



Energy and Telecommunications Interim Committee

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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
REBECCA SATTTLER, Secretary

MINUTES

September 16, 2003

Room 102, State Capitol
Helena, Montana

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 the document.** (The recorder was set on a tape speed of 2.4 for Side A of Tape 1 of this meeting, but was changed to 4.8 for the remainder.)

COMMITTEE MEMBERS PRESENT

SEN. ROYAL JOHNSON
SEN. EMILY STONINGTON

REP. DANIEL FUCHS
REP. GARY MATTHEWS
REP. ALAN OLSON
REP. DAVE GALLIK, arrived at 1:00 p.m.

COMMITTEE MEMBERS EXCUSED

SEN. DON RYAN
SEN. FRED THOMAS, Proxy vote, ATTACHMENT #1

STAFF PRESENT

MARY VANDENBOSCH, Research Analyst
TODD EVERTS, Staff Attorney
REBECCA SATTTLER, Secretary

AGENDA & VISITORS

Agenda, ATTACHMENT #2
Visitors' list, ATTACHMENT #3
Visitor's list for NW Energy Presentation, ATTACHMENT #4
SEN. JOHN ESP

COMMITTEE ACTION

- Adopted minutes from June 13, 2003 meeting.
- Adopted work plan with revisions (Exhibit 7).
- Confirmed next meeting date for November 20, 2003 in Helena, Montana.
- Decided to send an e-mail to the PSC requesting that they define their suggestions for future changes in statute.
- Decided to send a letter requesting the following information from the PSC, MCC, Attorney General, and Governor Martz by November 20: parties participating in the NorthWestern Bankruptcy proceeding and the capacity in which they are participating; the cost of participation in the bankruptcy proceeding; and the parties' plan to coordinate efforts in order to maximize efficiency and minimize counterproductive actions.
- Vote to focus on Options 1 and 11 (as contained in Exhibit 12) for default supply of energy, but not foreclose evaluation of other possible options later.

CALL TO ORDER AND ROLL CALL

The meeting was called to order at 8:10 a.m. by CHAIRMAN OLSON and the secretary went through the roll call (ATTACHMENT #5). SEN. STONINGTON was concerned with the amount of public notice given for the updated agenda. **Mary Vandebosch, Research Analyst**, explained the distribution of the agenda by e-mail the day before.

SEN. STONINGTON *moved* to adopt the minutes from the June 13, 2003 meeting. The motion carried by a unanimous voice vote of 5-0.

UPDATES

Governor's Energy Consumer Protection Task Force

John Hines, Task Force Chair, explained the Governor's priorities for the Task Force: 1) ensure low income utility affordability; 2) determine efficiency of rules and statutes; and 3) evaluate the status of the existing default supply system and determine any structural changes.

Mr. Hines explained that, in addressing priority #1, the Task Force found that the natural gas prices are of more concern than electricity. Over the heating season, an average customer's electric bill will rise about \$35, while an average customer's natural gas bill will rise \$230. The Task Force also looked at the low income needs and developed a "no net impact" standard, creating the goal that the low income customer would only pay the same amount as last year to cover utility costs. The difference that the State would have to cover is \$7.8 million. On the NorthWestern system, \$1.725 million is available through unallocated universal systems benefit (USB) program dollars. The Task Force recommended to the Governor that the USB dollars go toward low income funding. The Task Force formed a subcommittee to determine the best use for federal funds that may be available and three options were explored: 1) bill assistance; 2) weatherization programs; and 3) Energy Share. The subcommittee recommended that of the \$1.725 million, \$1.15 million should go toward option #1; \$262,000 for option #2; and \$312,000 should be allocated for option #3.

In addressing the other two priorities from the Governor, the Task Force formed a subcommittee to focus on structural issues, including the role and obligations of the default supply in the future. Mr. Hines explained that the subcommittee will also look into regulation issues. In the past, the stance has been more of a reactive role than proactive regarding regulation issues.

SEN. STONINGTON wondered what direction a consumer protection plan would take. Mr. Hines responded that there are two sides to cover: a short-term, emergency tool, and a plan to address long-term issues. He explained that a 120-day period is allowed after filing for bankruptcy before the long term plan needs to be in place, so there is more time to work on that.

SEN. STONINGTON asked if the Task Force is taking a role in the vulnerability of the USB funds and SEN. JOHNSON wondered if there are any rules set up to require the deposit of special account funds for USB. Mr. Hines stated that there has been no special account created; the funds have been co-mingled. SEN. JOHNSON inquired how long it has been known that the funds were not being deposited into a different account. Mr. Hines replied that it has only been one week. SEN. JOHNSON asked whose responsibility it is to ensure that the money is being allocated. Mr. Hines answered that it is statutorily defined that the Department of Revenue (DOR) ensure that the dollars are flowing in the right direction, but they are only reacting to the USB advisory program and the Public Service Commission (PSC).

Environmental Quality Council Alternative Energy Working Group

Todd Everts, Legislative Environmental Analyst, explained that the Group will be gathering information on biofuels and hydrogen technologies. He named the members of the Environmental Quality Council (EQC) working group and stated that they have scheduled a panel discussion on biodiesel for their October meeting.

REVIEW OF LEGAL ISSUES ASSOCIATED WITH BANKRUPTCY

Todd Everts, ETIC Staff Attorney, reviewed the memo he sent to the Committee regarding additional NorthWestern bankruptcy issues (EXHIBIT 1). He went over the three questions addressed in the memo, namely: 1) What could happen to qualifying facility contracts if NorthWestern files for bankruptcy?; 2) Is there anything that the Legislature can do to protect USB funds during a bankruptcy proceeding?; and 3) What is the State's role with respect to a bankruptcy restructuring plan in a NorthWestern bankruptcy proceeding?

SEN. STONINGTON asked what recourse an unsecured creditor has in maintaining their assets. Mr. Everts said that the bankruptcy court establishes the creditors' status. The creditors still have a vote, but the secured creditors remain the priority. REP. MATTHEWS had a question regarding the 15 qualifying contracts that NorthWestern has. Mr. Everts explained that the majority of the contracts are 35-year contracts. SEN. STONINGTON wondered how qualifying facilities were handled in other bankruptcy cases. Mr. Everts said that he has not found any information on that, but would research that issue. CHAIRMAN OLSON added that there is about a 15% success rate when a company files Chapter 11. He asked what would happen if the distribution company has to later file for Chapter 7 and liquify their assets. Mr. Everts explained that the distribution services provider would take on the default supply obligation. CHAIRMAN OLSON asked if the new default supplier has any obligation to take on

the contracts. Mr. Everts said that he would research that, but his assumption is that they would have that obligation. SEN. STONINGTON inquired if the State is a creditor, if they would have a say in USB funds. Mr. Everts replied that he thinks they would. SEN. STONINGTON asked if NorthWestern filed bankruptcy today and paid their due taxes tomorrow, would the State then be excluded as a creditor.

Mary Vandebosch added that other options are available for the Committee to look at in addressing USB funds, such as whether NorthWestern and the DOR are complying with current law. If not, if that should be addressed either by a change in practice or a tightening up of the law. SEN. JOHNSON asked how Oregon collected their USB funds. Todd Everts said it was through the utility billing. SEN. JOHNSON asked to whom that money goes. Bob Rowe, PSC, said that several entities receive the USB funds, but it is originally collected by the utility company. Todd Everts said there are two accounts set up if the utility has not expended its whole obligation in a given year; one is for DPHHS programs and the other is for DEQ conservation programs. Mary Vandebosch referred the Committee to the chart entitled, "2003 USB Budget Allocations by Category & Program" (EXHIBIT 2) to provide further clarification regarding the carryover of excess funds instead of depositing them into the accounts. SEN. JOHNSON pointed out that the policy set by the Department violated the statute, but Ms. Vandebosch added that the statute is vague.

REP. MATTHEWS had a question regarding the qualifying facility contracts and what the costs and status will be down the road. Bob Rowe said that they are long-term contracts and are the most costly contracts in the portfolio. He said the PSC is performing an inquiry into the issue. SEN. STONINGTON expressed concern that consumer protection have a strong voice in the filing, and inquired which entity is most appropriate to carry that voice. Mr. Rowe stated that the PSC has a strong standing for creditor interests, but the Montana Consumer Counsel has a unique role as a constitutional body. The Committee continued to discuss the intervention role of the various groups and the need for representation of all interests. It was agreed that they need to work together and avoid power struggles to ensure success.

ELECTRICITY AND GAS RATES STATEWIDE

Current Status and Prognosis

Bob Rowe, Chairman, Public Service Commission (PSC), went through a PowerPoint presentation (EXHIBIT 3), focusing mainly on pages 3-5 to update the Committee on rates. He went over those pages to explain the rates and trackers for gas and electricity. Mr. Rowe reminded the Committee of their invitation to attend the Montana Natural Gas Summit on September 17 and provided an agenda for the Summit (EXHIBIT 4). He concluded that the basic issue for the Legislature is the question of how much authority the PSC should have.

SEN. JOHNSON had a question regarding monthly trackers and the percentage of change having to do with the cost of the product versus usage. Mr. Rowe answered that the physical distribution assets are paid for separately; the trackers depend on the cost to purchase the energy. SEN. JOHNSON inquired if that percentage is added on to the raised price. Mr. Rowe said that the tracker is filed with the Commission, and they then approve those increases. REP. MATTHEWS asked regarding the contracts for future gas needs. Mr. Rowe responded that he will provide a memo that tracks exactly what NorthWestern is doing. The PSC requires NorthWestern to file biweekly gas storage reports and gas procurement plans. SEN. ESP

wondered about the forecast for natural gas prices. Mr. Rowe said that it is a very fluid market, but customers can expect rates to go down slightly in the future. SEN. ESP asked about this month's rate. John Fitzpatrick, NorthWestern Energy, stated that it is at \$4.50, which is a \$0.17 drop from last month's rate of \$4.67.

PSC OVERSIGHT OVER UTILITY TRANSACTIONS

SEN. STONINGTON asked how much of the PSC investigation of NorthWestern Energy is authorized by statute. Bob Rowe responded that the PSC's powers are limited; they have the power to set rates and deal with service issues, and have general power to investigate. He said that the recurring question is what authority PSC should have over the sales of utility property. Bob Nelson, Montana Consumer Counsel, added that the Commission has implied authority. He added that there are risks as well as advantages to specifically describing that authority. SEN. STONINGTON said that the law implies the authority to review, but wondered if it includes the authority to require remedies. Mr. Nelson affirmed that it does. SEN. JOHNSON inquired if any legislation was introduced last session that would have given the PSC the authority they are seeking. Mr. Rowe informed him that SB 234 was introduced by Sen. Cobb, but there was concern that the outcome of defining the authority could be detrimental.

REP. MATTHEWS asked if the PSC will work through the long-term contracts. Bob Rowe responded that the ability to enter into long-term electrical contracts is critical. He said they are concerned with making the right decisions for the customer and not just NorthWestern Energy when putting together the portfolio. CHAIRMAN OLSON asked how NorthWestern's rates historically compare to MDU and EnergyWest. Mr. Rowe answered that under the gas restructuring bill, the NorthWestern customers had stability compared to the other two companies. He said that the trackers are now done on a monthly basis, but in the past it had been done based on the annual market. CHAIRMAN OLSON asked if the NWE gas contracts were imprudent and Mr. Rowe responded that they were partially imprudent. CHAIRMAN OLSON inquired if preapproval statutory language is necessary for the gas utility, like for the electric utility. Mr. Rowe said it is not necessary; there is not a long lead time. CHAIRMAN OLSON and Mr. Rowe continued discussing the long-term gas contracts and the dilemma with the structure of the default supply. It was agreed that the goal is to create a healthy company and give NorthWestern guidelines by which to ensure that overall goal.

WORK PLAN

ETIC Budget

Mary Vandenbosch explained the budget as contained in EXHIBIT 5. She reminded the Committee that present expenses are only \$20 for this interim, since the June 2003 meeting came from allocations of the previous biennium.

SEN. STONINGTON wondered if there will be enough money to form an Energy Efficiency and Conservation Study subcommittee. CHAIRMAN OLSON stated that he feels the Committee can handle that issue as a whole and will not form a subcommittee.

Discussion of Any Proposed Revisions

Mary Vandenbosch addressed the memo regarding the draft work plan (EXHIBIT 6), the draft work plan (EXHIBIT 7), and the memo regarding updates on energy activities (EXHIBIT 8) to

explain the proposed changes to the work plan. The Committee discussed the options of possibly forming a subcommittee, working with the Governor's Task Force regarding building codes, and inviting Tom Eckman to address the Committee.

Adoption

SEN. JOHNSON ***moved*** to accept the suggestion contained on page 4 of Exhibit 7, to invite Tom Eckman from the Northwest Power and Conservation Council to make a presentation. The motion carried unanimously by a voice vote of 6-0, with SEN. THOMAS voting by proxy.

REP. FUCHS ***moved*** to adopt Task 1 of Exhibit 7 (Evaluation of issues or programs and development of findings or recommendations). Mary Vandebosch reminded the Committee of the suggested issues on page 2 of Exhibit 6 as a possible addition to Task 1b. REP. FUCHS ***moved*** to amend his original motion to include the recommendations for Task 1. The motion carried unanimously by voice vote 6-0, with SEN. THOMAS voting by proxy.

Without objection, the Committee returned to address Task 1c. SEN. STONINGTON referred to the article entitled, "Ring Fencing Mechanisms for Insulating a Utility in a Holding Company System" (EXHIBIT 9). CHAIRMAN OLSON stated that will be addressed in the November meeting. REP. FUCHS ***moved*** to accept Task 1 as voted on previously, with no objection.

REP. FUCHS ***moved*** to adopt Task 2 of Exhibit 7 (SJR 13: Study energy efficiency and conservation practices). REP. MATTHEWS asked if this eliminates the subcommittee. Mary Vandebosch said that the Committee needs to determine that, as explained on page 5 of Exhibit 7, and submit their proposal. REP. FUCHS ***moved*** to go without the subcommittee and accept Task 2 as written. The motion carried unanimously by a voice vote of 6-0, with SEN. THOMAS voting by proxy.

REP. FUCHS ***moved*** to adopt Task 3 of Exhibit 7 (Monitoring of important activities). Mary Vandebosch reminded the Committee that the italicized portion on page 5, Exhibit 7 is optional. REP. FUCHS ***moved*** to include the portion and make the Task the top priority. The motion carried unanimously by a voice vote of 6-0, with SEN. THOMAS voting by proxy.

REP. FUCHS ***moved*** to adopt Task 4 of Exhibit 7 (Learning about initiatives, projects, and technology). The motion carried unanimously by a voice vote of 6-0, with SEN. THOMAS voting by proxy.

REP. FUCHS ***moved*** to adopt Task 5 of Exhibit 7 (Review statutes and rules related to Energy and Telecommunications Interim Committee). The motion carried unanimously by a voice vote of 6-0, with SEN. THOMAS voting by proxy.

REP. FUCHS ***moved*** to adopt Task 6 of Exhibit 7 (Review legislation proposed by the Department or PSC). The motion carried unanimously by a voice vote of 6-0, with SEN. THOMAS voting by proxy.

REP. FUCHS ***moved*** to adopt Task 7 of Exhibit 7 (Administrative rule review). The motion carried unanimously by a voice vote of 6-0, with SEN. THOMAS voting by proxy.

Mary Vandebosch went over one more potential addition to the work plan, suggested on page

2 of Exhibit 6, regarding energy security. She referred to the National Conference of State Legislatures's list of recommendations regarding energy security (EXHIBIT 10). Ms. Vandebosch added that energy security includes the system's ability to withstand natural threats as well, such as earthquakes and fires, etc. SEN. JOHNSON asked if utility companies have insurance coverage for such occurrences. Ms. Vandebosch replied that she has not explored the topic yet, since it is still open to be adopted by the Committee. She agreed to provide updates to the Committee as an informational item; no action was taken regarding energy security.

Identify Agenda Items for Next Meeting

SEN. STONINGTON suggested that the question is utility oversight and that Mary Vandebosch needs direction from the Committee regarding that area. Ms. Vandebosch agreed that she needs to know what the Committee wants to do by the next meeting and the future steps to take. It was discussed and agreed that the Committee should send a letter to the PSC, asking them to define what authority they want in the statute. Ms. Vandebosch will send a draft by e-mail for the Committee members to review, and then she will send a final e-mail to the PSC. The Committee members also decided to seek public comment.

Confirm Date and Location of Next Meeting

CHAIRMAN OLSON confirmed that the next meeting will be held on November 20, 2003 in Helena. He said that he is tentatively planning to hold the June 3-4, 2004 meeting in Colstrip, Montana, and reminded the Committee of the opportunity to attend a PPL tour in Great Falls on September 20, 2003.

**REP. GALLIK joined the Committee and voted during the rest of the meeting.*

REVIEW OF SIGNIFICANT ADMINISTRATIVE RULES

Todd Everts, ETIC Staff Attorney, addressed the Committee regarding EXHIBIT 11, the "Status of PSC Administrative Rule Making Processes on 2003 Legislation". He focused primarily on HB 641 and SB 247. He explained that two informal roundtables have been held to discuss HB 641 and that the objector was the same party that objected during the 2003 legislative session.

DEFAULT SUPPLY OF ELECTRICITY

Overview of Options Paper

Mary Vandebosch extensively reviewed EXHIBIT 12, the memo regarding options for default supply of energy. She reminded the Committee that they are simply options, and not proposals for legislation. Ms. Vandebosch collected the options and questions to explore from the Committee members individually. Due to the bankruptcy filing, Option 3 (PSC orders the default supplier to sell its utility assets) is not as applicable now, but could be looked into for the long term. She also reminded the Committee of EXHIBIT 13, a letter from the Bonneville Power Administration (BPA) to Todd Everts, answering the seven questions posed by Mr. Everts.

Panel Discussion

- **Dave Wheelihan, Montana Electric Cooperatives' Association**, went through his written comments entitled, "Cooperative Utility Default Supply Provisions", included as

EXHIBIT 14.

- **Debbie Smith, Natural Resources Defense Council/Renewable Northwest Project (NRDC/RNP)**, noted that there were several workable options and stated that NRDC/RNP supports rewarding performance-based rate-making. She explained that three things are important to NRDC/RNP: 1) whomever the default supplier is, cost-effective demand-side measures need to be in the portfolio; 2) there must be a sound advanced approval process for wind power to be added to the portfolio; and 3) cost-effective energy efficiency and wind power should compliment above market renewable efficiency measures through universal systems benefit programs.
- **Don Quander, Large Customer Group**, said that the ability of large customers to participate in the default supply is limited. There have been two specifically who have plans to return to the default supply: Sunbelt and the League of Cities and Towns.
- **Bob Nelson, Consumer Counsel**, said that there are supply obligations and default supply obligations. He said that there are two main issues: utility business (mainly about heat/electricity in homes), and default supply obligations and issues. Mr. Nelson stated that he does not see the default supply obligation as being unfair or inequitable. He discussed option 11 and stated that the distribution company could be allowed to include a company-owned resource in the rate base on a cost-of-service basis. He noted that it will cost more to bring new resources into the rate base.
- **John Fitzpatrick, NorthWestern Energy**, stated that transmission and distribution issues are not the problem; the problem is supply. He said that there are two sides to supply: the physical structural supply, and the mechanics of the default supply process. He noted that the purpose of SB 390 was to provide customer choice and it took generation out of the rate base. Mr. Fitzpatrick explained that you can't get people to build power plants unless they are assured they can sell the power. The procurement process is problematic. He added that the advanced approval process established for procurement of electricity would not work for procurement of natural gas.
- **Bob Rowe, PSC Chairman**, stated that the Legislature, PSC, and stakeholders have done a tremendous job with development of an advanced approval process. He is interested in performance-based ratemaking but warned that the challenge is establishing a nexus between the incentive and the result. He also distributed his written memo (EXHIBIT 15) to the Committee regarding a discussion draft of "Options for Default Supply of Electricity".

Public Comment on Default Supply or on Matters within Committee's Jurisdiction

CHAIRMAN OLSON asked for public comment and no one stepped forward.

Committee Questions and Discussion

SEN. STONINGTON wondered about performance-based rate-making and its ability to keep costs down. Bob Rowe responded that everyone has the intention of working together, but the problem is that it's hard to move to that kind of a system. He believes it's worth it to try in Montana, however. John Fitzpatrick offered that it is a concept that NorthWestern is willing to entertain step-by-step. Mr. Rowe added that the PSC does have the authority to undertake performance-based rate-making. SEN. JOHNSON asked what full-cost recovery is involved, seeing that utility in Montana is making money. Mr. Rowe stated that a specific disallowance of part of the costs is proposed for recovery. The entire utility operation is making money, but only as a whole. Mr. Fitzpatrick added that they did not achieve full-cost recovery for gas contracts;

\$13 million is in dispute.

SEN. JOHNSON inquired about the differential when NorthWestern switched from annual trackers to monthly trackers. Mr. Fitzpatrick responded that the numbers were very close. Mr. Rowe stated that the numbers were very close, until summer, when an accounting issue was incorrect as to when the tracker started. Mr. Nelson affirmed that it was just an accounting issue. SEN. JOHNSON asked how the trackers have been doing since the first of July. Mr. Rowe said that month-to-month electric rates are more stable than gas is year-to-year. SEN. JOHNSON asked if the monthly tracker is better for cost recovery. Mr. Rowe answered that the monthly basis allows for a better matching of expenses, and reduces deferred account balances. Mr. Fitzpatrick said that an audited statement is prepared every three months. SEN. JOHNSON inquired as to where the surplus money goes. Mr. Fitzpatrick answered that the Corporation can take any net profits whenever it is deemed necessary.

REP. GALLIK asked if NorthWestern wants to remain the default supplier. Mr. Fitzpatrick responded that they are willing to look at alternatives, but they are happy performing that role. REP. GALLIK wondered if NorthWestern would sell its poles, wires and pipes, and Mr. Fitzpatrick answered that they would not. He explained that there are different mechanisms for supply, but that distribution remains a transportation function. REP. GALLIK asked why large customers can get better prices on the open market than a large company like NorthWestern. Mr. Fitzpatrick stated that many of them have long-term contracts that were signed before. Also, he said that some large companies are getting better prices, and some have worse contracts. REP. GALLIK and Mr. Fitzpatrick continued to discuss the investments made in nonutility subsidiaries that never performed financially; Mr. Fitzpatrick said that nonutility debt will go away with the bankruptcy and consumers will not be hurt. Mr. Rowe added that the going forward basis is now the concern, and that NorthWestern did the right thing in going into bankruptcy. REP. GALLIK asked if now is the time to launch into a new direction, and Mr. Rowe replied that a new direction with default supply doesn't respond to the most pressing concerns. He added that the time preceding bankruptcy was the riskiest.

Identification of Next Steps

The Committee members discussed the need to write a letter to the Governor's Office, the Attorney General, and the Montana Consumer Counsel (MCC) to specify who will be the leading attorneys in the bankruptcy proceeding and the cost involved. REP. FUCHS stated that this is important to send a message of the desires of the Committee to avoid a power struggle between the entities. SEN. STONINGTON added that there are many differing interveners with different issues, all needing a voice. It was discussed whether the State of Montana has a standing in court and Todd Everts informed them that it depends on the judge's determination of everyone's interests. John Hines added that the Administration is reviewing the potential status as a creditor, or at least as a party of interest. The Committee further explored the option to communicate with the various agencies for a cooperated effort. Mr. Hines and Mr. Rowe added that the agencies have been meeting over the summer; cooperation is their goal as well.

REP. FUCHS ***moved*** to send a letter requesting the following information from the PSC, MCC, Attorney General, and Governor Martz by November 20: parties participating in the North-Western Bankruptcy proceeding and the capacity in which they are participating; the cost of participation in the bankruptcy proceeding; and the parties' plan to coordinate efforts in order to

maximize efficiency and minimize counterproductive actions. The motion carried by a unanimous voice vote 7-0, with SEN. THOMAS voting by proxy.

SEN. STONINGTON ***moved*** to have the Committee look further into Options 1 and 11 of Exhibit 12 as possible future legislation. REP. GALLIK expressed his opposition to the motion, stating that the Committee should not limit itself to only a few issues, but should expand its scope. The Committee continued to support the more focused approach, stating that there is not enough time to cover all aspects of the industry. REP. GALLIK ***moved*** an amendment to consider Option 3 of Exhibit 12. The Committee informed him that it was not a pressing option due to the bankruptcy. The motion on the amendment failed 1-6 with REP. GALLIK voting aye and SEN. THOMAS voting no by proxy. SEN. STONINGTON restated her original motion, to focus initially on Options 1 and 11, but not foreclose on other options. The motion carried 6-1 with REP. GALLIK voting no and SEN. THOMAS voting aye by proxy.

CHAIRMAN OLSON brought attention to a letter from the Montana Democratic Legislative Leadership to the Committee (EXHIBIT 16) and encouraged them to read it. Bob Rowe provided the Committee with EXHIBIT 17, a memo regarding NWE natural gas storage monthly reporting since June, as promised earlier in the meeting.

ADJOURNMENT OF MEETING

CHAIRMAN OLSON closed the meeting and the Committee moved to Room 303 to participate in a joint meeting with the PSC and representatives from NorthWestern Corp.

JOINT BRIEFING FROM NORTHWESTERN CORP. REPRESENTATIVES, Rm. 303, Capitol

Gary Drook, President and CEO, NorthWestern Corporation (NWC), went through a PowerPoint presentation (EXHIBIT 18) to provide background and further information regarding their recent filing for Chapter 11 bankruptcy.

REP. GALLIK asked why NWC didn't separate USB and Montana utilities on the first day motions. Gary Drook explained that it is all one company under the Corporation so separation was not possible. Mike Hanson, NWC, explained further concerning the USB funds. REP. GALLIK asked if NWC wants to be the default supplier or if they would sell their poles and wires. Mr. Drook stated that the creditors own the poles and wires and NWC didn't propose selling them. Mike Hanson agreed that NWC has no intention of selling their assets. REP. OLSON inquired if the default supply is a statutory obligation, and if USB funds are statutory. Mr. Drook answered affirmatively to both questions and added that they are not allowed to make a profit on the default supply.

Bob Rowe wondered if bankruptcy gives NWC the chance to get out of inter-connection agreements. Mr. Hanson said that the contracts will continue, but they will review the contracts and reform or reject them if needed. Mr. Rowe asked what proceedings are stayed and Mr. Drook replied that by law, all are stayed. Mr. Rowe asked for an estimate of money being spent on the bankruptcy. Mr. Drook estimated \$5 million a month is being spent on attorneys and advisors. In response to the question of why NWC did not include Expanets and Blue Dot in the bankruptcy, Mr. Drook explained that it will be a lot quicker and easier to just get rid of the two companies, get the cash, and move on.

SEN. STONINGTON inquired what is included in the continuation of “ordinary business to be conducted.” Gary Drook answered that generally in bankruptcy circumstances, a company is allowed to pay their overdue taxes over a six-year period, but NWC wants to pay them now and continue paying future taxes on a current basis. Mr. Hanson added that “not ordinary course expenses” include the cost of the attorneys and advisors; the court has to approve any future sales and purchases during the bankruptcy period. PSC Commissioner Stovall asked if NWC is procuring power for their default supply or entering long-term contracts. Mike Hanson stated that they are able to, but investors did not willingly enter contracts before the bankruptcy status. He added that they are working on their portfolio to solve the long-term energy needs. Commissioner Stovall inquired if NWC has the authority to execute a contract. Mr. Drook responded that if they do not, the court would approve it. A Commissioner noted that long-term contract funds come from ratepayers, and Mr. Drook stated that NWC would perform the billing and collecting function.

REP. OLSON asked if NWC would open the schedule for a transmission grid and Mr. Hanson replied that necessary function has to continue. Commissioner Brainard noted that the discussion is close to touching on SB 390, and asked if there is an opportunity to create competition instead of stifling it. Mr. Drook answered that the company needs to take advantage of the situation to build a good basis for the future, and Mr. Hanson responded that they are open to the possibility of allowing competition.

Commissioner Schneider wondered what remains under the corporate level of NWC. Mr. Drook noted that it is not really a company, but an entity for accounting purposes. It does include all utility operations in Montana, South Dakota, and Nebraska. Another Commissioner asked how the expenditure of \$144 million in capital debt lies within bankruptcy. Mr. Hanson responded that it is a credit line used for general company expenses. The proceeds of the first mortgage bonds will be used to pay it off, and any unsecured debt below that will be restructured. The Commissioner further questioned how the secured first mortgage bonds are going to recover the portion spent on nonutility expenses. Mr. Drook answered that the money can't be pinned to one specific place. A Commissioner noted his pleasure with the tone of NWC and their efforts to work together. Mr. Drook said that they are indeed trying to “walk the talk” and do the right thing. The Commissioner was concerned with the minimal mention of a regulatory role by NWC in their press releases, and Mr. Drook apologized for not recognizing the role of the PSC in greater portion.

SEN. STONINGTON inquired about the importance of the ability to purchase generation and include it in the rate base. Mr. Drook stated that might be an option and Mr. Hanson added that could be an approach to stabilize the market. REP. GALLIK asked NWC how they would respond to a proposal to provide them with the value of the poles and pipes so NWC could get out of the responsibility of being the default supplier. NWC could then “reign in and focus on the basics.” Mr. Drook answered that the assets are not for sale; they don't want to sell off the company in pieces. Mr. Hanson added that the sale of the poles and wires would not address the fundamental issue. SEN. ESP inserted that the key is to work together and not focus on who will get the credit for fixing the problem.

Mr. Rowe asked about the effect of the bankruptcy on ratepayers. Mr. Drook responded that rates will remain unaffected; the burden fell on the shareholders. Mr. Rowe inquired if a cost of service is included in the bankruptcy. Mr. Drook answered that if it is not, it will be quickly done.

Mr. Rowe stated that they are simply looking for safeguards for future spending.

ADJOURNMENT

CHAIRMAN OLSON adjourned the meeting at 5:18 p.m. The next meeting is scheduled for Thursday, November 20, 2003.

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