MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
FREE CONFERENCE COMMITTEE ON ENERGY POLICY
SENATE BILLS 19 AND 521
HOUSE BILLS 474, 632, AND 645

Call to Order: By **CHAIRMAN WALTER MCNUTT**, on April 17, 2001 at 9:00 A.M., in Room 152 Capitol.

ROLL CALL

Members Present:
Sen. Walter McNutt, Chairman (R)
Rep. Douglas Mood, Chairman (R)
Rep. Roy Brown (R)
Rep. Tom Dell (D)
Sen. Alvin Ellis Jr. (R)
Sen. Don Ryan (D)

Members Excused: None.

Members Absent: None.

Staff Present: Marion Mood, Secretary
Greg Petesch, Legislative Branch
Todd Everts, Legislative Branch

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

Committee Business Summary:
Hearing(s) & Date(s) Posted:
Executive Action: SB 19; SB 521
HB 474; HB 632; HB 645

Note: This meeting was split into two session, one running from 9 a.m. to 10:30 a.m., and the second from 1:00 p.m. to 2:45 p.m.

EXECUTIVE ACTION ON SB 19

CHAIRMAN WALTER MCNUTT asked for amendments to SB 19, and received **Amendment #SB001902.ate**, **EXHIBIT(frs86sb0019a01)**. **Todd**

Everts explained that it extended the transition date to 2007, and conformed everything past that date.

Motion: Sen. Ellis moved that **AMENDMENT #SB001902.ATE BE ADOPTED.**
Vote: Motion carried with **three Representatives** and **three Senators voting aye.**

Motion: Sen. Ellis moved that **the Conference Committee Report on SB 19 be adopted.**

Discussion:

VICE CHAIRMAN DOUG MOOD reminded him that there had been discussion to change the language on page 14, line 4. **SEN. ALVIN ELLIS** stated he could not find it in the amendment. **VICE CHAIRMAN MOOD** asked the staff if it was necessary to change the year 2001 to every odd numbered year. **Todd Everts** said he would change that, as well as, on line 8, insert "next" in place of "58". When asked if the committee should wait until these were drafted, **Mr. Everts** said it would be fine to adopt them conceptually.

Motion: Sen. Ellis moved that the conceptual amendment **BE ADOPTED.**

Vote: Motion carried with **three Representatives** and **three Senators voting aye.**

EXECUTIVE ACTION ON HB 521

CHAIRMAN MCNUTT introduced **Amendment #SB052102.agp, EXHIBIT(frs86sb0019a02)**, requested by **SEN. ELLIS**, and asked him to explain the amendments.
SEN. ELLIS deferred to **Greg Petesch** who explained that since the price of energy was added as a reason to declare an emergency, the amendment added actions taken to increase the supply of energy; this was done because supply drives down price, and since price was used as a trigger for the emergency, it gave clear authority to take action to increase supply. The third amendment made sure projects started during the emergency could be completed.

Motion: SEN. ELLIS moved that **AMENDMENT #SB052102.AGP BE ADOPTED.**
Vote: Motion carried, with **three Representatives** and **three Senators voting aye.**

CHAIRMAN MCNUTT stated that with that, the committee had adopted the Conference Committee Report on SB 521.

EXECUTIVE ACTION ON HB 474

CHAIRMAN MCNUTT chose to work on HB 474 next, and there were three sets of amendments. **Todd Everts** explained **Amendment #HB047404.ate**, **EXHIBIT(frs86sb0019a03)**, by saying that it extended the duration of the USB charge from July 1, 2003 to December 31, 2005.

Motion: **VICE CHAIRMAN MOOD** moved that **AMENDMENT #HB047404.ATE BE ADOPTED.**

Discussion:

VICE CHAIRMAN MOOD stated he suggested this be amended into HB 474 so the continuity of the program would be assured beyond 2003; there had been a failed attempt with another bill that would have extended the duration of the USB charge, and he wanted to see this through. **SEN. DON RYAN** questioned why it was not extended through 2007 which would be the end of the transition period. **CHAIRMAN MCNUTT** explained that the bill was hung up because an amendment would remove MDU from the Universal Systems Benefits Plan, and he was reluctant to go out to 2007.

REP. TOM DELL added that the TAC committee felt it prudent to extend it to 2005 and he welcomed this amendment because it had not been all that certain it would even go to 2005. **VICE CHAIRMAN MOOD**, responding to **SEN. RYAN's** question, explained that there were some things that had happened in the USB program which led him to believe it would behoove the Legislature to take a look at this program every single session; the termination date was added so this body would be aware of it and look at it. **SEN. RYAN** felt that the program had proved itself; he had heard that especially in eastern Montana, usage had gone up tenfold in the last year, and welcomed that it might be tied in.

SEN. ELLIS commented that December 2005 would be well after the second legislative session, and asked why that date was chosen rather than December 2003, if the goal was to look at this every session. **VICE CHAIRMAN MOOD s**peculated it was extended to the end of the year so that if it were terminated, there would be continuity through the end of the year in terms of funding. **SEN. ELLIS** said he understood that, but still questioned why the date was set after the second session and not the first. **VICE**

CHAIRMAN MOOD explained it was consistent with the way it was before.

Vote: Motion carried with **three Representatives** and **two Senators voting aye; Chairman McNutt voted no.**

Greg Petesch was asked to explain **Amendment #HB047403.agp, EXHIBIT(frs86sb0019a04),** requested by **CHAIRMAN MCNUTT. Mr. Petesch** stated that these amendments allowed the default supplier to build generation facilities and sell the surplus on the wholesale market; it also removed restrictions in the default supplier license section of the code.

Motion: Chairman McNutt moved that **AMENDMENT #HB047403.AGP BE ADOPTED.**

Discussion:

SEN. ELLIS asked if these amendments were limited to the default supplier or if another facility could do this. **Mr. Petesch** informed him that there were no similar restrictions on other entities.

REP. DELL asked if this was in response to SB 390 which did not allow for that. **Mr. Petesch** said this was correct.

Vote: Motion carried that **Amendment #HB047403.agp BE ADOPTED,** with **three Representatives** and **three Senators voting aye.**

CHAIRMAN MCNUTT asked that **Mr. Petesch** explain **Amendment #HB047402.agp, EXHIBIT(frs86sb0019a05),** requested by **SEN. ELLIS. Mr. Petesch** stated it created a consumer electricity support program which had the ability to either dedicate money or power to this program, and it would be administered by the Department of Administration. The money and/or power would be allocated to serve default supply customers. He said this would be similar to the energy pool program, with the difference being that this was a long-term project.

SEN. ELLIS inquired whether this would extend past July 2002, and **Mr. Petesch** replied it did not terminate.

CHAIRMAN MCNUTT asked if the Department of Administration adopted the rules and provided for equitable distribution, would they also administer the distribution. **Mr. Petesch** said they would, in conjunction with the default supplier.

REP. DELL wondered how this compared with HB 645. **Mr. Petesch** explained that the power pool bill was designed to be a temporary, short-term fix, and this would have long-term capabilities to serve many of the same purposes, providing either cash or power. **SEN. ELLIS** thought this addressed more customers as well, whereas the power pool was mostly meant for industrial customers who had left the system.

SEN. RYAN asked how this would affect the purchase of a block of power, for instance, since it was not known how much would be available through this program. **Mr. Petesch** replied it would depend on how much money the Legislature would provide for its funding; the amendments were just a mechanism to allow it to function long-term.

Motion: Sen Ellis moved that **Amendment #HB047402.agp BE ADOPTED.**
Vote: Motion carried with **three Representatives** and **three Senators voting aye.**

CHAIRMAN MCNUTT decided not to report out HB 474 at this time.

EXECUTIVE ACTION ON HB 632

CHAIRMAN MCNUTT asked **VICE CHAIRMAN MOOD** to give the committee a synopsis of HB 632.

VICE CHAIRMAN MOOD explained that his bill did two things; it provided the legislative cover for the PSC to assert its authority over the generating capacity within the state; and it asked the PSC to adopt temporary lifeline rates which would be in place until October 2001. This would allow the industrials and other entities who had opted out of the system to get back under the authority of the PSC and into the regulated market at the lifeline rate which was defined at 150% of the current MPC rate. HB 632 also asked the PSC to establish a just and reasonable rate for the generation of electricity which would go into effect on July 1, 2002.

SEN. RYAN alluded that there were some amendments requested by NorthWestern which were being drafted. **Dennis Lopach, NorthWestern**, stated he believed they had been drafted by the staff, and explained they were a boiled down version of parts of the failed SB 243, addressing portfolio cost recovery and other issues important to the company.

CHAIRMAN MCNUTT asked if the staff had drafted those amendments yet, and **Mr. Petesch** stated they had not been edited.

SEN. RYAN referred to a section which had been amended out in the Senate, dealing with the PSC's ability to adjust rates upward, and asked where the money from this rate increase would have gone. **VICE CHAIRMAN MOOD** replied that it was originally thought that the PSC might want to adjust rates in the interim, between now and July 1, 2002; he stated it had not been a popular idea, judging by the letters he had received. The increase would have resulted from a potential extended arrangement with PPL Montana.

{Tape : 1; Side : B}
REP. DELL still thought that a rate moratorium exemption was a good idea in that it provided a softer landing in July 2002; this did not mean that the PSC should act on it and raise rates early. He felt that philosophically, it met what they wanted which was more flexibility if they had to raise rates. He stated that the shock to California consumers was that much greater because they had no such provision. He was tempted to amend it back in but wanted to give the sponsor a chance to ascertain whether his bill managed things enough where it would not be necessary to give the PSC that flexibility. **VICE CHAIRMAN MOOD** felt the idea made sense in the abstract but not in the concrete. He suggested to amend it into HB 474 since it had a very broad title.

SEN. ELLIS felt it was not judicially sound, besides being unworkable politically, and he would oppose such an amendment. He charged that Montana had an obligation to live up to the deal it made with the consumer, and it was not the consumer who had done well recently but the generator, and the consumer should not have to pay.

REP. ROY BROWN wondered if the PSC could do all this under current law because they had been saying they had the authority to do most of it without help from this body. **VICE CHAIRMAN MOOD** replied that he believed that under the terms of SB 390, it would not be possible without further legislative action. Changing the subject, he referred to two Senate floor amendments, one addressing page 9, lines 14 through 18; this amendment provided that if a customer who opted back in could never leave which, in essence, re-regulated electricity, and he wanted it stricken. The second amendment addressed page 14, lines 14 through 16, and changed the language to read: "in order to be eligible for a lifeline rate, a large customer shall demonstrate to the commission that the customer had no more than an 8% return on equity on the customer's Montana operations in the previous 12 months"; he said this meant that the state would not subsidize a profitable operation by giving them cheaper electric rates. He did not know of any single company who knew at any given point what their profit margin was until they got their statement at

the end of the fiscal year. From a practical standpoint, he was not sure that Montana wanted to make a policy decision that 8% was a profit margin reasonable and proper for a private entity, and he suggested that sentence be stricken as well.

SEN. RYAN said he understood the sponsor's reasoning, but if every large customer was granted the lifeline rate and there was not enough power, how would the determination be made. **VICE CHAIRMAN MOOD** did not know but thought the PSC would make the determination based on merit.

REP. ELLIS stated he supported the sponsor's changes for page 14, line 15, because those companies paid good wages, and the state could ill afford to lose these jobs on a technicality which was also difficult to prove.

REP. DELL agreed that the 8% was arbitrary, and asked if it was in his bill that the PSC was the final arbitrator and had the discretion to decide who was going to be able to opt back in. **VICE CHAIRMAN MOOD** answered that he speculated, if there was not enough power for all the people to opt back in under the lifeline rate, that the PSC would determine who would come back based on merit. If there was adequate power, anyone who wanted to could opt in. **REP. DELL** asked to defer this question to staff, wondering if there needed to be criteria statutorily to make that determination, or if we should allow them that discretion by being quiet about it. **Mr. Everts** agreed it would be the latter. **REP. DELL** asked if this was the safe way to go. **Mr. Everts** replied that would be a policy decision for the Legislature to make. **REP. DELL** stated he did not want to tie the commission's hands by setting the rate of return at 8%, but at the same time he would not want to create a situation where a large industrial would be excluded arbitrarily.

Mr. Petesch cautioned that if this body were to provide this discretion to the PSC, it would be in their best interest to also provide sufficient guidelines within which that discretion may be exercised; otherwise there might be a potential and unlawful delegation of authority to the commission and all their decisions could be made subject to an arbitrary and capricious challenge.

SEN. ELLIS agreed, saying there had to be some guidelines to avert possible legal challenge.

REP. BROWN concurred, saying guidelines needed to be set because it was conceivable that one large customer could use all available power, preventing others from getting back in. He also opposed the rate of return as a basis for determination.

CHAIRMAN MCNUTT asked if the sponsor had given this any thought. **VICE CHAIRMAN MOOD** replied this was a new thought to him but he had no objections to pursuing this.

CHAIRMAN MCNUTT suggested the committee do that, agreeing that it was open-ended, and asked **VICE CHAIRMAN MOOD** to draft an amendment addressing this issue.

He then turned his attention back to page 9 and the other suggestion by the sponsor regarding lines 14 through 18 which mandated once a customer opted back in, he could not leave again.

SEN. RYAN referred to language in SB 243, allowing some customers to opt out each year in order to stimulate people moving off the default supply and on to other areas; he felt this deserved some discussion as to what criteria were to be applied, because as new generation came on line, it would create a market for them.

SEN. ELLIS felt that customers needed to make an election where they wanted to be; he cited MRI as an example who had used a huge block of power but whose operations also depended on the price of copper, and who might have to opt out because they could no longer be profitable even if the price of power dropped. He added that they were also prohibited from reselling their power.

VICE CHAIRMAN MOOD claimed that it came down to whether or not this Legislature was going to pursue the idea of deregulation. He stated that they were seeing an extraordinary set of circumstances in the electricity market, both in 2000 and 2001 when, according to the Cambridge Electricity Management Institute there would not only be an adequate supply of electricity in three or fours years but an abundance. He maintained that despite the demagoguery, when there is an adequate supply deregulation will do exactly what it has done for the phone companies, namely lower rates substantially. He charged that would be possible if we would rid ourselves of the artificial constraints upon new generation, and the regulations which increase the cost of providing new generation and have a genuine competitive market. He was adamant about leaving this kind of language in the bill because it would sentence them to a life of regulation.

CHAIRMAN MCNUTT asked how long he thought the lifeline rate would be utilized before the large companies could go out into the market and leave the default supplier. **VICE CHAIRMAN MOOD** said he would envision that they would stay under the umbrella of the PSC until there was a market without monopoly pricing, maybe within three to five years, based on the opinion of the CEMI. **CHAIRMAN MCNUTT** asked if the language he objected to said that

once they were in, they were in. **VICE CHAIRMAN MOOD** explained that it said that someone who had opted out of the system, and opted in under the lifeline rate, could not ever opt out again.

SEN. ELLIS asked if this bill could work for an indefinite period of time, and **VICE CHAIRMAN MOOD** agreed.

REP. BROWN wondered how an electrical supplier would procure power for set periods of time when large industrials kept opting in and out. **VICE CHAIRMAN MOOD** did not have a definite answer but felt people would not opt out without having a secure supply, so there would be no going back and forth; and he would be far more comfortable if the amendment said once they had opted out, they could not opt back in.

CHAIRMAN MCNUTT addressed **REP. BROWN,** saying his point was well taken; he agreed that an orderly process for people exiting the program needed to be found to give the supplier a chance to maintain a competitive portfolio. He agreed with **VICE CHAIRMAN MOOD** that nobody should be locked in forever because that would regulate them which was not the intent of this body. He said he would work on amendments allowing an orderly withdrawal.

SEN. RYAN wondered if this language prohibited any entities who had opted out and faced expiration of their contract after October 1, 2001, from coming back in. **SEN. ELLIS** knew that the refinery in Great Falls had a five year contract at a price much higher and that they might want to opt back in, but he was not sure if they could get out of their contract in the first place. **SEN. RYAN** referred to page 9, line 15 where it said "make an election prior to October 1, 2001" and asked if their contract expired before 2007, would they have the option to come back in, using the default supplier as a source. **SEN. ELLIS** thought this could be provided for, but that the impact would be felt within the next five years, and that the supply/demand issue would be more balanced after that. He agreed with **VICE CHAIRMAN MOOD** that we were faced with an unusual set of circumstances, such as the drought and the restrictions on new generation. He surmised that rates had been cheap, and this kept regulators from allowing recovery of the cost for the building of new plants through a rate increase. This all built up, creating short supply and resulted in the horrific price increases seen now.
CHAIRMAN MCNUTT repeated his suggestion with regards to amendments which would provide an orderly process for opting in or out, in response to **SEN. RYAN's** concerns.

{Tape : 2; Side : A}

CHAIRMAN MCNUTT asked if there were any other entities which might need some flexibility. **SEN. ELLIS** suggested this included the 47 school districts, 23 towns, and the irrigators as well as industrial consumers. The problem irrigators were facing was being charged long-term for brief, seasonal use.

VICE CHAIRMAN MOOD pointed to the "green amendment" on page 10 which failed again to include wood as a renewable resource; also, on page 11, lines 22 and 23, he felt no new language should be added over and above what was currently in SB 390 because it would weaken the state's case should there be legal challenge. Similar language was to be found on page 14, lines 28 through 30, and he thought this should also be stricken.

REP. BROWN suggested that staff go through this bill, as amended, and check for language with regards to SB 390 which could weaken a potential court case. **CHAIRMAN MCNUTT** agreed and said it should be brought to **VICE CHAIRMAN MOOD's** attention so he could work on possible amendments. He then asked for comments from the audience pertaining to the issues touched on in HB 632.

Pat Corcoran, MPC, felt it would be helpful to include some parts of the failed SB 243 which addressed transition and customer choice; some language had been drafted in anticipation of the free conference committee activity which would provide for an orderly process of opting in or out; this needed to include dealing with the electricity supply cost the default supplier had committed to by procuring power to fill contracts of customers who later opted out. He stated this information was available and could help staff in drafting amendments dealing with the orderly process issue.

Mike Uda, Ash Grove Cement Co., referred to this same issue, explaining that the large industrials who had opted out were accumulating balances for the generation supply costs which had been attributed to them as part of the stranded cost calculation. If the supplier had entered into long-term power supply contracts, those customers had an obligation, and it was appropriate to take that obligation with them when they left. He surmised that the question arose if those stranded costs would have to be paid at some point, or if they would be extinguished if the customers came back in. He advised development of a coherent system which would address all customers and would be fair and equal for everyone, because it would be disastrous if some industrials were forced to stay with the default supplier at a potentially higher cost, and their competitors were able to leave the system without restrictions. He stated that the intent of SB 390 was full customer choice, and not just for industrial customers who he thought would opt for longer term contracts to

secure a steady power supply. **CHAIRMAN MCNUTT** asked if he meant industrial or large customers when he said "all customers", because customer choice during the extended transition period did not apply to them in the short term. **Mike Uda** replied that was correct; the idea of full customer choice was that there would be a transition, and the utility was acquiring contracts to the extent that there was a default service obligation but at some point, everyone would be able to go to customer choice.

Ellen Porter, LP Missoula, explained that when their previous contract expired, they entered into a five year contract which only covered the first, second, and fourth quarters of every year, for the duration of the contract. This meant they would be without power come July 1st, and if they were not allowed to opt in and opt out, they would be in breach of contract for the other three quarters of the five years. **CHAIRMAN MCNUTT** asked her to expand on that contract. **Mr. Porter** explained that when they entered into that contract, the third quarter prices were cost prohibitive, and would have put them in the red. Subsequently, ENRON provided them with a contract for the three quarters only which left them without a power contract for three months out of the year. She asserted that if the company went down for a whole quarter, their customer base would erode to the point where it would do irreparable damage. **CHAIRMAN MCNUTT** inquired if she was wanting the ability to opt in and then out for the third quarter only. **Mr. Porter** said that was correct; in order to stay in operation, they would have to have the ability to opt in on July 1 and opt out again on September 30. **SEN. RYAN** asked if these quarterly contracts varied, to which **Ms. Porter** replied that they had a firm price for all three quarters. **SEN. RYAN** wondered what price level they would need to operate. **Ms. Porter** said they needed to be below $100 per megawatt hour.

SEN. ELLIS invited the manager of the Great Falls Refining Cooperative to comment on his situation. **Leland Griffin** stated that they had entered into a five year and eight months contract with PPL Montana last November, and said he was not sure if anything that was happening here would allow them to opt out of the contract but that they were interested in the discussions because it could affect them from a competitive standpoint. **CHAIRMAN MCNUTT** wondered why it was a five year, eight month contract. **Mr. Griffin** responded that he was able to obtain a better price by going a few months beyond five years.

CHAIRMAN MCNUTT then proposed to work on some amendments, and asked **VICE CHAIRMAN MOOD** if there was anything else in his bill the committee needed to look at. **VICE CHAIRMAN MOOD** believed he had covered all the issues he had wanted to bring up. **SEN. RYAN**

referred to the green power amendment, and asked how much wood it took to create a kilowatt or megawatt of power. **VICE CHAIRMAN MOOD** said he would have to find that out; he added that the term biomass had been written into other bills, and it just had not made into this one.

CHAIRMAN MCNUTT, seeing no other comments from the committee on HB 632, decided to postpone work on this bill pending the proposed amendments, and take up HB 645 which dealt with the electrical energy pool. He asked the staff if any additional amendments had been drafted, and **Greg Petesch** told him that there were some in progress, based on **Mr. Hines'** comments.

SEN. ELLIS wanted to be sure that this energy pool could be formed by either donation of conserved energy or money. **Mr. Petesch** confirmed this.

When asked by **CHAIRMAN MCNUTT** if amendments were needed to finalize the bill, **Mr. Petesch** affirmed this, saying some of the amendments dealt with a termination date, and others clarified the administration of the pool.

Pat Corcoran, MPC, referred to page 2, line 5 of the bill, saying that there used to be a conservation target consumers had to meet. He believed there still needed to be some sort of threshold in the bill because usage varied from one year to next, citing people leaving for the winter in one year and not the next, or changing weather conditions which could influence the level of usage; the key to this bill was to have a measured amount of conservation savings, and he felt there needed to be some way to measure the true amount of conservation versus one that was seasonal. **CHAIRMAN MCNUTT** asked what kind of threshold this committee should look at as a meaningful target for conservation. **Pat Corcoran** replied it was difficult to identify because of the variety of customers; the initial intent would be to target the larger customers because they operated fairly consistently throughout the year. For smaller customers later on, it would be useful to look at a four year average to realize if there was a measured change.

CHAIRMAN MCNUTT asked if **John Hines** wanted to comment on this. **Mr. Hines, Northwest Power Planning Council**, explained that the 20% threshold was eliminated because it was not deemed a workable percentage because it was based on the customer's total load. In the case of an industrial using 100 megawatts, they would have to come up with a savings of 20 megawatts to participate in the pool which would be unattainable, whereas a homeowner with a 750 kilowatt load could easily conserve enough to participate. It was decided then to leave it up to the commission to develop

appropriate criteria, and they could set them for each different customer class, thereby mollifying MPC's concerns about creating an administrative nightmare. **CHAIRMAN MCNUTT** stated it would make sense to have the schedule developed by the PSC, and asked if any PSC representative would care to comment.

Will Rosquist, PSC, stated that there seemed to be enough authority in the bill for the PSC to implement the rules necessary to address these concerns.

VICE CHAIRMAN MOOD asked if the staff could have amendments ready for HB 645 by this afternoon.

REP. BROWN referred to the three main amendment issues, termination date, administration, and irrigation. **Mr. Petesch** relied that there was a priority for irrigators in the bill, and some clarification needed to be added. **SEN. ELLIS** asked if staff had addressed the schools and cities, and **Mr. Petesch** said he had not.

CHAIRMAN MCNUTT stated that staff would work on the proposed amendments for HB 632 and HB 645, and the committee would reconvene at 1:00 p.m. in Room 102.

P.M. SESSION - NEW TAPE ***{Tape : 3; Side : A}***

CHAIRMAN MCNUTT wanted to start off with amendments for HB 645 and asked **Greg Petesch** to explain **Amendment #HB064505.agp,EXHIBIT(frs86sb0019a06).**

Mr. Petesch explained that these amendments dealt with the administration issues of the energy pool; it terminated the pool on June 30, 2002 which was the date applying to the rate moratorium; and then proceeded to read from the amendment.

Motion: CHAIRMAN MCNUTT MOVED that **Amendment #HB064505 be adopted.**
Vote: Motion **carried with three Representatives** and **three Senators voting aye.**

CHAIRMAN MCNUTT introduced **Amendment #HB064506.agp, EXHIBIT(frs86sb0019a07),** requested by **SEN. RYAN.**

Motion: **Sen. Ryan** moved **AMENDMENT #HB064506,AGP BE ADOPTED.**

Discussion:

Mr. Petesch explained that this amendment provided a definition of conservation efforts achieved through efficiency improvement or actual reductions, and not by shifting demand from a utility to a non-utility supply source, such as onsite generation.

REP. DELL asked if there was a baseline used to determine efficiency. **Mr. Petesch** stated this could be found on page 2, lines 10 through 17 of the bill which specified the customer's weather normalized use during the base year.

Vote: Morion carried with **three Representatives** and **three Senators voting aye.**

CHAIRMAN MCNUTT stated that he wanted to wait before taking further action because some of these bills had be coordinated, and he wanted to continue with HB 632, introducing **Amendment #HB063207.agp**, **EXHIBIT(frs86sb0019a08)**, requested by **REP. DELL.**

REP. DELL suggested putting these amendments on HB 474 rather than on HB 632, by request of **VICE CHAIRMAN MOOD**, which was also acceptable to **REP. SLITER**, sponsor of HB 474.

CHAIRMAN MCNUTT agreed to discuss the concept of the amendments and not to vote on them until they had been put into HB 474. **Mr. Petesch** explained that these amendments dealt with the default supplier provisions the committee had discussed, such as cost recovery, energy purchase by the default supplier, and the opt in/opt out procedure. The next amendment struck language in both bills that required a company who opted back in to stay in for life. Referring to item #1 in **Amendment #HB063207.agp**, he explained that this definition of electric cost was used when referring to recovery of cost through rates. **VICE CHARIMAN MOOD** wanted to be sure the last sentence meant that profit from the surplus electricity would be deducted from the supply cost.

REP. BROWN asked what ancillary service costs were. **Mr. Petesch** explained that those were costs directly related to the fuel and transmission cost as well as the management of the contracts. **REP. BROWN** wondered how it was determined which management costs were directly related to this, and what were normal management costs. **Mr. Petesch** replied the commission would have the authority to examine the costs and determine whether they fit this definition.

VICE CHAIRMAN MOOD admitted he was not familiar with the concept of congestion, and asked for an explanation. **Mr. Petesch** believed that in this context, congestion meant the inability to move power over the grid because supply exceeded the amount which

could be moved at that point in time. **VICE CHAIRMAN MOOD** asked if there would be a cost to the default supplier, such as foregone revenue. **Mr. Petesch** explained that the cost of producing energy was incurred but it could not be moved.

SEN. RYAN wondered if someone from the industry could explain these terms. **Pat Corcoran** agreed to explain some of the terminology: electricity supply costs included fuel; ancillary service cost was a set of specific services which compliment the transmission related activities, and was put into practice under FERC guidelines. He stated **Mr. Petesch's** explanation of congestion was correct, and he added congestions costs were incurred when the company bought their way through the congestion which sometimes might be an economical thing to do, but had to be looked at by the PSC. He also explained that natural losses were incurred when power was transmitted from one point to another, and those were normally accounted for; other costs incurred recently were those for a consultant hired to conduct the RFP process. Lastly, he touched on the revenue generated through the sale of surplus electricity into the market, the profits from which were credited back against the total electricity supply cost.

Greg Petesch stated that the next amendment dealt with the transition period date of 2007. Item #4 was the short version of the opt in/opt out procedure. He introduced the long version, **Amendment #HB063209.agp**, **EXHIBIT(frs86sb0019a09)**, which held many of the same concepts but provided beginning July 1, 2004, customer loads amounting to 10% or less of the remaining default supply load in each year of the transition period were eligible to chose an alternative supplier, as in (b). He went on to read the amendment to the committee. He added that it specified a monthly load requirement for the five year period and an annual notice to the default supplier, and he felt this provision would address the problem LP was facing so that they could have a five year contract for each quarter they are not covered for now, because it could be bid by the default supplier.

REP. DELL wondered if **Pat Corcoran** had anything more to add. **Pat Corcoran** said he welcomed the additional detail in the long version because it was information they had supported in SB 243.

SEN. RYAN felt the committee was getting very specific with the second sets of amendments, dictating into law time frames and amounts; the first set was more open and broader, and let the PSC set up workable provisions as the market changed, allowing them more flexibility. **VICE CHAIRMAN MOOD** referred to **Mr. Petesch's** explanation that the second set of amendments tied anyone who came back in to the default supplier to a five year contract, and

asked whether there were any provisions to opt out early. **Mr. Petesch** replied only 10% of the supply load each year could opt out, and the commission would establish procedures to identify who could. The thought behind the time frame was that one could obtain a better price on a five year contract when opting back in.

SEN. ELLIS asked if there was any difference between the two amendments in way of defensibility. **Mr. Petesch** replied that the more detail one had, the better the chance of avoiding a challenge of unlawful delegation of authority.

Mr. Petesch then introduced the next substantive amendment, namely item 11 in Exhibit (8), which said that the default supply provider must provide all supply requirements to all default supply customers which required him to procure a portfolio of supply using industry accepted procurement practices. He went on to read from the amendment, stressing subsection (d).

CHAIRMAN MCNUTT asked if there were any question from the committee on item #11 before the remainder was covered. **SEN. ELLIS** inquired whether this was taken from SB 243, and **Mr. Petesch** replied that it was. **SEN. ELLIS** wondered if there was any substantive change from what SB 243 contained. **Mr. Petesch** answered not intentionally.

REP. BROWN referred to subsection (b), saying he was concerned with the word "may". **Mr. Petesch** explained that there were two methods: the contracts could be submitted to the commission and have them approve or reject them; the second alternative was to just enter into the contracts and then have the commission do a prudency review which was limited to the facts known, or those that should have been known, at the time the contract was entered into. The reason for the alternative was that a good deal could come along which did not allow the time spent in first submitting contracts for review.

{Tape : 3; Side B}
SEN. ELLIS questioned the 30 day time period in which the PSC can make their reviews. **Mr. Petesch** felt 30 days was a fairly significant time period, and explained it was the outside limit as they could not take any longer.

Mr. Corcoran explained that sometimes proposals were good for a few hours only; with regards to the contract discussed here, they needed to be differentiated into two categories, those for larger blocks of power and those for longer periods of time; he cited their recent request for proposal to PPL Montana which took two weeks; he cautioned that there were things the default supplier

would have to do instantaneously in order to manage its load, and these would be submitted for the prudency review.

Mr. Petesch moved on to item #13, which struck subsection (8) of the bill, so that now they can arguably recover costs at a higher rate than they would have been able to had the regulatory system had remained intact.

REP. BROWN asked if this statement was in HB 474, and **Mr. Petesch** assured him it was existing law. **VICE CHAIRMAN MOOD** wondered why Section (8) was put in SB 390 in the first place. **Mr. Petesch** thought it was to make sure the transition costs would be regulated.

REP. BROWN wondered if changing current law would have any effect with regards to a legal challenge. **Mr. Petesch** did not believe it would affect the authority of the commission to establish rates, it might have an impact on the amount of those rates.

Bob Anderson, PSC, charged that this language was one of the keystones of the commission's assertion of authority under current law.

SEN. ELLIS asked what the basis was for eliminating that language. **Mr. Petesch** felt it was stricken to allow the supply costs as defined to be fully recoverable which could potentially conflict with this section.

VICE CHAIRMAN MOOD argued that in an effort to protect the default supplier, everyone else was put at risk, including the PSC's authority. **Mr. Petesch** felt this was a broader assertion than he could agree to. **VICE CHAIRMAN MOOD** asked how he would characterize it. **Mr. Petesch** believed it allowed the default supplier to recover costs through rates that were higher than they would otherwise have been able to recover.

SEN. ELLIS wondered if there was any way to bring these ideas together without striking this section. **Mr. Petesch** replied there was, if the committee chose to adopt it. **SEN. ELLIS** stated he would choose that avenue.

Greg Petesch continued to read from Amendment #HB063207.agp, item #14 which directed the commission to establish electricity supply rates for individual customer classes.

REP. BROWN stated that the last sentence of item #14 bothered him somewhat because he felt the PSC should be the one to decide what just and reasonable rates were, and asked the staff to expand on

the effect of that statement. **Mr. Petesch** explained that if the electricity supply costs, which are key to this entire set of amendments, were approved, they would be passed on to the consumer and be considered just and reasonable rates; he stressed that the commission had the role of approving those supply costs.

SEN. RYAN asked for clarification if the residential customers whose usage would fluctuate the most would be paying the highest cost. **Mr. Petesch** answered the classifications he referred to, such as residential, commercial, and irrigation, were currently in effect and there were different rates attached to them; he believed that would continue under this provision.

REP. DELL asked **Bob Anderson, PSC,** to offer his comments on the last sentence of item #14 also. **Mr. Anderson** commented that the term "just and reasonable" existed in current law but was not defined; it had been established over decades and came to mean cost-based plus a reasonable rate of return on the investment. In the context of an unregulated market, this no longer applied, though. He thought the statement in the amendment would eliminate any challenge what those costs would be under existing traditional regulation.

CHAIRMAN MCNUTT inquired if there was anything the commission considered to be just and reasonable which was not subject to challenge. **Mr. Anderson** replied everything they did was subject to challenge. **CHAIRMAN MCNUTT** surmised that this statement was there because once the commission had made its determination with regards to the supply costs, and approved them, the rates were deemed just and reasonable but still subject to challenge. **Mr. Anderson** claimed he did not see what the basis for a challenge would be if this language was included.

VICE CHAIRMAN MOOD reiterated that the very first amendment in Exhibit (8) defined what electricity supply costs were; then, in the last amendment, it stated these were considered to be just and reasonable, and he wondered if this closed the loop, by saying that these were the costs, and they could not be challenged because they were deemed just and reasonable. **Mr. Petesch** replied it almost did, with the distinction that it said "approved supply costs" because the commission could also reject claims of supply costs if they deemed them to be not prudent. He conceded that so long as these were approved supply costs, **VICE CHAIRMAN MOOD'S** statement was accurate.

SEN. ELLIS felt that striking Subsection (8) as in item #13 conflicted with item #1 and thought inserting electricity supply cost more accurately reflected this committee's goal, and looked for comments. **REP. BROWN** referred to **Mr. Anderson's** statements

with regards to reasonable rates not being statutorily defined and asserted that these amendments were designed to allow the default supplier to recover his costs and pass it through without a reasonable rate of return; if there is no definition, could past definitions of just and reasonable rates be used, adding a reasonable rate of return. **Mr. Petesch** believed the definition allowed inclusion of related management costs as well as the time value of money. **REP. BROWN** requested **Mr. Anderson** to speak to this. **Mr. Anderson** stated it was important to understand the meaning of rate of return; it was the return on an investment. He went on to say that the utility industry was a capital intensive industry, with generating plants as well as distribution and transmission requiring a lot of capital; investors invest in that plant and earn a reasonable return. The default supplier, on the other hand, did not have to invest in plants, poles, and generators, and consequently there was very little capital involved; consequently, "rate of return" did not apply here. The default supplier should be allowed to make a profit on the human capital and the skill brought to the enterprise, and this was permissible under current law.

SEN. ELLIS referred to item #1 again and asked if ancillary service costs did not cover what he just explained. **Mr. Anderson** did not think it did; ancillary services were for technical support with regards to the transmission system and were not profit related.

CHAIRMAN MCNUTT wanted to make sure these amendments were not to go into HB 632, and **VICE CHAIRMAN MOOD** confirmed he would rather they went into HB 474. **CHAIRMAN MCNUTT** asked him to explain his reasoning.

VICE CHAIRMAN MOOD charged that the purpose of HB 632 was to reassert the authority of the PSC to regulate generation of electricity; assuming this went to court, and the court reaffirmed this, it would go forward. If the court denied the authority, then every single individual and entity in this state was at risk, except the default supplier; they were guaranteed full cost recovery. He doubted that this was good policy.

SEN. ELLIS understood his concern but felt the alternative was to follow the course California had taken. He found that more unacceptable, saying that the default supplier's assets would not last any length of time, and it was incumbent on the two conference committees to look for some solution other than to destroy an entity by not allowing it to recover any bonus from good decisions, and leaving it to bear the liability only.

VICE CHAIRMAN MOOD responded that as the future unfolds, he would love to see MPC stand with the state of Montana, wanting to be part of the solution. He did not believe the PSC would lose a potential lawsuit with regards to PPL Montana's assets or generating capacity, but if they did, and with the emergency power given to the governor, he was certain that she would declare an emergency, and that would be the time full cost recovery made sense. In the meantime, we could not allow them to stand on the sidelines, saying this was not their problem any more; they asked a previous legislature to go down this path, and now they are washing their hands of any responsibility, leaving us to our own devices.

{Tape : 4; Side A}
REP. DELL respected **VICE CHAIRMAN MOOD'S** will to not add these amendments to HB 632; he agreed that philosophically, they did not fit. But he thought there still needed to be a provision to protect the default supplier so he would not go bankrupt, and the members had to err on caution to avoid a California situation. He accepted these amendments because he felt the need to go forward. He charged that the default supplier had to have a vested interest in getting the best deal for the consumer, using as an example how they could buy their way through congestion. He said if there was no incentive for them to be creative, they could spend the money for it and the costs could be passed on. Lastly, he expressed hope that the right mix could be found, feeling that the perspectives of both bills were valid and needed to be included in the final bill.

SEN. RYAN wondered if NorthWestern would explain their interest in keeping prices low, and why this language may work for them. **Mike Hanson, NorthWestern**, agreed that MPC's interests needed to be aligned with that of the consumers but felt some of the confusion came because there were two different roles. The role of the delivery company was a very capital intense business, with a big investment; their interests were aligned with those of the consumers because their economic viability was tied to that of the consumers. Simply put, if companies had to shut down, the utility would suffer, and that was great motivation, and ensured that the best option for price and availability would be there. The default supplier, on the other hand, had a different role; he served those who chose not to choose for themselves, procuring power in the marketplace while trying to get the best value. If the default supplier was not allowed to recover the costs incurred on behalf of the consumers, his financial viability would be damaged. He stated these were very serious consequences, pointing to the state of California whose bonding ability may be threatened as a result of PG&E filing for bankruptcy. He understood that the consumer had to be protected,

and the way to do this was to give the default supplier the ability to get the best deal, subject to the reasonable review and scrutiny of the commission.

VICE CHAIRMAN MOOD addressed **Mike Uda** and asked for his perspective on how to best protect the default supplier as well as the consumer, stating that this was a very difficult issue. **Mike Uda** felt that the reason for the negative response to SB 243 was because of the very issue **VICE CHAIRMAN MOOD** had identified. He understood the default supplier's concern not to be exposed to market risk; however, there was an incentive, as long as they were not held harmless, for this not to become just our problem. He pointed out that there was a transition with MPC divesting itself of their remaining assets to NorthWestern Corp., and it was dangerous to let them off the hook because one, MPC, would be gone (TouchAmerica), and the other would say they were not responsible for SB 390. He talked about the California situation, saying the two utilities, PG&E and Southern California Edison, saw a price curve and requested permission from the Public Utility Commission to enter into long term contracts because they knew what would happen if they were forced into the spot market. The commission denied this, and they had to continue to buy from the PX and the ISO; this resulted in the PX drying up and everything ended up on the spot market which caused the two utilities to accumulate substantial debt. The state's response was one of alarm, and they became the guarantor for those companies and in turn, ran up substantial debt. Through the bankruptcy, the current providers were getting paid, and it remained to be seen how much the generators would be able to recover. He went on to say that sometimes, for a large company, bankruptcy was a management tool, usually the company emerged stronger, the state retained jurisdiction over retail rates, and consumers were no worse off than before the bankruptcy. He asserted that PG&E filed for bankruptcy because in return for the bailout by the state, PG&E was to sell their transmission and distribution systems and chose not to, while Southern California Edison did, and thus pushed themselves into bankruptcy. The mistake the state of California had made was to step into the breach. He felt that situation was not analogous to what Montana was facing. He went on to say that the power companies might have an incentive to keep customers on the system, and it was debatable that they all would leave. His perspective was that the transmission/distribution system component was small compared to the power supply cost component which was so enormous that it overwhelmed any other incentive they might have; it was like trying to balance $30 million with $1 billion. He charged that he was not insensitive to their risk; he acknowledged that it was there and should continue to be there, and he felt strongly that the approach of HB 474 was inconsistent with the commission's assertion of jurisdiction. In closing, he stated that if the

committee adopted these amendments, they would damage the commission's court case.

SEN. ELLIS had a different recollection of the California problem, saying that when California stepped into the breach, sources like PPL Montana and other providers selling them electricity were owed enough money and were reluctant to continue to sell power; it took an order from the Secretary of Energy to have them continue. He felt if we forced someone into bankruptcy, there would be a lot more skepticism, and asked **Mike Hanson** to respond to that. **Mr. Hanson** agreed with **SEN. ELLIS's** assessment, stating what had happened in California was that suppliers where concerned they would not be paid; at the same time there were power plants down for maintenance and shortages of supply occurred, and he did not want to debate a cause and effect linkage. Moreover, when the delivery company was the default supplier, it threatened their obligation to continue to supply reliable power because of the millions of dollars they had to expend annually just to maintain the systems, and if they were not protected, it would increase the cost of financing the operations, at best, and at the worst, create a California situation. In closing, he spoke of the investment his company was looking to make and their long-term commitment; neither MPC nor NorthWestern wanted to be in the generation business; they were not looking to be default supplier but accepted that role, and pledged to supply power at reasonable cost.

SEN. ELLIS wondered if it would not compound the problem if there was a correlation between the shut-downs for maintenance and the fact those companies were not getting paid. **Mr. Hanson** replied that any company entering into a contract would assess their own risk, and they would factor that into their pricing if they thought they might not get paid.

SEN. RYAN asked what he felt about the lifeline rate. **Mr. Hanson** replied the best thing for everyone would be if they were successful at setting the rate at the generator through regulation or other means. He was concerned that if they fell short of that goal, a price cap would be imposed on the default supplier and that would lead to those dire consequences; if the lifeline rate was set at 150% of the cost based rate, the difference could amount to almost $70 million annually. His suggestion was to pursue market-based solutions.

CHAIRMAN MCNUTT announced Amendment #HB063208.agp, **EXHIBIT(frs86sb0019a10)**, and asked staff to explain it. **Mr. Petesch** stated the added language was to cover both the PPL Montana and the proposed NorthWestern sale by MPC. **SEN. RYAN**

explained that this amendment request was sent to him by someone in Kalispell who wanted the committee to review it.

VICE CHAIRMAN MOOD expressed that he liked this amendment but also said he had meant to discuss with staff the possible striking of the section this would be inserted into. He alluded to the fact that a lot of the problems were due to the fact that MPC had sold its generation assets, and now the company intended to sell its transmission assets as well; he thought it had the potential to do further mischief.

REP. BROWN referred to that same section in the bill and asked if it was needed at all, agreeing, though, that the amendment would be good if the section stayed in. **Mr. Petesch** stated he believed that it was the contention of the PSC that this language was superfluous to their assertion of jurisdiction.

SEN. ELLIS asked his assessment of that statement. **Mr. Petesch** believed that if the commission did have jurisdiction, this language added nothing.

REP. BROWN asked **Bob Anderson, PSC,** for his comment, and he replied that the commission believed this language, if added, would weaken its case because it could be said that they did not have the authority under existing law. If they had the jurisdiction they asserted, this language was not needed.

SEN. ELLIS asked **VICE CHAIRMAN MOOD** to reflect on this because he agreed this language might not be necessary. **VICE CHAIRMAN MOOD** repeated that the purpose of HB 632 was to fortify the position the PSC took, and he would not want anything in the bill that weakened that, and adding language to current law did just that.

CHAIRMAN MCNUTT reminded **VICE CHAIRMAN MOOD** of the additional amendments to HB 632 that he was going to look into, and **VICE CHAIRMAN MOOD** said he would discuss them with staff.

CHAIRMAN MCNUTT proposed to move back to HB 474, and introduced **Amendment #HB047404.agp, EXHIBIT(frs86sb0019a11),** giving a quick overview of its implications with regards to energy and conservation programs as they apply to cooperatives.

Motion/Vote: Sen. Ryan MOVED THAT THE AMENDMENT BE ADOPTED. Vote: Motion carried with **three Representatives** and **three Senators voting aye.**

REP. DELL asked to make a technical correction to the amendment, item #2, saying the first inserted word "and" should be an "or". **Todd Everts** stated he would correct it.

Note: A corrected **Amendment #SB001902.ate** was submitted on April 18, **EXHIBIT(frs86sb0019a12).**

ADJOURNMENT

Adjournment: 2:45 P.M.

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SEN. WALTER MCNUTT, Chairman

_____
MARION MOOD, Secretary

DM/MM