

TRANSITION ADVISORY COMMITTEE

April 26, 2002

Montana Electric Cooperative Association Building,
Great Falls, Montana
Original Minutes with Attachments

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee Exhibits are on file at the offices of the Legislative Services Division. Because of a tape recording malfunction, Committee tapes are not available for this meeting.

COMMITTEE MEMBERS PRESENT

Sen. Fred Thomas	Art Compton
Rep. Tom Dell	Matt Brainard
Rep. Roy Brown	Gene Leuwer
Rep. Jim Keane	Bob Nelson
Rep. Steve Gallus	Kathie Roos
Rep. Alan Olson	Kathy Rice
Sen. Alvin Ellis	Dave Wheelihan
Sen. Walter McNutt	Russ Ritter
Rep. Stanley Fisher	Jerry Driscoll
Sen. Don Ryan	
Sen. Linda Nelson	

COMMITTEE MEMBERS EXCUSED

Sen. Emily Stonington
Pat Corcoran
Stephen Bradley
Dave Kinnard

STAFF MEMBERS PRESENT

Jeff Martin, Legislative Research Analyst
Todd Everts, Legislative Attorney
Robyn Lund, Secretary

VISITOR'S REGISTRATION

Attachment 1

AGENDA

Attachment 2

COMMITTEE ACTION

- Approved minutes from the previous meeting
- Adopted USBP Subcommittee Recommendations
- Recommended that TAC be funded through a general fund appropriation
- Recommended an extension of the USBP should HB 474 be repealed
- Recommended to allow aggregators to leave the default supply system
- Recommended to leave cooperative laws as they are
- Recommended to sunset instate incentive of low interest loans for coal generation
- Recommended to extend the transition period
- Recommended to repeal the Montana Power Authority statute
- Recommended to repeal consumer electricity support program
- Recommended to retain the electric buying cooperative language

I CALL TO ORDER

Roll call was taken. The minutes from the previous meeting were approved unanimously.

II PUBLIC SERVICE COMMISSION (PSC) REVIEW OF DEFAULT ENERGY SUPPLY PORTFOLIO

COMM. BRAINARD said that the PSC held public hearings on the default energy supply portfolio in April. Participants included the Consumer Council, Northwest Power Planning Council (NPPC), and NorthWestern Energy, and many others. Although prices of the contracts are public, there will be at least one closed hearing. The docket was divided into two phases. Two sponsors of new generation projects that were not included in the default portfolio said that the process was unfair and that there were no hard guidelines by which generation projects were chosen. Another complaint was the appearance of an affiliated relationship between merchant plant and the default supplier (NorthWestern Energy). The concern of future stranded costs was also raised. There are no traditional provisions for demand side management. Does the USB funding replace demand side management within the utility structure? The USB money is an essential part of the conservation and low income assistance in the state. The concept of risk was mentioned in the hearings: should the risk be assigned to new generation sources or to the default supplier? The PSC hopes to conclude the process by May 31.

SEN. RYAN asked if the satellite hearings would delay the PSC's final hearing by not allowing adequate time to redo the portfolio if it is rejected. **COMM. BRAINARD** said that was not the intent. The PSC follows a due process legal procedure and protocol that is very time consuming. If anything delayed the process, it was the lawsuit by the media. HB 474 said that the portfolio should be considered given the situation at the time. The hearings will consume some time, but the strength of the decision has to be good and has to hold up in court. The hearings are an essential part of establishing that record.

REP. DELL said that part of the reason he wanted to address the energy process during the 2001 session was the reaction that the PSC wasn't going to do anything. His sense was that if the legislature didn't do something, it wouldn't get done. Does **COMM. BRAINARD** see an activist role for the PSC to give the Legislature confidence that the PSC will address the issues?

COMM. BRAINARD said that the PSC can only do what is prescribed by law. If there are situations that require the PSC to have new authority, that authority needs to come from the legislature. The PSC needs to pursue their duties aggressively. **REP. DELL** said that the PSC needs to be activist, but was unsure that they were doing that. **COMM. BRAINARD** seems to have more confidence than what was heard in the last session. **COMM. BRAINARD** said that the PSC needs to use the tools that they have. An excuse is often that they don't have the right tools. He will look for other solutions and use the tools that he has.

SEN. THOMAS said that the default supply process was new to MPC. What the PSC has done is new territory as well. It seems that if the PSC has changes that they want made to improve the process next time, the Legislature is open to making those. He wants to make sure that the PSC wants the process to work well so that the consumers are protected. **COMM. BRAINARD** said that at some point there may be market-related retail customer legislation needed for protection. There will be some issues that will be presented for consideration in order to get the committee up to speed and get some individual sponsors for some bills. **SEN. THOMAS** said that the committee would give their attention to those issues when the PSC was ready.

SEN. THOMAS asked for the time line of the next 2 months. **COMM. BRAINARD** said that the PSC would soon receive briefs and will then have at least one meeting and proceed with the hearings. The PSC hopes to reach a decision by May 31, 2002. Satellite hearings will be held through the end of May. **SEN. THOMAS** asked where the press litigation is at. **COMM. BRAINARD** said that it was a mixed decision stating that some information was nontrade secret while other information was secret. It looks as though a media group is going to appeal that decision, probably in order to eliminate trade secrets in Montana. The biggest danger would be a challenge to the hearing process charging that the hearing procedure was flawed, that the public hearings were held while the appeal was ongoing.

SEN. THOMAS asked if the media appeals the decision, will the PSC still move forward. **COMM. BRAINARD** said that they will.

SEN. McNUTT asked about the PSC being able to regulate a generating facility in the state. **COMM. BRAINARD** said that PPL is filing an appeal at the federal level and that case will continue on. This is new ground. He would suggest that particular approach to that problem is not the only way to go.

III RESIDENTIAL PRICES OF ELECTRICITY IN SURROUNDING STATES

Bill Pascoe, NorthWestern Corp., referred to **Attachment 3**. The handout compares the residential rate and changes in the prices over time. There is also a comparison of Northwestern rates and cooperative rates. There are also comparisons with NorthWestern's residential rates

and the rates in neighboring states. NorthWestern's relative position has improved slightly since restructuring; they are about average in comparison.

SEN. THOMAS asked if these are the same utilities compared in the recent newspaper article. **Mr. Pascoe** said that the article described NorthWestern as among the highest. **SEN. THOMAS** asked if a year from now Montana will go from 6th to 5th if there are not other rate adjustments in the other utilities' rates. **Mr. Pascoe** said that was correct.

MR. WHEELIHAN said that page 2 shows that the cooperative rates include wires and poles; it is the delivered price. When you get to South East Electric, the cost of wires and poles will be higher because there are fewer customers.

SEN. THOMAS said that in a rural cooperative area transmission are more expensive. **MR. WHEELIHAN** said that there are fewer consumers to spread the costs among, which raises the costs to those consumers. **SEN. THOMAS** asked for a breakdown of the costs. **MR. WHEELIHAN** said that 7 cents is poles and wires and 3 cents is power. **SEN. THOMAS** asked if those are current rates. **MR. WHEELIHAN** said that they are. Flathead Electric Cooperative is average for the cooperatives.

SEN. ELLIS said that the last page shows the same thing happening in that Seattle has more consumers close together, where Montana has fewer consumers spread over a larger area, therefore raising the transmission costs to Montana consumers.

IV HISTORY AND RESOLUTION OF STRANDED COSTS RELATED TO RESTRUCTURING

Mr. Pascoe said that when the restructuring act was passed in 1997, there was a significant amount of the bill that dealt with transition costs. Those transition costs include regulatory assets, which are costs in the rate base without physical assets to back them up; costs associated with qualifying facility (QF) contracts, which is a question of estimating the costs of those contracts over the remaining lives in comparison with the price of power over their lives. MPC had generating plants that were included in the rate base and there was disagreement of what those assets were actually worth. That controversy was dealt with when MPC sold the power plants to PPL-M. There was a 4% decrease in rates due to the sale. That process got back in phase at the same time that MPC filed the portfolio docket. There was also a Tier 2 filing on transition costs at this point. There was a settlement that took another \$60 million off the transition costs. That settlement was approved by the PSC. There is now a schedule established for the next 20 years about the stranded costs that will be paid every year by customers.

SEN. ELLIS asked about the price on the QF facilities, was that part of the negotiation process. **Mr. Pascoe** said that the price was taken from the request for proposal. The QF power was considered not directly comparable to PPL power. The interveners in the case agreed that it was reasonable. **SEN. ELLIS** asked if that was an in-house price that. **Mr. Pascoe** said that was

correct. **SEN. ELLIS** asked how much power the Milltown Dam produces. **Mr. Pascoe** said that Milltown Dam produces about 2 megawatt. **SEN. ELLIS** asked what the firm power would be. **Mr. Pascoe** said a little less than 2 megawatts would be firm power.

SEN. THOMAS asked about the Milltown Dam. **Mr. Pascoe** said that Milltown Dam will play out under its own scenario. The driving issues are the environmental issues. Power generation issues are secondary. As long as the dam is there they might as well generate power, but EPA will decide the fate of the dam. **SEN. THOMAS** asked if the 2 megawatts pay for themselves. **Mr. Pascoe** said that 2 megawatts at \$32.75 produces more than \$400,000 per year, which is enough to cover its costs. It is not enough to make upgrades. **SEN. THOMAS** asked if the dam is physically moving every year. **Mr. Pascoe** said that earth dams shift and settle over the course of time. It has moved some, but not anything dramatic. It has settled. **SEN. THOMAS** asked if that is normal. **Mr. Pascoe** said for that type of dam it is normal. **SEN. THOMAS** asked for the average costs of the QF contracts. **Mr. Pascoe** said it was contract price was \$32.75. The actual contract costs are \$55 to \$60. **SEN. THOMAS** asked if the difference is in the rate. **Mr. Pascoe** said yes. **SEN. THOMAS** asked how that change would appear on a customer's bill. **Mr. Pascoe** said it would be listed as CTCQF. **SEN. THOMAS** said that the law requires MPC to mitigate those costs. Are stranded costs finished? **Mr. Pascoe** said they are. **SEN. THOMAS** asked if there will be attempts down the road to sell QF power to someone else, replacing that power with new generation or PPL. **Mr. Pascoe** said that QF costs are in 2 categories: that paid by customers and that considered a transition costs. The company has the responsibility to provide that much power at that price to default customers. The transition costs have been incorporated into a schedule over the next 29 years.

REP. DELL asked whether short-term purchases have to be approved by the PSC. **Mr. Pascoe** said that they will eventually. The costs are recovered through a tracking mechanism. They estimate the costs at the beginning of the year to establish rates. At the end of the year the actual cost is figured and there is a "true-up" in the following year. If the PSC finds that the short-term purchases were imprudently managed, those costs could be disallowed.

REP. DELL asked if this is the beginning of the process of defining "prudent." **COMM. BRAINARD** said that chastity is easier to define than prudent. There is some similarity on tracking and true-ups as to what is done with natural gas. MDU does monthly trackers. The spot market is a published price. There is not a lot of fluctuation. He thinks that we will see some stable prices. There are some large demands put on the default supplier. The default supplier needs to have flexibility in the portfolio and be able to establish a good faith relationship. The PSC never has done a daily monitoring of the power company when they were making short term purchases. When there is a pass-through, he doesn't think it will be a big issue.

SEN. ELLIS asked if they will have to sell as much power as they will have to buy, does NorthWestern stand the risk of what that power brings? **Mr. Pascoe** said that excess power will be sold on the market and credited to the default customers.

REP. FISHER asked where the other suppliers get the product to sell. **Mr. Pascoe** said that there are two ways to operate: sell to generating plants or sell through marketers that serve as middle men. **REP. FISHER** said that if NorthWestern lost half of their customers, the rates would increase. The supply and demand will regulate the price and will normalize over the next 5 or 6 years. The supply and demand will level out. **Mr. Pascoe** agreed. Supply and demand determines prices at the wholesale level. **COMM. BRAINARD** said that one of the issues is the RTO idea. There is an opportunity for more sources of generation and opportunity for competition with the default supply. He would caution not to view residential customers as a new regulated utility. A certain percentage will go to choice when there is an interface for small consumers. The PSC will be able to provide that interface in the next few years. The flexibility and necessity for short term contracts in the portfolio will become obvious.

SEN. THOMAS asked what percentage the short term purchases are of the portfolio.

Mr. Pascoe said that on a capacity basis it is about 20%. On an energy basis it is less than 5 %.

SEN. THOMAS said that it is often asked, “Why is there need for other power considering all the power the state produces? Where does all the excess power go?” **Mr. Pascoe** said that there is constant capacity and energy. There is in excess of 5,000 megawatts produced in the state. Most of that is hydro and is limited by the amount of water in the reservoirs. It is more in the 3,500 megawatt range for the course of the year. On an average basis there is about twice as much power produced as consumed in the state. Much of that power is dedicated to consumers in other states. Federal hydro projects produce a lot of power, but that power is dedicated to BPA and WAPA customers, many in other states. The power generated for Montana is less than the demand. **SEN. THOMAS** asked if what Noxon Dam produces is not available to Montanans.

Mr. Pascoe said that was right. **SEN. THOMAS** asked for owners of Colstrip. **Mr. Pascoe** said that there are 4 out of state owners. An example is Puget Sound Energy, which owns 50% of units 1 and 2, 25% of units 3 and 4. Portland General Electric is another. **SEN. THOMAS** asked if any of that power is available for Montana. **Mr. Pascoe** said that other than that controlled by PPL, the rest is committed to other states.

SEN. RYAN asked how much of the load left. **Mr. Pascoe** said that those numbers are a reflection of the default supplier. The 25 to 30% range of total load that has found other supply.

SEN. RYAN asked, when MPC was vertically integrated, did it ever have to buy power on the market? **Mr. Pascoe** said that they did. They bought contracts of varying lengths on the market.

SEN. RYAN asked if the dams were purchased by Montana, is there enough power to meet the default supply. **Mr. Pascoe** said that the PPL dams have a one-hour rating in the 500 to 550 megawatt range.

SEN. ELLIS said that firm generation is 43% of nameplate. Is that accurate in Montana?

Mr. Pascoe said that when you look at the federal hydro, that is used for peaking. The dams in Montana have a ratio of average to peak in the 60 to 70% range and firm would be about 50%.

V REVISIT REVISED FUNDING OF TRANSITION ADVISORY COMMITTEE

MR. MARTIN referred to **Attachment 4**. Under the original restructuring act, TAC was allowed to accept donations from private entities. He said that the funding scheme gives the appearance of impropriety and may be in violation of state law. He suggested that the committee recommend to the Legislative Council that the committee be funded either publically as part of the general fund appropriation. The memo contains a suggested budget.

SEN. ELLIS said that he has some of the same concerns about receiving that kind of funding. He thinks that it is appropriate to fund it through a legislative general fund appropriation.

MOTION/VOTE: **SEN. ELLIS** moved to recommend that the Transition Advisory Committee be funded through a general fund appropriation. Motion passed unanimously.

MR. MARTIN said that someone would need to present the recommendation to the Legislative Council.

VI REPORT FROM TRANSMISSION SUBCOMMITTEE

MR. WHEELIHAN said that the Transmission Subcommittee has received a great deal of information. There is a nationwide transmission problem. Transmission has not been built to the extent that it needs to be. They are trying to do an overview of what the problems are and then what policy makers can do to help the problems. The influence that the state and its policy makers have is limited because transmission is federally regulated.

There have been discussions about regional transmission organizations (RTO). The RTO's would eliminate pancaking of rates and alleviate some of the congestion points. The studies done on the RTO shows that everybody in the northwest benefits, except Montana. There is some question as to the accuracy of those studies. From a policy standpoint, the subcommittee is trying to decide if we want to weigh-in on whether the RTO is a good thing. It could be good if some of Montana's concerns are addressed. There is some question on how we would contact the Federal Energy Regulatory Commission (FERC) to relay support and concerns. There is some disagreement on how to do this. If Montana doesn't get a net benefit, do we ask FERC for something in return for our support? The comments are due May 29, 2002. PSC and NPPC have already expressed Montana's concerns.

Other questions that the subcommittee has discussed include, are there siting laws in Montana adequate to promote transmission infrastructure? Are there tax issues? PSC still has jurisdiction over investor-owned utilities. How do we plan for future power needs in the state? Are there things that the state can do to set up reliability standards? Should the state pursue interconnecting with Alberta? These are the policy issues that will be looked at during the June meeting. The most time pressing issue is the RTO discussion.

REP. DELL asked what criteria was used that would cause Montana to be the net loser.

MR. WHEELIHAN said that the filing utilities hired an outside consultant to do an independent

analysis. Everyone had a decrease in cost except Montana. The inputs in the study may not be that accurate. It is an open question. There are also intangible benefits that are not reflected in the study. **COMM. BRAINARD** said that the PSC perspective is that the potential for the RTO concept will benefit Montana in the long run. The actual impact of this will incur some costs, but it is not a huge percentage. He is not sure that it is enough of a difference that it couldn't be offset by opportunities for new generation in Montana, jobs, etc. With a proper functioning RTO we could see some economic development in the state that would offset the initial detriment.

SEN. ELLIS asked if the study was oriented toward the consumer. **MR. WHEELIHAN** said that the study was designed to see the cost of transmission in the states participating in the RTO. Generators that testified at the subcommittee meeting want the support of the RTO. They feel that being able to transfer power will lower the price of power. **SEN. ELLIS** asked who will pay for the infrastructure. **MR. WHEELIHAN** said that it is an open debate at this point. The RTO seems to be saying that new transmission will be paid for by those who develop it. If it is spread over the region the cost would be a lot less.

COMM. BRAINARD said that part of the RTO is that we have a physical capacity in transmission that goes unused. There are a lot of contractual bottlenecks. Eliminating those will help. We need more transmission out of the state and something will have to be done with the grid, but the real concept is people manipulating transmission through contracts. This is something that the RTO will address.

Matthew Brown, NCSL, said that the RTO requested a study of regional impacts and FERC did that study. The energy price increase that the RTO West study suggested was 6%. The assumption made was that of a 6% increase in spot market energy increases. Very little of what be buy is off the spot market. Another assumption was that there was a fixed amount of generation that was considered in the study. There will be more generation to export out of the state. There is a lot of uncertainty based on the inputs to the study. It is hard to know what it really means as far as the price for power. This is not necessarily what will happen in Montana.

COMM. BRAINARD said that there are decided outlines that have been presented for the eastern utilities. The needs of the west are entirely different. One size doesn't fit all. We need to look at this, protect western interests, and find something that works for us.

MR. RITTER said that as far as the opportunities for investment, the problems are the ability to entice someone to do that with the knowledge that they may not be able to move that power. It is not as simple as some would like. There are pockets of available transmission for place to place and the full contract to use that transmission is being controlled by the contract holders. He is not going to say that we expect the customer to pay for the transmission. The company is going to have to pick up that cost. He doesn't think that it is the responsibility of government to assume the cost of the transmission if the private company is the beneficiary of the transmission.

SEN. RYAN asked, as a large consumer, how are the RTO's affecting decisions?

MR. RITTER said that Montana Resources (MRI) was able to use deregulation for 2 years to keep the mine open. Since they closed, the price of electricity has come down. It is almost to where they were before they shut down. A stable electricity cost is a factor. Electricity seems stable, but the price of copper is down. They have closed the mine. They have environmental responsibility. They have balance those things in order to reopen the mine. **SEN. RYAN** asked how the RTO consideration and the cost of transmission figures in. **MR. RITTER** said that if the RTO would allow cheaper electricity to come into the state it would be a benefit. **SEN. RYAN** asked about the cost of transmission and its uncertainty. **MR. RITTER** said that is a factor. Anything that would drive the price down and counter a low copper price would be a benefit.

REP. GALLUS said that there are unmeasurable benefits with an RTO that would balance out a net loss, but we need to remember that other states will see the same benefits. Montana needs to walk away with as much as it can, maybe this could be used as leverage.

REP. KEANE asked if the RTO price to MRI for transmission is an increase, wouldn't that have a negative effect. **MR. RITTER** said that it would.

SEN. THOMAS said that it effects everyone the same.

SEN. ELLIS asked if some of the transmission blockages are contractual. **COMM. BRAINARD** said yes. **SEN. ELLIS** said that generators have contracted for transmission and not used it. **COMM. BRAINARD** said that the transmission line has a potential capacity; whether it is in use depends on a variety of things going on in the grid system. There is a certain amount of mobility in these things. Whoever has the contract has the authority to use it. Not everybody has a contract. If someone is new to the grid, they have to deal with the people who have the contracts. The RTO idea is that of management. The concept that problems are not all physical needs to be remembered. **SEN. ELLIS** asked if Avista has a contract to use a certain amount of transmission, are they charged for what the contract is for or what is actually transmitted. **COMM. BRAINARD** said that Avista is probably part owner of that transmission. If they are contracted for a portion of that capacity, the problem comes in how to get back into Montana. Even if they are not using the transmission, the owners may not allow others to use that line.

VII REPORT AND RECOMMENDATIONS FROM USBP SUBCOMMITTEE

REP. DELL referred to **Attachments 5 and 6**. The Subcommittee agreed with the governor's recommendation that the USBP be funded at current levels. Montana has greatly benefitted from this program. There are a lot of people served by this program, including but not limited to the disabled, seniors, and families with young children. The governor appears comfortable with the status quo, but has recommended some statutory adjustments. If the utilities have some unspent money, the utilities should be able to spend that money in their service area. This is a fairness issue and the subcommittee agreed. There are no alternatives to replace the USB programs. Low

income assistance and weatherization could not be met in other ways.

SEN. McNUTT said that previously, if a utility didn't expend the USBP money, it went to the state for disbursement. It was not necessarily redirected to where it was extracted. After going through the process and learning what the money is going to, he is supportive of the program. This is not a good time to dump the program. He will support it as long as the money is spent in the service territory from which it came. The governor's recommendation included the idea of redirecting funds to where the money was generated and the subcommittee agreed unanimously to support this recommendation to the TAC.

The USBP assessment was actually a rate increase for Montana-Dakota Utility customers. He feels that he can assure his constituents that the money won't be exported.

REP. DELL said that it is important to accept the proposed legislation redirecting USBP money to the contributing service territory because there was some reluctance about USBP in the last session. There was also a set percentage in HB 474 for irrigators. This is a problem for Flathead Electric Cooperative (FEC) because they don't have many irrigators. There needs to be an amendment on that at some point. He would hope that TAC would approve the USBP subcommittee recommendations today.

SEN. NELSON asked if the excess money would go back to the area that it is collected or the money in general will go back. **MR. EVERTS** said that the utilities can direct the use of the money. Only if they don't expend the money does the money flow into the state funds. This bill says that any money that hasn't been expended goes back to the service territory from which it was collected.

REP. FISHER asked at what point the bill will reflect a reduction of the 6% for irrigation in that was found in HB 474. **MR. EVERTS** said that the subcommittee did not make a specific recommendation for that provision. They are recommending that the full TAC look at the irrigation provision and provide some flexibility. **REP. FISHER** said that we need a numerical figure for the USBP agricultural irrigation funding allocation.

SEN. McNUTT said that the irrigation funding requirement applies to cooperatives and investor-owned utilities that have a transition plan. That is only 3 entities in the state. We need to make a policy decision of whether we exempt the cooperatives from this requirement or use a figure of up to 6%. It has created a problem and needs to be addressed. That decision will take time for the committee to digest. We need to work a little bit more to come up with a solution for the next session.

SEN. ELLIS said that there are cooperatives that have a significant share of their revenue arrive from irrigation. There should be flexibility rather than a fixed number.

REP. KEANE said that because 6% was in the bill, if we had up to 6% it would give the

flexibility that is needed.

REP. BROWN said that the recommendations assumes that HB 474 is not repealed. If HB 474 is repealed, the USB program ends. An extension was not discussed. Are we going to have a recommendation for the situation that HB 474 is repealed? **REP. DELL** said that we are supposed to make recommendations. We are recommending that the program be continued. If HB 474 goes down, we will need to extend the sunset.

MR. EVERTS said that the recommendations go to the statutory requirements for TAC. The USBP subcommittee found that there is an ongoing need at the current funding level.

REP. BROWN said that this could be construed to change the program, but because it doesn't address that the program ends the changes could affect just that period.

SEN. THOMAS said that if the full TAC embraces this recommendation, we can start to go forward. We need to act on that and decide whether or not we are willing to say that if HB 474 is repealed USBP should be extended. We should do that today.

SEN. RYAN said that we may be moving to fast on this proposal. We may be creating a situation similar to the bed tax. He doesn't know what this recommendation does to the funds available in other communities. Until he sees some figures, it would be hard for him to vote for this committee bill. He would prefer to wait until June to take action.

MR. EVERTS said that \$140,000 from MDU was diverted to the state. This was the only money that was diverted. Those moneys were being directed to eastern Montana generally. The subcommittee recommendation says that if the utility didn't expend all its funds, it would be directed back to its service territory.

SEN. RYAN asked if there will be a new state employee that will use some of those funds. He would like to have these questions answered.

REP. GALLUS said that this has a long way to go before it is a bill. He would like to see this accepted today. He can trust the subcommittee's work.

MR. LEUWER said that the bill wouldn't change past realities. Testimony indicated that the low-income portion of USBP was redirected to the service territory from which it came.

COMM. BRAINARD said that this is a way to make the law more equitable and more fair. The essential problem for MDU was that they didn't have experience with this type of program. Institutionally they had money left over. He doesn't think that will continue; they will find ways to use those funds in their system. The language makes the systems appear more fair.

SEN. RYAN said that he understands that one of the things in HB 474 was the extension of the

USB program because there was a lot of animosity about the program. He now understands how the money is allocated and he could take action on the recommendation today.

REP. BROWN said that the recommendations are commendable and that the program should be extended. However, things like this have some unintended consequences. By doing this the committee could influence the vote on HB 474.

REP. DELL said that there is a lot of ambiguity and we need to take that message back to the next session.

MOTION/VOTE: **REP. DELL** moved adoption of the recommendations as found in Attachment 5. Motion passed unanimously.

MOTION: **REP. DELL** moved that if voters reject HB 474, the committee recommends that the statutory extension of the USB program be reinstated.

Discussion:

SEN. NELSON asked if this motion would include the previous recommendation.

SEN. THOMAS said that this is a separate motion. This motion says that we want to continue this program regardless of whether the voters repeal HB 474.

SEN. RYAN asked for clarification. **SEN. THOMAS** said this would be recommending that the program be continued. **SEN. RYAN** said that even if HB 474 is repealed, the program ends after the session. Why vote now on something that we don't know the answer?

COMM. BRAINARD said that we are talking about the committee's sense of validity of this program. From the demand side management, the USB represents a lot of the management. If we vote on this, we are telling the next session that TAC believes in the program.

SEN. THOMAS said that it is easier to vote on this at an earlier point in time rather than as we get closer to the election. Now we don't have to worry about voting with or against the voters.

REP. KEANE said that dealing with the political issue, we can still vote either way on HB 474. If the voters reject it, the committee is still saying that it is a good program.

REP. BROWN said that there were other things in HB 474 that were good ideas, too.

SEN. THOMAS said that we do need to know what happens if the USB program goes away.

VOTE: Motion passed 9 to 2, with Sen. Nelson and Rep. Fisher voting no.

VIII DISCUSSION OF ISSUES COMMITTEE WANTS TO PURSUE FOR THE REST OF THE INTERIM

SEN. THOMAS referred to **Attachment 7**, an April 22, 2002 memo prepared by TODD EVERTS.

SEN. THOMAS said that the first issue he has relates to large industrial customers. There are some large industrial customers that remain in the default supply portfolio that can leave. Within the same context we have the league of cities and town. Do we want to examine the law and require them back into the default supply load in the future? Does any member want that issue considered?

MOTION: SEN. ELLIS moved to leave the law allowing other aggregators to leave.

Discussion:

COMM. BRAINARD said that customer choice is the key to restructuring. The problem is not having the industrial leave as much as them having to come back in. The default supply provides the safety net for the state. We need the flexibility of the default supply to bring people back in to prevent businesses from shutting down.

REP. KEANE asked for MR. RITTER's opinion.

MR. RITTER said that he doesn't see a need to change the law.

VOTE: Motion passed unanimously.

SEN. THOMAS said that another issue rural electric cooperatives. Is there any interest in changing the laws as to how cooperatives operate in regards to how they purchase power?

REP. OLSON said absolutely not.

REP. GALLUS said that a lot of cooperatives went a different route.

MOTION/VOTE: REP OLSON moved to leave the cooperative laws as they are. Motion passed unanimously.

MR. EVERTS said that the legal analysis (Attachment 7) was requested by the committee. When specific statutory language is removed it creates legal uncertainty. If HB 474 is rejected it gives the PSC more discretion. There is usually no absolute answers with legal analysis. There can be arguments made both ways. Without HB 474, the PSC would have a fair amount of discretion to make decisions about default supply, customer choice, cost recovery, and the procurement process.

HB 474 created an instate incentive program for low interest loans for electricity generation. The loan program would be eliminated if HB 473 is rejected. The Board of Investments has approval for the Thompson Falls cogeneration plant contingent on PSC approval.

SEN. THOMAS asked if the loan has already been approved and the law is repealed, does the loan stay in effect. **MR. EVERTS** said that is generally a correct statement. There are contract impairment issues that could be raised. That would likely protect contracting parties in the event the contract is challenged after rejection of HB 474.

SEN. ELLIS said that he would not be in favor of retaining it. He no longer sees this as an emergency situation.

REP. DELL would agree with **SEN. ELLIS**. We were in a crisis mode at the time that HB 474 was written. It is no longer a crisis.

MR. RITTER asked for the status of the Thompson Falls cogeneration plant. **SEN. THOMAS** said that it is legal staff's opinion that because it is approved and contracted for, it would be able to withstand a legal challenge.

REP. OLSON said that if we are looking at opportunities for creating jobs, we should leave the language in the statute.

MOTION: **REP. KEANE** moved to sunset this language.

VOTE: Motion passed 7 to 4, with Rep. Gallus, Sen. Ryan, Rep. Brown and Rep. Olson voting no.

MOTION/VOTE: **REP. DELL** moved to extend the transition period to July 1, 2007, if HB 474 is rejected. Motion passed unanimously.

MR. EVERTS said that HB 474 defined what prudent costs are. If the voters reject HB 474, what would the post rejection cost recovery look like? It would depend on what the PSC does.

SEN. ELLIS said that this is the most likely one to stir up a hornet's nest if we leave it the way that HB 474 is. Opponents will say it was passed at the behest of the corporations. Without this we could end up like what happened in California, bankrupting the providers. This is the meat of HB 474 and it needs to still be there.

SEN. THOMAS asked if there was anything not covered by the USB subcommittee work.

MR. EVERTS said no.

MR. EVERTS said that HB 474 created the Montana Power Authority (MPA).

SEN. THOMAS said that the question is whether to continue this provision of HB 474.

MOTION: **SEN. RYAN** moved to retain this law.

Discussion:

SEN. ELLIS said that this is something that he felt was done in a crisis mode. He would oppose the motion.

SEN. RYAN said that there should be a mechanism to get into the public power business, to get an asset that isn't subject to the market. This is something that we can do to keep businesses alive and moving. We need something in the law to allow the state to match a bid to keep assets and prevent turnover of providers from company to company.

IX PROCESS AND TIME LINES FOR CONDUCTING ASSESSMENT OF RESTRUCTURING IN MONTANA

Matthew Brown, National Conference of State Legislatures (NCSL), said that a few months ago he learned that there was an interest in looking at electric industry restructuring in Montana. His objective is to rely on a lot of experience working with a lot of different states on these issues. Although we are drawing on experiences from other states, it is something that will be appropriate. He expects that we will produce a number of policy options to consider. He will be looking at other proposals like this that will work in Montana.

REP. DELL said that there is an initiative to buy some of the dams.

COMM. BRAINARD said that the PSC is faced with a number of issues such as realtime metering, how to affect the transition period, etc. He would urge the committee to not go backwards on the issue of customer choice. He thinks that we have gone beyond that already. The other problem was that we didn't have the technology to interface small customers. With the default portfolio they have to do that. He hopes that we don't turn the default supply into a regulated system.

REP. KEANE said that we need to look at the risk. Does the company have the responsibility for some of the costs? **Mr. Brown** said that one of the issues is that if you insulate the customers from risk they will never switch. Striking the balance is very difficult. **REP. KEANE** gave Enron as an example. **Mr. Brown** would urge that this isn't the only opportunity.

SEN. RYAN said that he would like to look at the ability of communities to see what options and limitations we have for those and to look at the public power options in Montana. Are there any models that would make the default supply the last option for customers? **Mr. Brown** said that there is risk in prices that would move the market toward competition. **SEN. RYAN** said that the ability to have the large consumers move to competition is there, but there is nothing

available for the small consumers.

REP. KEANE said that if you look at a big customer they have something to offer, but a residential bill isn't much. Is there some state that has developed a way to make the small customers more appealing to utilities? **Mr. Brown** said that fits into the discussion of aggregation.

SEN. THOMAS said that he would like to look at the cost recovery element in HB 474 that defines what would be recovered and what would not be recovered. If there are ways to improve the process, what authorities the commission needs or doesn't need. He thinks that there is a lot of misconception. What does the cost recovery mechanism need to be better?

SEN. RYAN said that in the portfolio approach the PSC has to preview the bid structure that would go out. Is there a way that the bid process could be sped up if the PSC had a preview of the structure and criteria of bids?

Mr. Brown said that he is trying to come in with as few preconceptions as possible. He will be calling the TAC members to get further input

VIII DISCUSSION OF ISSUES COMMITTEE WANTS TO PURSUE FOR THE REST OF THE INTERIM--CONTINUED

REP. GALLUS said that he feels the Montana Power Authority is not necessary anymore, but there isn't a problem with having some enabling legislation around.

REP. DELL said that at the time HB 474 was passed, the Legislature wanted as many options as possible. We are in better shape now, but there are still loose ends. He is not thrilled about the state being in the power business, but he likes the idea of being able to facilitate and level the playing field. He will support retaining it.

REP. FISHER said that when they deregulated electricity it was everybody for themselves. If the voters vote the MPA down they are saying they don't want it. He can't support it.

REP. OLSON agrees with **REP. GALLUS**. He doesn't think the government belongs in the power business. This is something good to have to fall back on.

REP. BROWN said that the initiative to buy back the dams repeals MPA and puts a new but similar entity in place. He can't support this.

SEN. ELLIS said that he agrees that we shouldn't be in this business. He remembers the experiences in workers' compensation. There were huge deficits before the problem was addressed. Government is poorly equipped to be in a business that serves the public.

MR. RITTER said that he would agree with what has been said about getting the state out of the business. There are a lot of things that the state can do that don't involve the MPA. He thinks we need to define the problems and know where they are.

COMM. BRAINARD said that if you consider the scope of Montana and the cooperatives, what part of Montana does the MPA cover? If you are talking about generation, what about timeliness? Private industry is able to move more quickly.

REP. KEANE asked how the cooperatives feel about this issue. **MR. WHEELIHAN** said that the cooperatives had not taken a formal position on the MPA.

REP. GALLUS said that if we keep it, maybe we should put more emphasis on using it for transmission.

SEN. McNUTT said that there was an energy crisis at the time HB 474 was enacted. MPA was a trump card to say, "If we can't get it, we will build it." Today that is no longer the case. We don't know what will happen down the road. He thinks this is kind of dangerous and it is not needed.

SEN. THOMAS said that MPA was an attempt to say that if we can't get it, we will build it and create competition in the state. Given what we know today, this will never be used because private industry will be out in front of government and this will never matter. He doesn't see it as valuable now.

VOTE: Motion to retain the MPA provision of HB 474 failed 7 to 4, with Rep. Gallus, Sen. Ryan, Rep. Keane and Rep. Olson voting yes.

MOTION: **SEN. ELLIS** moved to repeal the MPA. Motion passed 7 to 4, Rep. Gallus, Sen. Ryan, Rep. Keane, and Rep. Olson voting no.

MR. EVERTS said that HB 474 created a program to protect customers of the default supply. The legislature didn't allocate any funding to this program.

SEN. RYAN said that we should reject an empty statute.

MOTION/VOTE: **SEN. RYAN** moved to repeal this statute. Motion passed unanimously.

MR. EVERTS said that the electric buying cooperative was created as a default supplier. HB 474 designated a default supplier and had to redefine the electric buying cooperative. If HB 474 is rejected, the purpose of the buying cooperative would go back to being a potential default supplier.

SEN. THOMAS said that this issue is if we want the incumbent utility to be the default supplier.

COMM. BRAINARD said that there is some confusion of what the default supply is. The responsibility of being the provider of last resort and tying that to distribution makes sense. If somebody wants to be a supplier, that is fine; but don't attempt to be a default supplier.

SEN. THOMAS agrees. The right policy is in law that the incumbent be the default supplier.

Patrick Judge, Montana Environmental Information Center (MEIC), said that the same amendment is part of SB 506 as well as HB 474. He doesn't see that the motion to preserve that section is needed.

MR. EVERTS said that SB 506 doesn't eliminate the language that the buying cooperative would act as a default supplier. HB 474 eliminates the ability to act as a default supplier. SB 506 still allows the buying cooperative to promote alternative energy.

SEN. THOMAS recommends retaining this section of law.

MOTION/VOTE: REP. BROWN moved to retain this law. Motion passed unanimously.

MR. EVERTS said that the procurement process for electricity supply and the requirement in HB 474 that utilities offer a green power product to its customers.

SEN. THOMAS asked Mr. Pascoe for his opinion on building wind generation into the portfolio and does that satisfy this part of the law. **Mr. Pascoe** said no, they are in the process of developing that.

COMM. BRAINARD said that this is a double-edged sword. There is decided advantage in having this as part of the default supply. He doesn't know what excess work the utility has to do to provide a completely green source of energy. The wind generation is an important part of the portfolio concept. He doesn't know if it is a practical requirement or not.

Mr. Judge would recommend that the committee retain that section of law.

Mr. Pascoe suggested that the committee save this question for the work that Mr. Brown is doing.

SEN. THOMAS asked when this requirement had to be met. **Mr. Pascoe** said July 1.

SEN. THOMAS wants the committee to go through the question of whether or not we change the law on the cooperatives provision allowing them to opt in or out. Perhaps we should let them stay out of transition and sell outside of their territory.

REP. DELL said that he would support hearing that at the next meeting.

X OTHER BUSINESS

REP. KEANE said that he would like to go back to representing your constituents. The Colstrip mine was owned by MPC. As we go down the sale of MPC it is having a devastating effect on his community. There were 55 high paying jobs in Butte that were lost as the companies move their people to other parts of the country. The loss of those 55 jobs will affect more than just those people, it will affect the whole community. If this continues to happen, our economy will continue to fall.

SEN. THOMAS hopes that Touch America will stay in the state and grow, hopefully offsetting some of the loss.

MR. RITTER said that even though MPA was voted down, nothing that was done today will prevent a company from going to the Montana investment board to get low interest loans. There is precedent.

REP. DELL said that he would like to see the net metering applications discussed. This would be a means to jump start empowering consumers to become part of the process.

SEN. THOMAS said that the PSC has had a lot of discussions in this regard. It should be added to the agenda.

MR. MARTIN said that the next meeting is June 21.

REP. BROWN said that will conflict with the Republican convention.

It was decided that the date will be changed sometime in the future.

XI ADJOURNMENT

There being no further business, the meeting was adjourned.
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