

MINUTES  
of the  
LEGISLATIVE CONSUMER COMMITTEE  
October 19, 2017  
State Capitol, Room 152, Helena, MT

COMMITTEE MEMBERS PRESENT

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

COMMITTEE MEMBERS EXCUSED

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Senator Jennifer Fielder

MONTANA CONSUMER COUNSEL STAFF PRESENT

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Robert A. Nelson, Consumer Counsel  
Jason Brown, Staff Attorney  
Paul Schulz, Rate Analyst  
Jaime Stamatson, Economist  
Suzanne Snow, Secretary

VISITORS PRESENT

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David Hoffman, NorthWestern Energy  
Webb Brown, Montana Chamber  
Bridger Malhum, Montana Chamber  
Mark Schoenfeld, Department of Revenue

CALL TO ORDER

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Chairman Cuffe called the meeting to order at 1:00 p.m.

MINUTES OF PREVIOUS MEETINGS

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MOTION: Representative Cuffe moved for adoption of the June 8, 2017, meeting Minutes.

VOTE: The motion passed unanimously.

## DEPARTMENT OF REVENUE – MCC FEE COLLECTION PRESENTATION

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Mark Schoenfeld from the Department of Revenue presented a detailed summary on how the MCC tax is collected, the problems that had occurred with calculating the tax, which caused the fund to grow over time, and the measures that his department has put into place to make sure that collections remain at the appropriate levels while allowing adequate funding for the office of the Consumer Counsel.

Chair Cuffe thanked Mr. Schoenfeld for his presentation and asked if he would be willing to attend the next meeting as part of the Committee's responsibility to make sure that the Department of Revenue remains in contact with the Legislature in an endeavor to keep track of this fund.

Kris Wilkinson, Legislative Fiscal Division, was also invited by Chair Cuffe to address the Committee on the Consumer Counsel's fund equity growth. Kris stated that it was her belief that the growth of the fund occurred due to a change in the Department of Revenue's formula for the collection of taxes. Kris also stated her willingness to provide the information supplied to the sub-committee during session at the next meeting for the Committee's review.

## STATUS OF CASES

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

**NWE – D2017.5.39 – MPSC Review of Rates to Recover NWE's Electricity Supply Costs.** This item relates to the follow-up activity to HB 193 that was approved in the last session. The Commission reached a conclusion that it could no longer reauthorize the existing tracker under the amended law. The Commission asked for comments on whether NWE should file a rate case with respect to the company's supply costs. MCC filed comments in June noting that trackers violate a fundamental rate making principle and that NWE's next electric rate filing should be a full general rate case, not one that related only to supply costs. Subsequently, NWE filed a power cost and credit adjustment mechanism proposal (PCCAM). MCC intervened in the case, which is in the discovery phase, with a hearing set for early next year.

**NWE – D2016.7.52 – 2017 Electricity Supply Tracker,** filed 5/31/17.  
The Commission issued an interim order approving the continued use of a monthly tracker.

In response to Senator Malek's request to explain what constitutes a tracker, Bob stated that trackers focus on one set of expense changes. The Commission evaluates the tracker and flows those adjustments through regardless of other changes that are happening within the company.

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

In this docket, NWE explained its efforts to comply with a component of the renewable portfolio standard requirement and its inability to do that within the cost caps. If the company is unable to obtain power from resources at the same cost that it is paying for other resources, there is a

safety valve in the CREP requirement that allows for a waiver. Bob noted that NWE's waiver request with respect to calendar year 2015 is also pending.

Bob outlined some of the unique circumstances related to QFs noting that they are not necessarily the same as renewables issues.

**NWE – D2016.5.39 – Application for Approval of QF-1 Tariff**, filed 5/3/16.

Bob noted in reviewing this docket that the Commission had issued a final order, which addressed how standard rates for small QFs should be set, including the capacity costs and capacity values for wind and solar, carbon values and contract length. Several motions for reconsideration of the final order were filed with the Commission. In a subsequent work session, the Commission did vote to reconsider the contract length determination to a 15-year contract length from a 10-year with a 5-year reopener. A written order on reconsideration has not yet been issued.

Senator Malek stated that she was concerned about what appears to be the PSC's intention to discourage renewable development in Montana and that it is her belief that Montanans want to look at non-carbon kinds of energy, especially after the fire season and the diminished ability to export coal, given changes in Oregon and Washington. Senator Malek also expressed her concern that the Consumer Counsel's support of the PSC's decision regarding renewables may contradict consumer desires, and questioned whether the MCC should involve consumers more in those discussions. Bob responded to Senator Malek's concerns by stating that the MCC is certainly open to input, but that the MCC is not the decision maker, and appears before the PSC to present what it believes are the consumers' economic perspectives.

Chair Cuffe congratulated Rep. Olsen on completing the Legislative Energy Horizon Institute.

A 15-minute recess was taken.

In continuing his discussion on QF related dockets, Bob noted that QF projects larger than 3 megawatts are required to negotiate with the utilities. The following projects have recently brought proceedings before the Commission to set rates because they could not agree with the utility: 1) New Colony Wind, scheduled to be heard October 31; 2) Crazy Mountain Wind, which was appealed in district court, with NWE and Crazy Mountain entering into a settlement and dismissing the appeal; and 3) MTSUN, a QF that is proposing a project near Billings.

**NWE – D2017.6.49 – Establishing Minimum Information Requirements for Net Metering Study**, initiated by PSC 6/16/17.

The Commission has issued its requirements for a net metering study, and has identified several areas of costs and benefits that the utility must study. This study is due to be completed in April and presented for review as part of NWE's next filing.

**NWE – D2016.9.68 – General Gas Rate Increase.**

Phase 1. In summarizing this docket, Bob noted that the MCC had entered into a second stipulation with the NWE in which the Company agreed to absorb some costs that the MCC did not think ratepayers should have to bear. The Commission, despite NWE's agreement to absorb

those costs, found that it was an unwarranted reduction and unexplained in the stipulation, denying that reduction in the final order.

Phase 2. MCC filed testimony taking issue with some of the Company's allocated cost of service recommendations. MCC's witness recommended smaller cost allocations to residential and small customer classes.

**NWE – D2016.7.53 – 2017 Natural Gas Tracker**, filed 5/31/17. For 12-month period ending 6/30/17, and projected period ending 6/30/18.

MCC reviewed the filing, and finding no issues with the case, did not file testimony.

**Havre Pipeline Co. – D2016.7.58 – Annual Rate Adjustment**, filed 7/29/15.

Bob noted in review that this docket was based on a service quality complaint that the MCC had participated in before a district court. The court's finding was that Havre Pipeline cannot abandon service without specific authorization. Havre Pipeline did propose tariff updates that describe service limitations and certain service aspects of its farm tap service. MCC will review the tariff requirements that relate to service continuation.

**Townsend Propane – D2017.4.36 – Application for Propane Rate Adjustment**, filed 4/28/17. MCC reviewed the filing, and finding no issues with the case did not file testimony.

**MDU – D2017.6.55 – Annual Purchased Power Tracking Adjustment**, filed 6/16/17.

This docket is MDU's annual true up. MCC examined the filing, but did not file testimony.

**MDU – N2017.9.73 – Biennial Electric Integrated Resource Plan**, filed 9/15/17.

MCC will review the filing with comments due January 2018.

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

In discussing this docket, Bob noted that MDU is requesting a \$2.8 million increase, which is based on a 9.9-percent return on equity. MDU is proposing to allocate slightly more than the average to residential and small customer classes, for an increase of approximately 5.5 percent. The Company also has requested a 43 percent increase in the monthly service charge, along with a proposal for an infrastructure tracker for its pipeline safety program. MCC filed a petition to intervene and will be examining the case.

**EWM – D2017.6.46 - Annual Gas Cost Tracker**, filed 6/1/17.

This docket is Energy West's request for a \$1.5 million increase for its Great Falls customers, which is a 12.3 percent increase in the non-gas cost, or a 7 percent overall increase. Energy West is the parent company of Cut Bank Gas, which is also included in this filing requesting an increase of \$183,000. The Commission has issued a notice of application. MCC will intervene and review the filing.

**Avista – D2017.9.71 - Application for Approval of Merger**, filed 9/14/17.

Avista is a Washington State utility but does own a small hydro facility in Montana. Avista is being acquired by Hydro One, and because it is a regulated Montana utility, Avista needs the approval of the PSC. MCC has petitioned to intervene and will monitor the docket.

**Big Sky Gas – D2016.10.79 – Petition for Waiver of ARM 38.5.6002, 6004(1), and 6004(3),**  
filed 10/14/16.

Big Sky is a Gas supplier in Helena offering competitive gas commodity supply service to NorthWestern's customers. MCC filed comments opposing some of changes of the requirements regarding how the company would sign up customers. A final order was issued approving in part and denying in part some of those changes. MCC is currently in the process of discussing with Big Sky Gas notification requirements that would be acceptable for customers.

Representative Olsen requested that the MCC provided the Committee with the documents in this filing for their review.

Jason Brown noted that the MCC can certainly obtain the authorization and the contract Big Sky is using. Jason also noted that the Commission denied the Company's request to combine the authorization and service contract, so those documents will remain separate and include a statement of the rate. Jason further noted that Big Sky Gas in its script for telephonic switching will include disclosure of the rate and the termination fee of \$150, if the 12-month contract is cancelled early.

Bob Nelson also noted that gas customer choice is an issue that is being considered in ETIC during the interim. MCC will be monitoring that discussion and offering comments as appropriate.

At the request of Representative Olsen, Bob will check with ETIC to see if it has an interest in obtaining the documents filed under the Big Sky Gas docket.

In discussing the Small Water Utility cases, Bob noted that the MCC has expressed its concern about the Commission's process to authorize standard rates for small water utilities. The Commission implemented this rule change approximately three years ago. While the MCC understands the Commission's reasoning for doing so and is sensitive to the financial burden in filing a rate case because those costs are ultimately flowed through to the ratepayers, MCC is concerned that in some cases these rates are significantly increased. Bob also noted that the MCC has received more complaints from customers of small water utilities than all the other large utilities combined. MCC has struggled with how to get to the point of conducting a low cost of review that will not burden customers with rate case expenses and still have the opportunity to examine the cost basis for these rates, rather than having an arbitrary rate set administratively. The Commission has tried to use average rates, but the average rate would then become the floor and there is a new average that floats up to between the top and that new floor. It is MCC's belief that this has caused a general increase in costs for these utilities. MCC filed a rule making petition with the Commission for revision of the standard rate rules, which would streamline the review process giving the MCC an opportunity in cases where it thinks the rates that are being proposed are not cost justified to challenge those rates and propose modifications. The Commission is concerned about bringing all utilities into compliance because some utilities did not initially know that they were going to be regulated, as for example a subdivision developer who built a water or sewer system. Another MCC concern is that because of the standard rates, there is potential churn going on in selling these systems and the value of the system becomes set based on the revenue stream from these administrative rates, rather than

what the cost of the system originally was. The Commission issued notice of that rulemaking petition and comments are due next Monday.

**Citizens Telecommunications** – D2017.9.75 – **Petition for Waiver of 69-3-805(1), MCA**, filed 9/26/17.

This docket is Citizens Telecom’s request for waiver of requirement for filing tariffs or price lists, which would be consistent with treatment with other companies and the Commission’s own notice of adoption of rules with respect to minimum filing requirements for tax tracker filings.

In response to a request from Representative Olsen, Bob agreed to put together information regarding bills monitored by the MCC during session.

Senator Malek expressed her interest in the MCC having more of a web presence. This discussion is set for follow-up at the next meeting.

Bob Nelson noted in closing the status of cases that a QF developer, WINData, has filed a complaint in state district court in Great Falls asking for damages due to what it views as discriminatory treatment by the PSC. The Commission, and the Commissioners in their individual capacity, and NWE are all name defendants in the law suit. MCC is reviewing the complaint.

## FINANCIAL REPORT

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

## CONTRACTED SERVICES

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Bob requested authorization to hire consultants in Montana-Dakota Utilities’ general natural gas rate case and Energy West Montana’s natural gas rate case.

The following motion was made:

**MOTION:** Representative Olsen moved to approve the request of the Montana Consumer Counsel to retain the consulting firms Larkin & Associates, Resolve Utility, Hill Associates and JW Wilson & Associates in the Montana-Dakota Utilities’ general natural gas rate case, and Resolve Utility Consulting, JW Wilson & Associates and Hill Associates in Energy West Montana’s natural gas rate case.

**VOTE:** The motion passed unanimously.

## SELECTION OF CHAIR

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Following discussion from the Committee the following motions were made.

MOTION: Senator Malek moved election of Representative Cuffe as the Committee's Chair.

VOTE: The motion passed unanimously.

MOTION: Representative Cuffe moved election of Senator Malek as the Committee's Vice Chair.

VOTE: The motion passed unanimously.

## PUBLIC COMMENT

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There was no public comment.

## NEXT MEETING

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The date for the next meeting is to be set later.

In closing Representative Cuffe asked the agency to be mindful and extra frugal in the use of funds.

## ADJOURNMENT

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

Respectfully submitted,

\_\_\_\_\_, Robert Nelson, Consumer Counsel

Accepted by the Committee this 16th day of January 2018,

\_\_\_\_\_, Chairman.