

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON TAXATION

**Call to Order:** By CHAIRMAN GERRY DEVLIN, on March 13, 1997, at 8:00 a.m., in Room 325 of the State Capitol, Helena, Montana.

#### ROLL CALL

**Members Present:**

Sen. Gerry Devlin, Chairman (R)  
Sen. Mike Foster, Vice Chairman (R)  
Sen. Mack Cole (R)  
Sen. Bob DePratu (R)  
Sen. Dorothy Eck (D)  
Sen. Wm. E. "Bill" Glaser (R)  
Sen. Mike Sprague (R)  
Sen. Barry "Spook" Stang (D)  
Sen. Fred R. Van Valkenburg (D)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Jeff Martin, Legislative Services Division  
Jody Bird, Judiciary Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 390, 3/7/97  
Executive Action: None

#### HEARING ON SB 390

**Sponsor:** SENATOR FRED THOMAS, SD 31, Stevensville

**Proponents:** Warren McConkey, Flathead Electric Coop  
Terry Holzer, Yellowstone Valley Electric Coop  
Ric Brown, Ravalli County Electric  
Bill Drummond, Western Montana G & T  
Allen Thiessen, President, Montana Electric Coops  
Ron Ostberg, Sun River Electric Coop  
Dave Wheelihan, Montana Electric Coop Association  
Bob Gannon, Vice Chair and President, Montana Power  
Company (MPC)  
SENATOR JOHN HARP, Kalispell

REPRESENTATIVE BILL RYAN, Great Falls  
 REPRESENTATIVE JOE QUILICI, Butte  
 Mick Robinson, Office of the Governor  
 Perry Cole, Montana Power Company  
 Tim Gregori, General Manager, Big Horn County Coop  
 Frank Kenny, Vice President, Goldman Sax, a Wall Street  
     Investment Company, New York  
 Dave Fisher, Chairman, Public Service Commission (PSC)  
 Don Quander, Ashgrove, Conoco, LaPacific, Stillwater  
     Mining, and Stone Container  
 Neil Colwell, Washington Water Power Company  
 John Alke, Montana-Dakota Utilities  
 Gail Kuntz, Bonneville Power Association  
 David Owen, Montana Chamber of Commerce  
 Jim Todd, Vice President, Administration and Finance,  
     University of Montana, Missoula  
 Mike Murphy, Montana Water Resources Association  
 Mike Strand, Executive Vice President and General  
     Counsel, Montana Telephone Coop and  
     Tele-communications  
 Greg Groepper, Energy Share of Montana  
 Gene Lewner, Rocky Mountain Development Council, and  
     Association of Human Rights Development Councils  
     (HRDCs)  
 Bill Drummond, Western Montana G & T, Missoula

Opponents: REPRESENTATIVE DAVID EWER, Helena  
 Bob Anderson, Public Service Commission (PSC)  
 REPRESENTATIVE VIVIAN BROOKE, Families Achieving (FAME)  
 Jim Payne, Pacific Corp, dba Pacific Power  
 Dick Pattison, President, Montana Senior Citizens  
     Association  
 Archie Nunn, Silver Star, Montana  
 Russell Hill, Montana Trial Lawyers Association (MTLA)  
 Peter West, Renewable Northwest Project  
 Debbie Smith, attorney, Helena, for National Resource  
     Defense Counsel  
 Patrick Judge, Montana Environmental Information Center  
     (MEIC)  
 Tara Mele, MontPIRG  
 Derek Birnie, Montana People's Action  
 Ron Mueller, Executive Committee, Montana Chapter,  
     Sierra Club  
 Vern Bertlesen, Montana Senior Citizens  
 Betty Waddell, Montana Association of Churches  
 Ted Lange, Northern Plains Resource Council  
 David Dittloff, Montana Audubon

Opening Statement by Sponsor: SENATOR FRED THOMAS, SD 31,  
 Stevensville, This is a collaboration regarding the restructuring  
 of electrical supply in Montana, involving every citizen of  
 Montana. The bill was drafted so as to ensure that all consumers  
 are protected and reap the benefit of lower prices, yet to  
 maintain viable economic competition in the marketplace. An

effort has been made to avoid haphazard deregulation, as federal legislation is currently pending to deregulate this industry.

We want to treat the companies and cooperatives serving Montana fairly, and in accordance with the Federal Regulatory Energy Commission Act order 888 of last year. The question is if regulation keeps electric costs artificially high. Since we can't conceive of all the contingencies, we strove to find balance in drafting this legislation, with consumer protection as a number one priority. We want to provide them with the real benefits of access to the lowest cost electricity as soon as possible. Since the large customer population is small, it is not difficult to surmount, but the large number of residential and smaller business customers present more of a challenge. The rate freeze for the smaller consumer is a beginning with a promise of lower benefits in the future.

There would be continued regulation of transmission service, so no customers would be without power. We propose a universal systems benefit package at a higher level than today. "Stranded" or "transition" costs are those already incurred by the provider, i.e., costs currently in today's utility rates, and not new or extra costs or windfalls for utilities, but paid for over time by customers.

It is essential to protect coops, yet allow them to opt in or out of the competitive market place. If they choose to opt in, it will have to be as a for-profit entity. Much effort has been put into the collaborative drafting of this bill. Change is coming, and a transitional period is necessary to achieve balance for all Montanans. **SENATOR THOMAS** introduced **Warren McConkey, Flathead Electric Coop, Terry Holzer, Yellowstone Valley Electric Coop, Ric Brown, Ravalli County Electric, Bill Drummond, Western Montana G & T, Allen Thiessen, President, Montana Electric Coops and Ron Ostberg, Sun River Coop** to the Committee.

**Proponents' Testimony:** **Dave Wheelihan, Montana Electric Coop Association.** We serve 330,000 Montanans. We met with a wide variety of parties on this and negotiations were intense and extensive. If consumers want choice of power source, that involves responsibility to the system in billing as a transit charge. Without these obligations, rates could go up if enough consumers left a system.

We believe the bill, in current form, allows customers to shape their own destiny. Opportunities and benefits in Eastern and Western Montana are clearly different. Changes exist in territorial integrity of the law to allow more efficient use of capital. With the consumer protection provision we support the bill.

**Bob Gannon, Vice Chair and President, Montana Power (MPC).** There have been forces at work since 1973, and competition is here. Customers are demanding retail access, and we have 550 larger

customers. Federal legislation is imminent. There has been a comprehensive review by the Northwest Energy System - Montana, Idaho, Washington, and Oregon - in the past year. At least eight states have enacted legislation similar to this. Only Tennessee is not involved, as they are dominated by the TVA (Tennessee Valley Authority).

**{Tape: 1; Side: A; Approx. Time Count: #22.2; Comments: None}**

MPC is finding ways to reduce costs and be competitive. We reduced our work force by 20 percent. Competitive power rates are critical to location of plant. We are finding ways to maintain system integrity and credibility with opportunities for lower energy bills, making Montana more competitive for economic development. The bill should be supported.

**{Tape: 1; Side: A; Approx. Time Count: #24.6; Comments: None}**

**SENATOR JOHN HARP, Kalispell.** I want to thank those involved in the process to this point. I believe it has worked well, and thank the Governor for his help and participation, as well. The goal is reliable, affordable electric service in the future.

This process began on May 21, 1996 with PSC notice of review of rates. MPC put together a plan in December, 1996 for customer choice (showed document). This issue is much bigger than Montana, and includes Idaho, Oregon, and Washington. There was a comprehensive review in December, 1996 by the Northwest Energy System. Since January, 1996 the System had 30 meetings involving over 100 people at 10 public meeting locations. In November, 1996 they were notified of MPC pending legislation.

The Legislature will ultimately decide this issue. The Process has been open and fair to all stake-holders. Part of my district is the Columbia Falls Aluminum Plant - the single-most user of power in Montana, and who was reduced-cost power.

**{Tape: 1; Side: A; Approx. Time Count: #30.2; Comments: None}**

Today Montana has opportunities to set it's own vision, rewarding those most efficient. Yesterday, we passed SB 89, the telecommunications bill. If Montana doesn't set a Montana-friendly direction we may see the same thing we saw with the telecommunications bill.

**REPRESENTATIVE BILL RYAN, Great Falls, for Stan DeFree, IVW, Local 44, Butte.** I have worked in this industry for 25 years, and employees were involved in the drafting of this bill. We urge your support.

**REPRESENTATIVE JOE QUILICI, Butte.** We need to change along with the changes taking place in the utilities industry, so we're not left behind. I have a list of all the states and the changes

their making in this area. The National Conference of State Legislatures (NCSL) has been in the forefront of this.

**{Tape: 1; Side: A; Approx. Time Count: #38.5; Comments: None}**

I believe each state is saying the electricity business is changing in such a way that we need to lower costs to be competitive. The large customer groups have a choice, and I believe residential rate-bearers need protection which is even better with **SENATOR HARP's** amendment. A state senator from New Mexico said this transition is a leap of faith. The worst thing this legislature can do is nothing.

**{Tape: 1; Side: B; Approx. Time Count: #00.; Comments: 8:40 a.m.}**

**Mick Robinson, Office of the Governor** read from prepared testimony (**EXHIBIT #1**). He also provided copies of the Racicot Administration Electricity Restructuring Principles (**EXHIBIT #2**). We appreciate being invited to speak on this bill. It was drafted with principles hoping to make clear the Governor's expectations. I am provided a copy of the Comprehensive Review of the Northwest Energy System of December 12, 1996 (**EXHIBIT #3**).

We believe all parties recognize the substantial progress achieved, but not all of it is in the bill, so the Governor has provided amendments (**EXHIBIT #4**). Some are clarifying or address format, a few are extremely critical to the Governor's acceptance of the bill. We also support **SENATOR HARP's** amendments, and strengthening the language concerning the two-year rate cap. The Governor is looking for a complete rate cap.

We believe the rate cap has been agreed to in principal, but the exact intent and structure need to be finalized. We believe the bond financing method is appropriate, and asked Mae Nan Ellingson, State Bond Counsel, to give appropriate testimony.

**{Tape: 1; Side: B; Approx. Time Count: #4.3; Comments: None}**

**Perry Cole, Montana Power Company (EXHIBIT #5)**. We're aiming at customer choice by July 1, 2002, with some limited exceptions. A pilot program is set to begin July 1, 1998 for smaller customers, with entry at that time for larger customers. Twenty-five percent of our customers make up 75 percent of sales volume. The bill provides for consumer education.

Concerning unbundling, the graph on page 5 shows the impact on customer rates. There are no additional or new transition charges, and the rates are no higher than what could have existed under the current transit period. There are rate freeze charges and transmission and distribution charges.

The uniform system benefit changes for public purpose programs, such as low income, conservation, and renewable resources, and public purpose programs are slightly enhanced. There are competitive transition charges on regulatory assets, for costs

incurred as a part of regulation in the past which would continue to be recovered. There are qualifying facility power contract costs, with upwards of \$500 million in stranded costs, which we were required to enter into by federal law, which would be recovered. These are six cent power contracts which escalating into the future against power markets of today of 1.5 to 2 cents. It is very important for us to recover these costs.

There is only a four-year recovery on hydro and thermal costs. MPC's financial future is directly linked with the automatic market cost recovery of competitive transit charges. It is very important to maintain financial integrity via stability, service, and safety.

The PSC will review all these costs. The reciprocity provisions are very important between counties. Transit cost financing is via revenue bonds - another extension process with the PSC. The value of the bonds will be passed on to consumers. The bill requires costs to small consumers if some markets don't develop, and provides for a possible two-year extension. Then, if it's still not working a legislative oversight committee would make a review. We ask the Committee's support.

*{Tape: 1; Side: B; Approx. Time Count: #17.5; Comments: None}*

**Tim Gregori, General Manager, Big Horn County Coop.** I'm to speak on the cooperative utilities perspective: transit plans, costs, distribution of service and obligations, universal systems, and territorial integrity (EXHIBIT #6). The plan includes customer education, the history and purpose of rural electric cooperatives, the cooperatives utility exemption, the University System Benefit Program, and the Territorial Integrity Act. All of this will have varied impact to varied consumers.

*{Tape: 1; Side: B; Approx. Time Count: #25.5; Comments: None}*

**Frank Kenny, Vice President, Goldman Sax, a Wall Street Investment Company, New York (EXHIBIT #7).** Securitization is common and is primarily a financial tool, for example, for home loans and autos. The purpose is to dedicate a stream of revenue to achieve a AAA rating on these bonds. It is being used across the country in every single deregulation plan. It doesn't affect the state's rating at all, and represents significant savings.

**Dave Fisher, Chairman, Public Service Commission (PSC) (EXHIBIT #8).** The majority of the PSC supported the bill, and the other amendments may serve to strengthen it. I want to thank the Committee for this hearing, and will be available for questions.

*{Tape: 1; Side: B; Approx. Time Count: #30.0; Comments: None}*

**Don Quander, for Ashgrove, Conoco, La Pacific, Stillwater Mining, and Stone Container, read from prepared testimony (EXHIBIT #9).**

We support the bill and freedom of choice at competitive prices. After wages and benefits, electricity is the next most costly item for larger employers in Montana. The new silicon plant in Butte will pay about one-half the existing rate.

*{Tape: 1; Side: B; Approx. Time Count: #37.4; Comments: None}*

**Neil Colwell, Washington Water Power Company.** This bill goes far and beyond that of Washington, Oregon, and Idaho, and is good legislation. We support it with one amendment to Section 5, Subsections (4) - (12), (22) and (26). We have more than 600 megawatts, but have only 20 residential customers at the Noxon dam, so it doesn't apply to us. We believe the proponents would agree. If we came in as a marketer, we would be subject to the other parts of the Act.

**John Alke, Montana-Dakota Utilities.** We are literally separated by a wall from the western three-quarters of the state, and are in a different council. North Dakota is 70 percent of our market, and that state is passing a study bill now..

**Gail Kuntz, Bonneville Power Association (EXHIBIT #10).** The Northwest Regional Review identified a three percent of regulated utility revenue shortfall remedy.

**David Owen, Montana Chamber of Commerce.** We support this legislation, and ask for the Committee's support.

**Jim Todd, Vice President, Administration and Finance, University of Montana, Missoula.** We conducted an exhaustive analysis, and believe there are tremendous savings possible for the University with this bill, as two campuses would qualify as large customers. This would allow a reduction in long range building dependency on the State of Montana. We are asking for a way to include all University locations in the bill.

*{Tape: 1; Side: B; Approx. Time Count: #6.0; Comments: None}*

**Mike Murphy, Montana Water Resources Association.** We support this legislation.

**Mike Strand, Executive Vice President and General Counsel, Montana Telephone Coop and Tele-communications.** We believe the bill has been successfully crafted for the greatest protection to consumers, yet is still competitive.

**Greg Groepper, Energy Share of Montana (EXHIBIT #11).** We support the Governor's recommended amendments to the bill, as well as **SENATOR HARP's** amendments. The changes for uniform systems benefits are predicated on what a number of Montanans are paying now for those benefits.

**Gene Lewner, Rocky Mountain Development Council, and Association of Human Rights Development Councils (HRDCs).** I believe the bill

is fair and generous, and support the rate cap, as well as SENATOR HARP's amendments.

Bill Drummond, Western Montana G & T, Missoula. We serve about 50,000 customers, and stand in support of the bill.

{Tape: 1; Side: B; Approx. Time Count: #13.1; Comments: None.}

Opponents' Testimony: REPRESENTATIVE DAVID EWER, Helena.

Montana's situation is different from California, or Maine, or New Hampshire. We have an abundance of energy reserves, and are close to the Canadian reserves, as well as having low rates in comparison to the national average. Congress is taking several steps back to look at this. Senator Burns said we should not rush into this, but should educate ourselves and the public, as this will take time. Deregulation of telecommunications took seven years.

In January, 1997 the proponents sent all legislators a letter mentioning a cautious approach, especially in rural areas. The letter talks about a task force study and a two-year moratorium during this study.

The coops get to opt out of this bill. We are offering competitive rates in a regulated environment. Retail choice is not the law of the land. I don't accept the premise of the opponents. I suggest we watch and study this and get a bill in at the first of a legislative session, in addition to allowing for plenty of public input. I suggest there will be substantial adverse consequences for ordinary Montanans in this bill.

{Tape: 1; Side: B; Approx. Time Count: #20.3; Comments: None.}

The bill is not clear as to who would issue the bonds. These would be under current federal tax requirements, and would not be tax exempt, and so it is not critical that a state agency issued the bonds. In California the state does this in order to have control. If the Committee wants to do so, I would suggest the Board of Investments, as they now do conduit bonds. The State's credit would not be affected. If the Committee decides to go with the Board of Investments, those bonds would be exempt from state income taxation, and I don't believe the Legislature counted on this. For the record, I recommend each of you read the study by Baxter and Hearst of electric utilities (1995).

The definitions of transit costs and strandable costs are used interchangeably, and the definition in the bill is incredibly wide open. A 4.5 percent cost of producing electricity makes the book value very low. They want the largest possible spread between negative value, and to call those transit costs and put a transit charge on all of us through the PSC. It is, essentially, as tax. In Section 12(3)(c), a utility and a customer can agree to alter this transit charge payment.



The bill says the bond mechanism is likely to generate savings to consumers. I see the cost of imbedded capital as 7.16 percent, but they say it is 13 percent. In the bill there is no way for transit charges to come down. We are stuck with it once bonding is implemented, the bonds have to be taxable, and Montana Power plans to go about ten years at higher than current treasury rates, but about 50 points less than imbedded cost.

The universal systems benefit charge is currently at 2.4 percent, on page 18 of the bill. The new craze called the "race to bond" protects the large customer. There's a top end and they get credit. I suggest they still need to at least pay for low energy income assistance.

I hope you pay attention to licensing, as large customers will be advantaged, and small Montana consumers won't have market power.

*{Tape: 1; Side: B; Approx. Time Count: #31.7; Comments: None.}*

On page 11, lines 6-8, transition costs are also investment costs made outside this bill. Colstrip comes readily to mind.

On page 19, lines 6-7, what better proxy is there for monopolies and oligopolies than market share? I don't know the dollar amount MPC hopes to put under transit costs - one-half to three-quarters billion dollars - but, you ought to ask them. \$500 million at 7 percent for 10 years is about \$90-100 per customer per year, plus \$10 for universal systems benefits.

This bill is terribly anti-consumer. These companies have total protection under this bill. What happens if energy prices begin to up? If we have the burden of paying the bonds, we're stuck.

I have amendments to empower the PSC to compartmentalize these stranded costs - probably Rosebud, and maybe BGI. They ought to get these done first (**EXHIBITS #12 and #13**). There is no upside for consumers in this bill. I challenge the Committee to review the initial premise, and am asking that you table this bill, study the issue, and watch the situation carefully.

*{Tape: 1; Side: B; Approx. Time Count: #40.0; Comments: None}*

**Bob Anderson, Public Service Commission (PSC).** I am here for myself and for Commission member Bob Rowe. We disagreed with the majority of the PSC, but agree with the big picture and with customer choice. The question is how to get through transit costs?

This process was opened up in May, 1995. In May, 1996 the PSC issued a set of principles very similar to the Governor's principles. We also asked for a restructuring plan, but didn't get one until December, 1996. In the interim, MPC entered the first draft of this bill, and everyone had to react. It was not

open to negotiation or to the public. This is a stranded-cost recovery bill.

{Tape: 2; Side: A; Approx. Time Count: #00.; Comments: 10:14 a.m.}

The balance should not change, and customers need quid pro quo if it does. We support the amendments proposed by the Governor's office. The rate cap is very important. This should either be a divestiture or continued regulation of that supply, and that will probably take many years.

The public benefit is at 2.4 percent, and undermines the 3 percent in the Northwest Regional Comprehensive Review. The FERC Code applies to wholesale transactions, and it is not known yet if it applies to retail. Consumer information ought to be provided by a neutral party.

The PSC will gladly participate, but there is not an appropriation in the bill to provide authority for staff and resources. If this bill passes, Montana will plunge from a high board, as it is the only state with restructuring written by the power companies and the bill was not prepared via public process, nor guarantees stranded cost recovery.

You could permit the PSC to impose an exit fee, so the companies are not leaving stranded costs behind. This would satisfy the problem. You could also provide for reciprocity, and recognize the issues of the cooperatives.

**REPRESENTATIVE VIVIAN BROOKE, Families Achieving (FAME).** Section 22 needs to be strengthened, so the universal benefits program can be implemented in 1997. We question if 2.4 percent of each utility is sufficient, and submit that 4 percent be substituted on page 18, subsection (13). We believe this renders the previous subsection useless. We urge you to carefully balance the perceived need to restructure.

**Jim Payne, Pacific Corp, dba Pacific Power.** We operate in the Northwest corner of Montana. We support direct access and are doing so before Congress and other state legislatures. We would support the bill except for the exemptions in Sections 5 and 20, and the reciprocity clause in Section 28. We support competition, but choice implementation dates will occur. If this prohibits Pacific Corp from competing in Montana, that is unfair, and likely an unconstitutional burden. If the bill passes, we will commit to working on finding a common ground.

{Tape: 2; Side: B; Approx. Time Count: 14.8; Comments: None}

**Dick Pattison, President, Montana Senior Citizens Association,** read from prepared testimony (EXHIBIT #14). We note the protection to rural electric coops. Since this bill surfaced on last Friday, it is difficult to fully evaluate it in a short

time. Congress has taken no action yet, and I believe this bill is premature. There is an average of 5 cents per kw hour in the U.S., 12 cents in Germany, and 17 cents in Japan. The U.S. has the lowest costs in the world. The Montana Senior Citizens adopted this legislation as their #2 priority six months ago, as we oppose deregulation of the utilities industry. We are asking for two years of careful study.

**{Tape: 2; Side: B; Approx. Time Count: #20; Comments: None}**

**Archie Nunn, Silver Star, Montana (EXHIBIT #15)**, read from prepared testimony in opposition to the bill.

**Russell Hill, Montana Trial Lawyers Association (MTLA)**, quoted 'Bat Masterson' - "the rich get their ice in the summer, and the poor get their ice in the winter". I don't believe the opponents are fairly matched in this, and it comes down to the Governor to represent the consumer. This bill is not before the Legislature because of federal legislation, but because of this legislature, as they are vocally opposed to federal mandates.

The only protection for consumers in this bill is price-fixing, and that is not good. The expertise of the proponents is bigger than Montana. Montanan's interests are not the same as those who do understand this bill. They will learn the hard way to hate this bill, and to regret its passage.

**{Tape: 2; Side: B; Approx. Time Count: #28.0; Comments: None}**

**Peter West, Renewable Northwest Project.** We participated in the Northwest Regional Comprehensive Review. The three percent is critical. Montana is most suited for wind and solar development. Renewable resources provide jobs and money. \$28-54 million goes out of Montana regularly now per year. Once we pay off initial capital costs of renewable resources during the first 10 to 15 years, they become very cheap. We need to provide a method for renewables to compete, and so the Northwest Regional Comprehensive Review recommended a minimum standard of three percent for competition for maximum control and flexibility. SB 390 falls short of the Region's compromises.

All eyes in the Washington, Idaho, and Oregon legislatures are on Montana's bill, but each is of those states is at three percent, and no more or no less.

We are suggesting three amendments: 1) include low income weatherization at three percent; 2) return to a ten-year life for the transition period; and 3) do green marketing.

**Debbie Smith, attorney, Helena, for National Resource Defense Counsel.** We would support the bill if public purpose implemented the three percent, and you funded low income bill assistance, as this was the deal reached by the Montana representative at the Northwest Region Comprehensive Review.

**{Tape: 3; Side: A; Approx. Time Count: #00; Comments: 10:53 a.m.}**

The Legislature has ultimate authority, so we are asking that you don't underestimate the value of regulations when federal legislation is considered. I will prepared an amendment for the three percent provision prior to executive action on the bill.

**Patrick Judge, Montana Environmental Information Center (MEIC) (EXHIBIT #16).** The NCSL magazine has a recent article on the electricity industry. We want to see the merits of deregulation carefully considered before passage of this legislation. In Section 5, on page 6, there is a distinction between small and large customers. If there is market development for small customers, the larger customers will still get a better deal. The bill is exceedingly optimistic, as it could lead to a monopoly. In Section 12, transit costs are in a "catch-all" category that consumers will pay for.

Meters cost \$300-400. We agree with **REPRESENTATIVE EWER's** comments on the rate moratorium, and would support extending the transmission period to four years. In Section 22, "into the future" was in the original agreement, so we are asking you to remove the 2003 sunset provision. The three percent figure developed from the public hearing process. I note that .9 mills is .09 cents.

**{Tape: 3; Side: A; Approx. Time Count: #13.5; Comments: None}**

**Tara Mele, MontPIRG (Montana Public Interest Research Group), (EXHIBIT #17).** For the record, we oppose moving forward on this bill at all, and think that a study bill would have been the best idea. It's easy to invite the powerless minority voice to this process, and then come out and say this is a consensus, both here and in the press. We think 2.4 or even 3. percent is too low, and oppose the credit given to industry. How does conservation to their infrastructure benefit those low income households. We also disagree with the sunset in 2003. I thank you for your time, and urge you to table this bill.

**Derek Birnie, Montana People's Action.** There are 5000 low income Montanans and members of the Northwest Region of Community Organizers in Montana, Washington, Oregon, and Idaho. Our mission is: 1) to improve lives; 2) to institute change for balance of power; 3) to empower individuals to make a difference, and SB 390 goes against all of these. We are asking for federal, citizen, and industry input in Montana.

**{Tape: 3; Side: A; Approx. Time Count: #22.5; Comments: 11:15 a.m.}**

**Ron Mueller, Executive Committee, Montana Chapter, Sierra Club.** We have two concerns: 1) market access, as the Governor's principles support access, and we would urge this to be mandatory

in the bill; 2) the systems benefit charge should be 3 percent and not 2.4 percent.

**Vern Bertlesen, Montana Senior Citizens** states his opposition to this legislation.

**Betty Waddell, Montana Association of Churches.** I would encourage you to table this bill and allow for public discussion over the next two years.

**Ted Lange, Northern Plains Resource Council.** We would support a study bill instead of this bill, and believe in shared costs for rates. We see the bill as restrictive and gutting the PSC. We echo the three percent figure as being essential, and taking out big business loopholes. We urge you to table the bill.

**David Dittloff, Montana Audubon** presents written testimony (EXHIBIT #18).

**WRITTEN TESTIMONY WAS PRESENTED BY THE FOLLOWING:**

**Rachel Shimshak, Director, Renewable Northwest Project (EXHIBIT #19).**

**Dave Wheelihan, General Manager, Montana Electric Cooperative Association (EXHIBIT #20).**

**William K. Drummond, Manager, Western Montana Electric Generating and Transmission Cooperative (EXHIBIT #21).**

**Neal Miller and Kathyn Hiestand (EXHIBIT #22).**

**Nancy Hirsh, Policy Director, Northwest Conservation Act Coalition (EXHIBIT #23).**

**Questions From Committee Members and Responses: SENATOR FRED VAN VALKENBURG.** I am concerned with the Governor's principle #11. The Fiscal Note says there could be an inestimable revenue impact to local government, but about 25 percent of the Montana tax base is utilities industries. Don't we need more information before this Legislature makes a decision that could mean an economic earthquake in Montana? **Mick Robinson.** It would be centrally assessed rather than locally, and the tax ramifications are enormous. The method of organization would determine this. That risk has been there forever, and would remain, and may or may not have an impact.

**SENATOR VAN VALKENBURG.** Why study this after passing the bill? I expected the Governor to be more concerned about the economic tax impact. I believe devaluing of taxes will have an impact. I sense MPC is driving this issue, as they are concerned that their industrial customers are about to jump ship. What is the difference between a transmission system and a distribution system? **Bob Gannon.** There is some difference at lower levels of

voltage - 100kv lines transmit power throughout the Northwest and are regulated.

**SENATOR VAN VALKENBURG.** So only 500kv lines are required to be open? **Bob Gannon.** No. The federal government is going through the process of defining what transmission is.

**SENATOR VAN VALKENBURG.** How is it possible for Stone Container and the University of Montana to leave the MPC system if this bill doesn't pass? **Bob Gannon.** Innovative lawyers around the U.S. have found ways to implement mechanisms to generate sham transactions to circumvent local utilities.

**SENATOR VAN VALKENBURG.** What's wrong with Bob Anderson (PSC) suggesting an exist fee on stranded costs? **Bob Gannon.** I believe the Legislature does contemplate exit fees for those existing customers wanting to leave the system. The PSC's ability to impose this fee now is in question.

**SENATOR VAN VALKENBURG.** What if that's all the Legislature did, and we studied the remainder of the bill? **Bob Gannon.** The issue has been studied, and the time is right now, so we would oppose waiting for two years.

**SENATOR MIKE FOSTER.** How would funding for the university system benefit if there were changes in the ownership structure? **Warren McConkey.** The 2.4 percent figure cam from a "shot in time" of 1995 load, so we could continue to do business in Montana. Restructuring could cause mergers, consolidation, and subdivisions wanting to create their own new coops or public utilities. So, we should allocate from that 1995 commitment of old service territories.

*{Tape: 3; Side: B; Approx. Time Count: #00; Comments: 11:31 a.m.}*

**SENATOR FOSTER.** The opponents talked a lot about transitional costs and Colstrip. **Bob Gannon.** Colstrip 4 was never included in the rate base.

**SENATOR FOSTER.** So stranded costs don't include Colstrip 4? **Bob Gannon.** That is correct.

**SENATOR FOSTER.** Section 12, page 10 refers to the PSC allowing recovering of costs. Does that mean they're the ultimate decider in those transmission costs? **Bob Gannon.** It is contemplated in this bill that these costs would have to be determined reasonable before they are ever instituted.

**SENATOR FOSTER.** Do you see this bill as gutting the PSC? **Dave Fisher.** No.

**SENATOR FOSTER.** Do you agree that Section 12 is an important part of this authority? **Dave Fisher.** Yes.

**SENATOR MACK COLE.** What is the feeling of members regarding the overall fee of the USBC (Universal Systems Benefit Charge)? **Dave Wheelihan.** We are concerned about it if the level falls below 2.4 percent, and we had to write to our consumers.

**SENATOR COLE.** Could you comment on **REPRESENTATIVE EWER's** amendment on university system benefits. **Tim Gregori.** The coops were an active participant and have language in the bill. Montana's coops serve diverse groups and populations, and to put restrictive measures on the Crow Reservation may not parallel what we may do on the Flathead, and so either may be above the 2.4 percent level.

**SENATOR COLE.** How do you feel about the Territorial Integrity Act. **Terry Holzer.** We believe it would help allow coops to compete effectively. The key principle is reciprocity, and current law doesn't allow this. It will change the taxation issue to tax them the same as the rest of utilities at twelve percent. If they became for-profit, they would be taxed the same as MPC.

**SENATOR COLE.** Would you address the concerns raised on large users? **Don Quander.** We believe these were misunderstandings concerning the USBC. We've agreed to lock in the current level of funding for low income and conservation programs. In the customer bill there is the energy component, the demand component and other changes. .9 mills represents the full current commitment, and we will continue at or slightly above current levels.

**SENATOR DOROTHY ECK.** On page 11, line 20 exit fees are specifically not allowed. Stranded cost was not addressed in that local governments will have to assume these if they lost part of their tax base. **Mae Nan Ellingson, Dorsey & Whitney, Missoula.** I don't have enough information other than to offer a hypothetical. If there is a significant change the bonds could be shifted, but there is no basis on which to make a conclusion.

**SENATOR ECK.** Please comment on **REPRESENTATIVE EWER's** amendment eliminating transmission bonds. **Mae Nan Ellingson.** The bill would authorize the counties to have transmission bonds issued in the nature of revenue bonds, as non-by-passable rates to be imposed on customers, and as such, are non-recourse bonds.

The bill is not clear as to who could issue the bonds. These would be under current federal tax regulations, and would not be tax-exempt. So, it is not critical that a state agency issues the bonds, but in California the State does it to have control. If you want Montana to do so, I would suggest the Board of Investments, as they now do conduit bonds, and the State's credit would not be affected.

If you go with the Board of Investments those bonds would be exempt from state income taxation, and I don't believe the Legislature counted on this.

*{Tape: 3; Side: B; Approx. Time Count: #19.6; Comments: None}*

**SENATOR MIKE SPRAGUE.** Could you comment on the Washington Power and Light amendment? **Bob Gannon.** I didn't see it, but I believe it's not a problem.

**SENATOR SPRAGUE to Betty Waddell.** I want a written statement as to what part of this bill the Montana Association of Churches is opposed to.

**SENATOR VAN VALKENBURG.** What is the range of stranded costs referred to by **REPRESENTATIVE EWER.** Transit costs are estimated (a mid-range, large assumption) at \$1 billion, out of forced purchases, regulatory assets, as out of market power generation costs, subject to general criteria.

**SENATOR VAN VALKENBURG.** I would like to know what the debt cost and equity cost of capital are. **Bob Gannon.** I will get that information for you and the Committee.

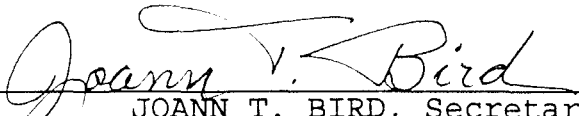
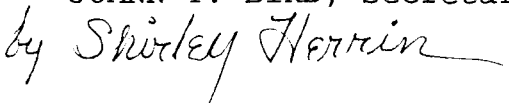
**Closing by Sponsor: SENATOR THOMAS.** I appreciate the opportunity for this hearing. Debbie Smith did a good job in making her argument, however we believe the 2.4 percent is appropriate. The process was no one's bill, but a collaborative built by consensus. This bill is about stranded costs, and that's where we start to protect the Montana consumer. The transition numbers are huge, and so we need a transition period. We feel comfortable in freezing those costs, and think that adds a lot of value. The first opponent is, today, where we were months ago. Taxes are not in this bill - current law, yes, but not in this bill.



ADJOURNMENT

Adjournment: 12:04 p.m.

  
\_\_\_\_\_  
SENATOR GERRY DEVLIN, Chairman

  
\_\_\_\_\_  
JOANN T. BIRD, Secretary  


GD/jtb