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MINUTES LOG

111(d) Subcommittee on Federal Clean Power Plan
January 14, 2016
Room 172, Capitol Building
Helena, Montana

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

Access to an electronic copy of these minutes and the audio or video recording is provided from the Legislative Branch home page at <http://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 Log, along with the audio and video recordings, is listed by meeting date on the interim committee's web page. Each of the Exhibits is linked and can be viewed by clicking on the Exhibit of interest. All Exhibits are public information and may be printed.

Please contact the Legislative Services Division at 406-444-3064 for more information.

COMMITTEE MEMBERS PRESENT

SEN. JIM KEANE, chair
REP. KEITH REGIER, vice chair

ETIC MEMBERS

SEN. DUANE ANKNEY
SEN. ROBYN DRISCOLL
REP. TOM STEENBERG

EQC MEMBERS

SEN. CARY SMITH
REP. JANET ELLIS

COMMITTEE MEMBERS EXCUSED

MR. SCOTT ASPENLIEDER

STAFF PRESENT

SONJA NOWAKOWSKI, lead staff

JOE KOLMAN, legislative environmental analyst

NADINE SPENCER, secretary

AGENDA (Attachment 1)

VISITORS' LIST (Attachment 2)

COMMITTEE ACTIONS

The 111(d) subcommittee:

- Approved the minutes from September 10, 2015.
- Voted 5-3 to send a draft letter to the Energy and Telecommunication Interim Committee (ETIC) and the Environmental Quality Council (EQC) to urge Montana's Attorney General's Office to work with other state attorneys general to challenge the legality of the federal Clean Power Plan.

CALL TO ORDER AND ROLL CALL

00:00:01 Sen. Keane called the meeting to order at 1:01 p.m. The secretary called the roll. **(Attachment 3)** Mr. Aspenlieder was excused and left his proxy with Rep. Regier. **(Attachment 4)**

ADMINISTRATIVE MATTERS

00:00:58 **Motion/Vote:** Sen. Ankney moved to accept the minutes from September 10, 2015. The motion carried unanimously by voice vote.

00:01:16 Sen. Keane said he and Sen. Ankney were in Washington D.C. for an NCSL meeting and talked with speakers who were willing to participate either in person, or by phone, at subcommittee meetings. Some of those speakers were contacted and asked to participate in today's meeting.

NCSL INFORMATION AND RESOURCES

00:02:33 Glen Andersen, National Conference of State Legislatures (NCSL), gave a PowerPoint presentation on the Clean Power Plan. **(Exhibit 1)**

00:04:28 Mr. Andersen discussed the state legislative role in Clean Power Plan compliance.

00:06:51 Mr. Andersen discussed the Clean Power Plan timeline.

00:08:10 Mr. Anderson discussed emission credit trading.

00:16:22 Mr. Andersen discussed what states have done planning and responding to the Clean Power Plan. **(Exhibit 2)**

00:18:18 Mr. Andersen discussed state legislative activity.

00:22:38 Mr. Andersen discussed NCSL resources that are available. **(Exhibit 3)**

Public Comment:

00:23:41 Anne Hedges, Montana Environmental Information Center.

Committee Questions and Discussion:

- 00:26:07 Sen. Keane asked if a state can collaborate with any other state to trade emission credits. Mr. Andersen said a state can, but both states need to measure their compliance in the same way as either rate-based or mass-based.
- 00:27:12 Sen. Keane asked why a state would want to trade emission credits with another state. Mr. Andersen said the state with extra credits can profit by selling its credits, and the state purchasing the credits can buy them for less than what it would cost to reduce emissions.
- 00:28:46 Sen. Keane asked if states bidding against each other to buy credits can pass the cost on to ratepayers. Mr. Andersen said the generator buys credits and then passes the cost of compliance on to the ratepayer.
- 00:29:49 Sen. Keane said the cost of compliance will be paid by the ratepayer. Mr. Andersen agreed.
- 00:31:04 Sen. Ankney asked if states own the emission credits. Mr. Andersen said the utility or the person who owns the power plant owns the credits.
- 00:32:11 Sen. Ankney asked if there can be several entities in a state that a producer can buy and sell credits from. Mr. Andersen said there can be and prices are based on supply and demand.
- 00:33:13 Sen. Ankney asked Mr. Andersen if there will be a partnership or entity that will buy and sell credits.
- 00:34:26 Sen. Ankney asked if Puget Sound Energy (PSE), based in the state of Washington, closes Colstrip Units I and II, if they will take the credits or if the credits will stay in Montana. Mr. Andersen said if the plants close CO2 will no longer be released and PSE will no longer be required to purchase credits to offset those emissions.
- 00:35:58 Sen. Keane asked if PSE closes the Colstrip plant will it have credits to sell to someone else. Mr. Andersen said if the credits were allocated, and the plant is shut down, then it may have credits.
- 00:37:27 Rep. Regier asked Mr. Andersen to respond to the public comment that Montana is a state with the greatest CO2 reduction need, but has the least stringent reduction goal.
- 00:39:30 Sen. Keane asked Mr. Andersen about Montana's 47% reduction goal.
- 00:40:01 Rep. Mike Cuffe (HD 2), asked if generating hydro power gives Montana any credit. Mr. Andersen said it does not.
- 00:42:10 Sen. Keane asked if there is an obligation by the generator to give back extra credits to ratepayers. Mr. Andersen said generators are regulated entities and their operating costs and profits are reviewed.
- 00:43:14 Sen. Keane asked Mr. Andersen to keep staff updated on whether one state is actually helping another state reduce its costs. Mr. Andersen said trading benefits both partners since one is making money and the other is paying a lower price for compliance.
- 00:45:11 Sen. Keane thanked Mr. Andersen for his participation and asked him to keep staff updated on new developments and what other states are doing. Mr. Andersen said he will.

LEGAL OUTLOOK - FEDERAL PERSPECTIVE

- 00:46:12 Thomas Lorenzen, Crowell & Moring, provided an update on the status of litigation on the Clean Power Plan.

00:49:21 Mr. Lorenzen said there are five core legal issues in the litigation.
00:50:35 Mr. Lorenzen discussed the Section 112 exclusion.
00:53:02 Mr. Lorenzen discussed cooperative federalism.
00:56:36 Mr. Lorenzen discussed the best system of emission reduction.
01:00:54 Mr. Lorenzen said the standards EPA issued for existing power plants are more stringent than new source standards.
01:03:12 Mr. Lorenzen discussed constitutional issues.

Public Comment:

01:05:14 Ms. Hedges.

Committee Questions and Discussion:

01:06:30 Sen. Keane asked if the initial decision will be issued by the end of January. Mr. Lorenzen said that is what is anticipated.
01:07:16 Sen. Keane requested a copy of the presentation. [\(Exhibit 4\)](#)
01:07:52 Sen. Keane requested that staff be kept informed of the legal decisions in the case.

MONTANA DEPARTMENT OF JUSTICE LEGAL ACTION

01:08:32 Jon Bennion, Attorney General's Office, introduced Alan Joscelyn, chief deputy, Attorney General's Office.
01:09:19 Mr. Joscelyn discussed the legal actions taken by the Attorney General's Office regarding the Clean Power Plan.
01:13:32 Sen. Keane provided a draft letter to the ETIC and the EQC urging Montana's Attorney General's Office to work with other state attorneys general to challenge the legality of the federal Clean Power Plan. [\(Exhibit 5\)](#)

Public Comment: None

Committee Questions and Discussion:

01:14:37 Rep. Ellis asked if Montana has challenged any of the constitutional issues raised by Mr. Lorenzen. Mr. Joscelyn said the state is one of the plaintiff parties in the primary challenge.
01:16:45 Recess
01:31:55 Reconvene

Sen. Smith left the meeting and gave his proxy to Rep. Regier. [\(Attachment 5\)](#)

OPTIONS FOR COAL AND COAL TECHNOLOGIES

01:35:08 Jordan Kislear, director, Division of Government Affairs and Analysis, Office of Clean Coal and Carbon Management, U.S. Department of Energy, via telephone conference, gave a PowerPoint presentation on options for coal and coal technologies. [\(Exhibit 6\)](#)
01:36:56 Mr. Kislear discussed the timeline of the Clean Power Plan.
01:38:22 Mr. Kislear discussed the standards for new power plants.
01:39:50 Mr. Kislear discussed the underground injection control program for carbon capture and storage.

01:42:51 Mr. Kislear discussed existing sources.

Public Comment: None

Committee Questions and Discussion:

01:52:46 Sen. Pat Connell (SD 43) asked Mr. Kislear about biomass, harvesting methods, and accounting for biomass emissions.

01:53:59 Sen. Connell requested that the EPA framework on biomass be given to the subcommittee.

01:54:35 Sen. Keane asked Mr. Kislear who is responsible for the accounting of biomass.

01:55:26 Sen. Keane asked if the cost to change to biomass will be passed to the ratepayer. Mr. Kislear said he is not sure.

01:56:15 Sen. Keane asked Mr. Kislear what states the department is currently working with.

01:57:41 Rep. Regier asked Mr. Kislear if he knew what it would cost for Colstrip to use sequestration or other related techniques to comply with the new standards. Mr. Kislear said he did not know.

01:58:35 Sen. Keane asked Mr. Kislear if a company that has been working to improve its heat rate could count the improvements from the original design of the plant forward for compliance purposes.

02:00:22 Sen. Keane thanked Mr. Kislear for his participation.

02:01:23 Sen. Keane opened discussion on the draft letter written to EQC and ETIC.

02:02:29 **Motion:** Sen. Keane moved that the subcommittee forward a draft letter to ETIC and the EQC urging Montana's Attorney General's Office to work with other state attorneys general to challenge the legality of the federal Clean Power Plan.

Discussion:

02:02:41 Sen. Driscoll

02:03:46 Rep. Ellis

02:04:38 Ms. Nowakowski

02:05:00 Sen. Keane

02:05:35 Rep. Regier

02:06:13 Sen. Keane

02:06:40 Rep. Steenberg

02:07:28 Sen. Keane

02:07:51 Rep. Regier

02:08:07 Rep. Steenberg

02:08:53 Sen. Keane

02:09:37 Rep. Regier

02:10:16 Sen. Ankney

02:11:04 Sen. Keane

02:11:24 Rep. Regier

02:11:29 Sen. Keane

02:12:22 **Vote:** The motion carried 5-3 by roll call vote. **(Attachment 6)** Sen. Driscoll, Rep. Ellis, and Rep. Steenberg voted no. Sen. Smith and Mr. Aspenlieder voted aye by proxy.

THE ROLE OF ENERGY EFFICIENCY AND RENEWABLES

02:12:47 Wendy Gerlitz, policy director, Northwest Energy Coalition, via telephone conference, presented a regional perspective on energy efficiency and renewables and how the resources offer cost effective strategies for Clean Power Plan compliance.

02:14:40 Ms. Gerlitz discussed energy efficiency.

02:18:38 Ms. Gerlitz discussed renewable resources.

Public Comment:

02:21:53 Kyla Maki, Montana Environmental Information Center.

Committee Questions and Discussion:

02:24:04 Sen. Keane asked if there is a date when credits can be taken. Ms. Gerlitz said under the Clean Energy Incentive Program there is a provision for early action credits, but it doesn't start until the state's compliance plan is accepted by the EPA.

02:25:05 Rep. Ellis asked if the date applies to when the state files its full plan in 2017 or when it files for an extension in 2016. Ms. Gerlitz said she will find out. See attached email with response. **(Exhibit 7)** Sen. Keane requested that the information be provided to staff.

02:25:40 Sen. Keane asked if any state will get credit for work it has already done. Ms. Gerlitz said credit will be given to the extent that it influences where the state target is set initially.

02:26:19 Sen. Keane thanked Ms. Gerlitz for her participation.

02:26:53 Laura Andersen, Energy Bureau Chief, Department of Environmental Quality (DEQ), said Director Livers will be arriving soon for the next presentation.

02:27:16 Recess

02:44:30 Reconvene

GOVERNOR'S MONTANA CLEAN POWER PLAN ADVISORY COUNCIL

02:45:04 Tom Livers, director, DEQ, gave an update on the Clean Power Plan Advisory Council

Public Comment:

02:52:45 Michelle Uberuaga, Livingston, Moms Clean Air Force

Committee Questions and Discussion:

02:55:46 Sen. Ankney asked if the work that will be done by the advisory council will be completed by July 6. Mr. Livers said it will be.

- 02:56:19 Sen. Ankney asked if the advisory council will have completed enough work to request an extension. He also asked if a new advisory council will be appointed or if the original council will continue to work on the plan. Mr. Livers said he did not know.
- 02:56:54 Rep. Regier said the director of the EPA indicated that the Clean Power Plan isn't about emissions, but economic development, and asked if that is the direction the advisory council is taking. Mr. Livers said both will be considered. He said there will be emission targets that have to be met so it will continue to be a focus.
- 02:58:17 Rep. Ellis asked if there will be a way for the public to sign up and receive notice of the advisory council meetings. Mr. Livers said the department will set up a website and keep an interested persons list.
- 02:59:29 Rep. Steenberg asked about deadline dates for the Clean Energy Incentive Program. Mr. Livers said details for the program have not been released by the EPA.

PUBLIC COMMENT ON ANY ITEM NOT CONTAINED IN THIS AGENDA

None

OTHER BUSINESS

- 03:01:28 Sen. Keane said the subcommittee will wait to see how things develop during the month of January before deciding on further action.
- 03:02:05 Rep. Ellis said the subcommittee heard from two legal sources about litigation against the EPA. She said she would like to work with staff on alternative perspectives for the meeting in March. Sen. Keane said it could be discussed after a decision is reached on the current legal action.

ADJOURN

- 03:03:33 Sen. Keane adjourned the meeting at 4:04 p.m.

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