



## Energy and Telecommunications Interim Committee

### 62nd Montana Legislature

#### SENATE MEMBERS

ALAN OLSON--Chair  
VERDELL JACKSON  
JIM KEANE  
CLIFF LARSEN

#### HOUSE MEMBERS

TONY BELCOURT--Vice Chair  
ROBYN DRISCOLL  
HARRY KLOCK  
AUSTIN KNUDSEN

#### COMMITTEE STAFF

SONJA NOWAKOWSKI, Lead Staff  
TODD EVERTS, Staff Attorney  
DAWN FIELD, Secretary

# MINUTES

May 17, 2012

Natural Resources Building, Montana Tech Campus  
Butte, Montana

**Please note:** These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. To the left of each section in these minutes is a time designation indicating the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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Hard copies of the 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. ALAN OLSON, Chair  
REP. TONY BELCOURT, Vice Chair  
SEN. VERDELL JACKSON  
SEN. JIM KEANE  
SEN. CLIFF LARSEN  
REP. ROBYN DRISCOLL  
REP. HARRY KLOCK

#### **COMMITTEE MEMBERS EXCUSED**

REP. AUSTIN KNUDSEN

#### **STAFF PRESENT**

SONJA NOWAKOWSKI, Lead Staff  
TODD EVERTS, Staff Attorney  
DAWN FIELD, Secretary

#### **AGENDA & VISITORS' LIST**

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

### **COMMITTEE ACTION**

The Energy and Telecommunications Interim Committee:

- approved the January 13, 2012, meeting minutes;
- did not approve PSC proposed legislation as ETIC bill drafts; and
- approved a final version of staff's HB 142 draft report to the 2013 Legislature.

### **CALL TO ORDER/ROLL CALL**

00:00:33 SEN. OLSON called the Energy and Telecommunications Interim Committee (ETIC) meeting to order at 8:00 a.m. The Secretary took roll, Rep. Knudsen was excused (Attachment 3).

### **WELCOME TO BUTTE**

00:01:55 **J.D. Lynch, Butte, former legislator**, welcomed the ETIC to Butte.

00:05:59 **Sonja Nowakowski, Research Analyst, Legislative Services Division (LSD)**, reviewed the meeting agenda and tour schedule.

00:06:21 SEN. KEANE announced that there would be a reception and dinner following the meeting.

### **MEETING RECESSED FOR TOURS**

- PPL EnergyPlus Trading Floor - Rose Spear, director of trading and marketing
- NorthWestern Energy System Operations Control Center - Casey Johnson, director of operations control center and transmission operations

### **LUNCH BREAK**

### **CALL BACK TO ORDER**

05:05:09 SEN. OLSON called the committee back to order at 1:40 p.m.

05:05:55 **Ed Deal, Director, Montana Bureau of Mines and Geology**, welcomed the ETIC to the Bureau of Mines and Geology and the Montana Tech Campus. Mr. Deal discussed bureau staff and highlighted various Bureau projects and activities.

05:08:57 **Donald Blacketter, Chancellor, Montana Tech**, welcomed the ETIC to Montana Tech and provided background information and statistics relating to the college.

### **PSC REPORTS AND REQUEST**

#### **Overview**

05:20:54 **Travis Kavulla, Chairman, Public Service Commission (PSC)**, updated the ETIC on PSC activities and dockets (EXHIBIT 1).

#### **LCet02 - Renewable Portfolio Standard (RPS) Housekeeping Bill**

05:30:46 **Jason Brown, PSC Staff Attorney**, reviewed the provisions of LCet 02 - Renewable Portfolio Standard (RPS) housekeeping bill (EXHIBIT 2). Mr. Brown

referred to a companion document (EXHIBIT 3) and discussed a summary of the proposed bill's provisions.

#### **Committee Questions**

- 05:39:23 SEN. OLSON referred to pages 3, 11, and 13 of the proposed bill draft and asked if the bill will bring co-ops into the reporting requirements under the PSC. Mr. Brown said no, that co-ops are exempted.
- 05:40:35 SEN. KEANE asked who the PSC is trying to "capture" in the bill with the new reporting requirement. Mr. Brown said that competitive electricity suppliers are the target and explained additional criteria and who would be required to report.
- 05:41:36 SEN. KEANE and Mr. Brown discussed dealing with RPS compliance through rule, versus statute. Mr. Brown discussed the benefit of having compliance in statute, SEN. KEANE said he would prefer to let the system work as is.
- 05:43:09 Commissioner Kavulla discussed why having the definitions confirmed in statute is needed and reiterated that co-ops will not be affected. He said the bill would simply put in statute a practice that the PSC already carries out.

#### **LCet03 - Renewable Energy Credit (REC) Cost Cap Bill**

- 05:45:45 Mr. Brown reviewed the provisions of LCet 03 - REC Cost Cap bill (EXHIBIT 4). Mr. Brown referred to a companion document (EXHIBIT 3) and discussed a summary of the proposed bill's provisions.

#### **Committee Questions**

- 05:48:25 REP. DRISCOLL asked if it is up to the utility to determine that a REC costs more than \$10. Mr. Brown said it would be up to the utility to show the PSC that the REC costs more than \$10. He said the PSC would look at the compliance period for that utility to confirm it and explained how the PSC would work with the utility.
- 05:50:07 REP. DRISCOLL asked if any public utility has had to use the existing cost cap. Mr. Brown said that the most recent filing from NWE regarding RECs does cite the cost cap as the reason it was requesting a waiver.
- 05:51:04 REP. DRISCOLL asked how much of the fine amount paid by a utility goes into the universal assistance low income energy fund. Mr. Brown said that initially, the standard began at 5% amounting to approximately \$300-500 but that with the increase to 10%, that amount has almost doubled.

#### **LCet04 - Storage Bill**

- 05:51:37 Mr. Brown reviewed the provisions of LCet 04 -storage bill (EXHIBIT 5). Mr. Brown referred to a companion document (EXHIBIT 3) and discussed a summary of the proposed bill's provisions.

#### **Committee Questions**

- 05:56:57 SEN. LARSEN asked where REC prices are stated. Mr. Brown said his explanation of the next bill would provide that information.

### **LCet 05 - REC price reporting**

05:55:23 Mr. Brown reviewed the provisions of LCet 05 - REC price reporting bill (EXHIBIT 6). Mr. Brown referred to a companion document (EXHIBIT 3) and discussed a summary of the proposed bill's provisions.

06:00:16 Commissioner Kavulla said what little is known about prices being paid for RECs comes from public utilities. He discussed the City of Great Falls' purchase of RECs as an example. He said it is difficult to predict the value of renewable assets under the current process.

### **Committee Questions**

06:01:33 SEN. KEANE, Commissioner Kavulla, and Mr. Brown discussed the repealer provision in LCet05 (EXHIBIT 6). Mr. Brown said the bill will repeal only the exception in 69-3-2010. SEN. KEANE said that exceptions are necessary sometimes and that the statute ought to be left as is.

06:04:26 SEN. LARSEN asked when RECs were created, if they were intended to be a publically traded commodity similar to other forms. Mr. Brown said it depends on who is buying or selling the RECs and explained further.

06:06:06 SEN. JACKSON asked if there is a possibility that too many RECs will be traded, which would be an indication that the policy is wrong. Mr. Brown said that if lots are being traded, that means there is plenty of supply to meet the demand. He said he doesn't see that as a failure of the policy but instead a price signal to send to the price market.

06:07:06 SEN. JACKSON asked if the proposed changes will be more fair to everyone. Mr. Brown said in the long run it will be more fair to everyone and explained further.

06:08:22 SEN. OLSON asked who created RECs. Commissioner Kavulla gave a detailed explanation of how states created them.

### **Letter RE: MFSA and Transmission**

06:15:22 Commissioner Kavulla said the ETIC members received a letter from the PSC requesting input on whether the PSC should promote legislation or policy to the Legislature shifting the determination of public convenience and necessity from the Department of Environmental Quality (DEQ) to the PSC (EXHIBIT 7) in the Major Facility Siting Act (MFSA). Commissioner Kavulla said the reasons it might be a good idea are stated in the letter but noted that he personally disagreed with the suggestion and would not comment further. SEN. OLSON thanked the PSC for the letter. He said he thought it was best left with the DEQ and would not support the recommendation.

06:17:17 REP. DRISCOLL agreed with SEN. OLSON's position.

- 06:18:05 SEN. JACKSON also agreed that the authority should be left with the DEQ and discussed his concern that making the change would require a major change in statute.
- 06:20:36 SEN. KEANE asked if this was an example of the PSC trying to set policy. Commissioner Kavulla said that the PSC has only an advisory roll in this particular issue and that he trusts that the Legislature is already doing a good job of analyzing if transmission laws are working or not.
- 06:23:09 SEN. OLSON said the ETIC would instruct staff to write a letter to the PSC reflecting the committee member comments made regarding the PSC's MFSA proposal. Ms. Nowakowski said the letter would primarily state that ETIC is not interested in sponsoring legislation at this time, and that she would work with SEN. OLSON to draft the letter.

### **Public Comment**

- 06:24:26 **John Fitzpatrick, NWE**, discussed numerous concerns regarding the PSC proposed legislation and why NWE opposes the proposals.
- 06:39:34 **Jeff Fox, Renewable Northwest Project**, said that the Project would support LCet02 with the exception of the definition change regarding local ownership. He said that the Project would oppose the remaining bill drafts and discussed why.
- 06:48:26 **Clayton Elliott, Northern Plains Resource Council**, said that he agreed with Mr. Fox's concerns regarding LCet03 and that he would oppose the policy change.

### **Committee Discussion**

- 06:49:47 REP. KLOCK asked Mr. Fox to discuss further his statement about cheap wind and to explain why wind is cheaper. Mr. Fox said that the production tax credit for wind energy is 2.2 cents per kilowatt hour and noted that all energy forms receive subsidies.
- 06:50:41 SEN. OLSON asked what other industries receive production tax credits. Mr. Fox said none that he is aware of but other industries receive various beneficial tax statuses. SEN. OLSON said it would be helpful to have a list of tax rates for renewable resources, including the transmission lines going from renewable resources, in order to compare tax rates on renewable energy versus fossil fuel energy.
- 06:52:33 SEN. OLSON asked what the average price of wind power is, excluding the Judith Gap wind farm. Mr. Fox said he could not answer that specifically but could say that the average price of wind energy for NWE varies widely, depending on if QF projects are included. He said he could provide the list of preferential tax treatments requested by SEN. OLSON.
- 06:54:15 SEN. JACKSON said that generally speaking, he likes most of the proposed bills because they will help the RECs become more understandable to the public. He said that energy storage needs to be part of the package because he thinks

energy storage is the best way to make wind competitive. He said another problem is the amount of water coming down through dams, cutting off wind production. SEN. JACKSON also commented on the cost cap bill LCet03. Mr. Fox responded to SEN. JACKSON's concerns regarding storage.

07:01:35 Ms. Nowakowski said that staff would like direction on how the Committee wished to proceed on the proposed bill drafts.

07:03:09 **SEN. KEANE moved to not approve the PSC proposals as ETIC proposed legislation.** SEN. JACKSON asked to defer the vote to the next day in order to think about it. SEN. KEANE said that SEN. JACKSON could personally carry the bills if he supports them and that he would keep his motion in place. **The motion passed on a 6-1 voice vote, SEN. JACKSON voted no.**

### **ONE CALL UPDATE**

07:04:53 Ms. Nowakowski referred the members to her staff report, "*Digging Into One Call*" (EXHIBIT 8). She said that the ETIC 's findings and recommendations would need to be listed on page 2, if pursued by the committee.

### **Stakeholders report and draft legislation**

07:05:47 **Doug Hardy, Montana Electric Cooperative's Association (MECA),** reported that the stakeholder group has continued to work on this issue and that current consensus is that because the federal rules will be finalized at the end of the year, they would not recommend a committee bill at this time but would continue toward the goal of having a bill prepared in time for the 2013 legislative session. He said the consensus was that any bill should treat hazardous liquids and gas differently than other facilities under one-call.

07:07:40 Mr. Fitzpatrick said that the federal government's notice of proposed rule making was released about a month ago, and that a PSC staffer summarized the proposed rules to identify the seven elements that will have to be included in state one-call laws (EXHIBIT 9). Mr. Fitzpatrick said that after studying the proposed federal rules, he was able to identify three shortcomings in the stakeholder's proposed one-call legislation and that efforts are underway to also address those deficiencies (EXHIBIT 10). He said the stakeholders hope to have a bill draft proposal at some point but will find a bill sponsor on its own because of the late date. He said that the legislation may have to be put off until 2015 if the federal rules aren't finalized in time for the 2013 session.

07:11:57 Ms. Nowakowski asked how the ETIC wished to proceed.

### **Public Comment**

07:12:28 There was no public comment.

### **Committee Questions**

07:12:25 There were no committee questions.

07:12:40 SEN. OLSON said that no action would be taken on the report at this time and that bill draft was not needed at this time. He thanked Ms. Nowakowski for her work.

### **NWE SMART GRID DEMONSTRATION PROJECT**

07:14:59 **William Thomas, NWE, manager of regulatory support services**, provided a detailed overview of NWE's Smart Grid project (EXHIBIT 11). Mr. Thomas's discussion points included what the project is, the current status of the project, and several emerging issues to be dealt with.

### **Committee Questions**

07:44:20 There were no committee questions.

### **Public Comment**

07:44:28 There was no public comment

### **HB 142 REPORTING REQUIREMENTS**

07:44:41 Ms. Nowakowski said that at the January ETIC meeting, the members voted to retain reporting requirements and that she updated the draft report (EXHIBIT 12) to reflect that action. She said that the report must be adopted by the ETIC in order to forward it to the 2013 Legislature. **REP. KLOCK moved to approve the HB 142 draft report. The motion passed on a unanimous voice vote.**

### **ENERGY RESOURCE DEVELOPMENT**

07:45:46 Ms. Nowakowski reviewed a May 7, 2012, memorandum (EXHIBIT 13) prepared by Jason Mohr, Research Analyst, LSD, regarding the work of the Select Committee on Efficiency in Government (SCEG) Natural Resources Subcommittee. She noted that SEN. KEANE serves as Chair of the Natural Resources Subcommittee of the SCEG.

07:46:53 SEN. KEANE commented briefly on the issues before the Natural Resources Subcommittee.

### **Public Comment**

07:47:21 There was no public comment.

### **Committee Questions**

07:47:24 There were no committee questions.

### **ETIC Instructions to staff for travel to Billings**

07:47:36 Ms. Nowakowski said that the Committee will meet at the Board of Oil and Gas headquarters in July and that the tentative agenda includes tours of the Conoco Refinery, fracing equipment, and PPL Montana's coal-fired Corrette power plant; review of committee and agency legislation, and miscellaneous statutorily required duties. Ms. Nowakowski and Rep. Driscoll will provide information on accommodations.

### **OTHER BUSINESS**

#### **Approval of Minutes**

07:51:01      **SEN. JACKSON moved to approve the January 13, 2012, meeting minutes as written. The motion passed on a unanimous voice vote.**

**Administrative Rule**

07:51:14      **Todd Everts, Staff Attorney, LSD,** discussed an administrative rule proposal to amend the current minimum insurance requirements for motor carrier passenger businesses.

**Budget Update**

07:51:58      Ms. Nowakowski reported that the ETIC has used approximately 34% of its budget, excluding the Butte meeting. SEN. KEANE suggested that the Committee visit the wind farm north of Harlowton if funds remain after the Billings meeting. REP. KLOCK asked to invite Mr. Thomas to the September meeting to report on the NWE Smart Grid project. It was agreed.

**PUBLIC COMMENT**

07:53:08      No public comment was given.

**ADJOURNMENT**

07:55:07      SEN. OLSON recessed the ETIC at 4:29 p.m. The Committee will reconvene at 8:00 a.m. on Friday, May 18, 2012.

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