



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 SATTLER, Secretary

MINUTES

Date: June 10, 2004

Isabel Bills Community Learning Center, Colstrip, 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.**

COMMITTEE MEMBERS PRESENT

REP. ALAN OLSON (Chairman)
REP. GARY MATTHEWS
REP. DAVE GALLIK

SEN. ROYAL JOHNSON
SEN. DON RYAN
SEN. FRED THOMAS

COMMITTEE MEMBERS ABSENT

SEN. EMILY STONINGTON
REP. DANIEL FUCHS

STAFF PRESENT

MARY VANDENBOSCH, Research Analyst
CYNTHIA A. PETERSON, Secretary

VISITORS

Agenda, Attachment 1.
Visitors' list, Attachment 2.

COMMITTEE ACTION

- The ETIC adopted proposed language defining “cost-effective,” as amended by Chairman Olson.
- The ETIC rejected proposed language in the bill draft regarding USB, including Rep. Gallik’s amendment to prohibit carry-over and double dipping.
- The ETIC will request a bill to put into effect the opportunity to raise the amount of benefits by utilizing a formula proposed by Sen. Johnson. The percentage to be used in the formula will stay the same and will follow revenue up and down.
- The ETIC adopted the recommendations regarding energy policy contained in Ms. Vandebosch’s memorandum (Exhibit 8) relating to Section 1, 2, 3, and 4 and requested a bill draft.
- The ETIC voted to draft legislation proposed in LC5555 and amended Section 1(1)(b)(i) by striking “than \$200,000 or” on page 1. The draft legislation will be put out for public comment.
- The ETIC accepted the principles and recommendations of the Governor’s Task Force regarding ring-fencing and will request legislation be drafted to implement the recommendations. The proposed legislation will be put out for public comment.
- ETIC members voted to request the co-ops to present legislation regarding the USB charge at its next full meeting on September 9-10, 2004.
- ETIC voted to consider legislation that would extend property tax exemption and impact fees, similar to the legislation sponsored by Sen. Cole in 2001, that would encourage development of coal in Montana, and to extend the sunset provision six more years.

BUSINESS

- **Call to Order**

The June 10, 2004, Energy and Telecommunications Interim Committee (ETIC) meeting was called to Order by Chairman Alan Olson at 8:15 a.m. in the Isabel Bills Community Learning Center Library, Colstrip, Montana.

- **Roll Call**

The secretary noted the roll (Attachment 3).

UNIVERSAL SYSTEM BENEFITS

Ms. Mary Vandebosch presented a memorandum regarding Universal System Benefits (USB) and proposed legislation (LC0004) to the ETIC for consideration (EXHIBIT 1). Ms. Vandebosch explained the legislation restricts eligibility for renewable resource projects to

those projects that are “cost effective” and provides a definition for a “cost-effective” renewable resource project (EXHIBIT 2). The legislation also extends the USB charge through December 31, 2007, and increases from 17 percent to 25 percent the minimum annual funding requirement for low-income, energy, and weatherization assistance. Ms. Vandebosch drafted the bill to provide mandatory uniform reporting by requiring the Department of Revenue (DOR) to adopt rules governing uniform reporting and also requires DOR to report to ETIC by May 1 every year. Rules regarding uniform reporting must be adopted December 1, 2005. Ms. Vandebosch asked the ETIC members whether they wanted include a provision in the law to prevent double dipping since some of the renewable projects could also be contained in the default supply portfolio. In addition, Ms. Vandebosch stated research and development of renewables is an eligible USB expenditure, and Ms. Vandebosch requested clarification from the ETIC whether they wanted USB funds spent for research and development for renewables. In addition, Ms. Vandebosch pointed out that carry forward of unspent funds is not authorized by statute, but the DOR has authorized it by rule without statutory authority. Therefore, if the practice is to continue, it needs to be authorized by law. Mary presented several options to the ETIC in Exhibit 1.

Chairman Olson explained his concerns with the definition of “cost-effective” and proposed the definition read:

Cost-effective renewables means electricity supplied from renewable resources whose cost of production per kwh, including amortization of the installed facilities over the reasonable expected life of the installation, is less than or equal to the sum of the distribution service provider’s projected electricity supply costs for the same period, plus avoided transmission and distribution costs.

Sen. Royal Johnson inquired how “reasonable expected life of the installation” would be determined and noted the life expectancy would vary among projects. Chairman Olson explained reasonable life is intended to mean the serviceable life, and for a wind project serviceability is amortized out 20 years. Sen. Fred Thomas added someone would approve projects before they are funded and would have to take the definition into account when reviewing projects.

Ms. Vandebosch explained currently the utility decides what to fund in compliance with the law, and in the case of NorthWestern Energy (NWE), they have an advisory committee. Utilities report to the Department of Revenue (DOR) every year on what their credits are for Universal System Benefit (USB) expenditures. Ms. Vandebosch noted all credits are presumed valid by DOR, unless an objection is filed within 60 days, and the burden of proof lies with the objecting party.

Sen. Johnson inquired about the change of language in § 69-8-402(1), and Ms. Vandebosch explained “Universal system benefits” is defined and then not used in the law. Ms. Vandebosch explained it is clean up language that will eliminate the need to make additional changes in statute.

At Chairman Olson’s request, Ms. Vandebosch summarized the ETIC’s past actions and stated the ETIC voted to extend the USB charge until 2007, voted to increase the low-income percentage from 17 percent to 25 percent, adopted concepts that renewable projects must be cost-effective, and required uniform reporting.

Sen. Don Ryan commented at first blush, the concept of cost-effective renewables makes sense, but in reviewing the definition of “cost-effective” in § 69-8-103, Sen. Ryan noted the reference to “unique social and energy system benefits,” and stated there is no “social” when you attach a kilowatt-hour price figure. Sen. Ryan suggested renewable energy is a learning process and may not be cost effective at first. Sen. Ryan was cautious about requiring a project to be “cost effective.” Chairman Olson replied if a company was attempting to fund a science experiment, they could get funding somewhere besides USB. Chairman Olson cited the solar panels used on the Roundup High School as an example since the panels cost approximately \$18,000 and had an expected benefit of \$250 per year, and charged the expenditure was not a wise use of public funds. Sen. Ryan suggested the Roundup school could operate in the instance of a power outage, so there would be different ways to view the cost-effectiveness of the solar panels. Chairman Olson did not believe the solar panels would be able to generate enough power to run the high school, and in his mind, it would be a waste of money.

Sen. Thomas moved the ETIC adopt the proposed language contained in Exhibit 2 and include the definition of “cost-effective,” as amended by Chairman Olson.

Rep. Matthews noted there a number of groups competing for money and did not feel it would be unreasonable to adopt the amendment and see where it goes.

Rep. Gallik was opposed to the motion because he thought it was bad policy both from a substantive and process point of view. Rep. Gallik thought many individuals would feel the Legislature does not consider renewables as legitimate.. Rep. Gallik thought determining what is and is not “cost effective” would be difficult. Rep. Gallik noted that NWE is the only entity to invest in renewables and that was only in the amount of \$1 million. Rep. Gallik stated this would create the necessity to spend more money in the process and implementation and commented this was a solution in search of a problem. Rep. Gallik read Sen. Emily Stonington’s proxy into the record (EXHIBIT 3).

Sen. Thomas commented he would be open to any middle-of-the-road language if it were proposed. Sen. Thomas noted the ETIC is generally in favor of renewables, but that does not mean the USB program would be the ideal program. Sen. Thomas thought the program should be more result-driven. Sen. Thomas believed that on the low-income side of the program, people are being helped with their power bills and with insulating their homes. Sen. Thomas explained his intent is to provide more accountability and, if in the future it is determined the language is too tight, the language could be opened up.

Sen. Johnson agreed with Sen. Thomas, and stated the program is working in some areas, and did not think the proposed legislation would help. Sen. Thomas explained that with a definition of this nature, programs and proposals will need to meet a threshold.

Chairman Olson agreed they are talking about \$1 million, but expanded that is \$1 million per year for six years. Chairman Olson explained the same people who believe we need to get into research and development on renewables are the same people who say the cheapest kilowatt is the kilowatt not used. Chairman Olson noted \$6 million could insulate a lot of homes and benefit a large amount of people. Chairman Olson suggested priorities be set and the money needs to be spent responsibly. Chairman Olson stated he would rather be able to help ten people instead of one person, and if a project is not cost effective, research and development

funding should be sought elsewhere.

Rep. Gallik preferred to focus on the bulk of the USB funds that have been used for the public sector such as fire stations, school houses and other public-sector facilities.

Chairman Olson asked the ETIC for suggestions on what should be done with unspent USB funds. Ms. Vandebosch directed the ETIC members to page three, Exhibit 1. Ms. Vandebosch identified the basic issue as DOR has authorized utilities to carry forward unspent USB funds without having the statutory authority to do so. Ms. Vandebosch explained the issue came to light when NWE communicated it had \$1.7 million of carry forward in USB funds.

Rep. Gallik amended Sen. Thomas's motion to include a provision to prohibit any carry-forward of USB funds, so the state can distribute funds to programs, and require that funds not spent by a certain date be deposited in the USB funds that are provided for in § 69-8-412. Rep. Gallik thought it was important to make sure all of the money is being spent in the appropriate place.

(Tape 1; Side B)

Rep. Gallik expressed concern that DOR is allowing by rule that which is not allowed by an enabling statute.

Ms. Vandebosch suggested there were a couple of different ways to address the issue of double-dipping, including amending the definition of cost-effective renewables, so it would be clear that if the project is part of the electricity supply, it is not eligible for USB funds. Ms. Vandebosch suggested a narrower alternative would be to only fund off-grid applications.

Chairman Olson observed the ETIC favored funding only off-grid applications.

Sen. Thomas added some of the local utilities are concerned about the need for flexibility, and encouraged that flexibility.

Rep. Gallik stated he would prefer the ETIC vote on the proposals before it in steps and the motion should not be presented as "all or nothing." Rep. Gallik amended the motion to include no double-dipping, no carry-forward, and no definition for cost-effective renewables.

Sen. Thomas's motion that the ETIC adopt the proposed definition of "cost-effective," as amended by Chairman Olson, carried by roll call vote (EXHIBIT 4), with Sen. Stonington and Rep. Fuchs voting by proxy.

The motion to endorse the proposed language in the bill draft, including Rep. Gallik's amendment to prohibit carry-over and double dipping failed by roll call vote (EXHIBIT 5).

At the request of Sen. Johnson, Ms. Vandebosch submitted numbers relating to USB funding to the ETIC (EXHIBIT 6). Ms. Vandebosch explained she focused on NWE since it represents the lion's share of USB funds.

Sen. Johnson explained the ETIC has a desire to continue the USB program in such a way that it benefits more people all the time. Sen. Johnson's thought process was that if instead of going back to 1995 and talking about 2.4 percent, in order to keep pace with the income from

ratepayers, you have to figure out a formula based on the current situation. Sen. Johnson suggested taking what would be required to be paid by the utility on the 1995 2.4 basis. Sen. Johnson explained adding a certain percentage onto an increased rate will result in an increase in the amount of money for USB. If rates were to go down, less money would be available for USB.

Sen. Johnson moved the ETIC request a bill to put into effect the opportunity to raise the amount of benefits by utilizing Sen. Johnson's proposed formula. The percentage to be used in the formula will stay the same and would follow revenue up and down.

Sen. Ryan inquired whether Sen. Johnson was referring to rates or revenue. Sen. Johnson responded he was referring to revenue.

Mr. Greg Groepper, Energy Share, submitted a chart depicting NWE rate changes since 1995 (EXHIBIT 7). Mr. Groepper suggested using a percentage rate of between 2 percent and 2.2. percent would barely catch up with inflation and not necessarily the rates, but would provide a little more money in the program. Sen. Johnson suggested using the numbers for 2003 in Exhibit 7 as a starting point.

Sen. Johnson's motion that the ETIC request a bill to put into effect the opportunity to raise the amount of benefits by utilizing Sen. Johnson's proposed formula carried unanimously.

Rep. Gallik moved the ETIC request a draft bill to continue the USB program until 2009.

Sen. Thomas commented the ETIC had agreed to extend the program until 2007 and raise the USB percentage to 25 percent and that authorization still stands. Rep. Gallik withdrew his motion.

STATUTES AND RULES RELATED TO ETIC

Ms. Vandenbosch submitted a memorandum and proposed legislation (LC7777) to the ETIC for its consideration (EXHIBIT 8).

Sen. Johnson moved the ETIC adopt the recommendations contained in Ms. Vandenbosch's memorandum relating to Section 1, 2, 3, and 4 and request a bill draft. The motion carried unanimously.

MONTANA ENERGY PROJECTS

- **Joe Dickey, Roundup Power Project**

Mr. Joe Dickey, Roundup Power Project, provided the ETIC with a status report of projects and gave a power point presentation on the Roundup Power Project (EXHIBIT 9).

(Tape 2; Side A)

- **Questions from the ETIC**

Rep. Gallik asked what, if anything, the ETIC or Legislature could do to assist with concerns about litigation. Mr. Dickey replied at some point there needs to be a level playing field regarding lawsuits. Mr. Dickey stated if the Roundup Power Project plant cannot be built, then no plant in the United States can be built. Mr. Dickey suggested various organizations set out to delay projects and measure their success by the length of time they delay a project and the amount of money the delay costs developers. Mr. Dickey thought petitioners should be required to put up a bond for the various delay costs, and suggested if the petitioners feel they have a good case, they would be agreeable to the bond.

Rep. Gallik inquired what would happen if the company loses, and Mr. Dickey replied he petitioners could file for attorney fees and possibly other damages if there are any.

Sen. Thomas asked when the target date for construction would be, and Mr. Dickey explained construction of the access road will begin in August and site work would begin in late September or October 2004. Mr. Dickey added they have been mining since August 2003 and the coal is going to certain utilities in the United States and local industrial customers. Mr. Dickey explained most utilities blend coals, and will test this coal with others to determine how it will burn.

Sen. Thomas stated it was his understanding the higher the BTU in the coal, the higher the emissions. Mr. Dickey replied that was not the generally the case and stated other factors were involved.

Sen. Johnson asked if the Roundup Power Project's financing was in place. Mr. Dickey explained the project is purely private, and clarified they would not be asking the Legislature for assistance.

Chairman Olson noted the power could be used with wind generation. Mr. Dickey explained they are working with utilities since the plant will be owned by a utility and will be part of that utility's load profile.

Rep. Gallik stated he was pleased with the mitigation efforts regarding pollution and the way transmission has been handled. Rep. Gallik identified litigation as the only thing he saw as being problematic and suggested the other side of the story be presented by litigants at the next ETIC meeting. Chairman Olson clarified that legislation that deals with MEPA and MEPA issues generally go through the Environmental Quality Council (EQC) and that the presentation could be made at the next EQC meeting.

- **Jerry Vaninetti, Great Northern Power Development, and Clark Fritz, Kiewit Mining Group, Inc.**

Mr. Jerry Vaninetti, Great Northern Power Development, and Mr. Clark Fritz, Kiewit Mining Group, Inc., submitted a Nelson Creek Project Fact Sheet (EXHIBIT 10), a one-page fact sheet about Kiewit (EXHIBIT 11), a press release regarding the Nelson Creek Project (EXHIBIT 12), and gave a power point presentation (EXHIBIT 13).

(Tape 2; Side B)

Mr. Vaninetti and Mr. Fritz continued with their power point presentation.

(Tape 3; Side A)

- **Questions from the ETIC**

Sen. Ryan asked about the Nelson Creek project building transmission lines to hook up with Colstrip and whether that would be a DC line. Mr. Vaninetti replied it would be an AC line giving consideration to either a single 230 line or twin 230 lines, and the cost would be approximately \$100 million. Mr. Vaninetti added right-of-way studies are currently being conducted. Mr. Vaninetti stated with two lines, they would have a lot of spare capacity and could potentially serve an additional 250 megawatt unit.

Rep. Matthews asked if there was any capability to take generation facilities in Eastern Montana and go east instead of west. Mr. Vaninetti responded they would not go east because it is a long way to transmit power. Mr. Vaninetti identified Teddy Roosevelt National Park in North Dakota as being one of the challenges to their North Dakota operations.

Rep. Gallik commented that he enjoyed Mr. Vaninetti's and Mr. Fritz's presentation. Rep. Gallik asked Mr. Vaninetti to speculate about what will happen down the road if there is not enough power and what he sees for Montana in the future as far as transmission and the role of government. Mr. Vaninetti replied Hardin is ahead of their project, and that they believe they have the last major piece of what is in the grid. Mr. Vaninetti identified a number of public policy groups with stakeholder input that will consider where transmission should be built and what is best for the public. Mr. Vaninetti stated there are substantial wind resources in Montana, and stated there needs to be a strong role in public policy development for transmission planning. Mr. Vaninetti suggested it could be very important for Montana to support project expansion and identified transmission as the important factor in that expansion. Mr. Vaninetti also identified federal legislation as paying a key role. Mr. Vaninetti explained there is only so much project developers can do and noted it was critical for the State to speak with one voice.

PSC OVERSIGHT OVER UTILITY TRANSACTIONS

Ms. Vandenbosch submitted a memorandum and proposed legislation (LC5555) to the ETIC regarding PSC review over utility transactions (EXHIBIT 14). Ms. Vandenbosch explained how the proposed legislation would give the PSC express statutory authority to review utility

transactions and stated she included suggestions from the PSC. Ms. Vandebosch noted there were numerous ways review could be accomplished.

Sen. Johnson asked for an example of a “petition for good cause by the applicant” referenced in subsection (1)(c) on page 2 of the proposed legislation. Ms. Vandebosch could not readily give an example, but explained it would be a case where the transaction would not have a significant impact. In response to further question from Sen. Johnson, Ms. Vandebosch stated the PSC has reviewed the proposed legislation. Comm. Jergeson agreed they had reviewed the draft legislation and the exemptions have been approved, and they prefer to have the exemptions be explicit in statute and that this would help deter lawsuits.

Sen. Johnson wondered how the proposed legislation differed from Sen. Cobb’s bill in the 2003 Legislature. Ms. Vandebosch pointed out there were concerns that every transaction would be covered, but the proposed legislation provides for an exemption for transactions that are in the ordinary course of business. Ms. Vandebosch explained another issue surrounding Sen. Cobb’s bill was that it could be denied based on whether the transaction was “in the public interest” and there were concerns about what “in the public interest” meant. In addition, Sen. Cobb’s bill gave the PSC 180 days to act.

Chairman Olson commented the \$200,000 threshold seemed low.

Mr. John Fitzpatrick, NorthWestern Energy, stated \$200,000 was a ludicrous number and thought this would set the stage for an unrelenting number of petitions being filed with the PSC. Mr. Fitzpatrick suggested using a percentage of assets. Chairman Olson suggested 25 percent of assets would be realistic.

Rep. Gallik asked where the \$200,000 came from. Ms. Vandebosch replied the number was suggested by the PSC. Comm. Jergeson explained the formula was an effort to find an appropriate threshold. Chairman Olson noted \$200,000 is not much to a company like NWE that is worth \$1.1 billion. Comm. Jergeson stated identification of a formula needs to be worked on. Mr. Vick pointed out the legislation exempts anything in the “ordinary course of business.” Mr. Vick also cautioned that if the threshold was 25 percent, two transactions under 25 percent could be done to change ownership of the company.

Sen. Thomas stated he was comfortable with having a percentage and noted NWE could own generation if they can get it approved by the PSC. Sen. Thomas moved the ETIC adopt the proposed legislation and that the percentile be set at 25 percent. Sen. Johnson amended the motion and the percentage be set at 10 percent in Section 1(1)(b)(i) on page 1 of LC5555. The motion carried unanimously. The draft legislation will be put out for public comment.

RING FENCING

Chairman Olson reviewed the principles and regulations adopted by the Governor’s Task Force (EXHIBIT 15). Ms. Vandebosch pointed out that if energy utilities are treated differently from other utilities with respect to ring-fencing, there needs to be a reason to justify the difference to avoid the issue of constitutionality being raised. Chairman Olson explained the Governor’s Task Force did not address ring-fencing for other utilities because the charge from

the Governor was limited to energy. Ms. Vandebosch explained it is up to the ETIC to request ring-fencing legislation.

Sen. Johnson moved the ETIC accept the principles and recommendations of the Governor's Task Force regarding ring-fencing and request legislation to implement the recommendations.

(Tape 3; Side B)

Rep. Gallik expressed concern about the Agreement in Principle (AIP) between the PSC, Montana Consumer Council, and NWE, and understood there is a differentiation between the recommendations of the Governor's Task Force and the AIP. Rep. Gallik expressed concerns about how Montana would deal with the situation if it should occur again and a non-utility subsidiary would drag down a utility. Rep. Gallik was concerned that by drafting legislation they could be building themselves into more litigation and thought it could be argued as a potential impairment upon a contract, which is unconstitutional.

Chairman Olson explained the Task Force discussed the issue at length and the recommendations were supported by Comm. Rowe. Chairman Olson understood the AIP is not being considered as a contract. Chairman Olson referred to the Minutes from the Governor's Task Force and noted they reflected that if the AIP is accepted by the bankruptcy court, a companion agreement would be filed by NWE for approval by the PSC and the Montana Consumer Council. Comm. Rowe had stated at the Task Force meeting that he would not like to see the Legislature attempt to revise the AIP. Chairman Olson explained the Task Force had discussion about adopting broad-based policy rather than setting up policy for individual companies for individual purposes.

Rep. Gallik explained that if the AIP is in place prior to legislation, the legislation could potentially impair the contract. Rep. Gallik did not have any solution and supported ring-fencing, but cautioned further discussion may be needed.

Sen. Johnson's motion that the ETIC accept the principles and recommendations of the Governor's Task Force regarding ring-fencing and request legislation be drafted to implement the recommendations carried unanimously. The proposed legislation will be put out for public comment.

PUBLIC COMMENT ON MATTERS WITHIN THE ETIC'S JURISDICTION

Mr. Doug Hardy, representing Montana Electric Cooperatives, stated it is evident that a one-size-fits-all approach to USB is not working. Mr. Hardy testified the ongoing changes being proposed are in response to rates that are not attributable to the co-ops. In fact, Mr. Hardy stated most of the areas served by co-ops do not have natural gas available. Mr. Hardy stated very few co-ops have raised their prices since the agreement on USB and that many co-ops operate on rates that were in place well before 1997. Mr. Hardy proposed a method of ensuring that they meet the commitments made in 1997 through the provision of the language effecting the rural electric cooperatives of USB being moved and codified into another part unique to the rural electric cooperatives. Mr. Hardy explained it would be easier to meet the needs of other utilities without having to be concerned about the unique circumstance of rural co-ops. Mr. Hardy requested the ETIC support a process which would allow the co-ops to meet their 1997 commitments without placing the co-ops in a position of opposing other changes that may be in

the best interest of other utilities.

Rep. Gallik asked Mr. Hardy if there was anything presented during the current hearing that could affect the co-ops as an unintended consequence when the ETIC was attempting to address other issues. Mr. Hardy identified the increase in the low-income floor from 17 percent to 25 percent and changing percentages within base years would affect the co-ops and added some co-ops have had growth and others have not. Mr. Hardy explained the money for the increased percentage will come directly from members' pockets rather than from a shift in money.

Rep. Gallik did not understand how the money could be new dollars because 2.4 percent must go to USB and 17 percent or 25 percent of that USB that goes to low income is still within the overall 2.4 percent. Mr. Hardy clarified that USB money is spent on cost-effective energy-efficient measures to benefit all the members, and the increase in percentage will take money away from those programs.

Rep. Gallik asked how this will be different for the co-op customers than it will be from the customers of NWE. Mr. Hardy explained the co-ops did not raise their rates like NWE. In addition, the co-ops have had rate stability, and Mr. Hardy emphasized the co-ops do not serve areas with natural gas.

Sen. Johnson noted the money will come from ratepayers no matter who they purchase power from. Mr. Hardy agreed, but added the money the co-ops do not spend is returned to ratepayers. Sen. Johnson suggested if a utility does not have an increase in revenue, it will not pay more money, and noted if revenue goes down, the utility will pay less money.

Chairman Olson explained the co-ops meet needs as they see fit and in 2003 the co-ops spent 3.69 percent on USB. Mr. Hardy stated the co-ops' position is they do not want to see a mandated increase. Sen. Johnson responded that there are increasing needs and that everybody should help.

Mr. Carl Schweitzer, representing Sheet Metal and Air Conditioning Contractors in Montana and Associated Plumbing and Heating Contractors in Montana, expressed concern about one of the utilities in Eastern Montana providing the unregulated service of installing, maintaining, inspecting and servicing heating and air conditioning equipment. Mr. Schweitzer suggested this creates an atmosphere of unfair competition. Mr. Schweitzer requested the ETIC to look at the issue and suggested the definition of "affiliate transaction" could be broader.

Mr. Mike Pichette, NorthWestern Energy, provided clarification on whether the default supplier has or should have incentives to get the best deal for natural gas and electricity. Mr. Pichette thought there was an implication there was no incentive, and clarified the statute only allows the PSC to approve prudently incurred costs.

Rep. Matthews asked Mr. Pichette about the lawsuit which states the PSC did not prudently approve some of NWE's gas purchases. Mr. Pichette stated the negative incentive has already been applied in the case of natural gas contracts and has resulted in \$12 million in disallowed natural gas purchases. The case is currently in district court and the question is whether the natural gas contracts were prudent. Mr. Pichette testified there is incentive for the natural gas supplier to look for the best deal.

Mr. Mack Cole, Chairman on Montanans for Responsible Energy Development, testified he is interested in proposed legislation including SB 206 which allows for power plant property tax incentive legislation. Mr. Cole would also like to see legislation establishing venture capital funds, not only for power, but also tying into other SBA loans. Mr. Cole would also like to see more economic development from the county level. Mr. Cole would like to see Montana develop a policy statement relating to energy and water. Mr. Cole was hopeful MEPA legislation would be revisited during the next Legislature. Mr. Cole suggested someone should take a look at what the anti-development lawsuits have done as far expenses to local and state government and Montana in general.

Chairman Olson informed Mr. Cole that representatives of the petitioners in the lawsuits would be making a presentation at the next ETIC meeting, along with the plant operators and project developers.

OTHER BUSINESS

- **Budget**

Ms. Vandebosch reported \$12,000 is left in the ETIC budget.

- **Final Report**

Ms. Vandebosch submitted a Decisions Checklist memorandum to the ETIC for its consideration (EXHIBIT 16), and stated it is up to the ETIC whether it wants to make a final report and what that report should look like. Ms. Vandebosch suggested a one-page fact sheet be developed for each policy proposal. The ETIC agreed a one-page fact sheet for each proposal would be beneficial.

- **Public Comment on Proposed Legislation**

Chairman Olson recalled all proposed legislation will go out for public comment.

- **Confirm Date and Location of the Next Meeting**

The next full meeting of the ETIC will be September 9-10 in Helena, Montana.

- **Confirm Agenda Items for Next Meeting**

Rep. Matthews moved the co-ops be allowed to present legislation about the USB charge for discussion by the ETIC.

Sen. Johnson agreed and would like to see statistics indicating how revenue has changed over the years presented with the legislation.

(Tape 4; Side A)

Rep. Matthews motion that the co-ops be allowed to present legislation regarding the USB

charge at the next full meeting of the ETIC carried unanimously.

Rep. Matthews moved the ETIC consider similar legislation as that presented by Sen. Cole in 2001, that would create impact fees and incentives to encourage development of coal in Montana. Rep. Matthews suggested the legislation should have a sunset date of 2006. Chairman Olson recalled the legislation in 2001 did not have a sunset provision, but the coal severance tax bill did have a sunset.

Chairman Olson directed the ETIC members to an article by Rep. George Eskridge, presented at the National Conference of State Legislatures (EXHIBIT 17).

Sen. Thomas suggested the ETIC may want to look at both bills, and Sen. Johnson added they may want to consider including surrounding counties, not just the county where the plant is located. Rep. Matthews suggested the sunset should be another six years on both bills.

Rep. Gallik expressed concerns about the ETIC's agenda. Ms. Vandenbosch directed the ETIC members to the ETIC meeting planner (EXHIBIT 18).

Rep. Matthews' motion the ETIC consider similar legislation as that presented by Sen. Cole in 2001, that would create impact fees and incentives to encourage development of coal in Montana and to extend the sunset provision six more years carried unanimously.

ADJOURN

There being no further business to come before the ETIC, the meeting was adjourned at 1:50 p.m.