



# LEGISLATIVE CONSUMER COMMITTEE

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## SENATE MEMBERS

Brad Molnar  
Andrea Olsen – Vice-Chair  
Daniel Zolnikov

## HOUSE MEMBERS

Brad Barker - Chair  
George Nikolakakos  
Zoey Zephyr

## MINUTES LOG

July 31, 2023  
State Capitol, Room 102  
Zoom Videoconference

Please note: This document is a Minutes Log and provides annotation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video recording of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of the meeting activities. The time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

Access to an electronic copy of these minutes and the audio or video recording is provided from the Legislative Branch home page at <http://legmt.gov>. On the left-side menu of the home page, select Committees, then Interim. Once on the page for Interim Committees, scroll down to the appropriate committee. The written Minutes Log, along with the audio and video recordings, is listed by meeting date on the interim committee's web page. Each of the "Exhibits" is linked and can be viewed by clicking on the Exhibit of interest. All Exhibits are public information and may be printed.

Please contact the Montana Consumer Counsel at 406-444-2771 for more information.

## COMMITTEE MEMBERS PRESENT

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Senator Brad Molnar  
Senator Andrea Olsen  
Senator Daniel Zolnikov  
Representative Brad Barker  
Representative George Nikolakakos  
Representative Zoey Zephyr

MONTANA CONSUMER COUNSEL STAFF PRESENT

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Jason Brown, Consumer Counsel  
Suzanne Snow, Secretary  
Jaime Pollard, Staff Attorney  
Paul Schulz, Rate Analyst  
Jaime Stamatson, Economist

AGENDA

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[\(Attachment 1\)](#)

CALL TO ORDER

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13:00:00 Senator Molnar called the meeting to order with roll call.

[\(Attachment 2\)](#)

APPROVAL OF MINUTES OF PREVIOUS MEETING – June 8, 2023

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13:03:31 MOTION: Senator Molnar moved acceptance of the minutes.

SECONDED: Representative Barker

VOTE: Motion passed unanimously on a voice vote.

[\(Attachment 3 – June 8, 2023\)](#)

MCC LEGAL OPINION ON SB176

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13:04:15 Jason Brown walked the Committee through the consumer counsel’s legal opinion on SB 176, and at the request of Senator Molnar, the memorandum from Jaret Coles, Deputy Director of Legal Services.

Committee Discussion:

13:09:49 Senator Olsen noted that the conflict in the wording of SB 176 regarding the Legislative Consumer Committee membership was a serious Legislative oversight that put the committee in the position of having to choose between two completely opposite directives.

13:11:52 Senator Molnar moved acceptance of the MCC legal Opinion on SB 176.

13:12:03 Senator Olsen proposed an alternative motion as it was her belief that it was too hard to say yes or no to the legal opinion, but rather the committee should move forward with the legislative appointments and agenda based on having legal authority to do so.

Public Comment.

13:14:21 Senator Dunwell, representing Helena and East Helena, Senate District 42.

Committee Discussion:

13:16:50 Senator Olsen asked for a discussion on whether or not the committee would function well as an equal membership committee.

13:17:15 Senator Molnar noted if two interpretations of a statute are possible, and one gives natural life to the statute, you must choose that which gives life and this case we give life to what the statute says. Senator Molnar also noted that the consumer committee is an administrative committee, which oversees the Consumer Counsel, primarily on financial matters. Senator Molnar further noted that because the committee does not set policy or make legislation, the makeup of the committee is of no real consequence.

13:18:40 MOTION: Senator Olsen moved that the Legislative Consumer Committee request the President to appoint two more Democrats, one from the House, and one from the Senate to this committee.

SECONDED: Representative Zephyr

VOTE: Motion failed on a voice vote

13:21:18 MOTION: Senator Olsen moved that the Committee move forward with the current legislative appointments, and the make-up of the committee as per SB 176.

SECONDED: Representative Zephyr

VOTE: Motion passed unanimously on a voice vote.

#### ELECTION OF CHAIR AND VICE-CHAIR

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13:22:00 Senator Molnar called for nominations for Chair.

13:22:31 MOTION: Representative Nikolakakos nominated Representative Brad Barker as chair of the Legislative Consumer Committee

SECONDED: Senator Zolnikov.

VOTE: Motion passed unanimously on a voice vote.

13:24:12 Chair Barker called for Vice-Chair nominations.

MOTION: Senator Olsen put forward her nomination for vice-chair.

SECONDED: Representative Zephyr

VOTE: Passed unanimously on a voice vote.

#### UTILITY RATE MAKING PROCESS

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13:25:25 Jason Brown introduced Paul Schulz, staff rate analyst, to present the utility rate making process.

Committee Discussion:

13:37:17 Senator Zolnikov asked about the discovery process in cases before the PSC.

13:40:35 Chair Barker asked if there were situations where objections to discovery were based on proprietary information being requested.

13:41:30 Senator Olsen asked for a discussion on the topic of investor-owned utilities, and why it is important that legislators are regulating and paying attention to those companies. She also indicated the importance of the consumer counsel to make sure regulation works for the ratepayers as well as the investors in public utilities.

13:45:10 Senator Zolnikov asked for clarification on natural monopolies and state granted monopolies.

13:48:46 The presentation continued with Slide 5 – Procedural Process-Hearing & Forward.

13:59:06 Regarding the rate of return, Chair Barker asked if there was pressure in the competition for investment in the utilities because the federal rate increases and how will that play out over time.

14:01:52 Senator Zolnikov inquired about O & M expenses.

14:04:08 Senator Molnar explained the concept of used and useful.

14:06:09 Senator Zolnikov inquired if a significant repair on a plant would counter the depreciation in the long term.

14:08:43 Chair Barker asked if the Consumer Counsel would take a deeper dive on the repair versus betterment discussion.

14:12:03 Presentation continued with Slide 8 – Rate Base General Formula.

14:21:43 Senator Olsen asked if the consumer counsel could describe a specific example on how it uses the tools described in this presentation.

DISCUSSION ON THE STATE OF COMMUNICATIONS INFRASTRUCTURE IN MONTANA

14:26:57 Senator Olsen proposed that the Committee study and address Montana's communication infrastructure jointly with ETIC and the Communications Advisory Commission.

Committee Discussion:

14:29:58 Senator Zolnikov noted he would be open to exploring the matter further if the process could be simplified.

14:31:58 Senator Olsen stated that there was an expression of interest in this study from the Communications Advisory Commission.

14:33:15 Senator Zolnikov said he supported the idea as long as the committee could figure out a focus point.

14:34:23 Senator Molnar noted that the constitution states that the mission of the consumer counsel is to represent the consumer before the Public Service Commission (PSC) and that it was his belief this study may be outside that mission. Senator Molar noted however, that the oversight committee would have the authority to call CenturyLink to come before them, and to take complaints from the consumers.

14:37:48 Chair Barker asked Mr. Brown if the committee limited the focus to service quality whether that would be more within the scope of the consumer counsel.

14:39:27 Senator Olsen stated that she was hearing there is interest to explore this topic further and would pull together more information for the committee.

14:41:10 Senator Zolnikov asked if it was within the committee's role to discuss expanding the role of the consumer counsel.

14:43:34 Senator Zolnikov in a follow up, stated the committee could look at expanding the role of the PSC, which would have an indirect effect on the consumer counsel. Senator Zolnikov further stated that if the committee does not agree with the direction the consumer counsel is taking in a case and the office maintains its independent approach, then what was the point of the consumer committee if it is only to hear updates without input.

14:44:31 Senator Olsen noted that the consumer counsel is constitutionally mandated to represent rate payers; making sure they pay the fairest rates possible, and that the consumer committee is appointed to make sure the office has what it needs to achieve that mandate.

14:48:31 Chair Barker recapped the discussion. The Legislative Consumer Committee does two things broadly; 1) it evaluates the hiring, firing and provision of resources for the counsel; and 2) has the opportunity to

identify where to draft future legislation based on the issues that are discussed, and on the education that it receives from having those discussions.

14:49:38 Senator Olsen noted that the consumer committee does not have staff to draft legislation, which is one of the reasons for the decision to reach out to the other committees.

14:50:55 Senator Molnar stated that because the Office of Consumer Counsel does not make legislation that this discussion would be best brought before ETIC.

14:51:40 Representative Zephyr noted her agreement with Senator Zolnikov that if the committee invited agencies to come before it that it should be limited to this committee. Rep. Zephyr further noted, as Senator Molnar had stated, that the role of the committee is that of oversight and it does not draft legislation, but the committee, as Senator Olsen had mentioned, can turn to the counsel to make sure it is paying attention to those matters. Rep. Zephyr also noted that there was value in joint listening sessions with the public and returning back to its respective committees to do the work.

14:53:15 Senator Olsen stated that there have been improvements in infrastructure and communications, but that government needed to catch up with the technology, particularly if legislation is getting ahead of consumer protection issues.

#### Public Comment

14:54:19 Senator Maryanne Dunwell, Helena and East Helena, Senate District 42.

#### Committee Discussion:

14:54:50 Senator Zolnikov asked for a pause on the discussion to determine legislative authority and the role of the different committees.

14:55:13 Senator Olsen asked if she had permission to reach out to the other committees on behalf of the committee.

14:55:27 Chair Barker asked Senators Olsen and Zolnikov to put together an agenda item for the next meeting on Montana's communication infrastructure, and then if warranted the committee could move forward with some involvement with other committees.

14:56:17 Senator Zolnikov asked if Mr. Graff could give an overview of the committees' authority, abilities, and limitations.

14:56:37 Mr. Graff gave an overview of the mission of the Communications Advisory Commission, and ETIC. Mr. Graff also noted that the role of

the Legislative Consumer Committee has been oversight of the counsel's actions.

15:15:00 Chair Barker called the meeting back to order after a brief recess.

#### STATUS OF CASES PENDING

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15:15:06 Jason Brown highlighted the cases that have seen some change in status since the Committee's last meeting. (Attachment 4)

15:16:38 NWE Gas Tracker, Docket 2022.07.077.

15:17:14 NWE Gas Tracker, Docket 2023.07.068.

15:17:20 NWE Townsend Propane Annual Adjustment Filing, Docket 2023.05.034, filed 4/28/23.

15:17:33 NWE Application for Approval of an Advanced Metering Opt-Out Tariff, Docket 2022.06.067, filed 6/9/22.

#### Committee Discussion:

15:20:23 Chair Barker inquired if NorthWestern had passed along the cost of installing the new advanced meters to ratepayers.

15:21:15 Chair Barker asked if it was expected for NorthWestern to recover those costs through rates.

15:21:42 Senator Zolnikov stated it was his understanding that NorthWestern's main argument was that these were cost saving mechanisms.

15:23:18 Senator Zolnikov asked how the consumer counsel would analyze a case to be cost effective when new technology replaces a depreciated technology.

15:25:34 NWE Integrated Resource Plan, Docket 2022.11.102, filed 4/28/23

15:26: NWE Annual Tax Tracker, Docket 2022.12.106, filed 12/15/22.

15:26:19 NWE Application to Increase Retail Electric and Natural Gas Utility Service Rates, Docket 2022.07.078, filed 8/8/22.

15:26:44 MDU Application to Increase Retail Electric Rates, Docket 2022.11.099, filed 11/4/22.

15:28:29 MDU Electric Tracker (Rate 58), Docket 2023.06.055.

15:28:29 MDU Gas Tracker Filings (Rate 88), Docket 2022.09.088, filed 9/8/22.

15:28:55 MDU Conservation Program Tracking Mechanism (Rate 90), Docket 2023.03.027, filed 2/28/22.

- 15:29:18 MDU Application to Offer Incentives for Conversion in the Saco/Bowdoin Area, Docket 2021.09.116, filed 9/15/21.
- 15:30:15 EWM Monthly Gas Cost Tracker, Docket 2023.04.029, filed 6/1/22.
- 15:30:15 EWM Annual Gas Cost Tracker, Docket 2023.06.048, filed 6/1/23.
- 15:30:24 EWM Application for Approval of Gas Cost Hedging for West Yellowstone, Docket 2023.06.057, filed 6/29/23.
- 15:31:05 High Quality H2O Application to Decrease Water Rates, Docket 2021.06.081.  
Committee Discussion
- 15:34:00 Aquanet, Inc. Application for Standard Rates for Sundance Subdivision, Docket 2021.09.115, filed 9/14/21.
- 15:34:09 Aquanet, Inc. Application for an Interim Rate Request for Linlee Lake Estates, Docket 2022.09.085, filed 9/1/22.
- 15:34:40 Flathead Utility Company, Inc. Operating Ratio Methodology Request for Rate Increase, Docket 2023.03.024, filed 3/26/23.
- 15:35:05 ABACO Propane Cost Tracker, Docket 2023.05.035, filed 5/8/23.
- 15:36:46 Qwest Corporation d/b/a CenturyLink QC Petition for Temporary Waiver, filed 12/9/21, and Commission Investigation into the Adequacy of Legacy Infrastructure Operated by CenturyLink, Docket 2021.12.136.  
Committee Discussion:
- 15:38:21 Chair Barker asked Mr. Brown if the company was making the argument that these are obsolete capabilities.
- 15:39:57 Chair Barker stated that in trying to understand the company's position, wondered if the company was trying to avoid additional capital expenditures to continue to provide land line services.
- 15:42:22 CBC [Third] Petition to Set Terms and Conditions, Docket 2021.12.134, filed 12/1/21.  
CBC [Third] *Petition for Judicial Review*, First Judicial District Cause No. BDV-2022-764, filed 11/30/22.  
Committee Discussion:
- 15:48:21 Chair Barker asked about the length of time QF petitions take from the date the petition is filed, to decisions made to completion.
- 15:49:33 Chair Barker inquired as to how many QF petitions would go through the appeal process.
- 15:51:15 Consolidated Edison ("CED") Petitions to Set Terms and Conditions, Docket 2019.10.076, filed 10/4/19.  
CED Complaint and Petition for Judicial Review, First Judicial District Cause No. ADV-2020-1292, filed 8/11/20.



CED Appeal to Montana Supreme Court, Case No. DA 21-0250, filed 5/24/21.

15:52:42 Jawbone Holdings, LLC Petition to Set Terms and Conditions, Docket 2020.12.126, filed 12/30/20.

Jawbone Petition for Judicial Review, First Judicial District Cause No. CDV 2022-161, filed 2/25/22.

15:54:35 Colstrip Energy Limited Partnership's Petition to Set Terms and Conditions, Docket 2022.07.073, filed 7/1/22.

15:55:40 Trident Solar, LLC Petition to Set Terms and Conditions, Docket 2023.01.013, filed 1/24/23.

#### PUBLIC COMMENT

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15:58:12 No public comment was offered at this time.

#### FINANCIAL REPORT

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15:58:34 Jason Brown reviewed the budget versus expenditure report that reflected accounting periods one through twelve of fiscal year 2023 (July 2022 to June 2023).

#### CONTRACTED SERVICES

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15:49:40 Jason Brown requested authorization from the committee to retain the services of the following consultant:

Docket 2023.06.057 – EWM – Application for Approval of Gas Cost Hedging for West Yellowstone

Acadian Consulting Group, LLC – David Dismukes

Committee Discussion:

16:00:18: Chair Barker Inquired if the budget of the consumer counsel is stable from year to year.

16:02:58 MOTION: Senator Olsen moved to approve the retention of Acadian Consulting Group as requested by the Consumer Counsel.

SECONDED: Senator Zolnikov

VOTE: The motion passed unanimously on a voice vote.

#### NEXT MEETING

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- 16:04:41 Chair Barker stated that the committee could defer setting the date for the next meeting. He asked for input on items to discuss, along with the feedback from the Vice-Chair on the discussion of the State of Communications Infrastructure in Montana.
- 16:05:13 Senator Zolnikov asked Mr. Brown what some of the main topics are that the consumer counsel would discuss and have an overview of one of them.
- 16:06:38 Senator Zolnikov asked if the consumer counsel could present a thorough breakdown of either the gas or electric tracker process.
- 16:07:15 Chair Barker noted that if other topics come to mind to reach out to himself and staff so they can be put on the agenda.
- 16:07:33 Senator Olsen asked if the consumer counsel was involved in any cases involving garbage carriers.

ADJOURN

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- 16:09:30 There being no other matters before the Committee the Chair adjourned the meeting.