

TRANSITION ADVISORY COMMITTEE ON ELECTRIC UTILITY RESTRUCTURING

Draft Work Plan for the 2001-2002 Interim

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INTRODUCTION

The Transition Advisory Committee on Electric Utility Industry Restructuring (Committee) was created by Senate Bill No. 390 (Ch. 505, L. 1997). The Committee is composed of 12 legislative members and 12 nonlegislative members. The Speaker of the House appoints 6 representatives, 3 from each party, and the President of the Senate appoints 6 senators, 3 from each party. The Director of the Department of Environmental Quality, the Legislative Consumer Committee, the Montana Electric Cooperatives' Association, the public utilities in the state, and the Public Service Commission each appoints one nonvoting member. The Governor appoints the following nonvoting members:

- one representative from the industrial community with an interest in the restructuring of the electric utility industry;
- one representative from the nonindustrial retail electric consumer sector;
- one representative from organized labor;
- one representative from the community comprising environmental and conservation interests;
- one representative from a low-income program provider;
- one representative of Montana's Indian tribes; and
- one representative of the electric power market industry.

Committee members are appointed to 2-year terms, expiring on January 1 of odd-numbered years.

Staff support is provided by the Legislative Services Division. The Committee may request the assistance of the Public Service Commission and other state agencies. The Committee must meet at least quarterly or as often as necessary to conduct its business. At the first Committee meeting, staff recommended a meeting schedule that avoided conflicts with other legislative committees. So far the Committee has assiduously deviated from that schedule. Staff recommends that the Committee reaffirm the following schedule for the rest of the interim:

February 15, 2002
April 19, 2002
June 21, 2002

September 19, 2002
October or November 2002 (tentative)

The Committee has been assigned several tasks that must be completed each interim or that must be completed by certain dates. The purpose of the draft work plan is to identify the tasks that must be completed by the Committee as well as other proposed topics that may assist the Committee in better understanding the many interrelationships that affect electric utility restructuring. A subcommittee of the Environmental Quality Council (EQC) is undertaking a comprehensive review of the state's energy policy. The draft work plan recommends that the Transition Advisory Committee coordinate its efforts with that subcommittee. Finally, the draft work plan includes a proposed budget for the interim.

Because of time and resource limitations, the Committee should rank the elements in the work plan according to the Committee's perception of the level of importance and the amount of detail required. The Committee will have the opportunity to revise the draft work plan and establish its priorities following the presentation of the work plan.

STATUTORY DUTIES

1. **Annual Report**--The Committee is required to provide an annual report on the status of electric utility restructuring on or before November 1 to the Governor, the Speaker of the House, the President of the Senate, and the Public Service Commission (69-8-501(9), MCA). The annual report for 2001 will cover the period from December 2000 to the present. Items in the report may include a review and analysis of:
 - a. legislation enacted during the 2001 legislative session and a brief overview of prior restructuring legislation;
 - b. actions by the Public Service Commission related to electric utility restructuring;
 - c. litigation related to the Public Service Commission's assertion of regulatory authority;
 - d. activities of the Montana Power Authority;
 - e. application for and use of electricity from the electrical energy power pool;
 - f. the legal challenge to HB 474 and the referendum petition;
 - g. trends in wholesale energy prices;
 - h. contract arrangements of large industrial customers that opted for competition;
 - i. contract arrangements of Flathead Electric Cooperative;
 - j. Montana Power Company default supply portfolio;
 - k. proposed new energy generation projects; and
 - l. other items identified by the Committee.

The annual report would be available for Committee review by early January 2002.

2. **Evaluation of Effective Competition**--The Transition Advisory Committee shall analyze and report on the transition to effective competition in the competitive electricity supply market (69-8-501(11), MCA).

- a. Criteria that the Transition Advisory Committee must use to evaluate effective competition in the electricity supply market include but are not limited to the following:
 - i. the level of demand for power supply choice and the availability of market prices for smaller customers;
 - ii. the existence of sufficient markets and bargaining power (e.g., aggregation) to the benefit of smaller customers and the best means to encourage and support the development of sufficient markets;
 - iii. the level of interest among electricity suppliers and the opportunity for electricity suppliers to serve smaller customers; and
 - iv. the existence of the requisite technical and administrative support that enables smaller customers to have choice of electricity supply.
3. **Restructuring Legislation**--The Transition Advisory Committee shall recommend legislation if necessary to promote electric utility restructuring and retail choice of electricity suppliers (69-8-501(13), MCA).
4. **Monitor and Evaluate Universal System Benefits Programs**--The Transition Advisory Committee shall monitor and evaluate the universal system benefits programs and comparable levels of funding for the region and make recommendations to the 58th Legislature to adjust the funding level provided for in 69-8-402, MCA, to coincide with the related activities of the region at that time (69-8-501(14), MCA).
5. **Evaluate Need for Universal System Benefits Programs**--On or before July 1, 2002, the Transition Advisory Committee, in coordination with the Public Service Commission, shall conduct a reevaluation of the ongoing need for universal system benefits programs and annual funding requirements and shall make recommendations to the 58th Legislature regarding the future need for those programs. The determination must focus specifically on the existence of markets to provide for any or all of the universal system benefits programs or whether other means for funding those programs have developed. These recommendations may also address how future reevaluations will be provided for, if necessary (69-8-501(15), MCA).
6. **Evaluate Access to Interstate Customers**--On or before November 1 of each odd-numbered year, the Transition Advisory Committee shall collect information to determine whether Montana utilities or their affiliates have an opportunity to sell electricity to customers outside of the state of Montana comparable to the opportunity provided pursuant to Title 69, chapter 8, MCA, to utilities or their affiliates located outside the state of Montana. That information must be included in a report to each Legislature (69-8-501(16), MCA).
7. **Required Reports to the Committee**--Public utilities must report annually on universal service benefits programs, including funding levels, to the Public Service Commission,

the Department of Revenue, and to the Committee. The Montana Electric Cooperatives' Association must file a similar report on behalf of its member cooperatives with the Department of Revenue and the Committee (69-8-402(9), MCA).

Public utilities must submit a report describing and analyzing the results of pilot programs required under 69-8-104, MCA, to the Public Service Commission and to the Transition Advisory Committee on or before July 1, 2005.

WORK PLAN ELEMENTS

In order to satisfy statutory duties and to gain a better understanding of energy issues, particularly as they apply to restructuring, the following tasks are recommended:

1. Historical summary of restructuring at the federal level and the state level
 - a. Enabling legislation and regulatory actions at the federal and state level
 - b. Examples of restructuring successes and setbacks in selected states

These items were presented by Matthew Brown, National Conference of State Legislatures (NCSL), at the Committee's October 4, 2001, meeting. Staff would prepare a report to supplement the previous discussion. The purpose of the report would be educational and does not have to be formally considered by the Committee. The report would be available to the Committee in February 2002.

2. National energy legislation and policy
 - a. Track federal legislation on energy policy
 - b. Federal Energy Regulatory Commission authority versus state regulatory agencies

Although the Committee reviewed proposed federal legislation at its October 4, 2001, meeting, it should continue to track federal proposals. Given prior Congressional foot-dragging on retail energy competition and recent events, it may be problematic whether federal legislation will be enacted in the near future. Staff would provide periodic updates.

3. Market structure and competition
 - a. Examine the conditions that lead to the emergence of a competitive market and the impediments, both economic and legal, to establishing a competitive market
 - b. Analyze restructuring laws and the level of competitive markets in other states
 - c. Evaluation of criteria for judging whether competitive market exists

The Transition Advisory Committee is required to analyze and report on the transition to effective competition for smaller customers in the competitive electricity supply market. Section 69-8-501, MCA, lists the criteria that the Committee must use to evaluate effective competition in the electricity supply market. Although the transition period has been extended until 2007, the Committee may want to begin looking at factors that lead

to the development of a competitive market and consideration of appropriate measures of the specified criteria, as well additional criteria that the Committee may determine.

Analyzing the successes and failures in other states may be used to establish competitive benchmarks. Staff, with the assistance of the Montana Public Service Commission,¹ would prepare reports for Committee consideration through June 2002. This task would also look at efforts of various customers in the state to obtain a competitive supply of electricity.

4. Electrical energy generation
 - a. Assessment of generation capacity, including appropriate reserve requirements, in Montana and the region
 - b. Review mix of energy sources (coal, natural gas, wind, etc.) and the economics associated with each type of fuel and generation

This task may be accomplished in coordination with the EQC energy subcommittee (see discussion below).

5. Transmission
 - a. Assessment of transmission infrastructure needs, including natural gas pipelines
 - b. Proposals for national energy grid and the effect on the Western region with respect to price, reliability, and safety
 - c. Rationale for regional transmission system operators and discussion of how RTO-West will operate
 - d. Role of Bonneville Power Administration and other entities (e.g., private entities, Western System Coordinating Council, and Western Area Power Administration) in developing transmission infrastructure
 - e. Miles City inter-tie
 - f. Transmission of electricity from Alberta and British Columbia

A (competitive) electrical energy industry requires an efficient delivery system to function effectively. This section would examine the additional transmission capacity that may be needed in Montana and the region, the cost of financing new capacity, and siting of new transmission. This task may also be coordinated with the EQC energy policy subcommittee.

6. Electrical energy portfolios
 - a. Criteria for establishing electrical energy portfolio and how contracts should be structured--e.g., long-term, short-term, spot market

¹The Public Service Commission is also required under 69-8-403, MCA, to "decide if there is workable competition in the electricity supply market by determining whether competition is sufficient to inhibit monopoly pricing or anticompetitive price leadership."

- i. Default supplier
- ii. Competitive markets
- b. Risks associated with type of energy portfolio
- c. Outlook for energy prices

This task would look at the advantages, disadvantages, and risk assessment of different mixes of energy portfolios for default supply customers and customers of competitive markets.

7. Universal system benefits programs (see items 4 and 5 under **STATUTORY DUTIES**)

Utility ratepayers have historically funded a variety of public-benefit programs, including programs to reduce energy use (energy efficiency or demand-side management), support of renewable resource projects and applications, and support of low-income assistance programs.

*Under a regulated environment, these programs were managed by the utilities with oversight from a state's public service commission. Under competition, there may be a risk that these "public benefits" would be abandoned because the incumbent utility would be at a disadvantage relative to other competitive suppliers.² This task would evaluate existing universal system benefits programs and funding and analyze whether competitive markets may provide universal system benefits programs. **This task must be completed by July 1, 2002.***

The Committee may want to request a representative of NCSL to discuss universal system benefits programs with the Committee.

8. Other substantive issues

- a. Resolution of Montana Power Company's "Tier 2" stranded costs
- b. Bonneville Power Administration policy decisions affecting supply of electricity
- c. Effect of tax incentives and other financial incentives for enhancing energy generation capacity
- d. Net metering
- e. House Bill No. 474 Referendum
- f. Litigation issues

9. What other issues need to be addressed so that the Committee and the public are better informed about restructuring and can make reasoned policy decisions?

²Martin Kushler, Ph.D., and Patti Witte, A Revised 50-State Status Report on Electric Restructuring and Public Benefits, Report Number U005 (Washington, D.C.: American Council for an Energy-Efficient Economy, March 2001), p. 3.

The Committee may want to obtain outside assistance to evaluate the state's current restructuring scheme.

10. Identify technical corrections to existing law.
11. Recommendations to Legislature for proposed legislation, if any, and other recommendations to the Legislature.

COORDINATION WITH THE ENVIRONMENTAL QUALITY COUNCIL

Title 90, chapter 4, part 10, MCA, establishes a process for the development of a state energy policy. Section 90-4-1003 directs the Department of Environmental Quality and the Environmental Quality Council, in cooperation with the Consumer Counsel and the Public Service Commission, to "maintain a continual process to develop the components of a comprehensive state energy policy." At its organizational meeting, the Environmental Quality Council appointed a 7-member subcommittee to address energy policy issues.

At the Council's September 10, 2001, meeting the Council adopted the subcommittee's work plan. Goals outlined in the work plan include:

- Develop a complete understanding of energy law, litigation, supply, demand, transmission, conservation, and price within Montana and the Northwest region.
- Develop an easy-to-understand handbook on Montana energy law.
- Develop a "state of the state" report on the energy situation (supply, demand, transmission, conservation, and price) in Montana for the 2003 Legislature.
- Determine whether the existing Montana energy policy statement is adequate.
- Develop an understanding of Montana rural electric cooperatives.

Tasks to be accomplished under the work plan include:

- Gather information on energy laws and policies in Montana.
- Gather information on regional and federal laws and policies that impact Montana's energy.
- Gather information and written reports from acknowledged experts on energy litigation, supply, demand, transmission, conservation, and price within Montana and the Northwest region.
- Develop and produce a handbook on energy law in Montana.
- Develop and produce a "state of the state" report on the energy situation (supply, demand, transmission, conservation, and price) in Montana for the 2003 Legislature.
- Analyze the adequacy of Montana's energy policy statement.³

The Transition Advisory Committee and the Environmental Quality Council energy policy subcommittee should work together to avoid duplication of effort.

³The Energy Policy Subcommittee Work Plan may be found at <http://leg.mt.gov/services/lepo/subcommittees/workplan/energyplan.pdf>.

BUDGET

Senate Bill No. 390 (Ch. 505, L. 1997), in addition to creating the Transition Advisory Committee, appropriated up to \$200,000 for the 1998-99 biennium for funding the operations of the Committee. The Legislative Services Division was authorized to accept gifts, grants, or other donations for offsetting the costs of the Committee. A little over \$83,000 was collected from Montana Power and the Montana Electrical Cooperatives' Association, and \$81,572 was expended. A portion of the collections was allocated to the former Revenue Oversight Committee for conducting a study of taxation of public utilities under restructuring. Similarly, House Bill No. 404 (Ch. 372, L. 1999) appropriated up to \$100,000 for the 2000-01 biennium. The Montana Power Company contributed \$50,000; PPL Montana contributed \$5,000; and Avista Corp. contributed \$2,500. The Committee spent \$41,469, leaving a cash balance of about \$16,000. That amount was carried forward to the current biennium.

House Bill No. 2 (Ch. 572, L. 2001) appropriated \$77,285 from the state special revenue account to the Committee. In September, Chairman Thomas sent a letter to several utilities and the Montana Electric Cooperatives' Association requesting contributions totaling \$80,000. To date, the Montana Power Company has contributed \$25,000 and NorthWestern Corporation has contributed \$10,000.

At the June 19, 2001, meeting Committee staff recommended that the Committee meet six times during the biennium (excluding the organizational meeting). The Committee has so far met three times (including November 16). As noted above, staff recommends that the Committee adopt the meeting schedule suggested for 2002. That schedule includes a tentative meeting in October or November 2002. That meeting would allow the Committee to deal with any loose ends or to consider the consequences of the referendum election on House Bill No. 474. Based on the proposed schedule (including the tentatively scheduled meeting), the Committee budget for the biennium would be as follows:

Transition Advisory Committee Operating Budget		
Number of meetings	7	2
Days/meeting	1	2
Personal Services (legislative)		\$8,293
Operating expenses		\$15,389
Contracted Services	\$12,500	
Printing	\$826	
Supplies	\$575	
Communications	\$1,488	
Travel		\$16,930
TOTAL		\$40,612

The budget also provides for one additional, unscheduled meeting. It represents a "fudge factor" that would allow Committee members to be reimbursed for attending other energy-related meetings, such as the Western Area Power Administration's October 19, 2001, "scoping" meeting on transmission infrastructure in Billings.

The total estimated operating budget is \$40,612, leaving the Committee a little under \$37,000 to play with. Although that amounts to considerable pocket change, it is unlikely that total contributions will approach the appropriated amount. If the past is prelude, and given the current economy, the deep pockets of donee corporations may have gotten shallower.

The Montana Legislature has provided substantial spending authority to the Committee, but it has relied on uncertain funding for the Committee's operations. Because energy policy, in general, and electric utility restructuring, in particular, is of statewide importance, the Committee may want to discuss whether to recommend to the 58th Legislature that the Committee's budget be included in the state general fund.

CONCLUDING REMARKS AND COMMITTEE ACTION

Although the draft work plan is quite ambitious, most of the elements included in the plan are important to understanding energy policy and to formulating potential recommendations to the Legislature. The Committee should be prepared to discuss at the November 16, 2001, meeting how it wants to allocate its time on the various tasks, including tasks that should be in the final work plan but are not included in the draft . The Committee should agree on the topics on which it should focus its efforts. There will be trade-offs on what the Committee can accomplish in the course of approving a final work plan. Keep in mind that the evaluation of universal system benefits programs must be completed by July 1, 2002.

Attached is a proposed timeline of the various tasks to assist Committee members in evaluating the draft work plan.

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ATTACHMENT

Transition Advisory Committee: Proposed Timeline for Work Plan

Task	December	January	February (02/15/02)	March	April (04/09/02)	May	June (06/21/01)	July	August	September (09/19/01)	October/ November
Annual report											
Public utility & co-op USBP reports											
Summary of restructuring											
National energy legislation and policy			Depends on federal action		Depends on federal action		Depends on federal action			Depends on federal action	
Market structure and competition											
Electrical energy generation											
Transmission											
Portfolio analysis											
Universal System Benefits Programs										Final draft legislation, if any	
Other issues identified by the Committee											
Draft legislation, including technical corrections											