

**MINUTES**  
of the  
**LEGISLATIVE CONSUMER COMMITTEE**  
September 14, 2005  
State Capitol, Room 172, Helena, MT

**COMMITTEE MEMBERS PRESENT**

Senator Sam Kitzenberg, Chairman  
Representative George Groesbeck, Vice Chairman  
Representative Walter McNutt  
Senator Ken Toole

**STAFF PRESENT**

Robert A. Nelson, Consumer Counsel  
Larry Nordell, Economist  
Mandi Shulund, Secretary

**VISITORS PRESENT**

Cheryl Gillespie, Qwest  
John Fitzpatrick, NorthWestern Energy

**CALL TO ORDER**

The meeting was called to order by Representative McNutt.

**MINUTES OF THE PREVIOUS MEETING**

**MOTION:** Senator Toole moved approval of the minutes of the May 25, 2005 meeting.

**VOTE:** The motion passed unanimously.

**SELECTION OF CHAIR AND VICE CHAIR**

Representative McNutt opened nominations for Chair of the committee. Senator Toole made a motion suggesting that Representative McNutt serve as Chair for one year and Senator Toole serve as Chair the following year. A roll call vote was taken, which resulted in a tie:

Senator Kitzenberg – Yes

Representative McNutt – No

Representative Groesbeck – No

Senator Toole – Yes

Senator Toole asked for discussion on the rationale of Representative McNutt's role as Chair, given that this is the only committee that he is aware of that has a house member convening the meetings. Senator Toole understands the uniqueness of the situation with Representative McNutt recently changing houses, but is curious about the authority that brings the chairmanship with him. Representative McNutt responded that to his knowledge, this is a statutory committee and the statute simply says the committee will elect a chair and vice chair, with no precedent or rules determining protocol or order. Representative McNutt added that he is a senior member on the committee, having served since 1997. Senator Toole nominated Senator Kitzenberg as Chair and Representative Groesbeck nominated Representative McNutt as Chair, stating that he would be the best choice given his experience. There were no further nominations and a role call vote was taken, resulting in a tie.

Senator Kitzenberg – Senator Kitzenberg

Representative Groesbeck – Representative McNutt

Representative McNutt – Representative McNutt

Senator Toole – Senator Kitzenberg

The committee took a recess. Representative McNutt called the meeting back to order and re-opened the nominations.

MOTION: Senator Toole moved to nominate Senator Kitzenberg as Chair.

VOTE: The motion passed unanimously.

MOTION: Representative McNutt moved to nominate Representative Groesbeck as Vice-Chair.

VOTE: The motion passed unanimously.

**BOB NELSON PROVIDED THE FOLLOWING HIGHLIGHTS OF CASES CURRENTLY PENDING:**

## **PacifiCorp**

### D97.7.91 - PacifiCorp Restructuring Plan & Cause No. ADV 2004-955:

This proceeding arose from a similar restructuring plan filing that resulted in the restructuring of Montana Power Company (MPC). The primary difference was that MPC sold its generation and PacifiCorp sold its distribution and transmission system, retaining its generation because it seemed more valuable to them. MCC did not see the issue of stranded costs being resolved by the PacifiCorp sale, and it was not resolved for quite some time. The Public Service Commission (PSC) did not want to issue determinations on questions in the PacifiCorp case that might affect the MPC proceeding. PacifiCorp owned distribution in the Flathead Valley. They sold their distribution system to an Electric Cooperative, which then kept some of the PacifiCorp assets in a separate subsidiary regulated by the PSC. A few years later the subsidiary was rolled into Coop operations, which made it difficult to determine how any refunds from the PacifiCorp case would be directed. In the MPC case, MCC ultimately figured net stranded costs of several hundred million dollars of benefits related to generation. The ultimate net cost was due to the Qualifying Facilities (QF) situation, which did not exist with PacifiCorp. When MCC reviewed PacifiCorp's stranded costs, the net figured to be positive, and MCC determined there were stranded benefits. However, PacifiCorp and the PSC felt that even if the net calculation was positive, and charges could only be levied against the customers, and the legislature fashioned no remedy to return that money to the ratepayers, which MCC felt was incorrect due to history before the Restructuring Act. Mary is arguing this case in district court today and MCC has argued that up to \$60 million is owed to the ratepayers. Senator Toole asked what the exact argument was by the PSC. Bob felt that the primary thrust of their argument is that there is a possessive form of public utilities transition charges that they say is property belonging to the public utility. MCC's response to that is the possessive is used in the genitive case and should be viewed as stranded costs arising from the public utility but is not

actually possessed by the public utility. Representative McNutt congratulated staff for going forward on this important issue.

### **NorthWestern Energy**

D2004.6.90/D2003.6.77 - Annual Electric Default Supply Trackers: These cases were suspended due to the bankruptcy proceedings, so a few years' cases are pending. A stipulation was filed, resulting in a one-time transfer of money for low-income purposes last winter. On 5/27/05 Dr. John Wilson filed testimony on MCC's behalf, with his primary issue being what should be done with QF replacement power, which is an issue that came out of the restructuring docket. Because of the stranded cost calculation there was a large component that was a cost related to QF projects. When MCC calculated the transition charge, a large part of the calculation was that costs associated with QF's were removed from the NWE generation cost obligations and put into Competitive Transition Charges (CTC's), which appear separately on ratepayer bills. This resulted in QF costs being written down to about \$32.75 per megawatt and the rest was put into CTC's. The volumes associated with the \$32.75 cost now appear in the trackers. On 5/31/05 a stipulation was filed that established a protocol for pricing replacement power in the future, basically resulting in using an average mid-C base load price during the tracking period so there will be no ability to game that system. The stipulation also provided that NWE would proceed with the original Colstrip 4 power acquisition as quickly as they could. Demand Side Management (DSM) was another issue addressed by Dr. Wilson. He recommended approval of NWE's proposal to recover direct DSM expenditures through the tracking mechanism instead of through the base rate cases. NWE proposed that as it acquires DSM, the effect on their revenues relates to transmission and distribution and not to power costs. This has been discussed at the PSC for the past 10 years because at that time, MPC proposed a decoupling mechanism to perhaps deal with the lost revenue issue. Ultimately a consensus was reached and a stipulation filed, with the PSC approving a decoupling mechanism that MCC felt was fair. After the first year of tracking these costs, MPC had to make

a filing to adjust its rates. The filing showed a reduction because they had received more growth in revenues or reduction in expenses than they had reduction in revenues related to DSM. MPC then unilaterally withdrew from the decoupling mechanism and has not supported it since then until this docket, in which they filed a modified request for just the lost revenue associated with that one piece. Dr. Wilson opposed this in his testimony due to it being a one sided adjustment. MCC typically opposes single-issue items because it is best to be able to match all expenses and revenues. Bob said there are several interest groups focused specifically on conservation and renewable resources and are highly interested and motivated in looking at NWE to identify what constitutes cost effective DSM. MCC is involved in the Technical Advisory Committee, which often addresses DSM. Although MCC supports cost effective DSM as a resource, there is the concern of paying more than necessary and the utility over earning. There has been a long running issue of expensing or capitalizing and then amortizing conservation expenditures, which Bob felt had been settled years ago, but AARP raised the issue again recently. Dr. Wilson stated in his testimony that the correct and historically applied regulatory treatment is capitalization and amortization of that investment over the useful life of it. The PSC basically had gone to expensing, so Bob expects that in this case. MCC only addressed this issue because the PSC asked for comments and coincidentally, AARP did not address the issue in their testimony. A hearing has been held and this case is currently in the briefing phase.

D2005.5.88 - Annual Electric Default Supply Tracker: This true-up was filed on 6/17/05 and proposed a small decrease related to current costs. Bob understands this filing will be amended, so it is unclear right now how the filing will actually turn out. The discovery phase of the case is underway.

D2005.5.87 - Annual Gas Tracker: NWE initially proposed a small increase in gas costs but submitted a revised filing, showing gas costs of \$7.92 that resulted in an overall increase of about 27%, which the PSC approved in an Interim Order. The discovery phase of this case is currently underway. Because of the Interim Order, the current commodity rate for NWE is \$11.05/Dkt. Senator Kitzenberg stated that

this issue has raised considerable comment in his area, partly because there are many gas wells in the Saco area, and he asked Bob what the committee could do to stop this increase. Bob said that MCC is currently reviewing all of the information, including proprietary price information, each source of natural gas prices and volumes, and how much NWE is paying each source. If MCC knew of cheaper sources of supply, everything possible would be done to have NWE acquire them. Also, if NWE did not acquire them at the cheapest source that they knew of and got caught doing so, they would have a large penalty to pay, so there is a very powerful incentive for them to find and use the cheapest source possible. Senator Toole added that the increase is a function of the market and other places are being hit much harder than Montana and despite gas storage and reserve, there are no quick-term fixes to increasing gas prices. Bob stated that MCC is exploring other issues, such as hedging practices. Senator Toole asked if there were disallowances of cost on the hedging issue, and it seemed to him that a few years ago some controversy arose around the gas costs that NWE presented, with them arguing that they had not managed term contract issues well. Bob agreed with Senator Toole and added that George Donkin did not recommend a disallowance at that point because he did not think it would be reasonable or sustainable. Senator Toole asked Bob if MPC had the capability to dip into storage reserves before they sold them and if so, how is that situation handled now. Bob said that the storage facilities and reserves were not sold and they are still an integral part of the NWE operation, so they still have the ability to try and hedge the market through storage. A few years ago the PSC put a reporting system into place due to concern that NWE would not keep adequate reserves in storage. Senator Kitzenberg asked if this case also applied to Montana-Dakota Utilities (MDU). Bob said that the same principals apply, but this case itself applied only to NWE and that MDU has its own annual tracker reviews. Senator Kitzenberg asked Bob what could be done to get more gas wells drilled. Bob said that MDU and NWE view themselves as transmission and distribution utilities so they rely on others to drill wells. Senator Kitzenberg recommended that Bob call Representative Stahl of Saco to discuss the availability of gas in that area, and Bob agreed to do so.

N2005.6.101 - NWE Application for Approval of Natural Gas Procurement Plan:

This filing is the result of a stipulation filed in a previous annual tracker. The plan proposes consideration of risk mitigation and hedging to address price volatility. This has been discussed for quite some time with not much activity, due to NWE not wanting to take the regulatory risk of engaging in this without assurances that they will recover their costs. MCC is also currently reviewing a separate proceeding on the related issues of gas procurement strategies.

Gas CTC True-Up: Competitive Transition Charges (CTC) relating to gas stranded costs are reviewed and adjusted on a semi-annual basis. The current review involves core CTC charges reduced from \$0.362 to \$.324/dkt.

D2005.6.106 - Investigation of Universal System Benefits: The PSC issued a Notice of Investigation regarding the allocation of both electric and gas USB funds. MCC recently filed testimony, and a summary was provided to the committee. The gas surcharge is .42% of current revenues and the electric surcharge is 2.4% of 1995 revenues. As part of a past stipulation, there was a redirection of roughly \$650,000 of conservation and renewables into low-income bill assistance, which allowed an increase in the low-income discount from 15% to 25% for the 2004-05 heating season. MCC hopes that the PSC will do everything necessary to maintain the 25% discount. In addition to the \$650,000, MCC calculated that another \$450,000 would be needed to maintain the 25% discount. Senator Toole asked where MCC felt the discount should come from, and Bob said that the PSC should make that determination with the priority being to maintain the 25% discount. Representative McNutt asked Bob how long-term the 25% would be. Bob said that it should be treated as a permanent change, subject to review every annual tracker, and the PSC could re-allocate if gas prices eased considerably. Senator Toole noted he was very involved with attempts to do something about USB, whether it be to have a track on current bills rather than from 1995, change rates, or bring up the gas contributions, with all of these recommendations being politically stymied in the legislature. Senator Toole said that there are consequences from taking funds away from these investments that yield long-term benefits and moving them to one-time emergency

relief. He would like to keep this from happening in the future by setting aside an emergency fund. Senator Toole feels that this needs to be dealt with as a tax and a social service levied on everyone, not just NWE consumers. Larry Nordell added that NWE has invested around 150 or more decentralized renewable installations, most being net metered and following USB Advisory Committee guidelines. Senator Toole said he was interested to see environmental impacts in the analysis of cost effectiveness and wondered if there is a factor in determining risk and cost of a resource in relation to environmental impact. Larry said the guidelines focus only on environmental impact and not on internal cost effectiveness. Senator Toole asked for clarification of a problem a few years ago with a large piece of renewable money not being spent. Bob said that on a one-time basis there was a wind project that had not been started and during the heating season before last there was a one-time redirection of about \$500,000. Senator Toole said he would prefer to see money come from electric renewables into gas conservation, if possible. Bob said the PSC has allowed the mixing of the electric and gas programs and that NWE itself has started to focus more on gas DSM, recently giving a presentation to the PSC.

N2005.6.96 - NWE Petition for Amendment of Protective Order Rules: This petition was filed on 6/6/05, which the PSC denied due to concern about due process issues surrounding the attempts to prevent parties in a case from having access to the information needed to fully participate.

D2003.7.86, D2004.6.96, D2005.6.103 - 2003, 2004, 2005 Avoided Cost Compliance Filing, Schedules QFLT-1 and STPP-1: These are annual filings where QF suppliers are paid according to updated prices. The long-term contracts are based on certain escalation clauses, so they do have this issue in front of the PSC, but there are also short-term QF rates available eventually to QF developers. MCC has tried to link those to the bidding process and due to the QF settlement, MCC's interest in the QF area is not quite as high as a few years ago. NWE filed a motion to suspend consideration of prospective QF power purchases because the Energy Policy Act amended the section of PURPA that required utilities to purchase QF power. There is a provision in state law that provides that if the Federal Government

repeals that section of PURPA that the state MINI-PURPA laws are also repealed. However, the Energy Policy Act did not actually repeal that section, it just amended it and so the obligation to purchase from the QF is removed if, in effect, there is open access to a market for that QF and if there is transmission access. This then becomes a factual issue needing to be dealt with and FERC has a certain period of time to adopt rules pertaining to this section. NWE has asked the PSC to suspend these proceedings, pending the FERC proceeding. That motion has been opposed and is currently before the PSC.

ER99-3491, EL05-125 - Triennial Market-Based Rate Update: This issue relates to PPLM but is important for NWE because a large portion of NEW bills is, in effect, a PPLM charge. Quite a few years ago, many people tried to figure out what could be done about what PPLM was asking for power that had been sold to them. FERC still has jurisdiction over PPLM, but FERC basically declined to exercise active rate setting because they believed that there was a market and they allowed market price tariffs for PPLM. This seemed to be the most fruitful area to attack the problem. When FERC grants market power authority, they require three-year reviews to ensure there still is a basis for market-based rates. MCC began intervening and objecting to the reviews, claiming that PPLM had market power and should not retain their market-based rate authority. Market-based rate authority became a national issue, and FERC basically held all of its market power issues in abeyance while going through a generic proceeding on market power issues. FERC eventually adopted revised market power screens and finally issued an order basically agreeing with MCC's position. The PSC also agreed and supportive comments were filed by NWE and a member of the Washington State Commission Staff. PPLM was given 60 days to respond to the FERC order and had three options. PPLM could continue to contest MCC's allegations, file a mitigation proposal, or a related third option would be to adopt default cost based rates, which would look like the cost based rates the PSC used to set for MPC. Senator Toole asked if the rate of return would be the same as in Montana on cost based rates and if any retroactivity would be involved. Bob said that FERC has typically allowed more generous rates of return, at

times 100-200 basis points higher than what the PSC might allow, but the impact would be relatively small. All they have been charging is technically subject to refund from roughly the beginning of September. After PPLM's 60-day deadline is over, MCC will have 30 days to respond. Bob feels that FERC is going to treat this as a paper hearing and currently has it on the fast track. Bob said that FERC is very market oriented and a concern is FERC's reluctance to stray from that. MCC has argued the unique circumstances of Montana's market and Bob feels that they seemed to have accepted that. Senator Toole added congratulations to Bob on the FERC decision.

### **Montana Dakota Utilities**

D2005.5.78 - Monthly Gas Cost Tracker: The July monthly tracker filed 6/10/05 resulted in a decrease of \$1.15/dk showing current gas costs of \$7.89/dk (includes an out-of-cycle reduction of \$0.50/dk for next ten months to return \$5.024M related to WBIP refund in RP00-107); The August monthly tracker filed 7/11/05 resulted in an increase of \$0.71/dk showing current gas costs of \$8.59/dk; The October monthly tracker filed 9/9/05 resulted in an increase of \$1.86/dk showing current gas costs of \$10.45/dk.

### **Energy West**

D2004.3.46 - Application for General Rate Increase: MCC and EWM filed a stipulation on revenue requirement that reduced their request by over half. The PSC refused to waive cost allocation filing rules, so EWM filed a cost allocation study, basically proposing an equal percentage increase to all but their negotiated contract customers. George Donkin reviewed this filing for MCC and agreed with an equal percentage increase, except he would have included more contract customers and only would have excluded Malmstrom and Montana Refining. Malmstrom became active at this point and were advocating for a reduction in rates allocated to them. MCC entered into a stipulation with Malmstrom and EWM agreeing to a fixed reduction for Malmstrom and to a small increase for the residential service charge.

The stipulation also fixed the amount of revenues collected from residential customers so they would be no worse off than if there had been no rate reduction to Malmstrom. The PSC issued an order at the end of August approving the stipulation.

D2004.8.113 - EWM Monthly Gas Tracker: The July monthly tracker filed 6/8/05 resulted in a residential rate increase to \$8.41/Mcf; The August monthly tracker filed 7/8/05 resulted in a residential rate increase to \$8.76/Mcf; The September monthly tracker filed 8/26/05 resulted in a residential rate increase to \$9.82Mcf; The October monthly tracker filed 9/12/05 resulted in a residential rate increase to \$12.20/Mcf.

### **City of Great Falls**

D2005.7.110 - Application to Operate a Limited Electricity Supply Program: Great Falls is currently licensed by the PSC to supply electricity, but have only provided electricity to themselves. They are currently researching expanding that program by adding smaller customers. MCC has reviewed their filing, because of concern with possible double collections of transmission charges.

### **Cut Bank Gas Company**

D2004.3.47 - General Rate Increase: This general rate increase filing requested an increase of \$55,000. Frank Buckley filed testimony on MCC's behalf recommending based on their cost information, a \$100,000 decrease based on tax adjustments and a different return on equity. MCC supported CBG in asking the PSC for the opportunity to file supplemental testimony, which the PSC granted. This case will be on hold until additional testimony is filed and another discovery phase is complete.

### **Mountain Water**

D2005.4.49 - Application to Increase Water Rates: This filing requested a 10% increase in rates. MCC and MWC filed a stipulation proposing a reduction by half,

part of the difference being recommendations in return on equity. The City of Missoula is still involved in this case, contesting the allocation of costs to fire protection. MCC agreed to a separate implementation of an interim and final amount of \$836,000, which the PSC recently approved.

## **Rules**

N2005.8.124 - Renewable Energy Rules: SB415, passed during last session, required the PSC to adopt rules by 6/1/06 in the areas of renewable energy credit tracking system, system for certifying eligible renewable resources, process for granting waivers, advanced approval process, and requirements for renewable energy procurement plans and reports. MCC filed comments on 9/23/05.

## **LARRY NORDELL PROVIDED THE FOLLOWING UPDATE ON GRID WEST:**

GridWest has been proceeding with much activity. Decision Point 2 is approaching, which is the point to determine whether to seat a developmental board and to bring people in with independent authority to proceed with GridWest development. BPA is a critical player in GridWest formation because of the amount of transmission they have and they have asked for comments on whether they should proceed with Decision Point 2 or choose some other option, such as the transmission improvement group, which is an alternative that has been presented. MCC filed comments with BPA, suggesting they proceed with Decision Point 2 because if they do not, MCC feels it could be the end of GridWest. Also, MCC feels that BPA could proceed with Decision Point 2 and will still have Decision Point Three and Decision Point Four to ultimately decide whether to commit to GridWest. The effort to form GridWest has been long and contentious, and a key part of the hold up is the Washington state publicly owned utilities, mainly BPA customers, objecting to anything that would mean BPA turning over operation of its transmission system to an independent party. The long-term possible changes of the GridWest proposal are ones that the Washington Publics are leery of, so they are strongly opposed to

giving up their ability to control the future evolution of the organization. BPA recognized this as having potential for bringing much political protest pressure down on them so they usually avoid making decisions in situations like this, but have asked for comments. In the mean time, BPA has convened a small group to try and develop a third proposal. MCC is somewhat skeptical of any alternative proposals and there is consensus that the way the Grid is currently managed needs to be improved, with the GridWest proposal a viable way to do that. Any current progress now hinges on BPA's decision.

### **MARY WRIGHT PROVIDED THE FOLLOWING HIGHLIGHTS OF TELECOM CASES CURRENTLY PENDING:**

#### **Extended Area Service**

D2003.12.170 - Western Montana Local Calling Coalition: The utilities involved in this case submitted a stipulation to the PSC that created a more modest local calling area, basically to include the Indian Reservation in the Flathead area exchanges. The telecommunication providers involved filed their rate design proposals, some offering options for customers who might not want to participate. MCC has supported this direction ever since there has been interest in EAS expansion.

### **FINANCIAL REPORT**

Two financial reports were presented to the committee. One report only showed one month of activity for the current fiscal year, and the other report showed final activity for fiscal year 2005. In fiscal year 2005, 99% of personal services and 97% of contracted services was spent. The contingency fund was not utilized. The remaining operating categories equal less than 8% of the total budget, and 80% of that portion was spent. Overall, 97% of the base budget was spent. Any money not spent is carried over into the current year and deducted from the appropriation, with the difference being collected through the tax. The tax rate for most of fiscal year

2005 was .13%, but effective 10/1/05 will change to .07%, the rate going down due to reimbursement for our bankruptcy work from NWE and we did not use the contingency fund.

### **PAY PLAN IMPLEMENTATION**

Because of MCC's exempt status as a legislative agency, the pay plan changes do not automatically apply, but MCC is granted appropriation for implementation of the pay plan, which was 3.5% in FY06 and 4% in FY 07, so there is money in the budget. Bob recommended approval of the pay plan increases that were applied generally to state employees.

**MOTION:** Representative McNutt moved approval of the 3.5% and 4% pay plan increases.

**VOTE:** The motion passed unanimously.

### **HIRING OF EXPERT WITNESSES**

**MOTION:** Representative McNutt moved approval to hire the services of the following expert witnesses:

ER05-968-000 - Basin Creek FERC filing: John Coyle

D2004.5.84 - PSC Inquiry Regarding Intercarrier Compensation: Allen Buckalew

D2005.5.87 - NWE Gas Tracker: George Donkin

D2005.5.88 - NWE Electric Tracker: John Wilson

D2005.4.49 - Mountain Water Rate Case (Cost of Capital): John Wilson

**VOTE:** The motion passed unanimously.

### **Public Comments**

Based on HB94 requirements, a public comment period was offered, but none was given.

**Adjournment**

There being no further business to come before the committee, the meeting adjourned.

Respectfully submitted,  
\_\_\_\_\_, Robert Nelson, Consumer Counsel

Accepted by the Committee this \_\_\_\_ day of \_\_\_\_\_, 2006  
\_\_\_\_\_, Chairman