MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ROYAL JOHNSON**, on March 13, 2003 at 3:00 P.M., in Room 317-A,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: HB 509, 3/7/2003

HEARING ON HB 509

Sponsor: **REP. ALAN OLSON, HD 8, ROUNDUP**

Proponents: **Bob Rowe, PSC**
Dick Brown, MHA

Ed Eaton, AARP Montana
John Bushnell, Northwest Power Planning Council and Office of the Governor
Ron Perry, Commercial Energy of Montana
Debbie Smith, NRDC/RNP
Patrick Judge, MEIC
Rachel Haberman, EnergyShare Montana
Bill Stevens, Montana Food Distributors Assn.
Pat Corcoran, NorthWestern Energy
Betty Whiting, MT Association of Churches
David Hoffman, PPL Montana
Don Judge, MT Chapter Sierra Club
Bob Nelson, Consumer Counsel

Opponents: **Don Quander, Smurfit-Stone, Holcim USA**
Matt Brainard, PSC
Jay Stovall, PSC
Tom Daubert, Navitas Energy

Opening Statement by Sponsor:

REP. ALAN OLSON, HD 8, ROUNDUP, presented HB 509, stating the bill basically set the ground rules for a deregulated utility market; he went over some of the aspects, namely the extension of the Universal System Benefits program until December 31, 2005; the elimination of the Transition Advisory Committee; the numerical limit of the amount of load which can leave the default supplier in a given year, i.e. 10 megawatts per year for residential and 20 megawatts per year for commercial customers, and the provision that industrial customers either stay on the default supply or they can leave but do not have the option to come back in; the sponsor added this issue was open to negotiation. Lastly, he stated the bill was similar to HB 474 which was passed in the previous session and subsequently repealed by the voters.

Proponents' Testimony:

Bob Rowe, PSC, submitted written testimony, **EXHIBIT(ens53a01).**

Dick Brown, MHA, also provided written testimony, **EXHIBIT(ens53a02).**

Ed Eaton, AARP, voiced his support for the original presentation of this "consensus bill" and asked the committee to adhere to the original proposal.

John Bushnell, Northwest Power Planning Council and Office of the Governor, stated their main interest in this bill was the protection of the small default supply customers which are primarily residential customers. He felt the bill provided an orderly transition to customer choice, rate stability, and incentives for economic development. He added both the Governor's Office and his organization supported the bill with amendments because it named NorthWestern Energy as the default supplier and provided reasonable opportunities to choose between the default supplier and competitive suppliers while protecting default supply customers. HB 509 separated consumers into three groups: small customers under fifty kilowatts average monthly billing; intermediate customers with 50 to 5,000 kilowatts monthly; and large customers with more than 5,000 kilowatts per month. He mentioned the large customers had ninety days from the effective date of the act to decide whether to come back into the default supply or remain in the competitive market. It was his office's recommendation that no further changes were necessary to this bill.

Ron Perry, Commercial Energy of Montana, stated his company served the intermediate customers as defined above and supported the original bill but not the amendments, added during Executive Action in the House committee, because they resulted in severe misinterpretations; one of them left one to wonder whether all customers were grandfathered, another whether 20 megawatts per year or a 20 megawatt cap was meant. He added the section he was most concerned with was Section (9), paragraph (5) which limits choice for customers with less than 50 kilowatts to only 10 megawatts per year, and Section (2)(b) which adds a cap of 20 megawatts per year for customers smaller than 5,000 kilowatts. These caps were not in the original bill; it was designed so that any additional costs resulting from customers migrating to choice were passed through to those customers who caused these costs, and did not have to be borne by the small customer. He felt the market was too volatile, and a cookie cutter solution would not solve anything. It was difficult to forecast what would happen if someone opted out; it might create either stranded benefits to the residential customers or stranded costs. He recommended, as had **Mr. Brown,** to revert to the original bill, without the caps, and let the PSC determine what was prudently allowable in letting customers go to choice. To illustrate what would be acceptable to him and his company, he submitted **EXHIBIT(ens53a03)** and **EXHIBIT(ens53a04).** The spreadsheet shows the cumulative load in choice at 27.8%; it represents the portion of power that is being served through competitive choice to the large customers by suppliers other than the default supplier. **(Note:** He went over some of the numbers in the spreadsheet and the graph but the tape is of very poor quality).

Debbie Smith, NRDC/RNP, stated her organization's support for HB 509 because for one, it defined the various types of resources which can be included in the electricity supply cost; she felt this was crucial to the default supplier's ability to assemble a diverse portfolio. She felt the bill protected small customers from risky market experimentation by customers deciding to go to retail choice, and it assured NorthWestern Energy that its prudently incurred supply costs will be recovered; it offered customer choice to all customers, including residential and mid-size market customers; it required a green choice product to be offered, and it provided for a two and a half year extension of the USB program. She, too, stated the original HB 509 was a superior bill, and the amendments added by the Governor's Office were not necessary for the protection of small customers from a legal standpoint, in fact, they had created distracting and unnecessary opposition to HB 509; the original bill gave the PSC adequate authority to protect small customers, and it contained a statutory prohibition to cause additional cost to those who remained on the default supply by those who had gone to choice. Lastly, she opined the USB clause belonged in a separate bill and lauded **CHAIRMAN JOHNSON's** efforts to get this crucial program extended.

{Tape: 1; Side: B}
Patrick Judge, MEIC, agreed with previous testimony, stating his organization had lent its support to both the process which led to this bill and its result; he felt while the final product was not 100% of what they would have liked to see, it did represent a substantial improvement over current law. HB 509 struck an important balance between customer choice on one hand, and between consumer and environmental protection on the other. He submitted a fact sheet, **EXHIBIT(ens53a05),** and stated his organization's support for HB 509 had not changed because of the amendments; what was important was preserving the consensus process as closely as possible and to avoid the temptation to alter the bill.

Rachel Haberman, EnergyShare Montana, voiced her organization's support for HB 509 based solely on the extension of the Universal Systems Benefit contained therein; the organization had no position on the other provisions in HB 509. She stated EnergyShare had also testified in favor of SB 77 because USB has had a positive impact on EnergyShare's ability to help Montanans. Before USB, they had only been able to help about 930 families with $234,000; this number jumped to over 2100 families and $656,000 during the last fiscal year. She pointed to **EXHIBIT(ens53a06)** and explained the number of Montanans below 150% of poverty has grown by over 12,000 between 1990 and 2000, and these families needed help through LIEAP.

Bill Stevens, Montana Food Distributors Assn., explained over the past three years, his association, much like the hospitals, had put together an energy program for their members. During the period from July 2000 through June 2002, more than 200 grocers were able to save close to $1.5 million; his concern with HB 509 were the imposed caps; this could mean not everyone would qualify to participate because with a usage of 25 to 30 megawatts, their program could well exceed the caps. He expressed support for the bill without these changes.

Pat Corcoran, NorthWestern Energy, also rose in support of HB 509, relating many small customers' desire for long-term power supply which would provide safe and adequate service at stable and reasonable rates, adding they were not so much focused on customer choice but on cost and rate certainty. He stated this bill eliminated the transition period; it focused on the small customer with less than 50 kilowatts remaining with the default supplier; there were options for pilot programs and opportunities for competitive suppliers to petition the PSC so they could provide choice to these small customers in a controlled fashion. This provided the default supplier with long-term certainty as to the available load and allowed the default supplier to enter into longer term contracts; this in turn will provide stability for the small customers. He added it also ensured that the default supplier would provide a number of rate options for those default supply customers who did not have choice opportunities; these could be market based rates, long-term rates, or incentive rates for off-peak demand. He stated the bill still provided necessary balance and opportunity for mid-size and large customers to go out and pursue other opportunities in the competitive market.

Betty Whiting, Montana Association of Churches, stated her organization's concern had always been whether there would be electricity at affordable rates for low-income families; they fully supported HB 509 because of its extension of the USB program. Secondly, they believed the bill provided for stability and affordable rates, and she praised the provisions for renewable energy resources contained therein.

David Hoffman, PPL Montana, submitted written testimony, **EXHIBIT(ens53a07).**

Don Judge, MT Chapter Sierra Club, rose in support of HB 509, echoing testimony given earlier by **Ms. Smith** with regard to the extension of the USB program.

Bob Nelson, Consumer Counsel, stated his office was charged with representing consumer interests before the PSC and had been actively involved in implementing electric industry restructuring

in Montana. He voiced his appreciation for the commission's establishing of a forum where interested parties could discuss these issues and attempt to reach a consensus on helpful legislative changes; these discussions ultimately resulted in HB 509. His office supported the bill primarily because it clarified the role of the default supplier; it provided balanced protection for both the consumer and the default supplier; and the default supply cost will continue to be reviewed to ensure a reliable and reasonably priced source of supply for default supply customers. It also provided a cost recovery mechanism for the default supplier coupled with provisions to substantially reduce the risk of any disallowance. He went on to say HB 509 was a balance of several competing interests with the most compelling aspect being the trade-off between long-term resource contracts and the uncertainty of load caused by the availability of open choice. To reduce the potential risks of long-term resource obligations, controls on customer choice and a mechanism for cost recovery would be adopted under this bill. He recalled several caveats expressed in previous testimony against amendments to HB 509 and mentioned SB 247 which had caused his office to take a somewhat ambivalent view on some of the provisions in HB 509; in particular, he felt the risk shifting and potential cost increases posed by the pre-approval requirement in its current form begged for a more careful consideration of the choice controls contained in HB 509, such as the imposed caps. Secondly, having placed the PSC in a decision-making rather than a review role, the prudence review provisions in Section 14 were inappropriate. He suggested these areas warranted further review by the committee but urged support for the bill otherwise.

Opponents' Testimony:

Don Quander, Smurfit/Stone and Holcim USA, stated he was also counsel for the Montana Large Customer Group and his testimony would reflect their views as well. He admitted being a reluctant opponent, having endorsed this bill as introduced in the House because he believed it struck a reasonable balance among competing interests; his clients' concern was with some of the amendments added in the Executive Session in the House. He felt some of the issues mentioned in earlier testimony could be addressed by simply returning the bill to the form in which it was introduced in the House and endorsed across the board. He felt while there were merits in the bill such as the extension of the USB program, the amendments undermined the balance achieved in the original version. To illustrate his point, he provided **EXHIBIT(ens53a08),** an un-amended version of the section of HB 509 which dealt with large customers. In his opinion, item(4) was intended to give the commission full authority to ensure that migration to and from the default supply would not have a

negative impact on small customers but upheld the language as per 3(b) changed this intent by saying the large customer must make a one-time and permanent decision within 90 days from the effective date of this bill. He found this interesting because default supply is not available to the large customers until after July 1, 2004. If this bill was adopted in its current form, any large customer would be required to make a permanent decision, perhaps in June of this year, to commit all of the load either to choice or to market, not knowing what default supply rates would be, what rules the commission will establish for inclusion in contracts if they elected to take default supply; in any event, this would not be available until July of 2004. He stated most of his clients have executed contracts for three to five years and are bound by them, so they would not be able to back out of them and make a choice within 90 days. For those who were in a position to make a choice because of the timing of their contracts, this bill would make it difficult because it limited their options and increased electric supply expense. The amendments in question removed the default supplier as the silent bidder whose presence would have increased negotiating power; it presented a real value to the customer to have an implicit bidder in the form of the default supplier at the table, especially in this thin market, and he would like to see this return. He also advocated giving the commission the tools and flexibility to respond to uncertainties in the market prior to the next legislative session. In closing, he questioned why certain allowances were made to public agencies, as per (E) which were not extended to other large customers and suggested to omit the reference to "public agency" in order to remedy this issue.

{Tape: 2; Side: A}
He contended the provisions for new customers were inconsistent with those for existing customers and hoped these issues could be resolved.

Matt Brainard, PSC, urged the committee to seriously consider **Mr. Quander's** presentation with regard to the large industrials, stating his district contained several large customers who would be affected. He suggested it was counter-productive for the government of this state to stop the business machinery from going to a safety net when times were tough. He questioned why large industrials should have to come back at their cost if they were caught in a sky-high spot market and were not able to make a good deal in a contract negotiation. He recalled there had been a number of meetings between the PSC and the large customers during the last session who wanted to opt back into the default supply, and their only option had been to shut down which resulted in a decrease in the state's tax base, not to mention the lost jobs and livelihoods. He wondered, if transition was over as the sponsor maintained, why it was necessary to limit

choice by imposing caps; he opined we were still in transition. The industrials had managed to move to the competitive marketplace, and there was more opportunity still. He acknowledged this bill saddled the transmission and distribution company with the responsibilities of being the default supplier and disagreed with the amended bill because it did not allow customers to move on to choice and denied flexibility to retail providers and the PSC managing the change-over. In his opinion, the original version was a much better bill. He recalled **Commissioner Rowe's** belief that the default supplier should be the most efficient aggregator, stating he was not sure this role should continue in perpetuity if customers could really go to choice. While he had been a proponent for HB 509 in the House, he felt some concepts in the bill were at odds with each other, such as the default supplier offering a variety of choices to customers within the default supply when he was to be the most efficient aggregator. He referred to the wide-spread belief that small customers would not want to leave the default supply and questioned the need to impose caps on them since they were not leaving and destabilizing the system.

Jay Stovall, PSC, rose in opposition to HB 509, stating he had been an opponent in the House as well because he did not think the bill was good for Montana; even today, proponents had voiced more concerns than agreement. He felt this bill created a deterrent to potential new customers with its restrictions and conditions, moving away from a free market concept and limiting real choice. The default supplier was supposed to be the supplier of last resort, and this bill made him the only game in town. He did agree the default supplier needed to be protected with regard to load, but this could be done through long-term contracts. He lauded the provisions in SB 247, agreeing pre-approval was needed to ensure new generation which in turn would create a competitive market.

Tom Daubert, Navitas Energy, stated Navitas Energy, one of the leading wind power companies, had hopes of becoming a new supplier of electricity to Montanans. He explained he appeared as an opponent to HB 509 because of the risk of NorthWestern Energy potentially going bankrupt between now and the next legislative session. Even though it was difficult to contemplate, it should be no secret that the company's stock had been extremely volatile as of late; he added this session had not produced any legislation seeking to map out what would happen to protect consumers and suppliers in the event bankruptcy occurred. He felt this bill might be a fitting place to address this concern and asked the committee to consider a possible remedy by giving the PSC the discretion to look for one or more alternative default suppliers, where supplier contracts would be

honored and where the PSC's authority on rate setting would remain in force so there would be no risk that a bankruptcy court judge might preempt their authority to determine rates for Montanans.

Informational Testimony:

John Alke, Montana/Dakota Utilities (MDU), stated HB 509 had no impact at all on MDU, however, some of the suggested amendments could have an adverse impact on MDU. He pointed to page 13, lines 5 and 6 of the bill where reference is made to the small customer of a public utility "that has restructured in accordance with this chapter." This language appeared in several other areas on the same page and was inserted at his request because he wanted to ensure the MDU exemption from deregulation would not be affected. He felt without this language, this act could repeal the MDU exemption by implication even though he was assured this was not the intent of the bill.

Tom Schneider, PSC, contended this bill presented a lost opportunity: it was a "love fest" prior to its being amended, garnered testimony of 16 -2 in the House committee hearing and reflected a delicate balance prior to the Executive Action where the amendments occurred. He felt this should never have happened and was saddened that the committee was subjected to the testimony brought before it.

Questions from Committee Members and Responses:

SEN. EMILY STONINGTON, SD 15, BOZEMAN, asked **Mr. Bushnell** where these amendments had come from. **Mr. Bushnell** stated he had not been part of the "love fest" nor had the Governor's Office taken part in the collaborative effort in the Power Planning Council's office or in the consensus sessions but admitted most of the amendments added during Executive Action had come at the request of both the Governor's office and his. **SEN. STONINGTON** wondered about the purpose of the amendments. **Mr. Bushnell** replied their foremost concern was the constituents, and the objective was to provide rate stability and long-term, reliable power for the default supply. Most of the amendments were offered in Section (9) which dealt with customer choice and which was so controversial now; they did not understand the cost of being able to come back lay in the fact that the bidder knew any resource acquisition by the default supplier would be passed on to the returning large customers. If the large customers had the opportunity to return, it would be at market unless they could somehow convince the commission to price-average and thereby increase other default supply customers' rates to the advantage of the large industrials; he stated the Council and the

Governor's Office did not want to see this happen. **SEN. STONINGTON** understood him to say large customers would come back at market, but she was certain they would not return at market because it would not be advantageous to them. She felt it was up to the PSC to find the balance between price and stability; she wondered why the commission would agree to average in a large industrial if their emphasis was price. **Mr. Bushnell** professed not to know the answer; he acknowledged this bill was based on a consensus; his office simply disagreed with the result of the consensus process and had offered their amendments accordingly. He did not know why the PSC would average in a large customer when they were equally equipped to negotiate power contracts with competitive suppliers as the default supplier was. **SEN. STONINGTON** opined these options existed without the amendments; the only thing the amendments did was not to let them return once they opted out, which **Mr. Bushnell** confirmed, adding if the large industrials felt the market was not competitive, they had a one-time option to come back.

{Tape: 2; Side: B}
SEN. DON RYAN, SD 22, GREAT FALLS, asked **Commissioner Jergeson** for his view of the bill in its current form versus the original version. **Commissioner Jergeson** stated it was his position that it was preferable in either form to what existed in statute as a result of SB 390 and subsequent actions in later legislative sessions. He felt deregulation was a mistake but believed this consensus process worked as it should have: most of the collaborating participants had come up with a good bill; for it all to come apart now risked killing this legislation and would leave the state with something less workable in statute. **SEN. RYAN** concluded **Mr. Hoffman** had not come across as a proponent in his testimony and asked him to explain. **Mr. Hoffman** replied he had been a "soft" opponent in the House committee hearing because he felt the bill could be improved with amendments. Unfortunately, none of the amendments he proposed were adopted, and his company decided to come in as a soft proponent for this version of the bill; the difference between the two positions was negligible. They still felt the bill needed some tweaking but there were also positive points which he had pointed out earlier. **SEN. WALT McNUTT, SD 50, SIDNEY,** referred to the terminology "the default supplier should be a silent bidder", saying he understood this to mean, as the large customer negotiated for a rate, he wanted to leverage the large customer's default supply rate to benefit him which **Mr. Quander** affirmed. **SEN. McNUTT** wondered where the benefit was if a large customer wanted to come back to the default supply when the market was up, willing to pay "costs incurred" but the default supplier did not have a big enough surplus, resulting in having to purchase power at market. **Mr. Quander** replied the benefit was the negotiating threat to the

bidder or bidders that the option of returning to market was available and would result in the loss of the industrial as a customer. If a default supply customer's contract expired and he had to renegotiate at a time when the market was way up, he could easily get caught in the cross hairs; therefore, it was his opinion the option of being able to return to the default supply was valuable. He explained the role of the default supplier as silent bidder: as a customer is negotiating for a power contract, the bidder needs to be able to at least match the default supply because it would not be prudent to enter into a five-year contract if the competitive supplier could not show some benefit over the default supplier. He added this had been advantageous in his negotiations and had made a difference in the price of some contracts since suppliers were interested in market share and retaining customers. He recalled two years ago, even the threat of some industrials closing down did not result in a willingness at the legislature or from the commission to average rates in at everyone else's expense, and he felt it would be extremely foolhardy to think the current commission would undertake this now. **SEN. McNUTT** remembered large customers who were in trouble two years ago, and the legislators taking the heat for it; he also remembered that the stranded costs these large customers were to participate in were negotiated and mitigated as part of their agreement. His concern was that **Mr. Quander** was going to put in some leverage which unfairly let him use the small customer to his benefit. He agreed that a 90-day limit and a single chance might not be optimal but felt there should be some provision where the large customer was either in or out; if long-term contracts were negotiated with rates set for a large number of small users, they should in no way be subject to abuse from a large customer wanting to leverage in or out. **Mr. Quander** replied the original bill addressed this concern and the parties present, including the utilities, had agreed sufficient authority had been given to the commission to ensure this would not happen. He saw no advantage to the small customer in the changes; he felt even the default supplier would be disadvantaged in the sense that there were circumstances where the better load factor associated with large customers was attractive to them; in fact, they had indicated during the discussions there were many circumstances under which they believed it would be financially beneficial to small customers if some of that load returned to the default system. The key was that the commission would establish fees, rules, and rates to ensure the protection of small customers. He went on to say he disagreed with the characterization of stranded costs and added he did not have a customer currently planning to return to the default supply; in fact, large customers may not ever return unless securing contracts for themselves was too time-consuming and not feasible, or if their contracts expired. **CHAIRMAN ROYAL**

JOHNSON, SD 5, BILLINGS, welcomed **HOUSE SPEAKER DOUG MOOD, HD 58, SEELEY LAKE,** to the hearing and asked if he had any comments, stemming from his long time involvement in energy issues. **SPEAKER MOOD** stated as the Vice Chair of the Conference Committee, he had been the sponsor for HB 474 on the House floor last session, and he had gotten involved in numerous discussions with members of the industry once **REP. OLSON** approached him with HB 509. These discussions led him to conclude regulated monopolies such as Montana Power, NorthWestern Energy and, to a degree, PPL Montana seemed to have a difficult time when released into a competitive market. He saw HB 509 as an attempt by NorthWestern Energy to move away from competition and back into a regulated market, and this had him concerned because it constituted a major policy shift for Montana. If in fact NorthWestern, as the default supplier, was providing electricity at a competitive rate and with adequate service, why would anyone opt out, and if they were not, why should customers not be able to leave. The way the amended bill read, customers were not allowed choice but captured into the default supply. An article he had read about California which attempted to explain one of the reasons why deregulation did not work stated most people did not want to make the effort to change providers because it did not make all that much difference in their monthly bill. It bothered him that residential customers' ability to move back and forth remained limited. **SEN. KEN TOOLE, HD 27, HELENA,** referred to a meeting he had attended where **Mr. Quander** had stated some cost sharing by small customers was appropriate when large customers came back to the default supply; he wondered whether he had misunderstood. **Mr. Quander** felt he might have heard a small part of a larger conversation within the attempt to lay out a number of different scenarios in which any size customer would exercise choice. He recalled the consensus had been to address this with language ensuring allocation of associated costs. He believed historically, larger customers were subsidizing smaller customers through the regulated rate process. He felt in general, cost allocation associated with costs the customer brought with him brought benefits, and those benefits should go back to the customer; by the same token, additional costs should also be assigned to that customer. **SEN. TOOLE** pointed to page 18, line 23 of the bill, where it states "... the commission's review of electricity supply cost incurred by the default supplier must be based on the facts that were known or should reasonably have been known by the default supplier" and asked what the current standard was for determining whether supply cost was recoverable. **Commissioner Rowe** explained the bill contained a two-part standard; the first part was prudence, and the second part was the "backward looking" standard. The standard for expense items other than the capital investment was prudence; the concern raised by some parties to the collaborative effort

was the possible relationship between this bill and SB 247; namely the use of facts which were known or should have been known in the past when the default supplier was assembling his portfolio rather than the facts which are known currently. **SEN. TOOLE** wondered, if the circumstance arose where everyone agreed a decision made five years ago was reasonable given the facts known at the time but now hindsight showed it was a poor decision, would the ratepayers assume all these risks. **Commissioner Rowe** replied assuming the decision was reasonable at the time it was made, they would; he added, though, the commission should aggressively examine what should have been known at that time but it would not rewrite the rules after the fact. **SEN. TOOLE** referred to the list of **Mr. Brown's** participating members and asked if any of them where in MDU's service territory which **Mr. Brown** confirmed. **SEN. TOOLE** asked how that worked and was referred to **Ron Perry** who explained the MDU customers on the list were gas customers; MDU had not been deregulated. **SEN. BOB STORY, SD 12, PARK CITY,** stated a lot of the discussion dealt with a finite pool of customers and those who were leaving or coming in and asked how the present system handled new customers coming in. **Commissioner Rowe** explained typically, those newcomers were small customers, and the commission would add cost such as line extensions to their rate. He added HB 509 did allow the commission to break down the default supply into sub-classes so that an influx of new customers could be accommodated; a new large customer coming in would raise the same issues as a large customer returning. He pointed out there was no disagreement between himself and **Mr. Bushnell** in terms of ensuring small customers did not have to bear costs caused by large customers.

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SEN. STORY repeated a number of residential customers were coming into or leaving the system every day due to vacations or newly built homes, and he wondered if the system was able to handle these changes. When **Commissioner Rowe** affirmed this, **SEN. STORY** wondered why legislation was needed to deal with small customers if they did not cause problems within the system. **Commissioner Rowe** agreed, saying the supplier would have included potential expansion in his procurement plans. He contended when the commission examined where the risk to the portfolio customers would be, it did not include the random migration which the senator had described but was based on the medium and large sized customers' movements. **SEN. STORY** inquired, absent this bill, whether a large new customer could come in and connect to the default supply. **Commissioner Rowe** replied they could in theory; typically, though, it would necessitate negotiating a contract with a supplier. **SEN. STORY** asked if the large industrial were to shut down, would there be a cost to them under present

statute. **Commissioner Rowe** confirmed this and added this issue had been raised and discussed under "industrial retention" rates. **SEN. STORY** inquired if "public utility" was defined in statute. **Commissioner Rowe** explained "public utility" was used mostly in the context of a gas or electric company. **SEN. STORY** commented the default supplier, then, had two separate functions; one was to deal with those currently on the system, and the other was to deal with new loads coming onto the system. **Commissioner Rowe** found this to be a provocative way to look at this issue. The purpose of the default supply was, at the very least, to serve customers who chose to remain in the system. **CHAIRMAN JOHNSON** advised the committee there was a definition of public utility on page 9, line 27. He also announced a fifteen minute recess, from 5:05 to 5:20 p.m.

When the committee reconvened, **SEN. STORY** asked whether administrative costs were figured into the costs associated with the return of a large customer and spread to the existing ratepayers. **Commissioner Rowe** stated any customer taking service from the portfolio would have to help pay administrative costs; he thought it possible that the administrative costs would decrease because it would then be spread over a larger base. **SEN. STORY** had looked at the definitions of "public utility" during the break and had found one more under Section 69 of the bill; he wondered why another definition was needed. **Commissioner Rowe** explained the definition in the commission's general statutes applied to all of the companies regulated by the commission whereas here, the focus was on electric utilities; therefore, a reconciliation of definitions was necessary. **SEN. STORY** referred to page 8, line 12 of the bill which dealt with energy supply costs and asked whether "any other costs" was not too broad a term. **Pat Corcoran** replied "any other cost" was defined as including but not limited to any other costs directly related to NorthWestern Energy providing those services which would warrant cost recovery. **SEN. STORY** voiced concern with the phrase "including but not limited to" and wondered why it was not just defined as "any costs directly related". **Mr. Corcoran** agreed this would be an option; omitting this language would not change the intent of the bill. **SEN. MIKE TAYLOR, SD 37, PROCTOR,** inquired how the commission would manage a possible bankruptcy by the default supplier. **Commissioner Rowe** stated the commission had the authority to continue regulating a utility going through bankruptcy. However, bankruptcy law was federal law and would potentially preempt any of the PSC's actions. He cited a case in California where the bankruptcy court went too far by basically taking over regulatory decisions from the California PSC in the areas of rate setting. This commission's actions would depend on whether it was a re-organization or a liquidation bankruptcy; in a re-organization bankruptcy, there were two different views,

those who argued bankruptcy was not a big concern to ratepayers because the company would come out of it with a lower cost structure; the other view, namely of trying to work through a bankruptcy, was a nightmare where customers could be harmed substantially. **SEN. TAYLOR** wondered if this bill would give the default supplier assurances of supply and available funds for investment. **Commissioner Rowe** felt HB 509 did give the default provider long-term security coupled with portfolio guidelines from the commission. He added one of the commission's difficulties was to separate risk associated with the utility or default supply function from risks stemming from NorthWestern Energy's non-utility operations. **SEN. GARY PERRY, SD 16, MANHATTAN,** wondered if he believed a successful coalition could be re-established with regard to this bill. **Commissioner Rowe** replied he would like to get back to the "love-fest" and resolve the issues which had come up; he added virtually the same parties were working intensively on SB 247. **SEN. STONINGTON** professed she, too, had wondered whether it was appropriate or possible to ask the group to reconvene and hammer out their differences with regard to the amendments. **SEN. TOOLE** inquired if and how the PSC would manage the mechanics should **Mr. Quander's** proposed changes be adopted where large customers could opt back in. **Commissioner Rowe** advised in before, they had dealt with large customers both on an individual contract basis and on a tariff basis; in theory either would be possible. Under HB 474, there was a rule limiting the amount of load moving to choice to 10% per year to ensure proper handling of cost shifting issues. It was important to determine whether the return of a large customer caused harm to the ratepayers; if it did not cause an increase in rate, he did not expect a rate hearing needed to be convened; should it result in a significant cost increase, the PSC would have to figure out a way to assigns these costs to the returning customer. **SEN. STONINGTON** invited the sponsor to comment on the amendments since he had endorsed them. **REP. OLSON** replied he had worked on the amendments with **Mr. Hines** and **Mr. Bushnell** out of concern for rate stability for the residential customer. Should the time arise where a large segment of customers left because of lower prices elsewhere, and the default supplier had to sell the excess power on the open market at a reduced price, the small customer would get stuck having to make up the difference; this was the reason for imposing limits on how much load could leave at any given time. **SEN. STORY** inquired whether NorthWestern Energy's Montana operations were in a decent fiscal condition. **Mr. Corcoran** advised NorthWestern Energy was a division of the NorthWestern Corporation, and the utility operation in Montana was holding the company together. **SEN. STORY** speculated should a bankruptcy judge run the operation, would it be possible for him to determine this operation was healthy and could stay in business but others were not, or would it all be lumped together.

Mr. Corcoran stated he could not answer this, saying it was a rate determination. **CHAIRMAN JOHNSON** wondered if the company was structured as he had described earlier when they purchased Montana Power's assets. **Mr. Corcoran** advised it was not; this structure was being discussed at the time of the transaction. **CHAIRMAN JOHNSON** wondered if TouchAmerica was organized that way with Montana Power, and **Mr. Corcoran** stated he could not answer for TouchAmerica. **CHAIRMAN JOHNSON** read the definition of the "transition period" in SB 390 (1997):"Transition period means the period beginning July 1, 1998 and ending in July 2002 unless otherwise extended pursuant to this chapter during which utilities may phase in customer choice of electric supply" and asked if the sponsor thought the transition period had indeed ended, that energy had flattened out and things were going smoothly. **REP. OLSON** replied he did not think energy had flattened out; to the contrary, he felt it would continue to be extremely volatile. He was told Bonneville Power's rates would double by June of this year, increasing from $20/megawatt to $40, and he saw continued volatility with regard to the mid-Columbia prices. He reminded the committee of the weekly price updates of the previous session and contended it was starting again. Indicators pointed to 2006 as being the year where 2001 would be repeated. **CHAIRMAN JOHNSON** asked the same question of **Commissioner Rowe** who stated he did not think the transition period was over either, especially with regard to the legislative concept that all small customers would move from the integrated service to competitive supply. The larger transition in the energy market was going on in a profound way, with changes in federal policy, technology and so on, but there continued to be transition at the retail level. **CHAIRMAN JOHNSON** wondered whether it was advisable to eliminate the Transition Advisory Committee and the transition period, replacing the latter with "stranded cost", or should the Legislature continue to have oversight. **Commissioner Rowe** felt continued oversight was important and recommended combining energy and telecommunications issues into one interim committee; he added he valued ongoing dialogue between the commission and the Legislature. He did not think the transition period as part of Montana's restructuring law was needed; using the kinds of tools laid out in HB 509 was sufficient. **CHAIRMAN JOHNSON** asked if substituting "transition costs" with "stranded costs" would change other language in the bill, and **Commissioner Rowe** replied the reason for changing "transition" to "stranded" signaled the transition was over; the term "stranded cost" was a term commonly used in the industry. He advised one of the amendments made in the House was to make it clear transition costs as used referred to costs incurred by a company before May 1997 so there was no opportunity to create an argument based on this language that there might be future stranded costs. **CHAIRMAN JOHNSON** understood "transition period"

had always included the fact we were in a period of change, and he could not fathom why a Transition Advisory Committee should not be called such if we still were in a transition period. He felt the new terms changed the meaning of some of the paragraphs in the bill. **Commissioner Rowe** agreed the Legislature should continue to actively oversee this, and repeated combining energy with telecommunications issues since both industries seemed to be going through a kind of "transition". **CHAIRMAN JOHNSON** asked if there was a bill other than SB 67 dealing with the TAC committee; **Commissioner Rowe** believed SB 67 was the only one.

{Tape: 3; Side: B}
SEN. JOHNSON inquired whether anyone representing the 65% of the people who voted to repeal HB 474 had taken part in the collaborative effort. **Commissioner Rowe** replied proponents of the repeal had been a part of the discussions, such as representatives of AARP. **CHAIRMAN JOHNSON** asked whether he thought those who attended represented the 65% well.
Commissioner Rowe stated it was hard to know if anyone spoke for the whole organization but he believed that segment of the population was represented. In his opinion, the cause for opposition to HB 474 was the contract with PPL Montana; concern about the process; and frustration with the energy situation in Montana in general. The commission had responded to the concerns with the PPL Montana contract two years ago by declining to modify its position and go along with the contract; he added the PSC was trying to deal with the concerns about process by making sure the meetings convened at the commission were open to the public and by making available pertinent documents by request.
CHAIRMAN JOHNSON reminded **Mr. Corcoran** he had once stated his preference of procuring power in segments rather than through a more complete contract, and asked how this had worked out for NorthWestern Energy with regard to cost. **Mr. Corcoran** explained this concept was the basis for the default supply portfolio; a portfolio was a mixture of resources including different quantities and different terms which were staggered; some of the contracts were for "base load" which represented a consistent source of power, and some were for "fluctuating load", namely for those times where loads were increasing because demand fluctuated due to time of day or due to season. Some of their base load contracts extended into 2007 and last June, the company had started work on procuring "dispatchable" resources which dealt with fluctuations in power; currently, they were looking at entering into contracts for wind power as well as gauging opportunities for customers to conserve energy as a means to lower the company's electricity supply usage. All of these things contributed to the portfolio and were reflected in the cost; he added some power was currently purchased in the market to help deal with fluctuations. He believed the average cost

under this system provided a better price to the consumer in the long run; the alternative would be to buy a "full requirements contract" from someone provided they would assume the full risk. Such a contract would take care of all of the usage but the price would be much higher than the prices NorthWestern Energy was able to procure using the portfolio approach. He believed this concept also allowed them to mitigate the risk to consumers in the long term. **CHAIRMAN JOHNSON** inquired whether they had contemplated the possibility of a full requirements contract. **Mr. Corcoran** stated they had not because the majority of the base load was secured through June 30, 2007 and thus, their focus was on dealing with the other parts of the portfolio; they would revisit this issue, though, when the time came. He agreed with the sponsor that we could be facing the same grave energy situation by 2006/2007. **CHAIRMAN JOHNSON** asked if the company was looking at ten-year contracts to address the dire predictions. **Mr. Corcoran** replied they were evaluating current trends in power supply contracts to see if was feasible to address this now or in a year or so. **CHAIRMAN JOHNSON** recalled his mentioning a contract with First Megawatts in Great Falls which had not even been built yet and asked how he could contract with them under the circumstances. **Mr. Corcoran** responded this was one of their dilemmas since they had signed a contract and it appeared questionable whether the plant would be built. **CHAIRMAN JOHNSON** understood First Megawatts had garnered a construction deal where up to $15 million per year was covered by ratepayers and wondered if he could confirm this. **Mr. Corcoran** advised this contract consisted of two parts; one component was associated with the capital, or plant, cost, based on the actual cost of building and operating the plant, and the other component was the fuel cost which was natural gas. **CHAIRMAN JOHNSON** repeated his question as to whether the contractual costs were in the rate base borne by the ratepayers currently on NorthWestern Energy's system which **Mr. Corcoran** denied, saying only at the time when those costs were realized would they be included in the current year's electricity supply's tracking filing. These filings were made to the commission on an annual basis and if current projections held, actual costs would start showing up in July 2004. **CHAIRMAN JOHNSON** did not feel he had answered his questions about the ratepayers subsidizing the Great Falls plant, to which **Mr. Corcoran's** replied he had understood him to mean were they paying for the plant currently, and the answer was no; they would pay, though, in the future subject to the PSC's review and approval. **CHAIRMAN JOHNSON** wondered if they had to pay even if the plant did not supply any power to them, and **Mr. Corcoran** affirmed this would be the case insofar as it applied to the capital costs. **CHAIRMAN JOHNSON** asked what the average cost of their current contracts was, and **Mr. Corcoran** replied it was

roughly $35 and this would be reflected in the tracker at the end of the year.

Closing by Sponsor:

REP. OLSON tried to alleviate the concerns expressed with regard to the amount of load which may leave the default supply in a given year by stressing the amounts in the bill were annual amounts. Those who had already left the default supply were not counted in the caps, and an additional 20 megawatts per year could opt out. He contended the transition to deregulation was over because a competitive market was developing. He recalled the difficulties of the last session where everyone wanted back on the default supply, contending someone had to pay for the additional costs associated with this migration; the choice had to be made whether we wanted the default supplier or an open market, but whatever the choice, the risk should not have to be borne by residential ratepayers. He repeated under the amendments, the 10 megawatts of small customer load which could leave in a given year represented 10,000 homes; and another 20 megawatts per year in medium customer load could leave. He lauded the effort put forth by the two co-op aggregators, saying they exemplified deregulation. His main concern was taking care of the small customer who would be left holding the bag if power prices went so low that everybody would leave the default supply and they would have to make up the difference. He agreed deregulation was not a simple task, and he felt the Legislature needed to put some order into it; it was their responsibility to take care of the people remaining on the default supply.

ADJOURNMENT

Adjournment: 6:00 P.M.

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SEN. ROYAL JOHNSON, Chairman

_____
MARION MOOD, Secretary

RJ/MM

EXHIBIT(ens53aad)