



Energy and Telecommunications Interim Committee

65th Montana Legislature

SENATE MEMBERS

MARY MCNALLY--Chair
NATE MCCONNELL
TOM RICHMOND
SCOTT SALES

HOUSE MEMBERS

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

COMMITTEE STAFF

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

MINUTES LOG

May 18, 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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COMMITTEE MEMBERS PRESENT

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

SEN. TOM RICHMOND
SEN. SCOTT SALES

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

COMMITTEE MEMBERS EXCUSED

SEN. NATE MCCONNELL

STAFF PRESENT

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

VISITORS' LIST (Attachment 1)

AGENDA (Attachment 2)

COMMITTEE ACTIONS

The Energy and Telecommunications Interim Committee (ETIC):

- Voted to accept LCIRP2, as amended, for public comment;
- Voted to have staff work on a bill draft that eliminates all PSC regulation of small sewer and water utilities and a bill draft that provides some regulation of small sewer and water utilities and put them out for public comment.

CALL TO ORDER AND ROLL CALL

00:00:01 Sen. McNally called the meeting to order at 8:02 a.m. The secretary called the roll. (Attachment 3) Sen. McConnell was excused.

ADMINISTRATIVE MATTERS

00:01:21 Sonja Nowakowski, staff, Legislative Services Division (LSD), said the committee received a letter from the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA), indicating that Montana's call-before-you dig law has been deemed adequate. (Exhibit 1)

PROGRAM REVIEW: IRP & RESOURCE PLANNING FOLLOW-UP

00:01:51 Ms. Nowakowski said at its meeting in March the committee learned about public participation in resource planning and heard from the Regulatory Assistance Program (RAP) about utility planning and how Montana compares to other states. (Exhibit 2) She said at the close of the discussion the committee requested two bill drafts.

LCIRP1

00:02:42 Ms. Nowakowski provided an overview of LCIRP1. (Exhibit 3)

Public comment

00:05:33 Diego Rivas, senior policy associate, Northwest Energy Coalition.

00:07:43 Brian Fadie, Clean Energy Program director, Montana Environmental Information Center.

00:09:39 Travis Kavulla, vice chairman, Public Service Commission (PSC).

00:14:26 John Bushnell, manager, Energy Supply Planning, NorthWestern Energy (NWE).

Committee questions and discussion

00:18:59 Sen. Richmond asked Mr. Kavulla if the PSC has adequate statutory support to modify the existing rule.

00:21:01 Sen. Richmond asked Mr. Kavulla if the PSC has different rules for Montana
Dakota Utilities (MDU) versus NWE.
00:22:38 Rep. Bishop asked Mr. Fadie about the bill drafts and options for public
participation.

LCIRP2

00:25:14 Ms. Nowakowski provided an overview of LCIRP2. ([Exhibit 4](#))

Public comment

00:27:03 Mr. Rivas.
00:29:12 Mr. Bushnell.

Committee questions and discussion

00:30:49 Rep. Perry asked Doug Hardy, Montana Electric Cooperatives' Association,
about public involvement and for his perspective on the bill drafts.
00:32:36 Rep. Zolnikov asked Mr. Hardy about any conflicts in the past because the
electric cooperatives were not involved in the public process.
00:34:18 Sen. McNally asked Mr. Bushnell how other utilities, that only have open
meetings, manage technical aspects.
00:36:13 Sen. McNally asked Mr. Bushnell about any problems associated with opening
NWE's Electric Technical Advisory Committee (ETAC) to the public.

Committee action

00:38:28 Sen. McNally opened discussion on the bills drafts.
00:38:36 Sen. Richmond said he did not agree with inserting the legislature on regulators
into an investor owned utility's process, or having those entities establish the
members of a utility's technical advisory committee.
00:39:31 Sen. Richmond asked Ms. Nowakowski about LCIRP2 and if it only requires a
public process and does not affect the technical advisory committee.
00:40:31 Sen. Richmond asked Ms. Nowakowski about the bill draft and the number of
public meetings required by NWE and MDU when developing resource plans.
00:41:14 Sen. Richmond said he recommends moving LCIRP2 forward, but changing the
public meeting requirement to be the same for both.

Motion

00:41:53 Rep. Skees moved to accept LCIRP2 and put it out for public comment.

Discussion on the Motion

00:42:14 Sen. McNally
00:43:09 Rep. Zolnikov
00:43:16 Rep. Skees
00:43:23 Sen. McNally
00:43:41 Ms. Nowakowski
00:44:17 Sen. McNally
00:44:44 Sen. Richmond

Vote

00:44:53 The motion carried unanimously by voice vote. Sen. McConnell was excused.

Motion/Vote

00:45:02 Sen Richmond moved to amend LCIRP2 so that after a plan is submitted by NWE the PSC is required to hold only one public meeting in the plan area to match the number of meetings with MDU's requirements. The motion carried unanimously by voice vote. Sen. McConnell was excused.

IRP Wrap-up and Review

00:45:46 Ms. Nowakowski said she provided an outline of potential questions for committee discussion on IRP's and changes to the IRP and resource planning in Montana. (see Exhibit 2)

00:47:20 Sen. McNally said the committee received copies of both pages of the recommendations from RAP. (Exhibit 5)

Public comment

00:49:49 Mr. Kavulla.
01:02:55 Mr. Bushnell.
01:09:48 Mr. Hardy.

Committee questions and discussion

01:10:49 Sen. McNally asked Mr. Kavulla about current problems with IRP's.
01:19:35 Sen. McNally asked Mr. Kavulla how the legislature can help the PSC with the IRP and resource planning process.
01:23:03 Rep. Bishop commented on finding a way to provide more instruction to the PSC while still allowing flexibility for application.
01:24:34 Sen. McNally said that recommendations 2 and 3 go together and asked Rep. Bishop if she wanted to make a motion.
01:25:02 Rep. Bishop asked staff about getting information from other states on recommendations 2 and 3. Ms. Nowakowski commented on the current study and direction for staff.
01:27:35 Sen. McNally commented on the recommendations and on giving the PSC more direction and being able to follow through on recommendations 2 and 3.
01:28:27 Ms. Nowakowski provided suggestions for changes to recommendations 2 and 3 and said staff can work on bill drafts to bring back to the committee. Sen. McNally said that with the approval from the committee she recommends that staff move forward on the bill drafts.
01:29:45 Rep. Skees commented on the recommendations and said he does not support any of them.
01:32:19 Sen. Richmond commented on the current process and said he agrees with Rep. Skees.
01:33:18 Sen. McNally commented on the recommendations and allowing staff to draft legislation and allowing for public comment on giving the PSC more authority.
01:35:05 Rep. Bishop commented on the current regulatory environment and said she does not recommend that staff work on bill drafts at this time.
01:36:52 Sen. McNally agreed.

SJ31: DECOUPLING

Introduction and Overview of Questions

01:37:37 Trevor Graff, research analyst, LSD, said the committee received a summary of questions to consider in constructing a decoupling policy. **(Exhibit 6)**

Committee Work Session and Discussion

01:39:55 Sen. McNally commented on decoupling.

01:40:26 President Sales asked about the states that currently use decoupling. Mr. Graff said the committee received information at the last meeting and the states in the west that are using electric utility decoupling are California, Colorado, Idaho, New Mexico, Oregon, and Washington. **(Exhibit 7)**

01:41:25 Sen. McNally said the committee can have a general discussion about what decoupling entails and if legislation is needed to encourage decoupling. She asked if the PSC can do decoupling voluntarily. Mr. Graff said yes.

01:43:17 Will Rosquist, Regulatory Division administrator, PSC, said the PSC believes it has sufficient authority under existing statutes to adopt a decoupling mechanism and that it has adopted decoupling mechanisms in the past.

01:43:42 Sen. McNally asked Mr. Rosquist about the two decoupling mechanisms that were adopted by the PSC.

01:45:25 Sen. Richmond said as long as the PSC has unchallenged authority to implement decoupling he does not see any benefit of putting in statute something that already exists in rule.

01:46:26 Sen. McNally said she did not disagree and that part of the process is to try and provide education about decoupling. She said utilities are interested in decoupling, and there is a lot of misinformation about what it means.

01:47:41 Sen. Richmond said he agrees that the information has been useful. He asked if the PSC has discussed proposed legislation on any of the ETIC's topics. Mr. Rosquist said they have not, but they will have any proposals ready for the July meeting.

01:49:26 Rep. Skees said the committee received information on decoupling at the last meeting. He asked how decoupling affects the ratepayers. Sen. McNally said the information was provided at a previous meeting. She said there are proponents and opponents for and against decoupling and said it would need to be favorable to the ratepayers.

Public comment None

01:53:09 Recess

02:05:21 Reconvene

ENCOURAGING INVESTMENT IN MONTANA ENERGY

Introduction

02:06:50 Ms. Nowakowski said the ETIC work plan dedicates time for reviewing opportunities for developing energy resources in Montana and discussing the regulatory hurdles to those developments. She said the committee will hear from Enbridge regarding transmission planning in Montana and their responses to a series of questions that were developed with Rep. Zolnikov. **(Exhibit 8)**

Transmission Line Investments

02:08:55 Darryl James, independent consultant, representing Enbridge on the Montana Alberta Tie Line (MATL) project, presented information on what the project was attempting to do, the hurdles with the Major Facilities Siting Act (MFSA), and how to modify it moving forward.

Public comment

02:18:07 Jeff Fox, Renewable Northwest.

Committee questions and discussion

02:20:16 Rep. Skees asked Ms. Nowakowski about the amount of time and available ETIC budget for addressing concerns with MFSA.

02:21:14 Rep. Skees asked Mr. James about the items he feels are critical to change on MFSA. Mr. James said he will prepare a white paper on the issues and identify areas where changes would be helpful.

02:23:09 Rep. Zolnikov asked Mr. James about additional examples of problems with MFSA.

02:26:54 Sen. Richmond asked Mr. James about MFSA and if current projects include only linear projects like pipelines and transmission lines.

02:28:31 Sen. Richmond commented on a project in Fallon County that was for a waste disposal project and asked about the different requirements under MFSA and the Montana Environmental Policy Act (MEPA).

02:32:31 Sen. McNally asked Mr. James about discussions at the Main Street Montana Project and Utilities Key Industry Network.

02:34:43 Ms. Nowakowski said that the Environmental Quality Council (EQC) prepared a program review on MFSA and will provide a copy for committee members. **(Exhibit 9)**

02:35:04 Sen. Richmond commented on the different philosophies for MEPA and for MFSA that gives the agency different directions and said it is part of the problem.

02:36:33 Sen. McNally said it will be useful to have the information that Mr. James provides the committee.

02:36:53 Sen. Richmond commented on extra time needed at the July meeting for issues regarding pipelines.

STATUTORY ADMINISTRATIVE RULE REVIEW

02:38:12 Jameson Walker, staff attorney, LSD, said the committee received the administrative rule report and discussed the rule regarding the Department of Public Service Regulation and PSC. **(Exhibit 10)**

02:39:55 Mr. Walker said the small water utility rules have not been acted upon yet.

Public comment None

Committee questions and discussion None

HB 216: MONTANA'S WIND BONDING REQUIREMENTS

DEQ Rules and Implementation

02:41:05 Laura Andersen, Energy Bureau chief, Department of Environmental Quality (DEQ), provided an update on the department's administrative rule making efforts and implementation of HB 216 (2017).

Public comment None

Committee questions and discussion

02:44:08 Rep. Skees asked Ms. Andersen about HB 216 and how bonding was done for facilities that were already built.

ENVIRONMENTAL QUALITY COUNCIL UPDATE

02:45:43 Joe Kolman, environmental analyst, EQC, provided information on the agenda for the EQC meeting in Helena on May 29-30.

02:57:42 Sen. McNally asked Mr. Kolman to provide the link for environmental trends. [\(Exhibit 11\)](#)

Public comment None

Committee questions and discussion

02:58:07 Rep. Bishop asked Mr. Kolman about the EQC's work on MFSA.

03:00:19 Recess for lunch at 11:02 a.m.

04:58:05 Reconvene at 1:00 p.m.

PROGRAM REVIEW: SMALL WATER AND SEWER UTILITY REGULATION

04:58:30 Ms. Nowakowski said the ETIC work plan dedicated time to a program review of the PSC's regulation of small water and sewer utilities in Montana.

[\(Exhibit 12\)](#) She said that based on discussions at the March meeting the committee decided to move forward on two potential bill drafts.

LCSMW1

05:00:24 Ms. Nowakowski provided an overview of LCSMW1. [\(Exhibit 13\)](#)

05:02:57 Rep. Skees said that a lot of the language in the bill was taken directly from public testimony by the people running small water and sewer utilities.

Public comment

05:03:30 Debra Wolfe, general manager, Holmberg Water Company.

05:04:27 Jennifer Hill-Hart, staff attorney, PSC.

05:04:54 Leroy Beeby, independent consultant.

05:05:56 Jason Brown, Montana Consumer Counsel.
05:09:55 Mr. Brown. [\(Exhibit 14\)](#)

Committee questions and discussion None

LCSMW2

05:11:17 Ms. Nowakowski provided an overview of LCSMW2. [\(Exhibit 15\)](#)
05:14:17 Sen. Richmond said the bill tries to exempt utilities, that serve 50 or fewer customers, from rate regulation.
05:16:20 Sen. McNally asked Sen. Richmond about the reason for setting the number at 50 users.

Public comment

05:17:14 Ms. Wolfe.
05:21:13 Mr. Beeby.

Committee questions and discussion

05:25:52 Rep. Skees asked Mr. Beeby what he considers to be a fair flat rate.
05:28:34 Rep. Skees asked Mr. Beeby about the just and reasonable amount.
05:30:17 Rep. Skees asked Ms. Wolfe about combining sections from each bill draft.
05:30:54 Rep. Skees asked Mr. Brown the same question.
05:32:23 Sen. McNally asked Mr. Brown about his ideas for improving the bill drafts.

Committee action

05:36:29 Rep. Skees said he recommends putting both bill drafts out for public comment.
05:37:03 Sen. McNally asked Rep. Skees if he recommends combining the bill drafts.
Rep. Skees said he wants to continue the process of drafting both bills and asked staff about the process.
05:37:33 Ms. Nowakowski said the bills can be moved forward and put out for public comment. She said the PSC approached the ETIC to do the study and requested some direction, but that they do not have an opinion on either of the bill drafts at this time.
05:38:21 Sen. Richmond commented on the bill drafts and on making an attempt to merge the drafts.
05:41:02 Sen. Richmond asked the PSC about what a simplified regulatory process would be for a small system. Ms. Hill-Hart said the PSC does not have a formal position and said they are looking for general policy direction from the committee.
05:42:49 Sen. Richmond provided his impression of a simplified regulatory process and asked Ms. Hill-Hart for her impression and for her impression of the annual reporting requirement.
05:45:12 Rep. Bishop asked Ms. Hill-Hart about utilities that may have multiple small operations in order to stay within the exemption of 50 or fewer customers.
05:46:16 Rep. Skees asked Ms. Hill-Hart about the need for legislation to regulate small water and sewer utilities.
05:48:19 Rep. Skees asked Ms. Nowakowski about keeping the two bill drafts and working with the PSC staff to design one bill that can be discussed at the meeting in July.

05:49:35 Rep. Skees said he would like to review the information received and possibly move forward with a bill that regulates small water utilities and one that does not.
05:50:30 Sen. Richmond said he can work with staff and Rep. Skees on combining the bill drafts.
05:51:19 Rep. Skees said more work needs to be done on the bill drafts.
05:51:54 Ms. Nowakowski said she will work with Rep. Skees on a bill draft that eliminates all PSC regulation of small sewer and water utilities and with Sen. Richmond on a bill draft that provides some regulation and put them both out for public comment.

Motion

05:52:15 Rep. Skees moved to have staff work on a bill draft that eliminates all PSC regulation of small sewer and water utilities and a bill draft that provides some regulation of small sewer and water utilities and put them out for public comment.

Discussion on the Motion

05:52:24 Rep. Bishop
05:53:56 Sen. McNally
05:54:16 Rep. Skees
05:55:08 Sen. Richmond
05:56:57 Sen. McNally
05:57:22 Rep. Bishop

Vote

05:57:56 The motion carried unanimously by voice vote. Sen. McConnell was excused.

DEQ and PSC MOU Efforts

05:58:40 Ms. Hill-Hart provided an update on the development of a draft memorandum of understanding (MOU) between the PSC and the DEQ in order to be able to share information on small water and sewer utilities in the state. **(Exhibit 16)**
05:59:27 Jon Dilliard, DEQ, said the draft MOU is currently being reviewed by the agency's legal department and they hope to have a final copy signed by the end of the month.

Public comment None

Committee questions and discussion

06:00:23 Sen. Richmond asked if the PSC and DEQ both agree to share data and are waiting on legal approval. Mr. Dilliard said yes.
06:01:01 Sen. McNally thanked Ms. Hill-Hart and Mr. Dilliard for the update.

PUBLIC SERVICE COMMISSION UPDATE

06:02:01 Brad Johnson, chairman, PSC, provided information on current challenges and the function of the PSC.
06:04:04 Mr. Johnson discussed the proposed merger of Hydro One and Avista.
06:06:15 Mr. Johnson discussed the Public Utility Regulatory Policies Act (PURPA).
06:08:48 Mr. Johnson provided information on the rate case that will be filed by NWE.

06:09:58 Mr. Johnson discussed implementation of HB 193 (2017).
06:12:11 Mr. Johnson provided information on natural gas rate cases.
06:13:19 Mr. Johnson discussed rules on small water and sewer utilities.
06:14:25 Mr. Johnson discussed the rating of adequate received from PHMSA.
06:15:11 Mr. Johnson discussed common carrier regulation.

Public comment None

Committee questions and discussion

06:16:38 Rep. Skees asked Mr. Johnson about issues at Kerr Dam and the management and operations under the Federal Energy Regulatory Commission (FERC) license.
06:19:15 Rep. Zolnikov asked Mr. Johnson about HB 193.
06:23:31 Sen. McNally thanked Mr. Johnson.
06:24:51 Rep. Zolnikov asked Mr. Johnson about the PSC's budget.

PUBLIC COMMENT ON MATTERS WITHIN THE JURISDICTION OF THE ETIC

06:29:27 David Hoffman, director of Governmental Affairs, NWE. ([Exhibit 17](#))

Committee questions None

06:33:11 Mr. Rosquist clarified the hearing date for the docket involving NWE's power cost adjustment mechanism.

OTHER BUSINESS/INSTRUCTIONS TO STAFF

Review of July Meeting Items

06:34:00 Ms. Nowakowski provided a review of items for the July meeting.
06:36:18 Sen. McNally thanked the committee and staff.

ADJOURN

06:36:53 Sen. McNally adjourned the meeting at 2:38 p.m.

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