Energy and Telecommunications Interim Committee

PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

58th Montana Legislature

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MEMORANDUM

To: Energy and Telecommunications Interim Committee (ETIC)

From: Mary Vandenbosch
Research Analyst
444-5367 or mvandenbosch@mt.gov

Date: March 9, 2004

Subject: Summary of Comments Received on Universal System Benefits (USB) Programs

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Comment Process

In November 2003, I distributed a draft *Universal System Benefits Programs Workbook* to committee members and made a presentation to the ETIC. The workbook included a number of options designed to provoke thought and discussion. The ETIC heard testimony from the public and decided to circulate the workbook for public comment.

On December 23 I sent a letter to everyone on the ETIC mailing list indicating that the committee was seeking comments on the workbook by 5 p.m. on February 23.

I received timely comments from the following organizations:

- NW Energy Coalition (NWEC);
- AARP Montana;
- MontPIRG;
- National Center for Appropriate Technology (NCAT);
- KEMA-XENERGY;
- Don Quander on behalf of the Montana Large Customer Group (LCG);
- Pat Judge, Montana Environmental Information Center (MEIC);
- Greg Groepper for the Board of Directors of Energy Share of Montana (Energy Share);
- Montana Electric Cooperatives' Association (MECA);
- the Renewable Northwest Project (RNP) and the Natural Resources Defense Council (NRDC); and
- NorthWestern Energy (NWE).

In addition, the Northwest Energy Efficiency Alliance provided information on the benefits received from past USB funds spent on market transformation. The Alliance does not take advocacy positions.

A few parties asked if they could submit their comments after the deadline. Chairman Olson advised that people who wanted to submit comments after the deadline could present testimony at the March 25 ETIC meeting.

Summary of Comments Received

I have summarized those comments that address what the committee should or should not do. Most commenters provided background information and a rationale for their suggestions, so I encourage you to read their letters to gain a better understanding of their position. In addition, I note that AARP Montana's letter urges the committee to take some immediate actions that do not involve legislation.

I note that most comments focused on the provisions of the electricity USB program. There appears to be much greater awareness of the electricity program and little awareness of the natural gas program.

General Comments

MEIC suggested that any changes to the USB program be pursued in the context of collaborative stakeholder groups.

Energy Share urged that the funding level reflect the need for and effectiveness of current programs.

Reporting, Accounting, and Oversight

The RNP and the NRDC and AARP Montana urged improved reporting and oversight of USB expenditures. AARP Montana proposed that the ETIC request a detailed study of USB revenue and expenditures with results to be reported to the next Legislature.

The NWEC and Energy Share supported requiring utilities subject to the USB requirement to keep funds collected from the USB charge in specifically identified USB trust accounts, subject to certain requirements (see options 29 and 38 in the draft USB Workbook).

Low-Income Programs

The NWEC suggested that the effectiveness of low-income assistance programs be evaluated, and identified several specific questions to be considered in the evaluation. The RNP and the NRDC stated that the current balkanized system of USB-funded low-income assistance appears to be neither efficient nor rational. AARP Montana suggested that the ETIC should focus on efficiently targeting the low-income programs so that they reach more Montanans who are eligible for assistance. AARP Montana indicated that, through the Energy Consumer Summit it sponsored, it had documented interest in a statewide, coordinated, year-round low-income assistance program with the goal of making electricity and gas bills more affordable in the long term. The NWEC provided information about the Eugene Water and Electric Board in Oregon as an example of such a program. AARP Montana noted that a significant portion of the funds dedicated to low-income assistance are spent on short-term emergency assistance.

In contrast, the LCG asserts that the local control and implementation of significant elements of the USB program is a recognized part of its strength and states that it would be a mistake to create a centralized, bureaucratic process to administer USB programs. MECA gave examples of cooperative-run programs to provide low-income assistance and stated that a system of centralized command and control could never begin to match the cost-effectiveness and efficiencies of local control. Further, MECA raised a concern that placing USB funds in state coffers would leave them vulnerable to use for other purposes and gave an example from Texas where MECA said the Legislature tapped USB funds for other purposes.

AARP Montana proposed that alternatives to the Low-Income Energy Assistance Program be used to demonstrate eligibility for utility bill discount programs. Ideas include qualification for Medicaid and/or food stamps.

Staff notes that the definition of low-income customer in law is broad enough to allow for alternative ways to demonstrate eligibility. The definition in law (69-8-103(20), MCA) refers to industry-recognized standards. However, the Department of Revenue (DOR) rules establish a definition based on an annualized household income that is 150% or less of federal poverty guidelines and allows for exceptions subject to documentation on an individual basis. (The Legislature can amend the law so it overrides the rules, if desired.) If the ETIC wants to pursue this recommendation, staff recommends consulting with representatives of the Department of Public Health and Human Services and the Human Resource Development Councils to determine feasibility and whether or not the criterion in the DOR rules needs revision.

Customers Served

The RNP and the NRDC suggested that the ETIC consider the discrepancy between the electricity USB charge and the natural gas USB charge, which is such that electricity customers are paying for bill assistance for natural gas customers. MEIC commented: "It is simply unfair to continue to ask electric customers to subsidize gas customers as a mater of ongoing policy."

NWE suggested that the committee consider whether or not the law should provide that funds collected from electricity or natural gas customers may be used for the benefit of either electricity or natural gas customers. Energy Share was not convinced there is a problem with spending electricity USB dollars to help customers that heat their homes with natural gas. Furthermore, Energy Share noted that restricting the use of the funds might leave families that heat with propane, coal, or wood without assistance.

Electric Law Program

General

The LCG and MECA supported the existing USB program. MECA noted that the existing program is the product of extensive negotiations and represents a delicate balance struck by interested parties. The LCG urged that "Our first priority should be to do not harm to a sound program and to preserve a broad base of support for USB."

Sunset

The LCG, MEIC, and MontPIRG endorsed the ETIC's recommendation to extend the termination date for the USB charge. Energy Share and the NWEC advocated elimination of the termination date. No one who commented said that the charge should be allowed to terminate.

Funding level

AARP Montana stated it does not support an increase in rates to customers. MontPIRG, the NWEC, and MEIC supported increasing the funding level from 2.4% to 3%. They noted that 3% was the funding level recommended in the 1996 Comprehensive Review of the Northwest Energy System for conservation, renewable energy development, and low-income weatherization alone. (Low-income bill assistance was not include in the recommended funding target.)

The MECA advocated that 1995 continue to be the base year for determining the annual funding level for USB programs. Two commenters proposed changing the base year for the funding determination. Energy Share suggested that the funding level be based on the prior year's gross revenue. The NCAT proposed that funding be based on utility revenues that are updated periodically. The NCAT gave 5 years as an example.

Large industrial customers

The LCG and Energy Share opposed changes to the large customer provisions.

MontPIRG and MEIC stated that large industrial customers pay a lower rate for USB than residential customers and proposed that the rate for large industrial customers be increased so that it is comparable to that for residential customers. The RNP and the NRDC also urged consideration of this idea. MontPIRG and MEIC also supported elimination of the $500,000 cap for large customers.

The LCG explained that the fixed charge and cap was intended as an important protection from imposition of disproportionate costs on individual large customers resulting from the use of a per kilowatt-hour charge instead of traditional utility ratemaking principles. The LCG also referenced section 69-8-402 (6), MCA, which provides:

> An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

The NCAT supported requiring large industrial customers to pay a USB charge to the utility, without increasing the current funding obligation. In essence, the large industrial customers would get a credit for part of their current USB obligation and part of the current "charge" would be paid to the utility.

MEIC and MontPIRG urged improved reporting and oversight of expenditures by large industrial customers. In contrast, the LCG stated that the current system for USB payments and credits for large customers is well-documented and working well. Mr. Quander stated that, to the best of his knowledge, no large customer credit has ever been allowed that was not fully reported.

Programs eligible for funding

The NCAT, KEMA-XENERGY, MontPIRG, NWEC and MEIC advocated continued funding for all USB programs. KEMA-XENERGY recommended retaining the current allocation among programs.

The MECA urged consideration of whether or not ineffective renewable resource projects should be ineligible for USB funds and noted that eliminating these projects would free up funds for other, more cost-effective programs. The MREA, the RNP and the NRDC, KEMA-XENERGY, MontPIRG, and NCAT support continued funding of renewable energy projects. Most commenters noted that renewable energy projects are at a disadvantage in the energy market. MEIC asserted that cost-effective renewable projects that are included in the default supply portfolio do not need to be funded with USB dollars, but that USB dollars are, and should be, used to fund distributed renewable energy systems that are not yet cost-effective on a purely financial basis.

The RNP and the NRDC, KEMA-XENERGY, MontPIRG, and NCAT support continued funding of energy conservation. MEIC, the RNP and the NRDC noted NorthWestern Energy has included demand side management in its default supply portfolio, but there is still a need to provide conservation programs to choice customers who pay the charge. Furthermore, MEIC indicated that not all USB conservation programs meet the rigorous cost-effectiveness test applied to procurement of electricity. KEMA-XENERGY recommended continuing conservation programs for all customers, including mass accounts and income-qualified customers.

Low-income funding

Most commenters addressed the issue of allocation of funds to low-income programs. A variety of approaches were identified:

- Increase the total pie by raising more revenue and allocate some or all of the additional revenue to low-income programs (NCAT, MEIC). (See sections on "USB Charge" above for suggestions about how to raise more revenue.)
- NWE suggested that the committee consider establishing a separate fund for low-income bill assistance that fluctuates monthly.
- AARP Montana suggested that the amount of USB funds targeted to low-income customers could possibly be increased without increasing the overall funding obligation or raising rates for other customers. They suggested this might be accomplished by more

effectively targeting current USB funds.

- The RNP and the NRDC suggested that the ETIC consider imposing a minimum funding requirement for low-income programs on large customers.
- Energy Share recommended that the ETIC consider funding low-income programs under the electric law at 1.12% of the utility's annual revenue. (Energy Share stated that this was the funding level required by the PSC for natural gas utilities; however, staff note that the PSC established this funding level by rule for all gas USB programs, not just low-income programs, and that alternative funding levels are allowed and have been authorized.)

MEIC noted that the PSC already has the authority to allocate NWE funds by order.

Credits

The NCAT and MEIC recommended that credit not be allowed for USB programs funded by power purchases. This recommendation would, in effect, increase the funding level for USB programs. The RNP and the NRDC also urged consideration of this idea. The MECA urged that the authority in current law be retained.

Staff notes that the statute authorizes credits for utilities and large industrial customers for the portion of power purchases that goes for the acquisition or support of renewable energy, conservation-related activities, or low-income energy assistance. Credits are also authorized for utilities for the portion of power purchases that goes for low-income energy assistance.

Several commenters addressed the use of "self-directed funds." There is confusion over the use of this term; I suggest that you clarify what you mean if you act on these recommendations. I believe that some clarification is needed regarding the provisions in the law; therefore, the law is explained below.

All utilities are subject to the minimum statutory allocation of 17% of USB funds to low-income weatherization and energy assistance. Aside from this requirement, the allocation of funds among eligible USB programs is determined as follows:

- for regulated utilities, the allocation is subject to Public Service Commission (PSC) approval; and
- for large customers and other utilities, the allocation is not subject to PSC approval.

Eligible expenditures are determined by law and rule. Utilities and large customers receive credit for qualifying expenditures and are required to pay the difference if their credits fall short of the statutory funding requirement. By statute, claimed credits are subject to review by the DOR; however, the DOR rules provide that claimed credits are presumed to be acceptable unless proven otherwise. Furthermore, DOR rules provide that the burden of proof that a credit is ineligible lies with the challenging party. Each utility and large customer is required to report its expenditures to the DOR annually. Utilities and large customers are required to submit annual summary reports to the DOR. Utilities must also submit the report to the PSC and the ETIC. The law requires that an annual report for a large customer identify each qualifying project or expenditure for which it has claimed a credit and the amount of the credit.

I disagree with the statement of the LCG that large industrials may not receive credit for expenditures on any USB programs. Section 69-8-403 (7)(a)(ii) and DOR rules clearly authorizes a large customer to receive credit for any USB program. Note the use of the phrase, "include but not be limited to" and variations on this phrase in both statute and rule.

MEIC recommended that credits not be assumed to be valid and that the burden of proof not be on private citizens.

MECA urged that the authority to receive USB credit for partial or full waivers of utility and other low-income connection and reconnection fees, application fees, and late payment charges as well as partial or full forgiveness of home energy bill arrearages be retained. Staff note that credit for these actions is authorized by DOR rules.

MEIC and MontPIRG proposed that a standard be established for cost-effectiveness for large customer expenditures. MEIC further recommended that credit be allowed only for demand side management activities that would not otherwise have occurred because of market barriers.

Unspent funds

Energy Share noted that the ETIC should consider timing issues if carry forward of USB funds is restricted. The issues are described in more detail in the letter, but have to do with the fact that the appropriate charge and need for December are not known until January. I note that the current law does not authorize any carry forward of funds[1] and recommend that the ETIC clarify this issue one way or another.

NWE identified additional criteria that could trigger the authorization to carry forward USB funds: a project is abandoned, and a project is completed under budget.

Natural Gas Law Program

Charge

NWE suggested considering whether or not to require that the USB charge be evaluated periodically and revised, if necessary, in order to maintain statutory funding levels.

Funding level

MEIC, the NWEC, and the NCAT proposed that the funding level for natural gas programs be increased. MEIC noted that the greatest impact on rates for typical residential customers, including low-income households, has been on the natural gas portion of the energy bill. The

[1]See Universal System Benefits Funding Legal Opinion from Todd Everts dated November 19, 2003.

NWEC recommended that the funding level be increased so that the natural gas charge is sufficient to pay for the needs of natural gas customers who are currently receiving benefits from the electricity USB funds as well as high natural gas prices. MEIC recommended seeking greater consistency in the funding levels required for different utilities.

AARP Montana indicated that it did not support an increase in rates.

Low-income funding

NWE suggested that the committee consider establishing a separate fund for low-income bill assistance that fluctuates monthly.

AARP Montana recommended that funding for low-income programs from natural gas customers be increased. They further recommended that the ETIC consider giving the PSC the flexibility to approve annual funding targets and program expenditures based on need. Staff notes that the PSC already has this authority for regulated utilities.

The LCG did not propose a change in the natural gas USB laws, but noted that LCG members make substantial USB payments for natural gas, without any direct benefit, credit, or ability to participate in natural gas USB programs. If the ETIC decides to significantly restructure the USB program, the LCG suggests that the imbalance in responsibility and benefit for natural gas USB programs be considered.

Other Fuels

The NCAT recommended that the ETIC institute a program to collect a charge for the sale of propane and distribute the funds for universal system benefit programs.