MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ROYAL JOHNSON,** on February 20, 2003 at 3:30 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)
Sen. Ken Toole (D)

Members Excused: None.

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 387, 2/14/2003; SB 386, 2/14/2003
Executive Action: SJ 13; SB 330; SB 335; SB 361; SB 365

HEARING ON SB 387

Sponsor: **SEN. JOHN COBB, SD 25, AUGUSTA**

Proponents: **Stacey Sprinkle, Verizon Wireless**

Margaret Morgan, Western Wireless
Chuck Evilsizer, Ronan Telephone, Mooseweb Corp./ MontanaSky Net
Cory Swanson, AT&T
Rick Hays, Qwest
Mary Whittinghill, MT Taxpayers Assn.

Opponents: **none**

Opening Statement by Sponsor:

SEN. JOHN COBB, SD 25, AUGUSTA, presented SB 387 which is designed to conform the retail mobile telecommunications excise tax to the federal mobile telecommunications sourcing act (MTSA). He explained under current statute, if he was to make a call from Denver to New York City, he would not be assessed this roaming charge because his phone is listed in Montana; SB 387 would make sure no matter where the call originated, the charge would be paid to his home district.

Proponents' Testimony:

Stacey Sprinkle, Verizon Wireless, clarified these roaming charges had unintentionally been omitted when statutory changes were made to existing law, and SB 387 merely corrected the mistake, thereby simplifying taxation of wireless services. She added with the implementation of "single rate" calling plans, it was particularly important to have conformity because carriers will have the option to start separating out the non-taxable revenue if Montana does not conform which in turn will decrease revenue to the state.

Margaret Morgan, Western Wireless, also rose in support of SB 387, echoing **Ms. Sprinkle's** testimony. She provided **EXHIBIT(ens38a01)** which shows Montana as the only non-conforming state in the nation and said her company was eager to have Montana laws conform because it not only simplified the billing process but also ensured calls were not subject to multiple taxation or escaped taxation altogether. While a similar version of this bill passed the House last session, this particular portion was vetoed by the Governor because of some misconceptions which now have been resolved. She added an effective date of July 1, 2003 would be better and could be amended in.

Chuck Evilsizer, Ronan Telephone Co., Mooseweb Corp./ MontanaSky Net, stated his clients' support of SB 387, adding a level competitive playing field was important for any industry, and the excise tax on roaming charges was just one aspect. He pointed out long distance call charges on wire line phones were assessed

a higher rate than local calls; with wireless calls, due to what is called the Spokane Major Trading Area, a call from Cody, WY to Coeur d'Alene, ID, is considered a local call and thereby carries a lower rate, which translates into unfair competition. He also mentioned the subsidies wireless companies are trying to attain, and which are being paid to local phone companies, without any commitment to provide Universal Service in Montana; these subsidies will amount to roughly $68 million in 2003. He alluded to several discrepancies in the telecommunications market which hindered true competition, such as taxation methods of regulated carriers versus cooperatives and wireless carriers.

Cory Swanson, AT&T, also rose in support of SB 387 and proposed an amendment to deal with the sourcing problems related to mobile telephone service as well as land line telecommunications systems.

Rick Hays, Qwest, stood in support of SB 387, agreeing with previous testimony.

Mary Whittinghill, MT Taxpayers Association, felt this bill contained good tax policy for the state, not only in terms of revenue but also in terms of facilitating the administration of the tax by the Department of Administration and lastly, it was beneficial to the taxpayers because all telecommunications companies would be applying the same standard in assessing the excise tax.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. COREY STAPLETON, SD 10, BILLINGS, asked what would happen if Montana did not conform to the federal regulations. **Ms. Sprinkle** explained the original bill was not designed to raise or lower taxes; it solely tried to address the problem of how to source, for tax purposes, a communications service which moved among jurisdictions by assigning it one single jurisdiction, namely the one where the customer used the service primarily. She added had this been done in 2001, there would not have been any fiscal impact but it was not known at that time what kind of revenue would be involved with wireless service. **SEN. STAPLETON** wondered if this was paramount to "taxation without representation", and **Ms. Sprinkle** clarified that Montana had already decided to tax telecommunications services, and with this bill, Montana was the only state which could tax its residents' use of wireless service, no matter where their calls originated. She added before the federal law was enacted, if he had made a call from New York, that state would have assessed and collected their tax.

SEN. MIKE TAYLOR, SD 37, PROCTOR, asked if the administrative paperwork was the problem, and **Ms. Sprinkle** replied the problem was twofold, namely the two different standards coupled with the uncertainty the Department of Revenue was facing in having to determine which charges to tax with respect to the federal statute. **SEN. TAYLOR** wondered if Montana's 3.75% rate was standard throughout the industry. **Ms. Sprinkle** explained it was one of the lower ones; other states taxation rate was between 8% and 12%. **SEN. TAYLOR** inquired whether the telephone companies would have testified in favor of this bill if they could not pass this cost on to the consumer. **Ms. Sprinkle** affirmed they were in favor of SB 387; the tax already applied, this just clarified the sourcing method, and the phone companies were instrumental in getting this provision added. **SEN. STAPLETON** referred to earlier testimony and wondered if the Governor had changed her position, given her refusal to raise taxes. **Ms. Sprinkle** repeated taxes were actually lowered with the onset of single rate plans which had roaming charges already incorporated rather than listing them separately; overall, there might be a slight increase in the short term, but in the future, the federal bill did allow for pulling out non-taxable items so the state revenue might drop slightly. **SEN. EMILY STONINGTON, SD 15, BOZEMAN,** asked, assuming she had a $39.99/ 400 minute calling plan, whether she would be paying roaming charge taxes on the entire 400 minutes. **Ms. Sprinkle** explained she would be paying the tax on the $39.99 base plan but would be able to use these 400 minutes in any state. She pointed out the federal plan allowed them to pull 50% of the base charge from the tax base if 50% of the base minutes were used in another state because they are not subject to tax in Montana; this "bundling" provision was what she referred to in her answer to **SEN. STAPLETON. SEN. STONINGTON** inquired if she used an additional 50 minutes on roaming charges over and above the 400 her plan called for, those minutes would not be taxable under current statute but subject to tax under SB 387, which **Ms. Sprinkle** confirmed. **SEN. DON RYAN, SD 22, GREAT FALLS,** wanted to ascertain, should he spend six months in New York and use his cell phone, the tax would be collected by that state; with passage of SB 387, this same tax would go to Montana. **Ms. Sprinkle** replied this would have been the case before the federal law was enacted; SB 387 only provided for Montana to collect those taxes. **SEN. RYAN** wondered if these taxes would be assigned to another state if SB 387 was not passed. **Ms. Sprinkle** explained this would not happen because the federal law mandated wireless service be taxed based on the primary place of use.

{Tape: 1; Side: B}

Closing by Sponsor:

SEN. COBB closed on his bill and provided **EXHIBIT(ens38a02)**, a copy of the bill including the amendments proposed by AT&T.

HEARING ON SB 386

Sponsor: **SEN. KELLY GEBHARDT, SD 4, ROUNDUP**

Proponents: **Terry Larson, Terasen Pipelines (USA), Inc.**
Mack Cole, Treasure County Commissioner
Gilda Clancy, Montanans for Responsible Energy Development
Dexter Busby, MT Petroleum Association

Opponents: **Patrick Judge, MEIC**
Michele Reinhart, Northern Plains Resource Council

Opening Statement by Sponsor:

SEN. KELLY GEBHARDT, SD 4, ROUNDUP, presented SB 386, stating this bill eliminated Department of Environmental Quality (DEQ) purview over pipelines previously certified under the Major Facility Siting Act which are greater than 17 inches and less than 25 inches inside diameter, and it amended the 2001 law in that it applied to all pipelines of this size rather than just to some. The only pipeline affected by SB 386 is the Express Pipeline, a 24-inch crude oil pipeline running 305 miles through Montana. He offered to answer any questions on issues not covered by proponents' testimony.

Proponents' Testimony:

Terry Larson, Terasen Pipelines (USA), Inc., stated he was the Health & Environmental Safety Manager for Express Pipeline which is owned by Terasen Pipelines (USA), Inc. He gave a brief overview, explaining the pipeline was 24" in diameter and was capable of carrying 172,000 barrels per day of crude oil; it went from Alberta, Canada through Montana and terminated in Casper, Wyoming; it was built in 1996/97 and was put into service in April 1997. He held up a map, **EXHIBIT(ens38a03)**, showing the pipeline location as well as the four existing and four proposed pump stations. The pipeline itself was permitted by the Montana Major Facility Siting Act of 1996, and the Environmental Impact Statement (EIS) was prepared by the Bureau of Land Management in conjunction with the DEQ. The Act was amended in 2001, changing the diameter requirement from 17" to 25". However, the applicability clause in the amendment excluded pipelines 25" or less inside diameter which were subject to a certificate of environmental compatibility on the day before the effective date

of the amendment. This meant only Express Pipeline would continue to be subject to the requirements and oversight of the Major Facility Siting Act, but also that any newly constructed pipeline under 25" inside diameter would not be required to seek a permit under this Act which he deemed unfair. He spoke of plans to increase the capacity from 172,000 to 280,000 barrels per day; this would necessitate the addition of the four proposed pump stations in Montana, with additional pump stations in Canada and Wyoming. To illustrate the new stations would be similar to the existing ones, he handed out **EXHIBIT(ens38a04)**, copies of photographs of the current stations, proposed station sites, and reclaimed flood plains. Express Pipeline felt no further review of the proposed modification was necessary since it had been considered in the original EIS and had been part of the original application. In anticipation of the new stations, the ground had been prepared and main line valves installed. He turned to the issue of taxes paid to the state of Montana, saying in 2002, Express Pipeline paid $5.9 million in property taxes; the expansion would increase those taxes by $200,000 to $250,000 per year per station. He repeated this bill would correct the oversight of not excluding Express Pipeline which met the diameter requirements from the Major Facility Siting Act. Lastly, he addressed what he considered overlapping regulations regarding pipelines such as emergency response plans for possible leaks for which the company had drawn up integrity plans; another set of rules dealt with the decommissioning process for which a decommissioning plan needed to be filed with the DOT prior to decommissioning, and land reclamation monitoring. He stated his company had complied with all of these and stressed they were successful in their reclamation efforts, as evidenced by the pictures in EXHIBIT (4), and they were monitoring the groundwater as well.

Mack Cole, Treasure County Commissioner, rose in support of SB 386, saying it was the original bill's intent to exempt all pipelines with a 25" or less inside diameter; the only difference with regard to Express Pipeline was the environmental compatibility, and he commended **Mr. Larson** for his accurate portrayal of the company's intentions and compliance.

Gilda Clancy, Montanans for the Responsible Energy Development, also stood in support of SB 386.

Dexter Busby, MT Petroleum Association, stated his association's support of SB 386.

Opponents' Testimony:

Patrick Judge, MEIC, commented how much the criteria for what constitutes a major facility under the Act had changed over the years, and asked to read from the statement of Legislative Findings on Purpose, Major Facility Siting Act, 75-2102, Subsection (2):"It is necessary to ensure the location, construction, and operation of the larger transmission facilities, pipeline facilities, or geothermal facilities will not produce unacceptable, adverse effects on the environment nor upon the citizens of this state by providing that an electric transmission facility, pipeline facility, or geothermal facility may not be constructed or operated within the state without a certificate of environmental compatibility required pursuant to this chapter". He added a definition of what is meant by a "facility" was contained in the law and claimed this was the epitome of a "loophole law". He repeated proponents had argued it was not fair to exempt one set of facilities without exempting all facilities and stressed there was more than one remedy available to correct this situation, such as the one this bill proposed, namely to find the lowest common denominator and exempt everyone, or to recognize the continuing fundamental benefit of the Major Facility Siting Act as a community protection law. He suggested crafting an amendment which would repeal the original bill, SB 319.

Michelle Reinhart, Northern Plains Resource Council, also rose in opposition and asked the committee to table SB 386.

Informational Testimony:

Tom Ring, DEQ, offered to answer any questions the committee might have.

Questions from Committee Members and Responses:

SEN. BEA McCARTHY, SD 29, ANACONDA, referred to page 2 of the Fiscal Note where it mentions bonds held for reclamation and asked who was holding these bonds. **Mr. Ring** replied they were held by the DEQ, and in order to release the bonds, they would have to get the approval of the Board of Environmental Review. **SEN. McCARTHY** inquired to whom these bonds would be released, and **Mr. Ring** stated they were a surety bond which Express Pipeline had purchased from a surety company. **SEN. KEN TOOLE, SD 27, HELENA,** pointed to pictures of the Arrow Creek area and asked if this had actually been reclaimed which **Mr. Larson** confirmed, adding it was an underground pipe which had been removed. **SEN. TOOLE** expressed concern with item (4) of the Fiscal Note but seemed to recall that **Mr. Larson** pledged in his testimony to continue to monitor reclamation sites. **Mr. Larson** repeated, in an effort to be a good neighbor, the company would continue to

monitor these sites until they felt it was no longer necessary. **SEN. TOOLE** then pointed to item (5) of the Fiscal Note where it states groundwater monitoring for leakage would cease, and **Mr. Larson** insisted it would be in the company's best interest that monitoring would not cease. They did not have to inform anyone of this activity but would contact the DEQ immediately should they determine, through their monitoring efforts, hydro-carbon was present in the water. **SEN. TOOLE** questioned item (7), remembering a federal agency was to oversee decommissioning, and **Mr. Larson** confirmed it was under the auspices of the Pipeline Safety Office, U.S. Department of Transportation. He repeated that as part of their operations plans, they were required to prepare decommissioning plans to be filed with and be approved by the U.S. DOT six months prior to closing a facility; this meant they could not just walk away from a facility but needed prior approval of the decommissioning plans. **SEN. TOOLE** addressed **Mr. Ring** with regard to his concern about the water quality monitoring and asked, should this bill pass, whether there was a legal requirement for notification of the DEQ in the case of water contamination. **Mr. Ring** was not sure if there was a statutory basis for notification and added if there was leakage, there was a minimum reporting requirement but could not cite the statute. **SEN. BOB STORY, SD 12, PARK CITY,** referred to the planned 60% capacity increase and asked by how much the pressure in the system would have to be increased in order to achieve this. **Mr. Larson** replied there would be no increase in pressure per se; he explained in the current design, the crude oil left the pump station at the maximum pressure for the thickness and diameter of the pipe, decreasing as it moved away from the station, and it was quite low now because of the distance between stations; adding more pump stations was a way to get the pressure back up to its former level and keep it more constant. **SEN. McCARTHY** asked whether the temperature of the oil changed with a change in pressure. **Mr. Larson** stated it did not. **SEN. TAYLOR** wondered how many gallons the tanks held, and **Mr. Larson** replied they held 120,000 barrels. **SEN. TAYLOR** asked what the company's recourse was should one of those tanks get blown up. **Mr. Larson** explained they did not carry a bond but had to meet certain standards which they were more than willing to do since they wanted to operate in Montana; this included a management commitment to clean up any problem in connection with the pipeline operation. He added this statement was provided to the Office of Pipeline Safety; moreover, in light of the threat of terrorist activities, the company was in the process of preparing a security plan for the length of the pipeline. **SEN. TAYLOR** inquired whether any of this crude oil was sold in Montana, and **Mr. Larson** explained it connected to Glacier Pipeline and ended up in a refinery in Billings.

{Tape: 2; Side: A}

CHAIRMAN JOHNSON, SD 5, BILLINGS, asked about Express Pipeline's tax contributions, and **Mr. Larson** informed him they were paying property taxes in Wyoming as they did in Montana, with the length of the pipeline being less in Wyoming. **CHAIRMAN JOHNSON** was curious to know if the tax rate was the same but **Mr. Larson** did not know. **CHAIRMAN JOHNSON** was concerned an increase in pressure would compromise safety and asked if he would consider leaving items (3) through (6) of the Fiscal Note or offer some other method, such as a bond, to ensure there was some recourse in the event of a problem. **Mr. Larson** explained all they wanted with this bill was to create a level playing field; as a company, they wanted to be good citizens and as such, would continue to comply with regulations; this included future reclamation sites as well as water quality monitoring and the reporting of any problems. **CHAIRMAN JOHNSON** repeated his questions whether they would be willing to leave some of those requirements in the bill, and **Mr. Larson** replied he did not think it was necessary, given all the requirements from other agencies; moreover, most of this applied to a decommissioning plan for the Buffalo Station which was required of them by another agency. **CHAIRMAN JOHNSON** asked if that had been done, and **Mr. Larson** replied it was still fully operational since it had only been operating since 2000. **CHAIRMAN JOHNSON** wondered why this station was mentioned in this context. **Mr. Larson** explained the decommissioning plan had to be prepared and filed long before the facility was actually shut down. **CHAIRMAN JOHNSON** surmised, if this bill went forward, there would be no bonding at the time of decommissioning and no assurance the company would take care of it properly. **Mr. Larson** reiterated they could not operate or function as a company without complying with DOT regulations. **CHAIRMAN JOHNSON** contended the state had been left to clean up problems before and therefore, he was looking for safeguards. He then asked **Steve Vick, PSC,** whether the commission had any regulatory authority over this particular pipeline. **Mr. Vick** stated their authority was only over pipelines contained in Montana; the U.S. DOT had jurisdiction over interstate pipelines.

SEN. GARY PERRY, SD 16, MANHATTAN, referred to lines 28 through 30 of the bill and asked if there were other facilities besides Express Pipeline which were affected by this. **Mr. Ring** replied in this definition bracket, there were no other facilities covered by the Major Facility Siting Act which carried crude oil, and he was not aware of any crude oil pipelines bigger that Express Pipeline. **SEN. PERRY** asked if this was limited to crude oil, and **Mr. Ring** replied in this size classification, there was one other pipeline, NorthWestern Energy's, which carried natural gas in a 20" diameter pipe. **SEN. PERRY** expressed concern with a

statement under "Long-Range Impacts" in the Fiscal Note which says "The state would no longer require or review monitoring results for potential impacts to shallow groundwater beneath the tank farm" and said a tank held that much more potential for disaster; he added the people of Montana should not be required to possibly pay for a company's neglect or mistake. **Mr. Ring** explained that decommissioning included "associated facilities", and these were defined as "including but not limited to transportation links of any kind, aqueducts, pipelines, transmission substations, storage ponds, reservoirs, and any other device associated with the delivery of the energy form or product produced by a facility except that the term does not include a facility or a natural gas or crude oil gathering line 25" or less in inside diameter." He stated since the tank farm was not certified at first because it was not part of Express Pipeline's original proposal, his agency required they obtain an amendment to their certificate which addressed the associated facility of the tank farm; he added this tank farm had been placed at the intersection of two pipelines. **SEN. McCARTHY** wondered, in line with the chairman's questions, if it was possible to release just parts of the bonds rather than the entire $539,000. **Mr. Ring** informed her this would require crafting of language to single out any of the bonds. **SEN. McCARTHY** asked if the bonds were related to a particular facility or time period, and **Mr. Ring** stated the bonds were required at the time of certification; he recalled public discussion and concern with regard to adequate bonding in case of spills when this project was certified. The decision rested with the newly created Board of Environmental Review which debated the issue and decided it was somewhat speculative to require a bond for a hypothetical petroleum release. SB 386 as currently written, states the DEQ would not have oversight over pipelines less than 25" inside diameter. **SEN. STONINGTON** wondered why Express Pipeline was left under the provisions of the Major Facility Siting Act when SB 319 was introduced. **Mr. Judge** could not recall the rationale for this decision. **SEN. STONINGTON** posed the question to **Mr. Ring** who said he was not directly involved in the discussions but recalled there was concern on the part of the DEQ that this might open the door to other issues. Colstrip was originally certified under the Major Facility Siting Act and has had problems keeping the salty water in their ponds; he added the agency had been working for several years to get them into compliance; he added Express Pipeline was of secondary concern at that time. **SEN. STONINGTON** inquired what the life span of a pipeline was, and **Mr. Larson** stated they expected it to be about 30 years; they owned one other pipeline which had been in service for 50 years, and with proper maintenance, they could last even longer. **SEN. STONINGTON** then asked about the make-up of the company to which **Mr. Larson** replied Express Pipeline was owned by

Terasen Pipelines (USA), Inc., a Canadian company; it had just been purchased in early January. **SEN. STORY** wondered what the savings to the company would be if this law passed. **Mr. Larson** explained the primary savings would be in the future of the pump stations since they did not have to go through the permitting application and the bonding, and it should be around $300,000 to $400,000. **SEN. STORY** asked how many times the company had changed ownership since the pipeline was built. **Mr. Larson** stated the pipeline was built through a 50/50 partnership by TransCanada and Alberta Energy Company (AEC) who together formed Express Pipeline, LLC. Subsequently, AEC bought TransCanada's shares and merged with another Canadian company, and this new company sold its holdings to Terasen Pipelines which is part of British Columbia Gas, an established utility. **SEN. TAYLOR** inquired what recourse Montana would have in case of a bankruptcy filing. **Mr. Larson** replied Terasen Pipelines (USA) Inc., is a U.S. company. **SEN. TAYLOR** asked him to explain the savings to the company again, and **Mr. Larson** repeated the savings were due to the application and permitting process, and the initial bond cost. **CHAIRMAN JOHNSON** inquired whether the company paid a monthly or yearly fee for the bonds, and what the amounts were. **Mr. Larson** told him the fees were an annual occurrence, and they were based on the size of the bond; for a $300,000 bond, the fee was between $4,000 and $5,000 per year. He responded to a previous question, saying Terasen (USA) Inc., is a registered U.S. corporation which owns all of the assets of Express Pipeline, LLC. **SEN. PERRY** asked if any other pipelines had been built since the Express Pipeline. **Mr. Ring** believed there was a smaller diameter pipeline, one of Conoco's, which would not have triggered the Major Facility Siting Act. **SEN. PERRY** wondered whether the provisions under "Long-Range Impacts" (Fiscal Note) would apply to any other pipeline 25" or less in inside diameter. **Mr. Ring** did not believe it would since Express Pipeline currently was the only pipeline which falls into the "greater than 17" but less than 25" category; the Montana Power gas line was constructed prior to the existence of the Major Facility Siting Act. **SEN. STORY** surmised, since the pump stations were part of the operating system, they could be built without going through the bonding process; if the company built another pipeline which met the diameter requirements and attached it to the existing line, would this new line be subject to the Major Facility Siting Act without SB 386. **Mr. Ring** stated if the new line met the size requirements, it would fall under the Act without SB 386, but would be exempt with passage of this bill. **SEN. McCARTHY** asked if the DEQ had any concerns with regard to the reclamation and vegetation if the bonds were released. **Mr. Ring** declined to comment on the department's position.

{Tape: 2; Side: B}
SEN. McCARTHY posed the question to **Todd Everts** who replied he could not answer for the department but from a legal standpoint, the company was not obligated. **SEN. McCARTHY** was incredulous that there would not be any obligation to carry out any type of reclamation, and **Mr. Everts** explained he meant they were not obligated to carry forward the bonds. **SEN. McCARTHY** rephrased her question, asking whether there was any obligation on the part of the company to continue reclamation at the current construction areas. **Mr. Everts** explained this bill took out the certification requirement under the Major Facility Siting Act and thus, Express Pipeline would not be subject to those requirements. **SEN. McCARTHY** commented she understood this to mean once the bonds were released, there would not have to be any further reclamation anywhere along the entire pipeline. **SEN. STORY** asked whether reclamation agreements were entered into with landowners who had granted easements during construction, and **Mr. Larson** stated all he had seen where simple reclamation statements which did not contain any success criteria.

Closing by Sponsor:

In his close, **SEN. GEBHARDT** assured the committee that Express Pipeline had done a very good job with reclamation as per his conversations with **Mr. Ring**; there was one problem area near Rock Creek where the landowner attributed a soft spot in the field, about 600 feet from the pipeline, to that facility; the company had agreed to put in monitoring wells to determine where the water was coming from but the landowner filed suit against them, and it was being arbitrated. Given the state of Montana's economy, he felt it important to allow these new pump stations to be built because it would result in a $1 million property tax increase.

CHAIRMAN JOHNSON announced a 10 minute recess.

EXECUTIVE ACTION ON SJ 13

Motion: **SEN. TOOLE moved that SJ 13 DO PASS.**

SEN. TOOLE introduced **Amendment SJ001301.ate,EXHIBIT(ens38a05),** reminding the committee this resolution was for the study of energy efficiency and building codes; the amendment expanded the study to include energy efficiency and energy conservation practices.

Substitute Motion: **SEN. TOOLE made a substitute motion that AMENDMENT SJ001301.ATE BE ADOPTED.**

Vote: **Motion that AMENDMENT SJ001301.ATE BE ADOPTED carried 7-0 with RYAN, STAPLETON, and STORY being excused.**

Motion/Vote: **SEN. TOOLE moved that SJ 13 DO PASS AS AMENDED. Motion carried unanimously, 7-0.**

Note: **SEN. STORY** and **SEN. STAPLETON** rejoined the meeting.

EXECUTIVE ACTION ON SB 330

Motion: **SEN. PERRY moved that SB 330 DO PASS.**

Discussion:

CHAIRMAN JOHNSON admitted to having problems with this bill because it singled out one project in one particular area, and it was difficult to ascertain the economic benefit to one community over another. **SEN. TAYLOR** agreed the PSC should include economic development in their considerations with regard to new projects but he was not sure this bill was the proper vehicle to accomplish it. **SEN. STONINGTON** stated she could not support this bill because it did not provide the proper mechanisms toward economic development. She added as long as Public Service Commissioners were elected and their job was to take care of the consumer, they would pay attention to the electricity rate as well as the stability of electricity supply, and to the process itself so their cases were defensible. **SEN. STORY** asked whether this provision was contained in HB 474 (2001) and was lost due to its repeal. **Mr. Everts** advised this issue was not part of HB 474 but there were provisions in this section which had been expunged, such as the procurement process and the electricity supply cost reimbursement mechanism. **SEN. STORY** agreed with **SEN. STONINGTON** in that language in SB 330 was vague, and it opened the PSC up to be challenged on a decision. **SEN. McNUTT** voiced his opposition as well, repeating it would pit community against community, and the PSC would be barraged with accusations of bias; the commission should weigh economic benefits when the consideration was between in-state projects versus out-of-state. **SEN. PERRY** professed, after listening to these arguments and analyzing the issue, he would have to withdraw his support as well. **SEN. McCARTHY** asked to wait for **SEN. RYAN's** return before the committee voted; upon his return, **CHAIRMAN JOHNSON** filled him in on the proceeding and afforded him the chance to comment as

well. **SEN. RYAN** remarked he and his community would welcome the bill' premise.

Vote: Motion failed 3-7 with RYAN, STORY, and TAYLOR voting aye, on a **Roll Call Vote.**

Motion/Vote: SEN. STAPLETON moved that SB 330 BE INDEFINITELY POSTPONED. Motion carried unanimously.

EXECUTIVE ACTION ON SB 335

CHAIRMAN JOHNSON asked **Mr. Everts** to explain the sponsor's **Amendment SB033501.apm, EXHIBIT(ens38a06). Mr. Everts** advised Section 1 of the bill reversed current law and by taking it out with this amendment, the law stayed the same.

Motion/Vote: SEN. STONINGTON moved that AMENDMENT SB033501.APM BE ADOPTED. Motion carried unanimously.

Motion: SEN. MCNUTT moved that AMENDMENT SB033501.ATE, EXHIBIT(ens38a07), BE ADOPTED.

Discussion:

SEN. McNUTT felt clarification was needed in statute to remove some of the ambiguity in setting rates for pole attachments, and this amendment proposed using telecommunications rules for pole attachments provided by the FCC to establish a ceiling on these rates. He stated the standard rate then should be divided by the number of attachments on a pole, and the quotient should be charged each attaching company. He also mentioned a letter from the Flathead Electric Cooperative, addressed to Mr. Wheelihan, **EXHIBIT(ens38a08),** which proposed to split the difference between the $7 FCC rate and FEC's current rate of $14.26 for Bresnan Communications, and raising it over the next five years to where it was even with the rate currently assessed all other companies.

{Tape: 3; Side: A}
CHAIRMAN JOHNSON invited **Mr. Wheelihan, MT Electric Cooperatives Assn. (MECA)** to address the offer contained in the letter, and he explained, if **SEN. McNUTT's** amendment was adopted, this was how FEC would handle pole attachment rates for the next five years. **CHAIRMAN JOHNSON** asked **Doug Hardy, MECA,** to relate the gist of his conversation with **Cory Swanson, AT&T,** with regard to the amendment. **Mr. Hardy** stated it was welcome because it set the cap at a lower level whereas the rate proposed by the FEC was quite a bit higher. **Mr. Swanson** had been shown the FEC letter as

well and admitted he preferred their earlier proposal to stay with the $7 FCC rate. **Tom Harrison, MT Cable Telecommunications Assn.**, stated he was clearly opposed to the FEC's proposal. He explained there were two standards for these rates, one for cable companies and one for telecommunications, and the cooperative was attempting to apply the telecommunications rate to the cable companies whose rates were set lower by the FCC. He did not see why cable subscribers should have to pay more and voiced strong opposition to the proposal, calling the letter "audacious". **SEN. TOOLE** asked for clarification on the proposed cost split in the amendment. **SEN. McNUTT** advised the fee would be split according to the number of hangers on a given pole; if there were two, the fee would be cut in half, and it would be a third if there were three hangers.

Note: The voices on the tape were undistinguishable for several minutes.
SEN. STONINGTON stated she had not been aware of the fact there were two different rates for telecommunications and cable as per FCC rules. It was disturbing that one company could set rates arbitrarily, and there was a definite need for cooperation among the involved parties who had done nothing but trade accusations. She related how she had tried to get the parties to sit down and talk to each other and asked **Mr. Hardy** about the outcome of the negotiations. **Mr. Hardy** reported they had not been able to contact **Mark Baker** and thinking he was the one who represented the cable company, had not tried to talk to anyone else. **SEN. RYAN** was curious as to whether there was a limit to the number of attachments on a pole, and **Mr. Hardy** informed him there was a limit because of the need for separation of the lines coupled with the fact holes needed to be drilled into the pole for the lines, and those had be a specified distance below the power lines. **SEN. TAYLOR** asked whether the fees would be split in half if two companies attached to the same poles. **Mr. Hardy** explained it would reduce the rates but not by half; it would be more like two-thirds divided by the usable space. **SEN. TAYLOR** wondered what sort of rates other utilities charged, and **Mr. Hardy** replied he would have to get exact information but knew it varied greatly; some charged $18.50, and some extended special deals of $2. **SEN. TAYLOR** expressed concern these rates, however high they might be, would be passed on to the consumer, and his constituents were already being charged higher electricity rates. **SEN. McNUTT** tried to give him some background on the reason for his amendments and said in the senator's area, the REA ran its power line which connected to a home by another wire, and a hangman (pole attachment) which may or may not go to the same home; if the rate was raised for the hangman, it affected the same customer. If the revenue from the attachment was applied to

the electricity rate, that rate will go down; in other words, the different charges are just moved around. He felt the reason for the FCC assessing a lower rate for cable was due to the fact that cable was run primarily in urban areas and not in rural areas served by the co-ops. Given the fact utilities were generating more income per mile from the cable companies in urban areas, and serving customers in a rural setting costing more, he proposed this amendment. **SEN. TOOLE** did not agree totally because in this scenario, the co-op customer who did not have cable would be the beneficiary because of the cost shifting. **SEN. McCARTHY** asked **Mr. Swanson** whether his customers were primarily urban since his company was paying $7, and he replied it was a mix of urban and rural; he understood the FCC formula intended to compensate for the mix, with a profit of 11.25% built in for rural rates, and this amendment would apply statewide. **SEN. RYAN** wondered whether any cable companies in Montana had their own network of poles, or did all of them attach to existing poles. **CHAIRMAN JOHNSON** asked **Mr. Everts** to clarify the applicability of the amendment before questioning went any further. **Mr. Everts** stated the amendment only applied to those situations where public utilities distribution services within a municipality were sold to a cooperative after the date of January 1, 1998, and thus it applied to the Flathead area and to future transactions within this definition. **SEN. RYAN** posed his question to **Mr. Harrison** who replied there were two separate cable systems with their own pole network in Red Lodge. **SEN. STORY** asked for clarification whether this amendment merely applied to the rural areas within the Flathead, leaving one rate for the urban areas and capping the rural rate, or whether it applied to the entire acquired area. **Mr. Everts** advised it applied to the entire area. **SEN. STORY** surmised with this amendment, the current rate of $7 would go to $10, and the $14 rate would come down to $10. **SEN. McNUTT** recalled the original proposal was to make all rates equal, whether urban or rural, and it had been his intention to establish an equitable baseline with a built-in cap. **SEN. STORY** understood SB 335 to leave the FCC rate in place inside the three municipalities but was not clear whether this was $7 or $14; he was told it was $7. **Mr. Hardy** came forward and stated the original bill would have limited this rate to those municipal areas as per last session's bill; this amendment changed the law, reflecting several senators' desire for uniformity, and his association fully supported the change.

Vote: Motion that AMENDMENT SB033501.ATE BE ADOPTED carried unanimously, (Roll Call Vote).

Motion: SEN. JOHNSON moved that SB 335 DO PASS AS AMENDED.

Discussion:

{Tape: 3; Side: B}
SEN. TAYLOR reminded him of his testimony that they would reduce the rates ...
Note: The tape is useless from here on in.

Vote: Motion carried 8-2 with JOHNSON and STAPLETON voting no, (Roll Call Vote).

EXECUTIVE ACTION ON SB 361

Motion/Vote: SEN. STORY moved that SB 361 DO PASS. Motion failed 4-6 with STAPLETON, McNUTT, PERRY and STORY voting aye (Roll Call Vote).

Motion/Vote: SEN. MCNUTT moved that SB 361 BE INDEFINITELY POSTPONED. Motion carried 9-1 with STORY voting no (Roll Call Vote).

Motion/Vote: SEN. STONINGTON moved that SB 365 DO PASS. Motion failed 2-8 with STONINGTON and TOOLE voting aye (Roll Call Vote).

ADJOURNMENT

Adjournment: 6:30 P.M.

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SEN. ROYAL JOHNSON, Chairman

_____
MARION MOOD, Secretary

RJ/MM

EXHIBIT(ens38aad)