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 26, 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 mark stamps follow testimony.

Committee Business Summary:
Hearing & Date Posted: HB 389, 1/21/2005
Executive Action: HB 199; HB 48; HB 136

HEARING ON HB 389

(REP. DENNIS HIMMELBERGER, HD 47, BILLINGS, chaired the meeting while CHAIRMAN OLSON presented HB 389.)

Opening Statement by Sponsor:

REP. ALAN OLSON (R), HD 45, opened the hearing on **HB 389**, which provides for cost recovery for electricity generated by the default supplier. **REP. OLSON** recalled that one of the things specifically prohibited under deregulation was the ability of the default provider to own generation assets. **REP. OLSON** believed that this has put consumers at risk, due to wild fluctuations in the power market. HB 389 will add the opportunity for a utility to own generation assets regulated by the Public Service Commission (PSC). **REP. OLSON** reviewed HB 389 with the committee and stated he would propose an amendment to Page 8, following Line 9, by inserting "irrespective of the avoided costs, the Commission [Public Service Commission], may not penalize the default supplier financially if the default supplier chooses not to invest in, acquire, or lease a plant or equipment used for the production of electricity in the default supplier's default supply portfolio."

Proponents' Testimony:

John Fitzpatrick, Northwestern Energy (NWE), stated HB 389 is about NWE. **Mr. Fitzpatrick** provided the committee with a history of the evolution of NWE and the services it provides to Montana. **Mr. Fitzpatrick** explained that NWE currently has two major contracts with PPL Montana that supply approximately two-thirds of the average load. In addition, NWE has 14 smaller contracts with independent generators. Shortages in the market are covered by medium- to short-term purchases. **Mr. Fitzpatrick** identified a great deal of market risk, since one-third of the portfolio is subject to market forces. **Mr. Fitzpatrick** stated that NWE and the Montana Public Service Commission (PSC) share the common goal of NWE developing a diversified portfolio of resources that will: (1) cover NWE's needs; (2) minimize market risk; (2) minimize cost to consumers; and (4) maximize stability for consumers. **Mr. Fitzpatrick** stated NWE initiated a Request for Proposal (RFP) process for power producers who are interested in supplying power to NWE. **Mr. Fitzpatrick** stated NWE is in the process of evaluating the contracts since the two large PPL contracts will expire in 2007. **Mr. Fitzpatrick** identified trying to operate in a noncompetitive market as a large problem since PPL has all of the power currently available for sale in the market and is in a position where it can undercut anyone trying to come into the

market. **Mr. Fitzpatrick** portrayed PPL's proposal as a substantial increase from the current costs NWE is paying. **Mr. Fitzpatrick** urged the necessity to have a truly competitive market. **Mr. Fitzpatrick** believed that when the Montana Power Company (MPC) management sold its generation assets, it should have sold those assets to two or more companies. **Mr. Fitzpatrick** identified three things to stimulate a competitive market: (1) encourage the development of additional generation resources; (2) improve the transmission system so power can be imported at a cheaper price; and (3) allow the utility to become involved in the generation business. **Mr. Fitzpatrick** pointed out that HB 389 is not a silver bullet that will destroy the current noncompetitive electricity market. **Mr. Fitzpatrick** believed HB 389 would provide an additional tool, but made it clear HB 389 would not hold back power prices because new generation coming on line is more expensive.

{Tape: 1; Side: A; Approx. Time Counter: 6.3 - 16.9}

Gary Marbut from Missoula offered a friendly amendment to HB 389. **Mr. Marbut** would like to be a power supplier by utilizing a process that would clean up the forest. **Mr. Marbut** explained his model would convert low-value biomass into electricity and place the power in the grid at the point closest to the clean up process. **Mr. Marbut** explained existing powerlines would be used as the transport mechanism. **Mr. Marbut** suggested the power could be sold to rural electrics, NWE, or marketed to find out how much more people would be willing to pay for green power. **Mr. Marbut** thought most of his potential customers would be part of NWE's system. **Mr. Marbut** identified difficulties in finding a floor trader that would handle units as small as those he is proposing. **Mr. Marbut** would like NWE to incorporate the power he produces in its floor trading, but believes he is too small of a trader for NWE to be interested. **Mr. Marbut** explained his amendment to the committee. **Mr. Marbut** stated he is looking for someone on the committee to sponsor his proposed amendment.
EXHIBIT(feh20a01)

Dan Flynn, International Brotherhood of Electrical Workers, supports HB 389.

Bud Clinch, Executive Director of the Montana Coal Council, testified that if HB 389 would create new markets for Montana coal, he would support HB 389.

Joe Mazurek, City of Great Falls, stated the City of Great Falls has an interest in developing generation capacity. **Mr. Mazurek**

pointed out that there are other potential entities which may be created this session, and he would like HB 389 to accommodate them as well.

Opponents' Testimony:

Greg Jergeson, Chairman, Montana Public Service Commission, submitted written testimony in opposition to HB 389. **Commissioner Jergeson** stated he opposes the bill in its current form. Specifically, **Commissioner Jergeson** opposes Section 6 of HB 389 and urged the legislature to avoid a proscriptive approach to regulation.
EXHIBIT(feh20a02)
{Tape: 1; Side: B}

David Hoffman, PPL Montana, submitted written testimony in opposition to HB 389. **Mr. Hoffman** stated it was his understanding that NWE received over 50 responses to its RFP, and he did not believe this was indicative of PPL Montana having a lock on competition in Montana. In addition, **Mr. Hoffman** testified that PPL Montana only owns about 25 percent of the total electricity production in Montana.
EXHIBIT(feh20a03)

Brad Molnar, Public Service Commissioner, disagreed with the majority position of the PSC. **Commissioner Molnar** explained when the default supplier presents its portfolio to the PSC; the PSC will never know what has been left out. **Commissioner Molnar** believed there needs to be a system of checks and balances in place. **Commissioner Molnar** suggested at the present time there is plenty of room in the process for fiscal shenanigans.

Informational Testimony: None.

Questions from Committee Members and Responses:

REP. BRADY WISEMAN, HD 65, BOZEMAN, had questions regarding Page 2, Lines 28-29, and asked if ratepayers would be paying for generation or equipment. **REP. OLSON** responded that is part of the cost of doing business. **REP. WISEMAN** requested an explanation for the language on Page 7, Lines 8-9. **REP. OLSON** referred the question to Todd Everts. **Mr. Everts** explained the language provides for emergency supply and related services if something should occur in terms of the power not arriving.

REP. HAL JACOBSON, HD 82, HELENA, asked Commissioner Jergeson if he thought HB 389 could be massaged to the point it would benefit

the average consumer. **Commissioner Jergeson** suggested Section 6 of the bill should be abandoned. **REP. JACOBSON** asked how the PSC could be allowed to maintain its authority to oversee these transactions without placing the ratepayers or the PSC in an untenable situation. **Commissioner Jergeson** identified one way as to make sure the rule-making authority in Section 5 is adequate enough to ensure the public interest is met.

REP. DAVE GALLIK, HD 79, HELENA, asked if NWE is not prepared to build generation today and in light of NWE's recent bankruptcy, why they should pass a bill that would provide for advance approval. **Mr. Fitzpatrick** indicated the bill was not crafted at the request of NWE, but that NWE does believe the bill has merit. **Mr. Fitzpatrick** stated he was simply being up-front by stating NWE is not ready to begin generation. **Mr. Fitzpatrick** could not say when NWE would be ready, but that if an opportunity presented itself, it would be beneficial if the law was already on the books.

REP. GALLIK asked about the proposal PPL Montana gave NWE which had a substantial increase and asked Mr. Hoffman for an explanation. **Mr. Hoffman** responded that PPL Montana offered NWE a variety of projects. **Mr. Hoffman** stated the particular proposal was less than the current portfolio price that NWE has filed with the PSC under its monthly tracker.

REP. MARK NOENNIG, HD 46, BILLINGS, asked about the Comanche project and the difficulties his constituents had in submitting competitive proposals and asked what in HB 389 would safeguard against a similar situation occurring in the future. **Mr. Fitzpatrick** admitted he was not working with NWE at that time.

{Tape: 2; Side: A}

Mr. Fitzpatrick stated NWE inherited the package from The Montana Power Company. **Mr. Fitzpatrick** recalled the PSC did not believe an appropriate process had been followed which resulted in those projects being sidelined, and since that time, NWE has attempted to open up the process. **Mr. Fitzpatrick** reminded the committee that, in the past, MPC went to the brink of bankruptcy when the PSC disallowed Colstrip Unit 4. **Mr. Fitzpatrick** emphasized that those types of investments would not be made again by NWE.

REP. NOENNIG asked if there was something in HB 389 that would ensure the PSC would have the ability to hear from everyone who is trying to get in the portfolio. **REP. NOENNIG** expressed

concerns about conflicts of interest. **Mr. Fitzpatrick** assured REP. NOENNIG that the PSC is very thorough in its analysis.

REP. NOENNIG asked Commissioner Jergeson to address his concerns about someone who is competing with the default supplier, particularly in reference to the Comanche project. **Commissioner Jergeson** commented that the discussion was interesting concerning the PSC's responsibility to those who would seek to be included and are not chosen. **Commissioner Jergeson** could not comment further.

REP. DIANE RICE, HD 71, HARRISON, asked Commissioner Molnar for clarification on his earlier comments regarding HB 389. **Commissioner Molnar** clarified if the default supplier remains the only avenue to become part of the portfolio, then there is an economic interest to skew the results of who gets into the portfolio. **Commissioner Molnar** noted while the PSC is entitled to see who was in the bidding process, they are not allowed to see who was not included.

REP. ROBIN HAMILTON, HD 92, MISSOULA, asked Mr. Fitzpatrick for his position on HB 389 if the committee decides to delete Section 6. **Mr. Fitzpatrick** responded they would lose interest in the bill. **Mr. Fitzpatrick** stated NWE is much more interested in having the ground rules set by the legislature rather than the PSC.

REP. GEORGE GROESBECK, HD 74, BUTTE, asked Commissioner Jergeson to explain how he should respond to his constituents when he has to explain the effect HB 389 will have on ratepayers. **Commissioner Jergeson** responded that one of the challenges for the default supplier is that they are required to provide the product, and **Commissioner Jergeson** outlined difficulties with advance approval when there is an overrun, and how that overrun gets passed on to the ratepayer.

REP. WISEMAN referred to Section 6 and the language that says the default supplier "may" apply for advance approval and wondered if the default supplier is not required to apply for advance approval. **REP. OLSON** agreed that was correct.

REP. WISEMAN asked if the PSC would have to allow unanticipated costs into the ratebase. **REP. OLSON** replied that was not necessarily the case and referred REP. WISEMAN to Page 9, Lines 18-19.

REP. WISEMAN noted the gap between the time of PSC approval and the time the plant comes on line, and that the standard the PSC is being required to follow is the prudent standard based on facts known years ago. **REP. OLSON** agreed the PSC's decisions will be based on the facts that were known and noted the language is almost identical to the preapproval language for the portfolio. **REP. WISEMAN** wanted to make it clear that the power of the PSC would be limited to the ability to make a decision based on one set of facts, and then years later will have to include in the ratebase a separate set of facts, and the PSC will not have the discretion to take into account what has happened in the intervening years. **REP. OLSON** referred REP. WISEMAN to Section 6 of the bill.

REP. WISEMAN stated his constituents spoke to him a lot about the high cost of energy and characterized the bill as "Deregulation Part 2, the Nightmare Continues." **REP. WISEMAN** asked Commissioner Jergeson if he would agree with that characterization. **Commissioner Jergeson** agreed the saga continues, but commented that without Section 6, there are some things that could be done as provided in the remainder of the bill.

{Tape: 2; Side: B}

Closing by Sponsor:

REP. OLSON closed the hearing on HB 389 by stating the legislature needs to move past deregulation since it is over and done with. **REP. OLSON** stated if he could, he would make NWE a vertically integrated utility. **REP. OLSON** suggested hatred towards utilities precludes taking care of business and taking care of the citizens of Montana. **REP. OLSON** believed there is substantial opportunity in Montana to build generation assets. **REP. OLSON** alleged it would be unrealistic to ask NWE, or anyone else, to build generation facilities thinking the PSC "might" approve the facility. **CHAIRMAN OLSON** indicated the citizens of Montana would be better off in the long run if HB 389 were implemented.

(REP. GALLIK was not present.)

EXECUTIVE ACTION ON HB 199

Motion: REP. HIMMELBERGER moved that HB 199 DO PASS.

Motion: **REP. OLSON moved that HB019902.ATE BE ADOPTED. EXHIBIT(feh20a04)**

Discussion: **REP. OLSON** explained the proposed amendments to the committee and suggested the amendment will alleviate REP. WISEMAN's concerns.

REP. WISEMAN clarified the intent of the amendment will replace the Environmental Quality Council (EQC) with the Energy and Telecommunications Interim Committee (ETIC).

Vote: **Motion that HB019902.ate BE ADOPTED carried unanimously by voice vote with REP. GALLIK voting by proxy.**

Motion/Vote: **REP. HIMMELBERGER moved that HB 199 DO PASS AS AMENDED. Motion carried unanimously by voice vote with REP. GALLIK voting by proxy.**

{Tape: 2; Side: B; Approx. Time Counter: 10.7 - 15.3}

EXECUTIVE ACTION ON HB 48

Motion: **REP. HIMMELBERGER moved that HB 48 DO PASS.**

Motion: **REP. WISEMAN moved that HB004801.ATE BE ADOPTED. EXHIBIT(feh20a05)**

Discussion:

Mr. Everts clarified the correct amendment HB004801.ate should reflect a date and time of January 26, 2005 (4:49 P.M.).

REP. WISEMAN submitted an exhibit entitled "HB 48 Coal-Combustion Waste Assumptions." **CHAIRMAN OLSON** asserted that the word "was" in proposed amendment (5)(iv) would make it so the statute would not apply to any future development. **REP. WISEMAN** stated it was his understanding the amendment would make the statute apply to currently existing plants.
EXHIBIT(feh20a06)

Ed Thamke believed the amendment would capture the two existing facilities operating under a groundwater permit.

REP. NOENNIG recalled the legislation would not cover the Lewis and Clark Station, and **Mr. Thamke** agreed stating that facility does not operate under a groundwater permit, but operates under a surface water permit. **Mr. Thamke** explained there is surface

water that runs directly through the Lewis and Clark facility and discharges directly into the Yellowstone River, which is a surface body of water.

CHAIRMAN OLSON wondered if the amendment would set up an unfair competition between existing generators and proposed generators. **REP. WISEMAN** elaborated his understanding was that the existing generation facilities were built under the Major Facility Siting Act (MFSA) and are permitted under that act, and their solid waste has to be disposed of according to that act. Subject to statute changes and deregulation, new plants, however, are not subject to regulation for disposal of fly ash. **REP. WISEMAN** thought the current situation was unfair because new plants can dump ash on their sight without any regulation at all. **CHAIRMAN OLSON** clarified that MFSA waste disposal has had absolutely nothing to do with deregulation.

CHAIRMAN OLSON asked if the Corette plant in Billings would fall under the Waste Disposal Act. **Mr. Thamke** explained if the Corette plant was to dispose of its solid waste at an off-site facility, it would be covered under the Montana Solid Waste Management Act. Currently, the plant recycles its fly ash and is being creative to avoid disposal of its bottom ash stream. Any ash that would go off site would have to abide by the Solid Waste Act. The Lewis and Clark Plant would also have to abide by the Solid Waste Act.

At the request of CHAIRMAN OLSON, Mr. Thamke explained GWPCS stands for Groundwater Permit Compliance System and MPDES is an acronym for Montana Pollutant Discharge Elimination System.

{Tape: 3; Side: A}

REP. HIMMELBERGER asked for an explanation of Assumption 3 contained in the fiscal note. **Mr. Thamke** explained the agency has no idea how many proposals for electrical generating facilities might require a solid waste management system, so the assumption is that one major system per fiscal year would come into the agency. The cost for the agency to review the application is $12,000. In addition, after the facility is licensed, there would be an annual license renewal fee of $4,200, and a fee of .40 a ton on a speculated 70,000 tons.

REP. NOENNIG stated his understanding is that the legislation is intended to regulate solid waste disposal on site for new facilities and wondered how realistic that goal is. **Mr. Thamke** speculated that would be realistic for Southern Montana Electric

and Rocky Mountain Power. **Mr. Thamke** could not speak with certainty for any other proposals.

Substitute Motion: REP. OLSON made a substitute motion that HB004802.ATE BE ADOPTED.
EXHIBIT(feh20a07)

Discussion:

REP. OLSON explained the amendment will make any future plant abide by the same rules as Montana Dakota Utilities, Colstrip Energy Limited Partnership, and Yellowstone Energy Partnership with ground and surface water discharge permits. **CHAIRMAN OLSON** noted the change to section (iv) which would now reference "...is or has been subject to a surface or groundwater discharge permit."

REP. JACOBSON asked REP. DICKENSON, sponsor of HB 48, to comment on proposed amendment HB004802.ate, who stated she could live with the amendment; however, **REP. DICKENSON** commented she would prefer the first amendment.

REP. WISEMAN commented that surface and groundwater permits do not prevent pollution, but simply monitor pollution. Solid waste permits are designed to prevent pollution. **REP. WISEMAN** thought Montana needed to be in a preventive posture when dealing with toxic heavy-metal pollution.

REP. WAYNE STAHL, HD 35, SACO, asked about the difference between fly ash, bottom ash and slurrie and stated it was his understanding fly ash is not a hazardous waste. **REP. STAHL** referred the committee to a letter submitted by Southern Montana Electric Generation stating the coal used at their facility is different than ash created at other facilities.
EXHIBIT(feh20a08)

Mr. Thamke agreed that fly ash varies depending on the processes involved and the content. **Mr. Thamke** also agreed fly ash is marketable, and that the department supports reducing the amount of ash deposited at landfills. However, **Mr. Thamke** noted the amount of fly ash produced greatly exceeds the amounts they are able to recycle. **Mr. Thamke** pointed out that fly ash still needs to be disposed of in an appropriate manner since there are metals associated with fly ash.

REP. HAMILTON agreed that surface and groundwater permits only provide for monitoring and would not provide for lining a

disposal pit. **CHAIRMAN OLSON** noted the second amendment puts surface and groundwater discharge permits into the bill. **REP. HAMILTON** expressed concern about the lack of enforcement. **Mr. Thamke** explained the Water Quality Permit Bureau falls under the Water Quality Act, and violations are enforceable by the Enforcement Division. **REP. HAMILTON** pointed out that process would only happen after a violation had occurred.

REP. WISEMAN commented the second amendment would create a loophole.

REP. HIMMELBERGER asked if existing permitted plants are paying the .40 tonnage fee. **Mr. Thamke** replied they are not, but they would under the new amendments.

Mr. Thamke explained to REP. NOENNIG that if the legislation is successful and electrical generating facilities are removed from those currently excluded from solid waste management systems, the agency would regulate them as a solid waste management system. The only facilities that would continue to enjoy a ground or surface water permit would be those existing electrical generating facilities that currently do so.

{Tape: 3; Side: B}

CHAIRMAN OLSON noted he has heard discussion where the Department of Environmental Quality (DEQ) would like to regulate impoundments for coal bed methane water through ground and surface water discharge permits and asked if that was the same thing. **Mr. Thamke** could not speak to the matter and added coal bed methane water is an aqueous substance.

Vote: Motion to adopt HB004802.ate failed 7-7 by roll call vote with REPS. HIMMELBERGER, CLOCK, RICE, WAITCHIES, STAHL, NOENNIG, AND OLSON voting aye, and REP. GALLIK voting by proxy.

Vote: Motion to adopt HB004801.ate carried 10-4 by roll call vote with REPS. OLSON, RICE, STAHL, and WAITSCHIES voting no and REP. GALLIK voting by proxy.

Motion/Vote: REP. WISEMAN moved that HB 48 DO PASS AS AMENDED. Motion carried 8-6 by roll call vote with REPS. HIMMELBERGER, OLSON, KLOCK, RICE, STAHL, and WAITSCHIES voting no, and REP. GALLIK voting by proxy.

(REP. GALLIK returns.)

EXECUTIVE ACTION ON HB 136

Motion: REP. HIMMELBERGER moved that HB 136 DO PASS.

Motion: REP. OLSON moved that HB013601.ATE BE ADOPTED. EXHIBIT(feh20a09)

Discussion:

CHAIRMAN OLSON explained HB013601.ate removes the reference to "off-grid" and will also make the legislation economically feasible.

REP. WISEMAN commented the proposed amendment in no way fixes the fundamental flaws of HB 136. **REP. WISEMAN** stated the typical NWE customer pays $1 to USB, and .14 of that goes to renewable resources. **REP. WISEMAN** suggested it is illogical to require renewable resource projects to be cost-effective since that is why the projects are supplemented by USB dollars.

Vote: Motion failed 7-7 by roll call vote with REPS. HIMMELBERGER, KLOCK, NOENNIG, OLSON, RICE, STAHL, and WAITSCHIES voting aye and REP. JACOBSON voting by proxy.

REP. KARL WAITSCHIES, HD 36, PEERLESS, commented he would rather spend the USB money helping people pay their heating bills than to fund uneconomical projects.

REP. WISEMAN stated there are approximately 125 renewable projects on the NWE system, including 28 schools, 16 fire stations, 14 community government buildings, 10 senior centers, 7 low-income housing projects, 82 solar demonstration projects, and 28 wind projects. **REP. WISEMAN** believed the program is working the way it was intended.

REP. GROESBECK stated he would not support HB 136 because the program has been very successful and has many benefits to the environment, communities and small businesses. **REP. GROESBECK** agreed it would be illogical to make these projects cost-effective.

(REP. JACOBSON returns.)

REP. GALLIK commented he would not vote for HB 136 because he does not believe it is an either/or situation. In addition, **REP. GALLIK** believed it would send a bad message to the citizens of

Montana if the legislature were to cut support for renewable resources.

CHAIRMAN OLSON responded that USB is a product of deregulation. **CHAIRMAN OLSON** charged that conservation is much more effective than a solar collector and people cannot pay their utility bills. **CHAIRMAN OLSON** did not believe USB funds should be paying for science projects.

Vote: Motion that HB 136 DO PASS failed 7-7 by roll call vote with REPS. HIMMELBERGER, KLOCK, NOENNIG, OLSON, RICE, STAHL, and WAITSCHIES voting aye.

ADJOURNMENT

Adjournment: 6:00 P.M.

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REP. ALAN OLSON, Chairman

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CYNTHIA PETERSON, Secretary

AO/cp

Additional Exhibits:

EXHIBIT(feh20aad0.TIF)