



## Energy and Telecommunications Interim Committee

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### 63rd Montana Legislature

#### SENATE MEMBERS

CLIFF LARSEN--Chair  
EDWARD BUTTREY  
ROBYN DRISCOLL  
ALAN OLSON

#### HOUSE MEMBERS

KEITH REGIER--Vice Chair  
MIKE LANG  
MARY MCNALLY  
TOM STEENBERG

#### COMMITTEE STAFF

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

# MINUTES LOG

September 13, 2013 - Day 2

Harlowton Kiwanis Youth Center, Harlowton, 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.

Access to an electronic copy of these minutes and the audio or video recording is provided from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side menu of the home page, select *Committees*, then *Interim*. Once on the page for *Interim Committees*, scroll down to the appropriate committee. The written minutes summary, along with the audio and video recordings, are listed by meeting date on the interim committee's web page.

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. CLIFF LARSEN, Chair  
REP. KEITH REGIER, Vice Chair

SEN. EDWARD BUTTREY  
SEN. ROBYN DRISCOLL  
SEN. ALAN OLSON

REP. MIKE LANG  
REP. MARY MCNALLY  
REP. TOM STEENBERG

#### **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 Telecommunication Interim Committee:

- approved a motion to determine the PSC's economic impact statement for the proposed qualifying facility rule to be insufficient, and
- approved a motion to object to the PSC's proposed rule on qualifying facilities.

#### **CALL TO ORDER AND ROLL CALL**

00:00:02 SEN. LARSEN called the Energy and Telecommunications Interim Committee (ETIC) to order at 8:00 a.m. The Secretary noted the roll, all members were present ([Attachment 3](#)). SEN. LARSEN recessed the meeting for the tour portion of the meeting.

### **Tours of Sheep Valley Wind Farm and Gordon Butte Wind Farm**

The ETIC toured the Sheep Valley Farm where owner David Healow and John Bushnell, NorthWestern Energy (NWE) presented, "*Introduction to Qualifying Facilities*". From there, the committee traveled to Gordon Butte Wind and listened to Bryan Rogan, Oversight Resources LLC, discuss "*Introduction to Community Renewable Energy Programs (CREPS)*".

### **CALL BACK TO ORDER**

05:54:07 SEN. LARSEN called the ETIC back to order at 1:55 p.m. and invited former Representative and former ETIC chairman Harry Klock, House District 83, to address the committee.

05:54:46 **Harry Klock, former ETIC chairman, former state representative, and local business owner**, welcomed ETIC to Harlowton and said that it was an honor to have the committee visit the Harlowton community. He said that wind power has made a tremendous difference in the community.

### **PUBLIC SERVICE COMMISSION -- Agency Oversight**

#### **Overview and Update**

05:56:35 **Bob Lake, Commissioner, Montana Public Service Commission (PSC)**, updated the ETIC on upcoming and ongoing issues before the PSC:  
05:57:59 an update on NorthWestern Energy's (NWE) 2012 electricity supply tracker case;  
06:00:45 NWE's purchase of Bear Paw Natural Gas Production assets, including Havre Pipeline Company;  
06:01:47 Montana-Dakota Utilities' natural gas rate case;  
06:02:10 Mountain Water Company's general rate case (Missoula);  
06:02:49 the Federal Energy Regulatory Commission (FERC) petition filed by qualifying facilities (QFs) against the PSC;  
06:05:09 an upcoming hearing on standardized rules for small water utilities; and  
06:06:19 an investigation of natural gas universal system benefits (USB) funding.

#### **Public Comment**

06:07:23 **Kyla Maki, Montana Environmental Information Center (MEIC)**, commented on MEIC's serious concerns regarding PSC comments concerning the NWE's electricity supply tracker docket.

#### **ETIC Questions**

06:11:37 SEN. LARSEN asked that ETIC staff be invited to the upcoming PSC Roundtable about USB. Commissioner Lake agreed to do so.

06:12:21 Commissioner Lake said that while he appreciates the ETIC's concern about the PSC's decisions regarding efficiency programs, the PSC has an obligation to make certain that companies and consumers are both treated fairly.

### **ADMINISTRATIVE RULE UPDATE AND REVIEW OF QF ECONOMIC IMPACT**

### **Introduction -- Mr. Everts**

- 06:13:43 **Todd Everts, Staff Attorney, LSD**, discussed an upcoming administrative rule hearing pertaining to regulatory options for small water and sewer utilities ([EXHIBIT 1](#)).
- 06:15:25 Mr. Everts noted that ETIC members had in their meeting materials a copy of the economic impact statement (EIS) from the PSC regarding its proposed rules for Qualifying Facilities (QFs) ([EXHIBIT 2](#)). He then discussed a memorandum he prepared outlining the ETIC's responsibilities, as provided for in 2-4-405(4), MCA, in reviewing the proposed QF rules ([EXHIBIT 3](#)).

### **QF EIS -- PSC Commissioner and Staff**

- 06:16:54 Commissioner Lake briefly reviewed the EIS ([EXHIBIT 2](#)) and assured the ETIC that the report is unbiased and was approved by the PSC on a 4-1 vote before forwarding it to the ETIC. Commissioner Lake said that Will Rosquist prepared the EIS and would discuss it more detail.
- 06:20:41 **Will Rosquist, Bureau Chief, Economics and Rate Design, PSC**, discussed a Powerpoint presentation on the economic impact of the proposed amendments to ARM 38.5.1902 ([EXHIBIT 4](#)). Mr. Rosquist summarized the effect of the proposed rule, the purpose of the proposed rule, and the key findings of the EIS.
- 06:31:53 Mr. Rosquist commented on Commissioner Travis Kavulla's objections to the EIS, as discussed by Commissioner Kavulla in an August 27 letter to ETIC ([EXHIBIT 5](#)).
- 06:37:44 **Travis Kavulla, Commissioner, PSC**, discussed his objections to the EIS and recommendations that would rectify the situation ([EXHIBIT 5](#)).

### **Public Comment**

- 06:52:15 **John Fitzpatrick, NorthWestern Energy (NWE)**, complimented the PSC and Mr. Rosquist on its EIS and then presented a rebuttal to Commissioner Kavulla's position.

### **Committee Questions**

- 06:57:02 REP. REGIER asked Commissioner Kavulla if the PSC's proposed rule is inconsistent with the Public Utility Regulatory Policies Act (PURPA). Commissioner Kavulla said the rule is consistent with the letter of PURPA but not the spirit of the Act. He said that while he didn't believe the PSC would lose a legal challenge of the rule, the PSC is on shaky ground with respect to competitive solicitation.

### **Committee Action**

- 06:58:20 SEN. OLSON thanked Mr. Rosquist for his excellent work on this issue. He emphasized that any ETIC motions would not be meant as a "jab" at the PSC but as a means of giving direction to the PSC on where things ought to go. **SEN. OLSON moved that the ETIC determine that the PSC's EIS is insufficient, based on that the alternatives did not consider a 3 MW cap.**

- 06:59:42 REP. REGIER asked Mr. Everts to discuss the difference between objecting to the rules and finding the EIS to be insufficient. Mr. Everts said there is a difference and explained the process for objecting to a proposed administrative rule ([EXHIBIT 6](#)) Mr. Evert's discussion included possible actions available to ETIC.
- 07:01:54 REP. REGIER asked if the motion would be considered an objection to the rules or a finding that the EIS is insufficient. Mr. Everts said the motion would determine only that the EIS is insufficient and that another motion would be needed in order to formally object to the proposed rules. He noted that there is nothing in the Montana Administrative Procedure Act's (MAPA) statutory provisions that prohibits the PSC from adopting the proposed QF rule, even if the ETIC objects to the sufficiency of the EIS. He said only a motion to object could delay the adoption of the proposed rule.
- 07:03:42 SEN. OLSON said the intent of his motion was to find the EIS insufficient because the 2013 Legislature passed HB 188 with great support and clearly supported a 3 MW cap. He said that the bill was vetoed by Governor Bullock and that as a result, the PSC "overstepped a bit" in its proposed rule and that he would like it to reconsider its actions and reinstate the 3 MW cap.
- 07:06:01 REP. REGIER, SEN. LARSEN, and SEN. OLSON discussed SEN. OLSON's motion further. SEN. OLSON said his motion deals with insufficiency of the EIS document and that he planned to offer a motion to object also.
- 07:08:57 REP. REGIER discussed his concern that because four of five commissioners approved the EIS, he didn't know if he could agree that the EIS is "insufficient".
- 07:09:58 SEN. LARSEN explained why he would be willing to amend the motion to make it an objection in order to force the PSC to deal with this question. SEN. OLSON stated that he would prefer to do that in a separate motion. **SEN. OLSON's motion to determine that the EIS is insufficient passed on a roll call vote, passed 7-1. SEN. DRISCOLL (Larsen) and SEN. BUTTREY (Olson) voted yes by proxy. REP. REGIER voted no.**
- 07:12:34 **SEN. OLSON moved, pursuant to 2-4-305, MCA, that the ETIC object to the PSC rule as proposed, as it does not consider a 3 MW cap.**
- 07:13:12 Mr. Everts reiterated that an objection will delay adoption of the rule and once the notice is sent to the PSC, the delay is in effect. He said that the ETIC can withdraw its objection at its November meeting or make a further objection to delay adoption until after the 2015 legislative session.
- 07:14:58 **The motion passed on a unanimous roll call vote. SEN. DRISCOLL (Larsen) and SEN. BUTTREY (Olson) voted yes by proxy.**
- 07:15:07 SEN. OLSON said he would like to have this issue on the November agenda and requested that a panel discussion be held on the competitive solicitation of resources process. He suggested Mr. Rosquist, a representative of NWE, and

Mr. Rogan as panelists. He also requested that the committee receive an overview of the Morgan and Howard report on resource planning and procurement. It was agreed.

07:16:38 REP. MCNALLY said that she also has concerns about the competitive bid process in place now. She requested that the ETIC be provided with a concise summary of the Morgan and Howard report, saying it would be very helpful.

07:17:38 SEN. OLSON thought it would be better for the members to read the full report themselves in advance of the November meeting. It was agreed that staff would mail copies of the report.

07:19:44 SEN. LARSEN recessed the meeting for a short break.  
**BREAK**

### **PSC BROADBAND SURVEY UPDATE**

07:26:58 **Gary Duncan, Rate Analyst, PSC**, reviewed a broadband survey update ([EXHIBIT 7](#)), which included background information, a list of Montana certified eligible telecommunications carriers (ETCs), the role of the Montana PSC in certifying the ETCs for eligibility, and other relevant information.

07:36:31 Mr. Duncan discussed the PSC survey conducted between April 1, 2013 and June 30, 2013, and how the PSC plans to proceed.

### **Public Comment**

07:44:28 **Dana Dogterom, Two Dot Wind**, commented on the strong connection between internet availability and the banking industry because of the many online banking services that many consumers use. He said that it is very important to be able to provide these services in rural areas.

07:45:50 **Bonnie Lorang, General Manager, Montana Independent Telecommunications Systems (MITS)**, commended Mr. Duncan and the PSC for the proactive approach being taken and working to make sure the process is done right.

### **Committee Questions**

07:46:36 There were no questions.

### **INTEROPERABILITY UPDATE**

07:47:19 **Warren Dupuis, Chief Operations Officer, Information Technology Services Division (ITSD), Department of Administration (DOA)**, discussed a Powerpoint presentation on Montana's Public Safety Communications System ([EXHIBIT 8](#)). Mr. Dupuis also discussed "*The Promise of FirstNet*" report ([EXHIBIT 9](#)) explaining the first nationwide high-speed wireless broadband data internet network dedicated to public safety.

### **Public Comment**

08:16:17 **Geoff Feiss, General Manager, Montana Telecommunications Association**, discussed the MTA's concerns regarding the FirstNet program and the

importance of using existing local telecommunications providers to leverage the federal funding in expanding Montana's public safety system.

08:18:34 Bonnie Lorang, MITS, echoed Mr. Feiss' comments and cautioned that there is still much that is unknown about FirstNet. She agreed that it is a great idea and goal but reiterated that the cost remains unknown, as is who will be responsible for the costs. She said it would be very helpful to have documents and information available on the ITSD webpage, such as a schedule of meetings; and that all stakeholders have an opportunity to participate.

#### **Committee Questions**

08:21:50 SEN. OLSON reiterated that existing telecommunication providers have established infrastructure and that government agencies should not be allowed to "cherry pick" and take customers away from private companies.

08:23:23 Mr. Dupuis said that he has reached out to the telecommunications providers and has encouraged them to participate but that he can't force them to respond. He said if they choose not to respond, it may not be possible to leverage their infrastructure but that it is his intent to work with the existing providers.

08:24:13 SEN. OLSON thanked Mr. Dupuis for his work and encouraged continued efforts to work with the telecommunications providers.

#### **PUBLIC COMMENT ON MATTERS WITHIN THE JURISDICTION OF THE ETIC**

08:24:35 There was no public comment.

#### **WRAP-UP AND ADJOURN**

08:25:22 REP. MCNALLY asked for confirmation that staff has copies of the comparative rates as resources provided by Invenergy and that the information will be supplied to the ETIC. Ms. Nowakowski said she would provide it and put it on the website ([EXHIBIT 10](#)). REP. MCNALLY said it was the report behind the Powerpoint presentation the Invenergy provided on Thursday that she wanted.

#### **ADJOURN**

With no further business before the committee, SEN. LARSEN adjourned the meeting at 4:30 p.m. The Energy and Telecommunications Interim Committee will meet next on November 8, 2013, in Helena, Montana.

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