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## Energy and Telecommunications Interim Committee

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### 65th Montana Legislature

#### SENATE MEMBERS

MARY MCNALLY--Chair  
TOM RICHMOND  
SCOTT SALES

#### HOUSE MEMBERS

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

#### COMMITTEE STAFF

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

# MINUTES LOG

March 16, 2018  
Room 172, Capitol Building  
Helena, Montana

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

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

### **COMMITTEE MEMBERS PRESENT**

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

SEN. TOM RICHMOND  
SEN. NATE MCCONNELL

REP. LAURIE BISHOP  
REP. ZAC PERRY  
REP. DANIEL ZOLNIKOV

### **COMMITTEE MEMBERS EXCUSED**

SEN. SCOTT SALES

## **STAFF PRESENT**

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

## **VISITORS' LIST (Attachment 1)**

## **AGENDA (Attachment 2)**

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

00:00:01 Sen. McNally called the meeting to order at 8:04 a.m. The secretary noted the roll. Sen. Sales was excused. **(Attachment 3)**

### **PROGRAM REVIEW: IRP & RESOURCE PLANNING FOLLOW-UP**

00:00:57 Sonja Nowakowski, staff, Legislative Services Division (LSD), said the ETIC received a program review in January on Montana's integrated resource planning (IRP) statutes. She said the committee also discussed the goals and objectives in both the IRP and the resource procurement plans. She said the committee asked to learn more about public participation in resource planning in Montana and in particular that done by NorthWestern Energy (NWE). She said the committee also asked for more general information about utility planning and how Montana compares to other states.

00:03:15 Ms. Nowakowski said the committee received a letter from NWE outlining recent discussions and recommendations from NWE's Electric Technical Advisory Committee (ETAC). **(Exhibit 1)** She said the committee will hear from David Hoffman, NWE, and Janine Midgen-Ostrander, Regulatory Assistance Project (RAP).

### **ETAC Open Meeting Update**

00:05:26 David Hoffman, NWE, discussed NWE's public participation process in supply planning.

00:06:58 Mr. Hoffman said John Bushnell, manager, Energy Supply Planning and Regulatory, NWE, is present and available for questions.

00:07:25 Mr. Bushnell said he oversees the process for putting together the integrated resource plan for NWE and that the next plan is due December 15.

### **Committee questions and discussion**

00:08:30 Sen. McNally asked Mr. Bushnell about the open meeting and public participation process.

00:10:04 Rep. Bishop asked Mr. Bushnell about why the process is the way it is.

00:11:37 Rep. Bishop asked Mr. Bushnell if developers are included in the ETAC.

00:12:15 Rep. Zolnikov asked Mr. Bushnell about the members of the ETAC.

00:13:33 Rep. Zolnikov asked Mr. Bushnell how someone can become a member of ETAC.

### **Planning Goals and Objectives**

- 00:14:38 Janine Migden-Ostrander, Regulatory Assistance Project (RAP), provided a PowerPoint presentation. **(Exhibit 2)**
- 00:15:50 Ms. Migden-Ostrander discussed Montana statutes.
- 00:22:35 Ms. Migden-Ostrander discussed the Montana Public Service Commission's (PSC) rules implementing resource planning.
- 00:40:42 Ms. Migden-Ostrander commented on statute and rules.
- 00:44:11 Ms. Migden-Ostrander discussed the stakeholder process.
- 00:51:46 Ms. Migden-Ostrander discussed competitive bidding with codes of conduct.
- 00:55:33 Ms. Migden-Ostrander discussed IRP laws in other jurisdictions.

### **Committee questions and discussion**

- 01:02:15 Rep. Skees asked Ms. Migden-Ostrander for a copy of her PowerPoint presentation. (see exhibit 2)
- 01:03:09 Rep. Skees asked Ms. Migden-Ostrander about tracking what suggested regulations cost a state, versus what it generates in savings.
- 01:06:36 Rep. Zolnikov asked Ms. Migden-Ostrander to provide a copy of her suggestions from other states for Montana to consider. Ms. Migden-Ostrander said she will provide the information to staff. **(Exhibit 3)**
- 01:07:38 Rep. Bishop asked Ms. Migden-Ostrander about the outlook standard for the needs assessment.
- 01:08:30 Rep. Bishop asked Ms. Migden-Ostrander about information and recommendations from other states on how to take the current guidance landscape with the commission and make it into something more strict.
- 01:10:34 Rep. Skees asked Ms. Migden-Ostrander about providing a track record of RAP's suggestions and the benefit for the utility on providing the lowest cost power and the net benefit for the ratepayers.

### **Public comment**

- 01:14:30 Brian Fadie, Clean Energy Program director, Montana Environmental Information Center.
- 01:18:48 Carl Borgquist, president and CEO, Absaroka Energy.
- 01:21:55 Diego Rivas, senior policy associate, Northwest Energy Coalition.
- 01:27:59 Chris Pope, former Montana state legislator and ETAC member.
- 01:31:11 Andrew Valainis, executive director, Montana Renewable Energy Association.
- 01:33:21 Recess
- 01:40:06 Reconvene

### **SJ 31: DECOUPLING**

- 01:40:24 Trevor Graff, research analyst, LSD, said the committee received information on what to consider when constructing a decoupling policy for Montana. **(Exhibit 4)**
- 01:41:35 Ms. Migden-Ostrander gave a PowerPoint presentation on decoupling. **(Exhibit 5)**
- 01:42:19 Ms. Migden-Ostrander discussed decoupling and its intended purposes.
- 01:48:50 Ms. Migden-Ostrander discussed state examples of decoupling.
- 01:52:08 Ms. Migden-Ostrander discussed decision points in the design of decoupling.

- 02:07:23 Ms. Migden-Ostrander discussed prescriptive legislative language versus deference to the commission.
- 02:10:14 Ms. Migden-Ostrander said the committee was given information on available resources. [\(Exhibit 6\)](#)

#### Committee questions and discussion

- 02:10:52 Rep. Skees asked Bob Decker, PSC analyst, about revenue mechanisms for decoupling in Montana. Mr. Decker said decoupling is not done in Montana.
- 02:12:04 Ms. Migden-Ostrander said utilities have favored revenue for customers and that it is the most common.
- 02:12:36 Rep. Bishop asked Ms. Migden-Ostrander to provide an overview on what to consider moving forward.
- 02:20:39 Sen. McNally asked Ms. Migden-Ostrander about the concerns against decoupling.

#### Public comment

- 02:24:44 Jason Brown, Montana Consumer Counsel.
- 02:34:50 Sen. McNally asked Mr. Brown to provided a copy of his testimony. [\(Exhibit 7\)](#)
- 02:35:30 Sen. McNally asked Ms. Migden-Ostrander to respond to the comments made by Mr. Brown.

### **ENCOURAGING INVESTMENT IN MONTANA ENERGY**

- 02:39:11 Ms. Nowakowski presented an introduction and said the committee received a copy of the responses to questions that were developed with Rep. Zolnikov for the energy industry representatives participating in the study. [\(Exhibit 8\)](#)
- 02:41:34 Carl Borgquist, president and CEO, Absaroka Energy, discussed the changes in energy development in Montana.
- 02:50:22 Mr. Borgquist discussed regulatory requirements in Montana.

#### Committee questions and discussion

- 02:53:13 Rep. Skees asked Mr. Borgquist about Absaroka Energy's pumped hydro power system.
- 02:57:09 Rep. Skees asked Mr. Borgquist about his recommendations for streamlining the regulatory process.
- 03:00:00 Rep. Bishop asked Mr. Borgquist about the regulatory process.
- 03:02:12 Rep. Bishop asked Mr. Borgquist about his policy perspective to encourage flexibility to account for new technologies.
- 03:04:46 Rep. Bishop asked Mr. Borgquist about how legislative leadership fits in with equity and protection.
- 03:06:56 Rep. Zolnikov asked Mr. Borgquist about his recommendations regarding what the ETIC can do.
- 03:13:10 Mark Peterson, chief operating officer, GTUIT, presented a PowerPoint presentation and gave an overview of GTUIT and what they are doing in Montana. [\(Exhibit 9\)](#)

#### Committee questions and discussion

- 03:21:38 Rep. Zolnikov asked Mr. Peterson about the incentives for producers to hire GTUIT.
- 03:23:34 Sen. Richmond asked Mr. Peterson about the percentage value of a barrel of natural gas liquids compared to a barrel of oil.
- 03:25:09 Sen. Richmond asked Mr. Peterson about marketing the gas liquids and if they strip separate components out.
- 03:25:39 Rep. Zolnikov asked Mr. Peterson about tax credits to help lower cost.
- 03:26:58 Rep. Skees asked Mr. Peterson about on-site power generation.
- 03:28:30 Sen. McNally commented on GTUIT working with Montana Manufacturing Extension Center (MMEC). Mr. Peterson commented on MMEC and said he encourages its funding.

#### Public comment

- 03:29:32 Jeff Fox, Montana policy manager, Renewable Northwest.

#### Committee questions and discussion

- 03:35:34 Rep. Zolnikov asked Mr. Borgquist about his recommendations on what the legislature can do to help.
- 03:40:01 Sen. McNally said the next two agenda items are being switched and the committee will have the program review on small water and sewer utility regulation before the Environmental Quality Council update.
- 03:40:47 Recess
- 04:07:49 Reconvene (after fire alarm)

#### **PROGRAM REVIEW: SMALL WATER AND SEWER UTILITY REGULATION**

- 04:08:11 Ms. Nowakowaki said the work plan dedicates time for a program review of the PSC's regulation of small water and sewer utilities and the committee will hear from the PSC concerning its rate regulation responsibilities and problems they have had fulfilling their statutory duties. She said the Department of Environmental Quality (DEQ) will discuss its role in regulating small water and sewer utilities and the committee will hear from the Montana Consumer Counsel which has statutory and constitutional authority to participate and represent the interest of ratepayers in rate proceedings.
- 04:09:24 Ms. Nowakowski provided an introduction to the program review. **(Exhibit 10)**

#### **Panel Discussion:**

- Justin Kraske, chief legal counsel, PSC.  
Jon Dilliard, Public Water Supply Bureau, DEQ.  
Jason Brown, Consumer Counsel.
- 04:11:47 Mr. Kraske
- 04:17:43 Jennifer Hill-Hart, staff attorney, PSC, discussed the commission's recent small water and sewer utility rulemaking hearing.
- 04:22:35 Ms. Hill-Hart provided an example of a Colorado statute. **(Exhibit 11)**

Committee questions and discussion

- 04:23:50 Sen. Richmond asked Ms. Hill-Hart about the frequency of studies done by the Department of Natural Resources and Conservation.
- 04:24:52 Sen. McNally asked Ms. Hill-Hart about the need for an inventory.

Panel discussion continued

04:26:10 Mr. Dilliard

Committee questions and discussion

- 04:30:33 Rep. Bishop asked Mr. Dilliard about DEQ's oversight and annual reporting requirements.
- 04:31:44 Rep. Bishop asked Mr. Dilliard about DEQ's ability to collect more specific information in the reports.
- 04:33:08 Rep. Bishop asked Mr. Dilliard about DEQ's relationship with the owners and if the information collected can be shared with the PSC.
- 04:35:00 Rep. Skees asked Mr. Dilliard if all the small water systems are located in rural areas or if they are also within city jurisdictions.
- 04:36:28 Rep. Skees asked Mr. Dilliard about the authority to maintain requirements after permits are issued by the DEQ.
- 04:37:34 Rep. Skees asked Mr. Dilliard about reporting requirements for community systems.
- 04:38:48 Rep. Skees asked Mr. Dilliard about grievance procedures.
- 04:39:45 Rep. Skees asked Mr. Dilliard about jurisdictional control.
- 04:41:58 Sen. McNally asked Mr. Dilliard about creating an inventory of utilities that the PSC is concerned about.
- 04:43:29 Sen. Richmond asked Mr. Dilliard about the ability of the DEQ to provide notice to a water system permittee that they may be subject to PSC regulation.
- 04:44:31 Sen. Richmond asked Mr. Dilliard about DEQ's communication with system operators.

Panel discussion continued

04:45:06 Mr. Brown

Committee questions and discussion

- 05:09:58 Rep. Skees asked Mr. Brown about complaints that are related to standard rates.
- 05:11:52 Sen. Richmond asked Mr. Brown about a cost benefit analysis for evaluating the regulation of small users.

Public comment

- 05:15:33 Leroy Beeby, independent consultant. **(Exhibit 12)**
- 05:25:23 Debra Wolfe, Holmberg Village Water Company.

Committee questions and discussion

- 05:27:56 Rep. Zolnikov asked Mr. Beeby if his fees are passed on to consumers.
- 05:28:17 Rep. Zolnikov asked Mr. Beeby about the amount of the rate increase as a result of the Montana Consumer Counsel intervention.
- 05:28:44 Rep. Skees asked Mr. Beeby about his recommendations.

- 05:30:21 Sen. McNally asked Mr. Beeby about his recommendation for setting a standard rate based on an outside reporting mechanism compared to the standard rate that currently exists.
- 05:31:36 Rep. Skees asked Mr. Beeby about the amount for a flat rate.
- 05:33:46 Rep. Skees asked Ms. Wolfe if she agrees with Mr. Beeby's recommendations. Ms. Wolfe said yes.
- 05:34:33 Sen. McNally thanked the participants.

#### **ENVIRONMENTAL QUALITY COUNCIL UPDATE**

- 05:35:21 Joe Kolman, environmental analyst, Environmental Quality Council (EQC), provided information on draft legislation that the EQC will be considering.
- 05:40:17 Mr. Kolman discussed aquatic invasive species funding and provided information on watercraft fees assessed in other states. [\(Exhibit 13\)](#)

#### **PUBLIC COMMENT ON MATTERS WITHIN THE JURISDICTION OF THE ETIC**

- 05:42:23 Mr. Hoffman, NWE. [\(Exhibit 14\)](#)
- 05:43:55 Sen. McNally commented on the ETIC's involvement in the electricity stakeholder group that is being put together by NWE and asked Mr. Hoffman if all of the committee members are invited to attend the meetings.

#### **OTHER BUSINESS/INSTRUCTIONS TO STAFF**

- 05:45:18 Sen. McNally said the committee needs to give direction to staff for the May meeting.
- 05:45:51 Rep. Bishop requested a brief recess before proceeding.
- 05:46:35 Recess
- 05:59:33 Reconvene

#### **Next steps: HJ 28 Natural Gas Customer Choice**

- 05:59:51 Sen. McNally said she recommends having staff prepare a draft report and asked about bill drafts.
- 06:01:05 Mr. Graff said there are three bill drafts which include the proposal from MDU, the proposal from MDU with sideboards decided by the ETIC, and a study bill to direct the PSC to study gas customer choice and present its findings to the legislature.
- 06:01:56 Rep. Bishop said she recommends the bill drafts as the MDU proposal with sideboards, moving choice along with sideboards from the legislature, and a study bill.
- 06:02:30 Sen. McNally agreed and asked the committee about the sideboards.
- 06:02:43 Mr. Graff
- 06:02:54 Ms. Nowakowski
- 06:03:46 Mr. Graff
- 06:03:53 Sen. McNally
- 06:04:00 Rep. Bishop
- 06:06:03 Rep. Skees
- 06:07:14 Sen. McNally
- 06:07:28 Mr. Graff
- 06:07:50 Sen. Richmond

06:08:10 Sen. McNally  
06:08:28 Rep. Bishop  
06:09:17 Sen. McNally  
06:09:21 Rep. Bishop  
06:09:58 Sen. Richmond  
06:10:51 Sen. McNally  
06:12:29 Mr. Graff  
06:12:52 Rep. Skees  
06:13:16 Ms. Nowakowski  
06:13:34 Sen. McNally  
06:13:52 Mr. Graff summarized the three bill drafts.  
06:14:28 Rep. Zolnikov commented on the PSC study bill.

Next steps: QF Contract Length

06:14:54 Sen. McNally said that next steps include an update on litigation and a bill draft to define contract length.  
06:15:32 Rep. Zolnikov said he recommends a 20 year minimum contract length and removing symmetry.  
06:16:11 Rep. Bishop agreed and said she recommends that the contract length be no less than 25 years.  
06:16:31 Sen. McNally opened discussion on contract length.  
06:16:42 Sen. Richmond  
06:16:58 Sen. McNally  
06:17:08 Mr. Graff  
06:17:25 Sen. Richmond  
06:17:53 Ms. Nowakowski  
06:18:15 Sen. McNally  
06:18:22 Rep. Skees  
06:18:41 Sen. McNally

Next steps: IRP

06:19:06 Sen. McNally opened discussion on bill drafts.  
06:19:43 Rep. Zolnikov commented on the open meeting and public participation process and said he recommends allowing the PSC to choose the participants.  
06:20:19 Sen. McNally  
06:20:32 Rep. Zolnikov  
06:21:25 Sen. McNally  
06:21:39 Rep. Zolnikov  
06:22:12 Sen. Richmond  
06:23:21 Rep. Skees  
06:23:58 Sen. McConnell asked Jameson Walker, staff attorney, LSD, about the Montana Constitution and the right to know.  
06:24:34 Mr. Walker  
06:26:36 Sen. McConnell  
06:27:55 Sen. McNally  
06:29:12 Sen. Richmond  
06:29:27 Sen. McNally  
06:29:46 Rep. Bishop



06:31:41 Sen. McNally  
06:31:49 Rep. Bishop  
06:32:40 Rep. Zolnikov  
06:33:20 Sen. McNally  
06:33:32 Rep. Zolnikov  
06:33:56 Sen. McNally  
06:34:26 Rep. Zolnikov  
06:34:54 Rep. Bishop  
06:35:39 Sen. McConnell  
06:36:09 Mr. Graff said the bill drafts include bringing the PSC into an oversight role of the list of participants at ETAC and to require open public meetings in the current IRP process.  
06:36:35 Ms. Nowakowski agreed and said it can be one or two bill drafts. She said after the IRP is done there are two public hearings required of the PSC and that the committee can add two more public meetings prior to submittal of the plan. She asked if the committee wanted to include MDU or just NWE.  
06:37:24 Rep. Bishop said she recommends including both utilities and commented on the public process.  
06:38:15 Sen. McNally  
06:38:24 Ms. Nowakowski summarized the two bill drafts to require two public meetings prior to submittal of the plan and that the ETAC members and the MDU members need to be approved by the PSC.  
06:38:45 Rep. Bishop  
06:39:12 Sen. McNally said she recommends another bill draft providing rules rather than guidance to the PSC.  
06:42:56 Ms. Nowakowski  
06:44:12 Sen. McNally  
06:44:36 Ms. Nowakowski said she recommends adding an agenda item for further discussion by the committee at the May meeting.  
06:45:16 Sen. McNally  
06:45:31 Rep. Bishop  
06:46:54 Sen. McNally  
06:47:39 Ms. Nowakowski said staff will draft the two bills as discussed by the committee and schedule time for a discussion on the technical aspects of the IRP and resource procurement plans at the May meeting.  
06:48:05 Rep. Skees  
06:49:13 Sen. McNally

Next steps: Decoupling

06:49:46 Sen. McNally said she recommends adding time for discussion at the next meeting.  
06:50:18 Mr. Graff agreed.  
06:50:23 Sen. McNally

Next steps: Investment in Montana Energy

06:50:42 Sen. McNally asked about draft legislation.  
06:50:57 Rep. Zolnikov said he recommends that staff organize a group of stakeholders.  
06:51:35 Sen. Richmond

06:52:32 Rep. Zolnikov  
06:53:44 Mr. Graff said he will work with Sen. Richmond and Rep. Zolnikov on stakeholders for a panel discussion.

Next steps: Small Water Utilities

06:54:35 Sen. McNally opened discussion on bill drafts.  
06:55:04 Sen. Richmond said he recommends asking the PSC and DEQ to develop a memorandum of agreement on sharing information for the next meeting.  
06:56:13 Rep. Skees agreed and suggested a bill draft to include the recommendations from Mr. Beeby regarding a flat rate.  
06:56:45 Rep. Bishop  
06:56:54 Rep. Skees  
06:57:34 Rep. Bishop  
06:58:39 Sen. McNally  
06:59:05 Sen. Richmond said there is a need to drop off from the regulatory scheme the smallest users.  
06:59:39 Sen. McNally asked Sen. Richmond if he wanted to include that in the bill draft. Sen. Richmond said yes and that he recommends a tiered approach.  
07:01:46 Ms. Nowakowski asked Sen. Richmond if his proposal is for a separate bill draft. Sen. Richmond said yes.  
07:02:41 Rep. Skees said the tiered approach can be included in Mr. Beeby's recommendations.  
07:04:00 Sen. McNally asked about a bill draft for the Montana Consumer Counsel.

**OTHER BUSINESS**

07:04:28 Sen. McNally said she would like the committee's endorsement to send staff to the public meetings on NWE's rate case.  
07:04:55 Rep. Skees agreed and asked about the location for the meetings.  
07:05:02 Sen. McNally  
07:05:08 Rep. Skees  
07:05:18 Sen. McNally  
07:05:49 Ms. Nowakowski said she recommends that the ETIC schedule two full days for the meeting in May.  
07:06:30 Sen. McNally said she will work with staff on the agenda and thanked the committee and meeting participants.

**ADJOURN**

07:07:22 With no further business before the committee, Sen. McNally adjourned the meeting at 3:11 p.m.

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