



Energy and Telecommunications Interim Committee

65th Montana Legislature

SENATE MEMBERS

MARY MCNALLY--Chair
NATE MCCONNELL
TOM RICHMOND
SCOTT SALES

HOUSE MEMBERS

DEREK SKEES--Vice Chair
LAURIE BISHOP
ZAC PERRY
DANIEL ZOLNIKOV

COMMITTEE STAFF

TREVOR GRAFF, Lead Staff
JAMESON WALKER, Staff Attorney
NADINE SPENCER, Secretary

MINUTES LOG

September 10, 2018
Room 172, Capitol Building
Helena, Montana

Please note: This document is a Minutes Log and provides a notation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video record of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of meeting activities. The time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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Please contact the Legislative Services Division at 406-444-3064 for more information.

COMMITTEE MEMBERS PRESENT

SEN. MARY MCNALLY, Chair
REP. DEREK SKEES, Vice Chair

SEN. NATE MCCONNELL
SEN. TOM RICHMOND
SEN. SCOTT SALES

REP. LAURIE BISHOP
REP. DANIEL ZOLNIKOV

COMMITTEE MEMBERS EXCUSED

REP. ZAC PERRY

STAFF PRESENT

TREVOR GRAFF, Lead Staff
JAMESON WALKER, Staff Attorney
SONJA NOWAKOWSKI, Staff
FONG HOM, Secretary

VISITORS' LIST (Attachment 1)

AGENDA (Attachment 2)

COMMITTEE ACTIONS

The Energy and Telecommunications Committee (ETIC):

- Approved the minutes from July 19-20;
- Voted to pre-introduce LCSMW2 as a committee bill;
- Voted to pre-introduce LCIRP2 as a committee bill;
- Voted to send a letter to NorthWestern Energy regarding the goal of HB 219.

CALL TO ORDER AND ROLL CALL

00:00:14 Sen. McNally called the meeting to order at 8:03 a.m. The secretary called the roll. (Attachment 3) Rep. Perry was excused and left his proxy with Sen. McConnell. (Attachment 4)

ADMINISTRATIVE MATTERS

Adoption of July Meeting Minutes

Motion

00:01:55 Sen. Richmond moved to adopt the minutes from the July meeting. The motion carried unanimously by voice vote of those present and voting.

Qualifying Facilities Bill Draft Sponsors

00:02:28 Trevor Graff, research analyst, Legislative Services Division (LSD), discussed the two pieces of legislation that need sponsors. He said that the first qualifying facilities bill will be carried by Rep. Bishop, and the second bill will be carried by Rep. Zolnikov.

00:03:06 Sonja Nowakowski, staff, LSD, said Sen. McDonald has agreed to put her name at the top until after the election.

PROGRAM REVIEW: SMALL WATER AND SEWER UTILITY REGULATION

Overview of SMW2 and SMW3

00:03:44 Ms. Nowakowski provided an overview of LCSMW3 (Exhibit 1) and LCSMW2. (Exhibit 2)

Public comment

00:08:28 Leroy Beeby, Beeby Consulting.

00:10:11 Debra Wolfe, regulatory administrator and general manager, Holmberg Village Water Company.

00:10:35 Justin Kraske, chief legal counsel, Public Service Commission (PSC).

Committee questions and discussion

00:11:08 Rep. Skees asked Mr. Beeby if he had any amendments to LCSMW2 that would address his concerns.

00:13:11 Rep. Skees asked Mr. Beeby about modifying the operating ratio.

00:15:42 Rep. Skees asked Mr. Kraske about the operating ratio that the PSC came up with and where in the MCA the PSC had such authority.

Motion/Vote

00:18:02 Rep. Skees moved to table LCSMW3. The motion carried unanimously by voice vote of those present and voting.

Motion

00:18:19 Rep. Skees moved to pre-introduce LCSMW2 as a committee bill.

Discussion on the Motion

00:18:36 Rep. Skees
00:19:30 Sen. Richmond
00:19:45 Ms. Nowakowski

Vote

00:20:03 The motion carried unanimously by voice vote of those present and voting.

Committee discussion

00:20:20 Sen. McNally commented on how the bills have evolved and that the outcome was a good one.
00:20:40 Ms. Nowakowski said that Sen. Richmond and Rep. Skees will sponsor the bill.

HYDROELECTRIC REPORTS REVIEW

Introduction

00:21:29 Mr. Graff gave an overview of the hydroelectric reports review.

Review

00:21:53 Jan Langel, administrator, Water Resources Division, Department of Natural Resources and Conservation (DNRC), reported on the evaluations on the potential for hydropower on state-owned dams and water projects.

Public comment None

Committee questions and discussion

00:29:35 Rep. Skees asked Mr. Langel if Montana citizens could have input on FERC licenses, specifically to Kerr Dam.
00:30:30 Sen. McConnell asked Mr. Langel about the bonding process for the Broadwater Dam and if the revenue from the Broadwater Dam could be used not only for maintenance but for other projects as well.
00:31:37 Sen. McNally asked Mr. Langel to provide a copy of his summary to the committee. ([Exhibit 3](#))

BREAK (reconvened at 8:59 a.m.)

EQC UPDATE

Overview

00:57:29 Joe Kolman, director, Legislative Environmental Policy Office, LSD, provided an update of the Environmental Quality Council's (EQC) activities.

Committee questions and discussion None

Public comment None

PROGRAM REVIEW: IRP & RESOURCE PLANNING

Overview of LCIRP2

01:02:54 Ms. Nowakowski discussed LCIRP2. ([Exhibit 4](#))

Public comment None

Committee questions and discussion None

Motion/Vote

01:05:38 Rep. Skees moved to pre-introduce LCIRP2 as a committee bill. The motion carried unanimously by voice vote of those present and voting. Sen. Richmond will be the initial sponsor.

STATUTORY ADMINISTRATIVE RULE REVIEW

01:07:44 Jameson Walker, staff attorney (LSD), reported on the administrative rule report ([Exhibit 5](#)) and the Order on Petition for Preliminary Injunction and Writ of Mandate in Cause No. DDV-2018-318. ([Exhibit 6](#))

Committee discussion

01:10:06 Sen. McConnell asked Mr. Walker about the process when a rule objection is filed.

01:10:11 Mr. Walker referred the committee to his September 10, 2018 memo regarding the committee powers with respect to MAR Notice 38-2-241: Data Requests. ([Exhibit 7](#))

Public comment

01:13:36 David Hoffman, NorthWestern Energy (NWE), supports the committee's objection to MAR Notice 38-2-241.

01:17:08 Justin Kraske, PSC, encouraged the committee to not object to the rule.

01:21:34 Bill Ryan, IBW Local 44, Butte, said that IBW Local 44 does not support the rule change.

01:23:34 Aimee Grmoljez, Montana Dakota Utility Resources, commented on the ex parte rule that is not referenced in the PSC's rule.

01:25:10 Brian Fadie, Clean Energy Program director, Montana Environmental Information Center, urged the committee to exercise caution in blocking the rulemaking.

01:26:44 Anne Hedges, Montana Environmental Information Center, supports the PSC's ability to request information in its fact finding missions.

Committee questions

- 01:27:29 Sen. McConnell asked Mr. Kraske on what authority does the PSC have the right to information through the discovery process, how does the PSC defend against the idea that the person deciding the case isn't injecting him or herself into the case, and what is the role of the PSC regarding protection of consumers and ratepayers.
- 01:34:17 Sen. Richmond asked Mr. Kraske about authority given to the PSC to grant itself the right to discovery, how the PSC makes a determination between what is a regular process of public hearing and what requires discovery, and once the PSC grants itself discovery, how commissioners are informed that they can no longer communicate with the applicant or any opponent.
- 01:40:19 Rep. Zolnikov asked Mr. Kraske why the PSC is asking for more information that should already be available at the beginning of the discovery process.
- 01:46:09 Rep. Skees asked Mr. Kraske if the PSC, under 2-4-612(2), brings evidence to the hearing, who is able to object to the PSC that the PSC's evidence should not be admitted, and how the PSC does not prejudice the evidence by having this new authority.
- 01:50:01 Rep. Bishop asked Mr. Kraske to speak to whether or not the PSC has addressed what the discovery process should look like for both parties.
- 01:54:07 Rep. Zolnikov asked Mr. Kraske if discovery was removed, would the PSC get the information in a way it could understand or would they have to make decisions based on the information received without discovery.
- 01:56:44 Sen. McConnell asked Mr. Hoffman for NWE's response to the PSC request for discovery rights.
- 02:02:59 Rep. Zolnikov asked Mr. Hoffman what the end result would be for the PSC if the rule is or isn't objected to by the committee.
- 02:03:36 Mr. Walker explained that an objection to the rule extends the time for which they may consider the public comment and then act on that.
- 02:05:14 Sen. McNally asked Mr. Walker if the committee could object and then withdraw its objection. Mr. Walker said that the committee could object under 2-4-305(9) today, meet later, and withdraw the objection.
- 02:05:57 Mr. Hoffman responded to Rep. Zolnikov's question.
- 02:06:33 Rep. Zolnikov asked Mr. Hoffman about the request in the Big Foot case that was considered out of bounds of discovery.
- 02:07:22 Sen. McConnell asked Ms. Hedges what her reaction is to the testimony that has been given and what does she recommend going forward.
- 02:13:55 Rep. Skees asked Ms. Hedges about her statement that she would like the PSC to be able to operate as the opposing party and as the judge.
- 02:17:27 Sen. Sales asked Ms. Hedges if the process has worked well in the past, why do we need new rules.
- 02:18:15 Sen. Sales questioned the wisdom of changing the rules.
- 02:18:45 Sen. McConnell asked Mr. Kraske to justify the rule.

Motion

- 02:21:22 Rep. Skees moved that the committee proceed with its objection to MAR 38-2-241 under section 2-4-305(9).

Discussion on the Motion

02:21:46 Rep. Zolnikov
02:22:22 Sen. McNally
02:22:33 Mr. Walker
02:24:33 Sen. Sales
02:25:05 Sen. Richmond
02:29:08 Rep. Bishop
02:31:12 Sen. McConnell
02:35:26 Rep. Skees

Vote

02:38:24 The motion failed 4-4 by roll call vote with Rep. Skees, Rep. Zolnikov, Sen. Richmond, and Sen. Sales voting aye. Rep. Perry voted no by proxy.
(Attachment 5)

02:40:57 Mr. Walker concluded his presentation on rule review.

02:41:11 Sen. McNally commented on the reason for her vote.

Break (reconvened at 10:55 a.m.)

NORTHWESTERN ENERGY GENERAL RATE CASE PANEL

Introduction

02:52:19 Sen. McNally introduced the panelists.

Northwestern Energy General Rate Case Panel

Heather Grahame, general counsel, NWE
Will Rosquist, Regulatory Division administrator, PSC
Robert Nelson, Montana Consumer Counsel (MCC)

02:52:47 Ms. Grahame gave an overview of a rate case. Ms. Grahame also introduced Joe Schwartzenberger, director, Regulatory Affairs, NWE, and said he is available for questions.

03:05:10 Mr. Rosquist **(Exhibit 8)**

03:14:19 Mr. Nelson provided a brief overview of the function of the Montana Consumer Counsel.

Committee questions and discussion

03:22:29 Rep. Bishop asked Mr. Rosquist for a follow up on NWE's request to split the rate case into multiple cases.

03:22:56 Mr. Rosquist discussed NWE's case that was split into two parts: the revenue requirements piece and the cost of service rate design piece.

03:25:04 Ms. Grahame gave a brief overview of the reason the case was separated into the two components.

03:26:58 Rep. Bishop asked Ms. Grahame to elaborate on what the customer stakeholder process looks like.
03:29:33 Rep. Bishop asked Ms. Grahame if a survey of NWE's customers was being conducted to ascertain the general public's interest.
03:31:09 Rep. Zolnikov asked Mr. Rosquist if a rate case is going on and the laws are changed during session, would NWE have to apply the current law or the new law to the case.
03:31:35 Mr. Rosquist
03:32:20 Ms. Grahame
03:32:36 Sen. McNally asked Ms. Grahame about her statement regarding the filing deadline and could that filing be amended.

Public comment None

03:34:32 Rep. Bishop asked Mr. Nelson to speak about how he ascertains what consumer interest looks like.
03:38:20 Rep. Bishop asked Mr. Nelson if the MCC has any authority to conduct its own public meetings with consumers.
03:42:56 Rep. Zolnikov asked Mr. Rosquist to address how NWE would respond to changes in laws that might impact an ongoing rate case.
03:44:07 Mr. Rosquist
03:46:13 Ms. Grahame
03:47:47 Sen. McNally asked Ms. Grahame if there have been any recommendations that NWE can use.

LUNCH (reconvened at 1:04 p.m.)

UNIVERSAL SYSTEMS BENEFITS LARGE CUSTOMER REPORTING

Introduction

05:01:55 Mr. Graff gave an overview of the USB Large Customer Reporting. **(Exhibit 9)**
Mr. Graff noted the inclusion of 69-8-402, MCA, that outlines the Universal System Benefits Programs **(Exhibit 10)**, and 69-8-414, MCA, the Universal System Benefits Programs Credit Review Process. **(Exhibit 11)**

Department of Revenue

05:04:01 Mark Schoenfeld, unit manager, Miscellaneous Taxes, Department of Revenue (DOR), gave an overview of how the department informs customers that an annual report is required to be filed in order to claim the credits under the USB Programs.

Committee questions and discussion

05:05:54 Sen. McNally asked Mr. Schoenfeld if the department reviews any of the reports.

Public comment

05:06:46 Diego Rivas, senior policy associate, Northwest Energy Coalition, suggested changing 69-8-414, to require the DOR to review the reports and to make sure that the reports comply with the law.

Committee questions

- 05:12:33 Sen. McConnell asked Mr. Rivas about receipts going to Wyoming and Colorado, who is supposed to catch those, and under Mr. Rivas' scenario, would that have been prevented under the current system.
- 05:13:36 Sen. McConnell asked if amending or changing the statute would be a statutory fix or a rulemaking fix.
- 05:15:59 Sen. Sales asked Mr. Rivas if he is insinuating that there was some sort of malfeasance.
- 05:17:52 Rep. Bishop asked Mr. Schoenfeld about amending the MCA to reflect the requirement of companies to display the match between the expense and what they reported, and how it met the criteria of the USB Program.
- 05:19:39 Rep. Bishop asked Mr. Schoenfeld to speak to what he thinks is within the capacity of the DOR to be able to provide the oversight.
- 05:22:01 Ms. Nowakowski discussed SB 312 from the 2015 session that required the DOR to adopt rules defining standards to be used by large customers in order to comply with the existing state law.
- 05:22:38 Rep. Zolnikov asked Mr. Rivas if any law was broken in the two examples he had provided to the committee.

PUBLIC SERVICE COMMISSION UPDATE

- 05:27:12 Brad Johnson, chair, PSC, provided an update on how NWE is going to treat the tax cuts that they received, the outage of Units 3 and 4 in Colstrip having to do with their failure to comply with mercury air toxin admission standards, and cases regarding the transportation sector.
- 05:35:15 Mr. Kraske provided an update on the PSC's active litigation.
- 05:40:14 Mr. Johnson gave a report on the PSC's budget.

Public comment None

Committee questions and discussion

- 05:45:09 Sen. McConnell asked Mr. Johnson if he expects any push back from the executive on whether or not the PSC will get the authority.
- 05:47:12 Rep. Skees asked Mr. Johnson why there is a problem with NWE's Community Renewable Energy Project (CREP).
- 05:49:35 Rep. Skees asked about the possibility of eliminating or modifying CREP legislatively.

SJ 5 EQC STUDY UPDATE AND OVERVIEW

Overview

- 05:52:40 Ms. Nowakowski gave a presentation on SJ 5, **(Exhibit 12)** and referred the committee to the SJ 5 final report. **(Exhibit 13)**

Committee questions and discussion

- 06:00:17 Rep. Skees asked Ms. Nowakowski if she included in her final report, details of the difficulty of getting Montana's coal through the west coast ports.

- 06:00:31 Ms. Nowakowski said that the final reports are online are intended to be online living documents that contain links to the information and court documents generated from the Montana Attorney General and the Wyoming Attorney General along with links to documents in Washington and Oregon pertaining to carbon tax issues and ports.
- 06:01:39 Rep. Skees asked how this will affect the State Severance Tax.
- 06:01:50 Ms. Nowakowski said that the information on the Severance Tax can be found on Page 14 of the final report.

Public comment

- 06:02:51 Ms. Hedges complemented Ms. Nowakowski on her good work on the report.

BREAK (reconvened at 2:22 p.m.)

Public comment on the PSC ruling

- 06:20:54 Chad Bauer, assistant manager, Public Services for Montana, commented on their objection to the PSC's rule.

Committee questions

- 06:22:53 Rep. Skees asked Mr. Bauer about the PSC's authority to make a rule change.
- 06:23:38 Rep. Skees asked for an update on the Big Foot lawsuit.
- 06:25:03 Rep. Zolnikov asked Mr. Bauer for an example of discovery that was requested by the PSC in the Big Foot lawsuit
- 06:29:39 Sen. McConnell asked Mr. Bauer if the proposed rule change would have made a difference in any case that he might have been involved in, and if the proposed rule prevents due process.

NET METERING UPDATE

Update on Request for Information

- 06:33:00 Ms. Nowakowski gave an update on the net metering study. **(Exhibit 14)** Ms. Nowakowski reported that NWE filed the underlying data on Friday that was used in the net metering study. She referred the committee to the spreadsheet containing net metering data and said that this document can be found at: <http://psc.mt.gov/Portals/125/Documents/Energy/pdf/NorthwesternEnergyD2017-6-49NetMeteringCostBenefitStudy.xlsx?ver=2018-09-10-114540-067>

Public comment

- 06:37:38 David Hoffman, NWE, introduced himself and said that he is available for questions.
- 06:38:17 Andrew Valainis, executive director, Montana Renewable Energy Association, commented on the net metering data.
- 06:40:28 Brian Fadie, Clean Energy Program Director, MEIC, commented on the lack of transparency with the process.
- 06:41:38 Cody Ferguson, legislative organizing director, Northern Plains Resource Council, commented on the lack of transparency and the poor faith effort to meet the intent of the committee.

Committee questions and discussion

- 06:42:34 Rep. Bishop asked Mr. Hoffman to comment on the lateness of getting the materials from NWE.
- 06:48:35 Rep. Zolnikov asked Mr. Hoffman if the PSC gets the redacted formulas or the full formulas. The question was referred to Sarah Norcott.
- 06:49:07 Ms. Norcott said that if the Commission grants protection, they will get the entire spreadsheet on a CD that will enable them to see every cell in the formulas. If they don't grant protection for the information, then the spreadsheet would be filed publicly and anyone who wants to see it could see that information with all the formulas.
- 06:49:51 Rep. Zolnikov asked if there would be an issue over proprietary information if the data is not granted protection and becomes public.
- 06:53:31 Sen. McNally commented on the process of attempting to get to the underlying information, understanding the issue of security, and the release of information on a timely basis. Sen. McNally distributed and read a draft letter to NWE regarding the goal of HB 219. [\(Exhibit 15\)](#)
- 06:57:09 Rep. Bishop said she appreciated the intent of Sen. McNally's letter.
- 06:59:11 Rep. Zolnikov commented on the direction that net metering is going.

Motion

- 07:00:49 Rep. Skees moved to adopt Sen. McNally's draft letter and to send it to NWE.

Discussion on the Motion

- 07:01:08 Rep. Skees
- 07:02:43 Sen. McNally

Vote

- 07:03:50 The motion carried unanimously by roll call vote. Rep. Perry voted aye by proxy. [\(Attachment 6\)](#)

COLSTRIP ADVISORY GROUP UPDATES

Introduction

- 07:05:30 Ms. Nowakowski provided a brief background of the Colstrip Advisory Group and introduced the presenters.

Colstrip Community Impact Advisory Group Updates

Jon Bennion, Attorney General's Office
Adam Schafer, advisor and staff attorney, Governor's Office, co-chair of the Colstrip Impact Advisory Group

- 07:06:22 Mr. Bennion provided a brief background of the closure of Colstrip Units 1 and 2, the \$10 million settlement, and the formation of the Colstrip Community Impact Advisory Group.
- 07:09:20 Mr. Schafer gave an update on the activities of the advisory group and its plan for the \$10 million settlement.

Public comment

07:15:19 Kate French, Northern Plains Resource Council, discussed a recent study that was commissioned by the Northern Plains Resource Council and the IBW Local 1648 to look at the impacts to the communities due to the closure of ash ponds and how the closure will be funded. She distributed copies of the study to the committee members. [\(Exhibit 16\)](#)

Committee questions and discussion

07:18:01 Rep. Skees asked Mr. Bennion for more information on the \$10 million settlement, if there was bonding in place for Colstrip Units 1 and 2 to pay for the ash ponds cleanup, and are there funds in place for the actual cleanup of ash ponds.

07:20:02 Ms. Nowakowski noted that Chris Dorrington, Department of Environmental Quality (DEQ) is in the audience and available to answer any questions.

07:20:15 Mr. Dorrington said that the responsible party is responsible for all remediation costs, which is separate and unrelated to the \$10 million settlement.

07:20:51 Ms. Nowakowski commented on an Administrative Order on Consent and the provisions in SB 339 from the 2017 session. She said she will provide a copy of the information that outlines the responsible parties and their responsibilities to the committee.

07:21:34 Rep. Bishop asked Mr. Schafer for clarification on the intent of the PSC regarding the dollar amount for the closure of Colstrip Units 1 and 2. She also asked Mr. Schafer if he had had any conversations with partial owners who have not yet made a contribution to this fund and whether or not there could be additional contributions coming.

07:24:04 Tom Ebzery, representing Puget Sound Energy (PSE), said that when that question was asked a year ago, the general counsel for PSE said that the \$10 million dollar settlement was for Units 1, 2, 3, and 4, and to Mr. Ebzery's knowledge that has not changed.

07:25:19 Sen. McNally asked Mr. Ebzery if that agreement holds, will some of the settlement money go to the surrounding communities.

07:25:29 Mr. Ebzery said that the settlement will go to Colstrip.

COLSTRIP UNITS 3 AND 4 UPDATES

Introduction

07:27:09 Ms. Nowakowski provided background information on the committee's request for an update on Colstrip Units 3 and 4. She referred the committee to the letter from Talen responding to Chair McNally's request for Talen to provide information regarding the current situation with Colstrip Steam Electric Station's Units 3 and 4. [\(Exhibit 17\)](#)

DEPARTMENT OF ENVIRONMENTAL QUALITY

07:29:11 Chris Dorrington, administrator, Air Energy and Mining Division, DEQ, gave an update on Colstrip Units 3 and 4, a timeline of Talen's PM testing, [\(Exhibit 18\)](#) and an overview of DEQ's request to Talen for additional information on the PM noncompliance. [\(Exhibit 19\)](#)

Public comment None

Committee questions and discussion

07:37:40 Rep. Skees asked Mr. Dorrington about whether the violation is based on Montana law or federal law.

07:38:30 Sen. McConnell asked Mr. Dorrington about Colstrip units that were off-line for a brief time.

PUBLIC COMMENT ON MATTERS WITHIN THE JURISDICTION OF THE ETIC

None

OTHER BUSINESS/INSTRUCTIONS TO STAFF

Review of Interim Items

07:41:35 Mr. Graff provided a rundown of the committee's accomplishments: one bill draft concerning integrated resource planning; two bills drafts concerning qualifying facilities; the small water 2 bill draft; and the final reports: HJ 28 Natural Gas Customer Choice (**Exhibit 20**) and SJ 31 Utility Decoupling (**Exhibit 21**) that will be finalized. He referred the committee to the "Understanding Energy Guide" that was distributed at noon.

07:43:05 Ms. Nowakowski reminded the committee of the evaluation forms that need to be completed and returned.

07:44:15 Sen. McNally thanked the staff and the committee on its good work.

ADJOURNMENT

07:45:16 Sen. McNally adjourned the meeting at 3:48 p.m.

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