



## Energy and Telecommunications Interim Committee

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### 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

September 16, 2011

Room 172, State Capitol  
Helena, 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

SEN. VERDELL JACKSON  
SEN. JIM KEANE  
SEN. CLIFF LARSEN

REP. ROBYN DRISCOLL  
REP. AUSTIN KNUDSEN

#### **COMMITTEE MEMBERS EXCUSED/ABSENT**

REP. TONY BELCOURT  
REP. HARRY KLOCK

#### **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 July 15, 2011, meeting minutes.

## **CALL TO ORDER AND ROLL CALL**

00:00:00 SEN. OLSON called the Energy and Telecommunications Interim Committee (ETIC) meeting to order at 8:30 a.m. The Secretary took roll, REP. BELCOURT and REP. KLOCK were excused ([Attachment #3](#)).

## **UPDATE ON PNWER ANNUAL SUMMIT**

00:01:31 SEN. LARSEN gave an update of the Pacific NorthWest Economic Region (PNWER) annual summit he recently attended.

## **ENERGY RESOURCE DEVELOPMENT**

00:06:29 **Sonja Nowakowski, Research Analyst, Legislative Services Division (LSD)**, updated the ETIC on the recent Environmental Quality Council (EQC) and Select Committee on Efficiency in Government (SCEG) meetings.

## **OTHER BUSINESS**

00:12:05 **SEN. KEANE moved to approve the July 15, 2011, minutes, as written. The motion passed on a unanimous voice vote.**

## **Adoption of Final Work Plan**

00:12:22 Ms. Nowakowski referred the ETIC to the revised work plan ([EXHIBIT 1](#)) and decision matrix ([EXHIBIT 2](#)). Ms. Nowakowski discussed decisions made at the July meeting as reflected in the current version of the work plan.

00:16:05 REP. DRISCOLL suggested, because several members of the current ETIC have already toured the Signal Peak coal mine in Roundup, that the committee meet with Signal Peak officials in Roundup but then travel to Billings to tour the Exxon Refinery. SEN. OLSON said the committee could consider the suggestion and that he is hopeful that there will be an opportunity to tour a working hydraulic fracturing site/well site in central Montana. SEN. KEANE said that committee members should tour Arch Coal at Otter Creek if the opportunity arises. He said that economic potential for the state is great and that it would be enlightening to see the operation in motion. SEN. JACKSON said that he visited the Zinc Air battery company in Kalispell and that company officials have agreed to present to the ETIC, if invited.

00:20:37 **REP. DRISCOLL moved to approve the revised work plan. The motion passed on a unanimous voice vote.**

## **ONE CALL: ENFORCEMENT IN MONTANA**

- 00:21:21 **Annamarie Robertson, Office of Pipeline Safety, United States Department of Transportation (DOT)**, reviewed the issue of excavation damage to underground utilities, saying that it is a safety issue and is preventable. She discussed statistics specific to Montana and noted that Montana places 8th nationwide for the number of excavation incidents. Ms. Robertson said that the states with effective enforcement mechanisms in place have fewer incidents. She discussed the proposed federal rules to put in a new authority to address excavation damage and said they will be finalized by the end of 2012. Ms. Robertson also discussed several grant programs available to help fund enforcement programs and offered to serve as a resource to the ETIC.
- 00:31:36 **Joel Tierney, Public Service Commission**, agreed that Montana has no enforcement authority in the one call law and said that local enforcement is a much preferable option than federal enforcement.
- 00:32:21 **Michelle Slyder, Montana Utility Coordinating Council**, said that the Council initiated the original stakeholder efforts to deal with this issue to revise the law and that the work group has met twice since the July ETIC meeting. She said it was agreed that a bilateral approach to enforcement, where oil and gas pipelines are handled differently than other underground utilities, would be best and explained how such an approach would work. She said she believed there was enough of a consensus to move forward with a bill draft and asked if ETIC staff could assist with the drafting. Ms. Slyder also discussed an excavation damage incident report for the first six months of 2011 ([EXHIBIT 3](#)). Ms. Slyder also provided copies of an industry newsletter ("*In the Pipe*") regarding pipeline damage and lessons to be learned from past incidents ([EXHIBIT 4](#)).
- 00:36:40 **Al Thorsen, Flathead Valley Utility Coordinating Council**, said he would be available to answer questions.
- 00:37:22 Ms. Nowakowski referred members to the background report she prepared for ETIC members, "*Montana's one-call law: Damage prevention in the federal context*" ([EXHIBIT 5](#)). She discussed Montana's lack of enforcement authority, how other states are addressing the issue, who the stakeholders are and their concerns, ETIC involvement to date, a summary of nine areas where Montana law fails to meet the intent of the federal act, and other related topics.
- Public Comment**
- 00:48:19 **John Youngberg, Montana Farm Bureau Federation (MFBF)**, explained the MFBF's concerns about a proposed call bill. He said his federation would like to be involved in the process and that he is available for questions.
- 00:49:58 **Doug Hardy, Montana Electric Cooperatives Association (MECA)**, said his association, as of the previous day, is involved in the discussions and that he is hopeful that solutions will be found, particularly for rural customers.
- 00:50:39 **Gary Forrester, MDU Resources**, commented that many stakeholders have an interest in this issue. He pledged to work with his groups to bring them together to work out an agreement. He said that periodic reviews and a review process

would be supported by his stakeholders but that a bill with a statutory appropriation would be opposed.

00:55:24 **Dave Galt, Executive Director, Montana Petroleum Association (MPA)**, said that MPA is involved in the stakeholder group and is committed to working on this issue through the 2013 Legislature.

00:55:33 **Bonnie Lorang, General Manager, Montana Independent Telecommunications Systems (MITS)**, said that MITS is participating in the stakeholder meetings and supports the bifurcation between pipelines and other underground facilities. She said that MITS intends to continue to work toward a solution.

00:56:25 **Ed Kaser, General Manager, Energy West Montana**, discussed the concerns of small companies in dealing with damage incidents. He said small companies want a law that will prioritize employee safety and departmentalize and separate pipelines and distribution companies from from telecommunication companies.

#### **Committee Questions and Discussion**

00:58:33 REP. DRISCOLL asked Ms. Snyder to comment on the Minnesota law, which has been held up as a leading model. Ms. Snyder said it is a good law and could be used as a starting point for Montana but that there are other good models available also. REP. DRISCOLL asked if the one call law is passed in 2013, then will companies be responsible to both state and federal governments. Ms. Snyder said that if Montana updates its law and it is deemed adequate by the Pipeline Hazardous Materials Safety Administration (PHMSA), enforcement would be handled at the state level. She said that it is not only a pipeline damage bill but a public safety bill as well and that enforcement at the state level would be best.

01:02:58 SEN. LARSEN asked Ms. Nowakowski to explain current statutory language regarding the absence of a penalty but a requirement to report an incident. Ms. Nowakowski explained the statutory requirements of current Montana law.

01:08:32 REP. KNUDSEN commented that he is hesitant to create new state laws simply because of pressure from the federal government, but that it appears that something may need to be done. He asked, regarding enforcement, what kind of civil remedies are available to the involved parties if an excavator causes damage. Ms. Nowakowski referred to 69-4-512, MCA, and explained the judicial remedies established there.

01:10:25 REP. KNUDSEN said, regardless of Montana statute, there are certain civil remedies available and that he is not clear why the state needs to be involved. Ms. Robertson said that states with active and effective enforcement have lower damages and fewer incidents. She said it goes back to a public safety issue and there is an obligation to address that.

01:12:20 SEN. KEANE referred to the information on other states' laws, as discussed in Ms. Nowakowski's report (EXHIBIT 5), and noted that Texas and Louisiana comply with all elements of the federal program. He asked if the enforcement

elements of the pipeline program also apply to utilities. Ms. Robertson said Texas is pipeline only and that she was not sure about Louisiana. SEN. KEANE asked if the federal government has a list of states that it is more concerned about than others. Ms. Robertson said the federal government is looking at states lacking certain elements, including Montana. She said that each state has different issues and will be evaluated accordingly. SEN. KEANE asked if Montana's law does not comply and accidents continue to occur, if the federal government would significantly increase the fine amount assessed to companies. Ms. Robertson said yes, that federal fines are significantly higher and that a possible reduction in federal funding or ineligibility for grant programs may also occur.

- 01:16:05 SEN. LARSEN said he has concluded that Montana law is lacking. Ms. Robertson said that clearly defined roles and expectations are needed and that penalties are needed, which could be graduated if necessary. SEN. LARSEN asked if stakeholders have a duty to work with the legislature to craft a good solution. Ms. Robertson agreed, but said the state must be the facilitator.
- 01:20:17 REP. DRISCOLL asked for examples in Montana where the company collects a fine, rather than a government. Ms. Nowakowski said that she would need to research that question.
- 01:21:08 SEN. OLSON asked why this is a federal issue. Ms. Robertson said because the federal pipeline safety program has authority over all pipelines, even though it operates in partnership with states. She said that the preferred route is to have states handle enforcement and that there has been a decline in pipeline damage incidents, but that Congress has directed that federal action be taken because it is still a serious threat in states that don't have effective enforcement programs. SEN. OLSON asked how many serious pipeline incidents have occurred in Montana. Ms. Robertson said that she knows of two excavation damage incidents between 2006 and 2010 but didn't know the total number of incidents caused by other causes. SEN. OLSON asked if there were penalties for the two incidents. Ms. Robertson said she did not know. Ms. Slyder provided a summary sheet of pipeline incidents in Montana ([EXHIBIT 6](#)).
- 01:23:53 Ms. Nowakowski asked the committee to provide staff direction on how it should proceed. It was agreed that staff will continue to monitor the work group activities and report at the January meeting.
- 01:29:16 SEN. OLSON recessed the ETIC for a 15-minute break.

**BREAK**

#### **OVERVIEW OF HYDRAULIC FRACTURING RULES**

- 01:46:21 **Tom Richmond, Administrator and Petroleum Engineer, Board of Oil and Gas Conservation (BOG)**, discussed a PowerPoint presentation regarding proposed hydraulic fracturing rules ([EXHIBIT 7](#)). Mr. Richmond's discussion also included an explanation of the hydraulic fracturing process.

#### **Public Comment**

- 02:14:12 **Clayton Elliott, Northern Plains Resource Council (NPRC)**, said that NPRC members have been heavily involved in the rulemaking process through the BOG

and cautioned that this must be done right. He highlighted areas of concern, including landowner rights, baseline water quality testing, and accessibility of information. Mr. Elliott suggested that there be one central information repository to dispense information. He said that other issues, such as disclosure of trade secrets has been discussed and said he encourages full disclosure in order to make sure the door is not closed to concerned citizens. Mr. Elliott said that this issue will extend well beyond the Bakken Formation.

02:19:33 Dave Galt, Executive Director, Montana Petroleum Association, said he testified significantly during this process and discussed a bill proposed in the 2011 Legislature. He discussed his association's position on the proposed rules, touching on the issues of public disclosure requirements, accessibility of information, and protection of trade secrets. He said the MPA worked extensively with the BOG on the proposed rules and predicted that they will be held up nationally as a good model. He commended the BOG on its work.

### **Committee Questions and Discussion**

02:23:47 REP. DRISCOLL asked about the issue of trade secrets, saying that there is a public perception that companies are very resistant to releasing that information. Mr. Richmond said it is a complicated issue but predicted that in the future, companies will be more willing to disclose the actual chemicals used but will want to protect the formulation process.

02:26:16 REP. DRISCOLL asked how information about a specific well site can be found, including how to use the BOG to find the chemical composition of fracturing fluids if the well is not registered on the Frac Focus website. Mr. Richmond said the BOG is working with Frac Focus to develop a link but in the meantime, it would take only a phone call to the BOG to get the information. REP. DRISCOLL asked if there is a timeline for completing the link. Mr. Richmond said not at this time. He added that the BOG is also working with Frac Focus to develop a GIS program that will locate specific wells, which will improve access.

02:30:21 SEN. LARSEN asked about the rules hearing held recently in Sidney, Montana. Mr. Richmond said that there were approximately 200 people in attendance and that eight public comments were taken during the hearing and in the week after. He said there was a good mix of landowner and industry comments and that several changes were made as a result. SEN. LARSEN asked if anything has arisen since the approval of the rules last month that will give the public more comfort. Mr. Richmond said that there has been a lot of discussion recently about Texas and Montana rules that affect the Frac Focus website regarding disclosure. He said that any needed changes could be done in the software but that the Ground Water Protection Council would like to see the fullest possible disclosure.

02:34:57 SEN. JACKSON said that fracturing has been around in one form or another since 1949 and asked if there is a history of water table contamination. Mr. Richmond said he is not aware of any instances of contamination due to the hydraulic fracturing process itself. He explained how contamination can occur which, he said, is usually attributable to improper waste disposal or poor well construction.

- 02:39:40 SEN. OLSON asked about the governor's recent statement that Montana's oil production has increased. Mr. Richmond said that peak production was in 2006 and explained how the production curve is affected if new wells are not added. He said that production has flattened for the last six months but predicted that production in Roosevelt County may cause an increase in production soon.
- 02:41:53 **Candace Payne, Southern Montana Electric Generation and Transmission**, announced that the Highwood Generation Station, as of September 15, has commenced commercial operation.

**The ETIC briefly recessed, due to technical difficulties.**

#### **PSC AGENCY OVERVIEW PRESENTATION**

- 02:51:17 **Travis Kavulla, Chairman, Public Service Commission**, discussed an update of PSC dockets and activities ([EXHIBIT 8](#)).
- 03:08:24 Commissioner Kavulla noted that the PSC recently certified ONEOK as a common carrier pipeline for natural gas liquids, which was not included in his report.
- 03:10:25 Commissioner Kavulla discussed the Federal Energy Regulatory Commission's (FERC) order 1000: Electric Transmission Planning and Cost Allocation ([EXHIBIT 9](#)). He said the rule is vague and that he is not certain of how it will affect Montana. He said an analysis continues. He urged ETIC members to attend an upcoming transmission conference in Big Sky at which federal and industry officials will be speaking.
- 03:15:20 Commissioner Kavulla continued his update on PSC dockets and activities - legislation and rulemaking ([EXHIBIT 8](#)).

#### **Public Comment**

- 03:21:57 There was no public comment given.

#### **Committee Questions and Discussion**

- 03:22:05 SEN. OLSON, referring to Commissioner Kavulla's discussion of renewable portfolio standards clean up, said that Electric City Power was so supportive of related legislation that an amendment was drafted to include it in the bill. He asked if the power company could be feeling "buyer's remorse". Commissioner Kavulla predicted that it probably was.
- 03:23:18 REP. DRISCOLL complimented Commissioner Kavulla on his presentation, saying that it was informational, entertaining, well prepared, and well presented.
- 03:24:02 SEN. KEANE asked about the proposed rule change for motor carrier rates. Commissioner Kavulla clarified that the PSC is not attempting to do through rule making what was clearly rejected by a legislative committee, but is attempting to require an increase in the amount of insurance carried and protest fee.
- 03:26:05 SEN. OLSON recessed the ETIC until 1:00 p.m. for a lunch break

## **LUNCH BREAK**

04:29:55 SEN. OLSON reconvened the meeting at 1:15 p.m.

## **SB 206 MAJOR FACILITY SITING ACT (MFSA) FOLLOW-UP**

04:30:42 **Richard Opper, Director, Department of Environmental Quality (DEQ)**, said there is little to report regarding the Major Facility Siting Act and instead provided a brief update on the Montana-Alberta Tie Line (MATL) project and the Keystone pipeline project. He said he would answer questions and then discuss the regional haze issue, as requested by SEN. OLSON.

04:32:32 SEN. JACKSON asked what the status is of landowner objections to the MATL project. Director Opper said that 25 landowners have objected and that only three of the objections have been satisfied.

04:33:21 SEN. OLSON asked, regarding the regional haze rulemaking, what it would take for the DEQ to apply to the federal government to take over that program. Director Opper provided background information on how the federal government ended up with a program that would normally be administered by the state. He said that DEQ plans to take the regional haze program over again but until that time, the program will remain under the EPA.

## **Public Comment**

04:38:52 Doug Hardy, MECA, commented that the regional haze issue does affect where new power plants can be built and that the oversight of the EPA is not conducive to the process.

04:40:10 **Darryl James, Montana Alberta Tie Line (MATL)**, discussed in more detail the landowner objections to the MATL line and the amendments filed thus far.

## **Committee Questions and Discussion**

04:42:42 SEN. KEANE asked, if the regional haze program is taken back over by the state, if the EPA will restore the funding it took away. Director Opper said he would fight to get it back.

## **NORTHWEST POWER AND CONSERVATION COUNCIL**

04:43:40 **Bruce Measure, Director, Northwest Power and Conservation Council (NWPPC)**, discussed a PowerPoint presentation covering three topics: the 6th Power Plan, the Columbia River Treaty with Canada, and a Bi-Op litigation update ([EXHIBIT 10](#)).

## **Public Comment**

05:04:55 There was no public comment.

## **Committee Questions and Discussion**

05:05:04 There were no committee questions.

## **BAKKEN PIPELINE PROJECT**

05:05:42 **Mick Urban, ONEOK Partners**, discussed a PowerPoint presentation ([EXHIBIT 11](#)), saying that the purpose of the presentation was to give the ETIC a better



understanding of who ONEOK is, what is planned for the pipeline, and why it is being built.

#### **Public Comment**

05:23:12 There was no public comment.

#### **Committee Questions and Discussion**

05:23:21 REP. DRISCOLL asked how many landowners in Montana will be affected and if they have been receptive. Mr. Urban said that 205 landowners have been contacted but that he did not know how many actual easements have been completed. He said that so far, discussions appear to be going well but that it will take time to work through the process. He said that people with strong communication skills and right-of-way expertise have been hired.

05:24:50 SEN. JACKSON asked for the total length of the pipeline and if there are plans to extend beyond Colorado. Mr. Urban said it will be 508 miles long, with 205 miles of the pipeline located in Montana. He said that the pipeline will intersect with another pipeline in Colorado

#### **OTHER BUSINESS**

##### **Administrative Rules**

05:25:52 Mr. Everts said there was little to add because Commissioner Kavulla's presentation covered the motor carrier rule and revision of the liability insurance. He noted that Ms. Nowakowski has posted an ETIC Rule Review page on the ETIC website that explains the rulemaking process, the authority of the ETIC, and the agencies that the ETIC has oversight of.

##### **Review of November Agenda Items**

05:27:46 Ms. Nowakowski reviewed the suggestions made to date: statutory duties related to the Universal System Benefits (USB) program and most recent report, a follow up on the one call discussion and possible visit to an excavation site, a panel discussion on the PSC reorganization issue, rural cell phone coverage, and Zinc Air battery company if available. Ms. Nowakowski asked members to contact her with suggestions for any of the planned panel discussions.

#### **PUBLIC COMMENT ON MATTERS WITHIN THE JURISDICTION OF THE ETIC**

05:31:12 No public comment was given.

#### **ADJOURNMENT**

05:31:32 SEN. OLSON adjourned at the meeting at 2:05 p.m. The Energy and Telecommunications Interim Committee will meet next on November 17, 2011, in Helena.

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