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## Energy and Telecommunications Interim Committee

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### 64th Montana Legislature

#### SENATE MEMBERS

CLIFF LARSEN--Vice Chair  
DUANE ANKNEY  
PAT CONNELL  
ROBYN DRISCOLL

#### HOUSE MEMBERS

KEITH REGIER--Chair  
CHRISTOPHER POPE  
TOM STEENBERG  
DANIEL ZOLNIKOV

#### COMMITTEE STAFF

SONJA NOWAKOWSKI, Lead Staff  
TODD EVERTS, Staff Attorney  
NADINE SPENCER, Secretary

# MINUTES LOG

September 10, 2015  
Room 172, Capitol Building  
Helena, Montana

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

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

### **COMMITTEE MEMBERS PRESENT**

SEN. JIM KEANE, chair  
REP. KEITH REGIER, vice chair

### **ETIC MEMBERS**

REP. TOM STEENBERG  
SEN. DUANE ANKNEY  
SEN. ROBYN DRISCOLL

### **EQC MEMBERS**

SEN. CARY SMITH  
REP. JANET ELLIS  
MR. SCOTT ASPENLIEDER

## **STAFF PRESENT**

SONJA NOWAKOWSKI, lead staff  
JOE KOLMAN, legislative environmental analyst  
NADINE SPENCER, secretary

## **AGENDA AND VISITORS' LIST**

Agenda, [Attachment 1](#).  
Visitors' List, [Attachment 2](#).

## **COMMITTEE ACTIONS**

The 111d Subcommittee:

- Elected Sen. Keane as chairman and Rep. Regier as vice chairman;
- Adopted the meeting calendar;
- Adopted the rules and procedures.

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

00:00:02 The meeting was called to order by senior senator Jim Keane at 4:40 p.m. The secretary called the roll, [Attachment 3](#). The subcommittee members introduced themselves.

### **Introduction of Staff**

00:04:16 Sonja Nowkowski, research analyst, Legislative Services Division (LSD), Nick Brown, fiscal analyst, Legislative Fiscal Division, and Joe Kolman, legislative environmental analyst, LSD, introduced themselves.

## **ADMINISTRATIVE MATTERS**

### **Purpose of the 111d subcommittee:**

00:05:06 Ms. Nowakowski presented an introduction to the federal Clean Power Plan or 111(d) rule. She said the purpose of the subcommittee is to focus on the rule and how Montana can best implement the final rule that was released on August 3.

**Questions from the committee:** None

## **ELECTION OF THE PRESIDING OFFICER AND VICE-PRESIDING OFFICER**

00:09:03 **Motion:** Sen. Driscoll nominated Sen. Keane as chairman of the subcommittee. The motion carried unanimously by voice vote.

00:09:52 **Motion:** Sen. Ankney nominated Rep. Regier as vice chairman of the subcommittee. The motion carried unanimously by voice vote.

## **111d SUBCOMMITTEE ROLE**

### **Subcommittee**

- 00:10:51 Ms. Nowakowski said the subcommittee needs to think about and discuss its role in working with the Department of Environmental Quality (DEQ) and the governor's potential advisory group in providing input in developing a plan for Montana.
- 00:13:58 Ms. Nowakowski said the subcommittee received a brief overview of the final federal plan, additional information from the EPA, and background reports from the Public Service Commission, [Exhibit 1](#).
- 00:14:44 Sen. Keane discussed the subcommittee budget and the importance of the subcommittee.

### **Governor's Advisory Group**

- 00:16:19 David Klemp, chief, Air Quality Bureau, Permitting and Compliance Division, DEQ, said it has been engaged in a process to develop a state plan since the draft rule came out and started a stakeholder process consisting of anyone who may be affected by the rule.
- 00:18:30 Mr. Klemp discussed what the DEQ had proposed to do under the draft rule and where it thinks it needs to go under the final rule.

**Public comment:** None

### **Questions from the committee:**

- 00:31:24 Sen. Ankney asked Mr. Klemp who will make the final recommendation on the state plan.
- 00:33:40 Sen. Smith asked how a recent Supreme Court ruling that the EPA is overextending itself on a rule, could affect the EPA and state plans for 111d. Mr. Klemp said he is not aware of the ruling.
- 00:36:07 Sen. Smith asked if any of the stakeholders were aware of the ruling. Todd O'Hair, senior government affairs manager, Cloud Peak Energy, said the Supreme Court made a recent ruling on the mercury rule, which was an air quality issue, and stated that the EPA had overextended its reach with regulating mercury.
- 00:37:48 Sen. Keane asked Doug Hardy, Montana Electric Cooperatives, how the rule will affect cooperatives.
- 00:38:59 Sen. Keane asked Mr. Hardy how the rule will affect Montana.
- 00:41:34 Sen. Keane asked Mr. Hardy if the subcommittee should send a letter to support that the rule be changed.
- 00:42:39 Sen. Keane said it is unusual that there is not a lot of public comment. Mr. Hardy said people are waiting for more to be done on the process before commenting.

00:43:36 Sen. Keane asked Bud Clinch, executive director, Montana Coal Council, to describe its issues with the Clean Power Plan. Mr. Clinch said the companies he represents will support the subcommittee adopting a position to push back against the rule.

## **111d FINAL RULE - WHAT IT MEANS FOR MONTANA**

### **Department of Environmental Quality**

00:46:24 Mr. Klemp introduced the staff that will be working on Montana's plan. He said not to focus on the final number, but how the number was established and options moving forward to comply with the number.

00:49:27 Rebecca Harbage, environmental planner, Air Quality Bureau, DEQ, presented the regulatory timeline and process for compliance with the 111d rule, [Exhibit 2](#).

00:56:46 Craig Henrickson, air quality engineer, Air Quality Bureau, DEQ, discussed technical issues related to the Clean Power Plan, [Exhibit 3](#).

### **Public comment:**

01:08:09 Mr. O'Hair

### **Committee questions and discussion:**

01:15:17 Rep. Regier asked how many full-time equivalents (FTE) the DEQ has dedicated to working on the rule. Mr. Klemp said it has 3-4 FTE.

01:15:53 Rep. Regier asked if a new administration will have an affect on the rule. Mr. Klemp said it could have.

01:16:30 Rep. Regier asked what the penalty is for noncompliance. Mr. Klemp said if the state does not fulfill its obligation then the federal government will have the same authority as the state and will write its plan.

01:18:35 Sen. Connell asked what public reaction has been to the plan in other states. Mr. O'Hair said they are still evaluating the rule and do not know how they will comply with it.

01:21:11 Sen. Keane asked Mr. Klemp about putting together a stakeholder group before the state knows if it will litigate the rule. Mr. Klemp said it is helpful to get people together to understand their perspectives.

01:23:01 Mr. Aspenlieder asked Doug Hardy, general manager, Central Montana Electric Power Cooperative, what impact the rule will have on grid security and the ability to maintain the same reliance on power.

01:25:21 Mr. Aspenlieder asked Mr. Klemp how Montana will fill the gap for grid security as it shifts away from coal energy to other sources considering its current permitting process for facility construction.

01:30:14 Rep. Steenberg asked Mr. Klemp about the deadline for states to indicate their intent to apply for emission rate credits (ERCs) and whether they intend to comply under a mass-based approach or rate-based approach.

01:32:48 Sen. Keane asked Mr. Klemp about the September 2016 deadline and the political ramifications during an election year.

01:35:30 Sen. Ankney asked if the state can get involved in carbon sequestration to keep its plants open. Mr. Klemp said it is keeping all of its options open.

01:38:54 Sen. Ankney asked if there is a cost estimate for carbon sequestration on Colstrip Power Plants I and II. Gordon Criswell, director of environmental compliance, Talen Energy, said it has been working with The Environmental Energy and Research Center at the University of North Dakota studying CO2 capture and the estimate is \$40-60 a megawatt hour to capture the carbon and then it has to be sequestered.

01:42:05 Recess

01:52:57 Reconvene

## **111d FINAL RULE - WHAT MONTANA IS DOING**

### **Public Service Commission**

01:53:27 Travis Kavulla, vice chairman, Public Service Commission (PSC), and commissioner, District 1, via telephone, discussed the rule and how it will affect Montana.

01:57:29 Mr. Kavulla provided an analysis of the rule, [Exhibit 4](#).

02:03:08 Mr. Kavulla discussed the utilities that the PSC regulates.

02:04:46 Mr. Kavulla said what Montana does or doesn't do is predicated upon the risk of having a federal implementation plan imposed upon it.

02:06:32 Mr. Kavulla said he can provide the subcommittee with information he has on transmission studies conducted by Northwestern Energy and the reliability of the grid if Colstrip I and II are shut down.

### **Committee questions and discussion:**

02:07:55 Sen. Ankney asked Mr. Kavulla if state legislation can have an affect on the proposed rule.

02:10:13 Mr. Aspenlieder asked Mr. Kavulla if the state has the capacity to replace the amount of power production it has through coal with renewable energy sources.

02:12:41 Sen. Keane asked Mr. Kavulla if the EPA has considered the cost people will have to pay for renewable energy under the plan.

02:13:20 Sen. Smith left the meeting.

02:17:48 Sen. Keane said the subcommittee will be interested in the PSC 's views as the rule moves forward.

### **Montana Consumer Counsel**

02:18:55 Bob Nelson, Montana Consumer Counsel, said it is interested in being included in the stakeholder group because of its interest in the compliance process and obligation to represent Montana's consumers.

## Department of Environmental Quality

- 02:24:15 Mr. Klemp said the energy program is also part of the DEQ and provided the names of the staff contacts. He mentioned other aspects included in the Clean Air Act.
- 02:27:20 Laura Andersen, chief, Energy Pollution and Prevention Bureau, DEQ, said it looks forward to working with the subcommittee and the stakeholder group.

**Public comment:** None

### Committee questions and discussion:

- 02:27:55 Sen. Connell asked Mr. Nelson what the ultimate cost increase will be for electric consumers.
- 02:31:40 Sen. Keane asked if the Montana Consumer Counsel was part of the stakeholder team interviewed by the governor's office. Mr. Nelson said it was not.
- 02:32:13 Sen. Keane asked Mr. Klemp about the future process for the governor's advisory committee.
- 02:33:53 Sen. Keane asked if DEQ has had discussions with the Department of Justice (DOJ) about its plans. Mr. Klemp said it has not.
- 02:34:33 Sen. Keane requested the DOJ submit a statement to the subcommittee regarding its plans in response to the federal Clean Power Plan.

## OTHER BUSINESS/INSTRUCTIONS TO STAFF

### Adoption of Calendar

- 02:35:15 Ms. Nowakowski discussed the draft calendar, [Exhibit 5](#).
- 02:36:32 **Motion/Vote:** Rep. Regier moved to adopt the subcommittee calendar as presented. The motion carried unanimously by voice vote. Sen. Smith voted aye by proxy, [Attachment 4](#).
- 02:36:48 Sen. Keane asked Mr. Kolman about the timing of the subcommittee meeting with the EQC meeting.

### Adoption of Rules and Procedures

- 02:38:01 Ms. Nowakowski discussed the rules and procedures of interim committees, [Exhibit 6](#).
- 02:38:23 Sen. Keane said written proxies are required for absent members.
- 02:38:48 **Motion/Vote:** Rep. Regier moved to adopt the rules and procedures as presented. The motion carried unanimously by voice vote. Sen. Smith voted by proxy, (see Attachment 4).

### Discussion of January Meeting Items

- 02:39:19 Ms. Nowakowski provided an overview for an agenda at the January meeting, [Exhibit 7](#).
- 02:40:18 Sen. Keane requested the subcommittee participate with the governor's office on the formation of the stakeholder group.
- 02:40:55 Sen. Keane said he would like to include the DOJ plans at the January meeting.
- 02:41:35 Sen. Keane adjourned the meeting at 7:21p.m.

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