# GOVERNOR'S CONSUMER ENERGY PROTECTION TASK FORCE

**Minutes of the Meeting**
**November 21, 2003**
**Room 102, State Capitol Building**
**Helena, Montana**

**ROLL CALL:** The November 21, 2003, meeting of the Governor's Consumer Energy Protection Task Force was called to order by Chairman John Hines at 10:15 a.m., in Room 102, State Capitol Building, Helena, Montana. Members present were John Hines, Chairman, Commissioner Rob Rowe, Haley Beaudry, Chuck Swysgood, Bill Drummond, and Mike Uda. Representative Alan Olson attended only the afternoon session. Mr. John Bushnell staffed the meeting, and Task Force member Tom Power was absent.

## Welcome and Introduction

Chairman Hines began the meeting by stating the ring fencing subcommittee had met, and will continue to meet in an effort to further define some of the issues. Therefore, the ring fencing subcommittee would not be making its final report to the Task Force. Likewise, the subcommittee formed to address weatherization of mobile homes had requested additional time before making its recommendations to the full Task Force.

Chairman Hines reported Dr. Janice Beecher, Institute of Public Utilities at Michigan State University, was unable to attend the meeting, and he will invite Dr. Beecher to address the Task Force at another time.

## Building Codes

### Mary Vandenbosch, Legislative Services

- **Current Law Regarding Adoption of New Building Codes**

Mary Vandenbosch, Legislative Services and staff person for the Interim Committee on Energy and Telecommunications, addressed the Task Force regarding current laws and adoption of new building codes, as well as the status of SJR 13. Ms. Vandenbosch submitted written testimony as Exhibit 1. Ms. Vandenbosch directed the Task Force to Mont. Code Ann. § 50-60-201(6) which encourages buildings to be heated and cooled with the least possible quantities of energy. Ms. Vandenbosch asked the Task Force to note that any recommendation made would be subject to the Montana Administrative Procedures Act (MAPA) and would require consultation with the Building Codes Council.

Ms. Vandenbosch described confusion about the State's policy on residential energy efficiency established by SB 340. It is Ms. Vandenbosch's opinion the statement of intent for SB 340 was simply a recommendation and not the law. Statutory construction recognizes the

language of the law is construed based on its plain meaning, and if that language is clear, it is not necessary to look at legislative intent. Legislative intent should only be reviewed if the language is not clear. In addition, the statement of intent for SB 340 does not prevent the Department of Labor and Industry (DOL) from updating building codes.

Chairman Hines inquired whether the residential energy efficiency working group established in 1991-92 is still a vehicle to evaluate proposed residential changes. Ms. Vandenbosch responded the working group no longer exists, but there is a provision in the law that provides for establishment of energy policies and lays out a process whereby the Department of Environmental Quality (DEQ) and its Council have a consensus process to develop energy policies. DEQ has not chosen to implement this process. Likewise, the Interim Committee on Energy and Telecommunications has not chosen to implement the process. Responding to Mr. Mike Uda, Ms. Vandenbosch explained in 1991-92 the working group did exist and the current building codes are the result of that working group. Ms. Vandenbosch summarized that she was under the impression the DOL felt the statement of intent prevented them from revising the building codes without the formation of another working group. Mr. Bill Drummond wondered whether the Task Force should recommend legislative or administrative action be taken to allow updating the building codes. Ms. Vandenbosch answered no, but suggested the Task Force listen to Mr. Tim Lloyd's presentation before making a decision. Ms. Vandenbosch closed by stating the DOL can revise the building codes as long as it is consistent with Mont. Code Ann. § 50-60-801.

Chairman Hines speculated that as long as the code changes are consistent with the cost-effectiveness and affordability threshold provisions in Mont. Code Ann. § 50-60-801, the State can move forward with adopting new building codes. Ms. Vandenbosch agreed with Chairman Hines' analysis.

- **Status of SJR13**

Ms. Vandenbosch reported SJR13 is not just about building codes, but is about all energy efficiency measures. This Resolution was referred to the Interim Committee on Energy and Telecommunications, and the Interim Committee has adopted a work plan. (See Exhibit 1.) The work plan asks for information to determine whether there would be any benefit to updating the building codes. The work plan asked for national and/or international models. Ms. Vandenbosch was assigned to write a white paper to be presented to the Interim Committee in March. Ms. Vandenbosch reported Rep. Alan Olson, Chairman of the Interim Committee on Energy and Telecommunications, had suggested the Task Force serve as a working group. Ms. Vandenbosch offered to assist the Task Force should it become a working group of the Interim Committee and to identify statutory options which may be helpful. Ms. Vandenbosch suggested inviting Tom Eckman, Northwest Power and Conservation Council, to make recommendations.

**Tim Lloyd, Department of Labor**

- **Process for Adoption of New Building Codes**

Tim Lloyd, Supervisor, Building Standards Section, Building Codes Bureau, testified on behalf of William Jellison, Chief, Building Codes Bureau. Mr. Lloyd explained the State is operating under the 1993 Model Energy Code and presented a copy of the 2003 edition of the International Energy Conservation Code. In August 2002 the Bureau received notice of a Federal Energy Conservation and Production Act which required all states to certify to the Department of Energy that their energy codes are comparable to the International Energy Conservation Code by January 10, 2003. Mr. Jellison consulted with counsel for the agency and determined they could propose to adopt a new energy code if they followed Montana's statutes and the state energy policy or the relevant policies of the state as outlined in Title 90, Chapter 4. The Bureau had envisioned getting groups together, contacting DEQ and trying to come up with a consensus on the state energy code. Mr. Jellison responded to the Department of Energy in November 2002 and explained the Bureau would propose an adoption of the 2000 International Energy Conservation Code. Mr. Lloyd submitted a copy of Mr. Jellison's response to the Department of Energy as Exhibit 2. In April 2003, the Department of Energy responded that the Building Codes Bureau could have an extension until January 31, 2004, to adopt the International Energy Conservation Codes or something comparable. As a result of SJR 13, the Building Codes Bureau is not proposing to move forward with the adoption of the International Energy Conservation Code. The Building Code Bureau adopts ten different codes, including the Energy Code, by administrative rule and must follow MAPA. Mr. Lloyd explained the Building Codes Council is an eleven-member council appointed by the Governor and consists of a wide range of professionals. If the proposal is approved by the Building Codes Council, the Bureau follows through with the MAPA procedure, including a public hearing and public comment period. Generally, this process will take five or six months.

Chairman Hines clarified any proposed measure would first go to the Building Codes Council for approval before the administrative process could be commenced. Mr. Lloyd agreed and added the Building Codes Council was established by the 1997 Legislature and will meet upon request by the Building Codes Bureau. Title 90, Chapter 4, is different from all other building codes.

Mr. Lloyd also spoke of building code enforcement and elaborated that local counties and cities have the option to become certified to enforce building permits and can only enforce what is adopted by the Building Codes Bureau. There are approximately 40 certified jurisdictions. Butte-Silver Bow County, Anaconda-Deer Lodge, and Richland County have county-wide enforcement programs. What is not covered by these jurisdictions must be covered by the State Building Codes Bureau. Local jurisdictions do all buildings, including single-family dwellings. Residential buildings containing four or less units and single-family dwellings are exempt from a

building permit if they fall within the State Building Codes Bureau's jurisdiction. Therefore, in rural areas, there is no enforcement mechanism. These buildings are self-certified by the contractor that the building meets the state energy code.

Mr. Drummond asked if the self-certification procedure utilized for rural areas was implemented because of cost. Mr. Lloyd responded the procedure came about in 1991. The state building code came about in the early 70s and exempted single-family dwellings and residential buildings with four or less units.

Chairman Hines expounded by stating that he worked on the 1991 energy code and it was too expensive for each locale to have a person on staff given the amount of construction that takes place in rural areas. Also, having one person serve large geographical areas caused significant delays. Therefore, the self-certification concept was adopted.

Mr. Drummond inquired whether a local jurisdiction could adopt a more stringent building code than the State. Mr. Lloyd responded they could not.

**John Bushnell, Northwest Power and Conservation Council**

- **Review of cost-effectiveness and building codes.**

Mr. John Bushnell, distributed a white paper prepared by Paul Cartwright (Exhibit 3) which was based upon his power point presentation. Mr. Bushnell restated the finding that the IECC for 2003 is generally found to be cost effective. Mr. Bushnell explained the only close call is the R-49 insulation in ceilings for homes heated by natural gas. Mr. Bushnell provided the Task Force with background information regarding recent meetings he had with David Cohen from the Northwest Energy Efficiency Alliance. Mr. Cohen met with DEQ and Mr. Bushnell to discuss the code adoption process. In addition, they met with the Montana Building Industry Association (MBIA), and DEQ to discuss adoption of a new code. It was felt clarification in the statute may be needed to allow the DOL to utilize a normal code adoption process.

Discussion was also held about SJR 13 and how that has influenced the DOL to hold off on adopting new codes. Mr. Bushnell proposed another subcommittee be formed to address these issues and make a recommendation to the Task Force. Mr. Bushnell felt this would allow the DOL and MBIA to work closer with the Task Force. Mr. Bushnell explained that while MBIA is in favor of upgrading to the 2003 Model Code, they have questions on specific R values and basement insulation, although the basement insulation issue may not be substantial since most buildings now have finished basements. Mr. Bushnell explained the code allows an exemption for an unfinished basement until the dwelling is occupied. The three apparent issues were (1) whether the Task Force would like to make a recommendation to Governor Martz to allow the DOL to proceed with the adoption of the new 2003 Code prior to the completion of the study required in

SJR 13; (2) changes in statute to allow the adoption of residential building codes in accordance with the normal code adoption policy; and (3) enforcement issues and clarification of who the code applies to and who it does not. Mr. Bushnell explained that during the last session, the Legislature took away municipalities' ability to enforce in a donut area surrounding a municipality. It was suggested the code should be applicable to all residential dwellings and simply not enforced. Mr. Bushnell felt a subcommittee could address these issues in depth and make suggestions.

Chairman Hines indicated stated this issue traced back to one of Governor Martz's original charges to look at changes in statutes and rules to enhance the affordability to customers. Initially, the Task Force looked at the issue for low-income consumers and short- versus long-term issues. Building codes could have a long-term impact on consumers.

Patrick Judge, Montana Environmental Information Center, assured the Task Force that the intent of SJR 13 was not to slow the adoption of the Model Energy Codes. In addition, Mr. Judge felt the areas identified for subcommittee work were appropriate. Upon question from Chairman Hines, Mr. Judge stated he had no recommendation as to whether the code should be fuel blind or separate for gas and electricity.

In response to Commissioner Rowe, Mr. Judge felt it would be appropriate to proceed with code modification without waiting for further study.

Doug Hardy, Montana Electric Cooperatives, felt strongly that adoption of codes should be fuel blind. In responding to Mr. Uda as to whether they had done a study on the issue, Mr. Hardy explained this was an issue in the 1980s. Chairman Hines added that the problem in the 1980s was the significant disparity between electric prices and gas prices. This gap has now closed, so there would not be a substantial difference between what is cost effective between the measures.

Chairman Hines explained Rep. Olson is hoping the Task Force will pick up on the cost effectiveness of building codes and provide input to the Interim Committee. Ms. Vandenbosch suggested the Task Force have its recommendations to the Interim Committee before March 25, 2003.

Commissioner Rowe asked Mr. Bushnell if his analysis of the required statutory changes would be modified at all by the information provided by Ms. Vandenbosch. Mr. Bushnell felt that the subject of whether there was an additional impediment was a good topic to be addressed by the subcommittee. Mr. Bushnell was under the impression that not everyone had the same understanding of what was required to adopt a new code.

***(Tape 1; Side B)***

However, Mr. Bushnell thought DEQ, DOL, and MBIA all supported starting a new code process.

Mr. Haley Beaudry cautioned the question could easily become complicated. Mr. Beaudry believed the question on the current process is beyond the scope of the Task Force, and the Task Force should focus on seeing an energy code that will help save energy and reduce energy bills. Chairman Hines interpreted Mr. Beaudry's concerns as suggesting the Task Force recommend to the Governor that there be a new building code and this should be a starting point for discussion. Mr. Beaudry agreed.

Mr. Bushnell commented it was his understanding there is only one code, the IECC Model Code, and everybody works off of it, and any recommendation from Mr. Eckman would be based on that code.

Mr. Uda was more comfortable forming a subcommittee to work on this issue so he could be more informed. Specifically, Mr. Uda would like to hear from the sector of people who will be required to implement the code. Mr. Uda is not comfortable forcing people to act in a way that is neither cost effective nor efficient. Chairman Hines noted the list of potentially affected persons is quite substantial and could consist of lending institutions, contractors, code enforcement people, and residential consumers. Mr. Uda stated he might ultimately have questions which are not apparent at this time; therefore, he would prefer to see a subcommittee.

Commissioner Rowe suggested taking most of the topics into the subcommittee, but on the first proposal identified by Mr. Bushnell, a recommendation should be made to DOL that it proceed to the code modification process without waiting for further work under SJR 13.

Mr. Drummond repeated Commissioner Rowe's suggestion as asking the Governor to encourage DOL to go ahead and begin the process of revising the building code without going through the study that SJR 13 may or may not require. Commissioner Rowe agreed and thought that would be appropriate. The subcommittee would begin the process of looking at what amendments to the IECC would be necessary or might best fit the situation in Montana. In essence, the second step would kick-start the first step and provide framework.

Mr. Beaudry felt the building code question should be whether the Task Force wants to recommend supplying assistance to homes or buildings that are just complete energy wasters or whether it wants to require those buildings be updated to save energy. The building codes will pertain to all new buildings, but the Task Force needs to address weatherization of older homes and mobile homes. Mr. Beaudry was concerned about spreading the available money throughout the state.

Mr. Drummond was concerned whether the subcommittee would add a lot of value in speaking to what changes might be necessary or might fit best with the IECC Model Code. Chairman Hines envisioned the subcommittee looking to see whether specific changes to the IECC Model Energy Code would fit the particular needs of Montana. In addition, if the subcommittee availed itself of the proper resources from DEQ and staff, it might be able to develop a more specific code that could be used as a recommendation from the Task Force as to where the conversation should start.

Chairman Hines stated a recommendation would be forwarded to Governor Martz stating the Task Force believes there is sufficient rationale to move forward on the development of a building code and the Task Force will form a subcommittee as well. The subcommittee will consist of Mr. Uda, Rep. Olson, Dr. Thomas Power, and Mr. Beaudry.

**Public Comment on Advanced Approval for Rate-Based Generation Used to Serve Default Supply**

**David Hoffman, and Joel Cook, PPL Montana**

Mr. David Hoffman, External Affairs, PPL Montana, and Joel Cook, Director of Marketing and Trading, PPL Plus, Butte, Montana, gave a presentation which responded two proposals the Task Force made to Governor Martz (Exhibit 4). Those proposals were:

1. Should the default supplier be authorized to request PSC approval of rate-based generation as a resource to meet its default obligations?

2. Should the default supplier be given authority to request advance approval from the PSC or other body for rate-based generation?

Mr. Hoffman reiterated the Governor's charge to the Task Force was to examine how customers can achieve the most affordable prices over the long term. Mr. Hoffman believed this was a policy decision to be made by the Legislature with involvement from the Task Force and the Public Service Commission (PSC), but did not believe this was the best way to achieve the goal of most affordable prices over the long term. Important considerations in procuring supply include cost, product solicitation and reliability, and diversity in location of generation.

Mr. Joel Cook thought it was important for the Task Force to step back and determine what is the default supplier's obligation. Energy consumption in Montana is evenly distributed between industrial, residential, and commercial classes. The default supply load is primarily residential and commercial customers. In addition, seasons play a major factor in load in Montana. Northwestern Energy (NWE) must consider cost, product selection, and reliability and diversity of location in supplying load. A plant that runs a significant amount of time will give a

lower cost overall versus a plant that is built but not used very much. There are many nontransferring costs and hidden costs that can be significant. Mr. Cook spoke about wind being an intermittent product needing ancillary services to support it. Fixed gas transportation costs is another example where the costs can be significant. Fixed costs that are in place make the overall costs higher. Mr. Cook believed the default provider should be required to follow an approved IRP process that procures from the market the lowest cost resources available to meet its needs. Mr. Cook identified an independent auction sanctioned by the regulator as a good forum and very common in the Eastern United States. Mr. Cook noted the idea behind product selection is to best meet the variable load shape while shifting the risk to the suppliers and away from ratepayers.

In speaking to reliability and diversity, one of the best ways to promote reliability is to have supply from more than one source and more than one facility. Congestion is a concern and how that congestion is managed is important. Congestion can be avoided by having sources of supply close to the load. Forced outages and maintenance history are important since all plants are mechanical and can break down.

Mr. Cook believed RTOs are a way of eliminating pancaked transmissions experienced in the West. RTOs are a more efficient way of operating what we have now and will help identify where the system needs to be upgraded and will help share the cost of those upgrades. In addition, RTOs will provide equal access to grid by all participants, provide greater access to new sources, simplify transactions, and provide more ancillary services Montana is burdened with some of the highest transmission rates in the country.

Chairman Hines asked Mr. Cook if he had been tracking the compromise proposal by the RRG Group. Mr. Cook replied that while the RTO is not necessarily going where NWE would like to see it, it is headed to where most people would like to see it, but it will take time. Mr. Cook stated there are five issues that could not be agreed upon, and those issues will be set aside and worked out later. There has been a lot of compromise, but without more detail, Mr. Cook could not comment further.

Commissioner Rowe asked Mr. Cook to explain how an RTO would deal with losses. Mr. Cook responded it is a cost-shifting issue and the losses will depend on how the system is utilized. From Mr. Cook's perspective, Montana has everything to gain.

Mr. Drummond asked if equalization of rates would benefit most customers in Montana, but not all. Mr. Cook stated that was correct.

Commissioner Rowe asked if it was Mr. Cook's position that rate basing of a utility-owned resource is per se inconsistent with the desire to see transparency, neutrality, flexibility, and other RIP characteristics or, if there is rate basing with some part of the portfolio, it has to be done consistently with those RIP-type objections. Mr. Cook believed there is a more cost-

effective way than rate basing to get to the lowest cost. Commissioner Rowe asked again if it was Mr. Cook's position that it is per se the case that kind of a determination as to which is the most cost-effective resource ought to be made through the portfolio guideline process. Mr. Cook replied he has a hard time seeing a resource that is being rate based being more cost effective than the alternative of looking at the broader market or broader choice for selection of products.

***(Tape 2; Side A)***

Mr. Hoffman closed by stating a default provider should be required to follow an integrated resource planning process and procure from the market the lowest-cost resources, and the solicitations made by the default supplier should be made on a regular basis and include a variety of products. In addition, the risk of market volatility should be placed on the supplier rather than on the ratepayers.

Mr. Uda inquired whether PPL had a position with respect to preapproval of potentially rate-based generation on the part of the utility. Mr. Hoffman did not feel there was a big distinction with preapproval for what might be rate-based generation or just a project.

Commissioner Rowe asked if it was per se inconsistent to allow for rate basing of a utility-owned resource that comes in through a neutral analysis on one hand, and on the other hand whether it was possible to preserve the kind of maladies Mr. Hoffman spoke about while allowing part of the portfolio to be served by a rate-based resource. Mr. Hoffman replied it was a matter of degrees and believed under the current market conditions, as well as foreseeable market conditions, the lowest price that will be obtained through a solicitation process is at market. Including rate-based generation in the mix will result in getting further and further away from an affordable long-term price. Commissioner Rowe followed up by stating the idea of rate basing for part of the portfolio keys off of stability, the value to customers of depreciation of the capital asset, and uncertainty in the Northwest about power supply in the future. Mr. Hoffman believed stability could be addressed through the RFP process by entering into ten- and twenty-year contracts. Regarding Commissioner Rowe's second point, Mr. Hoffman could not respond in a way that would say it would or would not benefit customers. In response to fears about lack of supply in the long term, Mr. Hoffman felt as generators and future generators predict shortfalls in supply, the supply will begin to build as evidenced by past shortfall predictions.

Mr. Drummond asked Mr. Hoffman if he would agree that one of the preconditions for the scenario he presented is a fully-functional market and an illiquid market would cause those conditions to fall away. Mr. Hoffman felt there is a willingness of built and to-be-built generators in the state to participate in the RFP process. Mr. Drummond commented it only takes a fax machine to be able to respond to a bid and getting from a bid to a final product can be a long process. In addition, it has been Mr. Drummond's experience that trying to live and die by an RFP process can be very expensive.

Chairman Hines clarified the Task Force did not recommend a requirement that the utility rate-base generation but rather to provide the utility and the PSC with another tool to use to get toward the objective of low cost. Second, Chairman Hines emphasized that while low-cost is one of the outcomes expected from the IRP process, there are other attributes and traits necessary and rate basing may or may not provide that, and that was the whole intent of going through the IRP process.

- **Mike Schmechel, Comanche Park, LLC**

Mr. Mike Schmechel, Comanche Park, LLC, felt the name of the Consumer Energy Protection Task Force was significant. Mr. Schmechel's organization has been actively involved in the developments and fallouts surrounding deregulation. Mr. Schmechel felt many agendas in deregulation are not aligned with the interests of Montana Consumers and submitted his written testimony as Exhibit 5.

Commissioner Rowe encouraged Mr. Schmechel to arrange a meeting with the Advisory Committee that works on portfolio issues to work through his specific bid concerns.

- **Bob Nelson, Montana Consumer Council**

Bob Nelson, Montana Consumer Council, felt it would be very beneficial for ratepayers to provide an option for the default supplier to consider company-owned or rate-based generations with other resources in the portfolio planning process that is being supervised by the PSC. Mr. Nelson provided the Task Force with comments regarding preapproval for rate-based power projects for the default supplier. Historically, preapproval has not been available in Montana for power resource acquisitions because it shifts risk to the ratepayers, and the ratepayers are not in a position to manage the risk. The utility constructing the plant is in a position to manage those risks and benefit from construction of the plant. Therefore, they would have the best incentives for providing low-cost generation if those risks remain. Restructuring and the situation with Enron caused concern about whether resources would get constructed given the new financial concerns. Senate Bill 247 attempted to address those concerns and contemplates preapproval for purchases from third parties and provides assurances to help with financing. Preapproval was intended only to go to certain elements such as price, quantity, and the duration of the contract and was not a total preapproval situation. Senate Bill 247 balanced the historical concerns against the new concerns for third-party supply for default suppliers and financing issues. Now, Montana is considering allowing utilities to again rate base their own generation facilities or provide treatment equivalent to rate basing, and considering whether preapproval would be appropriate in that situation as it would be for third-party purchases. Mr. Nelson's impression is that, assuming the utility is financially healthy, the balancing with SB 247 and the financing concerns overriding the concerns of risk shifting will not exist, and the balancing will shift back to the traditional rule of no preapproval for utility-owned resources. Mr. Nelson did not believe this would create an

unlevel playing field because while the utility could avoid the risks, those risks are taken into consideration by the PSC in setting a cost of capital or return on investment. Therefore, by avoiding the risks, they would also be avoiding the benefits they would get through a return on their investment. Historically, utilities prefer ownership of their own facilities versus purchases from third parties. Therefore, utilities view the benefits as outweighing the risks. Mr. Nelson felt the goals are to maximize the resource options available, have a level playing field, and still minimize the risk shifting to ratepayers. Mr. Nelson did not see the need for preapproval.

**Availability of Federal Funds for Additional Low-Income Energy Assistance**

**Chuck Swysgood, Budget Director**

Mr. Swysgood reported Governor Martz announced distribution of the federal funds which resulted in $2 million being made available to energy assistance which included $1.5 million to LIEAP and $500,000 to long-term weatherization. Mr. Swysgood admitted that while this amount probably would not meet all the needs, it would certainly help the situation. Chairman Hines thanked the Governor and Mr. Swysgood for their help in meeting Montana's energy needs. Mr. Swysgood commented the Governor had been adamant from the onset that she would like to help those folks who will find it difficult to meet their heating needs this winter.

- **Bob Nelson, Montana Consumer Council (cont.'d)**

Commissioner Rowe continued by asking if preapproval for utility-owned resources is a bad idea, whether it was Mr. Nelson's position that the kind of focused advanced approval under SB 247 would be prohibited by Montana law or whether it was just a bad policy choice. Mr. Nelson stated he did not ever believe preapproval was prohibited, and he would put it in the category of a bad policy decision.

Mr. Beaudry stated that from the Wall Street point of view, there is no credit-worthy customer in the state of Montana. Although this could change in the future, Mr. Beaudry reminded the Task Force it is cold now, and this needs to be looked at in a much shorter magnified perspective. Mr. Beaudry commented he did not see how anyone could get financing without preapproval. Mr. Nelson agreed and noted many utilities are financially stressed, but at the same time there are healthy utilities and cited MDU as an example. Mr. Nelson would not like to see long-term policy driven by a short-term isolated situation.

Chairman Hines asked if it would make a significant difference where most utilities have a greater asset base than what a new utility will have, and it will be basically a wires and poles company versus most utilities in the Northwest will have a generation asset base to loan against. Chairman Hines asked if this would create a greater hurdle and perhaps even prevent financing. Mr. Nelson felt asset base would be a consideration, but felt the utility would still have significant

assets, capital structure, and regulatory environment that will give them investment grade rating. Mr. Nelson stated under extraordinary circumstances, preapproval was always an option, but there was no mandate. Chairman Hines asked Mr. Nelson if he would be supportive of clarifying the utility would have the ability to do so, and it would have to make the case before the PSC that the rationale was sufficient as opposed to binding legislation. Mr. Nelson stated they would consider it pending clarification.

*(Tape 2; Side B)*

**Availability of Federal Funds for Additional Low-Income Energy Assistance**

Chairman Hines reminded the Task Force that at their first meeting they identified a funding gap of $7.8 million for low-income consumers for the upcoming heating season. At that time, the Task Force recommended to the Governor that $1.725 million from NWE's Universal Services Benefit Program (USB) funds be reallocated. In addition, the federal government has given Montana a $500,000 bonus for good performance, and Governor Martz allocated $2 million of additional funding, with $1.5 million to go to low-income bill assistance and $500,000 to go to weatherization. Chairman Hines calculated Montana now has $4.2 million of additional funds available for low-income consumers for this heating season.

**Jim Nolan, Montana Department of Health and Human Services**

Mr. Jim Nolan, Montana Department of Health and Human Services, thanked the Task Force and Governor Martz for their remarkable states. Mr. Nolan stated the most important part of the puzzle is how much federal money Montana will receive, and he expects to have those figures soon. The rule of thumb has been that for every million dollars received, they can add $50 of assistance to each household. Mr. Nolan noted that he believed Governor Martz would like to reserve some of the federal money for the Indian Tribes since LIEAP does not have a presence there.

Mr. Nolan stated weatherization could begin as soon as they receive the proper documentation and complete the contract amendments with the Human Resource Development Councils. Mr. Nolan added they are doing everything possible to make sure eligible households apply for assistance. The bill discount has been increased to 25 percent for households that use electricity and 36 percent for those who use gas. Mr. Nolan stated this was a significant increase and would like to see the discount become permanent and continue past March.

Chairman Hines asked if making the discount permanent would require a future reallocation of USB funds or other funds. Mr. Nolan replied if there were no increase in USB funds, it would require a reallocation of the present split between low-income and nonlow-income programs. Mr. Nolan clarified that the end of the heating season from the standpoint of DPHHS

is the end of April. NWE defines the end of March as the end of the current heating season. In response to Chairman Hines' inquiry of whether there has been an increase in the number of people applying for assistance, Mr. Nolan stated he has not yet seen an increase, but anticipates a caseload of 20,000.

Mr. Beaudry noted the weather has not been too bad, but wondered how the price of gas had been tracking. Mr. Nolan explained his models are based on the prices that are in effect in July and August. Mr. Beaudry commented a surprise could still be in store. Chairman Hines added the $7.8 million funding gap estimate was predicated upon the increase in case load up to 20,000. If the caseload does not reach the estimated 20,000, there will be a smaller funding gap.

Mr. Bushnell commented that he attended the USB Advisory Committee meeting and understood from that meeting the Advisory Committee's advice to NWE was to continue the bill discount past March and through the heating season even if the money runs out by the end of March. Mr. Nolan clarified they recommended the discount be extended through April and asked NWE to consider extending the discount past April. The Advisory Committee needed to look at a number of things in December and January before making a recommendation regarding the longer term.

Chairman Hines voiced there had been significant competition for a small amount of federal money, and he thought it would be appropriate to write the Governor thanking her for the actions she has taken.

**Activities of the Energy and Telecommunications Committee**

**Representative Alan Olson**

Rep. Olson stated the Interim Committee had received a report from Al Brogan on the bankruptcy proceeding. There was a motion to extend the USB four years. AARP is putting together a group to look at the USB and the Interim Committee was encouraged to take part in the discussion. The Interim Committee will consider any recommendations that come out of this group and will allow for public comment. In addition, the Interim Committee received a letter from the Governor and her recommendations, and Rep. Olson noted most of the items in Governor Martz's letter are included in their work plan. In addition, the work plan will be expanded to include ring fencing and PSC approval on utility asset transfers or sales.

Issues with SJR 13 were discussed, and Rep. Olson appreciated the Task Force's efforts in working out these issues. Rep. Olson will utilize the Task Force as a working group. Chairman Hines informed Rep. Olson of the Task Force's decision to suggest moving forward on the development of the building code process and had formed a subcommittee to develop a platform of measures.

**Default Supply Issues**

**John Fitzpatrick, Northwestern Energy**

Mr. John Fitzpatrick, Northwestern Energy, explained that in June 2003 before NWE filed its 2003-04 tracker, the price of electricity for a residential customer was 3.7366 cents per kilowatt. The price is now 3.7493 cents. On a per customer basis, the price for 750 kilowatts is now .09 higher than it was in June. The price of natural gas has also gone down. The group that procures electricity and natural gas are comfortable electricity prices should be relatively steady for the balance of the winter. In addition, they have done a lot of short-term contracts to cover portions of the portfolio that are not included in the long-term contracts. The market exposure is now down to five to ten percent of the total portfolio, which is consistent with a company's normal operations. Mr. Fitzpatrick reported gas prices are not going to be as extreme as they were predicted to be four or five months ago. Mr. Fitzpatrick warned an exceptionally long or cold winter could change the predicted outcome for gas prices.

Chairman Hines wondered if NWE had withdrawn any gas from reserves in storage. Mr. Fitzpatrick replied there had been some withdrawals, but confessed he did not have the exact numbers.

In addressing the issue of default supply, Mr. Fitzpatrick gave a brief history as to what has gone into portfolio planning. The process dated back to 1997 and the passage of the Deregulation Act. This bill provided for customer choice for energy suppliers. The bill anticipated a quick transition to a competitive electricity market. Provisions were made through the PSC for licensing procedures for people who wanted to become energy suppliers. The concept of default supply per se was not contained explicitly in the law, but there was an expectation that The Montana Power Company (MPC) would stay in place and continue to supply electricity to people who did not move to choice. There was a formal requirement that the utility prepare a plan for assigning those customers who did not offer choice so they could be assigned to an alternative supplier at the end of the transition period. In 1998, MPC sold its generation assets to PPL Montana, and entered into a contract for electricity supply for a four-year period which expired in June 2002, and that contract contained a favorable price. In the 1999 Legislature, SB 406, the Cooperative Buyers' Pack, was introduced. Under this bill, the concept of default supply was explicitly articulated and provision was made for multiple default suppliers to exist in Montana. In early 2000, the California energy crisis hit, and prices skyrocketed. For the most part MPC customers were insulated from these price increases, and the effect was mostly felt by Flathead Electric which sustained a fifty percent increase in its electricity supply costs.

HB 474 was introduced in 2001, and it required the designated distribution utility to be the default supplier and enacted into law the standard of prudently incurred costs. MPC began

the process of lining up energy supplies in anticipation of the day when the contract with PPL Montana would expire.

In 2002 the sale of the transmission and distribution assets to NWE took place. At that point, MPC was on its way to putting together its procurement portfolio, and NWE inherited that resource plan and carried it into the hearing process during which the portfolio was heavily criticized. The PSC issued a finding on three contracts, the PPL Base Load Contract, the PPL Heavy Load Contract, and Duke Power contracts. The PSC did not specifically approve or disapprove these contracts, but simply made the finding that the contracts appeared to have been acquired using standard industry procurement practices. Mr. Fitzpatrick explained several other contracts were presented at that time including the Thompson River Project, Tiber Dam, Montana Wind Harness, Rocky Mountain Power, and NWE's First Megawatts Project. The PSC did not act upon the contracts or deny them. Rather, the PSC took the position the contracts did not constitute energy procurement and, therefore, were not to be acted upon because the contracts contained cancellation clauses that would allow the contracts to be voided in the event the PSC did not approve the costs. After the portfolio docket was concluded, the PSC convened a group of interested parties to work on portfolio guidelines. This process ended up in rules being drafted which were officially enacted in the winter of 2003.

In November 2002, the public repealed HB 474 by referendum, so some of the items contained in HB 474 were brought forth again in HB 509. The two things in that bill were the notion of prudently incurred costs and the clear designation that the default supplier was the distribution utility. The 2003 Session also had SB 247 which received a lot of attention, and that bill ultimately prevailed. This bill contained a requirement that the default supplier prepare a plan for submission to the PSC defining the resources it wished to put in placed to meet the default supply obligation and made it clear there is explicit authority for preapproval of the contracts. NWE has been working on that plan and expects to make the filing with the PSC in the next couple of weeks. Mr. Fitzpatrick felt the plan was comprehensive and would deal with such issues such as available resources and load forecast. Once the plan is filed, NWE will ask the PSC to review and approve contracts for several different resources. The Thompson River Project and the Tiber Dam hydro facility will be in the plan. In addition, NWE did a wind RFP during the past year and had several different proposals brought forth. Currently, NWE is in negotiations with two potential wind developers. Mr. Fitzpatrick explained prices for wind projects are very attractive. Mr. Fitzpatrick stated a bump in the road for wind projects occurred when Congress failed to close debate on the Energy Bill. Wind is very contingent on the expansion of the wind energy production tax credit. Without the tax credit, the price of wind power is substantially higher and is not price competitive. Another part of the PSC filing will be a filing with the Basin Creek Plant in Butte. In addition, NWE is taking another look at the Montana First Megawatts project to see what might be done to restructure the facility to make it a rate-based resource.

NWE is also looking at a 800-megawatt coal plant which will be defined in the plan as a generic plant. NWE anticipates filing its plan in the next couple of weeks and expects it to be consistent with current prices.

Mr. Drummond asked Mr. Fitzpatrick how NWE would follow the load. Mr. Fitzpatrick explained they would look to the MFM plant for load quality.

Rep. Olson asked what the estimated cost of the power would be from Montana First Megawatts in today's gas market. Mr. Fitzpatrick estimated the cost to be in the mid-40s and there would not be an appreciable cost difference.

Chairman Hines asked Mr. Fitzpatrick to provide a summary of the new projects and to estimate how much of the portfolio need would be met by those projects. Mr. Fitzpatrick estimated 85-90 percent of the baseload would be covered if all the projects were in place, and approximately all the peaking requirements would be covered absent extreme circumstances. Chairman Hines asked if there was a purchase component included in the portfolio, and Mr. Fitzpatrick responded it is embedded in the portfolio in the long term. This initial phase is an attempt to fix part of the gap between the daily demand for power and what they have under contract. Depending on how the PSC reacts to this proposal, NWE is planning on doing another IRP process in the next couple of years or so. Mr. Fitzpatrick added the contracts they are considering in this first filing are longer term than what had been done in the past, and all the contracts will go through the pre-approval process.

**Development of Future Work Plan and Meeting Dates**

The Task Force listed some of the topics remaining before it, including long-term low-income weatherization issues, mobile home refurbishment, PSC structure, building codes, and ring fencing.

***(Tape 3; Side A)***

In addition, the Task Force needs to address follow up work on the consumer protection provisions of HB 509 and the effects of a municipality coming and going off of default supply. Chairman Hines suggested having a meeting in early January. Mr. Bushnell added he would like to get as much subcommittee work done as possible before the next meeting.

Mr. Beaudry wondered if the Task Force needed to be involved with the co-ops and MDU. Mr. Beaudry would like to ensure existing programs remain in place in the event of a sale.

Regarding the building codes subcommittee, Chairman Hines thought it might be worthwhile to bring in some of the interested groups who have been involved. Rep. Olson agreed asking the Chairman to keep in mind that Senator Toole sponsored SJR 13.

**Democratic Legislative Leadership**

**ReFuel Montana Plan**

Senator Jon Tester stated the purpose of ReFuel Montana is to start public dialogue for creating public policy to get energy back into the hand of the people of Montana (Exhibit 6). Since 1997 and deregulation, Sen. Tester and democratic leadership have felt Montanans have lost control of energy affordability and reliability. This is an attempt to create a solution to an on-going problem which was the result of deregulation. Cooperatives would be one way to get the power back into the hands of the people of Montana. The key to the whole plan is to set up an action group to do due diligence, and pressure will need to be applied in the appropriate places so Montana can have affordable, reliable, consistent power working for Montanans like it was before deregulation. There are many advantages do doing this, including improving quality of life and Montana's economic environment. Sen. Tester is presenting this plan in an effort to work together for the common good of the people of the state of Montana. Sen. Tester was advocating the use of hydro-power, wind supply, and energy conservation. The issue needs to be addressed by the Legislature, the Executive Branch, the PSC, and Consumer Council. Most importantly, the citizens of the state of Montana need to be involved.

Rep. Olson observed ReFuel Montana looks like NWE's proposed portfolio almost verbatim. Sen. Tester replied he is unaware of NWE's portfolio, and the goal of ReFuel Montana is to get the power back so Montanans have control over their energy future. There are some actions of NWE that have irritated Sen. Tester, and the ratepayers are the ones who will have to pay. While NWE will emerge from bankruptcy a better company, if they continue to make poor business decisions, they will be in the same boat. Sen. Tester was adamant public power and cooperatives are the best option for Montana. Therefore, condemnation of the NWE system is a possibility and should be discussed. While condemnation is not his preference, Sen. Tester was willing to proceed if that is what it would take to get consistent, affordable, and reliable power.

Rep. Olson asked Sen. Tester if he would be willing to condemn NWE's contract for the wind project in the Judith Gap area if he thought it was for the good of the people. Sen. Tester replied he does not want to have a debate on condemnation and stated it would not be his first choice, but Sen. Tester believed condemnation has to be on the table since it is a possible solution.

Rep. Olson stated gas generation is proposed for Great Falls and Butte and two wind projects are being contemplated. Rep. Olson opined that if condemnation was being considered, people would be very concerned. Sen. Tester was not suggesting people should get their power

for free, but rather that the people should be in control. While condemnation should not be a first option, Sen. Tester was adamant condemnation should be considered. In addition, Sen. Tester would like to see a long-term contact on hydro power entered into with PPL, would like to see PPL pay their taxes not under protest, and would like to see PPL be responsible to Montana.

Rep. Olson wondered if "people of Montana" referred to those on NWE's system or if it would include co-ops and MDU. Sen. Tester replied it was primarily for NWE.

Mr. Beaudry noted there is no Basin Creek plant yet. Sen. Tester clarified that ReFuel Montana is recommending the plant be built. Mr. Beaudry inquired about coal and why it was not mentioned in the plan other than potential research. Sen. Tester felt coal is very capital intensive up front. ReFuel Montana is looking at a long-term problem and trying to develop as many short-term solutions as possible. Mr. Beaudry felt coal-generation is currently available in Montana and then commented he felt the ReFuel Montana plan was a lot like NWE's plan. Mr. Tester testified that once there is a realization of the problem, as many solutions as possible have to be placed on the table. Sen. Tester thought there needed to be an understanding of the role energy plays in our society and if it is not affordable, people will be in trouble. Sen. Tester felt both water and electricity or important and making either one unaffordable or unstable, could change lives forever, and legislators need to address these problems.

Commissioner Rowe highlighted some areas of agreement by stating he appreciated the fact the proposal emphasizes working together on energy issues. The specific proposal gets at a variety of resources and is consistent with the portfolio. In addressing condemnation, the PSC has been discussing rate-basing to address some of these issues. Commissioner Rowe stated there are success stories and failures, strengths and weaknesses, with each form of utility operation. Commissioner Rowe suggested there are also transmission issues and regulatory issues which would need to be addressed. Commissioner Rowe was glad to see that the plan is consistent with the directions others are trying to go and commented that he appreciated the effort. Sen. Tester felt different perspectives could lead to a good plan.

Mr. Drummond asked whether they had settled on a group of co-ops different than the current structure. Sen. Tester responded that co-ops were brought in because of their history in the state of Montana, and the key is co-ops are controlled by the people who use the juice.

Mr. Drummond asked if they could obtain the output of PPL, Montana hydro resources under a long-term contract at a reasonable price, whether that would be acceptable. Sen. Tester felt that would be a win/win situation for everyone.

Mr. Uda was interested in the mechanics of the proposal and thought the proposal was less a plan and more an idea of encouraging looking at all these issues. Sen. Tester felt Mr. Uda's understanding was accurate and added other suggestions could be incorporated into the proposal.

Mr. Uda asked about the Action Committee and Sen. Tester explained they envisioned the Committee being comprised of someone from the Executive Branch, a Republican and Democrat from the Legislature, representatives from the PSC and the Consumer Council. The Committee would look at options to implement the proposal and make recommendations as to what would work and what would not work. Sen. Tester thought Legislative action would also be necessary and expertise in the area should be sought.

Mr. Uda understood that an investor-owned utility or a reorganized NWE would not address their concerns. Sen. Tester did not agree and thought a reorganized stable utility might be an alternative.

Mr. Uda wondered how Sen. Tester felt about the Task Force's recommendation to the Interim Committee that NWE be allowed to rate base generation and separate generation and transmission and whether he felt tying the two back together would be an adequate substitute. Sen. Tester did not know whether the issue had been discussed.

***(Tape 3; Side B)***

Senator Ken Toole felt the plan acknowledged and talked about there being an advantage to having an integrated utility and the rate-basing mechanism is an integral part. Sen. Toole pointed out that "condemnation" does not appear in the proposal. This is not something they are calling for. Since the assets of the distribution utility seem to be in a state of flux, the time to move on alternative ownership, and particularly the public power option, is now. Sen. Toole is concerned because if there is a public power entity, there are some real advantages and benefits in obtaining low-cost capital for building plants and buying the distribution and preference power. On the generation side, this is the NWE portfolio, and it is not a secret. Sen. Toole feels frustrated because it is not moving anywhere. The plan calls for public ownership because of the benefits of low-cost capital and preference power.

Mr. Uda understood from Sen. Tester that they were not precluding the idea of having another investor-owned utility buy the assets or even a reconstituted NWE that was financially viable and asked if that was Sen. Toole's position as well. Sen. Toole pointed out there is a lot in motion right now, and depending on what comes out of a potential buyout, they will remain open-minded. However, Sen. Toole was clear that they would lose the Bonneville preference benefit if it is an investor-owned utility. Sen. Toole cautioned that people should be thinking about the whole package, and it is hard to imagine how things could get much worse than having the distribution utility and default supplier being in bankruptcy.

Mr. Uda stated MDU and Co-ops will need to convince the Creditors' Committee to sell them NWE's transmission and distribution assets and wanted to know how Sen. Toole envisioned the Action Committee getting started as a mechanism to enable the proposal to take hold.

Sen. Toole noted the Action Committee would have a year before the Legislature would meet. Regarding the proposal from MDU and the Co-ops, which is all distribution and no generation, Sen. Toole believed the proposal has issues that warrant a dialogue. In implementing the plan, the Action Committee would have to form and that would take buy-in from the Executive Branch.

Chairman Hines thanked Sen. Toole and Sen. Tester for their time. From Chairman Hines perspective, it is irrelevant whether it is a co-op or utility, and it is the people driving those organizations that is critical. Montana has experienced a rate increase of 12 to 14 percent for electricity while other Northwestern states have had a 50 percent increase. Regardless of who will be the eventual owner of the distribution system, supply will be the issue. The Task Force is allowing the portfolio to go through on its own mechanism and has addressed the incentives and whether they are properly in line for the utility and consumers to obtain the best supply. In addition, the Task Force has looked at the issue from the perspective of consumer protection, including PSC review of assets and ring-fencing. Chairman Hines urged Sen. Toole and Sen. Tester to look at the issue from a slightly different perspective other than just identifying the resources.

Commissioner Rowe asked Sen. Tester how much weight was given to the preference power possibility and stated his biggest concern with cooperative ownership is there is not a shareholder to balance risk against. Sen. Tester responded his assumption is preference power is bought out until 2011, and it would help to get in line for that. In addressing ratepayers taking the risk, there is a balance since you do not have to pay extreme profits to stockholders. The risk is there, but it is controlled.

Sen. Tester thanked the Task Force and reiterated there needs to be a dialog and decisions need to be made on these issues.

There being no further business to come before the Task Force, the meeting was adjourned at 3:30 p.m.

APPROVED AS TO FORM AND CONTENT:

By:_____
John Hines, Chairman

## TRANSCRIPTION CERTIFICATION

I, Cynthia A. Peterson, residing in Helena, Montana, do hereby certify that the foregoing pages constitute a true and accurate transcription, to the best of my ability, of audio cassette Nos. 1-3 of the November 21, 2003, meeting of the Governor's Consumer Energy Protection Task Force.

C. Peterson

Cynthia A. Peterson, PLS