



Energy and Telecommunications Interim Committee

60th Montana Legislature

SENATE MEMBERS

GREG LIND--Vice Chair
JERRY BLACK
VERDELL JACKSON
DON RYAN

HOUSE MEMBERS

HARRY KLOCK--Chair
DUANE ANKNEY
ROBYN DRISCOLL
BRADY WISEMAN

COMMITTEE STAFF

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

MINUTES

July 16, 2008

Room 102, State Capitol
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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COMMITTEE MEMBERS PRESENT

REP. HARRY KLOCK, Chair
SEN. GREG LIND, Vice Chair
SEN. JERRY BLACK
SEN. VERDELL JACKSON
SEN. DON RYAN
REP. ROBYN DRISCOLL
REP. BRADY WISEMAN

COMMITTEE MEMBERS EXCUSED/ABSENT

REP. DUANE ANKNEY

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 a draft report on public power with changes and additions;
- approved a draft report on carbon sequestration with changes and additions;

- did not approve LC4002 - a bill to clarify pore space ownership;
- did approve LC4003 - joint resolution for continued study of carbon sequestration; and
- approved PSC proposed legislation.

CALL TO ORDER AND ROLL CALL

00:00:04 REP. KLOCK called the meeting to order at 9:02 a.m. The Secretary noted the roll, REP. ANKNEY was excused (ATTACHMENT #3).

REVIEW OF PUBLIC POWER DRAFT REPORT AND FINDINGS

00:00:35 **Sonja Nowkowski, Lead Staff**, said that the report, "*Perspectives on Public Power*" (EXHIBIT #1), is a summary of the work done by the Energy and Telecommunications Interim Committee during its study of public power, which included a look at the history of and status of public power in Montana, past legislation, and public power options. She noted that the Committee's findings and conclusions are listed on pages 1 and 2. She briefly reviewed several of the public comments received on the report (EXHIBIT #2). Ms. Nowakowski asked the committee members for discussions and recommendations for the final draft, to be approved at the September meeting.

Committee Questions and Discussion

00:04:42 REP. WISEMAN requested several changes and clarifications be made to the draft report:

- list the Great Falls Power Public Power Company at the top of page 2 under "ETIC finding";
- in the "Overview" section on page 2 - change the three references to public utilities to "investor-owned" utilities;
- under "Cooperative Utilities" on page 4, specify that there is statutory language regarding how cooperatives are formed and operate;
- on page 5, in third paragraph dealing with operation of nonprofit corporations, clarify language;
- on page 6 , dealing with other states' public power authorities, provide additional language to more clearly describe the generation assets of each authority and the amount of power actually generated.

Public Comment

00:08:16 No public comment was given.

00:08:42 SEN. RYAN thanked staff for the good work and said that the information would be a valuable resource in the future.

00:10:13 SEN. RYAN **moved** to accept the draft report, including REP. WISEMAN's changes. The **motion passed** on a unanimous voice vote 8-0, (REP. ANKNEY by proxy (Klock)).

REVIEW OF CARBON SEQUESTRATION DRAFT REPORT & PROPOSED LEGISLATION

00:11:20 Ms. Nowokowski provided a brief overview of the Committee's draft report, "*Carbon Sequestration Study: an analysis of geological and terrestrial carbon sequestration regulatory and policy issues*" (EXHIBIT #3). Ms. Nowokowski noted that the Environmental Protection Agency (EPA) released federal requirements

for sequestration the previous day and that because of the significant impact of several of the proposed requirements, the report may need to be amended. She said that a public comment period on the EPA's draft rules will be held and that the federal requirements will be finalized by 2011. She distributed a document listing the highlights of the EPA proposed geological sequestration requirements (EXHIBIT #4). Ms. Nowokowski also discussed several public comments received on the draft report and the proposed legislation (EXHIBIT #5). She said that all public comment has been posted on the ETIC website.

00:22:53 SEN. RYAN asked if there are federal standards for mercury emissions. Ms. Nowokowski said there are federal and state rules regarding mercury emissions. SEN. RYAN discussed how those standards could adversely impact sequestration efforts. SEN. LIND commented that federal standards may provide some selection standards for certain sources over others.

Public Comment on Carbon Sequestration Draft Report

00:25:53 No public comment was given.

Committee Recommendations, Questions, and Discussion

00:26:00 REP. DRISCOLL said that after reviewing public comment, she is in favor of postponing legislation because there is so much that has yet to be learned about sequestration. She supported additional study before drafting legislation.

00:27:07 REP. KLOCK asked that the public comment received from Dan Kieke, Chevron (EXHIBIT #5) be included in the draft report, saying it was insightful and would add value.

00:28:05 SEN. JACKSON asked that comment received from Bryan Rogan, OverSight Resources, LLC (EXHIBIT #5) also be included in the report and that additional information be gathered on liability issues regarding carbon sequestration.

00:29:28 Ms. Nowokowski said she could integrate the specific comments mentioned by the Committee members into the report and attach all of the public comment received as an appendix to the report. REP. WISEMAN and SEN. BLACK agreed that all public comment should be included.

00:30:03 SEN. BLACK **moved** to accept the draft carbon sequestration report, with inclusion of the public comment by Chevron in the body of the report and all other public comment as an appendix. The **motion** passed on a unanimous voice vote (REP. ANKNEY yes by proxy (Klock)).

00:30:42 REP. WISEMAN commended Mr. Kieke of Chevron for his in-depth analysis of and comments on the carbon sequestration report.

LC4002 - Pore Space Ownership

00:31:16 Ms. Nowakowski provided a brief explanation of LC 4002 (EXHIBIT #6). Ms. Nowokowski reviewed the instructions given her by the ETIC regarding the provisions to be included in LC4002.

- 00:37:44 SEN. BLACK complimented Ms. Nowokowski on her good work done for the ETIC, saying it has been enlightening, thorough, and valuable. However, he said, he felt it was premature to act on the issue of pore space ownership because there are too many unknowns at this time, including immense liability issues.
- 00:39:41 SEN. LIND asked SEN. BLACK to explain further. SEN. BLACK said that, for example, he would need additional information regarding the effects of earth tremors or earthquakes; or how sequestered carbon may interact with underground water. He said it could create immense liability issues for the landowner or operator and that there is no certainty that the carbon will stay put. SEN. LIND asked how clarifying the surface owner as the pore space owner would increase liability. SEN. BLACK said his concern stems from the fact it has not yet been determined if CO₂ will be designated a commodity or a pollutant, and that operating and engineering processes need refinement.
- 00:42:55 SEN. LIND said he sees LC4002 as a tool to further protect private property rights and his concern is to protect surface owner rights. He said the proposed bill would provide clarity and establish rules in advance, as well as prevent litigation in the future.
- 00:44:34 REP. WISEMAN said that while he is sympathetic to both arguments, he agreed that information is lacking. He suggested that Ms. Nowakowski include the public and committee comments in the bill draft in order to improve the language. He said that the bill draft will serve as a good resource for future legislators.
- 00:46:49 SEN. RYAN agreed that it was premature to approve LC4002 at this time because too many complex issues remain to be solved.

Public Comment

- 00:49:38 **Mack Cole, Chair, Montana Association of Counties (MACo) Energy Committee**, said that the concept of LC4002 was good but agreed that it needs much more work.
- 00:50:31 **Dave Galt, Executive Director, Montana Petroleum Association**, said that he provided written comment (EXHIBIT #5) and that he strongly agreed with the comments made by Dan Kieke of Chevron regarding section 5, paragraph 2 of LC4002. He read an excerpt from Mr. Kieke's comments (EXHIBIT #5) and said that is what he was trying to convey in his written comment also.
- 00:52:20 **Jerome Anderson, Encore Acquisition**, discussed a large tertiary recovery project currently in operation today and said that Encore is in the process of reactivating another old structure. He said Encore is not in support of LC4002 because of unknown consequences and if passed, would upset the relationship between the surface owner and the oil and gas operator.
- 00:55:06 **Leo Berry, attorney for Great Northern Properties**, said that property rights are a major concern for Great Northern as the largest private owner of coal reserves in the nation. As such, Mr. Berry said, Great Northern has a significant

stake in this issue. Mr. Berry discussed potential problems that could arise and agreed that the bill is premature.

00:58:46 **Jay Bodner, Montana Stockgrower's Association (MSGA)**, said SEN. BLACK attended the MSGA convention in June and gave a background and history of ETIC's work. He said that the MSGA has a good understanding of CO₂ sequestration but hasn't had time to discuss geological issues. He said concerns have been raised by landowners, particularly regarding liability, migration, leakage, and potential impact on water sources. Mr. Bodner said that the MSGA's position is that legislation is premature and that further study is needed. He provided copies of a resolution drafted by the MSGA regarding carbon sequestration (EXHIBIT #7), asked that work continue, and that landowner ramifications be further examined.

01:01:11 **Tom Richmond, Montana Board of Oil and Gas (BOG)**, said that an exemption for oil and gas waste already exists in the Resource Conservation and Recovery Act. He explained the exemption and how it would affect liability. He said that the EPA has done nothing to alleviate fears regarding liability.

Committee Questions and Discussion

01:02:43 REP. KLOCK suggested that LC4002 be included in the draft report.

01:03:17 REP. DRISCOLL said this Committee could not direct the work of future ETIC members. SEN. JACKSON agreed. SEN. JACKSON said that control should be in the hands of the surface owner and that he does not support legislation at this time. He agreed that LC4002 should be included in the draft report and that as research continues, important information will come to light.

01:05:32 SEN. LIND asked hypothetically, if LC4200 was passed to include ownership clarification, if he would be more or less likely to encourage his client to attempt storage. Mr. Berry said that the language in the bill draft may be more than a clarification and could be a fundamental change in ownership. He said that within a "bundle" of rights, pore space ownership goes to surface owner and that it gets complicated when separating those rights.

01:07:46 SEN. BLACK **moved** that LC4002 not be adopted as a committee bill, but that it be included in the report for future information purposes. The **motion passed** on 7-1 voice vote, SEN. LIND voted no and REP. ANKNEY voted yes by proxy (Klock).

LC4003 - Bill to Require Additional Study of Carbon Sequestration

01:09:00 Ms. Nowakowski reviewed the provisions of LC4003 (EXHIBIT #8), which included study of jurisdictional issues, liability, costs, and recommendations.

Committee Questions and Discussion

01:10:32 REP. WISEMAN asked to add language that would place more emphasis on ownership and consideration of CO₂ as a "commodity" versus a "pollutant." REP.

KLOCK agreed. He asked if other groups in Montana are studying carbon sequestration. Ms. Nowakowski said that carbon sequestration remains an issue of national interest and that much study is going on, both in Montana and on a national scale.

01:13:43 REP. WISEMAN said that much of the scientific and engineering research is about knowledge, technology, and technique but that other studies have done little to deal with legal and regulatory aspects of carbon sequestration. He said that the issues in LC4003 mainly address the regulatory and legal framework, so where would be little overlap between LC4300 and other studies.

01:16:19 SEN. JACKSON said he thought that more information is needed but that he was not sure a study bill was the route to go. He asked if the research could be done through some other means than a study bill. He said he wants to be kept up to date on what is going on but wasn't sure tax payer money should be used to do it. Ms. Nowakowski said one option would be to add language to the draft report that would direct the next ETIC to receive regular reports on the issue of carbon sequestration.

Public Comment on LC4003

No public comment was given.

01:18:46 SEN. JACKSON **moved** to recommend that next ETIC continue work on this and include LC4003 in the draft carbon sequestration report. REP. WISEMAN said this Committee could make recommendations but that it does not have the authority to require any action by the next ETIC. SEN. RYAN **moved** to draft LC4003 as a study resolution for continued consideration of carbon sequestration for the 2009 Legislature. SEN. JACKSON agreed with SEN. RYAN's motion and **withdrew** his motion. SEN. RYAN's **motion passed** on 7-1 voice vote, with SEN. LIND voting no and REP. ANKNEY voting yes by proxy (Klock).

01:21:27 Ms. Nowakowski asked for clarification on the motion as to what the language of the study resolution is to contain. SEN. RYAN said his intention was to expand the language to include the issues already listed in LC4300 and the others discussed by the Committee such as ownership of pore space and the associated complexities.

BREAK

ADMINISTRATIVE MATTERS

Budget Review

01:43:10 Ms. Nowakowski updated the ETIC on its current budget.

Update on EQC and Climate Change Advisory Group

01:43:43 Ms. Nowakowski said that the Environmental Quality Council (EQC) recently met and approved 12 bill draft requests for consideration by the 2009 Legislature and a draft report. Public comment will be taken until the end of August and final action will be taken by the EQC at its September meeting. All documents are

available for viewing on the EQC website. Ms. Nowakowski briefly discussed each bill draft proposal and also provided a short summary of each bill draft proposal (EXHIBIT #9).

01:48:58 REP. WISEMAN asked for additional information on LC6007 creation of a weatherization account using excess gas and oil production tax revenues. Ms. Nowakowski said she would provide an outline of the bill draft to REP. WISEMAN at the end of the meeting.

01:49:57 SEN. JACKSON asked if the State would have the authority to fight fire on federal lands if LC6010 was approved. He discussed several situations in which state and local fire departments protected property and structures but were not reimbursed by the federal government. REP. JACKSON said he would like the bill draft to specifically address these types of situations. Mr. Everts said that LC6010 is a resolution in support of the National Association of Counties' proposal to the federal government that would grant a Governor authority to declare a crisis due to severe fire conditions that pose a significant threat to public health and safety. He said it would not provide county governments with increased authority.

Update on Bureau of Reclamation - Pick Sloan Power Act

01:54:05 Ms. Nowakowski reported that Mike Ryan, Regional Director, Bureau of Reclamation, has confirmed that he will be at the September 4th meeting to address the Committee's questions regarding the Pick Sloan Power Act.

Agenda Items for September 4 Meeting

01:55:04 Ms. Nowakowski asked the Committee members to notify her of any issues they wish to have on the September meeting agenda.

01:55:43 REP. WISEMAN said he would like to have information available regarding Montana's energy consumption, particularly oil consumption and production; how much gasoline and diesel Montanans use; and the effect on the economy due to the rapid rise in fuel costs. He said resources within state government are available to provide the information at no additional cost.

01:57:54 SEN. JACKSON said he is continuing to work on a state energy plan and would like time to present the plan at the September meeting.

01:58:15 REP. KLOCK, in response to REP. WISEMAN's concerns, agreed that a report would be helpful. REP. DRISCOLL said she would like to be able to tell her constituents why gas prices are so high and the factors that go into setting prices.

01:59:20 **Jerome Anderson, private citizen**, (no relation to Jerome Anderson, Helena lobbyist for Encore Acquisition) said he has discussed this issue with Montana producers and that they feel high prices are being created by a shortage of refineries and trading practices that are tying up billions of dollars in the futures market.

- 02:03:43 SEN. RYAN said he too, would like information on why eastern Montana producers are not getting a good market price for their oil and the factors causing the pipeline issues.
- 02:04:39 **Tom Richmond, Board of Oil and Gas**, discussed ongoing concerns about pipeline capacity and price differentials. He suggested that the Committee invite representatives from Enbridge and True Oil companies to address the ETIC at the September meeting. He said that Dave Galt and he could assist the Committee, if needed.
- 02:06:54 **Jerome Anderson, Encore Acquisition**, discussed how the price differential is related to oil quality.

RULE REVIEW

- 02:08:48 Mr. Everts said that no administrative rules are being reviewed at this time.

ENVIRONMENTAL QUALITY COUNCIL UPDATE

- 02:09:01 Mr. Everts discussed a Board of Environmental Review (BER) contested case proceeding involving Southern Montana Electric's (SME) Highwood Generation Station and the rules regulating the amount of particulate matter allowed in emissions. He provided copies of the letter that the full EQC voted to send to the BER stating its position on the matter (EXHIBIT #10).
- 02:14:09 SEN. BLACK asked how this decision would affect SME's permit. Mr. Everts said that a "best available technology analysis" will have to be done to determine which level of particulate will be allowed.
- 02:17:40 SEN. JACKSON asked what Colstrip is doing in terms of air emission particulate and parts per million and what impact this issue could affect Colstrip's operations. Mr. Everts said this decision would not impact existing permits but could have an effect when Colstrip applies for renewal of its permits.

RECESS FOR LUNCH UNTIL 1 P.M.

- 04:02:31 REP. KLOCK reconvened the meeting at 1:03 p.m. (SEN. LIND and SEN. RYAN left the meeting absent and left proxies.)

DEQ RULEMAKING H. B. 3 UPDATE

- 04:02:39 **Paul Cartwright, Department of Environmental Quality (DEQ)**, updated the Committee on proposed rules for House Bill 3 (May 2007 Special Session). Mr. Cartwright said that the work has been divided into three categories: 1. rules that had to go into effect immediately because of waiting projects, such as transmission lines; 2. rules dealing with projects not in need of rules; and 3. carbon sequestration rules. Mr. Cartwright said that the DEQ has deferred action on carbon sequestration rules because of the substantive nature of the issue and the magnitude of policy calls. He said the Department's position is that the context of rulemaking may not be the best avenue to use for making decisions regarding carbon sequestration, but that it would do so if the Legislature insists.

He noted that the federal Environmental Protection Agency (EPA) has released its proposed draft rules and that Montana's would have to cue from those.

04:05:18 Mr. Evert stated that HB 3 requires the DEQ to adopt rules for carbon sequestration and that, from a legal standpoint, the DEQ has been given a directive from the Legislature. Mr. Cartwright pointed out that HB 3 does not contain a time table for doing so but that the DEQ will have rules ready for any project that may come in.

UPDATE FROM PUBLIC SERVICE COMMISSION

04:06:32 **Sarah Carlson, Public Information Officer, Montana Public Service Commission (PSC)**, updated the ETIC on PSC activities:

- Chair Greg Jergeson in presiding over a Universal Services Benefits (USB) hearing, so was unable to attend the meeting.
- The NorthWestern Energy (NWE) general rate case was approved as a result of the settlement between NWE and Montana Consumer Counsel (MCC). She discussed provisions of the settlement.
- On June 27, 2008, NWE filed an application to rate base its 222 megawatt interest in Colstrip 4. The PSC is working to meet the 121-day deadline.
- Efforts are ongoing with Qwest in its request for an alternative form of regulation and a hearing is scheduled for November 5, 2008.
- Natural gas prices are anticipated to be very high in the coming winter and the PSC is working to get the word out that programs are available to help citizens winterize their homes and to reduce consumption.

Ms. Carlson said that Kate Whitney, PSC, is present and available for questions.

04:12:35 REP. WISEMAN asked for clarification of what exactly the Colstrip 4 proposal is. **Kate Whitney, Administrator, Utility Division, PSC**, said NWE has made a "take it or leave it" type of proposal and that the PSC has only 120 days to process the filing, or NWE will sell to another company. Bient. She reported that Bient has offered NWE \$404 million for NWE's interest and with closing costs and other administrative fees added, the price being offered to rate payers is \$407 million. Ms. Whitney said the two big issues in the case will be determining the value and how to deal with the net operating losses.

Public Comment

04:15:30 No public comment was given.

PSC Proposed Legislation

04:15:48 Ms. Carlson said that copies of the proposed PSC legislation (EXHIBIT #11) have been provided to Committee members. Ms. Carlson discussed each proposal:

- amendment of Commission secretary provisions; and
- amendment of tow truck insurance reporting provisions.

4:20:33 REP. DRISCOLL **moved** to approve the PSC bill proposals for drafting. The **motion passed** on a unanimous voice vote, with SEN. LIND (Wiseman proxy),

SEN. RYAN (Rep. Wiseman), and REP. ANKNEY (Rep. Klock) all voting yes by proxy.

WIND INTEGRATION

04:21:46 **Ray Brush, Genivar Wind Site**, said that the purpose of the wind study was to evaluate the wind power variability for various development scenarios with the State of Montana and assess the impact on NWE electric system's operations. Mr. Brush said that on April 22, 2008, Genivar made a presentation to a Montana transmission meeting and the presentation is available on the Department of Commerce's website. He reviewed the progress of the study to date and said that the study will be completed within the next two months.

04:26:32 Ms. Nowakowski said Tom Kaiserski, Energy Infrastructure Promotion and Division (EIPD), Department of Commerce, provided a written update of the EIPD's activities (EXHIBIT#12).

Public Comment

No public comment was given.

POTENTIAL COMMITTEE LEGISLATION

04:29:13 Ms. Nowakowski said that the ETIC has two potential bill drafts for review:

- LC4001 - removing the termination date for USB rate charges and providing for ETIC review of USB reports (EXHIBIT #13); and
- LC4003 - joint resolution for continued study of carbon sequestration (EXHIBIT #8). She asked if there were any other legislative proposals that the Committee wished to discuss. There was not.

Public Comment

No public comment was given.

BRIEF RECESS

DIGITAL TV TRANSITION

04:38:44 **Roger Goldplate, Policy Outreach Advisor, Consumer and Governmental Affairs Bureau, Federal Communications Commission (FCC)**, discussed a detailed PowerPoint presentation (EXHIBIT #14) explaining the digital TV transition.

05:05:26 SEN. RYAN asked if television stations will be prepared by February of 2009. Mr. Goldplate said yes, with the possible exception of low-power stations.

05:06:03 SEN. BLACK asked if the coverage will be the same. Mr. Goldplate said there are concerns, such as areas reached by translator stations.

05:08:08 REP. WISEMAN said that Montana has a large number of translator stations. He asked how this issue will be handled. Mr. Goldplate said that the FCC is working with station owners to resolve concerns.

05:11:27 SEN. BLACK asked what will happen if all stations switch to digital but translator stations do not. Mr. Goldplate said he would find out. SEN. BLACK said that this could present problems for rural Montanans. Mr. Goldplate said that he has heard similar concerns from other rural areas and that citizens can call the FCC call center (1-888-call-fcc) or email the FCC at DTVinfo@fcc.gov with questions or complaints.

Public Comment

No public comment was given.

ADJOURN

05:27:31 With no further business before the Committee, REP. KLOCK adjourned the meeting. The next meeting of the Energy and Telecommunications Interim Committee is scheduled for September 4, 2008, in Helena.

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