



Electric Utility Industry Restructuring Transition Advisory Committee

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55th Montana Legislature

SENATE MEMBERS

STEVE DOHERTY
JOHN "J.D." LYNCH
WALTER MCNUTT
MIKE SPRAGUE
FRED THOMAS
BILL WILSON

HOUSE MEMBERS

ERNEST BERGSAGEL
TOM DELL
STANLEY FISHER
ROYAL JOHNSON
RAY PECK
JOE QUILICI

COMMITTEE STAFF

TODD EVERTS
STAFF ATTORNEY
STEPHEN MALY
RESEARCH ANALYST
JUDY KEINTZ
SECRETARY

DRAFT

TRANSITION ADVISORY COMMITTEE

November 5, 1999 - Metcalf Bldg
Original Minutes with Attachments

COMMITTEE MEMBERS PRESENT

Sen. Fred Thomas, Chair
Rep. Joe Quilici, Vice Chair
Rep. Ernest Bergsagel
Rep. Tom Dell
Sen. Steve Doherty
Rep. Stanley Fisher
Rep. Royal Johnson
Sen. J. D. Lynch
Sen. Walter McNutt
Sen. Mike Sprague
Sen. Bill Wilson

Bob Anderson
Ed Bartlett
Neil Colwell
Art Compton
Stan Dupree
Kathy Hadley
Gene Leuwer
Bob Nelson
Don Quander
Dave Wheelihan

COMMITTEE MEMBERS EXCUSED

Stephen Bradley
Rep. Ray Peck
Roma Taylor

STAFF MEMBERS PRESENT

Stephen Maly
Todd Everts
Judy Keintz, Secretary

VISITORS' LIST

Attachment #1

COMMITTEE ACTION

- < Approved the minutes of the September 24, 1999 meeting.
- < Approved the addition of Pennsylvania Power and Light as an ex officio member of the TAC.
- < Encouraged the PSC to continue its efforts to write implementation rules and standards for default suppliers and have them available for review by September 1, 2000, for presentation to this Committee and to the 57th Legislature.
- < Adopted a resolution reaffirming the Guidelines for the USBP and recommending that the Department of Revenue recognize that expenditures made by utilities (regulated and cooperatives) and large customers consistent with those Guidelines or the Temporary Emergency Rules should qualify for USBP credit. Requested that the Department provide written assurance that commitments made in reliance upon the Guidelines or Temporary Emergency Rules are qualifying USBP credits and expenditures. Also recommended to the Department that qualifying programs activities and expenditures must include but are not limited to internal expenditures.
- < Recommended completion of draft annual report.
- < Set next meeting date for February 18, 2000, in Missoula

I WELCOME AND INTRODUCTIONS AND ANNOUNCEMENTS

CHAIRMAN THOMAS called the meeting to order at 9:00 a.m. Roll call was noted; REP. PECK, MR. BRADLEY and MS. TAYLOR were excused, **Attachment 2**.

< **Adoption of Minutes**

Motion/Vote: REP. QUILICI MOVED THAT THE MINUTES OF THE SEPTEMBER 24, 1999, TAC MEETING BE APPROVED AS WRITTEN. THE MOTION CARRIED UNANIMOUSLY.

< **PP&L (Pennsylvania Power and Light) Participation in TAC**

REP. QUILICI related that there was interest on the part of members of the TAC as well as PP&L to have PP&L participate as an ex officio member of the Committee. They would also participate in funding of the TAC.

Motion/Vote: SEN. DOHERTY MOVED THAT PP&L BE ACCEPTED AS AN EX OFFICIO MEMBER OF THE TAC. THE MOTION CARRIED UNANIMOUSLY.

CHAIRMAN THOMAS reported that the Montana Power Company (MPC) has contributed \$50,000 to fund the TAC. This is the same amount that they contributed last biennium. The TAC is authorized to spend up to \$100,000 of funds donated. He added that the Montana Cooperative Association and Montana Dakota Utilities will also be supporting the efforts of the TAC.

II BONNEVILLE POWER ADMINISTRATION (BPA) ISSUES

MR. MALY presented an overview of BPA issues affecting Montana, **Exhibits 1 and 2**. The TAC does not have a clear statutory duty to address BPA-related issues but is not constrained by law from pursuing one or more of the following courses of action: 1) Do nothing more than watch, wait and reserve judgment. 2) Communicate concerns and a consensus position to Congressional delegation. 3) Participate in a regional forum on “preference power” issues. 4) File or join a lawsuit in the 9th Circuit Court of Appeals by petitioning to overturn BPA’s record of decision on standards for service. 5) Use the rate case as a vehicle to apply pressure and to leverage concessions.

John Hines, Northwest Power Planning Council, remarked that the administration wants to ensure that the residential customers are able to partake in the same benefits that the larger customers are able to receive. The BPA is one source for achieving greater benefits for small customer groups. The Administration received assurances from the BPA that the allocation of benefits to Montana would involve a fair allocation. However, other parties in the region have made it difficult for the BPA to fulfill these assurances.

Mark Stauffer, MPC, related that the BPA controls 40% of the power and almost 80% of the high voltage transmission system in the region. The BPA will continue to grow under the present statutory structure. He added that the BPA has the statutory right to recover costs through charges on the transmission system. The subscription process in the rate case has not caused the BPA to restructure. The success of Montana’s electrical restructuring is very dependent on future BPA restructuring. The subscription process will have contract terms varying from three years to twenty years. If there are staggered term contracts in the rate case, the impetus for restructuring will no longer exist. The MPC encourages limiting contract terms to five years. This will allow meaningful post subscription discussions.

Tim Gregori, Central Montana Generation & Transmission Cooperative, commented that in 1940 McCone Electric Cooperative built transmission and distribution systems to bring services to the

customers in that area. They were able to purchase a small piece of federal power. The remainder of their energy was received from the MPC or Montana Dakota Utilities (MDU). On June 22, 2000, Central Montana Cooperative will begin to purchase half of their electricity from the BPA. Montana is actually receiving 124 Mwa through the new residential exchange program. During the last 50 years, Central's members paid a higher rate for electricity from the BPA than the MPC and/or MDU was charging. These customers have paid the debt for building the transmission lines to bring electricity to their areas. They have a quasi-equity position. During the SB 390 discussions, it was contemplated that the BPA would play a very small role in restructuring. However, the BPA not only controls transmission, it is also one of the major producers of electrical energy in the area. He added that tiered rates should be used for BPA power. If Montana wants another 30 Mwa, the BPA should go to market and use its position to meet the needs of Montana.

Jim Morton, Montana Electricity Buyers Cooperative (MEBC), related that the MEBC is looking to the BPA for an allocation of preference power. This has set off controversy regarding whether Montana should receive any extra preference power. Other cooperatives are being formed in the region. Montanans must be involved in the regional debate. He emphasized that the allocation of federal power benefits issue should not be based solely on population.

Gail Kuntz, BPA, commented that the BPA is attempting to strike a balance that everyone can live with in its subscription process and the sale of federal power. They continue to address what Montana would consider a fair solution to the current issues. It is also the case that the other three Pacific Northwest states do have strong views on whether or not Montana is at par on both the allocation of the residential exchange to the IOUs as well as the per capita basis process. She provided two articles from, "Public Utilities Fortnightly", **Exhibits 3 and 4**. There are some very determined people who want to see the BPA and the rest of the power marketing agencies selling their power at market rates. The Northwest has enjoyed the benefits of low cost power for many decades. It is very important that a balance of agreement be reached in the region so that all is not lost to interests outside of the Northwest region.

Tom Schneider, City of Missoula, maintained that any local government that qualifies as a public body has the ability to request public power under existing federal law. The question is whether an entity qualifies as a public body in Montana if that entity does not own transmission and distribution facilities and does not have the obligation to serve. **Mr. Schneider** provided a copy of the "Comments of the City of Missoula" filed in the BPA's process on standards for service, **Exhibit 5**. The City of Missoula has joined with the Montana Consumer Counsel, the Montana Public Service Commission, Natural Resources Defense Council, the Human Resource Development Councils (HRDCs), and the Montana

Environmental Information Center in filing comments regarding default supplier designation and open access retail service in Montana. The argument is that in Montana's situation, neither the requirement to own and operate wires, or to have a traditional utility obligation to serve, ought to be barriers to obtaining public preference. Montana's restructuring act and the activities of the Public Service Commission to establish default provider rules for Montana will allow public entities to receive full public preference status.

Bob Anderson, Public Service Commission, commented that other states believe that Montana has created its own problems by passing SB 390, SB 406 and HB 211. He questioned whether the monetary value of an additional 20 Mwa of federal power was worth the fight. He added that Montana is politically weak in the region. Montana is not united in this process because the special interest groups are all pulling in their own separate ways.

SEN. DOHERTY questioned the Administration's position on the BPA's poles and wires requirement. **Mr. Hines** explained that if the preference issue was expanded to include almost any entity that could claim to qualify as a utility, the Administration is concerned that BPA's energy price would be driven up to the market price of energy.

SEN. DOHERTY asked for further information regarding the Central Montana Cooperative's qualifications for acquiring 100 aMW from the BPA. **Mr. Gregori** explained that when the enabling legislation was passed to construct the Hungry Horse Dam, embedded in the legislation was an opportunity for public power entities in Montana to have access to that power. The power is to be used first in the western part of Montana and any power not consumed in the western part of Montana is then made available to public power entities in the eastern part of the state. The Central Montana Cooperative will not meet all of its needs by the 100 aMW. He added that they will not be purchasing preference power but energy outside of the preference arena. They have the right to purchase a particular quantity of power. That avenue is open for the Montana Buyers Cooperative if they meet the qualifications with regard to poles and wires.

REP. QUILICI remarked that Stauffer Chemical in Butte received 70 Mwa of power from the Hungry Horse Dam. He questioned how this power was included in the BPA process. **Ms. Kuntz** explained that the Hungry Horse Dam includes a unique set aside in the federal system. The Dam and part of its output were earmarked for a particular state. She did not know whether the Stauffer Chemical contract included the Hungry Horse power. The calculated amount of that benefit was 221 aMW. This is presently under signed contracts with the Western Montana Cooperatives.

Mr. Hines maintained that he is not optimistic that Montana will be receiving more power from the BPA. The reason is not that the power is not available but that they do not have the political will to provide Montana with more power.

Mr. Gregori contended that the 70 aMW mentioned earlier is part of the power that is eventually ending up with Central Montana G & T and also with Western Montana G & T.

Mr. Stauffer claimed that there are a number of decision points that need to be reached before Montana will be able to receive the 24 aMW. It is very likely that the Direct Services Industries (DSIs) will take this issue to court. He further maintained that when the BPA is close to losing a lawsuit, they will usually settle the case.

REP. QUILICI maintained that he is not aware of any case where the 9th Circuit Court has ruled against the BPA.

REP. JOHNSON questioned the percent of power that would be allocated by the BPA and also the length of the contracts. **Ms. Kuntz** related that this information is not known. The rate case will be finished next April and contract negotiations will be starting with the 132 utilities that currently purchase BPA power. The bulk of the contracts will be signed in the four-month window following April 1st. The customer requests the term rate. It is believed that while some customers may ask for 20 year contracts, most of the contracts will be for a shorter time frame. The main reason is costs associated with fish recovery in the Columbia Basin.

Mr. Schneider remarked that most contracts would be five-year contracts because the following five-year period would be risky due to the costs associated with the salmon recovery.

REP. BERGSAGEL questioned whether the contracts included transmission costs. **Ms. Kuntz** explained that the BPA is embarking on separate rate cases. Their transmission rate case will be proposed this year. The discussions earlier this morning address only the power rate case.

REP. BERGSAGEL inquired whether the BPA would be able to charge additional items to the transmission cost. **Ms. Kuntz** explained that this would only be used as a tool of last resort. If through all other mechanisms available, including a power rate adjustment, there was no other way for the BPA to cover all of its costs there may be additional items charged to the transmission cost.

Mr. Stauffer remarked that this is known as the cost recovery adjustment clause in the power contract. This could increase rates up to 2 mills on average over the five-year rate period. Power customers would continue to enjoy a 6 mill differential for market and then the costs would be shared with everyone using BPA's power system. One of the recommendations of the transition board is that the cost recovery adjustment clause go up to market.

REP. FISHER asked for further information regarding the BPA decision of not providing preference power to entities who do not own transmission lines. **Ms. Kuntz** explained that this has been an administrative policy of the BPA for decades. Early last spring, they put out a proposal for comment that would allow a customer to lease for poles and wires. This customer would have full operational control of all costs and operations. The preponderance of comments received, with the noted exception of many Montana commenters, was that the BPA should stay with customers who have full ownership. The BPA is within days of issuing that record of decision which will contain the full legal rationale for the decision.

REP. FISHER added that since this is an administrative rule it could be changed. **Ms. Kuntz** remarked that the administrative standards for service rules stem from 1937 Bonneville Project Act clauses. The legal interpretation will state their flexibility or lack thereof.

III DEFAULT SUPPLIER DISCUSSION

CHAIRMAN THOMAS referred to a handout entitled "Default Supply in Other States", **Exhibit 6**.

COMMISSIONER ANDERSON explained that SB 406 has set out a deadline of December 1, 1999, for the PSC to set in place rules for licensing default suppliers. The Commission is responsible for licensing default suppliers and for choosing who shall perform the default supplier role. In September they received informal comments on the proposed rules. Formal comments were received at the November 4th hearing. This issue is very controversial and the parties are very divided. Should the December 1, 1999, deadline only address licensing or should issues regarding selection of default supplier also be included? Plan A is a price driven model and would provide that default suppliers who want to serve in that role would make bids strictly on price. The lowest priced provider would be chosen. Plan B would provide an alternative mechanism based on applications to the PSC. If the default suppliers can provide the service at a retail price below market, this will essentially undermine the opportunity for the retail market to develop. Plan B is an attempt to prevent this from happening by providing a competitively neutral way of providing for the default program. Neither plan was very well supported.

SEN. LYNCH questioned whether the default supplier would provide the lowest rates.

COMMISSIONER ANDERSON believed this should be competitively neutral to conform with the goals of SB 390. He added that most of the testimony before the Commission did not agree with that view.

SEN. SPRAGUE inquired as to whether the position of default supplier would be a responsible liability or whether it would be a profitable endeavor. COMMISSIONER ANDERSON maintained that some default suppliers are profit making enterprises. Non-profit entities would have different situations to address. Each entity will have its own business plan.

REP. FISHER questioned why the PSC is concerned with the price charged by the default supplier. COMMISSIONER ANDERSON maintained that the default supplier is part of the competitive environment process. When choosing the default supplier, price may be a factor.

MS. HADLEY remarked that an entity which would be able to purchase preference power from the BPA would be able to provide the power below the market price. She believed this would be a good situation. COMMISSIONER ANDERSON maintained that below-market prices would not be consistent with the goals of SB 390.

MS. HADLEY contended that only customers of rural electric cooperatives would have the advantage of lower prices. COMMISSIONER ANDERSON claimed that the Cooperatives are able to make their own decisions on whether or not they will open their systems. The Cooperatives and the MPC need to be viewed separately. A default supplier that was able to serve customers at a rate lower than other customers were charged would find that all customers would stay with that default supplier. This would not provide competition in the residential market. This may be in the public interest but is not consistent with SB 390.

SEN. DOHERTY maintained that if customers chose to stay with a default supplier because of a lower rate, this might cause price cutting by the other entities attempting to sell power on the market.

MOTION: REP. JOHNSON MOVED THAT THIS COMMITTEE GO ON RECORD SUPPORTING THE PSC'S EFFORTS AND ACTIONS IN WRITING THE RULES ON LICENSING DEFAULT SUPPLIERS, SO THAT THE PSC MAY MEET THE STATUTORY REQUIREMENT OF DECEMBER 1, 1999. THAT THESE LICENSING RULES PROVIDE ONLY FOR LICENSING INTERESTED AND POTENTIAL DEFAULT SUPPLIERS. THIS COMMITTEE ALSO ENCOURAGES THE PSC TO CONTINUE ITS

EFFORT TO WRITE IMPLEMENTATION RULES AND STANDARDS FOR DEFAULT SUPPLIERS AND HAVE THEM AVAILABLE FOR REVIEW BY SEPTEMBER 1, 2000, FOR PRESENTATION TO THIS COMMITTEE AND TO THE 57TH LEGISLATURE. THE COMMITTEE ALSO SUGGESTS THAT THE PSC FOLLOW THE STATUTE (69-8-201) CREATED BY SB 390 (1997 SESSION) REQUIRING THE INCUMBENT UTILITY TO BE THE DEFAULT SUPPLIER UNTIL SUCH TIME THAT THE PSC DETERMINES IT TO BE IN THE PUBLIC BEST INTEREST TO MAKE A CHANGE.

THAT THIS MOTION BECOME A PART OF OUR 1999 ANNUAL REPORT TO THE GOVERNOR AND VARIOUS PARTIES.

REP. BERGSAGEL asked for clarification of the December 1, 1999, date. REP. JOHNSON explained that September 8, 2000, is the last meeting for the TAC before the 2001 Legislative Session.

The Committee decided to return to the discussion of the motion later in the meeting.

IV STATUS REPORTS/TOPICAL UPDATES

< Universal Systems Benefits Credits

REP. BERGSAGEL addressed this topic early because he had to catch a plane. He stated that he generally agreed with the proposed rules of the Department of Revenue on the Universal Systems Benefits Credits, **Exhibit 7**. He took exception with the second paragraph in the recommendations section. He didn't believe that this fell within the intent of the USBC Subcommittee. He encouraged the DOR to allow for the self-direction of creditable contributions.

V DEFAULT SUPPLIER DISCUSSION CONT'D

REP. JOHNSON maintained that the TAC needed to make decisions based on the best interests of the people of the State of Montana.

MR. BARTLETT raised a concern that the motion might cause the TAC to take an action which would preclude other entities from proving their case before the PSC and allowing the PSC to decide which entities may be viable as the default provider. If the decision is that the MPC should be the default provider, this is a premature decision. The process has not run its course. MPC prefers not to be the default provider after July 1, 2002. If it is determined by the PSC that the MPC needs to provide this

service, they are willing to do so.

REP. JOHNSON did not want the other entities to be discouraged from applying for default supplier status.

He encouraged the PSC to continue to write implementation rules and standards for default suppliers and have them available for review by September 1, 2000.

Jon Alke, MDU, related that the legislation has been written with an MPC frame work and has ignored that there are other utilities servicing Montana. The rules that the Commission may adopt which may be well intended with regard to the MPC system will have an adverse impact on the MDU system. The default supplier legislation positioned the cities and the cooperatives to argue before the PSC that they will be the exclusive default suppliers. MDU has not sold its generation. The legislation states that if a city or county wants to be a default supplier they will be allowed to do so. The utility will not worry about the customers in that city or town, but will only focus on customers outside of the city or town. This gives MDU customers to the cities and towns. MDU still owns generation which they purchased to serve their customers. They would be the logical choice to be the default supplier. The statute could be construed to say that the Commission could make MDU be the default supplier and sell at below cost rates. The call for caution is well taken.

COMMISSIONER ANDERSON remarked that the Commission will be engaged in a rule making process that is driven by many factors. A strict interpretation of the motion would ask the Commission not to adopt any rules but to prepare and present the rules to the TAC and the Legislature. He would resist the inclusion of that phrase. REP. JOHNSON related that this was for the benefit of the PSC. The TAC must report on whether there is a need for continuing the emphasis on default supplier. Perhaps the rules should be in statute.

COMMISSIONER ANDERSON maintained that the Commission needs to act under current law and the TAC could not preempt that responsibility. He did not have a problem with keeping the TAC informed on the progress of the rule making process.

SEN. DOHERTY questioned what was being encouraged or discouraged by the motion.

COMMISSIONER ANDERSON believed that the motion was stating that licensing rules should be adopted by December 1, 1999, and a longer length of time would be left for selection of default supplier.

SEN. DOHERTY remarked that potential default suppliers might have problems with trying to line up contracts.

MS. HADLEY questioned whether the purpose of the motion was to instruct the PSC not to choose default suppliers before 2001. REP. JOHNSON did not believe that the PSC needed to select a default supplier before the end of the transition period. At that point in time, the PSC could ask the entity that is still supplying power to be the default supplier.

MS. HADLEY related that if the transition period is to end in 2002 and default suppliers are not chosen until near the end of 2001, the default suppliers would have difficulty pulling together their programs and services in order to start operating as default suppliers in 2002. She added that those parties still interested in obtaining BPA preference power will have missed the contract date by the time a default supplier is selected. These entities would need to be designated as a supplier in order to meet the standards of service provision. This would lessen the opportunities for these entities.

MOTION/VOTE: SEN. LYNCH MOVED TO STRIKE THE SECOND TO THE LAST SENTENCE FROM REP. JOHNSON'S MOTION. THE MOTION CARRIED UNANIMOUSLY.

Deb Smith, Natural Resources Defense Council, Renewable Northwest Project (NRDC/RNP), and Montana Electricity Buying Cooperative, reminded the TAC members that SB 406 was supported by all members. The motion just passed would prohibit a buying cooperative or a local government from contracting for power until such time as a default supply license was issued. That is completely inconsistent with SB 406. She further emphasized the importance of maintaining the ability of the State of Montana to access BPA power. The contract deadline for the BPA power is August 1, 2000. If the PSC has not issued a default supplier license until after that date, the ability of the state to receive this power will be precluded. This is inconsistent with the statute that passed in the last legislative session.

REP. FISHER suggested that the BPA be requested to extend their contract process. He questioned how the August 1st deadline was established. **Ms. Kuntz** explained that the reason for the dates is to have the contracts in place and fully operational ahead of October 1, 2001. She agreed to look into the possible latitude of that decision and report back to the TAC.

Mr. Schneider emphasized that 90 days following the BPA's decision on standards for service, a

decision would need to be made on an appeal to the 9th Circuit Court. It is extremely important that the door not be closed on opportunities that could be lost for five or six years. The PSC has responsibilities under the legislation and they need to listen to the merits of the legal arguments.

REP. JOHNSON asked how the City of Missoula became licensed as an electricity supplier. **Mr. Schneider** conveyed that the licensing process itself is not the most important element to this process, although it is a step in the right direction. The entity needs to demonstrate that a corporate structure is in place and that there is financial capability. The key is whether or not the entity has the ability to contract for power. Any public entity could seek redress of an adverse BPA decision regarding preference power. The default supplier designation is equivalent to an obligation to serve. These elements would be the basis of an appeal.

MR. COLWELL remarked that it was his understanding that HB 211 precluded a consolidated government from serving as default supplier until the end of the transition period. He added that customers have a choice to select an electric supplier during the transition period. A supplier cannot be changed without a customer's written consent. There are many gray areas associated with the remainder of the rules including how customers will be assigned, the definition of default supply service, etc. He affirmed the motion and recommendation of REP. JOHNSON.

CHAIRMAN THOMAS spoke in support of the motion. It is important to take any necessary actions to create a competitive market. The entities working to bring supply to Montana are on the right track for a competitive market. We should not be headed toward a default marketplace.

SEN. DOHERTY maintained that every state that is restructuring is still working with a legislative mandate that prices be set at a certain level. The discussion during the legislative session was to make sure that cities could become default suppliers. When the City of Missoula, which is investing a lot of time and money, asks us not to take this action, we need to listen to their concerns. This resolution would send a message to the PSC that could foreclose one of the possibilities of the City of Missoula becoming a default supplier. A competitive marketplace is important but the default supplier may be the safety net for those who can not or do not make a choice.

Vote: REP. JOHNSON'S AMENDED MOTION CARRIED.

VI STATUS REPORTS/TOPICAL UPDATES CONT'D

< Universal Systems Benefits Credits

Gene Walborn, Department of Revenue, reported that the department adopted Temporary Emergency Rules on August 30th and they became effective on September 1st. On September 27, the Department met with the Negotiated Rule Making Committee. On October 6th, the Committee's report was presented to the Director of the DOR. On October 12th, the proposed permanent rules were filed

with the Secretary of State. The public hearing will be held on November 12th. Comments will close on November 19th. On December 6th, the finalized version of the USBC rules should be filed with the Secretary of State and they would then become effective on December 17th. The emergency rules are in effect until December 29th.

The Negotiated Rule Making Committee included representatives from many interest groups. For the most part, agreement was reached on the majority of the issues. The Department adopted all proposals of the Committee. Some changes were added for clarification purposes. The Department was also required to make a determination of an internal expenditure and who was eligible to make that claim. This was the item in the negotiated rule making process where a consensus was not reached. The Department took the strict reading of the law and incorporated the same into the rules.

The public hearing will be held next week. All interested parties will be given an opportunity to provide written and oral comments. This will establish the record to make any revisions to the proposed rules. He suggested that the TAC USBC Subcommittee minutes be submitted as official comments to the rule making process. This will give the Department guidance on the issues. The tapes of the hearings on HB 337 will also be reviewed by the Department.

MR. QUANDER raised a concern about the status of the temporary rules and the expenditures that are being made while those rules are in effect. He questioned whether a utility, cooperative, or a large customer could currently make an expenditure relying on those temporary rules and not run the danger of having that expenditure disallowed later if the final rules are different from the temporary rules.

Mr. Walborn explained that they have the written request from MR. QUANDER. Their legal staff has reviewed the same and a draft will be forthcoming. This should be available in the next week or two.

MS. YOUNG asked how much change could be made to the proposed permanent rules without another hearing process. **Cleo Anderson, DOR**, reported that the temporary rules will be in effect until December 29. The permanent rules can be amended and those amendments and changes would be noticed on December 6th. The permanent rules can be changed on the basis of the comments received at the hearing.

MS. YOUNG questioned whether the permanent rules would still be adopted on the aforementioned time line. **Ms. Anderson** affirmed that that was their plan. They are also looking at the possibility of having a later effective date. There is a possibility that the permanent rules would be adopted effective January 1, 2000. The emergency rules are in effect until December 29th.

MR. LEUWER raised a concern with the DOR's recommendations. The second paragraph indicates that the Department intends to delete any reference or rule that would allow utilities, cooperatives or large customers to qualify external activities, programs or expenditures as an allowable USBC. Many of the activities currently undertaken by utilities or cooperatives are done by making external financial commitments with contracts. The MPC has an RFP for renewable energy projects. The MPC also contracts with the State of Montana for low income weatherization services and many of the activities listed for low income customers are provided by Energy Share. The funds are received by Energy Share either on contract or donations with cooperatives and utilities. There was a reasonable expectation throughout the USBC discussions that all these items would be continued.

Mr. Walborn remarked that their strict reading of the law in regard to internal expenditures would strike those activities. He added that this issue would be discussed at length at the public hearing.

MR. QUANDER remarked that the timing issue is of great concern because cooperatives, utilities, and large customers need to make decisions about the commitment of these funds by November 30th. He added that the majority of the participants in the USBC process request that the TAC provide some reaffirmation of its position and clarification that can be taken to the DOR to clarify the understanding of qualifying activities. He provided a set of resolutions, **Exhibit 8**.

CHAIRMAN THOMAS emphasized that the USBC Subcommittee worked extensively at developing the guidelines for implementing the USBP. He questioned whether the minutes of the Subcommittee's meetings were taken into account in drafting the rules. **Mr. Walborn** explained that they used the TAC Guidelines in drafting the rules. They will review the Subcommittee meetings and the tapes from the hearings on HB 337. **Ms. Anderson** added that they will collect the necessary information and research the intent of the legislation by reviewing the legislative minutes. The comments will also be reviewed. The final rules will be filed at the Secretary of State's Office on December 6th. The next filing date is mid-January. This would leave a gap between rules.

MR. QUANDER explained that the first paragraph of the resolution asked the TAC to reaffirm the guidelines which have been previously adopted. Also, the TAC is asked to reaffirm its understanding that expenditures that are identified under those guidelines should qualify for USBP credits. The second part asks that the TAC specify to the Department that in formulating its final rules it recognize and allow expenditures that are identified and consistent with the guidelines or with the temporary rules which adopted the guidelines. The temporary emergency rules adopted the TAC Guidelines and entities have been acting in reliance on the same and making their expenditures since that time. The TAC is asked to recommend that those expenditures be honored. The TAC is being requested to ask the Department to provide a written assurance as soon as possible that commitments made in reliance on the guidelines or

temporary rules are qualifying credits and expenditures. The Department has indicated that they will not be able to finalize rules until December 17th. Under the PSC's tariff for the USBP, large customers must identify those expenditures by November 30th. Even though the cooperatives and utilities are not under the November 30th deadline, there is a confusion about whether or not they will be penalized if the final rules are inconsistent with the temporary rules that they have relied upon.

Much confusion has arisen over the interpretation of references to internal expenditures in the statute. He believes that the intention of the USBC Subcommittee, the TAC, and the Legislature, was that qualifying activities and programs must include but were not limited to those internal expenditures. For example, it was intended that contributions to Energy Share and the Northwest Energy Efficiency Alliance would qualify for USBP credits.

CHAIRMAN THOMAS asked MR. QUANDER if anything in the resolution was inconsistent with the TAC's work on this issue. MR. QUANDER affirmed that it was not.

SEN. DOHERTY asked the Department if they were aware of any other situation in which taxpayers, in advance of rules being adopted, asked that they be given written assurance that what they are doing will qualify once the rules are finally adopted. **Mr. Walborn** commented that he was not aware of such an instance.

MR. QUANDER explained that the assurance is for commitments made in reliance on the guidelines or temporary rules. These rules have been enacted and are in law today. They are simply asking that they not be second guessed after the fact.

MS. YOUNG pointed out that HB 337 specifically stated that expenditures that were made in advance of rules being adopted would not be disallowed. She added that two new definitions were added in Rule I, Nos. 4 and 5, and are related to internal activities and internal expenditures. She also referenced changes in Rule II, No. 3, which addresses qualifying expenditures and timing.

The MPC, under SB 390, has an obligation to collect \$8.6 million of the \$13.5 million for the USBP. The current language of the proposed rules is vague and questions the expenditures already made. These expenditures have been consistent with activities before SB 390 was enacted that include low income assistance programs, low income discounts, a weatherization program that is under contract with the State of Montana, etc. Their activities are consistent with the Low Income Advisory Council and the orders of the PSC. Many of the MPC public purpose activities are done through contracts with third party administrators. Depending on how broadly the language is interpreted, the MPC could be in a position where the only activities that would qualify are the low income discount program and investments in

energy efficiency improvements in their facilities or distribution system.

SEN. SPRAGUE questioned the August 29, 1999 date referred to in the resolution as the effective date of the Temporary Emergency Rules. MR. QUANDER explained that this date should be changed to August 31, 1999.

CHAIRMAN THOMAS summarized that the DOR's proposed rules are inconsistent with the intent of the USBC Subcommittee and the legislation. The resolution would make it clear to the Department that the rules should be consistent with the legislative intent.

Motion: MR. QUANDER MOVED TO ADOPT THE RESOLUTION AS AMENDED.

Mr. Alke maintained that MDU filed a Petition for a Declaratory Ruling with the Department in June. They stated the programs that they proposed to put into place and requested acknowledgment of whether or not the programs were creditable. If these programs were not acknowledged as creditable, they would not be put into place. If they had spent the proposed \$675,000 on programs that the DOR determined not to be creditable, they would be in a position of having to spend an additional \$675,000. They have advised the state that they cannot put programs in place until the state acknowledges whether or not they are creditable programs.

Vote: THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: MR. QUANDER MOVED THAT THE CHAIRMAN BE AUTHORIZED TO COMMUNICATE THE RESOLUTION TO THE DOR. THE MOTION CARRIED UNANIMOUSLY.

CHAIRMAN THOMAS appointed Stephen Maly to represent the TAC at the public hearing on the proposed rules.

VII BONNEVILLE POWER ADMINISTRATION (BPA) ISSUES Cont'd

CHAIRMAN THOMAS asked Committee members whether there was interest in taking any action regarding the BPA issues discussed earlier in the meeting.

SEN. DOHERTY contended that SB 390 did not include BPA activities but it is important to acknowledge that the BPA is a very large player in Montana's electrical restructuring plans. This spring the BPA was considering allowing preference power for a cooperative that did not own poles and wires. Unfortunately, this appears to no longer be a consideration. He emphasized the importance of the TAC

receiving continuous updates of BPA activities.

REP. QUILICI agreed that the TAC should continue receiving updates from the BPA. The residential exchange program still contains many issues which need to be discussed.

VIII STATUS REPORTS/TOPICAL UPDATES CONT'D

< Tier II Issues Under MPC's Transition Plan Filing with the PSC

COMMISSIONER ANDERSON reported that the Commission issued an inquiry to the parties raising legal questions regarding whether certain issues should be included in the Tier II proceedings. These issues included whether the MPC's idea of a tracking mechanism for transition costs was legal. Should stranded costs be quantified with a single number at a single point in time? Other issues included revenue requirements and whether market power should be included. The staff is working on these issues.

The PacifiCorp final order is being prepared by staff and should be completed by the end of this month (November, 1999).

IX ADMINISTRATIVE MATTERS

< The Draft Annual Report: Discussion and Ratification of Abstract by TAC Members

MR. MALY related that it was his understanding that the Annual Report would be submitted following closure of MPC's sale of generation assets. The Committee decided that due to the uncertainty of the date of final closure, it was not necessary to wait until the closure of the sale to submit the annual report. (Abstract of draft 1999 Annual Report - **Exhibit 9**)

< TAC Web Site Development

MR. MALY reported that by the next TAC meeting, the TAC web site will be developed and all documents will be available to the public.

< Budget Information

MR. MALY provided a copy of the budget to date, **Exhibit 10**. He added that expenditures were detailed and specific. He is working with the Accounting Department to provide allocations for different activities.

< Next Meeting

The next meeting will be held in Missoula on February 18, 2000.

X ADJOURNMENT

There being no further business, the meeting was adjourned.

Sen. Fred Thomas, Chairman

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