

Committee Minutes:

Committee on Energy

House Majority Caucus Room

State Capitol, Boise, Idaho

January 15, 2004

4:00 p.m.

The meeting was called to order by Cochairman Representative George Eskridge at 4:00 p.m. after being postponed for one hour. Other committee members present included Cochairman Senator Brent Hill, Senator Joe Stegner, Senator Sheila Sorenson, Senator Clint Stennett, Representative Bert Stevenson, Representative Maxine Bell, Representative Steve Smylie and Representative Charles Cuddy.

Others present were Doug Glaspey, U.S. Geothermal Inc.; Justine Hayes, Idaho Conservation League; Daniel G. Chadwick and Maggie Mahoney, Idaho Assoc. Of Counties; Neil Colwell and Paul Anderson, Avista Corp.; Bill Eddie, Advocates for the West; Jenna Borovansky, Idaho Rivers United; Richard Urguidi and Ron Swearinger; City of Mountain Home; Ron Williams, Assoc. Of Idaho Cities/Idaho Consumer Owned Utilities; Russ Hendricks, Farm Bureau; Brian Jackson, Renaissance Engineering and Design; Peter Richardson, Industrial Customer of Idaho Power; Michael Heckler, Windland, Inc.; Representative Pete Neilsen, District 22; Mark Schroeder, Farmer; David Hawk, JR Simplot Co.; Kevin Stott, Harvesting Clean Energy Network; Russell Westerberg, PacifiCorp; Bob Hoppie, Idaho Energy Division; Leon Duce, Assoc. Of Idaho Cities; John Prescott and Rich Hahn, Idaho Power Co.; and Ted Spangler, State Tax Commission. Staff members present were Mike Nugent and Toni Hobbs.

After approval of the minutes from the October 28, 2003 meeting, **Representative Eskridge** introduced **Commissioner Paul Kjellander, PUC**, to discuss a report detailing Idaho's avoided cost rates and the impacts of increasing PURPA project size and contract length. This report is available at www2.state.id.us/legislat/legislat.html under the Energy Interim Committee section.

Mr. Kjellander stated that Idaho has the one of the most attractive avoided cost structures in the Northwest. Idaho's 10 megawatts project size with a maximum contract term of 20 years is the largest project size in the area. Most of the project sizes in surrounding states are closer to the one megawatt range. As a result of Idaho being the most attractive state with regard to its avoided cost rate structure, 15% of all of Idaho Power's qualified facility (QF) purchased today

are from out of state projects. This shows that Idaho is thought to be a good place to go to take advantage of PURPA contracts and it is very difficult to have only Idaho based projects with regard to PURPA.

In response to a question from **Representative Cuddy**, **Mr. Kjellander** stated that there is less of a financial incentive offered for nonfirm energy.

Representative Stevenson said that he understood that there was not a limit on the size of wind projects under PURPA. He added that, if this was true, he has concerns that large producers would come to Idaho to receive the tax incentives. **Mr. Kjellander** said that he has not seen the final report on this issue but that he would get the answer in writing for the committee.

Mr. Mike Nugent, Legislative Services Office, spoke to the committee on draft MPN508 dealing with renewable energy incentives. This is available at www2.state.id.us/legislat/legislat.html. He explained that this draft offers an income tax credit for capital investment for development of qualified alternative energy generation equipment. If the project qualifies, it would be eligible to receive a 3% investment tax credit for qualified investments. This legislation also offers an additional 3% income tax credit for qualified expenditures in qualified alternative energy generation equipment in Idaho. This section has a five year sunset date. Qualified alternative energy equipment is defined in this section. It also states that any property not primarily used to provide energy in Idaho is not qualified alternative energy equipment. If a project was used to ship energy out of Idaho, it would not qualify for the credit. **Mr. Nugent** continued that this draft includes transferability and there is some question of if the committee wants to allow transferability of these tax credits. Also, if the investment made in alternative energy equipment is located in certain counties an additional 2% credit is allowed similar to what is allowed in the Broadband Tax Credit statute.

Senator Noh asked what the term low impact hydro includes. **Representative Eskridge** stated that the concept at the last meeting was that low impact hydro only includes hydro systems located within canals and the intention is to make that is specifically defined in the legislation.

Representative Stevenson asked if subsection (c) on page 4 that states: "Any property not primarily used to provide energy in Idaho is not qualified alternative energy generation equipment.", means that the energy has to be made in Idaho and distributed in Idaho. **Mr. Nugent** said that the intent was that the energy be consumed in Idaho. **Representative Stevenson** asked how this would affect a utility in Idaho that was forced to buy the energy and if they would be forced to use the energy in Idaho even if there was more energy produced than was needed. **Representative Eskridge** commented that in his opinion, the intent was that the facility be located in Idaho but that the energy did not necessarily need to be consumed only in Idaho. **Senator Noh** said that the term "primarily used in Idaho" would exclude a facility or property that was intended to solely export power out of the state. **Mr. Nugent** said that was correct. Since this is a tax credit, a facility or project will have to certify that the primary use of the energy will be in Idaho. **Representative Cuddy** suggested changing "provide" to "generate". **Senator Noh** cautioned that this would open the door to a company coming into Idaho to strictly export energy. **Representative Smylie** stated that it is his understanding that once power goes into the grid, it is distributed wherever there is a need for it. There is no way to identify where

the power actually goes. On the other hand, he would like to encourage production of more energy capacity within the state of Idaho for the state of Idaho to encourage economic development. Due to this fact, he would like to see language maintained that would make sure that if a tax credit is offered, it is for the benefit of Idaho citizens. **John Prescott, Idaho Power Company**, agreed that when energy enters the power grid, there is no way to identify where it goes. Where it goes is all done by contract. If the intent is to encourage the development for the state of Idaho, the energy could be an export commodity that goes out of the state but brings revenue into the state. **Senator Noh** asked how revenue would be generated for the state of Idaho if an out of state company builds the plant and exports the energy. **Mr. Prescott** said in that case the only value would be in the number of people the plant employs.

Representative Eskridge, in response to a question from **Representative Bell**, stated that, in his opinion, the intent was to provide an incentive for renewable energy development within the state without a large concern as to where the energy was going. The renewable energy projects were looked at as economic development possibilities. **Representative Bell** said that the use of the word "primarily" in subsection (c) is a very mild word and really says "we hope" this is where the energy will be used. **Mr. Nugent** commented that this is the same language that is in the Broadband Tax Credit statute.

Mr. David Hawk, JR Simplot Company, suggested wording as follows:

- Any property not primarily used to generate power in Idaho for sale to an Idaho end user and/or utility who delivers power to and makes sales to Idaho customers.

Mr. Hawk continued that PURPA or avoided cost contracts are available to everyone in the state and this legislation is trying to make renewable energy more attractive to investors. Currently, if someone decides to build a project in Idaho, they can do so and move that power anywhere they want to. **Representative Stevenson** said this legislation is not limited to a PURPA contract, this is for anyone who generates power. **Representative Eskridge** agreed and stated that this is a tax incentive for the development of renewable resources outside of PURPA. PURPA already provides it's own incentives. **Senator Stegner** continued that one specific reason this legislation is being considered is to diversify the state's utility supply. Job creation and property tax base creation are other reasons. He added that it would be very difficult to require that the energy be consumed within the state of Idaho. If this type of tax credit is granted to these facilities and these facilities sell to any of the energy distributing utilities in the state, that benefits Idaho citizens. **Senator Noh** said that he would be in favor of using the language Mr. Hawk suggested. **Representative Eskridge** said that in his opinion, this language would be restrictive to the ability of a new developer to market power wherever possible. **Senator Hill** asked if this language, by virtue of who the sale is made to, limits projects back to PURPA contracts thus limiting the size of wind power projects and such. **Mr. Hawk** said that other language could be added stating this is for projects not seeking PURPA recognition.

Senator Stegner suggested eliminating subsection (c) altogether. **Senator Hill** agreed and said that is essentially what the above suggestion does also. If (c) is eliminated, the project would still be required to be located in Idaho. This language is in subsection (1) of this section.

- **Senator Noh moved to adopt language in subsection (c) of section 63-3029Q saying that power be generated in Idaho, need not be a PURPA contract, and that power should be marketed as Mr. Hawk outlined, to Idaho customers or to utilities in Idaho that do market power to Idaho customers.**
- **Senator Stennett seconded the motion.**
- **Senator Stegner made a substitute motion the subsection (c) in section 63-3029Q be eliminated from the legislation.**
- **Senator Hill seconded the substitute motion.**

Representative Stevenson stated that he sees very little value in subsection (c) even with the rewording and that it just clouds the issue. **Representative Eskridge** added that in his opinion, leaving the language in restricts the incentive for a developer to locate a project in Idaho.

Senator Noh argued that most projects of this type have only a one time capital construction cost and minimal maintenance thereafter. While they would pay property tax in Idaho, the idea of giving tax credits would be more saleable to Idaho citizens by stating that the benefits of this energy would be staying in the state.

The substitute motion carried by voice vote.

Mr. Nugent, in response to a question from **Senator Stegner**, clarified that cogeneration facilities are not included in the tax credit legislation unless they qualifies as a biomass, waste, renewable resources including, but not limited to, solar, wind, low-impact hydro, pumped storage or geothermal project.

Representative Eskridge commented that the intent of the committee was not to allow any transferability but this draft legislation has included it. He asked for discussion from committee members on this issue. He continued that leaving transferability in the legislation would give the publicly owned utilities some incentive to pursue these projects. **Representative Stevenson** stated that some of these projects are very small "mom and pop" operations that would probably not be able to use all of their tax credits. Being able to transfer or sell those to other entities, gives them more incentive to invest. **Representative Eskridge** reminded the committee that there is a cap on the credit allowed. **Senator Hill** asked that if credits are transferred, the language needs to clarify that the cap is for the specific project, not the taxpayer. **Mr. Nugent** said that he would get the tax commission's approval on this language for the final draft of the legislation.

- **Senator Stegner made a motion that transferability be struck from the draft legislation.**
- **Senator Noh seconded the motion.**
- **The motion carried on a roll call vote 6 ayes, 4 nays.**

Mr. Nugent continued with discussion of MPN514 that provides an income tax credit for alternative energy generation. This is available at www2.state.id.us/legislat/legislat.html. He stated that language requiring projects built after January 1, 2004 needs to be added as discussed at the last meeting. The specific definition of low impact hydro would also be added.

Mr. Nugent continued that the Federal Energy Bill had an alternative energy generation component in it but when Congress did not agree on an energy bill, the federal energy credit went away also because of a sunset clause.

This legislation provides a credit of ½ cent per kilowatt hour credit of electric energy generated by a taxpayer by alternative methods. The electricity has to be generated in Idaho to qualify and includes energy generated from biomass, waste, renewable resources including, but not limited to, solar, wind, low-impact hydro and pumped storage, geothermal resources, co-generation or any combination thereof. The committee decided to add a five year sunset date to this legislation.

In response to a question from **Senator Hill**, **Mr. Nugent** stated that this credit only applies to alternative energy generation and would an estimate based on an assumption of what would be put on line after January 1, 2004. **Representative Smylie** said that the committee needs to have a better understanding of the fiscal impact of this legislation before proceeding with a recommendation. **Representative Eskridge** requested a fiscal impact statement be presented with the revised legislation at the next meeting. **Mr. Hawk** stated that a five megawatt plant would receive \$180,000 tax credit per year.

Senator Stennett asked if the five year sunset date would affect a company's decision to build a project. **Mr. Hawk** said that a ten year sunset date would be more favorable because most plants have a five year payback period.

- **Senator Noh moved that this legislation be rewritten as suggested for review at a later date.**
- **Senator Stevenson seconded.**
- **The motion carried by voice vote.**

Mr. Ron Williams was introduced to discuss **RS13657** dealing with assessment of operating property. He stated that he was representing the Association of Idaho Cities on this issue and that the Idaho Consumer Owned Utilities Association fully supports the legislation.

The purpose of this legislation is to bring balance of both the burdens and the benefits of electric generating resources in the state. The burdens associated with electric generating resources on a community include air quality issues, noise issues and development issues.

In Mountain Home, the city welcomed a nonutility generating asset into its industrial park with the expectation that there would be property tax revenues from the generating plant going to the city. In turn, the city committed to provide the site, municipal water and sewer service, fire and police protection, to construct roads and so on. In the course of events, this particular plant is now going to be turned over to Idaho Power. Once this takes place, the city is left with all of the burdens without any benefits.

This legislation says that for purposes of newly constructed generating equipment within city limits used in conjunction with the generating of electricity using natural gas, the property tax revenues will be apportioned based on the physical location of the power plant rather than the physical location of the utility's transmission lines. It simply redirects the property tax revenues to the people that are being impacted by the power plant itself. The legislation is limited to power plants within city limits because there are many instances where it has been the city that has experience these problems. Also, if it were not limited to city limits it could have too broad of a consequence.

Senator Stegner asked why the legislation is limited to natural gas plants. **Mr. Williams** stated that there is a difference in looking at a small peaking unit that needs to be located next to a load center compared to a larger coal plant that is located out in the desert. If larger 500 megawatt coal plants are included, it could change the current state policy regarding property taxes on electric generating facilities.

Representative Stevenson said that one reason this legislation was drafted was due to a presentation at the Association of Idaho Cities conference. This presentation showed the burden on cities when electric plants are placed in cities.

In response to a question from **Senator Stegner**, **Mr. Williams** answered that if a power plant was located in a county, this legislation would have no effect. If a plant is located in a city, the county would still receive substantial property tax revenue due to a tax levy that would apply to the location.

Mr. Paul Anderson, Avista Corporation spoke to the committee in favor of the RS13657. He explained that Avista's service area is growing, as well as their load growth and that they need to build new generation plants. Avista would very much like to build these new generation plants within city limits because of the services that are given by cities. Currently, there is a disincentive for cities to welcome utility generating plants if they are a regulated utility. If it is a merchant plant that builds within city limits, taxes are allocated just like any other business or manufacturing plant would be. If it is regulated utility plant, the taxes are allocated by transmission line mile within the taxing entities of a particular county. In this case the number of transmission lines within a city's boundary makes a huge difference. If the city does not have much transmission line, it does not receive much benefit from the taxes.

From an equity standpoint the countywide line mile allocation seems pretty unfair to the host city. The host city is obligated to provide water, sewer, fire and police protection, roads, snow removal and so on. The host city residents also have to put up with a large generating facility that is noisy, uses a lot of water, has air emission issues and major overhead transmission lines. Under existing allocation, the city residents get very little benefit.

Mr. Anderson used the example of the City of Rathdrum. When Avista decided to build a generating plant within Rathdrum's city limits. It was a \$60 million investment and the city was excited by the significant property tax revenue it would receive. As the project went forward, it was discovered that there was central assessment and reallocation of the property tax throughout the county. It turned out the Rathdrum would have only received about \$6,000 a year in property

taxes off of this \$60 million investment. Other nearby cities would have received much more than Rathdrum. Once this was discovered, Rathdrum was not as excited about locating the plant within its boundary. Avista agreed and negotiated a municipal development agreement with the city that gave them the amount of tax it would have received from a manufacturing plant. Over a twenty year period, Avista is paying Rathdrum \$3.6 million.

Avista supports this legislation and thinks that the way of reallocating taxes presented in it is good for cities as well as utilities. Discussions with neighboring cities showed support for this legislation because they realize that if a plant was built in their community, they would also receive the same benefits.

Representative Pete Neilsen, District 22-Mountain Home, also spoke in favor of the legislation. As a resident of Mountain Home, he went through the process of establishing a gas fired plant in the city. He agreed with what **Mr. Anderson** stated above. There were many objections to the plant being built. Tax incentives to the cities are the only way these types of plants will get built.

Senator Stegner asked if utilities located in a city would pay a different property tax rate than other commercial or industrial businesses within that city. **Mr. Ted Spangler, State Tax Commission**, answered that what gets apportioned is the value. Currently the value is spread across the county and is subjected to different tax rates depending on where that value is apportioned. Under this legislation, all of the value would be brought together and focused in the city. It would then be subject to the property tax rate of the city (which is usually higher than the county) and would be paying the same rate as other businesses. **Mr. Spangler** continued that in the case of an electric utility, as opposed to other centrally assessed properties like railroads and telephones, the value is captured within the county. There is a different per mile rate in each county for electric utilities. It is apportioned from where the generating plant is throughout the county. This legislation would put the value just at the location of the plant within the city. A single plant would not be apportioned beyond a county boundary.

Mr. Dan Chadwick, Idaho Association of Counties, stated that his organization also supports the concept presented in this legislation but they would like more time to review it. In response to a question that was asked earlier, **Mr. Chadwick** said that in his opinion, there is no difference between a plant sitting inside a city or outside the city in the county. The same conditions apply. Police and fire protection, water, sewer, roads and snow removal still need to be provided. He added that if a plant was build outside of a city boundary if it is in an area of impact, it would be subject to annexation.

Mr. Richard Urquidi, President of the Mountain Home City Council, explained more in depth what **Mr. Williams** discussed earlier regarding the city of Mountain Home. The company, Mountain View Power decided to pursue a site within Mountain Home's industrial park for the following reasons:

- Mountain Home has a very low fire insurance rating
- Water is available
- Sewer is available

In March, 2001, the company applied for a conditional use permit that was approved on July 23, 2001. The city was excited by the chance to have an increase in the property tax base and along with other cities supported House Bill 582 that would allow privately constructed power generation facilities to be treated as new construction instead of being centrally allocated. This bill became law in 2002.

In the first quarter of 2003, Mountain View Power had an opportunity to respond to an RFP for the Idaho Power Company that required an amendment to the conditional use permit. This amendment was to increase the allowable capacity from 130 megawatts to 160 megawatts. This was approved in February 2003. In September, Idaho Power decided that it was in their best interest to own the facility and this took place. Since the power plant would now be owned by a publicly regulated utility, the property taxes Mountain Home hoped to gain would be greatly reduced. This proposed legislation would stop this from happening in the future and cities would be able to realize the benefits of property tax revenue from power generating facilities built inside their boundaries.

Neil Colwell, Avista Corporation, commented that while Avista supports the concept of this legislation, there are some technical issues with it. He cautioned that it needs to make clear that there is a distinction between replacement equipment and newly installed or constructed equipment.

Another issue is annexation. Language should be inserted that would prevent annexation of existing facilities if a minor expansion were to take place.

Mr. Colwell continued that the definition of what the equipment is used for needs to be more specific. The utility companies are concerned that this be focused on the generating facility, not on substations or existing transmission lines. He added that the source of electricity generation should not be limited to natural gas and could include alternative energy sources.

- **Senator Noh moved that this be revised for the committee to review at the next meeting**
- **Senator Stegner seconded the motion**
- **The motion carried unanimously on a voice vote.**

Representative Cuddy suggested that the committee draft a letter to the state of Washington regarding the use of water from the Columbia River for irrigation and stating Idaho's concern over how this will impact our water. **Senator Noh** suggested meeting with **Mr. Clive Strong, Deputy Attorney General**, for assistance with this matter. The committee agreed and a draft letter will be presented at the next meeting.

The meeting was adjourned at 6:30 p.m.