



Energy and Telecommunications Interim Committee

62nd Montana Legislature

SENATE MEMBERS

ALAN OLSON--Chair
VERDELL JACKSON
JIM KEANE
CLIFF LARSEN

HOUSE MEMBERS

TONY BELCOURT--Vice Chair
ROBYN DRISCOLL
HARRY KLOCK
AUSTIN KNUDSEN

COMMITTEE STAFF

SONJA NOWAKOWSKI, Lead Staff
TODD EVERTS, Staff Attorney
DAWN FIELD, Secretary

MINUTES

May 18, 2012

Natural Resources Building, Montana Tech Campus
Butte, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. To the left of each section in these minutes is a time designation indicating the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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Hard copies of the 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. ALAN OLSON, Chair
REP. TONY BELCOURT, Vice Chair
SEN. VERDELL JACKSON
SEN. JIM KEANE
SEN. CLIFF LARSEN
REP. ROBYN DRISCOLL
REP. HARRY KLOCK

COMMITTEE MEMBERS EXCUSED

REP. AUSTIN KNUDSEN

STAFF PRESENT

SONJA NOWAKOWSKI, Lead Staff
TODD EVERTS, Staff Attorney
DAWN FIELD, Secretary

AGENDA & VISITORS' LIST

Agenda, Attachment #1.
Visitors' list, Attachment #2.

COMMITTEE ACTION

The Energy and Telecommunications Interim Committee approved a motion to have ETIC staff continue to work with rural electric cooperatives on draft legislation relating to the SME G&T issue.

CALL TO ORDER/ROLL CALL

00:00:02 SEN. OLSON called the meeting to order at 8:00 a.m. The Secretary noted the roll, Rep. Knudsen was excused (Attachment #3).

ORPHAN GIRL MINE GEOTHERMAL PROJECT SITE TOUR

00:01:01 SEN. OLSON recessed the meeting to take a tour of Orphan Girl and Boy Mine located on the Montana Tech campus. The tour was led by Robin McCulloch, Montana Bureau of Mines and Geology.

Break for tour

02:03:33 SEN. OLSON called the committee back to order at 10:03 a.m.

GEOTHERMAL RESEARCH

02:03:56 **John Metesch, Montana Bureau of Mines and Geology**, discussed the use of geothermal energy in the Natural Resources Building. He noted that a geothermal inventory of the state has been completed and that a report and maps would be provided before the end of the meeting

MONTANA TECH ENERGY RESEARCH AND LAB TOUR

02:05:38 The ETIC recessed the meeting to tour the on campus hydraulic fracturing laboratory. The tour was led by **Leo Heath, Department Head, Petroleum Engineering, Montana Tech**. Mr. Heath discussed equipment, techniques, research.

Break for tour

02:34:51 SEN. OLSON called the meeting back to order at 10:36 p.m.

FOLLOW-UP TO SOUTHERN MONTANA ELECTRIC GENERATION & TRANSMISSION COOPERATIVE, INC. DISCUSSION

Bill Draft Considerations & Report

02:35:19 **Sonja Nowakowski, Research Analyst, Legislative Services Division (LSD)**, presented a staff report summarizing the transparency and participation concerns in rural electric cooperatives (EXHIBIT 1), as discussed at the ETIC's January meeting. She discussed additional elements and options for consideration, including draft legislation requested by the committee at its January meeting (Appendix A, EXHIBIT 1). Ms. Nowakowski said that the draft legislation could be put out for public comment and that final committee action could be taken at the July meeting.

02:41:09 SEN. OLSON noted that representatives of the Montana Electric Cooperatives Association (MECA) were present to discuss accountability and transparency standards (EXHIBIT 2 and EXHIBIT 3) recently approved by the MECA Board of Directors.

- 02:42:01 **Dave Wheelihan, CEO, Montana Electric Cooperative's Association (MECA)**, introduced himself and said he was available to address concerns raised at the ETIC's January meeting regarding Southern Montana Electric Generation and Transmission (SME G&T) difficulties and subsequent bankruptcy filing.
- 02:42:35 **Doug Hardy, MECA**, said that the cooperatives took the ETIC's concerns very seriously and that the "*G & T Cooperative Model Accountability Standards*" (EXHIBIT 2) were drafted in response. Mr. Hardy discussed the recommended standards.
- 02:54:59 **Gary Wiens, MECA**, said that although the cooperatives believe they have been open with their members, the Board took seriously the ETIC's concerns and formed a committee to develop uniform transparency standards. He said the standards were unanimously approved by the MECA Board of Directors on April 5, 2012 (EXHIBIT 3) and that all but one individual cooperative have adopted the standards. Mr. Wiens reviewed the twelve standards.

Committee Questions

- 03:00:14 REP. DRISCOLL asked how often cooperatives are audited. Mr. Wiens said financial audits are done annually. REP. DRISCOLL asked how members will be provided advance notice of the audits. Mr. Wiens said that information will be posted on the MECA website or through other means, such as an industry newsletter or publication. Mr. Hardy noted that annual member meetings statutorily require a meeting notice be mailed to members.
- 03:01:35 SEN. OLSON asked if the MECA standards and recommendations could be melded into the proposed legislation. Ms. Nowakowski said she could work with Mr. Hardy on language to meld the concepts. Mr. Hardy said he would welcome the opportunity to do so.

Public Comment

- 03:03:12 **Keith Bales, Otter, Board Member Tongue River Elect Cooperative**, said that the SME G&T situation is an abnormality and urged the ETIC to act cautiously and not over-react. He discussed his concerns about the proposed legislation and said that the cooperatives learned from the experience and took action to prevent it from happening again, and that legislative action is not needed.
- 03:09:09 **Arlene Boyd, Beartooth Electric Cooperative**, said that the cooperatives have done an outstanding job of trying to address the issue and that she supports the effort to establish a policy that will ensure more open and transparent operations. She thanked the ETIC for its work and said that she supports the proposed legislation.
- 03:13:07 **Scott Sweeney, General Manager, Fergus Electric Cooperative, member of SME G&T**, said that while there were serious problems with SME G&T, he thought that it was somewhat unfair to punish the other three generation and transmission cooperatives because of what happened with SME G&T. Mr. Sweeney said he appreciates the willingness of the committee to work with the cooperatives and asked that any proposed legislation not be overly burdensome.

- 03:15:52 **Terry Holzer, retired General Manager, Yellowstone Valley Electric Cooperative (YVEC)**, said that he has continued to assist with efforts to deal with the SME G&T issue. He said he had not planned to comment but felt he had to respond to Mr. Bales' comments and concerns and to clarify why YVEC filed litigation against SME G&T, which was because the cooperatives' concerns were ignored and rejected. He said that problems existed long before the lawsuit and that proper governance and transparency were needed to provide cooperatives a voice without being chastised, criticized, or ostracized. Mr. Holzer discussed factors that, in his opinion, contributed to the SME G&T filing for bankruptcy and YVEC's attempts to negotiate an exit from the situation. He said he wasn't sure how to legislate for this type of situation but that he has confidence in the other generation and transmission cooperatives.
- 03:22:28 **Dave Kelsey, Board Member, YVEC and SME G&T**, thanked the ETIC for looking into the issue but said that despite the serious nature of the situation, he wasn't sure how to legislate for it. He commented on why he thought litigation was necessary and said he felt all avenues and options were exhausted before making the decision to litigate. Mr. Holzer said that he hoped that lessons were learned and that he thought the MECA standards would educate the cooperatives on proper governance procedures, and would go a long way in preventing similar situations from happening again.

Committee Questions and Discussion of Report, Recommendations, & LCet01

- 03:25:52 SEN. KEANE stated that he found it interesting that those involved were discouraging legislative involvement, considering the fact the cooperatives were created by the legislature in 35-18-102, MCA. He said that this situation is similar to the days of deregulation when certain people made decisions that greatly impacted rate payers and that legislators have a civic duty and responsibility to look into the situation in order to protect citizens.
- 03:27:19 SEN. KEANE asked Mr. Hardy if his G&T would be opposed to ETIC legislation if it was created with his help. Mr. Hardy said no, not if it could address the concerns as discussed.
- 03:28:04 SEN. KEANE asked Mr. Wiens if his G&T would oppose ETIC legislation if it was created with his help. Mr. Wiens said he would be willing to consider legislation.
- 03:28:58 REP. DRISCOLL asked Scott Sweeney to clarify his comments regarding what he saw as "punishment" for the other G&Ts. Mr. Sweeney said that his cooperative fully supports the recommendations and standards adopted by MECA but would oppose legislation that would restrict the other three remaining G&Ts.
- 03:30:04 SEN. JACKSON asked Mr. Kelsey to explain further the training and education programs MECA has put in place. Mr. Kelsey said that all cooperative directors are encouraged to complete five courses relating to the business management and administration of cooperatives. He said the courses are being well-received and that almost all cooperatives have participated. He said that the improved

education and training will result in better decisions and financially sound cooperatives.

- 03:35:50 SEN. LARSEN said that he agreed with SEN. KEANE that legislative involvement is necessary. He asked Mr. Hardy to comment on what elements may be missing or objectionable to the cooperatives as proposed in LCet01 (Appendix A, EXHIBIT 1). Mr. Hardy discussed areas of concern which included proposed amended language in 35-18-317, MCA, regarding voting requirements and in 35-18-318, MCA, regarding long-term indebtedness. Mr. Hardy reiterated his sincerity and willingness to work with the ETIC to address those concerns and any others.
- 03:38:08 SEN. KEANE asked Mr. Wheelihan if he was willing to support legislation. Mr. Wheelihan said he thought that cooperatives have always demonstrated a willingness to work with the legislature on issues of concern. He said that if the questions raised by Mr. Hardy can be addressed jointly, he thought the legislation would be a very positive direction to take.
- 03:39:48 REP. BELCOURT asked if there is a penalty for not following the statutory language and if so, who would be responsible for enforcing it. Mr. Everts said that he would have to research that question but thought that a member of cooperative would have standing to take the issue to court. He said he would look at the cooperative statutes to make that determination. REP. BELCOURT asked that Mr. Everts present his findings prior to or at the July meeting. It was agreed.
- 03:40:57 SEN. JACKSON said that Ms. Boyd discussed the difference between "standards" versus "regulations". He asked Mr. Everts to discuss the difference between the two terms and how they may have to be addressed in the legislation. Mr. Everts explained that statutory language is considered a "have to" and provide the ability to impose enforcement actions.
- 03:42:31 SEN. OLSON said he was inclined to agree with the concerns discussed about having a unanimous vote required and about long-term indebtedness. He said he would work with staff on that.
- 03:43:40 SEN. OLSON discussed the precedence for ETIC involvement in similar situations. He said that the committee is getting pressure to create regulation for cooperatives but that he would prefer to allow boards to continue to that on their own, with some help from the Legislature via LCet01. He asked the committee to consider how it wished to proceed on the issues discussed by Mr. Hardy and Mr. Wheelihan regarding the vote requirements.
- 03:47:29 SEN. OLSON discussed several options for handling the unanimous versus two-thirds vote requirement for load requirements. He asked Mr. Bales to comment. Mr. Bales said that it is a difficult issue to deal with and discussed an anecdotal situation that occurred in eastern Montana. He said it could be considered but would need to be looked at very carefully, and that he was not sure what the

threshold should be. SEN. OLSON said what he was getting at was directed more towards the G&Ts.

03:50:16 Mr. Hardy discussed his response to SEN. OLSON's comments about load forecasts and excess loads, and said there were options for addressing load forecasting and excess loads as they related to industrial entities and the vote requirements.

03:52:21 SEN. OLSON asked Mr. Holzer to respond. Mr. Holzer discussed his thoughts on a unanimous versus two-thirds vote, saying that there are certain types of decisions for which all members must be on board.

Committee Action

03:54:40 SEN. KEANE said that he believes in letting the people who created the problem solve the problem, and that he would like the stakeholders to continue to work together, with input from ETIC staff.

03:55:39 Ms. Nowakowski said that after listening to testimony and discussion, she has identified three points: 1. that ETIC would continue working with Mr. Hardy and the cooperatives on language regarding voting requirements (unanimous versus two-thirds) and the varied circumstances, primarily for contracting or obligations for new contracting; 2. refining contract language to ensure that it be narrow enough to capture the ETIC's intent about new generation and large contracts; and 3. tailoring some of the definitions in LCet01 relating to actual load and forecasts. SEN. OLSON said those were the main three points. He asked Mr. Sweeney, Mr. Bales, and Mr. Holzer to participate in the work also.

03:57:05 **SEN. KEANE moved to direct staff to work with Mr. Hardy, Mr. Sweeney, Mr. Bales, and Mr. Holzer and other interested cooperative members to discuss the two-thirds versus unanimous language for various circumstances (Section 1); to tailor language in subsection (2)(b) as it relates to contracts (Section 2); and tailoring definitions' references to actual loads and forecasts.**

03:58:05 SEN. JACKSON said that he has seen instances of board manipulation and board violations so he feels that having strict voting requirements are important.

04:00:21 SEN. OLSON referred to the financial problems experienced by the Flathead Electric Cooperative in 2001 and asked, if LCet01 had been in place, if it would have helped that situation. Mr. Wheelihan said that it is difficult to legislate morality but that a more open process with more education ensures more informed and responsible decisions, thus protecting the consumer.

04:01:58 **SEN. KEANE's motion passed on a unanimous voice vote.**

04:02:19 Ms. Nowakowski said she would work with the cooperatives to revise LCet01 as instructed and would put it out for public comment, for final approval at the July meeting.

- 04:03:21 SEN. KEANE announced that a print out of the seismic activity measured from the Orphan Girl blast was available (EXHIBIT 4).
- 04:04:00 Ms. Nowakowski noted that a the report (EXHIBIT 5) and maps discussed by Mr. Metesch had been provided to all committee members. She said that a working lunch was prepared and asked that the members serve themselves and be seated to continue working. SEN. OLSON recessed the meeting to allow members to pick up their lunches.

LUNCH BREAK

ONE-CALL REVIEW

- 04:20:44 SEN. OLSON called the meeting back to order. He noted that due to the delay in federal rulemaking, the ETIC would not proceed with legislation at this time but that the workgroup would continue with its work. He said that the staff report, along with any additional public comment, will be printed and distributed to the 2013 Legislature.

REGIONAL HAZE, FEDERAL IMPLEMENTATION OF RULES

- 04:22:15 **Richard Opper, Director, Department of Environmental Quality (DEQ)**, discussed background information on the regional haze program and DEQ's 2006 decision to transfer oversight back to the Environmental Protection Agency (EPA), due to ever increasing rules and regulations but no additional funding with which to administer the program. He then discussed the EPA's current proposed regional haze rulemaking and the proposed Federal Implementation Plan (FIP) for Montana. He noted that the public comment period is open until June 19, 2012, and that the EPA is expected to finalize the FIP in August. He said the DEQ has not formalized its comments but that a copy would be provided to ETIC when the comments were prepared.

Public Comment

- 04:39:33 **David Hoffman, PPL Montana**, discussed PPL's concerns about the cost of the program and said that PPL's position is that the FIP must be modified to make it more cost-effective emission reductions (EXHIBIT 6).
- 04:40:05 **Gordon Criswell, Director of Environmental Matters for PPL Montana**, discussed PPL's concerns about the cost-effectiveness of the proposed FIP and said that PPL's comments have been submitted to the EPA.
- 04:42:14 **Mark Lambrecht, Executive Director, Western Environmental Trade Association (WETA)**, read a statement into the record outlining WETA's concerns that the proposed FIP will require installation of prohibitively expensive emission equipment that will not result in any perceivable visibility improvement (EXHIBIT 7).
- 04:46:52 Mr. Lambrecht discussed a FIP recently approved by the EPA for North Dakota which offers more flexibility than the plan being presented for Montana. He asked the ETIC to encourage the EPA to offer the same or a similar plan to Montana. He said his overall request is to encourage the EPA to allow the DEQ to re-

engage and have authority over the regional haze issue and that the ETIC do whatever it can to make that happen.

Committee Questions

- 04:48:56 SEN. OLSON and Director Opper discussed deciview (dv) measurements of air quality, and the important point of distinguishing between measuring air quality for aesthetic versus health purposes. Director Opper said that the primary purpose of the regional haze program is largely aesthetic and not human health.
- 04:50:37 SEN. OLSON asked if the technology standards in the North Dakota program are prescriptive. Director Opper said they were to a degree. He discussed several differences between the North Dakota program and the proposed FIP for Montana.
- 04:52:43 SEN. OLSON asked about the cost difference per dv between the North Dakota program and Montana. Director Opper said in terms of cost per dv improvement, Montana's program will be much more expensive to administer.
- 04:54:30 **Dave Klemp, Bureau Chief, Air Resources Management Bureau, DEQ,** compared the dv improvement goals for North Dakota and Montana and said that "North Dakota is getting a much bigger bang for the buck" in terms of money spent for dv improvements.
- 04:55:50 SEN. OLSON asked if Montana can challenge having to spend that much money to achieve such a minimal impact. Director Opper said he couldn't answer that at this point but thought that Montana could make a strong argument that the FIP is not particularly effective and doesn't compare favorably with other states.
- 04:58:01 REP. KLOCK said that haze can be something as simple as moisture in the air. Director Opper agreed and said that a number of naturally occurring factors can affect the viewshed. REP. KLOCK asked how the EPA will decipher what is natural and what isn't. Director Opper said that will be a battle that will go on for many years because not all air conditions are the result of technology or caused by man.
- 04:59:45 SEN. JACKSON asked about the impact of fires on air quality and if the EPA rules would affect prescribed burning, such as burning slash piles. Director Opper said that the regional haze program focuses on point sources of emissions and relies on the assumption that other programs address smoke and dust. Mr. Klemp discussed factors that are considered in determining air quality, air quality models, and how fire impacts air quality management. He predicted that it will be a highly discussed issue for years to come.
- 05:03:36 SEN. OLSON commented that smoke and haze resulting from fires far exceeds the amount of pollutants and emissions from coal plants.
- 05:04:19 SEN. OLSON asked how long it will take the DEQ to regain control and oversight of the regional haze program. Director Opper said that it is DEQ's intention to take over when the FIP is finalized, with plans to conduct a five-year review. He

noted that he could not guarantee that because he would not be the Director after December. He predicted that the EPA would be relieved to hand the program back over to the state.

05:06:03 SEN. OLSON asked if DEQ would have the authority to revisit the FIP criteria and revamp some of the EPA requirements in the FIP, including adjusting the modeling the FIP is based on. Director Opper discussed the modeling issue and said that any proposed changes would still have to be approved by the EPA. Mr. Klemp also responded to the question and discussed compatibility issues between the federal FIP and the state SIP that would have to be dealt with in making any changes.

05:11:22 SEN. OLSON said that Ms. Nowakowski will gather comments and that the ETIC would revisit the issue.

Public Comment on matters within the jurisdiction of the ETIC

05:12:02 **Gail Kuntz, Bonneville Power Administration (BPA)**, discussed the Montana to Washington transmission upgrade project and construction of a new substation. She said the intent of the upgrade is to achieve transmission capacity of 530 megawatts.

05:15:09 SEN. KEANE asked where the new substation will be built. Ms. Kuntz said three potential sites have been identified and that a full environmental impact study will be completed to select the final site.

ADJOURNMENT/DEPART FOR TOUR OF DAVE GATES GENERATING STATION

05:17:13 With no further business before the Energy and Telecommunications Interim Committee, the meeting was adjourned and members departed for a tour of the Dave Gates Generating Station near Anaconda. The next ETIC meeting is scheduled for July 16 and 17, 2012, in Billings.

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