MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON ENERGY AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ROYAL JOHNSON**, on April 1, 2003 at 3:25 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: None

Executive Action: HB 509; HB 424; HB 266

EXECUTIVE ACTION ON HB 509

CHAIRMAN ROYAL JOHNSON, SD 5, BILLINGS, asked **Mr. Everts** to briefly explain the amendments. **Mr. Everts** introduced **Amendment HB050903.ate, EXHIBIT(ens69a01)**, which was requested by **CHAIRMAN JOHNSON** and explained it provided for an Energy and

Telecommunications Interim Committee to replace the Transition Advisory Committee and reinserted a "transition period" to July 1, 2027; in doing so, the term "transition" had to be inserted throughout the restructuring act. He went on to say a number of sections had been taken out of the bill, such as Sections (2) through (5), which contained the natural gas restructuring provisions; they had been brought in because of the elimination of the term "transition" in the original bill; since "transition" had been re-inserted, there was no need for these sections. Other substantive amendments required the utility to conduct pilot programs during the transition period instead of making them discretionary, and finally, item 103 on page 11 re-stated the requirement that after July 1, 2010, the commission shall continue to determine and monitor whether or not competition has occurred. If they do make a determination after this date, they are required to report to the Legislature and include recommendations on the implementation of competition and customer choice.

CHAIRMAN JOHNSON invited questions from the committee. **SEN. BEA McCARTHY, SD 29, ANACONDA**, asked if the people who had testified during the hearing had an opportunity to speak with him regarding these amendments which **CHAIRMAN JOHNSON** confirmed, adding everyone involved had participated in meetings ever since the hearing, except for **Mr. Don Quander**, but discussions had taken place between **Mr. Quander** and himself. He went over some of the provisions of the bill, explaining the bill allowed 10,000 kilowatts of power a year to leave the default supply within the small customer category; 20,000 kilowatts a year can leave in the mid-size category. Large customers have to get on in a certain period of time if they find an acceptable contract; if they get on, they have to stay on; if they leave and opt back in, they have to come back at market rate, not at the default supplier's rate. **SEN. McCARTHY** referred to page 2 of the amendment where it related to a new interim committee and asked whether this was a continuation of the TAC committee or a new one. **CHAIRMAN JOHNSON** replied it would be a new committee, comprised of eight legislative members as voting members. He advised everyone he had talked to was extremely cooperative and agreed to attend meetings when notified. **SEN. McCARTHY** could not find the section in the bill dealing with the make-up of this committee. **Mr. Everts** explained there were provisions for interim committees in current statute, and they would be plugged into this legislation.

SEN. BOB STORY, SD 12, PARK CITY, asked for the reason behind extending the transition period through 2027. **CHAIRMAN JOHNSON** explained the current ending was 2007, and he wanted to extend it by another 20 years to have the opportunity for utility companies

to enter into long-term contracts; one exception to this was, if the PSC determined there was enough product to constitute choice, they could approach the 2009 Legislature, report their findings, and the Legislature could act accordingly. **SEN. STORY** referred to the caps in the bill and asked if the amendments affected them. **Mr. Everts** replied they did not.

SEN. KEN TOOLE, SD 27, HELENA, stated the amendments made pilot programs mandatory and inquired whether they also stipulated how large the programs had to be. **CHAIRMAN JOHNSON** told him size was not specified.

SEN. EMILY STONINGTON, SD 15, BOZEMAN, wondered what the effect of extending the transition period for another 20 years would be. **CHAIRMAN JOHNSON** stated it allowed everything to stay in the bill as originally drafted except for changes specified in the amendments. **SEN. STONINGTON** asked which provisions remained in the bill, and **CHAIRMAN JOHNSON** explained it was the extension, the interim committee, and such; what was changed was the "stranded cost" language. He felt it important to keep all the changes which had been made since 1997 in the bill. **SEN. STONINGTON** surmised he did not think having a permanent default supplier was a good idea which **CHAIRMAN JOHNSON** confirmed.

SEN. DON RYAN, SD 22, GREAT FALLS, wanted to know what overall effect the amendments had on the consumer as opposed to the original bill. **Mr. Bob Nelson, Consumer Counsel,** stated he had not studied them but at first glance, did not think extending the transition period would have much impact on the consumer; long-term contracts created stability which would benefit the customer.

SEN. STONINGTON felt the amendments moved away from the intent of the bill to have a permanent default supplier and asked for his opinion. **Mr. Bob Rowe, PSC,** repeated the commission had a strong preference for the original version of the bill but felt the provisions outlined in the amendments could work, especially coupled with those **SEN. McNUTT** was bringing forth. The provision to have the PSC report to the Legislature in 2009 and the extension of the transition period to 2027 should be enough time to allow for long-term contracts; both the Legislature and the commission had to be mindful in getting ready for a future transition date as this new deadline approached, to make sure the default supplier had made appropriate procurement plans.

CHAIRMAN JOHNSON asked him if he thought the amendments indicated a different or second default supplier would be designated. When **Mr. Rowe** denied this, **CHAIRMAN JOHNSON** asked if he felt the bill as amended would allow the commission to continue their efforts

to keep the default supply operating. **Mr. Rowe** stated the provisions certainly would ensure this even though they preferred the bill as originally drafted.

SEN. McCARTHY wondered if there was any need for a Fiscal Note, and **Mr. Everts** replied while the amendments added an interim committee, the Transition Advisory Council committee had already been budgeted for and thus, there was no new fiscal impact.

SEN. COREY STAPLETON, SD 10, BILLINGS, seemed to recall the committee had tabled a bill providing for a TAC committee. When **Mr. Everts** agreed SB 67 was tabled, **SEN. STAPLETON** wondered why another committee was being proposed. **CHAIRMAN JOHNSON** replied he should decide for himself what to do about it; this being the premier energy bill of the session, several people he had discussed this with felt the need for an oversight committee. **SEN. STAPLETON** inquired if the chairman had conferred with other legislators in drafting the amendments, and **CHAIRMAN JOHNSON** advised he had consulted with **REP. ALAN OLSON,** the bill's sponsor, **REP. DOUG MOOD,** Speaker of the House, **SEN. BOB KEENAN,** President of the Senate, and **SEN. McNUTT.**

SEN. MIKE TAYLOR, SD 37, PROCTOR, asked who would pay for the interim committee, and **CHAIRMAN JOHNSON** stated there were $21,000 left over from the TAC committee which would be used. **SEN. TAYLOR** recalled this money had come from the energy companies, and **CHAIRMAN JOHNSON** thought so, too. **Mr. Everts** contradicted, explaining it was General Fund money already budgeted for the TAC. The TAC committee had switched off of private donation funds late in last the interim. **SEN. TAYLOR** wondered if the amendments would result in disincentives with regard to building new generation. **Mr. Rowe** opined they would not.

SEN. STORY surmised, if the default supplier had contracted for long-term power supply for 20 years, it would be that long before we saw any real move toward choice. **Mr. Rowe** admitted therein lay the danger of extending the transition period but there were safeguards, particularly in **SEN. McNUTT's** proposed amendments, which did allow a certain block of power to move to the competitive market each year. **SEN. STORY** wondered what if there was potential, in 2012, for stranded cost in a long-term contract. **Mr. Rowe** stated this would depend on where the contracts were in relation to the market but it was something the commission could certainly deal with if necessary. **SEN. STORY** felt extending the transition period to 2027 was too permissive; the Legislature should not have to play a role in this as it should be the commission's decision. **Mr. Rowe** agreed the section directing the commission to report back to the Legislature was

fairly general but did seem to indicate it required action by the Legislature. In theory, it should be possible for the PSC, with the authority it had been given, to manage the move to choice up to the caps contained in the bill.

{Tape: 1; Side: B}

Mr. Everts advised amendment 103 on page 11 stated, if the commission, after 2010, determined workable competition existed, it would make recommendations on the implementation of customer choice to the Legislature; this meant further action by the Legislature was contemplated. **SEN. STORY** asked if there was anything in this bill or current law requiring the Legislature to take any action on ending the transition period sooner should the commission determine choice existed. **Mr. Everts** replied this did not bind future Legislatures but to keep in mind customers could leave for choice within the specified caps. **SEN. STORY** wondered if a new major industry was to get on the default supply, would they have to come in at market cost. **Mr. Everts** referred to lines 1 through 5 on page 14 of the bill and said this section stated a new customer with a large load could enter into a power supply contract with the default supplier, and it gave specific instructions. **SEN. STORY** asked whether the default supplier would remain just an aggregator for this company or would this new load be blended in with the existing default pool and rates if a new contract was negotiated by the default supplier. **Mr. Everts** referred to lines 12 through 16 on page 14 of the bill where it stated the commission would establish rates and fees to allow customers to come in or leave. **Mr. Rowe** agreed with this assessment, saying for the most part, large customers would make a one-time election. **SEN. STORY** wanted to make sure he understood they could make a one-time election to come in, but because of his existing contract, the default supplier had to go out and acquire more power to accommodate the new customer who then would probably have to pay a higher price. His question was, though, once existing contracts expired and new ones were negotiated, then this load would blend in with everyone else, and he would have the same advantages as everyone else. **Mr. Rowe** stated the commission had the authority to manage costs associated with entry or exit so small customers staying on should not be harmed by the migration.

SEN. STAPLETON asked what the significance was in replacing "stranded costs" with "transition costs" throughout this bill. **Mr. Rowe** advised either term was an acceptable term; in SB 390, the term "transition cost" indicated those costs which were occasioned specifically by the transition to the competitive market. As introduced, HB 509 replaced this term with "stranded costs" in part because of the theory the transition was over, and to more broadly match the state's language to that of the rest of

the country which used "stranded costs". **SEN. STAPLETON** asked if other states had established a deadline as Montana had with the year 2027. **Mr. Rowe** stated this was primarily **CHAIRMAN JOHNSON's** approach to allow entry into long-term contracts. A number of states which had been moving aggressively to a competitive market were pulling back in response to the situation in California, and others had slowed down and had extended the transition as well. **SEN. STAPLETON** wondered what the longest term contract was, and **Pat Corcoran, NorthWestern Energy,** replied a 20-year contract was not abnormal in the industry, most ran from ten to twenty years. **CHAIRMAN JOHNSON** asked if this was true of cooperatives as well which **Mr. Corcoran** affirmed, adding the length of a contract depended on the market conditions. **CHAIRMAN JOHNSON** wondered if he knew whether there were contracts longer than 30 years held by cooperatives but **Mr. Corcoran** did not know.

SEN. STORY wondered if the price of a long-term contract currently was higher or lower than a two-year contract. **Mr. Corcoran** stated longer term contracts had lower prices but there again, the market dictated the price at the time it was negotiated. He added certainty for a contract, availability of financing and being able to spread prices over a twenty-year period were the components which lead to lower prices. **SEN. STORY** wondered if there was any new generation under 5 cents per kilowatt, and **Mr. Corcoran** advised there were some wind projects which would come in under that price. **SEN. STORY** asked if it was mainly wind power, and not thermal, at those prices. **Mr. Corcoran** replied there were contracts for less than 5 cents involving other products as well.

CHAIRMAN JOHNSON commented even though this was not a perfect bill, it was the best one they could come up with; it provided an opportunity for suppliers to have a long-term contract with the default supplier which usually meant a lower cost contract; it gave the PSC the right to say the point had been reached where choice was possible.

Motion: **SEN. RYAN moved that HB 509 BE CONCURRED IN.**

Substitute Motion: **SEN. MCCARTHY moved that AMENDMENT HB050903.ATE BE ADOPTED.**

Discussion:

SEN. STAPLETON MOVED to segregate the amendments dealing with the interim committee.
CHAIRMAN JOHNSON stated they could be separated conceptually per **Mr. Everts** and suggested discussing the separated amendments

first. **SEN. STAPLETON** asked the committee to re-embrace what they had done earlier in the session, namely eliminate the interim committee. **SEN. McCARTHY** expressed her belief that the interim committee was different from the Transition Advisory Committee which was made up of members of the public as well as legislators whereas the former only was to have legislator members only. **Mr. Everts** agreed, the interim committee would be made up of eight legislators. **SEN. McCARTHY** commented she was much more comfortable with the idea of having a legislative oversight committee in place and thus, would object to his amendment. **SEN. STAPLETON** just wanted to be careful not to do what government was accused of doing; he would go along with her if she was willing to eliminate another interim committee.

SEN. TAYLOR asked if the $21,000 already appropriated for the interim committee would revert to the General Fund if the members voted down the interim committee. **Mr. Everts** explained it had been budgeted for interim committees, but if it was not needed, it would take legislative action to remove that amount from the budget process.

SEN. McNUTT, SD 50, SIDNEY, advised the committee had elected not to have a 21 member TAC committee; this was not a reversal of the vote on SB 77; these amendments stipulated an eight member oversight committee which was an entirely different proposal.

SEN. STORY injected interim committees usually consisted of twelve members, and **Mr. Everts** advised under current law, there was an option to increase the size of committees if the Legislative Council deemed it necessary; the default number was eight, though. **SEN. STORY** asked what he envisioned with regard to purpose and function of this committee. **CHAIRMAN JOHNSON** replied he envisioned the committee to do what the original committee was set up to do, namely to oversee the happenings in the transition period because it had not yet ended. He pointed out the importance of having given authority to the PSC to declare the transition period over if there was enough choice; the main purpose of HB 509 and these amendments was to get the lowest possible cost of electricity for the consumer, and the purpose of the interim committee was to monitor this on a continuing basis.
SEN. STORY stated he was not opposed to the idea of an interim committee; the Legislature always tried to reduce government but in doing so, the ability of legislators to learn more in the interim was severely limited.

SEN. STAPLETON rescinded his motion.

Vote: Substitute motion carried 8-2 with STAPLETON and TOOLE voting no.

SEN. McNUTT introduced **Amendment HB050904.ate, EXHIBIT(ens69a02),** saying the reason for this amendment was the concern with the specified caps in the bill. **Mr. Everts** explained it was a clarification that the 10,000 and 20,000 kilowatts could move to choice each calendar year. **SEN. McNUTT** advised the fourth amendment clarified those who have moved to choice in the mid-size category would not have to come back to the default supplier.

SEN. RYAN was concerned the time frame was in fact a calendar year and not one year from the last migration because it could potentially mean a large shift in the load if migration occurred late in December, and again the first of the year.

{Tape: 2; Side: A}

Substitute Motion/Vote: SEN. JOHNSON made a substitute motion AMENDMENT HB050904.ATE BE ADOPTED. Substitute motion carried unanimously.

Motion/Vote: SEN. MCCARTHY moved that HB 509 BE CONCURRED IN AS AMENDED. Motion carried unanimously (Roll Call Vote). CHAIRMAN JOHNSON will carry HB 509 in the Senate.

EXECUTIVE ACTION ON HB 424

Motion: SEN. TOOLE moved that HB 424 BE CONCURRED IN.

Discussion:

The House committee had taken Executive Action on SB 62 and SB 327 the previous day, and **Mr. Everts** stated **CHAIRMAN JOHNSON** had asked him to advise the committee of the fate of those two bills because it may have some bearing on what action the committee would take with HB 424. The House Energy committee had tabled SB 327 and amended SB 62 by taking out the Department of Administration and re-inserted the Attorney General's Office as the entity administering the do-not-call list. The House Energy Committee also added coordination instructions which said if both HB 424 and SB 62 were approved and passed, then HB 424 would be void.

SEN. STAPLETON surmised these two remaining bills were similar in nature, and **MOVED TO conceptually amend the bill to move**

administering of the list from the Attorney General's Office back to the Department of Administration.

He added it was the Legislature's prerogative to keep this type of activity where it currently was.

Mr. Everts advised **SEN. TAYLOR's** amendments specified this very thing.

SEN. STAPLETON withdrew his motion.

Motion: SEN. TAYLOR moved that AMENDMENT HB042402.ATE, EXHIBIT(ens69a03), BE ADOPTED.

Discussion:

SEN. TAYLOR advised these amendments did exactly what **SEN. STAPLETON** had in mind, keeping the do-not-call list with the Department of Administration. He was impressed with **Mr. Darkenwald's** testimony at another hearing as to how he had put his team together and did not want to change this system.

SEN. McCARTHY wondered if it would not be easier to hammer out the telecommunications bills' differences within a Conference Committee. **SEN. TAYLOR** felt it might come to that but wanted consideration given to this amendment first.

SEN. TOOLE repeated if people were to take telemarketing fraud seriously, monitoring and administration should be done by the Attorney General in the Department of Justice.

SEN. McNUTT stated his support for the amendment because the office within the Department of Administration had spent two years developing and upgrading their system, and he felt they were best suited to deal with the issue.

CHAIRMAN JOHNSON asked what would happen if HB 424 and SB 62 went to a Conference Committee and neither side agreed with the other side's amendments. **SEN. STORY** stated both bills would die; the only option left to resurrect the bills would be to agree with the House amendments which would put oversight with the Attorney General's Office. He added there was nothing to coordinate because they were the same. **SEN. RYAN** disagreed, and **Mr. Everts** pointed out there was a purpose statement in SB 62, and the exemptions were different; this meant there was enough substantive difference to overcome a prohibition.

Vote: Substitute motion that AMENDMENT HB042404.ATE BE ADOPTED carried 7-3 with MCCARTHY, RYAN, and TOOLE voting no.

Motion/Vote: SEN. STAPLETON moved that HB 424 BE CONCURRED IN AS AMENDED. Motion carried unanimously. SEN. RYAN agreed to carry HB 424 in the Senate.

EXECUTIVE ACTION ON HB 266

Motion: SEN. STONINGTON moved that HB 266 BE CONCURRED IN.

Motion: SEN. STONINGTON moved that AMENDMENT HB 026602.ASB, EXHIBIT(ens69a04), BE ADOPTED.
Note: This Amendment had originally been introduced and discussed on 3/25, 2003 when Executive Action was interrupted and postponed pending information on a funding issue.

Discussion:

Mr. Everts stated the committee had adopted items (3) and (4) of the amendment on March 25, 2003, and reported the Education Joint Subcommittee had appropriated $57,000 for the School of the Deaf and Blind, assuming these amendments would pass; there also was a technical amendment forthcoming to ensure this funding would not be built into the base for the next biennium.

SEN. STONINGTON referred to **Mr. Evert's** last statement, saying she had an amendment which said this appropriation would be one time only. She added items (1), (2), and (5) made this possible; if this committee did not change the statute to allow this expenditure for operating money for the School for the Deaf and Blind, the money could not be appropriated in HB 2.

SEN. TAYLOR inquired as to the consequences should the amendment fail, and **SEN. STONINGTON** replied if the amendment on HB 2 failed, and this bill passed as amended, the $57,000 would be built into the base for the 2007 biennium; it was slated for action on Thursday, April 3. She reiterated the move to take these funds out of the MTAP program and give it to MSDB first occurred during the Special Session; this was a continuation of the allocation which she deemed inappropriate because, as **SEN. STORY** had pointed out, this money was collected for MTAP. She stressed she was willing to give the money to the school, but only for this biennium, and wanted to be sure this was secured in the bill with appropriate language.

SEN. McCARTHY voiced her approval for **SEN. STONINGTON's** efforts because this money was needed for the school.

SEN. TAYLOR also stated his support for the one-time only funding.

SEN. STAPLETON stated it was his understanding HB 266 eliminated the use of MTAP funds, and he asked what exactly her amendments provided for. **SEN. STONINGTON** replied lines 21 and 22 on page 2 of the bill contained the actual statutory language which gave the Legislature the authority to appropriate any of the money; they appropriated $100,000 for the purchase of equipment to test infant hearing. This language was added into lines 13 and 14 during the Special Session. Her amendments changed this to read "The Legislature may allocate funds from this program to the Montana School for the Deaf and Blind to used to provide services to hearing-impaired students for the biennium ending June 30, 2005", item (3) of the amendment. The back-up for this was the "one time only" designation in HB 2.

SEN. STORY voiced his support for the bill and the amendment which made this a one-time allocation. He repeated an earlier sentiment of how easy it was to continue looking to fund programs once they had been given money, especially if reserves had been accumulated and found.

SEN. STONINGTON made one final observation, namely that the ending fund balance of the MTAP fund was being put at risk; they were legally obligated to provide relay services for the hearing-impaired, and cost estimates were just that. As technology progressed, the government would insist on upgrades to the system and without funds, they would not be able to comply. She stressed it was absolutely crucial to allocate these funds for one biennium only.

Vote: Substitute motion that ITEMS 1, 2 AND 5 OF AMENDMENT HB026602.ASB BE ADOPTED carried unanimously.

Motion/Vote: SEN. STONINGTON moved that HB 266 BE CONCURRED IN AS AMENDED. Motion carried unanimously. SEN. STORY agreed to carry HB 266 in the Senate.

ADJOURNMENT

Adjournment: 4:50 P.M.

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SEN. ROYAL JOHNSON, Chairman

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MARION MOOD, Secretary

RJ/MM

EXHIBIT(ens69aad)