MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ROYAL JOHNSON**, on February 11, 2003 at 3:00 P.M., in Room 317-B & C Capitol.

ROLL CALL

Members Present:
Sen. Royal Johnson, Chairman (R)
Sen. Corey Stapleton, Vice Chairman (R)
Sen. Bea McCarthy (D)
Sen. Walter McNutt (R)
Sen. Gary L. Perry (R)
Sen. Don Ryan (D)
Sen. Emily Stonington (D)
Sen. Bob Story Jr. (R)
Sen. Mike Taylor (R)

Members Excused: Sen. Ken Toole (D)

Members Absent: None.

Staff Present: Todd Everts, Legislative Services Division
Marion Mood, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted:	SB 327, 2/4/2003; SB 316, 2/4/2003
Executive Action:	SB 91; SB 247 SB 199; SB 154

HEARING ON SB 327

Sponsor: **SEN. MIKE TAYLOR, SD 37, PROCTOR**

Proponents: **Cort Jensen, Dept. of Administration, Consumer Protection Office**

Verner Bertelsen, MT Senior Citizens Association

Opponents: **Bill Olson, self**
Roger Halver, MT Association of Realtors
Cory Swanson, AT & T
Chris Gallus, MT Retailers Association
Dwight Easton, Farmers Insurance Group
Rick Hays, Qwest
Bill Johnston, Montana University System
Jerry Williams, Butte Police Protective Assn.

Opening Statement by Sponsor:

SEN. MIKE TAYLOR, SD 37, PROCTOR, stated SB 327 was the sensible approach to regulating telemarketing calls because it created a do-call list for, and at no expense to, the people desiring telephone solicitation. This list is easier and cheaper to administer since the responsibility for creating and maintaining it lies with the Department of Administration, and the cost for the estimated 100 customers will be absorbed by that department. The sponsor listed the types of calls which could be made without violating code, namely political calls; fund raising calls in which no item is sold; polls and surveys; calls by government entities; and business-to-business calls. He referred to upcoming testimony by **Cort Jensen** and assured the committee that the provisions in SB 327 were constitutional.

Proponents' Testimony:

Cort Jensen, Dept. of Administration, Consumer Protection Office, provided written testimony, **EXHIBIT(ens30a01).** In addition, he cautioned a federal do-not-call list is being litigated in Oklahoma, but assured the committee of the constitutionality of SB 327. He advised federal telemarketing regulations were close to being adopted in Washington, D.C., and pointed to two key exceptions present in most do-not-call lists which were not in SB 327; one allows charities to sell items rather than just raise money (at present, it is being argued in a federal case whether this is a constitutional right); SB 327 allows for the inclusion of what the courts decide. The second exemption is the right to call a pre-existing business customer, and he felt this protected small businesses who had long-standing business relationships.

Verner Bertelsen, MT Senior Citizens Association, rose in support of SB 327 because it protected seniors from telemarketing calls.

Opponents' Testimony:

Bill Olson, self, stated he had been involved in this issue dating back to the previous three legislative sessions because of the vulnerability of senior citizens. He felt that between SB 62, a do-not-call list, and SB 327, a do-call list, seniors were being sent mixed signals, and he definitely supported the concept of SB 62.

Roger Halver, MT Association of Realtors, rose in opposition to SB 327 because he feared it would make it impossible for his members to make cold calls to prospective clients, and conducting business would be especially difficult if the realtor became the agent of the buyer. In that case, he would have to make calls to find unadvertised property for sale, and he was certain SB 327 would not allow him to do so. In closing, he also expressed support for SB 62.

Cory Swanson, AT & T, stated the goals of these telemarketing bills were to protect the consumer from predatory or unwelcome solicitation, to eliminate threats to their safety and privacy, and from fraud. Aside from the perceived constitutional ramifications with regard to SB 327, he suggested the committee had more reasonably and narrowly drawn alternatives available which accomplished the same objectives. He claimed SB 327 went too far; most people would not make the effort to be included on a do-not-call list, and at the same time, would not put their name on this do-call list because then they would be part of the 100 or so people who become targets after passage of this bill because they would be the only ones left to call. In closing, he reminded the committee of the thousands of jobs which would be lost if Montana and other states passed this kind of legislation; he had no problem with regulating telemarketing as long as it was reasonable, and this bill was not reasonable.

{Tape: 1; Side: B}
Chris Gallus, submitted written testimony on behalf of **Brad Griffin, MT Retailers Association,** **EXHIBIT(ens30a02).**

Dwight Easton, Farmers Insurance Group, agreed with previous testimony in that a do-not-call list was preferable to SB 327 which was certain to have unintended consequences. Telemarketing was a viable source of finding clients for a new insurance agent, much like the earlier scenario in **Mr. Halver's** testimony. If new agents were not allowed to make these calls, they would have to come up with roughly $100,000 to buy into an existing insurance agency, effectively creating a new-entry barrier.

Rick Hays, Qwest, disagreed with the previous legal opinion about the constitutionality of the bill, maintaining there were serious issues relative to the First Amendment. He lauded the balance SB

62 provided as telemarketing was a significant component of commerce in Montana. Furthermore, he felt there were legitimate telemarketing needs beyond sales, such as service information, quality of service and customer feedback; in short, telemarketing was not only a sales tool but also a commerce and customer service tool.

Bill Johnston, Montana University System, stated his concerns with SB 327 as it was unclear as to how it would affect associations such as the Alumni Association and sports booster clubs on the university campuses. He claimed in all cases, their lists were qualified in that they were comprised of either former students or individuals who had asked to be included through access to tickets or as donors to the campuses. He asked the committee to consider these issues when discussing the telemarketing bills so the pledged support to the university system could continue in these economically trying times.

Jerry Williams, Butte Police Protective Association, stated it was an annual fund raiser for the association to sell tickets to the circus and provide free tickets to each child or adult who wanted to attend. The money generated from the ticket sales is used to sponsor various youth activities in the community as was practice throughout Montana by other police associations, and he was opposed to SB 327 as it would prohibit them from continuing this fund raiser. Lastly, he submitted **EXHIBIT(ens30a04).-**

Questions from Committee Members and Responses:

SEN. GARY PERRY, SD 16, MANHATTAN, asked **Cort Jensen** whether this bill would prevent Montana businesses from calling their existing customers. **Mr. Jensen** replied it would as currently written unless the customers' names were on the do-call list or they specifically authorized the phone call. **SEN. PERRY** wondered which of the proposed lists was more advantageous to senior citizens. **Mr. Jensen** replied the do-not-call list had a certain advantage as other states had adopted that list; on the other hand, the proposal in this bill required no action on behalf of the consumer who did not want to be called, and thus might be the easier option for seniors.

SEN. DON RYAN, SD 22, GREAT FALLS, asked, since the bill specifically mentions area code "406", if it was conceivable Montana would get a second area code some time in the future which would potentially open another market not covered by this bill. **Mr. Jensen** advised the bill could be amended to say "406 or any other Montana area code specified by rules".

SEN. BOB STORY, SD 12, PARK CITY, wondered whether the Butte Police Association made their own fund rasing calls or contracted them out to telemarketers. **Mr. Williams** stated the circus company brought in someone to set up phone banks and hired local people to do the calling. **SEN. STORY** then asked what percentage of the amount collected was kept by the callers, and was told the Police Association kept roughly 25%, the telemarketers received another 25% in profit, and the balance went to pay expenses such as wages and phone lines. **SEN. STORY** inquired whether tickets were actually sold or whether the callers just asked for donations to buy the tickets for the kids. **Mr. Williams** explained they do sell the tickets but check with the donor, and if the donor does not want them, they donate the tickets to youth groups or schools.

SEN. PERRY referred to **Mr. Griffin's** testimony and his concerns about his members' ability to contact existing customers, such as letting them know their prescription was ready. **SEN. TAYLOR** repeated what **Mr. Jensen** had stated, namely that SB 327 could prevent this. He felt, there might be a legal conflict, even though in his mind, this would not constitute a violation. **SEN. PERRY** pointed out he would already have taken a pro-active step by ordering a prescription and wondered whether the proponents' claims applied in this case. **SEN. TAYLOR** asked to defer this to **Mr. Jensen** who explained telemarketing involved selling an item and thus, this call would be exempt.

SEN. RYAN pursued **SEN. STORY's** line of questioning and asked whether they had to put up a guarantee with regard to the number of tickets sold, and what their total liability and expenses were. **Mr. Williams** advised they did not have any expenses nor did they have to make a guarantee; the circus company handled all of that. **SEN. RYAN** then asked, since the association had to give up about 75% of the money generated, whether their expenses would amount to those same 75% if they handled the logistics themselves. The way he saw it, the association ended up with 25% and the company took all the risk. **Mr. William** agreed with this assessment and said they had attempted to do all of this on their own but quickly found out that someone had to work almost full-time hiring people and promoting the event as well as being able to guarantee a minimum of ticket sales. He claimed the only way his organization could raise funds was through telemarketers.

CHAIRMAN ROYAL JOHNSON, SD 5, BILLINGS, inquired whether the Police Association carried any liability policy to keep them from being sued should something serious happen, and was informed by **Mr. Williams** the circus alone had liability coverage.

SEN. WALT McNUTT, SD 50, SIDNEY, stated the provisions in SB 327 could really hamper business relationships if they precluded a business from being able to inform existing clients of future sales events and other specials as he had done over the years in his farm implement business. It was a small consolation to him that his customers would not turn him in, as the sponsor had suggested earlier, because businesses did not intentionally break the law, and he wanted to be sure he was not violating code. He asked the sponsor what effect this would have on continued economic development. **SEN. TAYLOR** replied it had not been his intent to hurt local businesses and suggested some refinement to the bill because as it stood, these calls would be in violation. He stated being pro-business himself, this issue certainly would merit further discussion during Executive Action.

SEN. EMILY STONINGTON, SD 15, BOZEMAN, voiced her concern with pre-recorded solicitation calls for vacation get-aways or debt-consolidation which oftentimes originated out of state, and wondered how this could ever be enforced, especially since SB 327 stated it would not coordinate with a federal do-not-call list. **Cort Jensen** replied his office could coordinate with the federal list since it allowed cooperation but would have to have a do-not-call list to do so. His office was working on indictments in the two cases she was alluding to; they were working in conjunction with the Florida Attorney General's office to serve warrants on the individuals, and were trying to seize their bank accounts. They were able to pursue both cases because of legislation from the previous session which made pre-recorded messages illegal. **SEN. STONINGTON** advised him she had gotten more of these calls in the last six months, and **Mr. Jensen** explained these two companies were able to make 98% of these calls because they were using multiple names and calling plans, and that was why it was so difficult to prosecute. **SEN. STONINGTON** was certain local perpetrators could be dealt with easily, and was concerned with the callers who seemed to be of different nationalities. **Mr. Jensen** stated at least two of the companies who had bonded were from India, and advised India and Ireland were the countries with the fastest growing locations for telemarketing phone banks. **SEN. STONINGTON** wondered how his office could enforce the law in India when the Fiscal Note for SB 327 showed no financial impact. **Mr. Jensen** admitted enforcement would be difficult but the companies who contracted this out were American companies, and he could prosecute them. He further explained the zero dollar Fiscal Note pertained to creating the list, and the enforcement would end up paying for itself through collected fines.

{Tape: 2; Side: A}
SEN. STONINGTON wondered about the disbursement of the funds, and **MR. JENSEN** advised the money was used to pursue cases and the excess went to the General Fund.

SEN. RYAN continued a previous line of questioning and asked when someone resorts to mailings because of SB 327, would he have the right to sue someone like **SEN. McNUTT** for contacting his customers by phone. **Mr. Jensen** explained he could not do so under this act but under the Unfair Trade Practices and Consumer Protection Act which prohibits businesses from violating any law to the detriment of a competitor. He claimed **SEN. McNUTT's** best defense was to say he was calling his friends and people he knew because this did not constitute telemarketing; he surmised this would help small businesses without exempting telemarketers in India.

SEN. STORY wondered if **SEN. McNUTT** would not be exempted because he was making a business-to-business call in the example. **Mr. Jensen** thought he would be covered in this instance.

Closing by Sponsor:

SEN. TAYLOR repeated his bill was a "people bill" and admitted some clarification was needed regarding the questions **SEN. McNUTT** had raised as well as the provisions of SB 327 as they related to the university system. He was not trying to shut down organizations which depended on fund raisers and hired telemarketing companies but reminded the committee that most of the money collected by telemarketers went out of state. Lastly, and to allay concern with fraud, he stated telemarketing fraud was addressed in SB 308.

HEARING ON SB 316

Sponsor: **SEN. DUANE GRIMES, SD 20, CLANCY**

Proponents: **Shona McHugh, MT Department of Revenue**

Opponents: **None**

Opening Statement by Sponsor:

SEN. DUANE GRIMES, SD 20, CLANCY, stated SB 316 clarified and updated provisions of past legislation which dealt with mining exploration tax incentives. It provides for the referral of claims for deductions of credit obtained through energy

conservation measures by the Department of Revenue to the Department of Labor & Industry rather than the Department of Administration and secondly, it clarifies the mineral exploration credit may not exceed a total $20 million per project and is not cumulative for multiple activities on the same project.

Proponents' Testimony:

Shona McHugh, Montana Department of Revenue, repeated SB 316 clarified several statutes and offered to answer any questions.

Questions from Committee Members and Responses:

SEN. COREY STAPLETON, SD 10, BILLINGS, inquired about an effective date and was told by **SEN. GRIMES** it was October 1, 2003.

SEN. STORY asked what this bill applied to. **SEN. GRIMES** replied it applied mainly to hard rock mining exploration and asked **Ms. McHugh** to provide further information. **Ms. McHugh** explained statute defined it as including minerals and coal under 1532-503, and 1532-502. **SEN. STORY** stated current law specified credit for specific exploration activities may not exceed $20 million and accrued at 50%; he wondered if SB 316 changed this to a $20 million credit for all of a company's exploration activities instead of letting them accrue credit for work in two different counties, for instance. **Ms. McHugh** replied the intent was to cap the credit at $20 million for a specific project, and it would not be interpreted as being $20 million for each exploration activities set forth in 1532-503. **SEN. STORY** asked her to list the five activities as defined in 1532-503. **Ms. McHugh** complied, saying they are: surveying by geophysical or geochemical methods; drilling exploration holes; conducting underground exploration; surface drenching and bulk sampling, or performing other exploratory work including areal photographs, geological and geophysical work, sample analysis, and metallurgical testing. **SEN. STORY** asked the sponsor if this language limited a company to a $20 million lifetime credit or whether they could obtain another credit by doing another project. **SEN. GRIMES** responded his intent had been to ensure there was just one $20 million tax credit for a permitted exploration activity even if it encompassed some or all of the above five categories. He went on to say if there were separate permitted exploration activities, then they could potentially be applied to two separate mines. He stated he was flexible if **Todd Everts** felt the issue needed clarification by way of an amendment.

SEN. STONINGTON wondered if anyone had taken advantage of this provision so far, and **SEN. GRIMES** replied to his knowledge, only one person had applied and was currently going through a review process. **SEN. STONINGTON** asked the sponsor, since he had originally contemplated exploration for gold mines, if it would have been possible for the Bull Mountain coal mine to apply for the credit for existing work, or whether this applied to new exploration only. **SEN. GRIMES** explained it applied to new and permitted exploration activities.

SEN. TAYLOR wondered whether the reason for just one person applying for the credit was because people were unaware this tax credit was available, and whether a mine operator had asked for this legislation in order to start up a mine. **SEN. GRIMES** denied that was the case, explaining it had been brought by a consortium of natural resource interest groups. He believed the tax credit had not been applied for because there were no more exploration companies left in Montana and asked someone from the department to elaborate. **Ms. McHugh** stated the department did not really promote this credit and stated a company had to have an income to have this credit apply.

Closing by Sponsor:

SEN. GRIMES closed on SB 316.

EXECUTIVE ACTION ON SB 91

Motion: SEN. RYAN moved that SB 91 DO PASS.

Discussion:

SEN. RYAN refreshed the committee's collective memory by explaining this bill had been requested by the TAC committee to establish, for the PSC, what cost to assign to large customers who had left the default supply and now were opting back in.

SEN. STONINGTON asked whether he had reviewed HB 509 to see if this issue was included in that bill. **SEN. RYAN** replied this provision was contained in HB 509 but maintained the committee should go forward with SB 91 in case HB 509 failed; if it did, this issue would not be resolved, and if it did not, SB 91 could be tabled at that point. **SEN. STONINGTON** declared she would do the opposite since any bill could be brought back up; besides, HB 509 seemed to have all the momentum. **SEN. McNUTT** asked **Todd Everts** how it would be codified if this language was identical to the other bill and both passed. **Mr. Everts** informed him while

the language was not identical, HB 509 dealt with the same issue. If both were to pass, a coordination clause would be drafted which would strike conflicting sections and come up with appropriate language. **SEN. McNUTT** then asked at what point they would add this coordination clause to SB 91. **Mr. Everts** explained the staff would start developing the coordination clause when passage of both bills appeared certain in order to avoid conflict.

{Tape: 2; Side: B}
SEN. RYAN informed the committee **Mr. Everts** had prepared amendments, **SB009101.ate**, **EXHIBIT(ens30a03)**, which would define the electrical supply cost related to the re-entry in order to clarify to the default supplier what he could charge the customer opting back in; he believed this definition was part of last session's HB 474. **SEN. STONINGTON** asked **Mr. Everts** to explain how this bill dealt with the allowable cost issue versus what HB 509 provided for. **Mr. Everts** explained HB 509 had some of the same terms but he did not have a copy in front of him. **CHAIRMAN JOHNSON** noticed **Will Rosquist, PSC** had a copy of HB 509 and asked him to elaborate after **Mr. Evert's** explanation.

Motion: **SEN. RYAN moved AMENDMENT SB009101.ATE BE ADOPTED.**

Discussion:

Mr. Everts stated SB 91 included the terms "fuel cost, ancillary services, and transmission costs"; these were also in HB 509 but it listed, in addition, "capacity costs, energy costs, main site management and energy efficiency costs, billing costs, planning and administrative costs and any other costs directly related to the purchase of electricity and the management of default supply". He went on to say SB 91 had a catch-all provision with "any other costs directly related to the purchase of electricity and management of electricity costs and related service". **SEN. STONINGTON** charged SB 91 was more than just a definition, but **CHAIRMAN JOHNSON** reminded her this discussion was about the amendment only and asked **Will Rosquist** to address item (12) on page 2 of the amendment. **Mr. Rosquist** professed the PSC had set up a forum of interested parties to discuss possible legislative needs as a result of the repeal of HB 474, and this language did add back the definition of supply cost contained in HB 474. There had been an initial debate whether the term "electricity supply cost" needed to be defined for the benefit of the PSC; potential competitors were particularly interested in expanding the definition to ensure the price would reflect all of the cost of providing default supply service when the PSC set the price for default supply service. As of now, the price does not

include an allocation of certain costs, such as billing costs which is recovered in distribution rate elements; a portion of the billing costs should be allocated to the default supply cost so it can be compared to a price offered by a competitor on a level playing field. He stressed this was why the definition in HB 509 went beyond language in HB 474.

SEN. STAPLETON asked if these amendments had been requested by the PSC, and **SEN. RYAN** advised this was not the case, and SB 91 was not a PSC bill. **SEN. STAPLETON** then inquired if the amendments had been proposed by the TAC committee. **SEN. RYAN** explained he was bringing the amendments forward at the request of the default supplier to make sure they will be protected with cost recovery. **SEN. STAPLETON** advised caution in moving this bill forward without having had a chance to discuss HB 509. **SEN. STONINGTON** offered her view and said when HB 474 was repealed, the members of the TAC committee took each component and voted on it separately whether to advance the piece to the Legislature as a committee bill; she had introduced SB 154, dealing with the full cost recovery portion of HB 474, but later decided to withdraw it because of its inclusion in HB 509. She agreed with **SEN. STAPLETON** in that so much work had gone into HB 509 that she did not see the need to move something else forward.
CHAIRMAN JOHNSON asked her if the TAC committee had taken the provisions of HB 474 which the people of Montana had repealed, and voted on which ones to bring forth again. **SEN. STONINGTON** confirmed this, saying the gist of the discussion had been that HB 474 was defeated largely on the basis of it having been pieced together and passed at the last minute, but at the same time, there were parts of it everybody liked, such as the Universal Systems Benefits programs; on the other hand, they determined not to move forward provisions like the renewable energy offering, the green power amendment, full cost recovery, and the Montana Power Authority portion. Upon further questioning, she looked to **Mr. Everts** who had done the legal analysis on all the elements of HB 474, and to his recollection, this had been the basis for the TAC committee's debate. **CHAIRMAN JOHNSON** inquired which provisions were duplicated from HB 474 in HB 509. **Mr. Rosquist** alluded to a few pieces, such as the default supplier having to offer a separately priced optional, renewable product; the concept of being able to recover all prudently incurred electricity supply costs; and the procurement concept even though HB 509 dealt with this issue differently. **CHAIRMAN JOHNSON** asked which provision was not put back into HB 509, and was told the Power Authority as well as the Montana State of Investment Board generation portion. **Mr. Rosquist** explained HB 509 only dealt with the commission's regulation of the default supplier, and it did not go beyond the scope of the commission's function.

SEN. RYAN advised he would go along if the committee wished to go with HB 509; the only concern he had was HB 509 was another huge energy bill and could be "an all or nothing" bill. Lastly, he offered to withdraw his amendment, **SB 009101.ate.**

Substitute Motion/Vote: **SEN. RYAN made a substitute motion that SB 91 BE TABLED. Substitute motion carried 7-2 with JOHNSON and STORY voting no.**

SEN. STORY wanted to go on record saying the amendment in question was not brought at the last minute as had been intimated; it was handed out at the hearing for SB 91. **Mr. Everts** advised the amendment had been drafted some time ago but when amendments are printed, they are automatically changed and assigned the current date and time.

EXECUTIVE ACTION ON SB 247

Motion: **SEN. STAPLETON moved that SB 247 DO PASS.**

Discussion:

CHAIRMAN JOHNSON asked **Todd Everts** to recap SB 247 for the committee. **Mr. Everts** stated this bill duplicated a California statutory model for pre-approval of electricity supply contracts. It requires the default supplier to submit a procurement plan in compliance with objectives set by the PSC; if the objectives are met and barring some exceptions, the PSC will grant pre-approval for the electricity supply contracts.

SEN. STONINGTON inquired if portions of this bill where covered in HB 509. **Mr. Rosquist** replied the issue of pre-approval was discussed within the forum which crafted HB 509 but was not included in this consensus bill. He explained NorthWestern Energy was comfortable with the rules the PSC was developing which set forth the commission's expectations for the company's procurement processes, and they were willing to go forward with what they called "virtual pre-approval". He had recommended the PSC oppose SB 247 because it mandates pre-approval for any bilateral contract, and he deemed this unnecessary under the PSC's current authority. **CHAIRMAN JOHNSON** asked **Commissioner Jay Stovall, PSC** to comment on this issue. **Commissioner Stovall** replied the general idea was that pre-approval went against commission policy but he felt it was critical in order to obtain financing for new generation because of the uncertainty otherwise; contracts would not be signed until the PSC did their prudency review, and he was adamant about the need for new generation because of the unpredictability of the spot market.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 0.4}
SEN. STONINGTON asked, since the goal was to retain low prices, how pre-approval would help build new generation. **Commissioner Stovall** explained in order to obtain financing, the bank had to be sure the deal would go through, but without pre-approval, the outcome of the prudency review was uncertain. He felt pre-approval put the risk on the generator and not the public, and without new generation, the public might be at risk because of the uncertainty of electricity prices. **SEN. STORY** ascertained the process of procurement was similar with or without pre-approval; without pre-approval, the default supplier would solicit bids, put together the contract and take the signed contract to the commission for approval to get it rate-based. Under the provisions of SB 247, the default supplier would basically go through the same process except it would not be signed until after it was approved by the PSC. He felt SB 247 would not necessarily help with new generation; it did protect the default supplier from holding the bag should the PSC not approve his contract. **SEN. RYAN** wondered if a new generation plant had to be up and running to be approved, or if it needed to be approved first to secure financing. **SEN. STONINGTON** felt strongly that the dilemma of new generation would not be solved through either SB 247 or HB 509 because these bills would raise the cost of electricity, and a politically elected body, be it the PSC or the Legislature, would not commit to any bill which would result in higher electricity cost for the consumer in order to finance new generation. The solution was in new transmission which was a federal issue, and once it was resolved, there would be new generation. **CHAIRMAN JOHNSON** asked **Mr. Rosquist** to sort out this issue, and **Mr. Rosquist** stated he sensed some misconception that pre-approval could never happen without this particular bill. He disagreed, saying he and the attorneys on staff believed the PSC had the authority to pre-approve contracts now; but they had found there was not a strong enough public interest argument to ask for the authority to be put in statute. He did not deny a situation may arise which would warrant pre-approval, such as construction of a well-balanced portfolio to serve the long-term needs of default supply customers. It was his position that the utility needed to make the argument for pre-approval if a new resource not yet constructed needed to be added to the portfolio and could not be built without financing; he added they would have to abide by the commission's rules and prove due diligence on their part, and the commission would have the ability to pre-approve it. **SEN. STAPLETON** wondered how many times the PSC had used pre-approval in the past ten years, and **Mr. Rosquist** replied he was not aware of one instance. **SEN. STAPLETON** then asked if he agreed with **Commissioner Stovall's** assessment there might have been a different outcome in a few situations had pre-approval been in statute. When **Mr. Rosquist**

disagreed, **SEN. STAPLETON** wanted to know when pre-approval was used last. **Mr. Rosquist** believed there was implication of pre-approval in a Butte water company case where the commission found the water system had not been kept up properly; they asked the utility to upgrade and improve the system which carried the implication that once the capital improvements were made, cost could be recovered in rates. **SEN. RYAN** inquired whether there was a correlation between pre-approval of contracts and the spot market. **Mr. Rosquist** advised the utility should not plan their portfolio based solely on the spot market; they should engage in more long-term planning as far as where prices will be because spot market prices do not accurately reflect what would be available in a five or ten year contract, or a 20-year contract where the developer has plans to build a new generator. **SEN. PERRY** asked to comment on an observation made earlier by **SEN. STORY**, stating it would not be in the default supplier's best interest to bring a contract to the PSC to have them do the due diligence; the utility should have this done prior to offering the contract to the commission for approval because both time and money would be lost. He then quoted from **Commissioner Rowe's** previous testimony where he had stated "The commission already has sufficient legal authority to pre-approve agreements" whereas two days prior, he had asked to have this authority in statute. **SEN. PERRY** felt it necessary to have the authority to pre-approve in statute because operating without pre-approval was like committing to purchase a John Deere tractor from an implement dealer with the dealer agreeing to delivery before the John Deere Credit Company approved the deal; he therefore supported SB 247.

Vote: Motion carried 7-3 with MCNUTT, STONINGTON, and TOOLE voting no.

EXECUTIVE ACTION ON SB 199

Motion/Vote: SEN. STONINGTON moved that SB 199 BE TABLED. Motion carried unanimously.

EXECUTIVE ACTION ON SB 154

Motion/Vote: SEN. STONINGTON moved that SB 154 BE TABLED. Motion carried unanimously.

ADJOURNMENT

Adjournment: 5:20 P.M.

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SEN. ROYAL JOHNSON, Chairman

_____
MARION MOOD, Secretary

RJ/MM

EXHIBIT(ens30aad)