MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN MACK COLE**, on January 9, 2001 at 3:00 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:
Sen. Mack Cole, Chairman (R)
Sen. Royal Johnson, Vice Chairman (R)
Sen. Steve Doherty (D)
Sen. Alvin Ellis Jr. (R)
Sen. Mike Halligan (D)
Sen. Bea McCarthy (D)
Sen. Walter McNutt (R)
Sen. Don Ryan (D)
Sen. Corey Stapleton (R)
Sen. Mike Taylor (R)
Sen. Tom Zook (R)

Members Excused: None.

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Misti Pilster, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 56, 1/4/2001
Executive Action:

HEARING ON SB 56

Sponsor: **SENATOR WALTER McNUTT, SD 50, SIDNEY**

Proponents: **Allen Thiessen, Montana Electric Cooperatives Assn.**
Gary Wiens, Montana Electric Cooperatives Assn.
Terry Holzer, Yellowstone Valley Electric Cooperative
Harold Hanson, Tongue River Electric Cooperative

Michael Henry, Lincoln Electric Cooperative
Keith Colbo, Flathead Electric Cooperative

Opponents: **Debbie Smith, Natural Resource Defense Council**
Patrick Judge, Montana Environmental Information Center
Julie Ippolito, Human Resource Development Council
Matthew Leow, Montana Public Interest Research Group

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 14 - 16.8}

SENATOR WALTER McNUTT, SD 50, SIDNEY, stated that SB 56 is a recommendation of the Transition Advisory Committee, which was established by SB 390 in 1997. The bill is designed to clarify what the Montana Electric Cooperatives can count towards Universal Systems Benefits Program (USBP) obligations. When the electric industry restructuring law was passed in 1997, the legislature established a program to benefit low-income electric users, promote conservation, and promote the use of renewable resources. The program requires utilities to dedicate 2.4% of their 1995 gross revenues for low-income energy assistance, conservation, and renewables. The bill adds the words "amortized and non-amortized" to clarify what cooperatives can count toward their USBP, including USBP expenditures that are still being paid for over time in their wholesale power rates.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 17}

Allen Thiessen, Montana Electric Cooperatives Association, said that to the more than 300,000 customers and all the businesses served by rural electric cooperatives, the three-word change in this bill could represent millions of dollars. In 1997, the USBP became incorporated into SB 390. It was an understanding that the USBP was designed to be a status quo program that assured existing conservation and renewable resource spending would not be compromised. The cooperatives only agreed to support this program based on the condition it would not increase customers rates and that authorization of all conservation costs contained in the cooperatives wholesale power purchases was essential to making this rate protection guarantee. Obviously, some of these costs are large investments and like any other investment, these costs need to be amortized over several years to receive the benefit of that investment. An example would be that in 1999, these amortized power purchase credits represented about $2.02 million of the electric cooperatives USBP credits. If these credits were not allowed, it would definitely be a rate increase to consumers. He hoped they can support this clarification and help eliminate this problem.

Gary Wiens, Montana Electric Cooperatives Association, submitted written testimony, **EXHIBIT(ens06a01).**

Terry Holzer, Yellowstone Valley Electric Cooperative, submitted written testimony, **EXHIBIT(ens06a02).**

Harold Hanson, Tongue River Electric Cooperative, submitted written testimony, **EXHIBIT(ens06a03).**

Michael Henry, Lincoln Electric Cooperative, voiced his support of the bill. In their case, Bonneville Power Administration makes significant investments in developing and implementing conservation and renewable programs throughout the Northwest, which they were then able to implement in Montana. Small utilities such as Lincoln Electric simply do not have the resources to develop these types of programs on their own. Although BPA has quit funding a number of the conservation programs they've had in the past, Lincoln Electric has continued with a number of them on their own because they've recognized the benefit of using electricity efficiently. If Lincoln Electric cannot continue to claim these costs, it would force them to spend at least an additional $75,000 of the members money to meet USBP requirements. Because of a loss of over 10% of the co-op's load in the last year, with the closure of American Timber sawmill in July of last year and yesterday's announcement that another one of their major customers is reducing their capacity down to one shift, any increase in their cost would result in an immediate rate increase to members. He urged the committee to support this legislation.

Keith Colbo, Flathead Electric Cooperative, said that Flathead Electric supports SB 56 and urges a "do pass" consideration.

Opponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 28.5}

Debbie Smith, Natural Resources Defense Council, stated that the rules don't allow, under the existing language of the statute, old carrying costs to be part of the USBP credit. She said that for programs that were conducted prior to 1999, those costs should be recovered through something other than the USBP credit process, which applies to new programs. The cooperatives are including, as part of their overall $4.5 million USBC obligations, by her calculations, about 62% of old conservation expenditures. In today's energy price markets, it is crucial to have new conservation programs going forward. We should use this money for new investments, rather than paying for old stuff that is really the region's source of pride. They disagreed with this bill.

{Tape : 1; Side : B; Approx. Time Counter : 6}

Patrick Judge, Montana Environmental Information Center, submitted written testimony, **EXHIBIT(ens06a04).**

Julie Ippolito, Human Resource Development Council, submitted written testimony, **EXHIBIT(ens06a05).**

Matthew Leow, Montana Public Interest Research Group, stated that the purpose of the USBP is to promote conservation, aid low income consumers and to promote renewable energy projects. The USBP is not intended to cover past costs and to allow companies to cover the interest that comes with them. Consumers paying the USBP charges deserve the benefits that come with that. They were concerned that USBP credit process not be used for expenses that are not within the intent of what was written.

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 12.5}

SENATOR MIKE HALLIGAN asked if there was any legislative history that talked about the ability to amortize pre-existing expenditures. **Tim Gregori, Central Montana Electric Power Cooperative,** stated that there were discussions on being allowed to use this particular type of expenditure. It's important to clarify that Montana Power Company should be able to get full credit of their regulatory assets through the transition charge. He said since cooperatives have not "opted in" and there won't be a transition charge that allows them to recapture those monies in a single instance, they want to be able to continue capturing those monies towards the future. A rate payer for Montana Power will not see an increase in their rates because of previous expenditures because they are able to get the money back through a stranded cost or transition charge. Because they're not "opting in" and having transition charges on bills, they simply want to be able to continue to amortize that as a portion of existing expenditures. If denied the ability to do that, they're held at disadvantage because they're not "opting in" to competition, further putting customers in harms way because they will often have to pay market prices.

SENATOR HALLIGAN then referred the same question to **Debbie Smith** and also whether a cooperative would be put at a disadvantage if they were unable to do so. **Ms. Smith** replied that Montana Power Company is recovering through a transition charge, current amortization costs for former programs, which were already in MPC's base rates. Some of the transition charges that MPC customers are paying are charges being paid now and will drop off the bill after a certain amount of time. Wholesale power rates that cooperatives pay to Bonneville are already in their base rates as well. Cooperatives are allowed to pool their programs together and as an association, they aren't running the same level of programs that MPC was running. MPC had to implement a slight rate increase of a few mills, which is 1/10 of a cent.

SENATOR COREY STAPLETON then asked how the three-word addition to the bill clarifies, deletes, or replaces what remains in the bill. **Dave Wheelihan, Montana Electric Cooperatives Association**, stated that the bill says that "the benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for". If you read it as a whole, the object is to continue to fund the past programs and to ensure new funding as well.

SENATOR STEVE DOHERTY asked if we were to limit this to amortized or non-amortized expenditures to cooperatives, would it defeat the legislation. **Mr. Wheelihan** stated that he had not discussed that possibility and did not know the answer, but could find out. **SENATOR DOHERTY** then asked what exactly was being talked about - investments, who made the investments, what the investments are, how much they are, and what exactly is being amortized. **Doug Hardy, Montana Electric Cooperatives Association**, replied that what is being amortized was a combination of weatherization pilot program, $2.5 million of residential weatherization, low income weatherization ($250,000), street area lighting and improvements ($100,000+), Super Good Sense Grant (type of energy efficient house) in the neighborhood of almost $1 million, and a variety of other projects. Missoula County got some money, Energy Savings Plan, and financial and technical assistance grants in the conservation areas also reached over $1 million in Montana. Those expenditures have been made with rate payer's money and this is how it's paid for rather than taking it out of rates when it's expended.

SENATOR DOHERTY asked why reducing the amount of money spent for conservation measures would mean that rates will go up. **Mr. Gregori**, stated that the cooperatives are not advocating reducing the amount of monies that they are willing to invest in conservation programs, low-income assistance, and renewable resources. Cooperatives are probably leaders in the investment of those programs, including solar energy. For example, Little Bighorn Electric Cooperative probably has close to $500,000 invested in solar stock wells. What they are advocating is that when it comes down to the bottom line of determining rates, they first take the wholesale power costs, add on the existing operating costs, and divide all that by the energy at the end of the month to charge that much per kilowatt hour. If disallowed that amount, they must stack on additional monies to meet USBP obligations. By narrowing the margin with existing rate structures and getting credit for that, both tasks can be accomplished at the same time.

SENATOR DOHERTY stated that a person should be spending less if receiving credit for an amortized investment. **Mr. Gregori** replied that we continue to spend the same amount and more. MPC is already able to recover their amount by saying this is a transition charge. The total dollar expenditure can remain higher by getting credit for that because they don't have to backfill a hole that would be denied if they were disallowed that credit. **Ms. Smith** then responded that when a utility is running conservation programs at less than USBP levels, they actually have to pay more in order to meet those levels. Small investments are made now to offset longer term costs later.

{Tape : 2; Side : A; Approx. Time Counter : 2.5}

SENATOR ROYAL JOHNSON then asked that if you build a facility and pay for it so there is no amortization of debt, does that credit for the amount of money you put into the USBP come in one year? **Mr. Gregori** replied that yes it does. **SENATOR JOHNSON** asked about the non-amortized costs and whether they are reaching back to take credit for the costs in the past or starting from the day that Universal Benefits began and going forward from there. **Mr. Gregori** answered that rather than claiming it in one year, they want to claim it over a number of years. The total amount claimed will equal the same amount as if claimed in one year. However, because conservation measures have already been made, they are being paid for now in rates and simply want to capture that credit in the year in which they are paid for through rates. In essence they are paying for it in the current year for that amortized portion. **SENATOR JOHNSON** stated that you do not take the entire credit the first year, but rather the portion of the credit that is amortized. **Mr. Gregori** replied that is correct.

SENATOR JOHNSON asked what part of the bill makes it not understandable that way, because it does say the expenditures you make are a part of the program. **Mr. Gregori** said that the original bill did articulate that clearly enough to take that action. However, when the rules were promulgated by the

Department of Revenue (DOR) they took a different view of what was said in the legislation. **SENATOR JOHNSON** asked what the Department of Revenue wanted to do. **Mr. Gregori** stated that they said it wasn't clear to the point that they feel it should be allowed. **SENATOR JOHNSON** then asked what they were allowing. **Mr. Gregori** said he wasn't the right person to answer that question. **Mr. Wiens** stated that the rule adopted by the Department of Revenue says that a qualifying expenditure is one that does not include costs or debts incurred in a prior year. They are indebted through their wholesale power purchases to pay for these projects over a period of years and they're only claiming in a single year that portion they are paying for in rates for that particular year. **SENATOR JOHNSON** replied that you do not reach back to previous years, but take whatever you spend during that year. **Mr. Wiens** answered that they only claim whatever Bonneville Power charges that year.

SENATOR JOHNSON asked **Patrick Judge** what problems he had with the bill. **Mr. Judge** replied that the amount of money going to the USB programs from the cooperatives would be less than it would if the bill failed. They think the amount of funding for these programs is too low already. **SENATOR JOHNSON** then said that is a different subject and wanted to know how this situation makes a difference. **Mr. Judge** stated that it would simply reduce the amount of funding going to these programs and his group objects to that. **SENATOR JOHNSON** wondered if anyone from the Department of Revenue was available to answer the question of whether there would be a decrease in the revenue that the cooperatives would be required to put to this particular subject if this bill passed. **Russell Trasky, Department of Revenue**, commented that he was not prepared to answer the question, but could get some information and bring back to the committee.

SENATOR STAPLETON asked **Ms. Smith** if she objected to this bill being introduced due to the three word change. **Ms. Smith** stated that she objects to allowing current year amortization costs for programs that were run before 1999, the beginning of the USB period. She did not object to amortization costs for programs that would have been started in 1999 if a utility wanted to finance it over several years. **SENATOR STAPLETON** then asked if **Ms. Smith** if she simply didn't agree with three words, and was going after a separate area that's not being addressed. **Ms. Smith** replied that she is opposed to the proposed amendment, as well as the issue of including carrying costs for old conservation programs as USBP charges. If the DOR rules prohibit carrying charges for USBP run during the USBP period she could support an amendment saying a utility could amortize costs during the USBP period and claim those interest charges as USBP expenditures. Almost two-thirds of what the cooperatives claimed in 1999 as USBP is debt service paid to BPA for conservation programs run mostly along the I-5 corridor previous to 1995. That is what they have charged against USBP in 1999 and they want clarifying legislation that will allow them to do that on a going-forward basis. The DOR rules allow a grandfathering year in 1999 so everything the cooperatives claimed in 1999 is all grandfathered.

SENATOR STAPLETON then stated that the proposed bill simply acknowledges that amortization should also be allowed. **Ms. Smith** stated that the cooperatives are trying to claim USBP credit for charges paid to BPA for conservation programs done in the early 1990's along the I-5 corridor, and that as a region, it helped us. However, for Montana, on a going-forward basis to manage the energy crisis, it doesn't help us.

SENATOR ALVIN ELLIS asked how it is that a conservation investment made previously is not of help, but one newly made is. **Ms. Smith** stated that the investments made by BPA and other utilities in the early 1990's are helping us tremendously today in avoiding black-outs. They are recovering for those investments in rates already. The issue is whether they are allowed to use the USBP credit to cover the costs of those programs or if they have to use their base rates. **SENATOR ELLIS** then said that utilities who are "opted-in" to this program by law are able to recover these USBP charges through stranded costs and don't have to recover them through their rates. **Ms. Smith** answered that her group wants the USBP charge to pay for new items so we don't suffer more in the long-term from the energy shortage. **SENATOR ELLIS** asked that if there was a cost to rate payers due to this law not being adopted, wouldn't it be because a cooperative or utility must receive a return on an investment because they have the cost of capitalization. Thus, it doesn't matter what is invested in as long as a return is shown. **Ms. Smith** stated that the reason rates would have to be raised by the cooperatives today, if they can't include debt service, is that they aren't doing enough new programs according to their 1999 USBP report.

SENATOR TOM ZOOK asked what the set figure is for low income out of the 2.4%. **Ms. Smith** replied that it is a minimum of 17% of the 2.4%.

SENATOR MIKE TAYLOR asked if a 2.25% increase in power bills noted by **Harold Hanson**, would be standard for all the cooperatives if the bill would not pass. **Mr. Hanson** replied that he only did the study on his cooperative and couldn't answer the question for the other cooperatives. **SENATOR TAYLOR** then asked if any of the infrastructure created since 1999 has been amortized already. Several audience members shook their heads no. **SENATOR TAYLOR** asked if the rate increase for the other cooperatives sounded reasonable to the rate payers. **Mr. Wiens** said it was similar to the other cooperatives.

{Tape : 2; Side : A; Approx. Time Counter : 23; Comments : Some background noise}

SENATOR HALLIGAN noted that cooperatives have stated that they will increase their investment in new conservation and renewables even with the current language in the bill and asked **Ms. Smith** to respond. **Ms. Smith** stated that the situation didn't address her concern because due to the 1999 report the cooperatives filed, about 62% of what they are claiming is old programs. Another 17% is for low income and that means approximately 25% is being spent on new conservation and renewables. Almost two-thirds of what they are claiming is from the past. This 2.4% is barely adequate and to have two-thirds of that charge funding the old programs is just not sound energy policy. **SENATOR HALLIGAN** asked **Ms. Smith** what her interpretation of the funding that began in 1999 was. **Ms. Smith** stated there is no disadvantage between MPC and the cooperatives in terms of MPC moving forward into competition.

SENATOR TAYLOR asked **Mr. Wiens** to speak on the same issue. **Mr. Wiens** then noted that this was a commitment made to the cooperatives in 1997 and that we must continue to pay for these programs in wholesale power purchases regardless of whether we are able to claim credit for them, thus increasing rates.

SENATOR ZOOK asked if we eliminate the 2.4% entirely whether expenditures of this nature would still be made. **Mr. Wiens** replied yes. **SENATOR ZOOK** asked if that would mean a reduction in rate payers bills. **Mr. Hardy** stated that it would be different from cooperative to cooperative.

<u>Closing by Sponsor</u>:

{Tape : 2; Side : B; Approx. Time Counter : 0 - 2.5}

SENATOR McNUTT stated that there was agreement in 1997 that these amortized costs should be allowed. He was disturbed to hear that 2.4% wasn't enough. He said cooperatives will work hard to ensure efficiency and conservation and will make those investments so this bill is appropriate.

ADJOURNMENT

Adjournment: 4:15 P.M.

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SEN. MACK COLE, Chairman

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MISTI PILSTER, Secretary

MC/MP

EXHIBIT(ens06aad)