



# Energy and Telecommunications Interim Committee

PO BOX 201706  
Helena, MT 59620-1706  
(406) 444-3064  
FAX (406) 444-3036

## 58th Montana Legislature

**SENATE MEMBERS**  
ROYAL JOHNSON  
DON RYAN  
EMILY STONINGTON  
FRED THOMAS

**HOUSE MEMBERS**  
DANIEL FUCHS  
DAVE GALLIK  
GARY MATTHEWS  
ALAN OLSON

**COMMITTEE STAFF**  
MARY VANDENBOSCH  
RESEARCH ANALYST  
TODD EVERTS, STAFF ATTORNEY

## MINUTES

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

Room 102, State Capitol  
June 13, 2003

### **COMMITTEE MEMBERS PRESENT**

Sen. Fred Thomas  
Sen. Royal Johnson  
Sen. Don Ryan  
Rep. Alan Olson  
Rep. Daniel Fuchs  
Rep. Gary Matthews  
Rep. Dave Gallik

### **COMMITTEE MEMBERS EXCUSED**

Sen. Emily Stonington

### **STAFF PRESENT**

Mary Vandebosch, Research Analyst  
Todd Everts, Staff Attorney  
Lois O'Connor, Secretary

### **VISITORS LIST AND AGENDA**

Visitors' List (ATTACHMENT #1)  
Agenda (ATTACHMENT #2)

### **COMMITTEE ACTION**

- Elected Rep. Olson and Sen. Stonington Chairman and Vice Chair respectively
- Approved the proposed interim meeting schedule with the caveat that it could be changed if needed

## **CALL TO ORDER**

The meeting was called to order by Senior Senator Fred Thomas at 10:10 a.m. Roll call was noted; Sen. Stonington was excused. (ATTACHMENT #3)

## **OVERVIEW OF RESPONSIBILITIES AND GUIDELINES**

**Mary Vandebosch, Research Analyst, and Todd Everts, Staff Attorney, Legislative Services Division**, provided a brief overview of the Committee staff responsibilities. Ms. Vandebosch also provided overviews of the Committee's statutory duties, procedures, and guidelines for interim committees and provided a copy of House Bill No. 94 clarifying public participation and notice requirements for open meetings. (EXHIBITS #1 and #2 respectively)

## **PERSPECTIVES ON KEY ENERGY AND TELECOMMUNICATIONS ISSUES**

**Bob Rowe, Chairman, Public Service Commission (PSC)**, presented a slide presentation of the PSC's perspective on key telecommunication and energy issues. (EXHIBIT #3)

Sen. Thomas asked how the \$55.2 million and \$10.9 million received by the state from the federal Universal Service Fund was being spent. Mr. Rowe said for example, InterBel Telephone Cooperative Inc. (InterBel) that serves Eureka is one of the highest-cost areas to provide phone service in the country, without which people would be unable to afford phone service. Funding for universal services keeps the rates lower. He suggested that the Committee monitor the universal service funds and actions.

Sen. Thomas asked if NorthWestern Energy's (NWE) use of annual trackers was part of its problem in natural gas commodity rates and if consumers' future natural gas bills will include the cost of gas used in the past. Mr. Rowe said yes, and that NWE has proposed going to a monthly tracker. He said that normally, the Consumer Counsel does not participate in the interim review process but, because of the size of the natural gas rate increase proposed by NWE, he asked the Consumer Counsel to file comments.

Sen. Ryan asked if there was corresponding growth in wind development along with the development of natural gas combustion turbines. Mr. Rowe said that NWE is showing progress in wind development and new wind resources will be coming on line in North Dakota. The standard discussion about wind is that it is a good resource but that it needs transmission access and firming.

Rep. Gallik asked about the status of the Consumer Counsel's recommendation to form a working group of stakeholders to discuss what can be done to stabilize and decrease the cost of natural gas prices over the long term. Mr. Rowe said that the Consumer Counsel made the recommendation for the formation of a working group to deal mainly with the NWE issues. However, it could be broadened to include other utilities. The working group would not deal with contractual issues but would focus on default supply portfolio issues, what the portfolio is trying to achieve, the appropriate balance of indexed-contracts and fixed-price contracts, and the duration of contracts.

Rep. Matthews commented on the importance of monthly trackers versus annual trackers. He said that after the natural gas spike in 2001, many Montana Dakota Utility (MDU) customers went to an average billing. Taking advantage of average billing decreased the volatility of gas prices.

Sen. Johnson asked for an explanation of the stipulated increase in CTC-Qualifying Facilities (CTC-QF) contracts in NWE's electricity rates. **Will Rosquist, Public Service Commission**, said that there was a stipulation resolving stranded cost issues with respect to the CTC-QF's and NWE. The stipulation has annual amounts that will be recovered related to the CTC-QF which are set for a period of 20 to 30 years; and in the first few years of the stipulated amounts, there are annual increases. Those increases level off and become stable after a period of 3 or 4 years. The 23-cent increase is for this year (2003), but he was uncertain whether the annual increases were equal each year. Sen. Johnson asked what the relationship was between the CTC-QF increase and the \$30 million sale credit. Mr. Rosquist said that customers' bills include an offset to the total bill because of the sale credit. The CTC-QF bill amount for a typical residential customer is \$1.63 and the residential sale credit is \$3.35. The sale credit will expire on July 1, 2003.

Rep. Gallik asked about the percentages of the default supply purchased through long-term contracts by NWE as they relate to electricity versus natural gas. Mr. Rowe said that NWE's portfolio related to electricity long-term contracts includes fixed-price contracts. The contracts for new resources coming on line will be for a much longer term. The natural gas long-term contracts tend to be indexed contracts. These contracts include the reopening period of when they may be adjusted according to the specified terms of the contracts. Long-term natural gas contracts are typically on a much shorter term. He added that a question asked at a previous PSC meeting was whether NWE should have been active earlier to secure replacement resources and did it adequately execute its portfolio plan once it was adopted. He felt that the proposed working group should review electric portfolios.

Sen. Johnson asked what percentage increase would consumers see beginning July 1, 2003, with the expiration of the \$30 million sale credit. Mr. Rowe said that the expiration of the \$30 million sale credit would result in an increase of \$3.35 per customer or roughly 16%.

Sen. Thomas asked if the PSC was going to take the lead in establishing a working group to deal with SJR #13 (energy efficiency study). Mr. Rowe said that the issue has not been discussed but that the PSC would do as the Legislature requested.

### **ELECTION OF OFFICERS**

Sen. Thomas **nominated** Sen. Johnson for Chairman while Rep. Fuchs nominated Rep. Olson.

Rep. Gallik requested that each nominee comment on the SJR #13 energy efficiency study and express their thoughts about how it would work in conjunction with the proposed working group recommended by the Consumer Counsel.

Following Sen. Johnson's and Rep. Olson's responses, the Committee was tied in its vote for Chairman on a 4 to 4 roll call vote with Senators Thomas, Johnson, Ryan, and Sen. Stonington (by proxy) voting for Sen. Johnson and Representatives Fuchs, Olson, Matthews, and Gallik voting for Rep. Olson. (EXHIBIT #4)

Following a brief recess, Rep Fuchs **nominated** Rep. Olson as Chairman and Sen. Stonington as Vice Chair. Motion passed unanimously on a roll call vote (Sen. Stonington by proxy). (EXHIBIT #5)

## **CONTINUATION OF PERSPECTIVES ON KEY ENERGY ISSUES**

**John Hines, Northwest Power Planning Council (NWPPC)**, provided a slide presentation on the NWPPC's perspective on the key energy issues for the interim. (EXHIBIT #6)

Rep. Fuchs requested additional information on Washington, Oregon, and Idaho's recent updates of their energy-efficient building code laws. Mr. Hines will provide the information.

**John Fitzpatrick, NorthWestern Energy (NWE)**, provided an overview of NWE's current financial condition. (EXHIBIT #7)

Sen. Johnson asked if, for example, NWE went into bankruptcy and the \$390 million in mortgage bonds had to be paid, what position would NWE be in. Mr. Fitzpatrick said the first mortgage, \$280 million, is on the company's utility assets in Montana, with another \$110 million on utility assets in South Dakota and Nebraska.

Rep. Fuchs asked what percentage or share of the transmission lines will be sold if necessary and what does NWE expect to gain from the sale. Mr. Fitzpatrick said that the sale is approximately \$97.1 million, but he was unsure of the share of the transmission lines.

Rep. Gallik asked how much does NWE need to receive from the sale of its assets and by when to avoid a reorganization. Mr. Fitzpatrick said that NWE would like to receive between \$400 million and \$600 million which would give it some flexibility in buying down overall debt. Because of the structure of the debt, not much is due in 2003 or 2004. However, the sale must be almost complete by the end of 2004 or bankruptcy is inevitable. If it turns out that the sale of NWE's assets does not generate that much cash, the 2004 date would be advanced quite substantially. The unknown is what Blue Dot and the other assets would bring at market.

Rep. Gallik asked what NWE's philosophy was in regard to long-term contracts for natural gas and electricity. Mr. Fitzpatrick said that on the electricity side, a long-term contract is viewed as a 5-year-or-longer contract. NWE's two current long-term contracts reach out to 2007. There are also 14 QF contracts that extend to 2030. In addition, there is the opportunity to sign contracts for longer terms particularly when there is a new facility being built and a developer is looking for a stream of income. NWE has proposals in, for example, for wind developers that talk about contract terms ranging from 10 to 20 years. A short-term contract on the electricity side is approximately 1 year. However, in 2002, 85% to 90% of NWE's electric load was hedged with long-term or fixed-price contracts because included in that was the 1-year contract with Duke. NWE was then going into the spot market and picking up the remaining 10% to 15%. By losing the Duke contract, the hedge drops down to 73%. Unless the Duke contract can be replaced, NWE will purchase more from the spot market.

Mr. Fitzpatrick said that on the natural gas side, long-term contracts for a fixed price were virtuously nonexistent. Last year, when NWE was putting together its portfolio for the remainder of 2000 and into 2003, it found suppliers that were willing to offer a fixed-fee contract for 8 months to 12 months. However, currently, NWE's fixed-price contracts run from 7 months to 41 months. Due to the national volatility of the natural gas market, and producers are reluctant to lock into long-term contracts at fixed prices because they realize that gas prices have a normal cyclical swing depending on weather conditions and drilling activity.

Rep. Gallik asked if the financial and credit statuses of NWE were factors for determining whether natural gas and electricity would have to be bought on the spot market versus long-term contracts. Mr. Fitzpatrick said yes, and the Duke contract is the best example. NWE wanted to renew and restructure the 1-year Duke contract, but was unable to because of its credit situation. Rep. Gallik asked if NWE would go to the spot market to purchase the megawatts that it would otherwise receive from the Duke contract. Mr. Fitzpatrick said that there is some opportunity for very short-term contracts or energy-purchase agreements to buy power for 10 to 30 days. NWE is doing that to the extent that it can find people who are willing to sell under those terms.

Rep. Gallik asked how much of the purchase load in natural gas has moved away from Montana Power because of the choices available to purchase natural gas. Mr. Fitzpatrick said that several years ago, the Montana Power system was purchasing and selling 40 billion cubic feet of natural gas. Currently, NWE is purchasing approximately 20 billion cubic feet. Approximately 50% is made up with other utilities that it serves on a transmission basis, for example, EnergyWest. He said that choice has been much more successful in terms of quantity of natural gas than is seen on the electricity side. Rep. Gallik asked if individuals move back to default supply regarding electricity, how long can they stay on it. Mr. Fitzpatrick said that currently, the length of time is one year. Under HB 509, individuals have a 1-time, in-or-out election.

Sen. Thomas asked if NWE's goal was to increase natural gas commodity rates to \$5.33 per dekatherm (dkt) up from \$3.37. Mr. Fitzpatrick said that if NWE was to receive the \$5.33 granted on a monthly tracker basis, it could be looked at as what NWE's initial number would be for July including the 45% increase that NWE is requesting. Sen. Thomas asked about the difference between how NWE was setting its natural gas rates compared to MDU. Mr. Fitzpatrick said that structurally, there is no difference. However, MDU has access to different gas supplies, namely the North Dakota, Colorado, and Wyoming areas, that NWE does not have access to resulting in big price differences in index costs. Sen. Thomas asked if any effort was being made by NWE to facilitate the eventual opening of the Powder River Basin to natural gas development. Mr. Fitzpatrick said not specifically but that NWE's principal focus has been on system improvements resulting in increased storage capacity and the repressurization of its gas supply pipelines to receive as much gas as possible from Wyoming and Colorado. Given its financial circumstances, NWE will not be investing in natural gas facility development.

Rep. Fuchs requested future updates on NWE's asset liquidations (i.e., the \$600 million to \$800 million to pay off NWE's debt) and the potential value of each asset. Mr. Fitzpatrick will provide the information.

#### **DRAFT WORK PLAN**

Ms. Vandenbosch provided an overview of the Committee's proposed meeting schedule; a synopsis of energy, telecommunications, and utility bills considered by the 2003 Legislature; and an overview of the Committee's draft work plan. (EXHIBITS #8, #9, and #10 respectively)

Rep. Gallik **moved** that the proposed interim committee meeting schedule be approved with the caveat that the dates could be changed. Motion passed unanimously.

Following a thorough discussion of the draft work plan, the Committee decided the following:

### **Administrative Rule Review**

- Committee members will receive copies of notices of proposed adoption of rules and will be responsible for notifying staff or the Chair if they want more information or Committee action; and
- The staff attorney will provide a synopsis of significant and controversial proposed rules.

### **SJR 13: Study Energy Efficiency and Conservation Practices**

- establishing a working group that includes members of the Consumer Counsel, the Public Service Commission, contractors, two members of the Economic Affairs Interim Committee (EAIC), and two members of the Energy and Telecommunications Interim Committee (ETIC). Rep. Gallik and Sen. Stonington were appointed to the working group. The working group will investigate and evaluate options for improving energy efficiency and conservation practices; and
- requested that staff research and prepare a white paper on the building code portion of the study, including the energy code updates established in Idaho, Washington, and Oregon.

Ms. Vandenbosch provided a letter from the EAIC requesting reciprocal communication between the Committee Chairs regarding topics of mutual interest. (EXHIBIT #11)

### **PUBLIC COMMENT**

**Patrick Judge, Montana Environmental Information Center (MEIC)** stated the following:

- MEIC supported SJR 13 during the 2003 Session, and it received strong bipartisan support in both the House and the Senate;
- Montana's energy codes lack strict enforcement;
- NWE's Default Supply Advisory Committee is developing an assessment of the conservation resources available within its system;
- MEIC encourages the Committee to work with NWE to receive its latest information and continue conversations with the NWPPC and the DEQ in the area of energy efficiency, particularly if there may be federal matching funds available from the federal Department of Energy or other sources;
- MEIC would be available to participate in the SJR 13 study and it sees a value in the consensus and collaborative, broader-stakeholder-base approach to the study;
- MEIC was a participant in a similar approach facilitated by the PSC in the development of the procurement guidelines for default supply and HB 509; and
- MEIC also sees value in the documents that interim committees have produced in the energy arena in the past, such as The Understanding Electricity Guide in Montana and The Electricity Law Handbook prepared by the EQC.

**David Ponder, Director, Montana Public Interest Research Group (MontPIRG)**, provided written comments on why greater energy efficiency would benefit Montana. (EXHIBIT #12)

**Pat Callbeck-Harper, Associate State Director, AARP Montana**, provided written suggestions for the Committee's work plan to mitigate the impacts of energy rates for senior citizens. (EXHIBIT #13)

**Chuck Evilsizer, Montana SkyNet**, stated the following:

- Under the Federal Telecommunications Act and the Federal Communication Commission (FCC) rules, it is clear that the \$55 million (universal service funds) is expressly and explicitly limited to basic telecommunication services, and it is illegal for the funds to be used for any other purpose;
- The improper use of the funds jeopardizes the \$55 million for Montana and also jeopardizes the low rates for basic services in the rural areas where the money is intended to go; and
- There will be a hearing in July before the Montana Supreme Court regarding whether it is illegal under existing Montana law for rural cooperatives to provide Internet service in Montana.

## **CONTINUATION OF WORK PLAN DISCUSSION**

### **Review Statutes Related to the ETIC**

- that staff review statutes related to the state's comprehensive energy, transportation, and alternative fuel policies under the auspices of the DEQ and the EQC and prepare a memo identifying areas that may be better addressed by ETIC or another entity (i.e, the DEQ, the EQC, or the EAIC).

### **Review Legislation Proposed by the DEQ or PSC**

- The Committee is statutorily required to review proposed legislation offered by the PSC or the Department of Public Service Regulation and recommend whether to request draft legislation for preintroduction.

### **Monitoring of Important Activities**

- monitor natural gas prices;
- monitor NWE's portfolio, conditions, finances, services, length of contracts, and costs, including any future planned expansions or contractions;
- monitor Pennsylvania Power and Light (PPL) and rural cooperative plans;
- monitor the telecommunications business, such as QWest; and
- monitor the electric tracker systems and its increased cost to consumers.

### **Evaluation of Issues or Programs and Development**

- review the allocation of the Universal System Benefits Program (USBP) funds with the emphasis on raising the 17% set aside for low income Montanans to a higher level through a subcommittee;
- review the USBP natural gas funds for low income Montanans;
- review the Low Income Energy Assistance Program (LIEAP) along with EnergyShare;
- review how a default supplier is chosen and whether NWE should continue to be the default provider;
- monitor, study, and prepare legislation to respond to NWE finances by reviewing the PSC authority in the default supply arena;
- review the purchase and distribution of electrical and natural gas power;
- receive an update on the \$1.2 billion federal Department of Energy grant for hydrogen-fuel cell development to see if anything can be done to lure the funds to Montana to develop Montana coal (solicit the help of the Governor's Office of Economic Opportunity); and
- review the continuing problems with electrical transmission.

**Pat Murdo, Research Analyst, Legislative Services Division**, said that the EAIC received a presentation from Dave Gibson, Governor's Office of Economic Opportunity, who stated that the \$1.2 billion grant will go to the state that lands the grant. She recommended that the ETIC write a joint letter with the EAIC in support of Mr. Gibson's grant application.

Sen. Johnson was appointed Chair of the USBP Subcommittee.

**Learning About Initiatives, Projects, and Technology**

- receive an update on the coal bed methane issue, possibly two times during the interim;
- receive periodic updates from the Department of Natural Resources and Conservation (DNRC) on the Otter Creek assets and development;
- receive updates from Great Northern Properties and the Bull Mountain project; and
- review other states' legislation regarding asset transferring in case their default suppliers go into bankruptcy.

**FUTURE AGENDA ITEMS**

- a report from the Governor's Office of Economic Opportunity related to hydrogen-fuel cell development; and
- reports from Steve Vick, Public Service Commission, on any issue that may be important to the Committee.

There being no further business, the meeting adjourned at 4:10 p.m.

CI2255 3190loxa.