

Electric City Power, Incorporated

Regular Meeting of the Board of Directors

April 3, 2006; 5:30 PM
Gibson Room, Great Falls Civic Center

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≡ Hourly data for our customers

Electric City Power, Incorporated.

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April 3, 2006; 5:30 PM.

Gibson Room; Great Falls Civic Center

AGENDA

Call to Order 5:30 PM

Roll Call

A. EXECUTIVE DIRECTOR REPORTS

1. Update on ECPI license applications submitted to Public Service Commission
 - i. MCC Testimony * - *PSC Denied. ARM. Change*
 - ii. City data request related to MCC Testimony * - *we will resubmit large customer.*
2. ECPI Financials - to be distributed at meeting - *Assurance to small customer.*

B. OLD BUSINESS

C. NEW BUSINESS

1. Adoption of Board Meeting Minutes of March 6, 2006 *

D. BOARD MEMBER REPORTS

1. Director George Golie: Recap of SME presentation to Cascade County Democrats & Labor Unions

E. COMMUNICATIONS

1. Discussion of legislative opportunities and strategy
 - i. Montana's energy structure, Lawton concept paper *
 - ii. Lee newspaper article on Reintegration *
 - iii. PSC Memo on ETIC's info requests *
2. Public Comment

F. ADJOURN

H. NEXT BOARD MEETING

May 1, 2006

* Handouts Included in Board Packet

004428

1 Q. PLEASE STATE YOUR NAME, OCCUPATION AND WORK ADDRESS.

2 A. My name is Larry Nordell. I am the staff economist for the Montana Consumer
3 Counsel. The mailing address is 616 Helena Ave, Helena, MT 59620.

4

5 Q. PLEASE OUTLINE YOUR EDUCATIONAL AND PROFESSIONAL
6 BACKGROUND.

7 A. I received an A.B. Degree in Economics from the University of California at
8 Berkeley in 1963, and a Ph.D. degree, also in Economics and also from the
9 University of California at Berkeley, in 1967. During the 1967-68 academic year
10 I had a post-doctoral research position at the London School of Economics. From
11 1968 through 1972 I held the position of Assistant Professor of Economics at the
12 State University of New York, at Stony Brook, and from 1972 through 1976 I
13 held the position of Associate Professor of Economics at the Whittemore School
14 of Business and Economics at the University of New Hampshire. In 1976 I
15 moved to Montana and went to work as an economist for the Energy Planning
16 Division of the Montana Department of Natural Resources and Conservation. I
17 held that position until the 1995 reorganization when the Montana Department of
18 Environmental Quality was formed; after that I held the same position in the
19 Planning, Prevention and Assistance Division of DEQ. In 2003 I joined the staff
20 of the Montana Consumer Counsel.

21

22 Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?

23 A. Yes, I have testified on a number of occasions before this Commission.

24

25 Q. WHAT IS THE NATURE OF YOUR TESTIMONY?

26 A. The current docket revolves around a fairly limited issue: the request by the City
27 of Great Falls, and its wholly owned subsidiary Electric City Power, to operate a
28 small electricity supply pilot program. I will testify about the Consumer
29 Counsel's recommendation regarding this request. In addition, however, the city
30 is quite clear that it intends to pursue a larger effort of which this is only the
31 opening phase; that is, to become the default supplier to all loads within the City

1 of Great Falls. It is participating in the construction of a coal fired generating
2 plant which is under development by the Southern Montana G&T Cooperative,
3 and it is also participating in the effort by Montana Public Power, Inc., to buy the
4 Northwestern Energy utility business. The Commission does not have to make
5 any decisions in this docket concerning the longer-term plans of the City of Great
6 Falls and Electric City Power. However, because the current request is integral to
7 the longer-term plans and because testimony and exhibits provided in this docket
8 address those plans, my testimony will provide limited comments on these longer-
9 term plans and some issues that the Commission should consider in reviewing
10 them.

11
12 **Q. HOW SHOULD THE COMMISSION ANALYZE THE PILOT PROGRAM**
13 **PROPOSAL?**

14 **A.** As with any competitive supply proposal, the law requires that the remaining
15 default customers not be harmed. The proposed pilot program is so small, and of
16 such short duration, that I believe any impact to default supply will be de minimis
17 and imperceptible. The R.W. Beck study, Exhibit YH-2 sponsored by witness
18 Youssef Hegazy, purports to show that the pilot program will actually reduce the
19 average costs to Northwestern of serving default supply, and reduce the costs to
20 default customers. The Beck study assumes that the loss of pilot program
21 customers will show up only as a reduction in the amount of spot market power
22 purchases made by NWE. This is a plausible assumption in the short run, and
23 assuming that spot prices stay high, a reduction would reduce, by some small
24 amount, average power supply costs. However, regardless of the particular
25 assumptions, the loss of such a small number of customers is likely to have an
26 imperceptible impact on the costs of serving the remaining customers.

27
28 **Q. WHAT IS YOUR RECOMMENDATION CONCERNING THE**
29 **PROPOSED PILOT PROGRAM?**

1 A. I do not think a pilot program of the size and nature proposed by the City of Great
2 Falls will harm default supply customers, and I have no problem with the
3 Commission approving it.

4 Q. **HOW DOES THE CITY OF GREAT FALLS CHARACTERIZE ITS**
5 **LONG-TERM PLANS?**

6 A. The testimony of City Manager John Lawton makes clear that the city is
7 concerned with the recent history of electricity supply by NWE and its
8 predecessor the Montana Power Company. In addition to the swings in company
9 fortune and policies seen by all default supply customers, he points to events that
10 particularly affected the City of Great Falls, including claimed overcharging on
11 the City's street lighting contract, and NWE's breach of its supply contract with
12 the City and the Great Falls Public School District in 2003. To protect the
13 residents of Great Falls and to protect the itself and other governmental agencies,
14 the City intends to pursue a path by which it will supply its own needs and those
15 of city residents, with power from long-term, owned generation. The plan as
16 described would have the city serve only as the power supplier, with NWE
17 providing distribution, billing and metering services; customers would receive
18 bills from both the City and from NWE .

19

20 Q. **DO YOU HAVE ANY COMMENTS ON THE LONGER-TERM PLANS?**

21 A. Yes. As I said, there is little concern with the immediate issue of approval of the
22 pilot program. The Commission should recognize, however, that in the event
23 further formal proposals are forthcoming it will have to give serious consideration
24 to the question of harm to remaining default supply, as well as to some questions
25 of public policy that are in the process of resolution: implications for current
26 efforts to reform the NWE portfolio; consistency with current law on customer
27 choice; and discussions currently underway about legislation on the re-integration
28 of NWE.

29

30 Q. **WHAT IS THE ISSUE WITH ASSESSING THE IMPACT ON**
31 **REMAINING DEFAULT SUPPLY CUSTOMERS?**

1 A. The R.W.Beck study referred to earlier purports to show that the impact of
2 removing all of the Great Falls load from default supply would be similar but
3 larger than the impact of removing the pilot program load. The study claims to
4 show that removal of the full Great Falls load of .5 gigawatt hours, almost 10
5 percent of NWE's default supply load, would decrease costs for the remaining
6 customers. However, the methodology of the Beck study, while acceptable for
7 assessing short-term impacts, is unacceptable as a measure of long-term impacts.

8
9 Q. PLEASE EXPLAIN.

10 A. As discussed above, the Beck study assumes that all lost load is accommodated by
11 a reduction in spot market purchases. It models the cost of this through
12 projections of spot market energy costs and a construct of a spot market for
13 capacity (there is no such market and Beck concedes that capacity is not traded or
14 acquired as a separate commodity in the west). In fact, the extent of NWE's
15 reliance on the spot market is an extremely contentious issue, has been the subject
16 of testimony in other dockets, and will likely be a major issue in NWE's
17 upcoming default supply portfolio docket. NWE is under a great deal of pressure
18 to solidify its default supply resource portfolio with long-term resources and to
19 greatly reduce its reliance on the spot market. It is unlikely that the utility would
20 continue to rely on volatile spot markets for any significant portion of long-term
21 supply or that it would ignore the loss of almost 10 percent of its default load in
22 determining how to structure its long-term supply. The Beck study does not
23 satisfactorily address issues relevant to impacts beyond a small pilot program.

24
25 Q. DO YOU AGREE WITH DR. HEGAZY'S CLAIM THAT NO OTHER
26 CITIES CAN FOLLOW GREAT FALLS BECAUSE THEY DON'T HAVE
27 THE OPPORTUNITY TO PARTICIPATE IN THE SMG&T COAL
28 PLANT?

29 A. No, other cities could find their own perceived opportunities relying on other
30 plants and other sources of power.

31

1 Q. **WHAT IS YOUR RECOMMENDATION?**

2 A. The Commission should not rely on the Beck study as a measure of long-term
3 cost implications. Any approvals given in this docket should be clearly limited to
4 the pilot program, and a more thorough long-term study should be required in the
5 event an expansion is requested.

6
7 Q. **WHAT ARE THE OTHER ISSUES THAT WILL NEED TO BE
8 ADDRESSED?**

9 A. First, the Commission, the Consumer Counsel, and NWE's Technical Advisory
10 Committee have been urging NWE for at least five years to lock in long-term
11 supplies to serve its default customers, including the use of both long-term power
12 purchase contracts and owned resources. The need for this has become
13 increasingly urgent as the expiration date approaches for the PPL-MT contracts.
14 NWE has made some progress by acquiring the Basin Creek contract and the
15 Judith Gap wind project, but much more is needed and the utility now will have to
16 rely on bridging contracts until long-term resources can be acquired. The
17 Commission would have to give serious consideration to the impact on NWE's
18 acquisition efforts if the utility is faced with a loss of almost 10 percent of its
19 load, as well as the possible demonstration effect on other cities, which, if they
20 were to follow Great Falls, could lead to a loss of as much as half the default load.

21
22 Second, current law provides a gradual path for customer choice, with up to 10
23 MW per year of small customer loads permitted to select an alternate supplier.
24 The discussion of the long-term plans of the City of Great Falls do not refer to a
25 gradual shift limited to 10 MW per year, only to a goal of serving the entire city
26 load. The discussion also is silent on whether voluntary load switching is
27 envisioned but it suggests the City may try again to get legislation passed
28 allowing them to be the default supplier for the City residents. The long-term
29 plans of the City would seem to require a change in the law.

30

1 Finally, because of widespread dissatisfaction with the results of the 1997
2 decision to proceed with deregulation, there have been a number of efforts over
3 the years to modify or reverse parts of the restructuring law. In 2003, the
4 transition period was extended to 2027 and the 10 MW/year cap was placed on
5 movement to choice. Many parties have urged NWE to acquire or build its own
6 generation resources to provide long-term stability and protection from volatile
7 power supply costs, and discussions are underway about legislation that would
8 clarify the utility's ability to do that. The Commission itself, on March 7, 2006,
9 voted to pursue legislation that would repeal S.B. 390 and re-integrate the utility.
10 The long-term plans of the City of Great Falls would need to be assessed in the
11 context of with this policy.

12
13 Given the City of Great Falls' stated intention to use a 1-2 year experience with
14 the pilot program before making a decision to proceed, these issues should be
15 more clearly defined before proposals are made to the Commission.
16 Northwestern will be two years further down the road to defining its portfolio and
17 acquiring long-term resources. The legislature will have had an opportunity to
18 review proposals for reintegration of the utility and to redefine the parameters
19 governing customer choice. Further, there will have been ample time to continue
20 discussion of these important issues that have been raised by the Great Falls
21 proposal by the Commission, the public, the citizens of Great Falls, Northwestern
22 Energy's staff and Board of Directors as well as the TAC committee. At the
23 appropriate time when further proposals are made by Great Falls, the
24 Commission's deliberations should be well informed by this debate.

25 .

26 Q. DOES THAT COMPLETE YOUR TESTIMONY?

27 A. Yes, it does.

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

RECEIVED

MAR 28 2006

CITY MANAGER

IN THE MATTER OF the Application by the) UTILITY DIVISION
City of Great Falls to Operate a Limited Small)
Commercial and Residential Electricity Supply) DOCKET NO. D2005.7.110
Program)

Petitioners' First Set of Data Requests to Montana Consumer Counsel

ECP-001

Regarding: Background of Witness
Witness: Nordell

Apart from your experience beginning in 1976 with the State of Montana as an energy/utility economist, have you had any other experience or training relative to energy markets or utility industry structure? If so, please describe.

ECP-002

Regarding: Experience of Witness
Witness: Nordell

In any of your prior positions did you ever study, learn about, or work with public forms of ownership of utilities (as opposed to traditional model in Montana, consisting of a dominant IOU regulated by the State). If so, please describe your experience, training, and perspective.

ECP-003

Regarding: Beck Study
Witness: Nordell

In discussing the Beck Study you distinguish between its validity over the short-term as opposed to the long term. Please explain:

- a. What periods of time you consider to be "short-term" and "long-term" for purposes of your distinction.
- b. The basis (technical, economic, or empirical) for this distinction.

ECP-004

Regarding: Northwestern's Reliance On Spot Market Purchases
Witness: Nordell

On page 4 of your testimony you state that you believe the Beck study is flawed as a tool to determine long-term impacts to default supply customers since it assumes Northwestern will remain exposed to the spot market over the long-term at about the same level as it is now. However, on page 5 you note that the current reality facing Northwestern is that it will have to rely on bridging contracts at the expiration of the PPL contracts pending the acquisition of longer term (owned or contractual) resources. Given this:

- a. At what point in time do you believe that Northwestern will be able to materially alter its current position vis-à-vis the spot or short-term market, such that the loss of 10% of its load could not be accommodated without impact to the remaining customers?
- b. Until such time as Northwestern materially alters its portfolio position through the acquisition of long-term resources, isn't it true that the departure of load as large as the City's can be accommodated given sufficient notice? If not, please explain.
- c. What, if any, impacts on the procurement process itself would you anticipate if Northwestern were made aware that 10% of its load were to depart at a date-certain? In other words, do you think that Northwestern will be disadvantaged in its ability to procure resources for default supply customers solely by virtue of the fact it would need to acquire only 90%, as opposed to 100%, of its current load? If so, how?
- d. Please provide all studies, information, theories, assumptions, methodologies, and the like upon which your previous answers are based.

ECP-005

Regarding: Beck Study
Witness: Nordell

Please explain what methodology you would consider to be valid in order to assess the long-term impact to remaining default supply customers that would be caused by the loss of the Great Falls load.

ECP-006

Regarding: Public Policy
Witness: Nordell

You note at page 6 of your testimony that "many parties" have urged Northwestern to acquire or build its own long-term generation resources so as to provide default supply customers with long-term stability and protection from market volatility. In connection with this statement:

004457

- a. Please identify who these parties are and how it is that they are urging Northwestern to acquire or build long-term resources.
- b. Aside from the issue of relative impacts between classes of default supply customers, is there any reason why the acquisition of generation by an IOU such as Northwestern is preferable, from a policy, economic, or operational standpoint, to the acquisition of generation resources by the citizens of Great Falls?

ECP-007

Regarding: Public Policy
Witness: Nordell

Is it your view that, if the Legislature were to determine to re-integrate the electric industry in Montana, the preferable approach would be to reinstitute a model characterized by a single, economically and politically dominant IOU, as opposed to a more diverse set of institutions which may be more economically and politically balanced? Why or why not?

ECP-008

Regarding: Public Policy
Witness: Nordell

Would you agree with Mr. Lawton's argument that, over the long-term, electricity customers in Montana would be better served by a "responsible and controlled experience" with alternate models of electricity supply institutions, such as that contemplated by the City? Why or why not.

ECP-009

Regarding: Public Policy
Witness: Nordell

In reference to ECP-008, above, if there is to be a "responsible and controlled" experience with alternative models, wouldn't the best time to institute such alternate model(s) be when the default supply portfolio was in the process of change and the Legislature was just beginning the process of re-structuring the industry as a whole? Why or why not?


CERTIFICATE OF SERVICE

I, Harley R. Harris, certify that on the 27th day of March 2006, a true and accurate copy of the foregoing document was served upon parties of record listed below by depositing the same, postage prepaid, in the United States mail to:

Kate Whitney
Public Service Commission
P.O. Box 202601
Helena, MT 59620-2601

Robert Nelson
Montana Consumer Counsel
P.O. Box 201703
Helena, MT 59620-1703

Interested Party
Richard Garlish
Northwestern Energy
40 East Broadway Street
Butte, MT 59701



Harley R. Harris

Electric City Power, Incorporated

JOURNAL OF BOARD PROCEEDINGS

March 6, 2006

Electric City Power, Incorporated (The Corporation): Regular meeting of the Board of Directors
Great Falls Civic Center, Gibson Room

CALL TO ORDER: 5:30 PM

ROLL CALL: Directors present: George Golie, Randy Gray, Bob Pancich, Bill Ryan, and Dawn Willey. Also present were the ECPI Executive Director, City Manager, Assistant City Manager, and Administrative Officer.

I. EXECUTIVE DIRECTOR REPORT

Executive Director Balzarini gave an overview of ECP's various proceedings currently before the Montana Public Service Commission (PSC), including the City's effort to transfer its existing license to ECPI (from ECP) and its petition to operate a small customer supply program. The license transfer was rejected without prejudice to allow the PSC to collect additional information. The small customer supply program petition is currently in process.

Balzarini also explained to the Board that they are covered under the City's Director and Officer liability policy.

She finished her report with a recap of the Project Finance Team's February 22, 2006 meeting.

II. OLD BUSINESS

III. NEW BUSINESS

The Board unanimously adopted the Board Meeting Minutes from its February 6, 2006 meeting.

IV. BOARD MEMBER REPORTS

V. COMMUNICATIONS

The Board reviewed the December 2005 Financials from SME.

004480

Administrative Officer Jordan Love gave a recap of a Mercury Control Short Course he attended on March 1-2, 2006 in Billings, Montana.

The Board briefly discussed a draft of a Development Agreement between the City and SME. Executive Director Balzarini explained the purpose of and need for such an agreement. She noted that City staff and the City's bond counsel would be discussing the Agreement with SME officials on March 13th.

Balzarini briefly discussed the City's proposed cogeneration facility before detailing for the Board two upcoming meetings with SME:

1. The SME annual Meeting in Billings on March 13, and
2. The March project update meeting and meeting of the SME Board of Directors on March 16-17, 2006.

Chairman Bob Pancich adjourned the meeting at 6:30 PM

Memo

To: Jim Burr, Mae Nan Ellingson, Harley Harris
From: John Lawton
CC: Tim Gregori
Date: March 30, 2006
Re: Legislation Ideas

Here are some broad concepts to consider for a statewide electric utility system as we develop legislation for the upcoming legislative session. These will need refinement but they basically expand and protect the position we are building in this industry. I think it is clear that the PSC staff believes we should restore the *status quo ante bellum*. We will need to present an alternative vision if we don't want to be edged out of this business as the royalists try to restore the throne.

The following are concepts we believe should be accommodated in any legislative package.

- Allow for the co-existence of rural electric cooperatives, investor owned utilities, and municipal utilities as do most, if not all Western states.
- Allow and encourage partnerships among the three types of utilities for building and owning new generation.
- Provide for regulating investor owned utilities by the Public Service Commission. Regulation of cooperatives and municipal utilities would be accomplished by members and elected boards for co-ops and by voters and governing bodies for municipals.
- Retain concepts of territorial integrity and allow territorial boundaries to be adjusted by agreement. Municipal utility boundaries would be limited to city boundaries and rural electric cooperatives would be allowed to serve inside cities by agreement.
- Abolish the single default supply system. IOU supply would be regulated by the PSC.
- Allow vertical integration. All utilities should be able to build and own generation.
- Retain concepts of customer choice for supply. Cost for new generation should be rate based only if customer choice is allowed.

Jordan Love

From: Coleen Balzarini
nt: Wednesday, March 08, 2006 9:25 AM
To: Jordan Love; John Lawton; Cheryl Patton
Cc: 'ALAN DASHEN'; 'Jim Burr'; 'Mae Nan Ellingson'; 'Harley Harris'; 'Tim Gregori'
Subject: RE: PSC/dereg. article

I just got off the phone with Tim Gregori this morning. He has concerns about this and will be spending some time with John and I on Monday, prior to the Development Agreement session with Jim and Dave going over his perspective on how this might impact the City's efforts and some steps we might take to get our 2 cents into the draft legislation.

From: Jordan Love
Sent: Wednesday, March 08, 2006 8:25 AM
To: John Lawton; Cheryl Patton; Coleen Balzarini
Cc: 'ALAN DASHEN'; Jim Burr; Mae Nan Ellingson; 'Harley Harris'
Subject: PSC/dereg. article

All--this story ran in today's Lee papers (as usual, sources closer to us in GF missed it). We've talked about this, but it may be new news to most consumers that the PSC likes the idea. Where does public power fit in?

Enjoy,

Jordan

Officials to revisit deregulation

By MATT GOURAS - Associated Press Writer - 03/08/06

HELENA — The Public Service Commission told its staff Tuesday to enter into talks with NorthWestern Energy about rewriting or repealing the state's 9-year-old deregulation law.

The move puts into motion a long process that supporters hope could lead to a "vertically integrated" utility that sells electricity to consumers at cost-based prices — like Montana once had with the old Montana Power Co.

"What we want to do is rewrite the statute so that it gives us the opportunity to move back to where we were, not that we'll get there," said Public Service Commissioner Bob Raney.

NorthWestern, which has indicated an interest in acquiring power plants, said it looked forward to the talks.

"We would certainly encourage dialogue to vertically integrate, or at least to consider that option," said Dave Gates, NorthWestern vice president of wholesale operations. "It is not our decision to make alone, but we are supportive of those discussions and we would like to participate in them.

"Solving the problem is something we need to proactively do, and that's what we would like to be a participant in."

Lawmakers asked the PSC to look at legislation that would let NorthWestern buy or build its own power plants. The so-called vertical integration was banned as part of 1997's deregulation law.

But the PSC said the state should go further and consider scrapping the deregulation law altogether, rather than just tinker with it a more.

Such a wide-ranging look at the deregulation law should start by entering into talks with NorthWestern Energy and the Montana Consumer Counsel, the PSC unanimously decided Tuesday.

3/30/2006

004453 P16

The decision was made after reviewing a staff recommendation that said the Legislature should do more than just let NorthWestern back into the power generation business, and move instead to repeal much of deregulation and return to a "traditional regulatory model."

An interim legislative committee is resuscitating a bill from the 2005 session that would allow NorthWestern Energy to get into the power generation business. The PSC, which opposed the bill last year because it wasn't written correctly, decided to pitch its recommendation of a complete overhaul to lawmakers in April.

Rep. Alan Olson, the Roundup Republican who backed the 2005 legislation, said he would be happy to take a broader look at the deregulation law with the PSC.

"If we are going to do anything to protect the ratepayers in the current markets, it's going to take vertical reintegration," Olson said.

NorthWestern, which bought the energy distribution assets of the old Montana Power Co., buys much of its electricity from PPL Montana, which owns most of the power plants from the old company.

The two companies are currently embroiled in a dispute before federal regulators over charges that PPL has a monopoly in setting prices NorthWestern pays for electricity.

Experts, though, have said any attempts to undo deregulation won't give the state the cheap electricity it once enjoyed because consumers would have to pay for the high cost of the new power plants in their rates.

Raney said changes in the deregulation bill would only allow NorthWestern to get into the power business, not force the company to do so.

And he said there is no guarantee that NorthWestern will have the money, or inclination, to build or buy power plants that would cost billions.

"We're looking at giving them the options to do these things," Raney said. "I think the odds are very good that we'll be changing the law. Citizens certainly want it. They certainly recognize restructuring didn't work for them."

Memorandum

To: Commissioners, Robin, Al, Will, Eric

From: Kate

Date: March 30, 2006

Re: ETIC request for informal feedback on two bills

The Energy & Telecommunications Interim Committee is requesting informal feedback from the PSC and other interested parties on the first drafts of two potential committee bills. Explanations of the two bills and staff's recommendations concerning the PSC's response to ETIC follow.

LC0037 (HB 389)

This draft in its present form is the same as the final version of House Bill 389 that was not enacted by the 2005 Legislature. The bill would explicitly permit the default electricity supplier to own and rate-base generation it uses to supply electricity to default supply customers.

The bill's other key provisions include:

- Section 5(2)(b), prohibiting the PSC from imposing financial penalties on the default supplier if the default supplier decides not to acquire generation resources;
- Section 5(2)(c), prohibiting the default supplier from withdrawing a PSC-approved generation acquisition proposal from its portfolio;
- Section 5(3)(b), providing discretion to the default supplier as to whether or not to include in its planning and procurement process an evaluation of the option of acquiring its own generation resources; and,
- Section 6, providing a process for PSC pre-approval of the default supplier's acquisition of generation.

The Commission opposed HB 389 in 2005. The PSC testified that if the intent of the bill was to specifically permit the default supplier to own or otherwise acquire generation – a concept supported by the PSC -- that could be accomplished simply by amending § 69-8-419, MCA, to add a provision to that effect.

In Utility Division staff's opinion, the preferred approach to returning the default supplier to vertically integrated utility status would be to abandon the wholesale market model that is embodied in the electric restructuring chapter (Chapter 8) and revised yet again in LC 37 and move instead to a more traditional regulatory model by going farther and repealing much of Chapter 8 entirely. Staff recommends that the Commission suggest this alternative approach to ETIC.

Regarding the bill draft at hand, the PSC's opposition to HB 389 as it was introduced in 2005 stemmed mainly from troublesome provisions in Sections 5 and 6. As it did in 2005, staff recommends Section 5 be amended to delete Section 5(2)(B) that prohibits the PSC from imposing financial penalties on the default supplier if the default supplier chooses not to acquire generation resources and Section 5(2)(C) that prohibits the default supplier from withdrawing a PSC-approved generation acquisition proposal from its resource portfolio. Staff objects to both provisions because they unnecessarily remove options that could be important as the PSC and the default supplier work to effectively implement the law to result in optimal default supply resource portfolios. Staff also continues to recommend deletion of Section 5(4)(a)(iv), which is grammatically incorrect, but assigns to the PSC the task of adding provisions to its resource planning and procurement rules concerning "procedures for the use of electricity generated by the default supplier in the default supply portfolio." It is not clear to staff what is meant by this provision.

The amendments to Section 6 concerning the advanced approval process that were proposed by the PSC in 2005 are included in LC 37. Those changes largely resolve staff's concerns with that section. The problems that remain in Section 6 are at Section 6(7)(b) and (d), both of which provide that the PSC may protect certain cost information if the PSC determines the protection would be in the public interest. Staff recommends amendment of those provisions to delete those sentences because they appear to conflict with the *Great Falls Tribune* decision.

LC0038 (HB 388)

LC 38 is a watered-down version of HB 388 from the 2005 session. As introduced, HB 388 would have established a Montana Transmission Authority which could plan, finance, construct and own transmission facilities in the state. In its testimony in opposition to HB 388, the PSC said it was not necessary for the state to supplant the private sector in the electricity transmission business.

LC 38 would create the Montana Transmission Authority, a five-member board appointed by the governor which would have as its main functions the following: facilitating the planning and development of transmission facilities; assisting in planning and establishing transmission corridors; participating in regional transmission organizations; and, reporting findings and recommendations to the governor and ETIC. The board would be funded up to \$350,000 annually by the proceeds of the wholesale energy transaction (WET) tax. The board would be administratively attached to the state Department of Commerce.

Staff recommends the PSC give ETIC a thumbs-down on LC 38 for the same reason the PSC opposed HB 388: transmission facilities development is a private-sector function, not a government one.