

MINUTES
of the
LEGISLATIVE CONSUMER COMMITTEE
September 17, 2004
State Capitol, Room 152, 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
Mandi Shulund, Secretary

CALL TO ORDER

The meeting was called to order by Chairman McNutt.

MINUTES OF THE PREVIOUS MEETING

MOTION: Senator Shea moved approval of the minutes of the May 11, 2004 meeting.

VOTE: The motion passed unanimously.

STATUS OF CASES PENDING - BOB NELSON PROVIDED THE FOLLOWING HIGHLIGHTS OF CASES CURRENTLY PENDING:

NorthWestern Energy

03-12872 - Bankruptcy Proceeding: MCC, NWE and the PSC entered into a Stipulation and Settlement Agreement, that addresses the issues MCC raised in the Financial Investigation, was signed on 7/8/04 and was approved by the Bankruptcy Court on 7/15/04. One of the primary reasons for the Financial Investigation was to ensure some control would be maintained with the PSC and one of the elements in

the stipulation was the provision for a Consent Order in the Financial Investigation that would incorporate all the agreements approved by the Bankruptcy Court so the PSC would continue having jurisdiction over enforcement of these provisions. MCC has reviewed the financials for NWE and concluded that if they were currently brought in for a rate case they would probably be viewed as over earning. MCC was interested in this because rates should be set based on costs, and at the same time, costs could be unreasonably driven down and reliability may suffer. MCC did agree to a rate review and NWE will file a minimum filing requirement for a rate case based on standards set out by PSC rules, no later than 9/30/06. The reason for the 9/30/06 date is to allow for a full year of post bankruptcy operations so the filing will be based on 2005 test year results. It was also agreed that any party actually seeking to change rates would carry the burden of proof. Another main element of the agreement was the structural and financial separation of utility assets from the risks of the non-utility operations, which was discussed in length in the context of ring fencing provisions, specifically the utility assets being held by the parent corporation of NWE. There is a notice requirement for transfer of assets valued over \$5 million and financial restrictions and separation from non-utility operations that will be housed in the subsidiaries of the corporation. The parent debt, which is where the utility assets will reside, will consist of only public utility debt. The parties agreed to incorporation of Westar conditions, which come out of a FERC docket. These conditions require that any debt issued against the assets of the corporation will follow those assets. There is also a requirement that NWE Corporation not provide financial assistance to its non-utility subsidiaries except under certain circumstances, including maintaining a 40% equity ratio. On the effective date of the bankruptcy plan approval, they can provide \$60 million to subsidiaries. That \$60 million was calculated as the capital they need to sustain operations related to their public utility service and related activities. If a triple B- credit rating is achieved, then the \$60 million can be increased to \$75 million, to \$90 million at triple B and unlimited at triple B +. However, if some of their operations are disposed of, the \$60 million would be reduced and once they achieve a credit rating that hits one of these levels, there is a snap back provision requiring them to drop back again if credit levels are

reduced, so there is strong incentive there for them to achieve and maintain an investment grade rating. The settlement also requires separate books and accounting for the utility and non-utility, quarterly reports on their affiliate transactions and a transmission and distribution infrastructure audit. A new independent board was agreed on and Pat Corcoran is on a four-member committee that has management control over the energy supply. MCC agreed not to oppose refinancing of NWE's secured debt as long as it was refinanced on terms that are comparable to or better than the existing financing terms. The first amended plan of reorganization was filed 5/04 and essentially divided the equity interests and the creditors claims into 15 different classes, with various classes having more rights of recovery than others. Specifically, the subordinated unsecured creditors were class 8 and receiving under the plan about 2% of the stock allocation. NWE's position, as well as the other creditors', was actually that the class 8 creditors were entitled to nothing, and they were basically trying to give them a reason to vote for the plan. The voting period ended 8/04 and the plan received acceptance by all classes except for class 8. NWE could proceed to try and force the plan on Class 8, but that may take some time so they are trying to reach a consensual resolution and have gone back to negotiate among classes 7,8,9 to see about giving more to class 8. A second amended plan of reorganization was filed that gave class 8 almost 7% of the stock allocation, but because there is still some indecision in class 8, there is now class 8 A and B. The plan also establishes 2.3 million shares be allocated for future incentive payments to NWE employees to be determined by the new board. Specifically, 200,000 of those shares will be allocated to special recognition grants for 20 current NWE managers, 50% on the effective date of the plan and 50% when the board determines. Voting is currently taking place on the second amended plan and is scheduled to end 9/29/04. A continued plan confirmation hearing is scheduled for 10/6/04, so the plan could be approved at that time, or shortly thereafter. Senator McNutt asked if the ring fencing that has been discussed will require legislation to give the PSC additional authority. Bob said that this agreement will control unless there is legislation that supersedes the agreement. Representative

Olson added that there will be ring fencing legislation proposed during the upcoming legislative session.

D2003.8.109 - Financial Investigation: A consent order was issued by the PSC on 8/24/04. In the consent order, the PSC incorporated the stipulation and settlement approved by the Bankruptcy Court to maintain jurisdiction over these issues, which included the rate review provision, the structural and financial separation issues, reporting requirements, the transmission and distribution infrastructure audit and specifically PSC's continuing jurisdiction to enforce the consent order. The consent order closed the financial investigation docket except for the purposes of implementing the infrastructure audit. The Final Report of the operations audit was issued by Liberty Consulting on 7/2/04. The 13-week review consisted of inspection and maintenance of the electric and gas transmission and distribution systems and NWE's reliability system. It was concluded that generally NWE's performance has been satisfactory, but several areas of concern were found, such as an increase in outages by 40% over the last three years, mainly due to hardware problems and tree trimming, which can be addressed through maintenance programs. Underground cable failures with few replacements were found, current transmission and distribution spending levels may not be sufficient and an increase in engineering staff was recommended. Specific to the gas utility, no major concerns were found in their maintenance and reliability system. Regarding the electric system, 21 recommendations were made, to which NWE has filed a preliminary response. MCC participated in a preliminary meeting with NWE and Bob believes the intention of NWE is to file an action plan before the commission. Also, the commission recently issued generic rules regarding service reliability for electric utilities, possibly because of standards that Liberty Consulting is applying to NWE.

ES04-043 – FERC Docket: This docket relates to the Securities Issuance Application regarding NWE refinancing and the bankruptcy proceeding. As NWE comes out of bankruptcy, their debt has to be refinanced and new stock issued, with FERC approval. MCC did intervene in this docket, mainly to monitor the case and to

ask FERC to be aware of state commission approval of the securities issuance and not to do anything inconsistent with what the Montana Commission has done. FERC issued an order on 8/20/04 conditionally authorizing the securities issuance. FERC did recognize the Montana Commission order and did apply Westar conditions to the securities that would be issued.

N2004.1.15 – Default Supply Procurement Plan Filing: NWE filed this plan pursuant to HB509 in 1/04 and the commission determined this would be an informal review. MCC filed comments 7/04, stating that although NWE had developed a capable modeling system, there was concern with NWE not actually acquiring resources and their planning was focused only on short term or intermediate term resources, not longer term resources that will be needed to replace the PPL base load contracts. MCC recommended that NWE develop a comprehensive integrated default supply plan, giving consideration to a broader scope of RFP and the rate basing of resources and MCC recommended that the commission implement a procedural timeframe for NWE to complete this plan. The PSC issued comments on 8/17/04, concluding that the plan was transparent and that the four preferred portfolios presented a reasonable balance of resources, but there were also some concerns. One concern the PSC had was that NWE had not looked hard enough at long term resource planning. This was a concern because long term resources, for example a coal plant, take several years to establish. The commission also showed concern with delays in actual resource acquisitions, because NWE had issued two RFP's but had delayed acquiring actual resources, which seemed inconsistent to the commission due to NWE's sense of urgency when they showed support for the advanced approval bill. The commission also had concerns with the GenTrader model used by NWE, suggesting possible risks that NWE did not analyze. Based on discussions NWE was having with the Technical Advisory Committee, which Larry is participating in, NWE decided to issue an all source RFP, to which they have already received responses. NWE and the advisory committee will be reviewing the bids, which consist of gas turbines, wind, coal and several proposals from PPL for full requirements from their existing resources. NWE has hired Lands Energy, who

conducted this RFP, to assisting them in screening the responses. Bids are also being reviewed to replace their short-term resources, or bridging contracts.

D2004.7.114 - Electric Trackers: The May Electric Tracker filed 4/15/04 resulted in a residential rate increase to \$.0040709/kWh, or 4.2%; The June Electric Tracker filed 5/13/04 resulted in a residential rate decrease to \$.040702/kWh, or .2%; The August Electric Tracker filed 7/16/04 resulted in a residential rate increase to \$.041798/kWh, or 2.7%; and The September Electric Tracker filed 8/16/04 proposed no change.

D2004.9.60 - Annual Electric Default Supply Tracker: NWE filed their Annual Electric Default Supply Tracker on 6/7/04, which includes a true-up and projection for the next tracking period ending 6/30/04. Also in this filing was a request for recovery of revenue, that NWE believes they may lose due to their DSM programs, and a request to recover cost associated with the Tiber Hydro and Thompson River Co-Gen projects. Senator McNutt asked Bob if there were any problems with the Thompson River Co-Gen plant. Bob said that MCC submitted data requests asking NWE to confirm their progress in view of reported permitting type problems. NWE's response indicated they felt any problems would be resolved and they wanted to continue to include the project in this filing. This filing included an increase of 1.7% in current supply costs. Bob mentioned the issue of returning customers. HB509 contains a provision saying that the commission should adopt rules and procedures that would protect the small customers from negative impacts of the return of any choice customers, for example, large customers who have previously gone to choice. In this case, for example, Commercial Energy of Montana basically sent all of its customers back to NWE default supply and a few other large industrial customers came back as well. This had the effect of increasing revenue requirements by about \$2.8 million, which brought up the issue of the commission protecting small customers from the impact of the \$2.8 million, as HB509 would indicate that it should. In implementing HB509, the commission approved a tariff for NWE saying that they would require a surcharge for incremental costs for customers

returning in groups that had load larger than 5 megawatts, so the debate was about whether this standard was met in this case. Bob felt the tariff provision was not consistent with HB509 because HB509 did not include any limitation, such as the 5-megawatt limit. MCC filed comments, concluding that HB509 did appear to require protection of small customers from the \$2.8 million impact. NWE's comments fairly indicated there was some administrative difficulty with tracking this change over time because future incremental cost and the persistence of that cost differential is unknown and, if additional customers continue coming, it is hard to determine how many different rates should be established for different customers. NWE encouraged the commission to roll this into general rates, which they did for the interim order. This increased the rate about 3% and will be addressed in the final order. There is no procedural order in this docket, which is currently in the discovery phase.

D2004.7.113 - Gas Trackers: The June Gas Tracker filed 5/14/04 resulted in a gas cost increase from \$5.5331 to \$5.9314 (Residential rates increased from \$8.87 to \$9.27, or 4.5%) and The August Gas Tracker filed 7/15/04 resulted in a gas cost decrease from \$5.9182 to \$5.6665 (Residential rates decreased from \$8.75 to \$8.50, or 2.9%).

D2004.6.88 - Annual Review of Monthly Gas Trackers: NWE filed a request for their Annual Review of Monthly Gas Trackers on 6/4/04. This docket has been consolidated with the last annual tracker review (D2003.6.66), which has not been acted on yet, so there will be a two-year annual review period. There is no procedural order yet, but MCC has been conducting discovery.

D2004.5.77 - 2004 BPA Residential Exchange Credit Filing: This was filed on 5/21/04, to be effective 7/1/04, for an increase of \$.000296 in credit. The increased credit for a typical residential customer using 750 kWh per month would be \$.22 per month or \$2.64 per year on their total bill.

D2004.5.80 - 2004 Electric Qualifying Facilities Competitive Transition Charge Filing:

This was filed on 5/25/04 to be effective 7/1/04. The decrease for a typical residential customer using 750 kWh per month would be \$.10 per month or \$1.20 per year on their total bill.

D2004.3.45 – Advanced Approval of the Basin Creek Contract: John Wilson filed testimony in this docket on MCC's behalf, concluding that there were benefits to this sale but recommending several specific changes in the contract. NWE did submit an amended contract that dealt with all but one of those changes, which related to change of control of Basin Creek, LLC itself. The commission issued Final Order 6557c on 9/10/04 approving the proposed sale, by a 3-2 vote, and determining, as required by statute, that the price, duration and quantity of the purchase were reasonable and should be approved. Also in that order, the commission required that Basin and NWE address the one outstanding issue that Dr. Wilson addressed. Senator Shea asked Bob what the current status was of the wind component and if there was any hope for the Whitehall project. Bob said that the agreement with NWE on MFM included MCC agreeing to 130 megawatts of MFM power with NWE agreeing they would submit a like amount of wind power at the same time, so there was an agreement to link MFM and wind generation. The Montana Environmental Information Center (MEIC) requested the commission link wind to Basin and the commission declined to do so. However, the MFM application still provides a chance that this could get done if ever submitted to the commission. Also in the provision in the MFM docket agreement, NWE represented to MCC that, other than a few technical problems with their wind contract they were negotiating, they were close to finalizing the contract. But, for some reason, the contract never did get finalized and Bob feels there were more problems with it than NWE had indicated. In the new RFP there are several wind bids, but the question remains how to deal with bids from the old and new RFP and whether Florida Power and Light can be held to their old bid.

ER03-1223-000 – Montana Megawatts I, LLC FERC Docket: MCC has been participating in settlement discussions of this FERC proceeding and did sign a

settlement term sheet on 7/20/04 that specified the quantity and price for generation from MFM. Several other related issues were also addressed, such as the wind power component. A final settlement has not yet been worked out, although draft settlements are still being negotiated, but NWE recently said they are not going to file anything with the commission until they have a conclusion to the new RFP.

Energy West

D2004.2.16 - General Rate Increase-West Yellowstone: EWM has requested a 16% increase in this docket, asserting they could justify a much larger increase. EWM also proposed a flexible rate and eliminating their gas cost tracking mechanism. Bob felt this was an interesting proposal because most other utilities think the tracking mechanisms are important in controlling and managing the volatility of their commodity prices. In this case, EWM actually had substantial credit in their deferred account. Frank filed testimony on 5/25/04, making several adjustments to their proposal. Larry also filed testimony, recommending a different cost allocation and applying the increase uniformly to all non-gas rate components instead of having a larger increase in the service charges proposed by EWM. MCC entered into a stipulation with Energy West on 7/16/04 that resulted in a \$204,507 increase. However, since EWM agreed to spread the deferred account credit over two years, the increase is closer to \$159,000, which is what Frank recommended. EWM also agreed that customer charges in the commodity rates will be what Larry recommended until the commission issues an order in the Great Falls general rate case.

D2004.3.46 - General Rate Increase-Great Falls: EWM is requesting close to a \$1 million increase, or 4% to residential customers. EWM also requested a waiver of commission rules that require cost allocation studies, so basically EWM wants to present a revenue requirement case. The commission denied that waiver, so EWM put together a cost allocation and rate design study to submit with an amended application. The effect of the study is a request to increase allocation to residential and smaller customers, and now their proposal is a 13% increase for the smaller customers. In terms of rate design, the proposal is to almost double the customer

charge to \$12.00 per month. This docket is currently in the discovery phase and no procedural schedule has been issued.

D2003.12.165 - Property Tax Expense Recovery: A final order was issued on 5/26/04 adopting the proposed order which had reduced their request.

D2003.4.50 - Environmental Surcharge: EWM had implemented an environmental surcharge in 1995 to take care of costs associated with the cleanup of a manufactured gas plant from many years ago for which they are just now incurring the environmental remediation costs. The commission had approved a two-year surcharge in 1995 and found that EWM had continued applying the surcharge, so this docket was established to provide support for continuing the surcharge. MCC conducted discovery and a stipulation was submitted to the commission on 6/2/04, concluding that a rebate wasn't necessary because there were continuing costs and the surcharge was an appropriate mechanism to recover prudent remediation charges. The settlement sets the surcharge at \$.04/mcf, noting it will have to continue for at least 5 years in lieu of a higher surcharge for a shorter period of time. The commission issued a final order on 8/20/04, approving the stipulated surcharge for two years and required EWM to file for continued authorization at that time.

D2003.6.75 - Annual Gas Cost Tracker: George Donkin filed testimony on 6/8/04 on MCC's behalf, analyzing EWM's gas acquisition practices and affiliate transactions. The two criteria that Mr. Donkin viewed would be determinative of reasonableness for gas purchases were that purchases generally be in line with market prices and price stability. Historically, Mr. Donkin has emphasized market prices almost exclusively, but in this testimony he also recognizes price stability and tries to balance the two criteria. Mr. Donkin concluded that EWM has engaged in a type of hedging by buying forward or fixed price contracts for a certain period of time and recommended that EWM consider hedging through financial derivative transactions and that affiliate transactions for this tracker period have been reasonable.

D2004.7.120 - Great Falls Gas Tracking Application: This is a new annual gas tracker and true-up that EWM filed on 7/26/04, requesting a 2.1% increase. This filing basically subsumes the earlier annual tracker, so the commission may consolidate them. MCC will be conducting discovery and no procedural schedule has been issued.

D2003.7.93 Monthly Tracker: The June monthly tracker filed 5/11/04 resulted in a residential rate increase of \$.247/mcf, bringing the new rate to \$7.2575/mcf.

D2004.8.131 - Monthly Trackers: The July monthly tracker filed 6/8/04 resulted in a residential rate decrease of \$.257/mcf, bringing the new rate to \$7.00/mcf; The September monthly tracker filed 8/10/04 resulted in a residential rate increase of \$.21, bringing the new rate to \$7.21/mcf; and The October monthly tracker filed 9/13/04 resulted in a residential rate decrease of \$1.01/mcf, bringing the new rate to \$6.35/mcf.

Montana Dakota Utilities

D2004.4.50 – Application to Increase Natural Gas Rates: This is a natural gas general rate increase that was filed on 4/1/04. MDU is requesting a \$1.5 million increase, or a 1.9% increase to residential customers just for non-gas costs. The increase is due mostly to union and non-union wage increases, benefits and depreciation expenses. MDU also proposed a weather normalization mechanism and in this case, the commission denied the waiver of the cost allocation study requirement. Al Clark, George Donkin and Steve Hill filed testimony on 7/30/04 on MCC's behalf. Al Clark reviewed revenue requirement and accounting issues, George Donkin looked at cost allocation and rate design issues, and Steve Hill reviewed at cost of capital issues. Al Clark recommended the commission decrease rates by about \$250,000 and he brought the non-utility expenses above line rather than taking out non-utility revenues. Heating and air-conditioning contractors have complained about MDU's involvement in competitive businesses. MCC has addressed this in the past by recommending to simply bring revenues up above line

so cost allocations aren't necessary. Mr. Clark also excluded SISP costs, which is a management plan that restores benefits that MDU would not otherwise be able to receive. Federal tax requirements don't allow deductibility of benefits above a certain level so MDU actually increased benefits back to the levels they would have been at if there was no federal tax impact. Mr. Clark also concluded the depreciation expense was unsupported, but in this area an agreement has been reached to reduce their claimed depreciation expense by \$1.5 million by applying rates approved in a recent North Dakota proceeding. Steve Hill recommended a 9.75% return on equity, or an 8.45% overall rate of return. George Donkin concluded the cost of service studies were flawed due to MDU allocating too much of their fixed costs to the smaller customers. Mr. Donkin recommended allocating more cost based on commodity throughput, which has beneficial impact to smaller customers. Mr. Donkin also recommended the request for a delivery charge increase and weather normalization mechanism be rejected. A hearing is set for 11/17/04.

D2004.5.69 – Monthly Gas Cost Tracker: The June monthly tracker filed 5/10/04 resulted in an increase of \$.65/dk showing current gas costs of \$8.11/dk; The July monthly tracker filed 6/10/04 resulted in an increase of \$.788/dk, showing current gas costs of \$8.90/dk; The August monthly tracker filed 7/9/04 resulted in a decrease of \$.36/dk, showing current gas costs of \$8.54/dk; and The September monthly tracker filed 9/10/04 resulted in a decrease of \$.85/dk, showing current gas costs of \$7.69/dk.

Williston Basin

RP00-107-000: Williston Basin is an MDU affiliate and there is a dispute regarding the level of refund owed to MDU ratepayers. FERC issued an order that essentially confirmed MCC's estimation of these refund amounts, but Williston Basin has sought clarification of this order and FERC has set up a process for rehearing of a particular issue relating to transportation rates for a company not even in Montana so these issues have created procedural delays.

Cut Bank Gas

D2004.3.47 – General Gas Rate Increase: The PSC issued an interim order on 9/3/04 approving their request on an interim basis. MCC has conducted discovery, but no procedural schedule has been established.

MT Associates LLC

D2004.5.74 - Initial Water Rates: MT Associates, LLC is taking over for Skyview Water District (formerly M&W Investments), which is a service area outside of Helena. This application was filed on 5/20/04. Typically in initial rate applications the commission allows the companies to charge the requested rate for a 12-month period in order to obtain actual experience and after 12 months conduct a review of those rates. The requested rates in this case are \$69.76 per month.

Havre Pipeline

D2004.8.128 – Increase Rates: This application was filed on 8/2/04, requesting a 7% increase that would bring rates to \$4.17/mcf, which is based on actual average gas cost for 12 months ended 5/31/04.

Electricity Market Investigation

D2004.2.21: The Attorney General recently requested that the commission extend the procedural schedule, which they did, so the discovery deadline is now 2/5/05.

Mountain Water Company

D2003.8.122 – Implementation of Power Cost Tracking Adjustment: A stipulation has been submitted to the commission that modified the tracking mechanism. The commission issued an order approving that stipulation on 5/26/04.

D2004.9.145 – Authority to Decrease Water Rates: This is a new cost tracker that was filed on 9/3/04 requesting a decrease of about 1%. MCC will review this filing.

Wilder Resorts, Inc.

D2003.10.152 – Increase Rates and Charges for Water Service: This application was filed on 10/22/03 requesting a 72% increase. Frank filed testimony on 1/26/04 recommending an increase of about 48%. The commission issued a final order on 8/12/04 concluding that, as Frank suggested, the original plant had been fully depreciated and there was no original cost left to include in rate base. After adjustments, the commission granted a 43.2% increase and adopted MCC's cost allocation proposal.

D2003.12.173 – Initial Rates for Sewer Utility: This application was filed on 12/12/03 requesting a 62% increase. Frank filed testimony recommending a 14% decrease largely due to the dispute regarding plant that could be included in the rate base, and depreciation expense. Frank also recommended cost allocation based more on volume usage. An agreement has been reached for a 9% decrease and cost allocation based on our proposals. A hearing has been held, but no order has been issued.

Firelight Meadows

D2004.5.71 & D2004.5.72 – Revise Rates and Charges for Water and Waste Water Service: This utility is located in Big Sky and is requesting to increase water and sewer rates by about 15%. MCC has intervened and is reviewing these applications.

Phantom Hills Water Company

D2004.4.61 – Initial Rates for Water Service: This utility is located in Missoula and on 4/20/04 filed an application with the PSC to establish initial water rates. An interim order was issued on 6/3/04 authorizing the requested rates on an interim basis. MCC will be reviewing this case.

Grid West

There are several work groups that have been trying to put together an operating plan and Larry has been actively participating with the risk/reward group. This group is doing a study of the costs and benefits of the regional transmission organization. The transmission owners are currently scheduled to make a decision in early November on whether to form a legally existing developmental entity and, upon formation of the entity, a more specific platform and governance committees will be set up. MCC is hoping to be one of the consumer representatives on one of these committees.

MARY WRIGHT PROVIDED THE FOLLOWING HIGHLIGHTS OF CASES CURRENTLY PENDING:

Long Distance Cases

D2002.12.153 – Qwest Long Distance Corporation (QLD) and D2003.10.153 –

Qwest Communications Corporation (QCC): The QLD case has actually been concluded but serves as background for the QCC case. All of the important decisions made in this case were based on MCC's recommendations. Two main recommendations by MCC that the commission accepted were that it was improper to offer this long distance service only to Qwest local service customers and to restrict the long distance plans service to voice only, instead of voice and data. The reason for two different cases is because QCC was involved in a restatement of income and could not certify that their records were in order. Because of this, QLD was formed to provide long distance service while the restatement problems were being resolved. However, since the QLD case basically decided all the issues in the QCC case, MCC agreed with Qwest that there was no need for hearing. A stipulation was filed, asking the commission to approve QCC's rates on a preliminary basis, which reserved Qwest's right to challenge the order under federal law. The stipulation is pending before the commission.

Eligible Telecommunications Carriers (ETC)

There are currently 11 ETC cases but Mary provided a summary of the most controversial and active cases:

D2003.1.14 – Western Wireless Holdings: A hearing has been held in this case and is awaiting commission decision. The CEO of Western Wireless has been urging his managers to support certain candidates for the office of PSC, which is legal, and he has criticized the PSC for hurting their business. The commission has had no opportunity or order to support his claims.

D2003.8.105 – Mid-Rivers/Cable and Communications Corporation: Mid-Rivers has not filed any testimony in this case. MCC did file testimony, but with no testimony from Mid-Rivers, there will be very little on record if the commission decides to hold the hearing scheduled for 10/27/04 in Miles City. MCC may file a motion to dismiss.

D2003.10.156 – 3 Rivers Wireless: This case is controversial because it involves the issue of the wireless company trying to get a federal subsidy for competing against its parent corporation, which MCC has questioned is in the public interest. This hearing has been postponed due to the applicant's realization that they hadn't made their case, so they have asked the commission if they could start over. Despite objections from MCC and other parties, the commission said they could. A motion for reconsideration is pending.

Extended Area Service

These are difficult cases for MCC because some consumers will benefit greatly from the extended local calling area and others will pay more but will get no benefits. MCC has not taken much of a position either way, but did attend some of the hearings. There are four EAS cases pending. Hearings have been held in all cases and are awaiting PSC decisions.

D2003.1.8 – Blackfoot Telephone Cooperative/Qwest: Blackfoot Telephone Cooperative petitioned the PSC to expand the existing Missoula EAS region to

include all but one of its regions. Hearings were held in August and a settlement agreement is pending before the PSC.

D2002.11.145 – Northern Telephone Cooperative, Inc/Qwest: Northern Telephone Cooperative has applied for regional EAS in the Shelby/Cut Bank area. After Phase I was completed, Northern Telephone requested to suspend the proceedings.

D2002.10.132 – Triangle Telephone Cooperative Association, Central Montana Communications, Inc/Qwest: Triangle Telephone and Central Montana Communications applied for EAS in the Havre/Great Falls/ Lewistown areas. Hearings were held in August and a settlement agreement is pending before the PSC.

D2003.6.84 Lincoln Telephone Company/Qwest: Lincoln Telephone Company applied for expansion of the existing Helena EAS region. Two public hearings were held in August and the case is awaiting commission decision.

Local Number Portability

D2004.3.39 - Ronan Telephone/Hot Springs Telephone & MTA/MITS: LNP is the requirement of both state and federal law that companies port numbers to competitors, mainly wireless carriers. LNP also provides that state commissions can suspend or modify requirements for LNP if certain economical or technical harms are shown and suspension is in the public interest. The commission issued a temporary suspension and all of the petitioners except for RTC, HSTC, and MCC entered into settlements with Western Wireless. The settlements are not identical and they extend time for some companies to implement LNP, which creates cost issues. Briefing is under way and a commission decision is expected in November.

Court Cases

CV 03-20-H-CCL (Federal District Court for the District of Montana, Helena Division)
Ronan Telephone Company vs. Montana PSC: Motions to dismiss and motions for

summary judgment have been filed in this case and are awaiting the judges decision.

CDV 2003-464 (Montana First Judicial District, Lewis and Clark County) and BDV 2003-465 (Montana First Judicial District, Lewis and Clark County): These two cases are about whether the commission can call Qwest in for a rate case. They are fully briefed and awaiting the judge's decisions.

03-9617 – Qwest Communications International vs FCC and United States of America (United States Court of Appeals for the Tenth Circuit): This case has been briefed and an oral argument has been requested.

BUDGET

Bob discussed the budget development process for the next biennium. The FY06 and 07 figures are based primarily on actual FY04 levels, as well as Department of Administration fixed costs and inflation/deflation. The personal services figures are provided by the budget office with some increases, primarily in benefits, which will flow through the general pay plan bills as they have in the past. Other Services is the largest component of the budget and the most difficult to forecast. The figures for 06 and 07 are based on the non-contingency portion of the 04 budget with 2% inflation factor added per year with the contingency remaining at \$250,000. This past year showed how critical the contingency fund can be. Other agencies have flexibility through the budget office allocation of funds for emergencies, but the budget office has no authority to do that for legislative agencies. Senator McNutt asked Bob if \$250,000 would be adequate. Bob said that the bankruptcy was a major test of the contingency last year and it was good that nothing else had come up. Bob felt it was safe to build on the base budget and maintain the \$250,000 contingency. The other categories are based on historical experience, with some figures provided by the Department of Administration. The travel category went over in 04, mainly due to travel for RTO West activity, so those figures are the same as 04. The net effect of the 06 & 07 proposal results in annual increases of less than 2%. Senator Shea

asked Bob if this proposal was too conservative, but Bob felt there was comfort in the \$250,000 contingency, especially if any consultants increase their rates. Bob added that through the course of the legislative session there are chances to make adjustments, if needed.

MOTION: Representative Olson moved to accept the budget as proposed to the committee.

VOTE: The motion passed unanimously.

FINANCIAL REPORT

The current financial report was presented to the committee. As discussed, this report runs a few months behind and it is still early in the fiscal year. Part of the bankruptcy stipulation settlement is that MCC fees and costs in the bankruptcy case and the financial investigation are to be reimbursed by NWE, which currently is around \$300,000. The reimbursement will not affect the 05 budget appropriation level. It will become a surplus in collections and next September when the tax rate is calculated, the tax rate will be reduced because of the surplus in the account.

Other Business

Bob recommended a base pay increase for Mandi Shulund of 5% effective the first day of the current pay period. This figure has already been built into the figures provided to the budget office.

MOTION: Senator Shea moved that the committee accept the recommended salary adjustment for Mandi Shulund.

VOTE: The motion passed unanimously.

Bob also recommended approval of the \$.25 per hour increase that was applied generally to state employees but committee authorization is needed for MCC. There

is money in the 05 budget to cover this increase and it would take effect during the pay period that includes 1/1/05.

MOTION: Representative Matthews moved approval of the \$.25 cent per hour pay raise to take effect on the pay period that includes 1/1/05.

VOTE: The motion passed unanimously.

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 _____, 2005

_____, Chairman