



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

Thursday, November 20, 2003

Room 102, State Capitol

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

SEN. ROYAL JOHNSON
SEN. EMILY STONINGTON
SEN. FRED THOMAS

REP. DANIEL FUCHS
REP. DAVE GALLIK
REP. GARY MATTHEWS
REP. ALAN OLSON

COMMITTEE MEMBERS ABSENT

SEN. DON RYAN

STAFF PRESENT

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

AGENDA & VISITORS

Agenda, ATTACHMENT #1
Visitors' list, ATTACHMENT #2

COMMITTEE ACTION

- ! Adopted Committee minutes from September 16, 2003 meeting.
- ! Decided to draft legislation to extend the Universal Systems Benefit (USB) program for electricity for four years (until the end of 2009).
- ! Added the topic of ring-fencing to the previously-approved Work Plan items.

CALL TO ORDER AND ROLL CALL

The meeting was called to order at 8:30 a.m. by CHAIRMAN OLSON, and the secretary went through the roll call (ATTACHMENT #3).

SEN. JOHNSON *moved* to approve the Committee minutes from September 16, 2003. SEN. THOMAS seconded the motion, which passed unanimously by voice vote.

I. REVIEW OF SIGNIFICANT ADMINISTRATIVE RULES

Todd Everts, ETIC Staff Attorney, said that he provided the Committee with a list of the significant rules in the last meeting, and gave a brief update on development of rules pursuant to SB 247 (Revise the default supply procurement process) and HB 337 (Revise laws moving of utility wires and poles). He said a hearing on SB 247 is scheduled for Nov. 25, and the rules have been published. A hearing on HB 337 was scheduled for Nov. 18, so both of those rule-making processes will be finished by the end of the year.

II. UPDATE ON NORTHWESTERN BANKRUPTCY

State Participation in Bankruptcy Proceeding: Bob Rowe, Chairman, Montana Public Service Commission (PSC), thanked the Legislature and the Governor for the recent funds authorized to the PSC. He said that \$850,000 was authorized for the Attorney General's Litigation Fund to hire a financial advisor, and \$350,000 went to the Commission to cover expert bankruptcy counsel and extra costs, such as attending hearings in other states. He said that the PSC has consulted with the Legal Services Review Committee to hire expert outside counsel and are working with Brady Williamson's firm in Minnesota.

Mary Vandenbosch, ETIC Research Analyst, followed up on the letter the Committee requested be sent to the Governor, the Attorney General's Office, the Montana Consumer Counsel (MCC), and the PSC. She said that the responses were either mailed or are included in the folders. She said that the State wants to encourage NorthWestern to assume the contract for the Broadwater hydropower project at Toston Dam. NorthWestern can assume, assign or reject qualifying facilities (QF) contracts.

SEN. THOMAS wondered if retaining those contracts is up to the bankruptcy judge. Ms. Vandenbosch affirmed that was true. SEN. THOMAS asked if that was true for any contracts, or only for QF contracts. Ms. Vandenbosch responded that includes all executory contracts. SEN. STONINGTON inquired about the role of the PSC, seeing that the court makes the decisions regarding the contracts. Bob Rowe explained that the PSC has the opportunity to take a position on any of the issues in the bankruptcy. SEN. STONINGTON wondered about the role of the PSC versus the MCC regarding the rates and contracts. Mr. Rowe stated that the PSC represents the customers and the MCC represents the public interest, which is broader. He added that the PSC and MCC are coordinating closely in the bankruptcy process.

Summary of Major Actions: Al Brogan, PSC Attorney, gave an overview of the case, stating that it is moving along rapidly and producing many pleadings, exhibits, and other filings. He told of a similar case where California Pacific Gas and Electric tried to circumvent the state laws and regulations in their bankruptcy plan. A case was filed in 2001 and continues to drag on. The

Ninth Circuit Court recently issued a ruling that impacts how much federal bankruptcy law preempts state law and state regulation. He said that they have learned that nearly everything in a bankruptcy can impact ratepayers and public interest. Mr. Brogan continued with NorthWestern's case, and stated that four objections have been filed by the PSC (they are joined by the MCC in three of the objections):

- 1) Automatic stay applied to all proceedings (the PSC worked to have the Commission proceedings exempted from that automatic stay).
- 2) Permission to maintain public purpose programs, including USB programs (the PSC negotiated a settlement and a separate account was opened for USB funds on Nov. 13 with \$4,508,000; also established that USB funds are not part of the bankruptcy estate and not subject to any liens).
- 3) Continue to transfer \$72,000 per month to Montana First Megawatts and \$370,000 per month to the Milltown Dam (the PSC said that there is not enough information to determine whether the transfers are proper in the ordinary course of business, but NorthWestern has promised to provide that information).
- 4) Sale of Expanets, Inc., a non-utility asset not part of the bankruptcy (the PSC did not object to the sale, but inserted new language to allow the Commission to retain all authority and options to additional liabilities).

Mr. Brogan spoke to the recent news items regarding allegations of executive bonuses at NorthWestern. He explained that NorthWestern has not filed any requests for a Key Employment Retention Program (KERP), which would entail bonuses for top executives. He said that they will ask for a broad-based bonus program, and the PSC will examine that program as it comes forth. Mr. Brogan also referred to the interest of Montana Dakota Utilities (MDU) and Basin Electric Coop in purchasing NorthWestern's assets. He said that if they can convince NorthWestern's creditors that they'll be better off to sell than operate under the reorganized NorthWestern, that might be a possibility. They could also seek to change the filing from Chapter 11 to Chapter 7 and avoid the plan of reorganization process. He added that NorthWestern has not filed motions to reject their QF contracts, but are seeking to renegotiate. Mr. Brogan explained that the financial advisor is very important to evaluate the plans set forth, explore alternatives, and recognize fraudulent transfers. He said that the advisor would be able to facilitate communication between the PSC and NorthWestern not appropriate for public disclosure.

Mr. Rowe added that the Ninth Circuit decision (regarding the California bankruptcy) was very important with respect to state jurisdiction. He said that they have learned the importance of getting with the financial advisor early in the plan. Mr. Rowe stated that the PSC requested that NorthWestern drop any executive incentives, and that the PSC is neutral regarding the sale of assets to MDU or coops until they can see more specific information.

Questions/Discussion:

REP. GALLIK wondered if the PSC has been unsuccessful in accomplishing the fourth item regarding the sale of Expanets. Mr. Brogan explained that there are three possible claimants to that sale: the 5% minority shareholders, contingent litigation claimants, and securities litigation plaintiffs in South Dakota. He said that they have not been able to evaluate how much these claims might be. He added that Expanets will change their name but will continue under the normal course of business. REP. GALLIK asked if the money received from the Governor is enough so that a special session is not needed. Mr. Rowe affirmed that the amount authorized

was the amount the PSC requested, and they will try to live within that budget.

SEN. THOMAS inquired what the next step will be for the creditors' committee. Mr. Brogan said that he cannot speak for them, but if the creditors are convinced that certain money is better than uncertain equity, they will vote for the sale of NorthWestern's assets. The creditors could possibly move for Chapter 7 as well. SEN. THOMAS asked about the unsecured creditors' role. Mr. Brogan said that secured creditors are protected fully in a Chapter 11 case, as long as the assets are sufficient. He added that the debtor is responsible for collections and professional fees incurred by the lender, and that NorthWestern is continuing to make payments to secured creditors. Mr. Brogan stated that the bankruptcy code provides for rejection of contracts but that in two recent cases, FERC asserted that its jurisdiction trumped the bankruptcy court's jurisdiction. This matter is currently being litigated in federal appeals courts. SEN. THOMAS further inquired if the PSC can reauthorize a QF contract under state law, if that contract is rejected. Mr. Brogan informed him that the PSC can authorize any contract presented by the parties, but can't force NorthWestern to enter into any contracts.

SEN. JOHNSON wondered what the price is for the sale of Expanets. Mr. Brogan explained that it could be sold for \$152 million, minus the certain debt owed, so NorthWestern would net \$70-80 million. SEN. JOHNSON and Mr. Brogan continued to discuss NorthWestern's financial situation in relation to the bankruptcy and the reorganization plan they will propose. Mr. Brogan explained that NorthWestern has a certain time to present their plan, called an exclusivity period, that extends 120 days after filing bankruptcy. The period will continue another 60 days after the plan is presented to try and get it approved. He added that the court can allow an extension of that period if they desire. REP. GALLIK wondered if the reorganization plan is not officially presented until the 120 days, plus 60 days. Mr. Brogan said that is true, if the plan is presented as a plan of reorganization; if it is a motion to convert to Chapter 7, that is not true. He added that he is not aware of the details behind the proposal, but there is no indication for a conversion.

REP. GALLIK asked if the PSC is filing the legal documents regarding the bankruptcy on a Pacer service center or a website. Mr. Brogan responded that the proceedings are available through Pacer, but it is expensive. He said that the documents are available in electronic form, but are not on the PSC website. Mary Vandebosch inserted that free access to the court documents is available through a link on the ETIC website; she e-mailed this link to ETIC members.

SEN. THOMAS inquired if the QF generators are seen as creditors. Mr. Brogan said that the QF parties are the counter party to the executory contract. If NorthWestern were to reject the contract, it would be a breach of contract and would become an unsecured claim against the creditor. Mr. Rowe stated that the Attorney General is representing the executive agencies and that the PSC and MCC are sharing a financial consultant. He added that the most sensitive issue regarding QF's is, "If QF contracts are modified, does NorthWestern continue to have a right to the stream of payments?". SEN. THOMAS asked if that issue falls within the purview of the PSC. Mr. Rowe said that is an important issue, and he can't answer that question.

SEN. STONINGTON wondered about the advantages of filing Chapter 7 before evaluating a reorganization plan. Mr. Rowe answered that he can't think of any advantages, and doesn't see the conversion as a likely alternative. Mr. Brogan agreed that it is not probable to convert

to Chapter 7, but the only potential advantage is the time factor. If an extension is granted to the exclusivity period, the interested parties might want to speed up the process.

III. TRANSMISSION OF ELECTRICITY -- INITIATIVES AND SOLUTIONS

- **Western Interconnect: Camden Collins, President and CEO, Western Interconnect, L.L.C.**, participated via conference call. She told of her diverse background as an electrical engineer and lawyer, and is presently pursuing a finance degree. She proceeded through a PowerPoint presentation (*EXHIBIT 1*) to explain the Board membership and the specifics of her company. Ms. Collins stated that they are creating an RTO that gains membership over time. The company currently doesn't have transmission owners as members, but Ms. Collins doesn't know if the FERC thinks that is important. SEN. STONINGTON asked where the funding for Western Interconnect comes from. Ms. Collins answered that there is a collateral escrow account established from the utilities.
- **RTO West: Ted Williams, NorthWestern Energy**, went through his written remarks, included as *EXHIBIT 2*. He addressed the history behind the regional transmission organization (RTO) process, the responses to the RTO West Stage 2 filing, what has happened since the last filing, and the present situation.

Committee Discussion/Questions:

SEN. STONINGTON wondered if RTO West filed their own model with the FERC that conflicts with the western plan. Mr. Williams affirmed that their model proposes an RTO funded with contributions from transmission owners. Mary Vandembosch added that Western Interconnect is a competitor of RTO West. CHAIRMAN OLSON inquired about the consumer risks associated with RTO West for Montana. Mr. Williams said that there would be more opportunities for generators in Montana to serve markets elsewhere. It also allows access to resources outside of Montana at a lower cost. CHAIRMAN OLSON asked if that could open up competition, and Mr. Williams responded that an RTO would eliminate "pancaking" of rates for wheeling.

SEN. STONINGTON asked about the RTO West region. Mr. Williams explained that it includes Washington, Oregon, Nevada, Idaho, Montana, Wyoming, Utah, and British Columbia, with Alberta close to being involved as well. SEN. STONINGTON wondered if preference is shown to those within the region, or if the business goes to the lowest bid. Mr. Williams responded that the point of an open system is that there are no preferences. He added that SSG-WI is a collection of three RTO's looking at broader planning than just the subregions. They want to provide for a robust area market, but not lose sight of the whole market.

SEN. JOHNSON inquired about the funding for Montana's eight-year participation in the RTO West process. Mr. Williams responded that it was paid for by the transmission owners. He said that RTO West hired consultants and maintains an office in Portland, Oregon. They are essentially making loans to RTO West and will petition for money to repay those loans. SEN. JOHNSON asked about the cost to the State of Montana so far. Mr. Williams said that there is no cost, except as the State chooses to participate. The participation costs of the PSC and MCC come out of their respective budgets. SEN. JOHNSON remarked that he can't see how RTO West would help Montana. Mr. Williams replied that the goal of an RTO is to create an

efficient wholesale market structure; Montana's power supply comes out of that wholesale market. SEN. JOHNSON asked if Montana is represented on the seven-member board. Mr. Williams explained that there is a regional representatives group. Marla Larson from the PSC and Larry Nordell from the MCC are members.

SEN. STONINGTON asked where Montana benefits the most with an RTO. Mr. Williams responded that they would be best served with a single transmission rate. NorthWestern's transmission rate is high compared to other states in the region, due to the large geographic area it has to cover without much load on the lines. SEN. STONINGTON wondered if that applied to NorthWestern Energy customers only and not coop customers. Mr. Williams said that it would impact them both the same, because the coops take delivery from NorthWestern. He added that an alternative is the "license plate" approach which would charge different taxes for different states. It is important to eliminate the "pancaked" transmission rates.

REP. GALLIK questioned if Montana wants or needs a new transmission system. Mr. Williams answered that there is more generation than load in Montana today. The new energy generation would leave Montana, but there is not substantial transmission to move it out. REP. GALLIK wondered why there are no proposals for new transmission as well as generation. Mr. Williams said that the big question is who should pay for that. SEN. THOMAS and Mr. Williams then discussed the Colstrip-Townsend power situation and who paid for that transmission. Mr. Williams replied that some portion of the energy was consumed by Montana customers, but the other portion was paid for by other out-of-state customers down the line.

- **National Conference of State Legislatures (NCSL) Meeting:** SEN. THOMAS said that he attended a NCSL Energy Committee meeting in Idaho in September. He stated that the main issues covered were in regard to transmission and the energy bill going through Congress putting eminent domain into federal law. He explained that the bill establishes that public need outweighs individuals' needs. SEN. THOMAS continued that the two issues for the Legislature to address are: 1) look at how to fit the new federal law into Montana laws; and 2) work with Sen. Baucus, Sen. Burns, and Congressman Rehberg to obtain the funding required to implement those changes.

IV. TRANSMISSION OF NATURAL GAS, INCLUDING COAL BED NATURAL GAS

Jay Waterman, NorthWestern Energy, went through a PowerPoint presentation to explain the natural gas transmission and distribution in Montana. He distributed a transmission system map of the natural gas lines and the companies who own them (*EXHIBIT 3*). Mr. Waterman also pointed out the proposed line additions (loops) to ameliorate the "bottle-necking" of gas occurring in certain areas with the increases in population.

SEN. THOMAS wondered if the map (Exhibit 3) shows other entity pipelines besides NorthWestern. Mr. Waterman replied that it shows crude oil, but no natural gas pipelines. SEN. THOMAS asked if gas can be brought in and out of Wyoming. Mr. Waterman stated that there are 200 miles of 16" pipeline and 250 miles of 10-12" pipeline, but it would take more money per unit of increased capacity to move gas to and from Wyoming. SEN. THOMAS asked about the Powder River Basin lines. Mr. Waterman responded that it is not cost-effective to truck natural gas, but the Grasslands pipeline is nearing completion.

SEN. STONINGTON inquired if there are easement issues with looping additional lines. Mr. Waterman said that some areas have multiple pipeline rights, and some don't. They will have to buy additional rights for the areas that don't already have them. SEN. STONINGTON wondered who pays for that. Mr. Waterman replied that they submit a request for firm transmission contract. If the cost is too high, they ask for contributions.

CHAIRMAN OLSON wondered about the current costs for gas transmission. Mr. Waterman stated that it is 30¢ per MCF. REP. GALLIK asked how much it would cost to build one mile of pipeline. Mr. Waterman said that it depends on the locality and diameter, but 16" pipeline costs about \$80-100 per foot. REP. GALLIK inquired if other areas could provide new gas. Mr. Waterman said that Montana has 0.7 trillion cubic feet in reserves, but Wyoming has over 10 trillion cubic feet and Alberta has 50-70 trillion cubic feet. REP. GALLIK observed that the future is in storage and pipelines versus extracting gas from the ground. SEN. STONINGTON wondered where a pipeline would be built if the coal bed methane were developed in the Powder River Basin area. Mr. Waterman assured her that if there is a market for the gas, a pipeline will be built where it is needed.

V. UNIVERSAL SYSTEM BENEFITS

Presentation of Background Information and Options: **Mary Vandenbosch, ETIC Staff**, went through a PowerPoint presentation to compare the USB programs for electricity and natural gas. She referred to the USB Programs Workbook that she prepared for the ETIC November 9, 2003 (*EXHIBIT 4*). SEN. STONINGTON asked why the excess money goes to the State in electricity collections, but not natural gas collections. Ms. Vandenbosch replied that she does not know the history behind that, but will find out.

Legal Opinion: **Todd Everts, Staff Attorney**, read his memo to the Committee regarding the USB funding legal option (*EXHIBIT 5*). The memo included his response to the question, "Can a utility carry forward USB program funds instead of annually depositing the unspent funds in certain state special revenue accounts?". Mr. Everts also recommended that the Committee look at the options provided by Ms. Vandenbosch on pages 12-13 in the USB Programs Workbook (*Exhibit 4*).

CHAIRMAN OLSON added that the administrative rule is contrary to state statute; statute does not allow carry-forward of funds, even though it's taking place. He stated that he would prefer to look at the Department of Revenue rules and check into the statute next session as desired, but to not carry over the funds. He inquired how the reversions to the Department of Environmental Quality (DEQ) and the Department of Public Health and Human Safety (DPHHS) are dispensed.

SEN. STONINGTON asked if more oversight or reporting is necessary. Ms. Vandenbosch explained that they are required to report to various agencies, including the ETIC and its predecessor, the Transition Advisory Committee, but if they are concerned about ensuring oversight, the Committee could continue to put the topic in the work plan every interim. Mr. Everts added that the provision requires the money to go back out to the service territory. Ms. Vandenbosch suggested a going-forward approach instead of focusing on past actions, and went over the options listed on page 12 of the Workbook (*Exhibit 4*).

Public Comment:

Patrick Judge, Energy Policy Director, Montana Environmental Information Center (MEIC), read his written testimony (*EXHIBIT 6*). He stated that the USB Coalition formed this summer strongly supports additional assistance for low-income energy customers, but that it shouldn't take away from the conservation and renewal energy programs in the process. He also distributed a partial list of USB-supported Renewable Energy Projects (*EXHIBIT 7*).

Jess Alger, Farmer/Rancher, explained that he received a USB grant to build a wind tower. The project cost \$37,000 which was funded by the USB grant as well as other grants. He said that the wind tower is producing lots of power, and recommended that the Committee continue funding the USB grants.

Matt Leow, Montana Public Interest Research Group, read his written remarks (*EXHIBIT 8*) to explain the Group's support for continued funding of the USB programs. Mr. Leow read a letter from Joe LeFebvre, a science teacher at Red Lodge High School, expressing his support for the Sun4Schools program (*EXHIBIT 9*) and also submitted a letter from Doug Nelson, Mad Wolf Ranch, L.L.C., explaining the grant he received for a wind turbine (*EXHIBIT 10*). Mr. Leow stated that one area for improvement regarding the USB funds is the lack of oversight or cost-effectiveness tests for large industrials.

Pat Callbeck-Harper, Associate State Director of AARP Montana, read her written testimony (*EXHIBIT 11*). She explained that they hired Barbara Alexander, a national energy consumer specialist, to examine the programs available to Montanans to lower their energy bills. She listed the preliminary observations and their recommendations. She explained that they would like to see the USB program extended and studied more closely. Ms. Callbeck-Harper said that they are willing to take an active role in finding the best options, and are willing to facilitate roundtable discussions to find a consensus among energy and consumer stakeholders.

Don Quander, Counsel, Montana Large Customers Group, explained the reasoning for the cap on the amount that large industrials pay for their energy. He said that the PSC has per-kilowatt charges, but USB is a simplified system and is calculated only on hourly kilowatt charges. He stated that large industrials pay USB, but if they meet the qualifications for conservation programs, they receive certain credits. Mr. Quander added that there are a lot of reporting requirements and guidelines for large industrials as well. He said that detailed criteria have been established and are used by the Department of Revenue as a basis for their rules. He ended by stating that the Large Customers Group generally supports the USB program and works closely with Energy Share.

Gene Leuwer, Executive Director, Rocky Mountain Development Council, said that they encourage the segregation of USB funds from the other utility funds collected. He stated that the USB program could be improved, but it is a good system and that Energy Share and Low Income Energy Assistance Program (LIEAP) applications are increasing. He supports the extension of USB revenue going forward; with the current economic state, low income energy demand is just going to increase.

Questions from the Committee:

REP. GALLIK asked why the AARP is offering money and office space for stakeholders to meet. Ms. Callbeck-Harper explained the importance of sharing perspectives and identifying

where the program is strong and weak, to make recommendations for improvement. She added that the utilities supposedly offer programs, but their staff doesn't know anything about them when a person inquires. Mr. Quander agreed that ongoing USB discussions are useful, though there has been a lot of past discussion on the subject already. SEN. JOHNSON wondered what is being done currently to make the program more workable. Jim Nolan, DPHHS, said that DPHHS administers the LIEAP and weatherization programs. He said that they were the recipient of significant USB monies and excess reverted funds that they used for weatherization and Energy Share programs. He added that DPHHS holds roundtables each year to determine what works and what doesn't work.

SEN. STONINGTON wanted further clarification on what the Governor announced this morning. Chuck Swysgood, Director, Office of Budget and Program Planning, said that \$1.5 million was authorized for LIEAP, \$500,000 for weatherization, and \$1.1 million to energy assistance, in addition to the federal bonus money previously allocated to LIEAP in the amount of \$500,000. SEN. STONINGTON asked if this allocation is precedent-setting. Director Swysgood stated that the money was a one-time-only (OTO) appropriation from federal funds and was not precedent-setting. Mary Vandenbosch added that the PSC order also identified the allocation as OTO.

CHAIRMAN OLSON and Patrick Judge discussed Exhibit 7. Mr. Judge stated that MEIC's goal is to expand the market of alternative energy to make it more cost-effective and minimize the use of USB funds. CHAIRMAN OLSON inquired about the life expectancy of a wind turbine generator. Mr. Judge replied that it is 30 years. When asked if it is cost-effective, Mr. Judge responded that one has to look at the cost to the environment as well as the monetary costs. He said that conservation is the first step, but not to the exclusion of the alternatives. CHAIRMAN OLSON observed that the cheapest kw is the one never used, and wondered if consumers are better served by conservation. Mr. Judge stated that a balance needs to be maintained between the two approaches. CHAIRMAN OLSON inquired about the pay-back period on weatherization projects. Jim Nolan stated that every dollar put into weatherization must result in \$1.80 in energy savings, but that he didn't know how long that would take to pay back. Gene Leuwer added that the \$1=\$1.80 is required over a 7-year period.

Committee Discussion/Identification of Next Steps:

SEN. STONINGTON inquired if the Committee is ready to make a decision regarding the continuation of the USB program. SEN. THOMAS said that he is in favor of extending the program, but wants to look into the specifics of the program for the future. He wondered if it would be better to put more money into LIEAP and weatherization instead of conservation projects.

SEN. STONINGTON *moved* to draft legislation to extend the USB program for electricity for four years (until the end of 2009). SEN. JOHNSON suggested that the program sunset on a continuing basis so that it is reevaluated upon renewal by the legislature at least every four years. REP. GALLIK wondered if the motion was to continue the USB program as currently constituted, or in an amended form. SEN. STONINGTON said that this is just the first step of whether or not to even continue the program; they can look at tweaking it afterwards. The motion carried unanimously by voice vote.

REP. MATTHEWS suggested that the Committee not draft any legislation until after the AARP

has had time to meet with their roundtable and report back. The Committee discussed the time frames for drafting any legislation, concluding that they need to take action on any proposed legislation before September of 2004.

REP. FUCHS stated that he would like more feedback regarding market transformation. CHAIRMAN OLSON added that he would like a rundown on all programs included USB programs.

VI. UPDATES

Governor's Energy Consumer Protection Task Force: John Bushnell distributed an agenda for the Task Force's meeting tomorrow (*EXHIBIT 12*). He said that they were given three charges by the Governor: 1) develop proposals to mitigate power bill increases for Montanans, especially low-income consumers; 2) evaluate current Montana laws and rules to determine if they are sufficient to protect Montana consumers' interests in the event of NorthWestern's bankruptcy; and 3) examine how electricity default supply customers can receive the most reliable, affordable, and stable electricity prices over the long-run. He went through the Task Force membership, and stated that they have already met five times. Mr. Bushnell briefly described some of the projects and approaches of the Task Force in fulfilling those charges from the Governor. He said that the Task Force looked at HB 509 and SB 247 regarding consumer protection issues. He referred to *EXHIBIT 13*, a letter from the Governor requesting that the ETIC look at the issue and work with interested parties to address transfers of utility property. He also read the five recommendations listed in that letter on page 2.

Mr. Bushnell stated that the Task Force's scope is limited, but the structural issues involved are in regard to ownership of generation. The Task Force suggested that the default supplier be given statutory authority to request PSC to approve rate-based generation. He added that another issue they are working on is the advanced approval of utility-owned generation. He listed the continuing work of the Task Force as being: ring-fencing of utilities, PSC structure (elected vs. appointed), low-income programs improvement, and HB 509.

SEN. STONINGTON had a question regarding the advanced approval of rate-based generation. Mr. Bushnell explained that legitimate bids should be lower than the default supplier. SEN. STONINGTON wondered if there is any profit for the default supplier. Mr. Bushnell stated that imbedded in the rate-based concept is return on investment. CHAIRMAN OLSON added that the Task Force is waiting on comments from the MCC.

Environmental Quality Council Energy Policy Subcommittee: Todd Everts, Legislative Environmental Analyst, listed the members of the Subcommittee and stated that they are investigating alternative fuels and energy sources. They will not duplicate the ETIC's actions, but will look into hydrogen, ethanol, wind, and fossil fuels as they relate to alternative fuels. SEN. STONINGTON wondered if there was any discussion regarding biomass as a fuel. Mr. Everts responded that there was not. CHAIRMAN OLSON inquired about the State Energy Office that is supposed to exist, but Mr. Everts told him that one does not. Though there is no designated State Energy Office or person, Tom Livers of the DEQ deals with energy conservation requirements.

REP. GALLIK asked about the federal energy bill coming forth. Mary Vandebosch referred to

an e-mail she received, listing the highlights of the proposed Energy Policy Act of 2003 (*EXHIBIT 14*). She read the section of the e-mail regarding how the proposed Act relates to Montana. Ms. Vandebosch also distributed *EXHIBIT 15* (PSC Natural gas and electricity rates), *EXHIBIT 16* (Natural Gas Weekly Update), and *EXHIBIT 17* (MDU fact sheet) for the Committee's reference.

VII. PSC AUTHORITY OVER UTILITY TRANSACTIONS

PSC Presentation: Bob Rowe, Chairman, PSC, referred to a PSC memo sent to the Committee on October 31, 2003 (*EXHIBIT 18*). He stated that the PSC is seeking express statutory authority to approve the sale, transfer, merger, or disposition of utility property. Exhibit 18 includes examples of laws from other states that grant this authority. Mr. Rowe emphasized that the PSC would not review transactions involving nonregulated utilities or involving property that is not necessary to the utility's regulated operations. Furthermore, the PSC would propose an exception for transactions that occur in the ordinary course of business as well as transactions involving property valued less than a specified threshold.

CHAIRMAN OLSON *moved* to add the topic of ring-fencing and PSC approval over assets to the Work Plan. The motion carried without objection.

Public Comment: John Alke, Montana Dakota Utilities (MDU), distributed Alternative 234, last session's PSC draft with MDU suggested amendments (*EXHIBIT 19*) and stated that he and the PSC are close to working out mutually acceptable language to grant this authority. CHAIRMAN OLSON asked if MDU has had any contact with NorthWestern regarding the amendments. Mr. Alke said they had not, but he believes the issue is well known from the advocacy efforts during the 2003 session. He added that the small telecommunications carriers were concerned about making sure leasing is accepted, but that can easily be accommodated.

VIII. PUBLIC COMMENT ON MATTERS WITHIN COMMITTEE'S JURISDICTION: None

IX. OTHER BUSINESS

- **Budget:** Mary Vandebosch informed the Committee that of the \$21,575 allocated to the Committee, \$19,089 is left in the budget so far. She said that the budget could cover a meeting in Colstrip, based on assumptions from the past meetings, and that a two-day meeting in Great Falls could be covered but could fall short by approximately \$300 in personal services.
- **Confirm Date and Location of Next Meeting:** CHAIRMAN OLSON stated that the next meeting would be on Thursday and Friday, Jan. 29-30, 2004 in Great Falls, MT if there is no objection from Committee members.
- **Confirm Agenda Items for Next Meeting:** Mary Vandebosch went over the proposed agenda items for January in *EXHIBIT 20*. CHAIRMAN OLSON suggested adding 30 minutes to the bankruptcy discussion time. REP. GALLIK added that he would like to hear more about eminent domain and the national corridor, and to follow up on the federal bill. She said that the Committee is a little behind schedule and they need to think about possibly cutting items from the work plan or spending more time

reviewing materials between Committee meetings.

X. BRIEFING FROM NCGL ENERGY SECURITY INSTITUTE IN DENVER, COLORADO

SEN. JOHNSON informed the Committee about the meeting he recently attended. He said that there was a lot of discussion regarding the protection of poles and wires for the utilities companies. SEN. JOHNSON suggested that the Committee might inquire of the utilities and see if they are interested in receiving help in this area. He suggested that retired citizens might help out by performing routine drive-bys to look for maintenance needs and vandalism.

ADJOURN

The meeting adjourned at 4:40 p.m. The next meeting is scheduled for Thursday and Friday, January 29-30, 2004 in Great Falls, Montana.

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