

MINUTES
of the
LEGISLATIVE CONSUMER COMMITTEE
January 16, 2018
State Capitol, Room 137, Helena, Montana

COMMITTEE MEMBERS PRESENT

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

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

Katie Guenther, Legislative Fiscal Division
Mark Schoenfeld, Department of Revenue
Chairman Brad Johnson, Public Service Commission

CALL TO ORDER

Chairman Cuffe called the meeting to order at 1:30 p.m.

MINUTES OF PREVIOUS MEETINGS

MOTION: Senator Malek moved for adoption of the October 19, 2017, meeting Minutes.

VOTE: The motion passed unanimously.

CONSUMER COUNSEL FUNDING

At the request of the Chair, Katie Guenther, Legislative Fiscal Division, and Mark Schoenfeld, Department of Revenue, followed up on discussions regarding the Montana Consumer Counsel's fund equity balance. Ms. Guenther provided the Committee with details on how the tax rate calculation had changed over time, which resulted in a growth of the fund equity account. Mr. Schoenfeld recapped how the Department of Revenue has revised its method of calculating the Consumer Counsel tax rate, which will address excess funds collected for the upcoming year and allow the fund to remain at appropriate levels in coming years. Chair Cuffe thanked both Ms. Guenther and Mr. Schoenfeld for their time and for bringing the Committee up to speed.

STATUS OF CASES

Bob Nelson highlighted selected case developments that have occurred since the Committee's meeting in January.

NWE – D2017.5.39/D2016.7.52 – MPSC Review of Rates to Recover NWE's Electricity Supply Costs/2017 Electricity Supply Tracker.

Bob noted that the MCC filed testimony in response to the Commission's Notice of Commission Action and Procedural Schedule in late November 2017. In summary, Mr. Donkin recommended that the Commission terminate the tracker entirely as it violates the matching principle, which considers all cost and expenses and revenues and volumes in the same time frame. The MCC consistently has opposed trackers in the absence of a clear-cut reason for exceptions. If the Commission does continue the tracker, then Mr. Donkin recommended that certain cost categories should be excluded. Mr. Donkin also recommended that the termination of the tracker be coordinated with the base rate review that NWE will be filing later this year. The Commission, subsequent to the filing of testimony, issued a Notice of Additional Issues to consider issues that it thought had not been addressed in testimony at that point. Specifically, the Commission directed parties to consider alternatives for trackers that incorporate risk sharing features that other utilities in the Northwest use. The Commission also requested an evaluation of categories that should be included and excluded from the power cost and adjustments mechanism (PCCAM, or the tracker) beginning July 1, 2017. Mr. Donkin provided testimony on those additional issues. The Commission amended the procedural schedule to address the additional issues with the hearing scheduled at the end of May.

The next cases that were summarized related to Qualifying Facilities (QF).

In reviewing the qualifying facilities (QF) dockets, Bob noted that some parties had filed motions for reconsideration with respect to contract length and carbon cost issues. NWE also filed a motion for clarification with respect to four projects, which it asserted beat the deadline for the emergency suspension to bring these facilities in under the old QF rates. The Commission issued an order on reconsideration, changing the contract length to 15 years and eliminated the 5-year rate adjustment requirement. The Commission further allowed the QFs to retain the renewable credit values associated with carbon regulation, stating that there was no accurate way to forecast the carbon related price adder that would serve as a proxy for avoided costs. In addition, the Commission noted that resource planning requirements will incorporate

emissions costs in avoided cost calculations. With respect to capacity costs, Bob noted that the Commission concluded that the 6.1-percent capacity value for Solar QFs was reasonable and that a legally enforceable obligation (LEO) and not been formed. The Commission maintained its finding with respect to the QF-1 docket that NWE's resources should be treated in the same manner and evaluated in the same 15-year time frame, and that it would apply symmetry prospectively as well as consider a risk sharing arrangement for terminal values in the future. Appeals of the QF-1 order include: 1) Vote Solar, Montana Environmental Information Center (MEIC) and Cypress Creek Renewables, filed in the Eighth Judicial District, Great Falls, and 2) NWE filed a petition for review, in Lewis and Clark County, which related to the symmetry finding.

MTSUN – D2016.12.103 – Petition to Set Terms and Conditions for Qualifying Facility, Bob noted that the Commission had issued a final order in the case. Both MTSUN and NWE filed motions for reconsideration of that order. The Commission issued an order on reconsideration, which was consistent with the QF-1 docket, reaffirming its final order and including the 15-year contract length. Subsequently, NWE filed a petition for judicial review in Lewis and Clark County and MTSUN filed a complaint and petition for judicial review in Lewis and Clark County. These cases are in the initial stages and still pending.

NWE – D2017.6.45 - Petition of New Colony Wind to Set Terms and Conditions for QF, filed 6/1/17.

Bob noted that a hearing had been held and a final order issued. The final order was consistent with the Commission's conclusions in the MTSUN and the QF-1 dockets. Bob further noted that a unique issue in this docket was that NWE attempted to establish interconnection transmission costs that would be imposed on its system by the New Colony Wind Project. The Commission found a lack of support for those costs and determined that those costs would be borne by NWE rather than by New Colony Wind. New Colony and NWE have subsequently filed motions for reconsideration of that final order.

NWE – D2017.6.56 – Petition for Declaratory Ruling on Availability of Schedule QF-1 Rates, filed 6/19/17.

Bob explained that this is a petition by NWE for a declaratory ruling on the availability of QF-1 rates, which apply only to small projects. The projects involved in the petition have common ownership and are separated by roughly one mile. NWE therefore views them as one larger QF. The Commission issued a notice of opportunity to comment on the petition. MCC reviewed the filing but did not file comments. The Commission issued an order late November that denied NWE's petition. The Commission reasoned that these projects are certified by FERC as separate 3-megawatt projects and that NWE has an opportunity to challenge that certification at FERC; therefore, the Commission did not think that it was appropriate for it to issue a declaratory relief. A motion for reconsideration is pending on the Commission's findings.

Senator Malek expressed her concern, with the loss of Colstrip 1 and 2 and probably 3 and 4 by 2030, that progress is needed on the types of energy that are being developed across the nation.

NWE – D2011.5.41 - Spion Kop Compliance Filing, filed 10/25/17.

Bob noted that Spion Kop is a wind project that was approved approximately seven years ago. The approval required biennial rate filings and updates of fixed costs. In this filing the company proposed about a \$400,000 reduction, which has been approved on an interim basis. MCC will conduct discovery with respect to the proposal.

NWE – D2017.8.65 – Petition for Waiver of Community Renewable Energy Project Purchase Obligation for 2016, filed 8/18/17.

This docket concerns the community renewable energy (CREP) obligation that is a component of the renewal portfolio standard requirements. Utilities in Montana in the aggregate are required to have 75 megawatts of their renewal portfolio standard met by these CREP projects, which are to be small and Montana owned. NWE had difficulty in procuring its share of these CREP resources and therefore requested a waiver of that obligation. Bob noted that NWE has received several waivers in the past and that this petition is for a waiver of its 2016 obligation, which has been consolidated with its 2015 waiver request. The Commission has noticed the petition. MCC petitioned to intervene. A procedural order was issued, with a hearing set for April.

NWE – N2015.11.91 – December 2015 Electricity Supply Resource Procurement Plan, filed 3/31/16.

Bob noted that the Commission had issued comments, which were consistent with the concerns that the MCC had expressed in the comments it had filed. Subsequently, the Commission asked NWE to pursue a rigorous stakeholder process to consider some of the concerns that it had raised. Considering these comments and other resource planning issues that came up with respect to QFs, the Commission issued supplemental comments reiterating that NWE should consider capacity requirements in a regional context. The Commission expressed skepticism, as did the MCC, concerning NWE's stated capacity needs, deeming that NWE's RFP, which had been issued to explore how the company could satisfy those capacity needs, had been too restrictive. The Commission asserted that NWE had not adequately tested the market and therefore was skeptical that its procurement regime would impose risks on consumers for projected benefits well into the future. Consistent with QFs, the Commission wanted to try to minimize long-range consumer risks, so it indicated that for 2018 NWE would file using a 15-year planning horizon. Finally, NWE expressed its intent to hire a consultant to advise on that planning process.

NWE – D2016.9.68 – General Gas Rate Increase.

In summarizing this case Bob noted that a final order had been issued on the revenue requirement issues, which left the cost allocation and rate design portion of the case to be decided. MCC had filed testimony disagreeing with NWE's cost allocation study. Bob further noted that since the last meeting MCC had filed additional testimony from Mr. Donkin, which applied the same criticism to another intervenor, the Large Customer Group, that supported the approach that NWE had taken. Ultimately, MCC entered into a settlement with NWE, the Large Customer Group (LCG), and the Human Resource Council (HRC). The HRC, in Missoula, participated in the settlement because it had filed testimony with respect to the customer service charge. In the settlement the parties agreed to specific customer class revenue allocations and increases. For the residential and general service classes the settlement specifies a 2.25 percent increase, as opposed to the original requested increase of 7.11 percent. NWE had requested an

\$8.25 per month service charge and the settlement specifies a \$6.50 per month service charge. The settlement has been submitted to the Commission. A hearing was held in December and the final Commission action is still pending.

Chair Cuffe suggested that the MCC provide statistics that would be meaningful to the legislators, detailing savings made to the consumers as the result of the MCC's participation in the cases before the Public Service Commission, and Bob stated that he would put something together.

Bob referenced NWE'S 2017 Natural Gas Tracker (D2016.7.53), noting that the MCC analyzed the filing and did not file testimony. The Commission issued a final order approving the requested rates.

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

Bob noted that this tracker relates to state and local non-income taxes that utilities in Montana are entitled to track. Historically the MCC has opposed this type of tracker, but the legislature has authorized them. There is much complexity that is difficult to process in the short time frame for these tax trackers, which are filed in December with an approval by the PSC set for early January. NWE's tax tracker contains a net increase for the electric utility of about \$4 million, which includes deferred accounts for its transmission and distribution (T&D) and several production assets stated separately, and for the gas utility a decrease of about \$2.8 million. Ignoring the deferred account offsets, it would represent about a \$6.5 million increase for the electric utility and a small increase about \$270,000 for the gas utility. The Commission issued a notice of application. MCC petitioned to intervene and filed comments relating to an allocation issue identified in the docket. NWE has both retail jurisdictional customers and wholesale jurisdictional customers. The Federal Energy Regulatory Commission (FERC) sets the rates for the wholesale customers, which have not changed for approximately 10 years, while the Commission tracks them for the retail customers. In the past the revenues the company obtains for its wholesale sales are credited to the retail customers. In this case a direct allocation would indicate that about \$2.9 million dollars had been shifted from the wholesale customers to the retail customers. MCC's comments indicate that NWE has not supported recovery of that amount for the retail customers. The Commission will hold a hearing in the near future.

Chair Cuffe welcomed Commissioner Brad Johnson, Chairman of the Montana Public Service Commission, to the meeting. Chairman Johnson assured the Committee that the Commission places a level of importance on its outreach to utility customers and ability to provide assistance to them as they try and find their way through what can be a rather complex structure and a frustrating adventure sometimes. Chairman Johnson noted that the PSC is currently involved in redesigning its case management software. Part of that initiative was to enhance the PSC's ability to accept and to track customer concerns that are expressed. Chairman Johnson said he would welcome a conversation of an interface between the MCC and the Commission regarding customer concerns as a co-operative effort to prevent reinventing the wheel or duplicating efforts and wanted to offer that openness to working with the MCC to ensure provision for utility customers to be heard.

Chair Cuffe thanked Chairman Johnson for his time. He also expressed his interest in scheduling a follow up discussion on how consumers can bring their issues to light. Chairman Johnson added that he would welcome that opportunity

A brief recess was taken

Chairman Cuffe call the meeting back to order with the continuation of the status of cases.

The next several cases presented related to the Montana-Dakota Utilities Company.

MDU – D2017.10.83 – Application to Update Rate 93 Tariff, filed 10/17/17.

Bob noted that the MCC has intervened in this case and a hearing is set for May 2018.

MDU – D2017.9.79 – General Natural Gas Rate Increase, filed 9/25/17.

In reviewing this docket Bob noted that it is in the discovery and testimony filing phase with a hearing set for mid-April.

MDU – D2017.9.72 – Annual State and Local Tax Tracker, filed 11/29/17

Bob noted that MDU is proposing a small natural gas net increase and a small electric net decrease. MDU indicate that its tax liabilities in the state have increased approximately 8.2 percent. MCC reviewed the filing and did not suggest any adjustments. A hearing was held January 5, 2018. The Commission took no action so the tax change went into effect pursuant to statute.

The next several dockets presented related to Energy West Montana (EWM).

EWM – D2017.9.80 – Natural Gas General Rate Increase, filed 9/29/17.

In summarizing this docket Bob noted that the MCC has recently hired consultants and that it is in the discovery and testimony preparation phase with a hearing set next May.

EWM – D2017.12.89 – Reconciliation of West Yellowstone No Interest Loan Program Surcharge, filed 12/1/17.

Bob noted that EWM has had a No Interest Loan Program (NIP) surcharge that has been in effect for some time. The Commission recently asked EWM for a reconciliation of the difference between collections and disbursements, which EWM completed for a 20-year period. EWM's NIP has basically dropped out of use by its customers. EWM has continued to collect the charges without disbursing them, resulting in a \$113,000 over-collection. EWM is proposing to handle that over-collection by committing half to an immediate grant to Energy Share and retaining the other half and drawing that down over time in conjunction with its current collections for continuing contributions to Energy Share. MCC filed a petition to intervene and is reviewing the filing to see if it wants to file any comments or testimony.

Petition of MCC – N2017.9.76 – Petition to Amend ARM 38.5.2527 and 2528, filed 9/25/17.

In recapping this petition of the Consumer Counsel, with respect to changing the standard rate rules for small water utilities, Bob noted that since the last meeting the MCC filed a request for

hearing or an opportunity to respond in writing to other comments. A hearing was held in November. The Commission issued a Notice of Commission Action accepting the petition for rulemaking, which kicked off a rulemaking process. The Commission indicated that it did not agree entirely with MCC's positions, or its proposed rules, but agreed that the process should be refined. The Commission indicated its intent to file proposed rules with the Secretary of State by today and that the MCC will have an opportunity to comment on the rulemaking.

PSC – N2017.12.94 – Investigation of Federal Tax Reform Impacts, initiated 12/29/17.

Bob noted that the Commission had initiated an investigation into the federal tax reform impacts. A notice of commission action was issued late December, before the first of the year when the new tax rates go into effect. There are two major changes to income tax expense for utilities, one is the immediate reduction of tax rate from 35 percent to 21 percent, which is a large expense item and will have significant impact on rates; the other component is that the utilities collect taxes that are charged to the ratepayers immediately, but they do not have to pay to the federal government, which are referred to as deferred taxes, basically enabling utilities to finance capital improvements through these ratepayer tax collections that then over time are reversed. With the change in the rates there will be a change to those liabilities, so part of this investigation is looking at that issue as well as just the tax rate change. The Commission has noted this is similar to the single-issue filings in trackers and Bob reiterated that in most cases the MCC opposes those single-issue trackers. There are, however, some standards for when trackers of individual items are allowed. In recognition of those standards, the Commission did make some findings in this investigation, noting that the revenue impacts for utilities are large, are unplanned, and are beyond management control and thus unusual. Therefore, utilities are required to implement deferred accounting, which allows the Commission time to determine in the upcoming months how to handle those amounts being booked under that deferred accounting order. The Commission required NWE and MDU and EWM to record a deferred liability, which will be examined with the estimated reduction in the revenue requirement that would result from the tax changes. With respect to EWM and MDU, due to pending gas rate filings, the Commission required supplemental testimony in those cases, which will be handled immediately through those dockets. The other utilities have a March 31 deadline to submit a proposal to address the effects of the 2017 act. As Chairman Johnson indicated, the Commission has allowed the utilities to propose other ways of using these excess funds that might be generated by the change in tax liabilities, rather than just requiring an immediate refund. Bob expressed his hope that the Commission will remain open to the MCC concerns about whether expenses should be taken care of on a normal business basis, not just because more money is available to be spent. Bob stated that the process should start from the perspective that this money should be returned to the ratepayers. For example, if it went towards capital expenditures, such improvements would have to be considered customer-contributed capital in the view of the MCC.

PSC – N2017.10.82 – Investigation into High Cost Support and Lifeline Services, initiated 11/9/17

This docket is PSC initiated and relates to telecommunications and the high cost support and lifeline services, which are federal cost support programs to provide services to rural customers and to low income customers. The Commission would like to ensure universal service - that the service in rural areas is comparable to service in more urban areas. The Commission has asked the telecommunication carriers questions, which were broken down into three categories. The

first category is what the Commission can do with respect to its rulemaking and its oversight, which is authority given by the Federal Telecommunications Act over the eligible telecommunications carriers, basically asking whether its oversight under the state administrative process be improved. The second category of questions related to whether the state laws should be revised - there is currently a state law that allows for the creation of a state universal service fund, in addition to the federal universal service fund. For the third category, the FCC is in the process of considering reforms with respect to these cost supports and is proposing to limit the application of those funds to facility-based carriers, so that non-facility-based carrier customers would lose some of that support. The Commission is asking for suggestions on what could be done with the federal regulation and comments that they should provide to the FCC.

FINANCIAL REPORT

Bob noted that he presently had no concerns with the budget. The financial report presented to the Committee was for the period July through September of fiscal year 2018.

CONTRACTED SERVICES

Bob requested authorization to hire Ralph Smith with Larkin and Associates for the PSC Investigation of the tax reform impacts, which covers all the major utilities in Montana

The following motion was made:

MOTION: Senator Fielder moved to approve the request of the Montana Consumer Counsel to retain the consulting firm Larkin & Associates in the PSC Investigation of the tax reform impacts.

VOTE: The motion passed unanimously.

Bob requested authorization to hire Dr. Robert Loube for the PSC Investigation into High Cost Support and Lifeline Services.

The following motion was made:

MOTION: Senator Fielder moved to approve the request of the Montana Consumer Counsel to retain the consultant Dr. Robert Loube in the PSC Investigation into High Cost Support and Lifeline Services.

VOTE: The motion passed unanimously.

Bob requested authorization to hire the consulting firm Larkin and Associates to assist in the Montana-Dakota Utilities corporate re-organization docket.

The following motion was made:

MOTION: Senator Fielder moved to approve the request of the Montana Consumer Counsel to retain the consulting firm Larkin and Associates in the Montana-Dakota Utilities corporate re-organization docket. Senator Fielder asked that the contractor include an investigation into the character of the corporate officers that will have fiduciary responsibilities to the corporation.

VOTE: The motion passed unanimously.

PUBLIC COMMENT

There was no public comment.

NEXT MEETING

The date for the next meeting was set for May 17, 2018 at 1 p.m.

ADJOURNMENT

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

Respectfully submitted,

 _____, Robert Nelson, Consumer Counsel

Accepted by the Committee this 17th day of May 2018,

 _____, Chairman.