

Committee Minutes:

Legislative Council Committee on Energy

House Majority Caucus Room--Statehouse

Boise, Idaho

9:00 a.m.

June 4, 2003

Corrected Minutes

The meeting was called to order by Cochairman Representative George Eskridge at 9:10 a.m. Committee members present were Cochairman Senator Brent Hill, Senator Joe Stegner, Senator Laird Noh, Senator Clint Stennett, Representative Maxine Bell, Representative Bert Stevenson, Representative Steve Smylie and Representative Charles Cuddy. Senator Sheila Sorensen was absent and excused.

Others present included Rich Hahn and Pete Pengilly, Idaho Power Co.; Bjorn Doskeland and Michael Heckler, Windland Inc.; Jim Kempton, Northwest Power Planning Council; Russell Westerberg, PacifiCorp; Glen Pond, Utah Power; Dennis Codr, Payette County Commissioner; Doug Glaspey, US Geothermal; Bob Ford, Senator Mike Crapo's Office; Norm Semanko and Gail Batt, Idaho Water Users; Mike Huntington, Intermountain Gas Company; Dennis Tanikuni, Farm Bureau; Andrea Mihm, Sullivan and Reberger; Brenda Tominaga and Lynn Tominaga, Idaho Irrigation Pumpers; Dike Teinert, ESG Energy Strategies Group; Don Howell, Attorney General's Office; John J. Williams, Bonneville Power Administration; Gerry Galinato, Idaho Energy Division; Bill Eastlake, Idaho Public Utilities Commission; Woody Richards, Moffatt Thomas; Peter Richardson, Industrial Customers of Idaho Power; Ron Williams, Idaho Consumer Owned Utilities Assoc.; David Hawk, JR Simplot Co. and Bill Eddie, Advocates for the West. Staff members present were Mike Nugent and Toni Hobbs.

After introductions were made **Mr. Mike Nugent, Legislative Services Office**, explained that House Concurrent Resolution 9 (HCR9) establishes the Energy Committee and expands the committee's charge. The committee's focus has changed from strictly studying electric deregulation to include a broader study of energy related issues both statewide and nationally. **Representative Eskridge** stated that this seems to be a good direction for the committee as it is a more inclusive study of energy issues.

Mr. Mike Huntington, Intermountain Gas Co., was introduced to explain where the price of natural gas is headed and what effect that might have on the ability to provide quality, as well as quantity, of service to the state. **Mr. Huntington** explained that Intermountain Gas is a local distribution company that serves approximately 230,000 customers in 76 communities across Idaho. They have 335 employees. Nationally, pipeline expansions exist that are able to move gas in large quantities to different markets. The most notable expansion is the Kern River expansion that used to part of the Williams Company. This expansion is now moving gas from the Rocky Mountains supply basin into California. This is largely due to the demand for electric generation in that area.

One of the reasons that prices are going where they are is due to fact that the area east of the Rocky Mountains experienced one of the coldest winters on record in the last thirty years. On the other hand, west of the Rockies the winter was 15% warmer than the winter of 2002 and was the warmest winter on record in the past thirty years. As a result, most of the supply east of the Rockies was used up. This creates a demand to replenish/refill that storage during the summer. This is typical and summer prices are usually down. However, west of the Rockies with the warmer winter, the depletion of storage was not a significant factor and there is not a large demand to replenish the storage. It would seem that adequate supply and diminished demand would drop the price. The catch is that because natural gas is traded on the New York Mercantile Exchange Market (NYMEX), the influence of the NYMEX is holding up the price of natural gas west of the Rockies. This may be artificial but it is still there. The Northwest Pipeline and supply basins in this area used to be isolated from commodity price pressures because there was no way to move the gas to other markets.

In our area, Intermountain Gas Company (IGC) has an application to the PUC asking for a purchase gas cost adjustment (PGA). This is essentially a "trueing-up" of the price IGC pays for natural gas (molecule) and its transportation with the price IGC charges for the same natural gas molecule and its transportation. A big piece of this price is referred to as the Weighted Average Cost of Gas (WACOG). This is the weighted average cost of gas over a twelve month period on a "going forward" basis. **Mr. Huntington** explained that on the commodity market the price of natural gas fluctuates daily but the price/cost as approved by the PUC is set for a twelve month period. IGC's proposed WACOG is just over \$5.50 per therm. This reflects the average price paid.

IGC's specific application to the PUC has the following key elements:

- Cost adjustment of \$61 million
- 38% overall increase
- Weighted Average Cost of Gas
- Management of Interstate Pipeline Transportation
- Temporary Price Adjustments
- Industrial Transportation Price Decrease

Residential rates include the companies distribution, overhead and profits such as the price of vehicles, maintenance, health insurance, unemployment benefits and any profits. This amount has not changed since the early 1990s. The cost of the gas molecule, on the other hand, changes frequently. The major portion of the increase they are asking for is due to the increase in the price of the actual gas molecule.

Mr. Huntington explained that a "therm" was a billing term. They measure the gas in cubic feet and bill it in therms. It is a sort of common denominator.

Senator Hill asked how the company keeps the distribution, overhead and profit constant for so long. **Mr. Huntington** answered that the company strives to use technology to increase efficiency. They work together with other utilities to keep costs down by building common trenches for lines and such. They do this because to change this portion of the pricing, they are required to file for a general rate case with the PUC. To clarify further, he explained that profits do fluctuate but they use that to offset increases in the distribution and overhead portions of that price. **Representative Eskridge** stated that he would assume constant growth would help keep the overhead costs constant. **Mr. Huntington** said their average growth has been about 6% in new customers or about 10,000 per year. The volume of gas associated with those new customers does help to offset some of the costs but the weather is making it more and more difficult. Since they are an optional source of power, they strive to have the lowest, most cost effective energy available in the service area.

Representative Smylie asked if additional pipeline expansion caused IGC to experience supply pressure with the extra capacity that is being sent to California. **Mr. Huntington** said that this does not effect the volume of the gas molecules but it does effect the price of that molecule.

In response to another question from **Representative Smylie, Mr. Dave Hawk, JR Simplot Co.**, stated that natural gas is a just in time commodity and if there had been a cold winter in the west, there would have been shortages of natural gas in the United States. The storage levels are at five year lows currently. There is a market for storage and this is why the price is up. Many people in the natural gas market are speculators, not consumers. This drives the price up also. **Mr. Huntington** added that the western side of the Rockies pressure on the price is not as great as the pressure in the east. The demand for natural gas for electric generation is another factor. All of these factors influence the price of gas that is coming both ways across Idaho therefore no longer isolating it from commodity pressure.

Senator Stennett asked if since the price to consumers has doubled in the last five years, has demand for natural gas also doubled. **Mr. Huntington** said no, the price controls demand. As the price goes up, the demand goes down. They have seen a decline in average use per customer in 2000-2001. On the other hand, in new homes, more energy efficient appliances are being installed and construction is more energy efficient so this also leads to a decline in the amount of natural gas being used.

Senator Stennett asked if new supplies are coming on line and how much more natural gas is being used today. **Mr. Huntington** answered that generally, on a national basis, the demand for natural gas has increased from 22 trillion cubic feet in 1973 to a projected 30 trillion cubic feet in

2010. **Mr. Hawk** added that there are 1,000 oil rigs drilling. This is the most that have been drilling in four years. While the finding rate is higher, there is no way this number of rigs can keep up with current consumption, especially if ever ounce of electricity is generated by natural gas. If it is a cold winter, we are in a deficit position. Also, there is at least an 18 month lag time before the current drilling will make a dent in the need. Unless you see "demand destruction," prices will not come down. The gas is available, there are just several hurdles to overcome.

Mr. Jeremy Meadows, Committee Director, NCSL Standing Committee on Economic Development, Trade & Cultural Affairs, on a conference call spoke to the committee regarding a letter that was sent to Ambassador Robert Zoellick, U.S. Trade Representative (USTR). This letter was regarding the GATS issue and the issue of General Trade Agreements on Idaho's ability to regulate industry in the state. **Mr. Meadows** stated that he is still in the process of learning about GATS and its implications for the states and is trying to balance the information they are receiving from the USTR with information from other sources that are expressing concerns.

Mr. Meadows said that NCSL supports free trade. Their policies are adopted by 3/4 of the states so it would seem that most states also support free trade. Free trade is an economic development tool. It promotes exports and builds local economies. Thirty percent of U.S. farm production is for export purposes.

NCSL's efforts on international trade are to protect state sovereignty and U.S. Constitutional principles while promoting export, international trade and economic development. They try to protect the separation of powers, both legislative and judicial branches and their role in governing in individual states. NCSL tries to prevent the preemption of state law or regulatory authority by international trade agreements. This is one of the primary concerns with GATS. They also try to prevent any undue disturbance that international trade agreements might bring for state revenue bases or tax systems.

Before discussion the letter to the USTR, **Mr. Meadows** explained more about GATS and what industries are involved.

U.S. Services Industries

are all industries except agriculture, mining, and manufacturing;
account for four-fifths of U.S. GDP and non-farm employment;
account for one-fifth of all global services exports;
exports reached \$276 billion in 2002.

General Agreement on Trade in Services (GATS)

is an agreement under the World Trade Organization between 140 different countries from both the developed and developing world with on-going negotiations touching:

energy
entertainment
water
education
insurance and finance
legal services
health
information technology, etc.

Mr. Meadows emphasized that GATS agreements do not require congressional action. In launching the GATS process, Congress, in many ways, gave carte blanche to the USTR and the President to continue these negotiations. The most recent offer from the USTR on services might be sent to Congress for their information but there is no act of Congress required to implement it. This is one of NCSL's concerns.

Recent GATS Developments

July 2002 -- WTO members submitted "requests" for market access commitments
March 24, 2003 -- NCSL comments on GATS to Ambassador Zoellick, the U.S. Trade Representative
March 31, 2003 -- U.S. and WTO partners submit "offers" responding to requests

Some Idaho-specific Requests from Abroad under GATS

Remove in-state residency/licensure requirements for accounting, bookkeeping, auditing and engineering services (Australia)
Remove citizenship restriction preventing purchase of or bid on public lands (Australia, Brazil, Japan)
Reduce or remove citizenship and residency restrictions on insurance, banking and other financial services (Canada)
For direct insurance and reinsurance eliminate ban on government-owned or government-controlled companies to conduct business (China, European Union)
Remove residency requirement for accounting, auditing and bookkeeping, legal, and engineering and integrated engineering services (European Union)
Remove/relax citizenship/residency requirements in life and non-life insurance and auxiliary services including brokerage, agency, consultancy, actuarial, risk assessment and claim settlement services (Hong Kong)

The source for these requests is www.tradeobservatory.org.

Mr. Meadows continued that he had received three particular concerns that have been expressed to him by Public Citizen. Even though NCSL is a non-partisan/bipartisan organization, this information was relayed to them by the National Rural Electric Cooperatives Association. As a result, one would assume these concerns are legitimate for states. These concerns include:

1. State or federal commitments to deregulate and/or open its markets to private companies may prevent reregulation in emergencies.

- Inflexibility flies in the face of the recent reregulation trend by states: 9 states repealed or significantly delayed deregulation since the west coast crisis and Enron fraud.
- Remaining 15 deregulated states continue to experience severe problems, calling into question how long America's deregulation experiment can continue.

Mr. Meadows added that the reregulation issue is a primary area of concern for NCSL. State flexibility to respond to localized problems that the state might determine are in the public interest to address is drawn into question under GATS.

2. GATS seems to place greater importance on free market access than on consumer protections.

- Enron spearheaded energy trading. Since its bankruptcy large investment banks like Goldman Sachs, Morgan Stanley, Merrill Lynch, UBS and commercial banks like Bank of America have taken its place speculating on electricity and natural gas.
- Unregulated speculation is what caused the west coast energy crisis, and GATS may make it worse.

3. GATS promotes a centralization of regulatory control over electricity, restricting the ability of states to protect citizens.

- Vice President Cheney's energy task force recommends that the Federal Energy Regulatory Commission (FERC) replace states in regulating energy markets. 35 states remain regulated and appear reluctant to enter GATS negotiations, since agreeing to GATS would be agreeing to deregulate. FERC, however, has proposed a plan that would force states to deregulate. FERC is isolated from the demands of consumers, with a five-member commission in Washington, DC.
- FERC took 13 months to address the west coast energy crisis; its members faced no political pressure.

The argument is that GATS, because our foreign trading partners are looking for a single point of contact or a single regulator in the United States to simplify the process, may encourage

Washington to centralize regulation of energy services with perhaps the Federal Energy Regulatory Commission (FERC) and to move toward removing that authority from the states. This is a very important issue at NCSL. FERC is isolated from the demands of consumers being comprised of only a five member commission in Washington, D.C. and not necessarily responsive to states or their constituents.

NCSL's Concerns with GATS

State flexibility and authority to regulate

Sovereignty and security of state governmental institutions

- There is the prospect that the sovereignty and security of state governmental institutions could be challenged by international trading partners or private firms from overseas that take issue with state's governmental action.

Notice of challenges or preemption efforts

- The level of communication between the United States Government and the States regarding any challenges that might arise from international trading partners or their private entities or regarding any preemption efforts from Washington on state control.

State revenues

Information flows

Consultation during negotiations

- There is a concern that NCSL and the states be made aware of what is being put on the table and what the effects of that are on states as well as the implications that implementation will have on state authority during the negotiations.

Process for obtaining state commitments

- This is another area of tremendous concern because as the USTR is putting these offers on the table, there is no clear indication that the appropriate state level authorities are being consulted to be sure that the offer being put forward is legitimate. This is a concern because the USTR often communicates with states through a single point of contact that is usually in the Governors office. On the other hand, the authority to grant request that is being made to the state by the USTR may not even fall under the Governor's regulatory purview. But that single point of contact is asked to obligate the state.

Mr. Meadows informed the committee that regarding the offer that was made on March 31, 2003 by the USTR, there was no reference to water services. He clarified this because NCSL's

letter to the USTR referenced water services. This letter is available at www.ncsl.org/standcomm/scecon/gatsltr03.htm. This offer does recognize state authority over insurance and applauds the National Association of Insurance Commissioners for trying to harmonize and unify state regulatory policies. Thus making it a more palatable industry for international purposes.

This offer also notes that the energy services offer excludes government monopoly. It does not offer the prospect of foreign companies acquiring or entering into areas where there is a government monopoly. The question that remains is whether that government monopoly is truly a government entity or a government sanctioned monopoly. The U.S. Postal Service was used as an example and it was stated that no offer would be made for foreign companies to compete with the U.S. Postal Service in the delivery of first class mail. This is somewhat different from a state regulating a single company to provide electric utility service or a single cable company to provide cable service in a region. NCSL is still unclear what this exclusion really means.

Mr. Meadows said that NCSL will be inviting a representative from USTR and a few other organizations that are following GATS closely to speak to the economic development trade and cultural affairs committee during the annual meeting this July in San Francisco.

Mr. Meadows highlighted some of the main points of the letter that NCSL sent to Ambassador Zoellick, USTR, that is mentioned above. They are as follows:

1. The concern over local monopolies and the ability of states to grant or regulate local monopolies.
2. The coverage of public services. To the extent that public services are truly managed by government agencies seems to be excluded from the current offer. There is always the prospect they could be put on the table.
3. Concern over domestic regulation and whether or not the United States will make any specific commitments that might hamper a state's ability to regulate particular sectors.
4. Concern over sectors of the economy including health facilities, insurance, licensing of attorneys and so on and how the USTR is seeking obligations from the states. The USTR could be seeking these obligations in a manner that might not truly obligate the states in a legal sense.

As mentioned above a copy of this letter is available at www.ncsl.org/standcomm/scecon/gatsltr03.htm.

Senator Noh asked if other states have submitted letters to the ambassador and if they have been answered. **Mr. Meadows** answered that there has been a letter sent from California and there were phone calls or expressions of interest from several other states. To date, NCSL has not received a response to the above referenced letter. **Mr. Meadows** and several of his counterparts from state and local association have met with the Intergovernmental Relations staff at USTR and have again raised these same concerns. In **Mr. Meadows** opinion, they have not received any satisfactory answers, only promises that the issues will be addressed in a forthcoming

meeting of the Intergovernmental Policy Advisory Committee. **Representative Eskridge** added that Idaho has not received a response to their letter that was sent on April 15, 2003.

In response to another question from **Senator Noh**, **Mr. Meadows** stated that committees that could exert some influence over these trade agreements include the Senate Finance Committee. They tend to have the strongest jurisdiction over international trade. He said that NCSL was very successful in working with the finance committee last year on trade promotion authority issues. In the House of Representatives, the Ways and Means committee has the most influence. There are several other committees that do hold hearings on the issue and do have some jurisdiction. **Mr. Meadows** added that NCSL is in touch regularly with Senator Chuck Grassley from Iowa. He is the chairman of the Senate Finance Committee. Senator Max Baucus from Montana is the ranking member of that committee. Congressman Bill Thomas from California is the chairman of the House Ways and Means Committee and Congressman Chuck Rangel from New York is the ranking member of that committee. These people are the primary points of contact for NCSL. They were in contact with the Idaho delegation during the trade promotion authority discussion to express some of those concerns.

Mr. Meadows stated that the GATS negotiations are unique in that they do not need to go back to Congress for ratification or for implementing legislation. All other trade agreements negotiated under the trade promotion authority granted to the President do go back to Congress for an up or down vote. He added that one of NCSL's recurring themes is that they need to be engaged in discussions early in the process to ensure they are behind agreements as they are negotiated.

Representative Eskridge asked for clarification that this offer does include energy issues and there is the possibility that states could lose their ability to have any influence or that they may lose all or part of the authority they current have within their own boundaries. **Mr. Meadows** said that was definitely possible. Energy is part of the offer, particularly as it relates to engineering services. In reference to energy, he quoted from the offers as follows:

"The USTR asserts that nothing in the U.S. offer on energy services should be construed as extending a right to acquire or invest in a government monopoly that provides a service with any of the sectors or subsectors included in the offer. Those sectors and subsectors include mining services, engineering services, retail services, wholesale trade, etc...."

The difficulty, in **Mr. Meadows** opinion, is in defining what that government monopoly means. This is a question they have posed but have not yet received an answer. Does it mean a government run agency or does it mean the granting of a government monopoly to a private company. In the latter case, he is concerned that could be challenged under the WTO arbitration rules as a result of this offer.

Senator Noh mentioned that an obvious tie in for those in the Pacific Northwest would be between water and energy. The ability to move power anywhere in a deregulated mode, in essence moves that water as well. **Mr. Meadows** said that was a good point and was a link that he had not yet made. An offer on energy services could very well implicate water resources even though the offer does not directly relate to the delivery of water services.

Senator Stennett asked about water services and if other western states have voiced concerns about how certain agreements could change state water law. **Mr. Meadows** reiterated that water was a great concern to NCSL before March 31, 2003 offer. This offer did not include water services. California was the only state they heard from on this issue. Nebraska contacted them with concern of what this could mean regarding enforcement of state law governing aquifers and for any privatization of water resources in the state.

Senator Stegner asked if, other than waiting for a response to the letters that have been written, there is any ongoing effort to develop an NCSL strategy for reversing the current situation where Congress has no approval oversight of these agreements. **Mr. Meadows** said that, as that relates to GATS, there is not currently any effort to reverse that decision. NCSL is actively seeking additional or increased oversight by Congress of the negotiations and also greater involvement of state and local organizations. They also want this to include state and local officials. This involvement is to make sure that all potential pitfalls are identified as the negotiations continue. It does seem that USTR is increasingly open to discussing negotiations in progress and the potential implications with state and local officials and organizations.

Mr. Meadows, did state that USTR is a very minimally staffed organization and that they work very hard. Due to the increased cooperation NCSL has experienced with the USTR, he is hopeful that there will be a response to their letter.

Representative Eskridge commented that while we wait for a response from the USTR, there are offers being negotiated and it still appears that the states and NCSL are not in good positions to look out for their own interests. **Mr. Meadows** agreed and said that offers have been made. However, the negotiations have not been finalized so there is still the opportunity for NCSL or the states to have some influence. The process is a request and offer mechanism. So the USTR's offer was in response to requests. In regard to the offer as presently presented by USTR, although not a done deal, states need to pressure their Congressmen as well as USTR to make sure the negotiations are responsive to their needs and interests. In his opinion, NCSL has not been as engaged in the GATS process as they need to be. They are getting more involved and will continue to be so. As an example, USTR contacted the National Governor's Association regarding an offer dealing with higher education. This is an example of the misdirected communication that was discussed earlier. NCSL will be responding to this offer on behalf of the states highlighting the fact that they have not received a response to their GATS letter and noting that the state legislatures have a tremendous interest and role in higher education and putting forth observations about that offer.

In response to a question from **Senator Noh**, **Mr. Meadows** stated that the National Governor's Association's involvement in discussions and concerns over state sovereignty and free trade agreements and GATS has not been as loud or active as NCSL or other state and local organizations in Washington, D.C. He highlighted that the National Association of Attorneys General, including the Idaho Attorney General as well as the U.S. Conference of State Chief Justices have been very involved in these issues. NCSL is making the case to USTR that the Governors interests are in promoting exports and business development but they are not necessarily the constitutional officer in the states responsible for either legislating or in protecting state laws regarding these issues.

Representative Eskridge asked if the Finance Committee in Congress is interested in this offer. **Mr. Meadows** said not regarding GATS. Last year regarding the Trade Promotion Authority debate, the Senate Finance Committee took a great interest in the area of states and localities. The language of that bill was amended regarding the protection of due process for states for dispute resolution purposes. Through NCSL's role in raising the awareness of Senators on this issue, the House also took a renewed look at it and were increasingly aware of NCSL's concerns. He is encouraged by this and inclined to think that Congressmen and Senators on these committees as well as those on the energy committees do have an increased awareness and interest in the state's concerns.

Mr. David Hawk, JR Simplot Company, was introduced to discuss natural gas prices, how we got here, how long we will be here and what the state legislature of Idaho can do. He commented first that regarding standard market design (STANDARD MARKET DESIGN), Idaho's three PUC commissioners are following this very closely and forming their own opinions. The JR Simplot Company believes, along with the industrial customers throughout the northwest that as standard market design's are developed, independent operators need to be running those systems.

Mr. Hawk stated that regarding natural gas, we are in an energy crisis. We got in this situation due to:

- a) Not enough drilling. There are 1,000 rigs actively drilling today. In **Mr. Hawk's** opinion those rigs and what they will find will keep up with the decline.
- b) In 1980, there were 4,000 rigs active. What happened?
 - Technology has increased the finding rate dramatically and there are probably not 4,000 rigs in the United States today.
 - Producers do not necessarily have access to capital. We have made a mistake in this country with certain large mergers and have essentially rebuilt the Standard Oil Trust.

An example is BP merging with Standard of Ohio, then with Standard of Indiana (AMOCO), next they merged with Atlantic Richfield. So, where there were once four active R and D groups, there is now barely one. Where there were four active frontier exploration groups that went out to the hinterlands and took leases and competed for leases, there is now barely one group. When BP merged with Atlantic Richfield they took the 191 person office in Midland, Texas and reduced it to about 40 people, moved 80 people to Houston and laid the rest off. This is happening over and over. According to Earl Bennett, University of Idaho, there are about 50% fewer students in geology and geophysics today than there were ten years ago. The United States does not have the intellectual capability to drill enough wells in the country today, nor do we have the rigs or access to capital. People that run the major companies today are risk averse. They make money by trading money and their mission is to add stockholder value, not necessarily to find oil and gas.

Natural gas use will continue to grow except for limited demand destruction. **Mr. Hawk**, referenced an article from analyst Steven Smith, Energy Associates. It states "the gas market has determined that prices must stay at or above current levels in order to destroy enough demand to free up sufficient gas to fill storage." In other words, we have to destroy demand in order to have enough gas to fill storage. We are hurting for natural gas. We got in this situation because we stopped drilling when prices went down.

Mr. Hawk added that Idaho utilities are very good. Intermountain Gas Company is probably the most innovative gas utility in the western United States. Pacificorp has resources and is trying to do something about their interjurisdictional confusion between states. Idaho has four utilities: Idaho Power; Avista; Pacificorp; and Intermountain Gas that do listen to customers and are trying to put things together.

It is bad public policy to use natural gas to fire electric power plants. Public policy needs to make a statement that we discontinue using natural gas to generate electricity. In terms of projects in the future, the Simplot Company does not support any more natural gas fired, combined cycle combustion turbines. There is just not the gas available.

Mr. Hawk stated that as a legislature, Idaho needs to do what it can to get the Alaska Pipeline going. There is 4 to 6 billion cubic feet per day of gas available in Alaska. It will take about seven years to get the Alaskan Pipeline up and running.

In closing, **Mr. Hawk** reiterated that there is a natural gas crisis and prices could go to \$9.00 this winter. This crisis will last at least four years and may last longer. Demand destruction is the closing of potato plants, fertilizer plants, vegetable processing facilities and manufacturing facilities and the movement of these off shore. It is shame that the industry has to rely on demand destruction in order to have enough supply.

In **Mr. Hawk's** opinion, it is extremely important that Congress keep PURPA and that people need to be given incentives to begin drilling and to allow more companies to be creative that will do drilling. Oil companies can make money when gas is \$3.50 to \$4.50 and \$23.00 to \$25.00 a barrel for oil. The current price for a barrel of oil is \$31.00 for July and \$6.56 for natural gas.

The next speakers included **Congressman Butch Otter, Arlen Lancaster from Senator Mike Crapo's office and Mr. Jeremy Meadows, NCSL** on a conference call to discuss the energy bill that is being considered in Congress.

Representative Otter began by going over what was passed in the House of Representatives regarding their energy bill. **Representative Otter** is on the Energy and Commerce Committee and he stated that the bill this year is not very much different from that passed last year. He stated that over the next 20 years, energy consumption in the United States will almost double and this is of great concern. They feel this bill provides a good foundation for strengthening the national security because the less dependent we are on foreign oil or energy sources the better.

The Vice President and his group stated that conservation is very important to the issue of energy usage because if you do not use the energy, you do not have to produce it. About 30% of this bill

is dedicated to research and development and conservation in terms of incentives for more efficient homes, appliances and so on.

The House energy bill allows drilling in the Arctic National Wildlife Refuge in Alaska. This is a relatively small area of 2,000 acres within the 19.6 million total acres of refuge. It is a very small imprint on this area but it is huge in terms of what it can do to displace the United States dependence on foreign oil. There is also tremendous incentive for research and development of nuclear power. **Representative Otter** stated that many members of the subcommittee are convinced the nuclear power is going to be the clean, inexhaustible source of energy for the future.

There is also a provision in the bill to incentivize FERC to move with more haste in relicensing hydro electric dams and other electric producing facilities. It also includes and added dimension on nuclear facilities.

In order to protect consumers from unfair pricing, the bill includes a modernizing of electrical infrastructure. This is due to what happened in California.

Representative Otter added that many people are rightfully concerned about the energy title but he and Representative Walden from Oregon were able to make sure this title recognizes regional differences in the United States. This is to ensure that there will not be a cookie cutter approach to things such as regional transmission authorities or standard market design.

Mr. Arlen Lancaster, Senator Crapo's Office, stated that the Senate has taken up the energy bill in fits and starts. Discussion was started again the week of June 4 with an Ethanol amendment and two second degree amendments that were disposed of. Unfortunately, a third amendment on tax policy caused people to back off on discussion of the energy bill. There is a request that has been sent to the floor limiting first degree amendments to the bill and to have them all filed by the end of this week. If that is objected to, it will slow things down considerably. There will be a number of amendments offered including the electricity title and standard market design to ethanol to nuclear energy. The status is unclear when the bill will be finished. There is a big push to get the bill to conference before the end of this year.

Representative Smylie asked where the United States stands regarding GATS and how that could possibly affect local regulation of energy production and many other issues in which the states are involved. This question is regarding comments that were discussed by **Mr. Meadows** earlier. **Mr. Lancaster** said that it is important that Congress recognizes the regional differences of the United States. In his opinion, the message has been delivered and it has been heard. **Senator Noh** clarified that the concern regarding GATS is due to the fact that it appears that proposals from USTR have the direct potential to eliminate the states abilities to regulate electrical energy such as the ability to keep our inexpensive hydro power in the west. He added that there is a sense that Congress, as well as Governors, need to brought up to speed in this area.

Representative Smylie said that many people that work at the Simplot plant in Pocatello have voiced concern to him about the future of their jobs. Especially as they relate to energy prices and the fact that so many natural resources are going overseas. **Representative Otter**

commented that the House Energy Bill, as well as some issues that the natural resource committee is dealing with, is trying to make available more public lands for development and exploration of natural gas supplies. Without new supply coming on line and the development of gas fields themselves, the price of natural gas will continue to rise. **Mr. Lancaster** added that there is also a push to get the administration to streamline its permitting process. The delay that is taking place to get permits approved for exploration and development is a problem. In addition to that, the energy bill includes many incentives for the use and development of new technologies.

Senator Stennett asked what impact the issue of a single point of contact that the GATS negotiations seem to be moving toward and the idea of the authority for regulation of energy being centered in FERC would have on Idaho. He also asked if that was part of the Vice President's Task Force recommendation. **Representative Otter** stated that he did not know if this was part of the task force's recommendation. As far as FERC authority goes, they have tried to maintain as much state and region rights as possible.

Senator Stegner stated that last year this committee looked at what the state could do to encourage alternative energy production. The sources of energy looked at were primarily renewable sources such as wind, geothermal and anaerobic digesters. The committee has taken the approach of offering incentives rather than renewable portfolio standards, as other states have done. Renewable portfolio standards, in the committee's opinion, are really mandates. One of the things considered was a state mandated premium for alternative energy sources above the avoided costs of the utility. This would be a premium the utility would have to pay to a new energy source under contract for a period of time. It has been brought to their attention that the federal government and FERC, through energy policy and PURPA laws, have preempted and have preemption rights on whether incentives can be offered for alternative energy. This information is based on rulings from the FERC on the federal PURPA law and were brought to the committee's attention by Idaho Power Company. **Representative Otter** said that the House Energy Bill changes PURPA substantially and repealed PECHA so this may solve some of these problems. He added that he would send copies of that bill language to the committee for review. **Senator Stegner** commented that the state would like to have the opportunity to be able to make the decision to offer incentives of this sort. **Mr. Lancaster** clarified that the Senate version of the bill repeals the mandatory purchase requirements and he will get more information from Senator Crapo about where the PURPA language is that is creating the problem.

Senator Noh commented on **Mr. Hawk's** statement that the greatest impediment to energy development in the United States has to do with the fact that we have ignored the responsible application of anti trust laws and have allowed companies to restrict production and raise prices in the short run for the benefit of stockholders. He asked if Congress has expressed any interest in pursuing this issue. **Representative Otter** answered yes, they are interested in this. One of the reasons for this is because **Mr. Hawk's** input in to the energy issues that Congress is working on. **Representative Otter** clarified that **Senator Noh's** use of the word "allowed" really should be that government rules, regulations and decisions "forced" these companies together. Government permits today are very expensive.

Representative Eskridge switched the emphasis of the discussion to the GAO paper on increasing the charges for land involved with hydro production and asked for comments.

Representative Otter answered that this is very important to Idaho because about 60% of our energy is produced on these reservoirs. It is not likely they will get the higher fees because there is a lot more involved and they have not looked at the entire picture. **Mr. Lancaster** added that there is widespread concern with GAO methods and what data was used for this report.

Representative Eskridge asked that having lived through the Washington Public Power Supply System nuclear projects, why is there such a renewed emphasis on nuclear power today.

Representative Otter said the high price of natural gas has a lot to do with it. He also stated improvements in technology and storage are making nuclear energy much more attractive than it was in the past.

In response to a question from **Senator Stennett**, **Representative Otter** stated that he does not totally agree with the statement that GATS agreements are without oversight or approval from Congress. Currently, the USTR is trying to get Congress to agree with a proposal to Chile and a free trade agreement with Singapore. Under permanent trading authority, each of those agreements has to come back to Congress and they either accept or reject the agreements. They cannot alter or modify them.

The committee readjusted at 1:00 p.m and began a discussion of renewable energy resources and what direction they want to take. **Mr. Nugent** stated that an energy working group met in March that included PUC members and people from power suppliers to discuss digesters and wind power. During this meeting, PUC Commissioner Paul Kjellander stated that he felt there needed to be a proven technology regarding anaerobic digesters before incentives are given. They suggested a pilot project would be appropriate using state, private and federal money. These projects would involve dairies and hog farms. There was also a suggestion of getting INEEL involved due to their techno-engineering expertise that could be used to develop a workable design. Housing the money received in the Energy Division in the Department of Water Resources was discussed as the logical place to put it and to begin a grant program.

Unlike digesters, wind power technology has been proven to produce electric energy. The big issues is whether the power is firm or nonfirm with the utility. Electricity from wind power may be firm for Utah Power and Light but nonfirm for Idaho Power purposes. **Mr. Nugent** defined firm as meaning uninterruptable. Nonfirm power could be interrupted or taken offline. Some pumpers and industrial loads use nonfirm power because it is cheaper. **Senator Stegner** clarified that firm power, in terms of being noninterruptable, has a higher value. It is worth more money because the utilities have to have a reliable source of energy. Wind power is generally thought to be nonfirm and consequently its intrinsic value is less than a coal fired generator that produces energy regardless of the weather. This does not necessarily mean that Idaho is going to gather any economic presumptions about wind power. There are other reasons to develop wind power that could make up the economic difference of firm and nonfirm power.

Mr. Nugent continued regarding the incentives to develop alternative energy sources that were discussed earlier and that the state was prohibited from providing an incentive above the avoided costs. Incentives discussed included tax deductions, exemptions, deed of property, sales, income,

length of contract and issuance of bonds. There was a concern amongst the group that the avoided cost, especially in Idaho, may not be enough for developers to make wind power economically viable. Another incentive that was discussed revolved around the siting of these facilities.

Representative Smylie asked how successful other states have been in offering alternative power to customers by adding a small surcharge to their bill. **Mr. Nugent** answered that generally in other states, the green power option was part of those states electric restructuring plan. This was done by adding into the law a requirement that utilities have a certain percentage of green power by a certain date. By doing this, people could subscribe to receive part of their power from these sources. These programs have not been that successful.

Senator Stegner clarified that last year this committee considered legislation to present to the full legislature during the last session. They decided not to move forward with that. The essence of those pieces of legislation was:

1. It would be declared state policy of the state of Idaho to encourage renewable energy development without using any mandates.
2. Idaho wanted an incentive based approach to satisfy the growing demands for green power.

Idaho does have a green power option offered by utilities but the green power is not produced in Idaho so we do not get the monetary benefits. Producing that green power within the state would allow us to keep that money within the state and would encourage the economic development of our rural areas. This has many advantages

- It increases our tax base, particularly the property tax base for local governments
- It increases job creation in a number of potentially depressed areas
- It diversifies that state's energy production sources

The approach that these two bills took was to encourage development by spreading the cost of development/incentive over as broad a base as possible. This was divided into two general areas:

1. The general taxpayers of Idaho. They would participate by offering an investment tax credit to the developers.
2. In essence to tax the consumers of the utility that would be purchasing the power using the 1 cent per kilowatt hour over the avoided cost. Why should these consumers have to participate? It was felt that they will be the ones who eventually get the long term benefit from the projects.

There is the question of whether this approach is legal. The federal government may not allow this second option of charging over the avoided cost.

Mr. Doug Glaspey, Idaho Geothermal, stated that Idaho Power has a voluntary green tag program in effect. It is a voluntary program and for a contractor to finance the capital to build a plant, they need a firm contract with someone to buy your power. If you rely on voluntary green

tags, they are not considered a firm contract. Financing is a very real concern and that is why PURPA and/or some sort of power purchase agreement are essential for small developers to be able to get a project off the ground.

Senator Noh said that in Nevada, near the Idaho border, Sierra Pacific is putting a large investment into an experimental wind power operation with Idaho citizens that have grazing operations and private land in Nevada. On the Idaho side, there is an equal amount of interest and same type of wind pattern from local property owners. He asked if it is legal and feasible under the rules for our state citizens to generate wind power in Idaho and to sell it to a utility in another state that might have more favorable avoided costs. **Senator Stegner** said that he is not aware of any restriction to this under the current law. **Representative Eskridge** stated that in his opinion, outside of transmission restrictions, they would be free to market that power wherever they can find a transmission path. **Bill Eastlake** from the PUC agreed. **Mr. Glaspey** added that Nevada has renewable portfolio standards so Idaho citizens can bid to them to provide part of their green power. **Mr. Ron Williams** stated that Idaho follows federal PURPA statute and that any Idaho utility has to purchase PURPA qualifying facility energy whether it is in state or out of state.

Mr. Codr, Payette County Commissioner, commented that Minnesota has a really effective system of wind power. He suggested talking to them about what types of incentives they offer because it seems to be working. Green power does not work in Idaho because we do not offer any incentives and there are too many restrictions. He added that their cost of energy is about the same as Idaho.

Mr. Mike Hecker, Director of Marketing and Development for Windland, Inc., and the project manager for developing the first commercial windfarm in Idaho, stated that the questions that have been asked today are things he thinks of daily. He offered to present information to the committee explaining the current costs for developing and producing electricity via wind power. There have been substantial technological developments over the recent past. There are multiple sites in Idaho that offer excellent wind energy resources. These sites can produce power that, they believe, after adjustments are made for variability and future prices of natural gas, are a lower cost source of electricity than the alternatives that are available. If these sites were developed, they would provide tens of millions of dollars of economic benefit to many rural counties in the state. There are also opportunities for meeting our short term load growth that could provide economic benefits and protect rate payers.

Mr. Bob Ford, Senator Crapo's Office, commented that renewable fuels projects have become more popular. He reminded the committee not to forget geothermal and biofuels when looking at renewable energy sources. Regarding anaerobic digesters, **Mr. Ford** said that digesters are a proven technology and they are in place all over the world. It is an adaptation of the technology to a specific site that is the issue, not the technology. Digesters are not a particularly good way to generate electricity, in his opinion. They are probably a good way to handle CAFO or dairy waste management and odor control. Animal waste is far down the list as to the amount of methane it will produce. To use an anaerobic digester to generate electricity, you need to import other feedstocks such as slaughterhouse waste. There are some digesters that do this in Europe that are able to pay their own way. They would still like to put a few pilot projects in place to see

how they actually work. **Mr. Ford** said that the Energy Division of the Department of Water Resources has had an anaerobic digester program for a few years. Working with Mike Fields, **Senator Crapo's** office sponsored a workshop in the Magic Valley regarding the energy title of the farm bill that provides some funding for a wide range of renewable energy development projects. In **Mr. Ford's** opinion, there will be possible two projects come in with proposals under this program.

Mr. Ford stated that Senator Crapo is very interested in ethanol as a form of energy. The Senator will be in Twin Falls later this month to conduct a discussion of ethanol and what it has to offer.

The Senator's office has been contacted repeatedly by different entities looking to use biomass for some type of energy development. Use of forest trimmings is of particular interest and with the President's healthy forest initiative, at some point down the road, they are hoping these developments will begin to make sense. Currently, based on studies done by the University of Idaho, it is not particularly viable to haul those trimmings very far to make this work. If the economics of this change and additional funds are made available, this could make sense.

Senator Stegner said that he agreed that the purpose of the pilot digester project is not to prove that the technology works. In his opinion, there seems to be a need for pilot projects as demonstration projects that would allow the state to learn a lot about the economics, cost of construction, output and so on that could lead to a solution to general animal odor problems associated with dairies and CAFOs. He asked what this committee or the Idaho legislature do to encourage these projects. **Mr. Ford** answered that a general statement supporting renewable energy is a good starting point. Another option would be to work with the federal delegation to find creative uses of federal funds for alternative energy projects. Under the USDA Environmental Quality Improvement Program (EQIP) projects can be funded up to \$450,000 per project for the life of the farm bill. For digesters the cap is set at \$50,000. There are other EQIP type incentives available that the state tried to get this year but did not.

In a meeting with the Farm Bureau, **Mr. Ford** learned that there is an animal production company looking for someone to build an anaerobic digester to provide them methane to burn for raw heat. So there may be other more creative ways to promote digester development. Once the dairy owners see that this makes sense, reduces overhead and operating costs, provides lower on-site power costs, helps with odor management and so on, more and more of them will sign on.

Representative Eskridge asked if the committee wants to issue a renewable energy policy and if so, how do we do it. **Senator Stegner** said that he has interest in developing state policy on renewable energy. Due to the limited number of meetings allows the full committee, he suggested forming a smaller subcommittee to develop a draft piece of legislation for consideration at a later date by the full committee.

Representative Stevenson stated that net metering always seems to tie into renewable energy. He asked how many people are signing up for net metering projects. **Mr. Eastlake, PUC,** answered that all three utilities in Idaho have net metering programs in place. He pointed out that most people that use net metering only produce enough power for their own needs. The net

metering tariffs in Idaho place a limit at about 1/10 of 1% of the company's demand. There would have to be a significant change in the net metering program in order for it to amount to a significant amount of megawatts. **Representative Stevenson** said that most of the people he has talked to with anaerobic digesters are small operations that don't produce enough energy to be viable as a business but they are too big to qualify for net metering. He asked if the state should be focusing on commercial renewable operations or small mom and pop operations. **Senator Stegner** answered that in the language of the bills drafted last year there was a proposal for net metering that was similar to Idaho Power's net metering program. Given that trend, it would seem that promoting net metering as written would not be helpful. If there is a demand or need for the state to be more involved in net metering, he is unaware of it.

Senator Stegner suggested that the committee do the following:

1. Encourage pilot digester projects.
2. Develop an investment tax credit incentive for a term long enough to be reliable to those making the investments.
3. Track the federal issue to see if the state is allowed to issue incentives and once that is resolved, develop an incentive based alternative energy development program.

Mr. Bill Eddie, Board of Directors NW Energy Coalition, stated that his organization is interested in promoting clean energy in Idaho for the same reasons that have been discussed today. He echoed the comments of **Mr. Ford** regarding anaerobic digesters. In his opinion, these digesters are a fantastic way for the legislature to show leadership on conflict resolution in the Magic Valley. A technological fix that has economic benefits is a win-win solution for everyone.

In the net metering area, he was involved in the statute that was presented before the Senate State Affairs committee last year. One reason this was turned back was because it was felt that the PUC had not completed its work on the subject yet. Idaho Power was developing its own net metering tariff at the time, Pacificorp now has proposed one that should be approved shortly. The problem with these tariffs is that they cap the net metering opportunity at 100 kilowatts. For most methane digesters and large irrigators that want to install wind turbines, 100 kilowatts does not go very far. To have statewide guidance to the PUC or statewide requirement from the legislature would be advantageous.

Mr. Eddie proposed the following options regarding incentives for alternative power:

- Oregon has a program called the Business Energy Tax Credit. This allows businesses to obtain a 35% tax credit or 35% of the cost of the installation of a renewable energy system or energy efficiency system. This program also has a pass through option.
- An exemption on sales tax for renewable energy equipment. This would mean a 6% incentive to developers.

Both of these options are intended to avoid direct impact to the state budget. To build economic development without appropriation from the state.

Mr. Eddie said that this is one side of the equation. While encouraging developers to build, we also need to encourage utilities to buy the alternative power.

It was agreed that a subcommittee would be formed to work on draft legislation that consisted of Cochairman Representative Eskridge, Cochairman Senator Hill, Senator Stegner, Senator Stennett and Representative Stevenson. **Senator Noh** suggested they contact Senator Gannon because he has many large dairies in his area.

Representative Eskridge suggested that due to the limited number of meetings allowed the committee this year, the subcommittee meet and decide when the next meeting will be necessary.

Senator Noh suggested that the cochairmen meet with the Governor regarding the GATS information that was discussed today. **Senator Stennett** agreed with that suggestion and said he would like someone to keep the committee up to date on that GATS and FERC issues.

Representative Stevenson reminded the committee that no one thought GATT was going any place and it slipped through and now controls what they can or cannot do in agriculture. He cautioned not letting that happen with GATS and suggested keeping pressure on Congress and USTR. **Representative Smylie** suggested sending a letter to our congressional delegation and to the Governor asking for follow up on these issues. **Representative Eskridge** asked **Mr. Nugent** to draft such a letter. **Senator Noh** suggested trying to raise public awareness of this issue as well.

The meeting was adjourned at 2:30 p.m.