



# Energy and Telecommunications Interim Committee

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## 59th Montana Legislature

### SENATE MEMBERS

GLENN ROUSH--Chair  
JEFF ESSMANN  
DAVE LEWIS  
GREG LIND

### HOUSE MEMBERS

ALAN OLSON--Vice Chair  
ROBYN DRISCOLL  
HARRY KLOCK  
GARY MATTHEWS

### COMMITTEE STAFF

CASEY BARRS, Lead Staff  
TODD EVERTS, Staff Attorney  
DAWN FIELD, Secretary

# MINUTES

November 22, 2005

Room 137, State Capitol  
Helena, Montana

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

### COMMITTEE MEMBERS PRESENT

SEN. GLENN ROUSH, Chair  
REP. ALAN OLSON, Vice Chair

SEN. JEFF ESSMANN  
SEN. DAVE LEWIS  
SEN. GREG LIND

REP. ROBYN DRISCOLL  
REP. HARRY KLOCK  
REP. GARY MATTHEWS

### STAFF PRESENT

CASEY BARRS, Lead Staff  
TODD EVERTS, Staff Attorney  
DAWN FIELD, Secretary

### AGENDA & VISITOR'S LIST

Agenda, [Attachment #1](#).  
Visitors' list, [Attachment #2](#).

## **COMMITTEE ACTION**

The Energy and Telecommunications Interim Committee:

- approved the September 22, 2005, minutes as written;
- approved changes in Committee meeting dates; and
- approved drafting a telecommunications regulatory bill incorporating Qwest's recommendations ([EXHIBIT #11](#)).

## **CALL TO ORDER**

00:00:01 SEN. ROUSH called the meeting to order at 8:20 a.m. The Committee approved the September 22, 2005, minutes as written with a unanimous voice vote. The secretary noted the roll, all members were present ([Attachment #3](#)).

## **REVIEW OF USBP ANNUAL REPORTS**

00:01:14 **Casey Barrs, Research Analyst, Legislative Environmental Policy Office (LEPO)**, explained that part of the ETIC's duties is to review all annual reports from utility companies and to decide if comments regarding compliance are needed. Mr. Barrs said the annual reports from NorthWestern Energy (NWE) and Montana Dakota Utilities (MDU) were mailed out to the members for review prior to the meeting. He said that since the reports were mailed out, the Public Service Commission (PSC) released an interim order regarding NWE's Universal System Benefits (USB) low income discount programming. Mr. Barrs read the highlights of the order ([EXHIBIT #1](#) - pages 30 and 31). There were no Committee questions or comments.

## **00:05:50 DISCUSSION OF QUALIFYING FACILITIES**

00:06:40 **Will Rosquist, Staff Analyst, Public Service Commission (PSC)**, provided followup information regarding questions raised by Committee members at the June meeting regarding NWE's Qualifying Facilities (QFs). He presented the information in a written question and answer format ([EXHIBIT #2](#)). Topics covered were as follows:

1. What was the PSC's settlement amount on the QFs?
2. What percent of NWE's costs are QF contracts?
3. What portion of the QFs are wind power as opposed to co-gen?
4. Has the PSC been evaluating QFs?
5. Recap the effect, if any, of the federal energy bill on QFs.
6. Recap the impact, if any, of the bankruptcy process on NWE's QFs.

00:20:24 Mr. Rosquist, at the request of REP. OLSON, provided background information on how and why QF's had come into existence, how the rates were set and when, and whether the PSC is considering adjusting the rates:

- Qualifying facilities were created in response to the oil price embargoes in the 1970s an interest in energy independence, and a desire to increase efficiency.
- To become a QF, a facility must demonstrate that it can produce electricity at a certain thermal efficiency or that it is a renewable resource.

- In 1978, Congress established the federal Public Utility Regulatory Policies Act (PURPA), which required the Federal Energy Regulatory Commission (FERC) to adopt rules and ultimately, required state PSC's to set rates that utilities would pay QFs.
- Utilities are obligated to purchase from any QF that approaches it to sell power.
- The PSC held several contested cases in the early to mid 1980s to set these avoided cost-based rates. All of the utilities in Montana participated in those contested cases, as did the Montana Consumer Council and the Department of Natural Resources and Conservation, and other interveners.
- Those orders are some of the most complicated and complex orders ever issued by the PSC. The primary objective of PURPA was that utilities should pay QFs a rate that reflects their avoided costs, which is the incremental costs that the utility would incur to generate the electricity itself or purchase it from another source, if it did not buy it from the QF.
- The technical question is how one identifies the avoided cost and establishes a rate that will promote QF development. In order to promote QF development, it was thought that long-term contracts were needed, so the Commission, with the other parties, were trying to establish rates that reflected a very long term look at NWEs or MDU's avoided costs.
- In the contested case process, interveners provide their testimony on what they think NWE or MDU avoided costs are, the companies provide their own view, and ultimately the PSC has to base its decision on the record evidence before it. As with all contested cases, there are opportunities to challenge the Commission's order, either by asking for reconsideration or asking a court to review the Commission's decision.
- None of the Commission's avoided costs orders from the early to mid 1980s were challenged by any of the intervening parties. In hindsight, it became clear that the rates were wrong compared to what the utilities actual avoided costs have turned out to be, but the rates were based on the evidence that the Commission had at the time.

00:25:28

REP. MATTHEWS, in reference to question 5, said that it appeared to him that the 2005 federal energy bill will make it more difficult for a QF to get started. Mr. Rosquist said that may be the case because the bill requires FERC to establish new criteria for QFs. It may be that some facilities that would qualify under current criteria may not qualify under the new criteria. Mr. Rosquist noted that a utility can attempt to make a case to FERC that says any facility that qualifies in its service territory or that wants to sell to the utility really has access to a competitive wholesale market. The transmission system is operated by a regional transmission provider, or if it is not operated by a regional transmission provider, the level of access that the facility has to competitive wholesale markets is sufficient that there should not be an obligation on the utility to have to buy power from that facility, that it has as much access as anybody else to markets, and therefore, there should be no QF obligation. But the utility has to ask FERC to make that finding and at this point, NWE hasn't gone to FERC to get them to make that finding, but it could at some point.

00:27:47 REP. MATTHEWS noted that Montana has 17 QFs and asked how that number compares with surrounding states' QFs. Mr. Rosquist said he doesn't have an exact number of QFs in surrounding states.

### **SJR 36: PROMOTION OF DISTRIBUTED ENERGY GENERATION IN MONTANA**

00:29:28 Mr. Barrs reported on the public forum held the previous evening on the possible promotion of distributed energy generation in Montana. Mr. Barrs explained how the forum was conducted and said he will be preparing a summary for the member's review. He said in addition to his summary, he will also be preparing a recap of today's meeting regarding distributed energy generation, and also a summation of the broad literature available and discussions with Montana-based experts on the subject. Mr. Barrs discussed both the advantages and disadvantages of distributed energy. He said some of the issues that would have to be dealt with include power quality, reliability, safety, and who would have to pay for upgrades and expenses related to distributed energy generation power.

00:35:06 SEN. ROUSH said the energy forum panel presented good discussion and the opportunity for public input. He cautioned that a "one size fits all" approach will not work but that he is of the opinion that there is a place for alternative energy in Montana.

### **TAPE 1 - SIDE B**

#### **ADMINISTRATIVE RULE REVIEW**

00:38:38 **Todd Everts, Staff Attorney, LEPO,** reported that the only pending rulemaking issue deals with the annual natural gas pipeline safety rulemaking updates to reflect the federal changes in the pipeline safety rules. The hearing is scheduled for December 23, 2005. Mr. Everts added that he Supreme Court decisions on impact energy issues are still pending.

### **SJR 39: AN ENERGY PLANNING AND COORDINATING ENTITY FOR MONTANA**

00:40:11 Mr. Barrs reviewed and discusses the following documents:

- the aggregate survey data gathered to date ([EXHIBIT #3](#));
- a comparison of energy entities in other states ([EXHIBIT #4](#));
- Montana's Energy Milieu - a detailed layout of the array of entities of formal energy entities in Montana ([EXHIBIT #5](#)).

Mr. Barrs reviewed the aggregate survey data ([EXHIBIT #3](#)). He said there were blank surveys for those wishing to participate in the survey, noted that the survey period has been extended to allow for greater participation and urged all interested parties to respond to the survey.

Mr. Barrs discussed the workplan and asked the Committee how it wished to proceed with the study of SJR 39.

- 00:54:56 SEN. ROUSH asked how long the survey period will be extended. Mr. Barrs said he would like to extend it until December 15, 2005. SEN. ROUSH said it appears that the survey results tabulated to date agree that there should be an energy planning and coordinating entity in Montana.
- 00:56:22 SEN. ROUSH said, regarding question number 7 - equal voice for tribal governments - that he is concerned that the public may envision the creation of an entity that is more broad-based with more authority and reach than the ETIC. He said it is his understanding that the ETIC is to be the energy policy committee. Mr. Barrs said the wording of that question was of concern to others also and that he would clarify it.
- 00:59:51 REP. OLSON said an entity created as a result of the study would not necessarily be a legislative committee but would be a board or a commission, with the members appointed by the Governor, as in some of the other states.
- 01:01:07 REP. MATTHEWS said that he was not able to attend the Governor's Energy Symposium and asked if this issue had been discussed there. He asked for comment from anyone who attended.

#### **PUBLIC COMMENT**

- 01:02:37 **Bob Anderson** commented on SJR 39 and said that Montana needs better energy policy guidance. He said state government was very active and aggressive on energy issues at one time but that over time, the energy division was reorganized and is practically nonexistent today. He said the low level of involvement shows in the quality of policy making in both the Executive Branch and the Legislative Branch. Mr. Anderson encouraged the ETIC to pursue the SJR 39 study and to do it in a systematic manner, starting with the obvious fact that energy is very important to Montanans.
- Mr. Anderson said his main purpose for appearing before the ETIC is to point out the conspicuous absence over the years of the university system in the energy policy making process. He said many other states have university-based energy institutes, which add intellectual value to energy policy debates; provide analysis and research; and offer objective and reliable information. Mr. Anderson said an energy institute would have to be objective and neutral in order to be credible and that many issues, such as funding and a governing body, would have to be decided. An energy institute could coordinate existing research, stimulate new research on timely topics, respond to the Executive and Legislative Branches when needed, and bring people together. Mr. Anderson said an energy institute would not be a substitute for the energy entity proposed in SJR 39 but would be complimentary to the energy entity.
- 01:09:32 **John Alke, MDU Resources Group, Inc.**, presented a contrary view to SJR 39. He said it is his opinion, and his client's opinion, that the creation of a centralized planning bureau will not solve the problem. No agency will willingly give up its current existing statutory authority to a centralized planning bureau. Any entity created will be an additional regulatory burden to any energy development in

Montana. As an historical example of how a centralized planning bureau has already failed in Montana, Mr. Alke explained how the Major Facility Siting Act complicated the permitting process for Colstrip 3 and 4. He said it was a very lengthy and expensive process for the Montana Power Company (MPC) to get these permits, which then was denied cost recovery by the PSC. **TAPE 2 - SIDE A** Mr. Alke urged the Committee to not create another regulatory entity, despite the good intentions of the resolution.

01:15:10 REP. OLSON asked if it is MDU's position that the status quo is sufficient. Mr. Alke said MDU has successfully built projects in Montana without this type of planning entity and has functioned well under the status quo.

01:16:29 **Haley Beaudrey, Butte**, commented that the two largest QFs in Montana are qualified because they burn a waste fuel to make electricity, which is one of the requirements of PURPA.

### **WIRELESS ENHANCED 9-1-1**

01:54:45 **Becky Berger, Program Manager, Bureau of Public Safety Services**, gave an overview of 9-1-1 services in Montana ([EXHIBIT #6](#)) and explained:

- 9-1-1 program responsibilities;
- the makeup of the 9-1-1 advisory council;
- the difference between basic, enhanced, and wireless enhanced 9-1-1 services;
- the statewide E9-1-1 project; and
- other related information including costs and revenues, federal and state funding sources, the CenturyTel Network design, the VisionNet network, and emerging technologies.

02:20:51 SEN. LEWIS asked **Jamie Doggett, Meagher County Commissioner**, to comment on how a recent power outage in Meagher County immobilized emergency services. Commissioner Doggett said a storm knocked out a frequency in a power substation, which cut off 9-1-1 telephone services. The lights on the system operator's panel remained on, so the operator did not realize that the system was not functioning. When the staff realized what was happening, they hooked up old rotary telephones and were able to respond to emergency situations. Commissioner Doggett said she thought cellular telephone service probably was still functional. She noted that Meagher County had only one power line coming into the community at the time, so there was no backup. It also knocked out other entities that use that same frequency.

02:22:27 SEN. LEWIS referred to Ms. Berger's statement on the importance of having redundancy in the system, and asked Ms. Berger to comment on what could be done to prevent this from happening to other rural counties. Ms. Berger said the redundancy she spoke of is in the telephone network and doesn't take power outages into consideration. There is backup power in the call centers, so Commissioner Doggett is correct that the wireless calls would have made their way into that dispatch center without a problem. This is an education issue and cell phone users need to know that if they call 9-1-1 that it is very important for

them to give their location and phone number to the dispatch center immediately. The system as designed, when implemented, will prevent this from happening because the calls would be routed to another dispatch center and service would not be interrupted.

02:26:10 REP. MATTHEWS referred to page 5 of EXHIBIT #6 - costs and revenues - and asked for clarification regarding federal and state revenue and how the \$13.7 million CenturyTel contract will be paid. Ms. Berger said the CenturyTel contract is a 5-year contract. The federal funding was a one-time grant, which was applied to the initial cost of the CenturyTel contract, so the federal funding paid the one time costs to build the network and to put the network in place. The remaining balance of the \$13.7 million will be paid by the individual dispatch center as monthly recurring costs, much the same as you pay your telephone bill on a monthly basis.

REP. MATTHEWS said it didn't add up to \$13.7 million. Ms. Berger said that \$3.3 million from other funding projects was also used to pay down the \$13.7 million. She also said that in the RFP process, the total cost of the monthly recurring costs and one-time revenues for the term of the five-year contract were calculated and the contract was awarded based on those costs. She said HB 775 attempted to recover the costs of the wireless carriers for delivering calls to wired networks and that the wireless companies have the option of imposing a surcharge on customers' bills to recover these costs. Ms. Berger pointed out that most of Montana is covered by small rural carriers and that the cost to these carriers to deliver calls to the 9-1-1 network is huge. She said the State must help them recover their costs or face the risk of these small carriers going out of business.

02:31:46 SEN. LIND asked if the enhanced service federally mandated or if this a voluntary movement by the State. Ms. Berger said there are federal mandates from the Federal Communication Commission (FCC) regarding wireless services. She said the PSAPs are under no federal mandate but that Montana is concerned about safety and wants to be sure that once a call is delivered to the dispatch centers that the centers have the capability of receiving that information and using it the way it was intended.

SEN. LIND asked for objective data or a cost benefit analysis proving that enhanced 9-1-1 is better than regular 9-1-1. **TAPE 2 SIDE B** Ms. Berger said the standard public safety answer is that if one human life is saved, then a dollar amount is irrelevant, but that the average cost for land line service averages \$250,000 per Public Safety Answering Point (PSAP). She noted that Montana has 57 PSAPs. Regarding the cost of the wireless providers to deliver a call, there is no history on that. Ms Berger said many wireless providers do not want to share their costs because that is considered proprietary information. Ms. Berger said she is hopeful that the Advisory Council will work through this and be able to come up with a dollar figure. SEN. LIND asked if there any objective data showing the benefits of this service. Ms. Berger said that information has not been compiled but she thought that the benefit would mirror land line benefits.

SEN. LIND asked, if statewide enhanced 9-1-1 coverage is achieved, if having 57 PSAPs still be necessary. Ms. Berger said there are pros and cons to consolidation and that some of the 57 call centers are considering consolidation on their own.

- 02:37:38 SEN. ESSMANN said new cellular telephones will have GPS capability eventually and the provider will be able to track the location of the phone. He asked if the State need to consider privacy issues and the potential for misuse of this technology. Ms. Berger said that issue has been considered, not only for wireless providers but for land line providers as well. SEN. ESSMANN asked if there are any statutes, rules, or regulations that prevent cell phone providers from selling location data to customers. Ms. Berger said she did not see that as an issue and explained that the information being forwarded to the 9-1-1 network is strictly the telephone number and the location of the caller and does not contain any subscriber information. It is data that is used to dispatch emergency services and doesn't have the same proprietary nature that a land line call does. SEN. ESSMANN asked if it would be possible to enter into an agreement with a service provider to have a cell phone tracked. Ms. Berger said she didn't have the answer because that issue is outside of public safety policy.
- 02:41:41 REP. OLSON pointed out that the tracking device on a cellular telephone can be turned off.
- 02:42:03 Ms. Berger said GPS technology on cell phones is somewhat misleading because GPS technology not yet in place in Montana. It is still very critical to give all necessary information to the dispatch center, in the event the call is disconnected.
- 02:42:49 SEN. LIND said an individual should not have to compromise their safety for the sake of privacy. REP. OLSON responded that he fully supports HB 775 and that it still needs some work to address issues such as this. He said it is a good bill and gave an sues such as this. REP. OLSON related an example of an accident in remote area of Montana in which GPS technology saved a man's life. He said it is a very beneficial technology and that the privacy issue can be adequately addressed with more work.
- 02:44:34 SEN. ROUSH asked about the .50 per month charge on telephone bills for 9-1-1 services. Ms. Berger said telephone companies collect the .50 cents and remit it to the Department of Revenue, which distributes it back to the counties to help operate the dispatch centers. These funds cover about 20% of the total cost. Each local jurisdiction has to pick up the remaining cost of operating the dispatch center. SEN. ROUSH asked how the amount allocated to each county is calculated. Ms. Berger said it the funds are collected based on the number of telephone access lines in a county and allocated back to the counties based on population. That is a contributing issue because the costs of a sparsely populated county is the same as in a more populated county, but the sparsely populated county does not receive the same amount of funding. Access lines are an issue that contributes to a sparsely populated county's service because the costs are the same for all counties but the rural counties do not receive the



same amount of funding as the more populated counties. SEN. ROUSH asked if changing the funding formula has been considered to ease expenses for the rural counties. Ms. Berger said the current statute allows for additional funding going to the rural areas but that piece of the statute sunsets in 2007. The Advisory Council is considering that sunset. In addition to that, Ms. Berger said her office is continuing to pursue other funding sources to avoid having to ask the Legislature for additional funding or having to impose an additional surcharge to the residents of Montana.

- 02:48:42 SEN. ROUSH asked about the funding going to tribal governments and if this is an extra cost. Ms. Berger said that issue is being researched internally in her office. Currently, there are three tribal governments that have official dispatch centers: the Blackfeet, Cheyenne and Rocky Boy tribes. There has been some discussion of consolidating services with county dispatch but obstacles, such as language barrier, may prevent consolidation.
- 02:50:20 SEN. ROUSH asked if homeland security funding could or would be used to help with this. He thought that there should be some coordination done in order to integrate systems, reduce costs, and increase efficiency. Ms. Berger agreed, saying that work is being done to create interoperable agencies". Homeland Security dollars are being distributed to local jurisdictions and that at some point there will be a single system.
- 02:52:58 SEN. ROUSH said there is abuse of the 9-1-1 system by pranksters and inappropriate calls and asked if the penalty for abuse being enforced. Ms. Berger responded that at this point, this has not been looked at. These will be tracked with the new system and will be dealt with in the future.
- 02:55:13 REP. MATTHEWS said he has been told that there has been abuses in spending the homeland security funding. He asked if the Legislature needs to make a directive on how this money should be spent. Ms. Berger said from a public safety services perspective, there is a statewide strategic plan to dictate how funds may be spent in order to prevent the abuses seen in other states.
- 02:57:55 Mr. Barrs thanked Ms. Berger for a good presentation. He said Ms. Berger had provided additional materials for the members ([EXHIBIT #6A](#) - 9-1-1 Legislative Subcommittee agenda held on November 18, 2005, and [EXHIBIT #7](#) - Public Safety Services Bureau projects).
- 02:59:42 SEN. ROUSH asked Rep. OLSON to report on the Pacific North West Economic Region conference (PNWER) conference. REP. OLSON reported on the conference:
- PNWER is a regional economic development organization and coordinates between states on similar concerns and issues.
  - A bi-national regional energy task force has been set up and the preeminent issue is transmission and how to ensure long term access to the low cost energy necessary to fuel the region's future economic growth, given the severe congestion in the regional grid. Coordination of planning for new projects and infrastructure must also be addressed.

- Eminent domain concerns, particularly as they relate to power, were also discussed and how to address this between states. REP. OLSON said an interstate compact may be a possibility.
- The regional energy task force is comprised of legislators from the Pacific Northwest, including British Columbia and Alberta.
- Impacts from China and India on the United States fuel markets were addressed and it was reported that the refining capacity in the Pacific Northwest must increase in capacity to meet demand. REP. OLSON provided several examples:
  - ▶ The West Coast is currently short about 75,000 barrels per day in refined products. California is bringing gasoline refined in Nova Scotia, due to the lack of refining capacity.
  - ▶ Current demand for crude oil in North America is 23 million barrels per day. The United States produces only 10.8 million barrels per day.
  - ▶ Current demand in China is 6.4 million barrels per day and it produces only 3.5 million barrels per day. China's demand is expected to increase to 13.8 million barrels per day by 2015.
  - ▶ Current demand in the world for oil production is 82.2 million barrels per day and production is 83.1 million barrels per day.
- There was a great deal of discussion involving natural gas. In 2004, the requirements were 11.5 billion cubic feet per day, by 2015, that number is expected to jump to 23 billion cubic feet per day.
- Other significant issues that PNWER will address, in order to help alleviate the energy issues facing the western United States in the next few years, are regulatory certainty for businesses, a competitive fiscal policy, tax requirements, and utility corridors.

03:10:10 REP. MATTHEWS asked for more specific information on proposed energy transmission corridors and if any are planned for eastern Montana. REP. OLSON said eastern Montana will not be left out and the currently the most promising possibility is a transmission corridor through south of Townsend and down through the Beaverhead, on into Idaho. Corridor capacity going west is almost nonexistent and tribal and other issues will prevent much northern development.

03:11:52 REP. MATTHEWS said Townsend is far from Miles City and eastern Montana. He said he would need more reassurance that eastern Montana will benefit from transmission lines. REP. OLSON said Townsend was chosen because of its location on the existing transmission system. **TAPE 3 - SIDE A** Current transmission from Colstrip to Townsend isn't sufficient to handle future demand and as the planning process proceeds with the Department of Energy and the Bureau of Land Management (BLM), that issue will be a part of what will be considered. REP. OLSON said he planned to make comments to include eastern Montana in the planning efforts.

03:15:45 REP. OLSON related several examples of possible energy projects slated for eastern Montana, such as a 500 megawatt wind generation facility in north central Montana, the Great Northern project at Circle West, Otter Creek, and a 50 megawatt wind generation facility south of Roundup. He said all that power

will need a road to market. He said that WAPA and Bonneville will need to be a part of this but that industry also needs to be involved. In order to encourage this type of development, the State must also assist because taxpayers and ratepayers should not have to pay.

03:16:58 Mr. Barrs said, in regard to the federal energy corridors, that the speakers originally scheduled for the morning meeting will be rescheduled, possibly as soon as the January meeting.

03:17:34 SEN. LIND asked how the State can encourage business and what REP. OLSON envisions to accomplish this. REP. OLSON said Montana needs the means to facilitate and coordinate these various interests and the long range planning that needs to be done. None of the proposed wind or coal projects can take this on by themselves but if they can be organized to work together, it will be to the benefit of everyone. Energy is an exportable commodity and Montana needs to work on developing an export market. Wind and coal energy plants can be built, but if the energy can't be shipped out of the State, it is worthless. Other states reap the benefits if these types of projects are allowed to go out of state. Montana needs to be proactive and give business the encouragement to do business in Montana.

03:21:00 SEN. ROUSH recessed the Committee for lunch and said the meeting would reconvene at 1 p.m.

## **PART TWO**

### **TAPE 3 - SIDE A**

#### **SJR 39: ENERGY PLANNING AND COORDINATING ENTITY FOR MONTANA**

00:00:01 **John Hines, Northwestern Energy (NWE)**, provided his personal background and experience, as related to energy issues. Mr. Hines said his comments were general in nature at this point and that if a planning and coordinating entity takes shape in Montana, he would be pleased to offer more detailed comments. He said:

- There is a need to recognize what a planning body's limitations - what it can and cannot do.
- A planning body can:
  - ▶ serve as an information clearing house for the public, interested parties, or utilities;
  - ▶ can assist in developing policy for the administration for the various types of energy policy;
  - ▶ help ensure consistency across the various agencies involved with energy and energy policy;
  - ▶ potentially be a vehicle for resource development, with the caveat that the resource would have to be based on if it was the best resource for that particular utility's perspective. To create a resource that a utility would be forced to acquire would not be good state policy.

- ▶ provide a societal perspective in analyzing energy issues.

A planning body should not:

- ▶ duplicate what other entities are already doing;
- ▶ should not create additional planning uncertainty; and
- ▶ should not be a planner for a specific utility's needs and should stay generic in nature. The authority must be linked with the decision making and the accountability. If those are severed, there will be problems.

Mr. Hines summarized his statements by stating that a planning institution without ratepayer accountability can only provide broad policy recommendations and shouldn't be applied to individual utilities. He pointed out that politics do play a role in this issue and that an effort should be made to keep politics out of the process. Mr. Hines said before making a final decision, it would be best to define what the planning entity is to accomplish and determine if there is another planning entity already working to that end; set forth clear and consistent goals; decide how the entity would interact with Legislature and with the PSC; and finally, decide if the cost of creating entity is worth the benefits.

00:11:02

**Ralph Cavanah, Natural Resources Defense Council, via teleconference phone,** agreed with many of Mr. Hine's points and made several additional points:

- the Northwest Power Conservation Council (NWPPC) is a crucial part of the institutional structure serving Montana and noted that while serving at the NWPPC, Mr. Hine's leadership and expertise contributed significantly to effectiveness of the Council.
- Don't neglect existing institutions while considering the creation of new ones. Two of the critical existing oversight bodies - the NWPPC and the PSC - don't have the resources needed for them to properly discharge the responsibilities entrusted to them by the Legislature. Consider strengthening them before creating a new entity.
- Public choices made by public agencies are of great interest to Montanans and will continue to be. Montanans have always resisted central planning and government control of most functions in the state and energy is no exception.
- Key energy decisions that would be made under central planning, as mandated by SJR 39, are already being made by utilities and other large companies. Currently, those utilities and companies have no oversight and pursue their planning oblivious to some of the important public interests associated with the economic and the environmental consequences of energy development.

Mr. Cavanah completed his statement by saying he is supportive of establishing a new agency, so long as existing agencies remain effective and adequately staffed.

00:18:12

**Bruce Measure, NWPPC,** reported on the Governor's Energy Symposium in October. He said the symposium was not intended to duplicate the efforts of the

ETIC, but rather to provide an interchange for both the similar and competing interests in energy issues. He reported that 800 highly qualified participants attended and that broad issues were addressed. Mr. Measure said he is in the process of compiling the data from the conference and that the data will be shared with the Committee when it is completed. Mr. Measure provided a brief summary of the Governor's Energy Symposium and which outlined the next steps to be taken in developing Montana's energy future (EXHIBIT #8).

00:20:39

**Don Quander, Holland and Hart law firm**, said there is little consensus regarding SJR 39 among his clients. Mr. Quander said he has listened to the public comment given and said the State must decide if it wants energy development, not only for itself, but for the outside market. If the answer is yes, then the impediments to energy development must be identified. He pointed out that neighboring states have been much bolder than Montana in energy development and that it must be asked why that is the case. Mr. Quander said those issues must be addressed before deciding if a planning and coordinating entity is needed. If current impediments are identified, then it must be determined if an entity can be designed to do a better job than the existing agencies. It is also critical to identify what purpose an entity would serve. He pointed out that the lack of energy resources in Montana in recent years is not for want of resources but that the issue has been bogged down in what should be done with the resources.

Mr. Quander offered to help provide information regarding other states, particularly Wyoming; and to contrast and compare other state's models with Montana. Montana and Wyoming both have very strict environmental standards. The difference is how those standards are applied.

### **TAPE 3 - SIDE B**

00:30:05

**Gerald Mueller, Regional Member, NWPPC**, provided a historical perspective of energy planning in Montana and how a new energy planning and coordinating entity might be crafted and used. He summarized his comments by stating that he was not sure how a new state entity would actually engage in planning. It could assist policy making but policy making ultimately is the responsibility of the Legislature. A clearinghouse and coordination entity would be the most valuable to the State. Mr. Mueller used the example of the five Montana cities' efforts to purchase NWE and said it will be very difficult for those cities to make an educated decision because there is no extensive or reliable information source available for use as a resource.

00:37:54

SEN. LEWIS asked if it would make sense for the NWPPC to become act as the planning and coordinating entity. Mr. Mueller said the Council is a tremendous resource on issues related to gas and electric utilities. To some extent, other forms of energy feed into that but the staff that is available now is limited and may not want to take on additional planning responsibilities.

- 00:40:04 SEN. ROUSH referred to question 7 on the energy survey ([EXHIBIT #3](#)) and asked each panelist to respond to his concern that it would be a very difficult task to bring that many groups together to decide policy issues.
- Mr. Quander said that if the objective is to have a regular forum for thoughts and ideas, it would be a great idea. A body that would identify and reach a consensus on steps to take would not be helpful.
  - Mr. Cavanah said that the objective of getting better stakeholder involvement and building a record for a better decision can be met. He said he is most concerned about Montana's participation in regional issues. Montana needs to have the people and resources to participate fully and personally in regional forums on transmission development and the whole spectrum of energy issues.
  - Mr. Hines said it depends on the purpose of the entity but that an advisory role would be beneficial. It would not be effective to have the entity be a decision making body.
  - Mr. Measure agreed that regional issues are important, but said that state and local issues are of great importance also. Mr. Measure said that people are willing to engage and to help outline the process, so broad engagement and inclusion can be very useful. Mr. Measure also asked to address SEN. LEWIS' question regarding the role of the NWPPC and its capacity to resolve energy issues. He said the Council is constrained geographically and mainly addressed issues arising from the Columbia Basin.
  - Mr. Mueller said how the entity would be structured would depend on what the purpose of the entity is. The entity should serve as a sounding board and serve as a catalyst to engage stakeholders and should not be a policy or decision making entity.
- 00:48:03 REP. DRISCOLL asked Mr. Barrs how he decided who to send the survey to. Mr. Barrs said he provided surveys to all of the people on the Committee's interested persons list, he had notices of the survey published twice in newspapers, and that the survey was posted on the Committee's website and available to anyone in the public sector. He noted that the PSC responded to the survey and provided copies of the PSC opinions ([EXHIBIT #9](#)).
- 00:49:20 SEN. LIND said there are good and bad examples of both government and private planning. He asked Mr. Hines if he sees any role for government in this issue. Mr. Hines said the context for his statement was that if a government entity would be the entity responsible for the detailed planning for a utility, it would be a duplication of efforts because of the existing PSC role. Such an entity would have to have the ability to do that for all utilities, including rural electric cooperatives. Mr. Hines said there is a role for government in an advisory and informational role.
- 00:52:10 Mr. Cavanah agreed that a government agency shouldn't take over planning responsibilities but said more and more is being expected from the state regulatory officials. If the state regulators are expected to make major decisions, such as approving long term investments, they must be able to have the resources and knowledge available to make an educated decision. Montana can

not afford to sit back and second guess these decisions years down the road, the initial decision must be the correct one. That means having a strong and resourceful regulatory agency.

## **PUBLIC SERVICE COMMISSION UPDATE**

00:54:58 **Greg Jergeson, PSC Commissioner**, reported that the workload of the PSC has been overwhelming. He said the PSC's time and attention is divided mainly between energy issues and telecommunications issues. He discussed recent activities of the Commission:

- The Commission has worked hard to maximize Universal System Benefit (USB) funds for citizens and reallocated some of the funds to help with energy costs/low income bill assistance/energy share for families above poverty level. The Commission is concerned about the future of this program and said that the policy makers at the federal level will have difficult decisions to make in the future.
- All PSC members attended the Governor's Energy Symposium. Much information was presented and a wide range of voices were heard.
- The PSC is getting more involved in various national and regional transmission discussions. Commissioner Jergeson was named to sit on a joint FERC-State Commission Board for the MISO-PGM Region of the United States to deal with the mandates of the 2005 Energy Policy Act.

### **TAPE 4 - SIDE A**

- Commission members have attended and will be attending regional conferences dealing with a wide range of energy issues, particularly transmission issues.
- Telecommunications is in a major flux situation and the federal government is considering a number of issues that could impact Montana, particularly rural areas. The PSC is aware of the potential impacts and is concerned that the rural consumers continue to receive the same quality of service as urban consumers. The PSC will continue to communicate Montana's needs and concerns to the FCC on these issues, as well as with the telecommunications companies serving Montana.
- In response to recent scrutiny of the Commission's decision making process, Commissioner Jergeson explained the steps the PSC takes to complete its research and issue a decision.

01:15:11 **Bob Raney, Public Service Commissioner**, commented that he has attended many conferences on a wide range of energy issues. He reported that a common denominator of almost every meeting is the failure to recognize how to help Montanans now and that talk of planning and new projects does little to help those in need now. Commissioner Raney also said;

- He would like to see a renewed interest in conservation and that educating consumers of the importance of using less energy is the key.
- Experts estimate that as much as one-third of energy in America is either wasted or squandered.
- There are upcoming opportunities to learn about conservation measures, such as smart metering; real time metering; economical use of

- dishwashers, dryers, and washing machines; and tips on adjusting consumption and timing of power usage.
- Montana needs to take action on developing more alternative energy sources such as wind energy, ethanol, and biodiesel.

01:20:40 SEN. ESSMANN asked for more information on smart metering. Commissioner Raney explained that there are ongoing pilot projects in the United States so Montana could adopt various different approaches to using smart metering. He also explained the capabilities of a smart meter, such as automatic shut down of appliances during the most expensive times of the day.

## **REGULATED TELECOMMUNICATIONS**

01:43:30 **Mike Strand, CEO, Montana Independent Telecommunications Systems (MITS)**, explained Montana's telecom infrastructure, including existing infrastructure and needed improvements and additions to the existing infrastructure ([EXHIBIT #10](#)) and covered topics such as:

- digital subscriber line (DSL) deployment;
- iConnect Montana (fiber hotels) and what a fiber hotel is;
- iConnect fills a niche in Montana's economy and allows small players to take advantage of economies of scale;
  - provides conditioned telco grade carrier ready space for rent;
  - tenants nationwide, including HOTWIRE.com. new customer and huge account;
  - details of Montana's Advanced Information Network (MAIN)/Vision Net merger;
  - services offered by MAIN/Vision Net;
- technology and public policy challenges : competition, access reform and universal service, regulatory parity, service quality parity, emerging technologies, inter-dependency among networks; and
- how to fit pieces together to make sound public policy - teamwork is the key.

## **TAPE 4 - SIDE B**

02:07:12 **Geoff Feiss, General Manager, Montana Telecommunications Association (MTA)**, discussed Montana's telecom infrastructure ([EXHIBIT #11](#)). Mr. Feiss' discussion included:

- a map of fiber highways throughout the state,
- Montana's rural telecom carriers;
- rural telecom investment;
- MTA membership;
- MTA member statistics; and
- public policy issues such as competitive market dynamics, investment in universal infrastructure/service, traditional revenue source risk, regulatory parity/competitive "neutrality"; federal regulatory proceedings, congressional activity, and state issues.

02:28:01 **Rick Hays, President of Qwest Operations, Montana**, presented and discussed three concepts for potential legislation ([EXHIBIT #12](#)):



- to remove the PSC regulation of promotional offerings by regulated telephone companies making it similar to the way Qwest's competitors operate;
- to maintain the PSC existing regulation over all basic telephone lines into all homes or businesses providing basic local telephone service; and
- to prohibit any company from pricing its competitive products or services below their cost and give the regulated companies the choice of opting into this legislation if they so choose.

- 02:35:55 REP. OLSON read aloud the third concept and said that it wasn't clear to him how an activity could be both prohibited and available for opting in. Mr. Hays said a provider must opt in to the entire package and would not be able to pick and choose the options it wished to participate in.
- 02:36:57 SEN. ESSMANN commented that Bresnan is beginning to do local phone service and asked if the proposed concepts are attempt to regulate Bresnan. Mr. Hays said the proposed concepts would have the opposite effect by would allow other companies to have similar flexibility to that of Bresnan's.
- 02:37:51 SEN. ESSMANN said he questions the second concept regarding maintaining the PSC's existing regulation over all basic telephone lines and asked if this would apply to Bresnan. Mr. Hays this would apply only to existing regulated telephone companies.
- 02:38:13 SEN. ESSMANN said DSL service does not extend throughout the entire community of Billings and asked what Qwest plans to do to address this situation. Mr. Hays said Qwest is continually advancing the service, particularly in the larger markets in the state. Qwest has added about 20 "neighborhood" sites in 2005 and is planning similar growth for 2006.
- 02:39:38 REP. OLSON asked if the three concepts address the concerns about the bill (HB 539) presented in the 2005 legislative session. Mr. Hays said it was his hope that by getting the concepts out to the public now that the concerns would be addressed. He said that progress has been made and that there is already greater support for these concepts than HB 539 had. He said efforts to improve the bill to meet the concerns of the industry would continue.
- 2:40:24 REP. MATTHEWS noted that approximately 20,000 land lines were lost in the last year and asked if this number is similar to that of surrounding states. Mr. Hays said this is an industry trend and is happening nationwide, especially in the younger generation. He attributed the loss of land lines to the flexibility of cellular telephones, as well as the issues of universal service and subsidies.
- 02:41:42 Mr. Feiss said some of the loss is the move to wireless and internet-based services and because of the difference in regulatory treatment between cable internet services versus telephone lines. Some of the services don't have the same regulatory costs or burdens as other services and the consumers take advantage of this. Many consumers just like the mobility and flexibility of cellular telephone service.

02:43:31 SEN. ROUSH commented that technology is changing very quickly and this has resulted in some telecommunications business being regulated and some not. This has resulted in unfairness to both the consumer and the business.

#### **TAPE 5 - SIDE A**

02:44:32 Mr. Strand commented that deregulation is one solution but that he is concerned that the quality of service would decrease even more and that the lack of parity in service quality standards is an issue that must be dealt with.

02:45:51 Mr. Hays responded that the concepts proposed by Qwest should move providers closer together in terms of services provided and quality of service. From the industry's standpoint, this is a move in the right direction.

02:47:07 Mr. Feiss said that the goal is to create public policy which will create an equitable contribution system to the network and make sure that all players have some responsibility, but have as little regulation as possible. This is not meant to impose more regulation on new entrants, but rather to impose equity across the board.

#### **OTHER BUSINESS**

02:48:43 SEN. ROUSH said that the mercury issue in industrial plants in Montana has been taken off the agenda.

02:49:42 REP. OLSON said that there is no need for action at this time because the Department of Environmental Quality (DEQ) is working on draft rules. The Committee can review the proposed rules and determine if further action is needed at a later date.

02:51:46 Mr. Barrs discussed opportune meeting dates for the Committee's next meeting. After discussion, the meeting dates of January 19, April 19, 20, and September 7 were chosen. Mr. Barrs said that the two-day April meeting would allow time to consider possible committee legislation and that any proposed legislation could be finalized at the September 7, 2005, meeting.

02:56:45 REP. OLSON said any agency or proposed legislation should be to the Committee by the April meeting in order to have time to adequately consider each proposal.

02:57:35 SEN. LEWIS, as a QSIC member, said he still thinks there will be a special session and that early January is very likely.

02:59:51 REP. KLOCK **moved** to accept the changes in meeting dates. **The motion passed** on a unanimous voice vote.

03:01:27 REP. OLSON **moved** to have a bill draft prepared incorporating the three concepts, as presented by Mr. Hays ([EXHIBIT #11](#)). He said the Committee and

the public will have the opportunity to review and comment on the proposed legislation.

- 03:03:44 SEN. ESSMANN asked that the South Dakota and/or Utah models be considered when drafting the bill.
- 03:04:20 REP. OLSON said SEN. ESSMAN's concerns would be dealt with through the Committee and public comment process.
- 03:04:41 REP. MATTHEWS asked if the PSC was concerned about this issue when it was presented in the 2005 session as HB 539. REP. OLSON said this is considerably different than the proposed 2005 legislation and that Qwest would continue working with the other stakeholders. REP. OLSON said he would like to have the bill draft prepared for review at the January meeting. **The motion passed on a unanimous voice vote.**

### **PUBLIC COMMENT**

- 03:09:00 **Candace Payne, Southern Electric,** noted that an update on the progress of the Southern Montana Electric project had been provided in the member's meeting folder ([EXHIBIT #13](#)).
- 03:09:36 SEN. ROUSH reported that the Montana-Alberta Tie Line project will hold a public meeting on December 9, 2005, in Cut Bank, Montana.
- 03:12:15 REP. KLOCK gave an update on the wind farm project north of Harlowton.
- 03:12:53 REP. MATTHEWS said his PSC representative was present at the meeting and asked him to address the Committee regarding SJR 39.
- 03:13:29 **Brad Molnar, Public Service Commissioner, District 2, Laurel,** said because his district is significantly different than the other districts, he does have concern about creating a planning and coordinating entity for Montana. He said the only format he would support would be one of a focus group, which would be limited to only those who have a stake in a particular issue because they are the ones who bear the risk. If something is going to get done, it is going to get done by being focused, by those who want to accomplish it, not by those who want to hinder it. Commission Molnar said if a planning and coordinating entity is not set up in this format, it is his opinion that it would be a waste of time because top down, centralized management won't work. He said how the State focuses management is important and that government should help, but that it should not take the lead because it is not a stakeholder either.
- 03:19:44 REP. OLSON said while at the PNWER conference, he learned of the British Columbia Progress Board, which had very good ideas and suggestions. He said he would request copies for the ETIC members.

### **ADJOURNMENT**

03:20:37 SEN. ROUSH adjourned the meeting at 4:30 p.m. The next Committee meeting is scheduled for January 19, 2006 at the Capitol.

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