what MCC sees as limited options of dealing with these increases. The impacts have been and will continue to be tremendous on customers and MCC is trying to figure out what all the options are. This filing was made 11/13/02, with NWE requesting a 36% increase. George Donkin filed testimony on MCC's behalf. Mr. Donkin analyzed the purchases of NWE, checking to see that they paid what they claimed to have paid. Mr. Donkin also looked at their gas purchasing practices, which is an area that has always been of interest to MCC in whether the NWE acted prudently or if something different could have been done to result in lower costs. Mr. Donkin could not find imprudence on part of NWE in their gas purchasing practices and stated this in his testimony submitted on MCC's behalf to the PSC. At the same time, Mr. Donkin proposed that a gas working committee be formed of interested parties to research issues of risk mitigation through hedging, or stabilizing these rates and eliminating some of the volatility, which can hurt consumers. Mr. Donkin's opinion is that in the long run, some volatility can be eliminated through hedging, but it is important that everyone realize what the costs, benefits and trade offs of hedging are. Mr. Donkin also feels that it is important that a conscious public policy decision be made by the PSC and implemented by NWE. At the hearing it was apparent to the people watching this process that the PSC showed interest in concluding that the company did act imprudently and that there should be disallowances. This put MCC in an awkward position, but the theory that the PSC is exploring is two-year contracts. For example, if a two-year contract had been entered into a year ago, this contract would have allowed the purchase of gas at an average of about \$3.15 a dkt. Looking back now, it is easy to say that things would be better off today if a two year contract was in place to carry through this current period but at the time, it would have been difficult to conclude that was the right thing to do. Mr. Donkin did compare month by month

to see how much may have been lost if prices had actually continued to decline and there are some large numbers that he calculated that, at certain points, NWE would have been in the hole. At that point, people may have been asking why NWE had entered into long-term contracts and would have suggested disallowances because now you can purchase on the spot market today at cheaper prices than the long-term contracts. MCC so far has come out on the side of saying that NWE did act prudently so we didn't propose a disallowance in this case. The PSC is discussing a conclusion that they should have signed long-term contracts at least in the \$3.50 range but that would probably not have any financial impact on this tracker because the cost actually came in within that range enough so that there wouldn't be a significant disallowance but obviously at the \$5.33 level in the next tracker, if the PSC concludes that \$3.50 should have been the price that was set for that two year period, there would be a very significant disallowance.

D2003.6.66 – Current NWE Gas Tracker Filing: There is a debate going on about interim relief and because NWE has requested interim relief effective 7/1/03, the increase would go into effect immediately. During the last tracker, Commissioner Rowe requested that MCC take a position on the interim request and it has been MCC's practice not to be actively involved in the interim stage of the applications. The historical reason for this is due to a compromise many years ago concerning utilities complaints about earnings attrition and the amount of time that it took the PSC to issue orders, the PSC stating that they need at least 9 months. An accommodation was made that the PSC would allow interims that are fully refundable to the consumers as a way of addressing the utilities concerns and still allowing the PSC the time to adequately consider the applications. The PSC then adopted rules that prescribed mechanical application for interim consideration. The application needed to show adjustments from the last case, include all positions that were approved in the last case and changes that have occurred since then. The PSC would then calculate and grant an interim at that level and this basically is how interims are handled still. In general rate cases, MCC has dealt with interim requests only if an obvious mistake has been made in the request. Also, in general rate cases, if the amount turns out to be above the interim that is granted, the utilities are not allowed to go back and surcharge customers for the amount not collected. In tracker cases, this is not the case because utilities get to recover every

dollar that they spend on the commodity that the PSC ultimately allows. The PSC issued an opportunity to comment on interims. MCC commented, stating that MCC did find some benefit in interims. MCC does not oppose monthly trackers for MDU and EWM for some of the same reasons previously discussed. Senator McNutt asked Bob if he knew why the PSC wanted MCC to take a position on Interims. Bob stated that he wasn't sure of the reason, but his personal view has been that it could actually be detrimental to MCC's long-term interest. Without full details and adequate time to review the application, MCC may take positions that we later on want to retract. Senator McNutt asked Bob if the PSC does adopt a monthly tracking system for NWE, would this preclude the need for interims. Bob agreed, stating that monthly trackers are temporary in nature, subject to refund, and since there is an annual review and true-up, MCC would have a chance to look at these issues annually. Adjustments would be made every month, similar to monthly interims.

D2003.6.77 – NWE Electric Default Supply Tracker: This application was filed on 6/16/03 and would mean a typical residential increase of 16.43% or about \$9.05 per bill. This request is a result of several factors, the largest two being elimination of the credit that was part of the agreement in the last case, in the 6% or 7% range. The other major factor being a projected increase actually in the purchase price of the wholesale commodity, which is contributing around 8% of this increase. The elimination of the credit is something that is just now occurring with the expiration of that amount from the last tracker. MCC will be looking carefully at what purchases NWE made and the reasons for making those purchases. One other factor is a slight increase in the QF CTC, which refers to the stranded costs that are related to the QF purchases that were part of the settlement as well.

Application for exempt wholesale generator status for Milltown Dam: Federal law requires certain determinations to be made by the PSC before NWE can get exempt wholesale generator status for facilities that were in rate base but they want to remove from rate base, and for sales that they wish to make to themselves. Exempt Wholesale Generator status is needed so they don't fall under some of the provisions of the Public Utilities Holding Company Act. MCC had informally agreed to this designation and that sales from the

Milltown dam would be treated the same as what the agreement was with respect to the QF sales for the default supply docket, i.e., that they would be flowed into default supply at \$31.25 a megawatt. MCC did not object when the PSC issued a notice of opportunity for hearing because MCC has this agreement with NWE. MCC felt that the customer would be financially protected here.

D20002.10.131 – Application for Determinations regarding Montana Megawatts: This application was filed on 10/24/02 and the PSC rejected the filing on 12/17/02. This application has not been refiled and NWE is still considering how this is going to be handled and presented to the PSC.

N2003.5.65 – Application for Amendments to Electric Customer Choice Guidelines and Procedures – Schedule ECCGP-1: This application was filed on 6/5/03 and is actually a tariff that NWE has in place. The PSC ordered NWE to make revisions to the tariff to comply with HB509. MCC filed comments on 6/18/03 that basically suggest recovery of certain default supply costs. As customers come and go, the customers should be responsible for those because of these trackers and accumulated deferred accounts. The customers should be responsible instead of having those liabilities built up as customers leave and shift those to remaining customers. MCC feels that this should apply to both customers who are electing to stay and electing to return. Small customers should not be prohibited if they decide to leave the default supply and try a competitive supplier and that they shouldn't be prohibited from returning within that first year to the default supplier. The PSC will be considering all comments submitted and could possibly have something in place by 7/1/03.

NWE Technical Advisory Committee: This group advises NWE on procurement practices. Larry Nordell explained that the Technical Advisory Committee is a continuation of the Least Cost Planning Advisory Committee that MPC set up in the late 1980's as a result of the settlement of the lawsuit over the Colstrip Transmission line with the Natural Resources Defense Council. Part of this settlement involved setting up the Technical Advisory Committee, which originally helped MPC set up a planning process that would incorporate

environmental concerns and decision-making in planning for new generation.

Representative Matthews asked if this advisory committee is looking at any pre-approval contracts for the default suppliers. Bob stated that he understood this Committee was an evolving process and just getting started. The background of this Committee is that over the last 12-18 months there have been discussions, especially coming out of the last default supply docket at the PSC, regarding the PSC's refusal to pre-approve the contracts that were presented. There is still the continuing discussion of pre-approval and the need for some security for NWE and in recognition of this need, the Energy Forum was put together. The PSC developed and adopted procurement planning guidelines that supposedly, if followed by NWE, would result in very low risk of disallowances. NWE agreed then not to seek pre-approval legislation, but elsewhere this type of legislation was presented, which NWE supported. Bob doesn't feel that this Committee was meant to be a pre-approval mechanism, but more of a substitute for pre-approval. Representative Matthews voiced his concern about not having long-term contracts in place and Senator McNutt added his concern about NWE not being able to negotiate long-term contracts with their current financial condition.

D97.7.90(MPC) and D97.7.71 (Pacifcorp) – Restructuring Issues: When SB390 was passed in 1997, utilities, including MPC and Pacifcorp, were required to file restructuring plans. During the 2001 legislative session when prices were going up, the PSC issued Order No. 5986t on 6/27/01 in D97.7.90 (which has not technically been closed) concluding that MPC was still an integrated utility and could not increase rates after the buyback period in 2002 above the level they were currently set at. There were some legal issues associated with this order, but the PSC was trying to do what they could to put pressure on prices. Because of all the events since 2001 and the new arrangement with default supply, the PSC issued Order No. 5986x on 2/4/03 that rescinded Order No. 5986t. In D97.7.91, Pacifcorp filed a restructuring application. Part of the issue in these dockets was establishing the level of stranded costs, or some people viewed it as the stranded benefits of separating generation from the rest of the utility. In D97.7.91, MCC calculated stranded benefits of \$65 million, or the amount that customers should be credited if and when the generation was separated from the rest of the system. This case went to hearing in late

1997, and an order has never been issued. One factor that complicated things was Pacificorp's decision to sell their distribution system to Flathead Electric. In proceeding with the approval of this sale, the PSC maintained that it would still have jurisdiction to seek any stranded benefits that were owed by Pacificorp. Senator McNutt asked Bob how any stranded costs would be collected with Pacificorp not being a Montana Company and Bob said that this issue will need to be sorted out since Pacificorp still may fall under Montana jurisdiction because they do own generation and other assets.

RTOWest - FERC Docket No. RT01-35: This docket results from a FERC Order that encouraged utilities to enter into regional transmission organizations. Several utilities in the Northwestern United States have for quite awhile been trying to accomplish this kind of a structure. MCC filed comments on 5/29/02, but with the utilities working on filing tariffs and FERC issuing an order on Standard Market Design, Docket RT01-35 has basically been put on hold.

Standard Market Design - FERC Docket No. RM01-12-000: MCC, with other Montana parties such as the Governor's Office and NWPPC, filed joint comments on concerns shared on SMD. As a result of these concerns that many people have expressed, FERC recently backed off from many provisions that they had originally pursued in SMD and have gone back to allowing much more flexibility and are emphasizing RTO's instead of the arrangement they envisioned under SMD's. This then has caused renewed interest in the RTOWest process and Larry added that the efforts to change the system of management of the transmission grid have been underway for at least 8 years and the intent is to put it under a single ownership with a system of management that would make efficient use of the available capacity. There are many reasons why the existing system does not work well, one being that the power, when going from one point to another, flows over the entire network, but is managed as if a single path was chosen so the way capacity is limited to manage congestion leaves a lot of capacity unusable and the RTO would make much more efficient use of the system. There are understandable fears that the system may be more complicated and impose more risks on people. A recent discussion between the states and the filing utilities brought up the perception of if regulators were going to have to approve

the transfer and control of transmission assets, they need to be convinced that the transfer would be worth doing and so far the benefit cost analysis has not been convincing. A filing is due out sometime this year.

Incentive Pricing - FERC Docket No. PL03-1-000: On 1/15/03 FERC issued a proposed pricing policy for efficient pricing in transmission that would include incentive adders of 50 basis points on the return on equity for participating in an RTO or 150 points for divestiture of the transmission, which would be then taken over by an RTO or an independent transmission provider, and 100 basis points for investment in new generation. MCC filed comments on the pricing policy on 3/13/03, essentially saying that MCC did not think that consumer interests were considered and that the cost benefit analysis was not provided that would indicate a consumer benefit.

MDU Monthly Gas Trackers: There has been some price volatility in MDU's rates in the past six monthly trackers. MDU's gas costs include Williston Basin charges that are actually transmission investment related. It is true that all utilities are experiencing very high costs right now and there is not a whole lot that separates EWM from MDU or from NWE.

D2003.4.49 – MDU Gas Tracker: This application was filed on 4/10/03 and is MDU's annual audit and true-up that Bob mentioned before. This would mean a residential rate decrease of \$1.57 per dkt, which would put the rate at \$6.23 per dkt. This also includes a small increase for an unreflected account to be applied over the next 12 months. This case is currently in the discovery phase and MCC has submitted data requests.

D2002.5.59 – MDU General Rate Case: This filing concerns MDU's general rate case, which is a non-gas cost increase. MDU requested a \$3.6 million increase, or a 6.5% increase overall with the bulk of that being shifted to residential and small customers. The PSC issued Interim Order 6424b on 9/9/02 authorizing a \$1.2 million increase, which makes residential rates increase by 5% and firm general rates increase by 1.7%. MCC entered into a settlement agreement with MDU, with MDU largely agreeing with MCC's

recommendations although there was a small piece of revenue requirement that had been allocated to the Large Interruptible Customers under MCC's proposal and it was agreed to allocate this revenue requirement to smaller customers because of by-pass concerns. MCC also agreed to an increase in the residential service charge, which MDU had wanted, that provides some additional rate stability for MDU. The result ended in an increase of 4.5% for residential and 3.9% for firm general customers. The PSC issued Final Order No. 6424e on 4/4/03 approving the stipulation.

EWM Monthly Gas Trackers: These monthly trackers have fluctuated quite a bit, at one point in March to over 8 dollars per mcf.

D2002.9.120 – EWM General Rate Case: On 9/24/02, Energy West Montana filed an application for increased non-gas costs, requesting a \$1.3 million increase which would be a 6.8% increase overall, or a 22.8% increase in non-gas costs spread out equally to all classes and rate components. MCC entered into a stipulation with EWM that addressed the cost of capital issue, agreeing to a 9.18% rate of return. This issue will not have to be litigated because a stipulation was reached and the impact of the stipulation is a factor in the remainder of the filing. The agreement also resulted in an increase of \$690,000 and a slightly different rate spread for that increase. The PSC issued Stipulated Final Order 6445c on 6/2/03 approving that stipulation.

D2002.8.99 – Havre Pipeline: D2002.8.99: This filing is an application for a rate decrease to direct rural farmstead customers. MCC reviewed the filing and after conducting discovery, found no objections to the rate decrease and did notify the PSC on 11/4/02. The PSC issued Final Order No. 6443a on 12/6/03 approving this filing.

D2002.12.153 – Qwest Long Distance Tariff Filing: This filing has come out of the 271 process and MCC has supported Qwest's entry into in-region interlata long distance. MCC has participated in the PSC process that went through the necessary steps before the FCC would authorize Qwest to begin the process to offer long distance service in its territory. As a result of the FCC authorization, Qwest filed this application for its long distance tariffs in

Montana. The PSC issued interim approval for Qwest to offer long distance service at the rates that they had filed. MCC filed testimony of Allen G. Bucklaw on 6/12/03 and he raised several concerns. In his opinion, the toll service, or long distance charges, should not be tied to local exchange service because he felt that it could have an anti-competitive effect on the long distance market in Montana. Mr. Buckalew also found that the long distance rates that they were proposing are not cost compensatory so he suggested that Qwest file a cost study by 6/04 to justify their rates. He also suggested that their tariff offerings, or long distance offerings, not be restricted to voice and also allow data traffic over long distance. MCC is currently waiting for data requests from Qwest on Mr. Buckalew's testimony.

D2003.2.22 – Notice of Investigation: The PSC has a filing requirement that utilities, on an annual basis, file certain information with the PSC that gives them a snap-shot on what the earnings on a regulated adjusted basis of the utilities are. The last few reports that Qwest has filed indicate that they have been substantially over earning, almost double, the authorized rate of return from the prior proceedings. The PSC issued Notice of Investigation on 3/14/03 and is investigating Qwest's tariffs and earnings. MCC has intervened in this docket and Qwest has recently filed its response, indicating that in effect, the PSC cannot rely on the information that was filed because the numbers are not reliable and are subject to restatement. Qwest also claims that the information is stale and not adjusted as it needs to be for rate setting. MCC will continue to proceed with this case and hope that there will be some review of Qwest's rates and their earnings.

D2002.7.87 – Qwest Unbundled Network Element Rates: This filing relates to an application to set rates for Unbundled Network Elements. Al Buckalew on behalf of MCC reviewed this rate filing and found that MCC did not need to take issue with any of Qwest's proposals. MCC decided not to file any testimony and informed the PSC of this decision. The PSC issued a Notice of Additional Issues, which they typically reserve the right to do in the procedural orders. Two additional issues that were raised in this case were commingling of interLATA and local traffic on the same trunk groups and ratcheting of prices and the process used to benchmark wholesale prices. Qwest recently filed

testimony on these issues and MCC will review and file comments if necessary. A stipulation was filed on 4/2/03 for approval of proposed wholesale UNE rates.

FCC Triennial Review: One of the issues in the Triennial Review that the FCC has looked at is whether certain rate elements, or unbundled network elements, need to continue to be offered on an unbundled basis by the incumbent exchange companies to competitors and have found in many cases that they do not. This has been a very controversial proceeding and the FCC has not issued an order yet, but have issued press releases indicating what they are going to do. Once they issue the order, there is going to be 90 days for state commissions to respond. The FCC has also indicated that they believe that this may no longer be needed for the mass market as well, so are going to allow state commissions 9 months to look at this issue. The PSC has established two dockets:

D2003.4.46 – Notice of Investigation: This docket was set up by the PSC for the 90 day review of the enterprise market switching. MCC has intervened in this docket.

D2003.5.62 –Notice of Investigation: This docket was set up by the PSC for the 9-month review of mass-market proceeding. MCC has intervened in this docket.

D2002.12.150 – Notice of Investigation: The PSC issued this Notice of Investigation in regard to which Interconnection Agreements need to be filed for state approval. MCC intervened in this case and filed comments, indicating that all Interconnection Agreements should be filed and the PSC can make a determination after the filings are made about whether approval is actually needed or not.

D2000.1.14 and D2000.5.63 – Ronan Telephone: These dockets relate to a reciprocal compensation rate filing and a related complaint with Blackfoot Telephone. These reciprocal compensation rates are rates that carriers pay each other for local transport determination when they are exchanging traffic. MCC did file testimony, basically about some problems with Ronan Telephone's cost studies and their rate request. MCC recommended a bill and keep arrangement, which is another way of compensating for the

interconnections. Ronan and Blackfoot have filed a settlement, which MCC had not been a part of, so the PSC has preliminarily adopted their agreement subject to comments after they filed a tariff that would actually implement that agreement. That tariff has recently been filed and the PSC issued Final Order Nos. 6225g and 6404d on 2/12/03. The PSC denied Ronan Telephone's Request for Reconsideration and they have now filed appeals in state court and federal district court:

Cause No. DV-2003-273: This appeal was served on the First Judicial Court on 6/11/03, seeking review of Orders 6225d, f and g and an order that PSC approve reciprocal compensation tariffs filed 11/14/02.

Cause No. CV-03-20-H-CCL: This complaint was filed before the U.S. District Court on 5/9/03, seeking review of orders 6225d, f and g regarding interconnection agreements findings, rural exemption and transiting traffic, inclusion of ISP traffic, and an order that PSC approve reciprocal compensation tariffs filed 11/14/02.

D2003.1.14 – Western Wireless: Western Wireless has filed a petition for designation as an Eligible Telecommunication Carrier in Montana areas served by Qwest. The ETC status is required in order to receive Universal Service Funding and there are certain requirements that must be met before state commissions can designate carriers as ETC's. MCC feels that ETC's can be advantageous to consumers as long as these requirements are met. MCC has intervened in this docket.

D2003.4.47 – CenturyTel: CenturyTel has filed a tariff for provision of IntraMTA Termination Service to Wireless Carriers. MCC has intervened in this docket.

D2003.2.23 – 3 Rivers Telephone: 3 Rivers has applied for designation as an ETC in the Shelby exchange. MCC has intervened in this case.

D2002.11.134 – Big Mountain Water: Big Mountain Water filed an application with the PSC on 11/2/02, requesting an increase of \$56,604, or 71%. The proposed increase went from

an \$8.00 minimum with \$3.75 for every 10,000 gallons over 2,000 to \$17.50 minimum with \$5.51 for every 1,000 gallons. They also requested a 10.5% cost of capital. MCC entered into a stipulation with Big Mountain on 5/5/03, agreeing on a 34% rate increase and a residential customer charge of \$8-12 with a \$4.08 commodity charge. The stipulation also requested a 7.48% cost of capital. The hearing was held on 6/17/03.

D2002.5.60 – Mountain Water Company: A settlement was filed in this proceeding on 10/30/02. Mountain Water had requested a \$1.6 million increase, or around 13.5%. Frank's recommendation was \$983,937 or 8.2%, with a 10.5% return on equity. Mountain Water essentially accepted this recommendation in the settlement. A hearing was held on 11/26/02 to consider this proposal and the PSC issued Final Order No. 6432b on 12/31/02 approving the stipulation.

FINANCIAL REPORT

The financial summary for May 2003 was presented. Bob stated that this report is not entirely representative because there are categories where MCC pre-pays and categories such as contracted services that can run a month or two behind. Bob does not expect any problems with the budget at fiscal year end, in fact, it appears that there could be a surplus of over \$300,000, \$200,000 of that being the contingency fund. Bob reminded everyone that MCC's funding mechanism is a tax on the regulated activities of utilities. These utilities report their gross revenues to the Department of Revenue and MCC's appropriation is divided into that and a tax rate is derived, which is currently .0009. Any money that is unspent is carried over to the next year as an offset to the appropriation. This rate is adjusted annually and then that rate is flowed through the utilities' rates and ultimately it is the rate payers who pay that. The PSC is funded in the same manner. There has been some discussion about this funding mechanism and interest at the PSC in studying it.

Hiring of Expert Witnesses

MOTION: Representative Olson moved approval to retain the services on the attached list of expert witness with the change of striking Al Clark from D2003.6.66.

VOTE: The motion passed unanimously.

Consumer Savings

Bob handed out calculations that MCC was asked to do a few years ago, dated 3/31/00, that indicate the impact in the savings generated through MCC’s participation in various proceedings on behalf of the consumers. This hand out did not take into account the past few years and there have been some very beneficial actions on behalf of the consumers since then. For the six years or so covered by the hand out, the amount of savings is over \$340 million dollars. Had the PSC always gone with our decision, this amount would be more. Bob feels that this shows that MCC does aggressively represent consumers, both in rate cases and in federal and regional forums where consumer interests are at stake.

Public Comments

Based on HB94 requirements, a public comment period was offered, but none was given.

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 _____, 2003

_____, Chairman

1. D2003.2.22 – Investigation of Qwest Rates Allen Buckalew
2. D2003.4.49 – MDU Annual Tracker Review George Donkin
3. D2003.6.66 – NW Gas Tracker Al Clark (accounting issues)
George Donkin (gas purchases)
4. D2003.4.46/D2003.5.62 – Tirenniel Review Allen Buckalew
5. D2003.1.14 – WWC filing for ETC Allen Buckalew
6. D2003.6.77 – NW Electric Default Tracker Al Clark (accounting issues)
John Wilson (supply issues)
7. D2003.6.75 – EW annual tracker George Donkin
8. MDU Electric Al Clark (revenue requirement)
John Wilson (rate design)
Steve Hill (cost of capital)