MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
FREE CONFERENCE COMMITTEE ON HOUSE BILL 474

Call to Order: By **CHAIRMAN WALTER MCNUTT**, on April 20, 2001 at 1:25 P.M., in Room 137 Capitol.

ROLL CALL

Members Present:
Sen. Walter McNutt, Chairman (R)
Rep. Douglas Mood, Vice 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: Greg Petesch, Todd Everts, Legislative Branch
Marion Mood, Secretary

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

Committee Business Summary:
Hearing(s) & Date(s) Posted:
Executive Action: HB 474

EXECUTIVE ACTION ON HB 474

CHAIRMAN WALTER MCNUTT announced there were several new amendments which would be discussed and voted on separately.

Motion/Vote: SEN. ALVIN ELLIS, JR., MOVED AMENDMENT #HB047409.AGP BE ADOPTED, EXHIBIT(frs89sb0474a01).

Discussion:

Greg Petesch explained that this was an amendment to an already adopted amendment, and the new language was inserted in bold type; it dealt with the power authority and revenue bonds. The

first change on page 3 was a clarification that the power authority can purchase, construct, and operate power generation facilities. The new language on page 4 essentially clarified the standard procedure for issuing bonds, and the change on page 5 dealt with the use of the proceeds to either design and build new generation facilities or to pay capitalized interest during construction, or make use of other options as described therein.

REP. TOM DELL asked why these changes were made, and **Mr. Petesch** replied that the Bond Council had requested them after reviewing the language.

Motion/Vote: Motion carried, with **3 Senators and 3 Representatives voting aye.**

Mr. Petesch introduced Amendment #HB047414, **EXHIBIT(frs89sb0474a02)**, and explained this was also amending a previous amendment by adding "or may choose to again be served by the default supplier"; this clarified the procedure established by the PSC to allow opting in and opting out, and this choice must be available by July 1, 2002; it was designed so no one can opt back in under the rate freeze.

Motion/Vote: SEN. ELLIS MOVED that Amendment #HB047414.agp **BE ADOPTED.**

Discussion:

REP. ROY BROWN asked if the commission would be offered guidelines as to how long a customer had to be on or off the system. **Mr. Petesch** reiterated that the long version of this amendment had provided for five years, and the committee had chosen to go with a less restrictive version and agreed to allow the PSC to adopt procedures it determined to be appropriate. **REP. BROWN** surmised that customers opting in and opting out would create quite some concern for the default supplier, and the committee's intent should be that it did not happen that way. **Mr. Petesch** drew his attention to the last sentence of the amendment where it said the procedures have to provide for full recovery of the cost associated with this. **CHAIRMAN MCNUTT** felt it also said that the PSC had the authority to establish procedures and terms under which they can come and go.

Motion/Vote: Motion carried with **3 Senators and 3 Representatives voting aye.**

SEN. DON RYAN introduced Amendment #HB047421.ate, **EXHIBIT(frs89sb0474a03)**, which had been inserted in HB 632 and

was amended to include "biomass" which would give people an alternate choice.

Motion/Vote: SEN. RYAN MOVED Amendment #HB047421.ate **BE ADOPTED. Motion: Motion carried**, with **3 Representatives and 3 Senators voting aye.**

Motion/Vote: SEN. ELLIS MOVED that Amendment #HB047411.ate, **EXHIBIT(frs89sb0474a04) BE ADOPTED.**

Discussion:

SEN. ELLIS stated that this amendment was a revamped version of the one he had proposed the day before. He pointed out that it did not increase the USB charge but instead appropriated a percentage of it to irrigation conservation; this meant the irrigator had to switch to smaller pumps or lower pressure heads to be entitled to this financing. **Todd Everts** reiterated that this amendment did nothing to change the base year or raise the percentage; it directed a utility which had filed a transition plan to apply 15% of the USB monies to reducing energy cost through conservation and efficiency measures for irrigated agriculture.

CHAIRMAN MCNUTT asked if this amendment had any effect on the low-income programs. **Todd Everts** replied it did not because the low-income program had a prioritization of at least 17% of the existing USB monies, and the 15% for irrigated agriculture was also a portion of the existing fund.

REP. BROWN asked for a representative from Energy Share, and **Greg Groepper, Exec. Director**, stepped forward, praising **SEN. ELLIS** for a much better amendment with regards to the low-income program.

REP. TOM DELL asked if **Debbie Smith** had any comments on the amendment. **Debbie Smith** also lauded the concept; she was not sure if MDU or Pacific Gas & Electric were participating in this program. She referred to MPC having recently updated their conservation potential for its service territory, and identified about 100 megawatts for savings that were available at $35 per megawatt hour or less, and it was estimated that less than 1% of that was from irrigated agriculture, 25% from residential customers, and the remaining percentage from the commercial/industrial sector. She suggested checking with the power companies whether there was enough conservation available in irrigated agriculture to meet this threshold.

SEN. ELLIS asked if someone from the cooperatives could comment on this, too. **Doug Hardy, MT Electric Cooperatives,** stated that only the Flathead and Glacier Cooperatives had opted into competition; the former having about 300 irrigation systems which could be true beneficiaries of this program, and the latter had a significant irrigation load as well. The rest of the cooperatives would have the right to direct but would not have the percentage mandate.

REP. BROWN asked whose share the 15% would come from. **Debbie Smith** explained that it come from the remainder of the USB fund; it would not be deducted from the low-income programs but from conservation directed to other sectors and the renewable power fund. In determining which programs to fund first, the power companies looked at where they could get the most savings for the least amount of money.

REP. BROWN wanted to make sure that this satisfied the large customers who had objected to the old version of this amendment. **Donald Quander, Counsel for MT Large Customer Group,** felt the present amendment would not inhibit the ability of large customers to self-direct funds up to the amount they pay to the USB; the question at hand dealt with prioritizing the remaining funds among other uses.

SEN. RYAN referred to a remark by **SEN. ELLIS** that this had the potential to conserve water, too. **SEN. ELLIS** explained that using lower pressure sprinkler heads resulted in water dispersal less wide and thus less evaporation which in turn got more water to the ground.

CHAIRMAN MCNUTT invited others from the audience to comment on this issue.

Warren McConkey, Gen. Mgr., Flathead Electric Cooperative, stated that even though they had about 360 agricultural accounts, these only amounted to 2% of total sales, and 15% of the total USB program designated for this small sector would be almost impossible to reach. Moreover, they had implemented energy efficiency measures for that sector over the last 10 years, making further conservation very difficult.

REP. DELL asked what happened if this was not achieved. **Mr. Everts** replied if the 15% was not achieved, there was a state fund created to provide for energy cost reduction for irrigated agriculture through conservation efficiency as per page 9; this would be administered by the USDA. **REP. DELL** inquired if this fund could be used if there was no money for other programs. **Mr. Everts** declined comment.

Mike Murphy, MT Water Resource Association, rose in support of the amendment because he felt this type of program could become critical to irrigated agriculture, in light of rising prices, even though he could not endorse the 15% level.

SEN. ELLIS wondered if someone from the PSC could be more specific about whether this program really obligated $800,000. **Will Rosquist, PSC,** explained that he computed 15% of MPC's Universal System Benefit's expenditures for the year 2000 and arrived at $1.3 million. **SEN. ELLIS** suggested reducing the percentage to 6%. **John Hines, Northwest Power Planning Council,** calculated that based on a USB collection of $8.5 million per year, 6% would represent $510,000. **CHAIRMAN MCNUTT** asked **SEN. ELLIS** if this amount was more in line with this thinking, which **SEN. ELLIS** confirmed.

Substitute Motion: **CHAIRMAN MCNUTT moved** to reduce the 15% tp 6%.
Motion/Vote: **Motion carried,** with **3 Representatives and 3 Senators voting aye.**

CHAIRMAN MCNUTT stated that now the original motion was before them, except for the change to 6%.

Motion/Vote: **Motion to adopt Amendment #HB047411.ate carried,** with **3 Representatives and 3 Senators voting aye.**

{Tape : 1; Side : B}

CHAIRMAN MACNUTT introduced Amendment #HB047413.agp, **EXHIBIT(frs89sb0474a05),** requested by **REP. DOUG MOOD.**

REP. MOOD commented that he was concerned with some of the language in HB 474 as amended, and a discussion with staff members and **Mike Hanson, NorthWestern Corp.,** resulted in the amendment he was proposing. He stated that electric supply costs were defined more comprehensively in order to enable the PSC to determine whether the full definition had been met when looking at the feasibility of a contract. He asked **Mr. Petesch** to explain the language change in Section (12). **Mr. Petesch** stated that this amendment replaced Section (12) and the definition of electric supply cost in the previously adopted set. The provision of PSC pre-approval of supply contracts submitted to them within 15 days and the automatic inclusion of those supply costs in the rates, if approved, had been removed; this would allow the default supplier to submit contracts or bid processes to the PSC, and the commission has the option of commenting on them. In essence, it required that the commission use an

electricity supply cost mechanism which ensured that all electricity supply costs were fully recoverable in rates. He further stated that with the costs redefined, the dispute in a rate case for the default supplier was whether the submitted costs fell within the definition and if they did, they would be recoverable in rates; if they did not, they would be excluded.

REP. DELL asked a staff member to expand on the industry vernacular that had been used throughout. **Mr. Petesch** complied by saying that the discussion with regards to the first amendment had revealed terms such as "ancillary cost" and "congestion"; subsequently, subsection (c) had been added, providing that the terms used in the definition have to be construed according to industry standards.

REP. MOOD requested of **Mr. Petesch** to explain Section 4 (b) on page 2 of the amendment. **Mr. Petesch** said that the concept had already been adopted, and it required the default supplier to submit a proposed electricity supply cost mechanism to the commission for approval by July 1, 2001 which had to be reviewed, modified, and adopted by March 30, 2002; this would give the commission a year before the rate moratorium ended. He was certain that a cost recovery mechanism had already been developed and submitted to the commission.

SEN. ELLIS asked someone from NorthWestern to comment on these amendments. **Mike Hanson** reiterated that their concern all long had been that the default supplier not be put in a position where they had to expend funds for power and were not able to recover those; he felt this amendment addressed that concern. He also welcomed that the pre-approval clause had been removed.

REP. DELL wondered why Section (2), subsection (2) of the original amendment was eliminated. **Mr. Petesch** explained that this had been taken out earlier and was merely reflected here; the reason was that if the default supplier was allowed to recover their costs, he could not be put into a deficit situation.

SEN. DON RYAN invited a PSC representative to comment on this. **David Hoffman** stated that the commission had not yet met to review these amendments, and his comments would be based on previous positions the commission had taken. He felt the changes to section 69-8-210 hindered the commission's ability to assert their statutory authority; he alluded to the legal memo which the PSC's staff had prepared and which relied heavily on the provisions in 69-8-210. These had been partially eliminated and modified in this amendment. Their staff had also expressed concern with the perceived guaranteed full cost recovery, saying

this modified the method by which the PSC set rates. To eliminate the guaranteed full cost recovery, he proposed an amendment for Subsection (4)(a) on the second line, to insert after "ensures that all", "prudently incurred". Lastly, he mentioned that several members of their legal counsel were available to answer questions.

REP. DELL was concerned with the potential cost to the consumers; he hypothecated that if there was congestion in the transmission lines, the power company would purchase transmission to solve the problem which would be expensive; he felt that there needed to be some incentive to the default supplier to operate prudently, as well as some accountability. He claimed that if there was no accountability, some of the incurred costs would be shifted to the consumer. **Pat Corcoran, MPC,** charged that the default supplier had to act in a prudent manner and would not enter into a contract arbitrarily. He referred to Section (3) (a) which established guidelines for the default supplier. They did have to weigh alternatives and evaluate the economics of one situation versus the other and would not enter into a contract that included congestion if this was unfeasible. **REP. DELL** inquired whether the PSC, with these amendments, would be able to second-guess the default supplier's actions, such as accusing them of paying too much, or would the default supplier get cost recovery regardless. **Mr. Corcoran** referred to Section (3) (c) which dealt with the commission's review of the activities of a particular transaction. **REP. DELL** maintained that after the review, the commission could still say that the default supplier paid too much, and the supplier would need to justify their actions and show why they took certain steps. Considering all this, he asked if it was the commission's responsibility to prove the default supplier wrong. **Mr. Corcoran** agreed with him, saying they had to make the determination based on their review of the facts and materials whether it was the best decision at the time. He was quick to point out that this was a process, and the decisions made had to be the best decisions for the benefit of the customer.

REP. DELL asked the question regarding cost shifting and accountability of **David Hoffman,** hoping these amendments provided some assurance that the power companies would be held accountable. **Mr. Hoffman** repeated his earlier concern that language in the amendment guaranteed cost recovery; he charged that the commission's role was to balance the interests of the utilities and the consumers, and some of the provisions in the bill as well as this proposed amendment tempered the cost recovery language slightly. He felt that the commission might be reluctant to have its fingerprints on these contract at the time they are entered into when they have to act in a quasi judicial

capacity subsequently. He invited other PSC staff to add to his take on it.

Will Rosquist, PSC, referred to the exchange with **Mr. Corcoran** with regards to the commission having to prove that actions taken were too expensive, and, claiming he would have to take it a step further, asked what would happen if the commission did find the company's actions in getting around the congestion increased costs unnecessarily. He feared the commission would not have any recourse because congestion costs were defined as electricity supply costs, and under (4)(a), the PSC shall use a cost recovery mechanism which ensures that all electricity supply costs are fully recoverable in rates. He summarized that in his view, even if the commission could prove the actions taken were not prudent, they would not have any recourse.

CHAIRMAN MCNUTT touched on the conceptual amendment suggested by **Mr. Hoffman** with regards to "prudently incurred supply costs" and asked **Will Rosquist** if he would endorse it. **Mr. Rosquist** replied that from staff's perspective, the preference would be to have most of that language stricken since the standards for prudence reviews were firmly established in statute, and the commission cannot disallow cost recovery on an arbitrary basis. Lastly, he asserted that if it was not possible to strike that language, he would favor that "prudently incurred" would be added.

CHAIRMAN MCNUTT asked **John Hines** to comment on this for added clarity. **John Hines** felt the reason for the varied answers was the natural tension between the regulators and the utilities, of having the risks aligned appropriately and still leaving the utilities with the ability to get financing and enter into power supply contracts. He charged that in his opinion, these amendments did not provide full cost recovery; in fact, (12)(a) was rather specific about which items could be put into rates. On the other hand, he felt if more clarification was needed, he would favor the conceptual amendment brought forth by **Mr. Hoffman.**

{Tape : 2; Side : A}
CHAIRMAN MCNUTT also asked for **Mike Hanson's** views. **Mr. Hanson** elaborated on the points made by **Mr. Corcoran** that industry practice was to look at a least cost, best alternative type approach which he believed was encompassed in the definition. Addressing the language in (4)(a), the requirement that they file a rate recovery mechanism with the commission would establish those procedures, and this assumed that the material was known beforehand, and if it did not fit the prudence aspect, it would not be allowed in the mechanism. He, too, did not oppose the conceptual amendment if it helped clarify things.

REP. ROY BROWN asked **Greg Petesch** to address an earlier concern with the congestion costs found as being too high, and wondered if he thought this situation was covered in this added amendment. **Mr. Petesch** understood it to be covered because congestion charges were very expensive and the company better have a good reason to incur these charges under the restriction of accepted industry standards. If they were deemed imprudent, with this added language, the PSC could exclude them.

REP. MOOD asked for **Mike Uda's** response to these amendments. **Mr. Uda** started out by reciting the first tenet of the Hippocratic oath" first, do no harm" because he felt that adopting this amendment would do tremendous harm to the PSC's assertion of jurisdiction. He referred to the staff memo prepared by the PSC which said eliminating subsection (2), which was stricken on page 1 of Amendment #HB047413.agp, meant that if they entered into a contract with a market based rate, the commission could not come back and second-guess their decision, saying they should have done something different, which was also **Mr. Petesch's** analysis. He informed the committee that there was an ongoing question of legal jurisdiction over the assets of PPL Montana, and he feared adoption of these amendments would be interfering with current law. He also objected to the first sentence in subsection (3)(a) because it did not give a time frame and it seemed to assume to be a substitute for current commission jurisdiction. He felt there was language in Subsection (3) of 69-8-210 ensuring full cost recovery and this amendment was not needed; he charged that the utilities would not be here and ask to change the law if it did not benefit them. He repeated that there was a regulatory balance between the rights of the consumers and the interest of utilities, and the PSC had to weigh that balance. He pointed out that this balance had been in place since 1913 when the decision to regulate public utilities was first made, and it would be a mistake for this committee to adopt these amendments in this form.

CHAIRMAN MCNUTT questioned where the power companies would buy power from after July 1, 2001, if not on the market. **Mr. Uda** replied that currently under 69-8-202, until the commission issued its final transition order, it had the authority to continue to control the price of electricity supply for default customers. He made it clear he was not against full cost recovery as long as these costs were incurred prudently; what he objected to was the attempt to change current law which impeded the PSC's ability to its job and implement SB 390 in a way it was intended.

CHAIRMAN MCNUTT commented that the words "assumption" and "if" were leading the committee around in a circle. He felt the

committee had worked very hard to come up with a policy decision that was trying to encompass the assumptions and the if's; in the essence of time, he invited the members to voice any other comments or questions.

REP. MOOD admitted it was difficult to walk the fine line, and he believed that the vehicle which had the best opportunity to help the state was gone. He was aware that this was the 89th day and a decision had to be made, admitting it was difficult to know what was best without making a decision and letting some time pass. He stated he worked on these amendments, hoping to find some middle ground, but maybe that middle ground did not exist.

REP. BROWN wanted **Greg Petesch** to respond to **Mike Uda's** charges that these amendments affected the PSC's authority. **Mr. Petesch** assured him that this bill was careful not to affect the sections of the law which state that during the transition period, the electrical generation assets remain part of the rate base. On page 1 of the amendment, the part which said "during the transition period, the distribution services provider can extend any cost based contract with their affiliate supplier for not more than three years" had also not been disturbed. In his opinion, this left the ability of the PSC to assert authority over the generation assets intact. If the assertion of jurisdiction over the generation asset was unsuccessful, meaning the PSC cannot regulate the ability of the default supplier to purchase electrical energy under the regulated rate, they would have to purchase power on the market. If the PSC was successful, it would be beneficial to the consumer because they would continue to get power for three additional years at the cost based contract rate; if the assertion of jurisdiction failed and the default supplier was forced to buy power on the market, which was always the optional mechanism under Subsection (c), the default supplier would be allowed to recover those supply costs. This meant we would not force him to incur deficit sales.

REP. BROWN commented that indeed, the members were walking a fine line, wanting to have an incentive for the default supplier to get the best prices for the consumers without giving them free reign to do what they want. He felt these amendments and others already passed had greatly improved the situation they were facing, and he thanked **REP. MOOD** for improving on the amendments.

SEN. ELLIS also voiced support for the amendments. He related how the legislature had faced other tough decisions; one being to tax the use of the publicly owned transmission lines from Colstrip to the West Coast, and they had prevailed, using the legal staff to guide them. He professed confidence in the staff

and believed they were right on this issue, and stated he would support this amendment for that reason.

REP. DELL stated he still had problems with the cost shifting to the consumer, but he was satisfied that the USB was extended, that there was a customer pool provision, and there were obligations for the default supplier beyond the transition period. He summarized that this bill was loaded with things which were critical, and he understood that the time had tome where a decision had to be made. He said he had gone through the same deliberations as **REP. MOOD** in trying to find the best solution. He proclaimed that he would vote for this bill as amended, because by rejecting it the day before they had made it a better bill. He said the newspapers might say they caved in a bit to the utilities, but he believed that they had stood as firm as they could without giving away extensions to the USB, which was critical.

REP. MOOD charged with the caveat that the amendments were not yet in the normal format and would be adjusted by staff, and the understanding that the conceptual amendment "prudently incurred" would be inserted in (4)(a), he would move his amendment.

Motion/Vote: **REP. MOOD moved** that amendment #HB047413.agp **BE ADOPTED.**
Vote: **Motion carried** with **3 Representatives and 3 Senators voting aye.**

Greg Petesch asked the committee's indulgence to undo a technical amendment adopted yesterday, which was to correct an erroneous reference in HB 474; the conclusion he drew was in error because the statute had changed due to the special session but the reference was still correct.

Motion/Vote: **REP. DELL MOVED** that the Free Conference Committee Report **BE ADOPTED.**
Vote: **Motion carried** with **3 Representatives and 3 Senators saying aye.**

ADJOURNMENT

Adjournment: 2:50 P.M.

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SEN. WALTER MCNUTT, Chairman

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MARION MOOD, Secretary

WM/MM

EXHIBIT(frs89sb0474aad)