

MINUTES
of the
LEGISLATIVE CONSUMER COMMITTEE
August 27, 2018
State Capitol, Room 102, Helena, Montana

COMMITTEE MEMBERS PRESENT

Representative Mike Cuffe – Chair
Senator Sue Malek – Vice Chair
Representative Andrea Olsen

COMMITTEE MEMBERS EXCUSED

Senator Jennifer Fielder

MONTANA CONSUMER COUNSEL STAFF PRESENT

Robert A. Nelson, Consumer Counsel
Jason Brown, Staff Attorney
Paul Schulz, Rate Analyst
Jaime Stamatson, Economist
Suzanne Snow, Secretary

VISITORS PRESENT

Mark Reller – Government Liaison for Bonneville Power Administration
Joe Stimatz, NorthWestern Energy
Casey Johnston, NorthWestern Energy
Dawn Wrigg - Rudd & Co., PLLC CPAs
Katie Guenther, Legislative Fiscal Division
Mark Schoenfeld – Montana Department of Revenue
Carla Abrams - 350 Montana
Patty Ames – Ratepayer
Brian Fadie – MT Environmental Information Center
Tom Green – 350 Montana/Sierra Club
David Merrill – Ratepayer/Sierra Club
James Roach – NWE Customer
Jeff Smith – 350 Montana
Brad Stacey – 350 Montana
Mari Vin Hoffmann - 350 Montana/Sierra Club

CALL TO ORDER

Chairman Cuffe called the meeting to order at 10:00 a.m.

MINUTES OF PREVIOUS MEETING

MOTION: Senator Malek moved for adoption of the May 17, 2018, meeting Minutes.

VOTE: The motion passed unanimously.

Chairman Cuffe invited Mark Reller from Bonneville Power Administration (BPA) to address the Committee.

MONTANA RENEWABLES DEVELOPMENT ACTION PLAN

Mr. Reller thanked the Chairman and members of the Committee for the opportunity to present the published Montana Renewable Development Action Plan (MRDAP).

Before presenting the plan, Mr. Reller reviewed some of the terminology used. He also gave a brief overview on the collaborative efforts of Governor Bullock and BPA to bring together a diverse group of interested stakeholders to look at the barriers and opportunities of more wind development in Montana, and the role of the transmission system in enabling that development. Mr. Reller stated that the published MRDAP is the fruit of this effort, outlining nineteen observations and recommendations.

Rep. Olsen thanked Mr. Reller for the detail provided in his presentation and the work done to address the opportunities and barriers of wind development in Montana. Rep. Olsen expressed interest in what a study would look like in terms of practicality, barriers, and opportunities for Montana to go 100 percent renewables. Mr. Reller replied that it would be complex, as there are many nuances to address, not only technically to make it work but financially as well. Mr. Reller stated that such a study would not be a trivial exercise and expressed appreciation for her interest.

Senator Malek stated that she has been concerned about Colstrip closing down because of the substantial tax revenue it provides to the state. She expressed that she was heartened to hear planning was in motion to address this issue.

Chairman Cuffe thanked Mr. Reller for his presentation.

WESTERN MARKETS AND WESTERN GRID RELIABILITY

JOE STIMATZ AND CASEY JOHNSTON – NORTHWESTERN ENERGY

Chairman Cuffe thanked Mr. Casey Johnston and Joe Stimatz from NorthWestern Energy for taking the time to provide the Committee with some background on the Western Markets and Western Grid Reliability and Reliability Coordinators. Mr. Johnston addressed the Committee on the status and various options that NorthWestern is pursuing in the area of choosing a new reliability coordinator, and Mr. Stimatz provided the Committee with an overview of the Western Markets.

OVERVIEW OF MCC AUDIT FOR FISCAL YEARS 2016-2017

Chairman Cuffe welcomed the Montana Consumer Counsel's contracted auditor, Dawn Wrigg, of Rudd and Company CPAs, Helena, Montana. Ms. Wrigg noted that during the audit of fiscal years ending June 30, 2017 and 2016, no instances of noncompliance or other matters that are required to be reported were found.

PUBLIC COMMENT

Jim Roach, NorthWestern customer from Missoula, voiced his concerns about climate change and outlined his support for clean energy.

David Merrill, representing the Sierra Club, outlined his concerns about Colstrip and his support for the community of Colstrip during this time of transition. Mr. Merrill also expressed his support for renewable energy.

Patricia Ames, resident of Missoula, conveyed her support for renewable energy.

Jeff Smith, resident of Missoula and Co-Chair of 350 Montana, outlined his support for renewable energy.

Carla Abrams, resident of Missoula and member of 350 Montana, voiced her support of clean energy.

Brad Stacey, resident of Plains, Montana and member of 350 Montana, outlined his support for renewable energy and his concerns about climate change.

Mari vin Hoffmann, resident of Missoula and member of 350 Montana and the Sierra Club, expressed her support of renewable energy.

Chairman Cuffe closed the public comment segment. Additional time for public comment would be offered at the end of the meeting.

Chairman Cuffe called the meeting back to order, after a short recess for lunch, with the discussion on Consumer Counsel funding.

CONSUMER COUNSEL FUNDING

Katie Guenther, Legislative Fiscal Division, provided the Committee with an update of the fund balance for the Montana Consumer Counsel Tax, noting that in 2018 Revenues were approximately \$900,000 and expenses \$1.2 million, resulting in a decrease from fiscal year 2017 to fiscal year 2018 of about \$300,000 in the fund balance. Katie explained that the calculation looks at what was appropriated and actual expenditures on that appropriation, so the fund balance did not decrease as much as some might have expected, but it is decreasing.

Mark Schoenfeld, Department of Revenue, noted that it is his department's responsibility to calculate the tax rate to make sure that the Consumer Counsel is fully funded. Mark reported that the fund balance was not coming down as fast as they had anticipated and in working with Katie may make one more small adjustment that hopefully will be in place for this upcoming year.

Chairman Cuffe thanked both Katie and Mark for taking the time to update the Committee.

STATUS OF CASES

Bob highlighted selected case developments that have occurred since the last Committee meeting in May 2018.

The first several items highlighted relate to NorthWestern Energy.

NWE v. PSC – Cause No. DV 16-1236 – **Complaint**, filed 9/14/16 in 13th Judicial District Court, Yellowstone County.

In reviewing this case, Bob noted that a district court order was issued in July. The order stated that the Commission has wide latitude to evaluate the utility's prudence and the utility has the burden of establishing that prudence, affirming the Commission's disallowance of \$8.2 million replacement power cost with respect to the Colstrip 4 outage.

NWE – D2014.7.58 – Electric Supply Cost Tracker, filed 5/29/15.

Bob noted that the MCC had entered into a stipulation with NWE. The Commission issued an order disallowing some costs relating to modeling of power costs. NWE appealed the Commission's order. A court order from Lewis and Clark County district court reversed the Commission's order, remanding it to the Commission. The Commission recently issued an order on remand approving the inclusion of those modeling costs.

NWE – D2018.2.12 – Application to Increase Electric Rates, filed 2/23/18.

Bob noted that this item relates to the upcoming NorthWestern Energy rate case. NWE filed a motion to bifurcate the case, which was approved by the Commission. The Commission asserted that the bifurcation request had effectively been a waiver of the 9-month statutory time period for

making a decision and that the revenue requirement order issued in Phase 1 would be interim and subject to adjustment based on issues raised in the second phase. NWE filed a motion for reconsideration, asserting that the Commission had to issue a final decision within the 9-month statutory deadline for making that decision, and that it had not waived the deadline. The Commission issued an order on reconsideration clarifying its order, stating that there is no 9-month deadline for final orders. The Commission found that the utility had not waived its 9-month time period and that it could self-implement rates at the end of the 9-months, subject to refund, but that those revenues, if NWE did choose to implement them, would be subject to refund and that the Commission may amend them based on findings in Phase 2. The Commission also noted that if NWE decided to go ahead and file in one filing without bifurcation, because of the magnitude of issues that might be included in the filing, it may exceed the 9-month time frame. In conclusion, Bob noted that NWE intends to file without bifurcation, filing the entirety of the revenue requirement and cost allocation and rate design in one filing on September 30.

NWE – D2017.7.57 – Annual Electric Tracker, filed 5/31/18.

Bob noted that the Company is reflecting a net deferred balance of approximately \$20,000 in this filing. An Interim order was issued in June approving NWE's request, on an interim basis. The case is still in the discovery phase.

NWE – D2018.8.52 – Petition of Caithness Beaver Creek, LLC, to Set Terms and Conditions for QF Facility, filed 8/10/18.

In reviewing this docket, Bob noted that the Company has requested the Commission determine terms and conditions for four separate 80 megawatt QF wind projects. A Notice of Petition has been issued. The MCC will intervene in the docket.

NWE – D2017.7.58 – Annual Gas Cost Tracker, filed 5/31/18.

Bob noted that this docket is NWE's annual filing for its gas commodity costs. This filing reflects an over-collection of commodity costs of about \$750,000, which is offset by an under-collection of a gas transportation tracker of about \$840,000. MCC has petitioned to intervene in the case, which is in the discovery phase.

NWE – D2017.11.86 - Annual Tax Tracker, filed 12/15/17.

In reviewing this docket, Bob noted that the Commission had originally approved MCC's recommendation with respect to the allocation of tax expenses between retail and wholesale customers. As a result of the Commission's initial order NWE had been ordered to reduce its request by about \$2.9 million. NWE requested reconsideration and the Commission did issue an order on reconsideration that in effect stated that it still agreed that this allocation method is correct, and that in a close vote the Commission determined that it would be fair practice to make the allocation change on a forward-looking basis, even though this is a tracker that reaches back for cost recovery, reducing the \$2.9 million by about \$1.7 million.

NWE – D2018.4.24 – Investigation of Federal Tax Reform Impacts, filed 3/30/18.

Bob noted that this docket is an investigation that the Commission had initiated generically and then decided to handle in separate dockets with respect to the individual utilities.

NWE had calculated the cash flow impact from the tax reduction of about \$14 million split into approximately \$3 million for the gas utility and \$11 million for the electric utility. NWE proposed to flow the gas utility's \$3 million reduction through to its customers in its entirety. With respect to the roughly \$11 million to the electric utility, NWE proposed to flow half of those funds back to ratepayers and use half of it for addressing hazard trees that are outside of its right of way, which are in addition to trees that are within its right of way. MCC filed testimony of Ralph Smith in July in which he explained that the tax reduction was a result of the 21-percent tax rate change. Mr. Smith testified that the company should use what it has termed a restated historical method, and make an adjustment based on a changed tax expense as if it had been presented for use in the rates that are being collected now as outlined in the Commission's Notice of Investigation. Mr. Smith stated that tax savings should be addressed in the current proceeding to the extent possible, with unresolved questions regarding the issue of excess accumulated deferred income taxes addressed in the upcoming rate case. Mr. Smith also testified that the need for any vegetation management should be addressed in the upcoming rate case rather than as part of this tax reform docket. The net result of the revenue requirement impact of the restated historic method is about \$22 million as opposed to the \$14 million, which breaks down to be about \$21 million for the electric utility and a little under \$1 million for the gas utility.

Senator Malek thanked the Consumer Counsel for fighting for the tax money to be applied back to the ratepayer rather than benefiting the company's bottom line.

MDU – D2018.6.43 – Annual Purchased Power Tracking Adjustment, filed 6/15/18.
In reviewing this docket, Bob noted that MCC has intervened and that an interim order has been issued by the Commission approving the requested rates on an interim basis. The docket is currently in the discovery phase.

MDU – D2017.9.79 - General Natural Gas Rate Increase, filed 9/25/17.
Bob noted that a final order has been issued in this case approving the stipulation that MCC had entered into with MDU. The stipulation provides for a \$975,000 increase as opposed to MDU's amended request of \$1.6 million.

MDU – D2018.4.22 – Impacts of Tax Cuts and Jobs Act of 2017, filed 4/2/18.
Bob noted that this is MDU's docket for its electric utility related to the impacts of the federal tax reform.

EWM – D2017.12.89 – Reconciliation of West Yellowstone No Interest Loan Program Surcharge, filed 12/1/17.
In reviewing this docket, Bob noted that the Commission had asked the Company to do an audit of its USB program. The audit revealed that the Company had over-collected approximately \$112,000 based on its expenditures. MCC entered into a settlement agreement with Energy West and in that agreement the Company agreed to reduce the USB collection rate going forward from 1.12 percent to 0.42 percent, resulting in a reduction in the surcharge on customer bills. There was \$3,100.00 out of the \$112,000 over collection that could be returned to customers immediately, which the Company agreed to do. The remaining balance of \$110,000 is required by statute to be collected, so MCC asked the Company to immediately implement a low-income

discount program similar to the one that it operates in Great Falls, and to file a new USB plan by October 2018. The Commission issued an order approving the stipulation.

EWM – D2018.6.37 – Annual Gas Cost Tracker, filed 6/1/18.

Bob noted that this docket has been consolidated with Energy West's 2017 annual tracker. The trackers will be processed concurrently. MCC is already participating in the 2017 docket.

Avista – D2017.9.71 - Application for Approval of Merger, filed 9/14/17.

In reviewing this case, Bob noted that the Commission has issued a final order approving the proposed sale and transfer. In the order, the Commission stated that accelerated depreciation adopted in other states for Colstrip does not reflect the remaining useful life and is inconsistent with traditional rate making principles. Applicants have asserted that they do not expect, without some Commission action, that accelerated depreciation would result in any different retirement date for Colstrip.

High Quality H2O – D2018.3.13 – Application to Implement Standard Rates, filed 3/1/18.

In summarizing this case, Bob noted the company has applied to implement the Commission's standard rates. The company had been charging \$25 and raised its rates to \$30 without knowing that they were a regulated utility. After a consumer complaint about the increase, the company discovered that it could increase its rates to the standard rates. Paul filed testimony summarizing the context of that rate filing. He attempted to construct a revenue requirement, which was difficult to do in this case because there was no original cost information. Using the purchase price as a substitute for the original cost and accepting 100-percent equity, which is also unusual, Paul concluded that the rate the company is requesting would result in a return of 147-percent, and that based on his analysis, the revenue requirement should be less than half of the company's prior collections. MCC has requested that the Commission return the rate to \$25 that was in place before the increase to \$30.

Mountain Water – D2018.6.40 – Application to Increase Water Rates, filed 7/31/18.

Bob noted that Big Mountain Water had filed an application to increase water rates, which would result in a 4.2-percent increase.

In response to Chair Cuffe's inquiry about the organization "PEAK" Reliability, which was mentioned during NorthWestern's presentation, Bob noted that as an office the MCC is a member of PEAK. He further noted that MCC is also a member of the Western Electricity Coordinating Council (WECC) and that he is a member of WECC's member advisory committee.

Chairman Cuffe called the meeting back to order with the Financial Report after a brief recess.

FINANCIAL REPORT

The financial report presented to the Committee was for July of fiscal year 2019. Bob noted that because this report was only for the first month of the new fiscal year it was not very informative, with some categories running a month or two behind and at least one category running a month ahead.

Bob also reviewed the end of fiscal year 2018 budget vs. expenditure report, noting that the unexpended balance was largely due to the contracted services budget.

Chairman Cuffe asked that the Consumer Counsel provide in writing for the next meeting a calculation on how the unexpended appropriation is deducted from the upcoming year's appropriation.

CONTRACTED SERVICES

Bob requested authorization to hire the following consultants –

D2018.9.60 – Montana-Dakota Utilities – General Electric Rate Increase

Stephen Hill (*cost of capital*)

Larkin & Associates – Ralph Smith (*revenue requirement*)

Resolve Utility Consulting – David Garrett (*depreciation*)

Technical Associates, Inc. – Glen Watkins (*allocated cost of service and rate design*)

Dennis Lopach (*legal*)

D2018.9.56 – Montana-Dakota Utilities – Annual Gas Tracker

George Donkin

D2018.2.12 - NorthWestern Energy – Application to Increase Electric Rates

Stephen Hill (*cost of capital*)

Larkin & Associates – Ralph Smith (*revenue requirement*)

Resolve Utility Consulting – David Garrett (*depreciation*)

Acadian Consulting Group – Dr. David Dismukes (*allocated cost of service and rate design*)

D2017.7.58 – NorthWestern Energy – Annual Gas Tracker

George Donkin

D2017.7.57 – NorthWestern Energy – Annual Electric Tracker

Larkin & Associates – Ralph Smith

MOTION: Senator Malek moved to approve the retention of consultants as requested by the Consumer Counsel.

VOTE: The motion passed unanimously.

2021 BIENNIUM BUDGET APPROVAL

Bob presented the agency's draft budget proposal and requested approval from the Committee prior to submission for inclusion in the budget book.

MOTION: Senator Malek moved that the budget be approved for submission to the Governor's Office of Budget and Program Planning.

VOTE: The motion passed unanimously.

MCC WEBSITE UPDATE

Bob provided a brief update on the website, noting that it is still a work in progress. He further noted that Legislative Services has done a lot of the work on the website for the agency but due to other commitments has not been able to design a comment form at this time.

Rep. Olsen suggested that a link be provided on the website that gives direction to consumers if they have a complaint.

Rep. Olsen made an announcement that the Public Service Commission is holding a public hearing in Havre for the purposes of discussing the Havre Pipeline Company's request to impose limitations on its customer service obligations. Rep. Olsen also noted that the public can sign up for email notifications to receive notices of all public hearings by contacting the Public Service Commission.

Senator Malek requested that a summary of NWE's current Resource Plan be provided for the next meeting to help educate people on what may be expected in the new plan that is due to be filed in December 2018.

NEXT MEETING

Chairman Cuffe requested that the secretary create a Doodle Poll for the Committee to determine the date for the next meeting.

PUBLIC COMMENT

No additional public comment was offered at this time.

VIDEO – COLUMBIA RIVER TREATY

Chairman Cuffe provided a video presentation that included a series of historic photos of Rexford, Montana and Libby Dam, and which was narrated by a young Representative Cuffe, who as a senior in college put together a journalism project on the impacts of Libby Dam on the residents of Rexford, for a radio program.

ADJOURNMENT

There being no further business before the Committee, Representative Olsen moved that the meeting be adjourned, and the motion was unanimously passed.

The meeting adjourned at 4:10 p.m.

Respectfully submitted,

_____, Robert Nelson, Consumer Counsel

Accepted by the Committee this 6th day of December 2018,

_____, Chairman.