MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ALAN OLSON,** on January 17, 2005 at 3:05 P.M., in Room 455 Capitol.

ROLL CALL

Members Present:
Rep. Alan Olson, Chairman (R)
Rep. Dave Gallik, Vice Chairman (D)
Rep. Dennis Himmelberger, Vice Chairman (R)
Rep. Robyn Driscoll (D)
Rep. George G. Groesbeck (D)
Rep. Robin Hamilton (D)
Rep. Hal Jacobson (D)
Rep. Harry Klock (R)
Rep. Mark E. Noennig (R)
Rep. John Parker (D)
Rep. Diane Rice (R)
Rep. Wayne Stahl (R)
Rep. Karl Waitschies (R)
Rep. Brady Wiseman (D)

Members Excused: None.

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Cynthia Peterson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed. Tape stamp markers follow testimony.

Committee Business Summary:
Hearing & Date Posted: HB 48, 1/6/2005
Executive Action: HB 43; HJ 3; HB 212; HB 106

HEARING ON HB 48

Opening Statement by Sponsor:

REP. SUE DICKENSON, HD 25, opened the hearing on HB 48, which would eliminate the exclusion for electrical generating facilities from solid waste management facility regulatory requirements and re-establish state solid waste regulatory authority for the disposal of coal combustion waste. REP. DICKENSON submitted a white paper on HB 48 and provided the history behind HB 48. **REP. DICKENSON** informed the committee that coal combustion wastes consist primarily of fly ash and bottom ash and generate huge quantities of ash. **REP. DICKENSON** testified that a portion of the ash contains elements that are harmful to people and the environment. However, the ash can be recycled and sold to companies who use the ash in road materials, cement, and as soil additives. The ash can also be backfilled into the mine. **REP. DICKENSON** explained HB 48 would deal with ash deposited or stored in nonpermitted landfills or ponds. HB 48 will place these facilities under the Solid Waste Management Act and require the ash to be stored in a safe, responsible, and reasonable manner.

REP. DICKENSON testified that she is bringing the legislation for three reasons: (1) protection of public health; (2) to prevent costly and protracted lawsuits; and (3) to allow Montana to set the guidelines rather than have the guidelines set by the Environmental Protection Agency (EPA). **REP. DICKENSON** testified that EPA has recognized the unhealthy components of coal combustion waste and has issued guidelines regarding storage of the waste and decided to let the states establish regulations. **REP. DICKENSON** offered amendment HB004801.ate, which would exempt existing facilities operating under a current Major Facility Siting Act (MFSA) certificate or groundwater permit. If the facilities expand their storage area, the expansion area will be included.
EXHIBIT(feh12a01)
EXHIBIT(feh12a02)

Proponents' Testimony:

Rep. Paul Clark, HD 13, submitted written testimony as a proponent of HB 48.
EXHIBIT(feh12a03)
{Tape: 1; Side: A; Approx. Time Counter: 10 - 13.9}

Ann Hedges, Montana Environmental Information Center (MEIC), submitted written testimony as a proponent of HB 48. **EXHIBIT(feh12a04)**

Cody Ferguson, Northern Plains Research Council, stated he is keenly aware of the concerns that prompted the legislation. **Mr. Ferguson** gave a brief history of the Solid Waste Management Act of 1991. **Mr. Ferguson** testified that ponds are leaking and poisoning groundwater, and that the Department of Environmental Quality (DEQ) is aware of the leakage and potential human health hazard and, while DEQ has authority over PPL Montana (PPL), it will lose its authority over new plants.
{Tape: 1; Side: A; Approx. Time Counter: 25 - 27.5}

Matt Leow, Montana Public Interest Research Group (MontPIRG), stated the primary concern of HB 48 is pollution of water. Mr. Leow does not believe the public should be put at risk because a company has ignored its responsibility to properly dispose of toxic waste. **Mr. Leow** identified two factors which would make the problem larger in the future: (1) There are a number of coal-fired plants in the process of being constructed or being permitted; and (2) as emission controls increase, toxic substances are no longer a problem in the air, but become a problem on the ground.

{Tape: 1; Side: B}

Stuart Lewin, an attorney in Great Falls, testified that the Republican Party should embrace the importance of conservation measures and suggested big industry has taken the Republican Party toward the wrong turn. **Mr. Lewin** suggested it is extremely important to take the responsibility to regulate industry, especially industry that could cause a major change in the environment. **Mr. Lewin** noted the new power facility being built in Great Falls sits on the edge of the Missouri River. **Mr. Lewin** stated the assistance of the state and state agencies is needed to protect the Missouri River and the environment. **Mr. Lewin** believed the state can afford that protection by developing state agencies that are fair to industry and provide the opportunity for the public to know what is occurring. **Mr. Lewin** identified HB 48 as a good first start.

Opponents' Testimony:

Jim Mockler, Montana Coal Council, believed anything a company or person manufactures will create toxic waste and require a water discharge permit, which will result in regulation. **Mr. Mockler**

believed HB 48 would just add another layer to the existing regulations.
{Tape: 1; Side: B; Approx. Time Counter: 4.9 - 7.7}
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John Alke, MDU Resources Group, Inc. (MDU), spoke about MDU's small coal-fired generating station on the Yellowstone River at Sidney, the Lewis and Clark Station. **Mr. Alke** stated the Lewis and Clark Station has operated with a fly ash pit for many years without controversy. **Mr. Alke** noted the station has a lined fly-ash disposal pit to avoid contamination of the groundwater. **Mr. Alke** submitted proposed amendments that would have excluded the Lewis and Clark Station from the legislation. **Mr. Alke** noted the Lewis and Clark Station has a discharge permit under Title 75, Chapter 5. **Mr. Alke** was concerned about the amendment submitted by Rep. Dickenson since the exclusion for the Lewis and Clark Station would no longer be in effect. **Mr. Alke** requested the amendment, as it was first presented, be passed.
EXHIBIT(feh12a05)

John Fitzpatrick, Northwestern Energy (NWE), took exception to Ms. Hedge's reference to NWE as a generator and clarified that is not the case. **Mr. Fitzpatrick** stated NWE is interested in the legislation because it is a party that buys generation and is interested in seeing new generation facilities built in Montana. **Mr. Fitzpatrick** believed HB 48 would provide a stumbling block for new generation facilities. **Mr. Fitzpatrick** did not believe there was a significant threat from fly ash. **Mr. Fitzpatrick** suggested fly ash in Montana has a high calcium content and a small amount of metals. **Mr. Fitzpatrick** submitted an article which discussed fly-ash characteristics.
EXHIBIT(feh12a06)
{Tape: 1; Side: B; Approx. Time Counter: 11.4 - 15.8}

Dan Flynn, International Brotherhood of Electrical Workers (IBEW), opposed HB 48 because it could inhibit construction of new powerplants.

David Hoffman, PPL Montana, submitted written testimony in opposition to HB 48.
EXHIBIT(feh12a07)

Ellen Engstedt, Montana Wood Products Association, thought HB 48 would stop a very positive form of economic development in Montana.

Don Allen, Western Environmental Trade Association, did not believe HB 48 was necessary legislation.

Informational Testimony: None.

Questions from Committee Members and Responses:

REP. BRADY WISEMAN, HD 65, BOZEMAN, asked **Rep. Dickenson** to explain the change in policy that resulted in the problem the legislation is attempting to address. **Rep. Dickenson** provided a history of the Solid Waste Management Plan and how the electric generating plants were removed in 1991 because they were covered under the MFSA certification process. Since that time, Montana has not had any way to regulate solid waste created by electric generation facilities. **Rep. Dickenson** agreed the legislation would simply bring these facilities back under regulation.

REP. DIANE RICE, HD 71, HARRISON, asked for an idea of problems that have occurred regarding fly ash since the change was made in 2001. **Mr. Mockler** replied there is nothing in MFSA that regulates fly ash, and that he is unaware of any environmental problems.
{Tape: 1; Side: B; Approx. Time Counter: 23.6 - 24.6}

REP. MARK NOENNIG, HD 46, BILLINGS, compared the amendment distributed by Rep. Dickenson and the amendment provided by Mr. Alke and asked Mr. Alke to highlight the difference between the amendments. **Mr. Alke** explained the amendment he distributed provided an exemption for a facility that had a discharge permit issued under Title 75, Chapter 5, which included the Lewis and Clark Station. **Mr. Alke's** understanding was that the amendment has been modified to apply only to groundwater.

Ed Thamke, Bureau Chief, Waste and Underground Tank Management Bureau, Department of Environmental Quality, responded to REP. NOENNIG's request for information regarding the scope of what is currently regulated and what is contemplated by HB 48. **Mr. Thamke** explained there are two existing groundwater permits for electric generation facilities. Those two facilities would enjoy an exclusion until they expand off their existing permit or the permit expires. Under the Solid Waste Management Act, releases to ground surface water would not be allowed and the facilities would be required to mitigate any release into the environment or groundwater.

REP. NOENNIG asked for the practical affect of the contamination that would not be allowed under the Solid Waste Management Act. **Mr. Thamke** responded the landfill situation is intended to be more protective to the environment.

{Tape: 2; Side: A}

REP. DAVE GALLIK, HD 79, HELENA, stated his understanding was that the requirements of the legislation were in effect when Colstrip was constructed. **Mr. Thamke** explained the MFSA operates under a different set of standards than the Solid Waste Management Act, and the Colstrip facility fell under MFSA and would not carry the same set of standards.

REP. GALLIK inquired whether there had been any problems at Colstrip. **Tom Ring, Department of Environmental Quality,** replied Colstrip's certificate required the plant to minimize impacts considering the nature and cost of various alternatives and required ash products to be disposed of utilizing a sealed-disposal system. Later, the certificate was amended and required a series of monitoring wells and a pump-back system if any leakage was detected. Within the last couple of months, a major leak has been detected at the Colstrip 3 and 4 ash disposal pond, and it has been determined the leak is toxic to some, but not all, species of plants. In addition, leakage has also been detected from the pond that has mostly served Units 1 and 2, but occasionally Units 3 and 4. **Mr. Ring** also stated the Moose Lodge Well, which served as the public water supply, had to be replaced.

REP. GALLIK stated there could be significant contamination issues in the future with coal-fired generation plants if there is no method to deal with fly ash as evidenced by Colstrip. **Mr. Ring** gave two examples of ash disposal sites. The first was a Billings facility that trucks its ash product to Warren and disposed on property originally owned by a limestone quarry. **Mr. Ring** stated the site is under a groundwater discharge permit, and they are not experiencing much leakage. The Colstrip facilities are at the other end of the spectrum, and **Mr. Ring** noted Colstrip uses the wet-scrubber system. **Mr. Ring** believed each facility would be unique in terms of the setting, characteristics of the ash, and the processes involved.

REP. GALLIK was curious what requirements DEQ would impose upon new facilities and whether the requirements would be rigid or flexible depending on the location. **REP. GALLIK** solicited dialogue on the cost of complying with the regulations. **Mr. Ring** deferred the question to Mr. Thamke. **Mr. Thamke** responded that removing the exclusion from the Solid Waste Management Act for electrical generation facilities would result in the creation of Class II landfills, which is the same classification as municipal solid waste landfills. **Mr. Thamke** stated DEQ recognizes that is not a good fit, and the need to form a stakeholder group in order to develop regulations that would be fair to electrical generation facilities. **Mr. Thamke** stated a large factor in the

cost would be the location of the facility and the sensitivity of the environment. In addition, if a facility were to produce more than 25,000 tons of ash per year, there would be a one-time cost of $12,000 for an application review fee, as well as an annual license fee of $4,200.

CHAIRMAN OLSON stated the Bull Mountain Project had originally wanted to slurry the ash and take the ash back into the mine workings, and DEQ had disallowed it. **CHAIRMAN OLSON** was curious on what grounds DEQ made the disallowance. **Mr. Thamke** responded it was not that the slurry backfill into the mine was disallowed; rather, it was just a bad idea. **Mr. Thamke** identified the preferred alternative as utilization of a landfill setting.

CHAIRMAN OLSON asked what stipulations regarding ash disposal were in the agreement between DEQ and the Thompson Falls and Hardin facilities. **Mr. Thamke** replied the Hardin facility is in planning stages, and there is no statutory authority at this time. **Mr. Thamke** could not speak to the Thompson Falls facility, but reiterated that there is no statutory authority to require them to anything under the Solid Waste Management Act. **CHAIRMAN OLSON** asked whether, under current law, the Great Falls plant could dump its ash in a wind row along the Missouri River. **Mr. Thamke** replied they could not. **CHAIRMAN OLSON** inquired whether Bull Mountain facility could dump ash in a coulee. **Mr. Thamke** replied it would depend on who owns the land and where the land is in relation to the facility.

REP. GEORGE GROESBECK, HD 74, BUTTE, asked Mr. Hoffman to elaborate on his statement that the legislation would create redundant regulation with DEQ. **Mr. Hoffman** stated the possibility exists since some facilities are regulated under MFSA, but were not permitted under MFSA. **Mr. Hoffman** suggested it would pose the question whether they were under MFSA, and then whether they would become regulated under the Solid Waste Management Act. **Mr. Hoffman** suggested these confusions may cause redundant regulation.
{Tape: 2; Side: A; Approx. Time Counter: 19.5 - 21.1}

REP. GROESBECK asked Mr. Thamke to respond to the concerns voiced by Mr. Hoffman. **Mr. Thamke** replied if the facilities under MFSA were included in the certificate of review, they would enjoy the grandfather exclusion under MFSA. If Colstrip 1, 2, 3 or 4 expanded beyond the review of the MFSA certificate, they would come under the Solid Waste Management Act.

REP. KARL WAITSCHIES, HD 36, PEERLESS, asked if there was an economic consideration under the Solid Waste Management Act. **Mr. Thamke** responded if the product is recyclable and has an economic value, it would not be considered a solid waste.

Upon question from REP. WAITCHIES, Mr. Thamke explained at the present time, there is a 40-cent per ton charge for municipal solid waste, and fly ash would be subject to that same charge. **Mr. Thamke** admitted that the charge would not be equitable and would probably need to be modified.

REP. WAITCHIES wanted to know how many tons of ash are produced in Montana annually. **Mr. Thamke** did not readily have the number and offered to obtain the figure. **Mr. Hoffman** spoke to the PPL Properties in Billings and stated they have approximately 20,000 tons annually of fly ash and approximately 7,000 tons of bottom ash. At Colstrip, PPL currently deposits about 1.2 million tons annually in the pits.

Closing by Sponsor:

REP. DICKENSON closed the hearing and apologized for the difference in amendments between the one she proposed and the one Mr. Alke had seen. **REP. DICKENSON** stated the amendment came about because of concerns about the surface water discharge. **REP. DICKENSON** disagreed that the legislation is a stumbling block to economic growth. **REP. DICKENSON** depicted the legislation as measured, thoughtful, and a matter of common sense. **REP. DICKENSON** reiterated each facility would be able to negotiate with DEQ and come up with the best solution for its unique circumstances. **REP. DICKENSON** stated HB 48 will protect human health and the environment.
{Tape: 2; Side: A; Approx. Time Counter: 25.7 - 30.5}
{Tape: 2; Side: B}

EXECUTIVE ACTION ON HB 43

Motion: **REP. GALLIK moved that HB 43 DO PASS.**

Discussion:

REP. WISEMAN submitted a financial statement he received from a royalty owner.
EXHIBIT(feh12a08)

Motion: REP. GALLIK moved that HB004301.ATE BE ADOPTED. EXHIBIT(feh12a09)

Discussion:

Mr. Todd Everts, Environmental Research Analyst, explained the amendment clarifies the legislation is for both oil and gas producers that are required to itemize charges. In addition, the amendment clarifies the statute would also apply to working interest payments and working interest ownership. In addition, the amendment sets a per violation cap at $5,000.

REP. WAITCHIES commented adding a working interest would be a bad idea and would not work. **REP. WAITCHIES** stated he would not support the amendment.

REP. GALLIK suggested the working interest payment is just more of what the individuals who have made investments in their ground or particular area will be getting compensated for. **REP. GALLIK** explained it is consistent with spelling out exactly what the payment of royalties is for, how much it is for, and what deductions were taken.

REP. NOENNIG stated most times the working interest is owned by the same entity that distributes the royalty payments. **CHAIRMAN OLSON** agreed and added working interests are paid out on operating agreements.

REP. JOHN MUSGROVE, HD 34, HAVRE, stated there is a difference in the contractual obligation between a working interest owner and a royalty owner. **REP. MUSGROVE** thought the amendment may be in the wrong place in code and could be addressed at a later point.

REP. GALLIK withdrew his motion TO ADOPT HB004302.ate.

Motion: REP. OLSON moved that HB004302.ATE BE ADOPTED. EXHIBIT(feh12a10)

Discussion:

Mr. Everts explained the amendment clarifies that the statute requires both oil and gas producers to itemize charges, modifies Subsection (2), and changes the penalty provision.

CHAIRMAN OLSON explained the intent behind the amendment and stated the statute will still direct the producer to specify every charge against the royalty owner. **CHAIRMAN OLSON** noted

sometimes the information required by Subsection (2) is not available to the producer. **CHAIRMAN OLSON** explained the proposed change in penalties is due to difficulties in determining what would constitute a violation.

REP. WISEMAN asked about the language on Line 25, "oil and" and wanted to know if "and" would exclude gas-only wells. **Mr. Everts** explained the language is consistent with original law.

REP. GROESBECK questioned why the specific line items were deleted. **CHAIRMAN OLSON** responded royalty owners are not subject to production and pumping costs or the other enumerated costs. **CHAIRMAN OLSON** explained all costs the royalty owners are subject to would have to be itemized.

REP. WAYNE STAHL, HD 35, SACO, provided the committee with examples of deductions that would have to be itemized and what costs would be set in contract. **REP. GROESBECK** expressed concern about granting discretion about what deductions would have to be itemized. **REP. STAHL** stated that was not the intention and the producers will have to specify what the charge is for.
{Tape: 2; Side: B; Approx. Time Counter: 20.2 - 23.1}

REP. NOENNIG summarized his understanding of the problems HB 43 is attempting to solve.

REP. GALLIK asked why the language on Line 27 was not included, so there is a description of how the assessment is calculated. **CHAIRMAN OLSON** replied the assessments that are being held out would be addressed by the line item that is provided for every charge. **REP. WAITCHIES** added the royalty owners simply want to know how much is taken out for each line item.

REP. MUSGROVE explained there seems to be a complete lack of communication among all the entities involved in the process. **REP. MUSGROVE** noted other states have similar statutes.

{Tape: 3; Side: A}

REP. MUSGROVE stated it would be helpful if the statement included a telephone number where additional information regarding the payment could be obtained and suggested adding that amendment.

REP. WISEMAN addressed Exhibit 8 and noted the reference to the deduction code "S" and noted it is not listed on the legend. **REP. WISEMAN** stated he could understand the frustration of the

royalty owners. **CHAIRMAN OLSON** assured **REP. WISEMAN** that under the current amendment, a statement like Exhibit 8 would not be acceptable.

CHAIRMAN OLSON suggested Mr. Everts include **REP. MUSGROVE's** suggestion of including contact information as a conceptual amendment.

REP. NOENNIG suggested the amendment should not be limited to a telephone number, but should reference a means to contact the company for further explanation, whether it be telephone number or website.

Vote: Motion that HB004302.ATE (Exhibit 10) BE ADOPTED carried unanimously by voice vote.

Motion/Vote: REP. OLSON moved that a CONCEPTUAL AMENDMENT to include producer contact information BE ADOPTED. Motion carried unanimously by voice vote.

Motion/Vote: REP. NOENNIG moved that HB 43 DO PASS AS AMENDED. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON HJ 3

Motion/Vote: REP. RICE moved that HJ 3 DO PASS. Motion carried unanimously by voice vote.

Motion/Vote: REP. JACOBSON moved that HJ 3 BE PLACED ON THE CONSENT CALENDAR. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON HB 212

Motion: REP. HIMMELBERGER moved that HB 212 DO PASS.

Motion: REP. GALLIK moved that HB021201.ATE BE ADOPTED. EXHIBIT(feh12a11)

Discussion:

Mr. Everts explained the proposed amendments to the committee.

REP. STAHL asked if the proposed amendment No. 3 would conflict with the provisions in law in Title 7 for local government procurements. **Louise Moore, Department of Environmental Quality,**

agreed there is a potential conflict, and stated the exemptions to Title 7 are listed in the last portion of the bill.

Motion/Vote: REP. GALLIK's motion that HB021201.ATE (Exhibit 11) BE ADOPTED carried unanimously by voice vote.

Motion: REP. STAHL moved that HB 212 DO PASS AS AMENDED.

Discussion:

REP. WAITCHIES commented he believes HB 212 is a design bill for one contractor group that does everything, including estimating the savings. **REP. WAITCHIES** suggested there would be no concrete way to determine energy savings, and it would only be a projected savings.

Vote: Motion carried 13-1 by voice vote with WAITSCHIES voting no.

EXECUTIVE ACTION ON HB 106

Motion: REP. STAHL moved that HB 106 DO PASS.

Motion: REP. WISEMAN moved that HB010603.ATE BE ADOPTED. EXHIBIT(feh12a12)

Discussion:

REP. WISEMAN explained the amendments were requested by the Public Service Commission (PSC) and would make the bill workable and meaningful for the PSC and allow them to regulate the energy business in terms of transactions that need to be looked at to avoid problems such as those experienced with NWE.

{Tape: 3; Side: A; Approx. Time Counter: 18.8 - 20.9}

CHAIRMAN OLSON summarized the language originally came from the Governor's Task Force on Consumer Energy Protection and then went through the Energy and Telecommunications Interim Committee (ETIC). **CHAIRMAN OLSON** stated the bill, without any amendments, is the bill that came out of the ETIC. **CHAIRMAN OLSON** noted that although the vote was not unanimous, it was a majority vote, and it was a bipartisan vote. **CHAIRMAN OLSON** stated he would resist the amendment.

REP. GALLIK stated he supports the amendment. **REP. GALLIK** believed 15 percent of a utility with a great net worth could be upwards of $140 million. **REP. GALLIK** suggested $500,000 is reasonable, but that it would be impossible to determine 15 percent unless the total was known. **REP. GALLIK** thought without making the change from "greater" to "less," that nothing was learned from NWE's bankruptcy experience.

REP. WAITCHIES did not like the proposed amendment because Montana Dakota Utilities (MDU) does several million dollars of gas purchases in a single day.

REP. WISEMAN recalled that Public Service Commissioner Brad Mulnar had stated North Dakota has a limit of $500,000 or less, and in South Dakota the limit is $200 or less. **REP. WISEMAN** recalled transactions within the normal course of business are exempt.

REP. STAHL was disturbed about the "implied authority" mentioned by Public Service Commissioner Greg Jergeson, and asked Commissioner Jergeson for an explanation.
{Tape: 3; Side: A; Approx. Time Counter: 26.4 - 27}

Commissioner Jergeson stated Title 69 provides the PSC's authority to oversee and manage the regulated utilities in Montana. **Commissioner Jergeson** believed the PSC has the authority to do what is in HB 106, and commented the amendments are being offered to make the process work properly. **Commissioner Jergeson** stated the PSC's authority to review the transactions are implicit in Title 69, and HB 106 would make that authority explicit.

CHAIRMAN OLSON commented that policy should be broad, statewide, and not focused on one individual company.

REP. GROESBECK recalled Commissioner Jergeson testified that the amendment is good public policy and stated he would favor the amendment.

REP. JOHN PARKER, HD 23, GREAT FALLS, thought bringing more transactions under the purview of the PSC would better serve the people of Montana. **REP. PARKER** stated he was in favor of the amendment.

{Tape: 3; Side: B}

REP. HAL JACOBSON, HD 82, HELENA, recalled one of the key issues he heard about during his campaign. He stated there was great

concern about the lack of control the state has over its energy prices and energy future. **REP. JACOBSON** believed the amendment begins to address those concerns.

Motion: REP. NOENNIG moved to segregate the two amendments in HB010603.ate (Exhibit 12). Without objection from the committee, the amendments were segregated.

Vote: Without formal motion on the segregated amendment No. 1 of HB010603.ate (Exhibit 12) that it BE ADOPTED, the amendment failed 7-7 by roll call vote with DRISCOLL, GALLIK, GROESBECK, HAMILTON, JACOBSON, PARKER, and WISEMAN voting aye.

Discussion:

REP. NOENNIG recalled the issue as being if there was something other than a corporation, such as an limited liability corporation. In drafting the amendment, **Mr. Everts** commented that he assumed the PSC believes the change in ownership or control could include more than a voting capital stock change. **REP. WISEMAN** agreed.

Vote: Without formal motion on the segregated amendment No. 2 of HB010603.ate (Exhibit 12) that it BE ADOPTED, the amendment carried 9-5 by roll call vote with HIMMELBERGER, KLOCK, RICE, STAHL, and WAITSCHIES voting no.

Motion: REP. WISEMAN moved that HB 106 DO PASS AS AMENDED.

Motion: REP. STAHL moved that HB010601.ATE BE ADOPTED. EXHIBIT(feh12a13)

Discussion:

Mr. Everts explained the amendment adds small telecoms of less than 15,000 subscribers to the series of entities that the legislation would not apply to.

REP. GROESBECK was curious how many providers the amendment would apply to. **Geoffrey Feiss, General Manager, Montana Telecommunications Association,** estimated the amendment would apply to five providers.

REP. WISEMAN asked how the subscribers to those small telecommunication providers would be served by exempting their provider from PSC review. **CHAIRMAN OLSON** explained many of the issues surrounding the small telecom companies had to do with the

lease of the plant and equipment and that is why the amendment is being proposed.
{Tape: 3; Side: B; Approx. Time Counter: 9.5 - 14.4}

Ron Osberg, Montana Independent Telecommunications Systems (MITS), added that in a lot of cases small companies are subsidiaries of a larger company that is operated under a board of directors and includes members of the community. **Mr. Osberg** believed the threshold would require more transactions to be reviewed by the PSC, and that was the concern of MITS.

Vote: Motion that HB010601.ATE (Exhibit 13) BE ADOPTED carried unanimously by roll call vote.

Motion: REP. STAHL moved that HB 106 DO PASS AS AMENDED.

Discussion:

CHAIRMAN OLSON presented amendment HB010602.ate.
EXHIBIT(feh12a14)

Mr. Everts reviewed the amendment and definitions of "electricity supplier" and "distribution services provider." **CHAIRMAN OLSON** stated the amendment would apply to Colstrip and other marketers and suppliers that are not part of the regulated utility business.

REP. GALLIK expressed his concern that all the exemptions could make the bill unnecessary.

REP. STAHL stated the amendment was brought to clarify PPL Montana is an electric supplier and not a distribution service provider. PPL would like to make it clear in law that they are not regulated and do not want to be regulated. **REP. WISEMAN** thought it was already clear in the bill, and he did not see any reason for the amendment. **REP. WAITCHIES** asked if the amendment would make any substantive change. **REP. STAHL** replied the language was just a clarification.

Vote: The motion failed 2-12 with OLSON and STAHL voting aye by roll call vote.

Motion: REP. GALLIK moved CONCEPTUAL AMENDMENT ON LINE 18, PAGE 1, BY PLACING A PERIOD AFTER $500,000 AND STRIKING THE LANGUAGE THROUGH LINE 19.

Discussion:

REP. GALLIK thought there was confusion regarding the 15 percent, and he thought just having the $500,000 threshold would make it more clear. **REP. GALLIK** reminded the committee that the threshold would only apply to transactions that occur outside the normal course of business. **REP. GALLIK** believed his proposed conceptual amendment would remove all unintended consequences.

CHAIRMAN OLSON announced he would not support the amendment because $500,000 would be too restrictive to a large company.

{Tape: 4; Side: A}

REP. STAHL recalled that MITS had expressed the same concern that $500,000 would be too restrictive.

Vote: Motion failed 7-7 by roll call vote with DRISCOLL, GALLIK, GROESBECK, HAMILTON, JACOBSON, PARKER, and WISEMAN voting aye.

REP. WISEMAN commented the bill, as currently amended, does not do the job to protect Montana ratepayers.

REP. PARKER commented that he did not believe anyone was picking on NWE or other large companies, but rather was exercising due diligence. **REP. PARKER** read from Commissioner Molnar's testimony stating HB 106 does not provide adequate protection. **REP. PARKER** wanted to see better steps taken toward consumer protection.

REP. GALLIK thought it was essential to implement ring fencing, but he was not confident HB 106, as amended, would protect the public.

Vote: Motion that HB 106 DO PASS AS AMENDED failed 3-11 with DRISCOLL, GALLIK, and GROESBECK voting aye.

Motion/Vote: REP. HIMMELBERGER moved that HB 106 BE TABLED AND THE VOTE REVERSED. Motion carried unanimously.

ADJOURNMENT

Adjournment: 6:10 P.M.

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REP. ALAN OLSON, Chairman

_____
CYNTHIA PETERSON, Secretary

AO/CP

Additional Exhibits:

EXHIBIT(feh12aad0.PDF)