MINUTES

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

Call to Order: By **VICE CHAIRMAN ROYAL JOHNSON,** on January 24, 2001 at 9:05 A.M., in Room 102 Capitol.

ROLL CALL

Members Present:
Sen. Royal Johnson, Vice Chairman (R)
Sen. Don Ryan (D)
Sen. Tom Zook (R)

Members Excused: Sen. Mack Cole, Chairman (R)
Sen. Steve Doherty (D)
Sen. Alvin Ellis Jr. (R)
Sen. Mike Halligan (D)
Sen. Bea McCarthy (D)
Sen. Walter McNutt (R)
Sen. Corey Stapleton (R)
Sen. Mike Taylor (R)

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:
Discussion of SB 243

Discussion:

SENATOR ROYAL JOHNSON explained that the bill attempts to find a market for power to supply Montana Power Company's (MPC) current customers, starting when the 2.25 cent deal stops in July 2002. In their order, the Public Service Commission (PSC) extended the time period to 2004. No one besides MPC and PPL have the right to alter the contract they have, so no matter what the PSC or the legislature does, the contract will stay valid.

Todd Everts explained the process by which the subcommittee would go through dealing with amendments.

REPRESENTATIVE DEE BROWN asked if the process would be extended somewhat if different people talked to various subcommittee members about a similar or the same amendment. **SENATOR JOHNSON** declared that it really wouldn't because the subcommittee could evaluate all the amendments and determine whether they were the same or similar.

Dennis Lopach, Northwestern Corporation, wondered about the possibility of drafting a marked copy of the bill with the proposed amendments so it would be easier to note and make changes. **Mr. Everts** indicated that it would be possible to draft the amendments and then put together a gray bill. It would show all of the amendments and how they would work in the bill.

REPRESENTATIVE TRUDI SCHMIDT wished for the chairman to repeat a previous statement about the PSC. **SENATOR JOHNSON** reiterated that he had presented the idea of the bill to the Transition Advisory Council (TAC). The PSC put out a notice that they wanted to have some input on their potential for extending the transition period from 2002 to 2004, which was allowed in the original law. He referred to 69-8-210 in the MCA and noted that his bill would extend the period for an additional five years. The PSC doesn't have to make an extension to the period until two months prior to July 1, 2002.

Mr. Lopach responded that his company wasn't certain that a longer term would yield a better price. A portfolio is the notion of approaching supply and getting a variety of contracts, not just a single contract. If there were both short and long term contracts, the companies could hedge their bets on what the market price would do. **SENATOR JOHNSON** professed that the supplier would set the price.

REPRESENTATIVE SCHMIDT wondered if that might not restrict the supplier in getting the best price.

REPRESENTATIVE TOM DELL thought that the sponsor originally wanted to keep the bill as simple as possible. However, now he wanted to allow some flexibility for the supplier to determine the duration of the contract. **SENATOR JOHNSON** indicated that the legislation is for a five year contract for MPC customers currently receiving their power at 2.25 cents until 2002.

REPRESENTATIVE BOB STORY was confused by some of the terminology. **SENATOR JOHNSON** explained that the supplier would supply the electricity and the distributor would distribute that power, which would be MPC.

SENATOR EMILY STONINGTON suggested that the sponsor was offering to provide an umbrella to MPC and PPL to negotiate a year and a half contract to get back off the stock market. **SENATOR JOHNSON** stated that was correct. If it raises the cost to individual customers, he didn't want to include it in the bill.

SENATOR DON RYAN noted that if the price could decrease over the long term five year contract for residential customers, that would be good.

SENATOR STONINGTON wondered if the sponsor wanted to allow MPC to negotiate differential contracts since large industrial customers have traditionally received lower rates due to their constant load requirements. **SENATOR JOHNSON** replied that the supplier would set the rate on a specified basis and the customer load requirements would be identified. If large customers are locked in for six and a half years, the suppliers have indicated that the total cost of the contract may be reduced for a long period.

REPRESENTATIVE ALAN OLSON wanted to know whether the sponsor would be willing to have staggered contracts from multiple suppliers, such as a two year and a five year contract. **SENATOR JOHNSON** felt like the supplier wouldn't want to be put in that position because they don't know what the price will do over that period of time.

REPRESENTATIVE ROY BROWN asked for discussion of financing for the supplier if they were locked in at a certain price and took on a loss. **SENATOR JOHNSON** responded that the loss would be a loss in profits.

SENATOR STONINGTON pressed as to how time phasing would be arranged in the legislation. **SENATOR JOHNSON** exclaimed that MPC and PPL do not want to have to borrow money like that. If needed, he would borrow money from the Coal Trust on a monthly basis to pay the distributor of the electricity. **Mr. Lopach** contended that it was an interesting idea, but the problem would be who was going to finance it and how much more it would cost than simply reflecting the true cost in rates on a flat basis. **SENATOR JOHNSON** cited that he was trying to measure out the required load and ask the supplier to supply that load.

Patrick Judge, Montana Environmental Information Center, wanted an explanation of the rationale behind taking that approach as opposed to offering consumers a stable, constant rate that they wouldn't have to repay extra interest charges on. **SENATOR**

JOHNSON professed that all customers currently on the MPC system will be without power on July 1, 2002 unless other arrangements are made. Consumers would not have the option of paying the constant rate. This is not an option, but rather a contractual deal.

Mike Pichette, MPC, wondered if it would be more of a hardship for the customer to pay a high rate for five years or have an annual rate change. **REPRESENTATIVE OLSON** exhorted that prior to deregulation, the market wasn't flat, but rather continuously adjusted for the increased cost. **Mr. Judge** exclaimed that he was a MPC customer and would prefer to pay over five years and not pay interest to pay back the subsidy.

SENATOR RYAN stated that there will be a lot of upset customers in 2007 if the rate is locked in and the price continues to increase.

REPRESENTATIVE ROY BROWN professed that a flat rate over a period of time would seem to make the situation simpler. However, if money is taken from the Coal Trust to use for supply, that takes a hit on the General Fund. **SENATOR JOHNSON** disagreed because the Coal Trust loans money out on bonds on a continuing basis, which would be paid back in the latter half of the following year. It would not come out of the General Fund.

REPRESENTATIVE GARY FORRESTER asked about the PSC determining whether a rate transition is in the public interest. **Mr. Everts** noted that the definition of a rate transition basically says that it is a phase-in of electricity rates in effect on July 30, 2002 to the rate that would otherwise be charged beginning July 1, 2002 by the default supplier. **REPRESENTATIVE FORRESTER** was concerned about the PSC making the rules and setting the prices when the legislature is not in session. **Mr. Everts** affirmed that the PSC would make the determination on whether a rate transition, under this bill, is viable or not.

REPRESENTATIVE BOB STORY voiced concern over the phase-in rate, as well as financing the interest of monthly loans.

SENATOR RYAN questioned whether the default supplier would have the ability to offer different rates to different entities and if there would be some flexibility. **SENATOR JOHNSON** referred to page 15, line 22 of the current bill which said, "all default supply customers shall pay the same rate for electricity."

REPRESENTATIVE TOM DELL was concerned about enough explicit authority in the bill to ensure that the PSC follows through and acts upon issues discussed. He would like to see explicit language that would compel them to define the ground rules for the default supplier so everyone would know the rules of the game. However, he would also like to allow for flexibility in the system for the default supplier to find the best deal for residential and small business customers in the system. **SENATOR JOHNSON** felt like the law should be rule enough.

SENATOR RYAN wondered about the feasibility of a default supplier needing to get PSC and legislative approval before signing a contract. **SENATOR JOHNSON** responded that the contract would be purchased based on the spot market and that they would be dealing with it in a 24-hour period.

Gary Willis, MPC, noted that we don't have a market here because there is a flat rate. No competition will come in when an artificial price is set that is too low.

REPRESENTATIVE SCHMIDT stated that the supplier needs to have flexibility in the market in order to help the consumer. **Mr. Lopach** explained that they were concerned about the risk of different contracts, but thought they could do a better job of managing that risk and yield a better price for consumers. There is no way they can contract for five years for every kilowatt hour that will be delivered. They would propose a mix of contracts that might be greater in variation than the sponsor's proposal. **Mr. Willis** mentioned that on page 7, 5% of customers are allowed to go to choice.

REPRESENTATIVE DEE BROWN believed everyone was saying that the bill is to help lessen the shock to the consumer and hedge some time between deregulation and when new generation comes on in the state. **REPRESENTATIVE DELL** explained that it is a good idea to hedge bets because it works more often than not. It creates a controllable system for businesses to anticipate their costs.

REPRESENTATIVE OLSON asked if MDU was still regulated by the PSC for gas prices. **SENATOR JOHNSON** said no.

REPRESENTATIVE SCHMIDT inquired if there was anything that could be done to form another type of authority, like the PSC, to oversee the energy portion. **SENATOR JOHNSON** didn't want anything like that to be included in this bill.

REPRESENTATIVE ROY BROWN reminded the committee that this part of the bill is only about one third of the total price that will end up on a customer's bill. **REPRESENTATIVE DEE BROWN** desired to know whether the 5% was from the total customer base or the usage base. **SENATOR JOHNSON** noted that it was 5% of the usage base.

REPRESENTATIVE STORY questioned variable rates for customers and default provider rules. **SENATOR JOHNSON** professed that the power companies were trying to set up a set of rules for the PSC.

Mr. Pichette exclaimed that the risk to the default supplier, MPC, is a large amount of money being spent with the hope of breaking even. No profit will be allowed, there will be a lot of scrutiny over the contract that will be reviewed by the PSC, and MPC is at risk of losing a large amount of money.

ADJOURNMENT

Adjournment: 10:30 A.M.

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SEN. MACK COLE, Chairman

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MISTI PILSTER, Secretary

MC/MP

EXHIBIT(ens19aad)