

## MINUTES

# HOUSE ENVIRONMENT, ENERGY, & TECHNOLOGY COMMITTEE

**DATE:** Tuesday, February 14, 2012

**TIME:** 1:30 P.M.

**PLACE:** Room EW41

**MEMBERS:** Chairman Raybould, Vice Chairman Harwood, Representative(s) Anderson, Eskridge, Hartgen, Simpson, Schaefer, Vander Woude, Block, DeMordaunt, Gibbs, Nielsen, Thompson, Smith(30), Jaquet, Cronin

**ABSENT/  
EXCUSED:** Rep. Nielsen

**GUESTS:** James McMillan, Jan Sylvester and Hubert Osborne, citizens; Marsha Smith and Paul Kjellander, Commissioners, Idaho Public Utilities Commission (IPUC); Randy Lobb, IPUC; Brenda Tominaga, Idaho Irrigation Pumpers Association; Toni Hardesty, Director, Department of Environmental Quality (DEQ); Matt Kaiserman, Gallatin Public Affairs; Neil Colwell and Larry LaBolle, Avista Corporation; Pat Barclay, Idaho Council on Industry and the Environment; Jane Wittmeyer, Wittmeyer and Associates; Will Hart, Executive Director, Idaho Consumer-Owned Utilities Association; Russell Westerberg, Rocky Mountain Power; Dave Goins, Idaho News Service; Elizabeth Criner, Northwest Food Processors Association/Simplot; Ben Otto, Idaho Conservation League; Dan Olberding, Idaho Potato Growers Association; Shelley Davis, Barber, Rosholt and Simpson

**Chairman Raybould** called the meeting to order at 1:30 p.m.

**MOTION:** **Rep. Smith (30)** made a motion to approve the minutes of the February 8, 2012 meeting. **Motion carried by voice vote.**

**Marsha Smith**, Public Utilities Commissioner, reported on the Public Utility Regulatory Policy Act (PURPA) of 1978. She explained that PURPA had both a federal and state role. The Federal Energy Regulatory Commission (FERC) administers the Act at the federal level with the IPUC administering locally.

In response to questions from the committee regarding public frustration with the over-ride power of FERC, **Commissioner Smith** stated that FERC had primary jurisdiction. She said private utilities are allowed to recover 100% of the amount paid to purchase energy from PURPA Qualifying Facilities.

**Commissioner Smith** explained that a Qualifying Facility (QF) can be a small-power production facility whose primary energy source is renewable (hydro, wind or solar), biomass, waste or geothermal resources. It can also be a cogeneration facility that sequentially produces electricity and another form of useful thermal energy (heat or steam) in a way that is more efficient than the separated production of both forms of energy. She also explained that the avoided cost is the cost that an electric utility, such as Idaho Power, avoids by not having to generate or buy from another source. The Surrogate Avoided Resource can be a coal-fired plant, a natural gas-fired plant, etc.

In response to questions from the committee, **Commissioner Smith** stated that if the facility is a QF, the electric utility has to buy the power. She explained that wheeling power occurs when a power project, such as a wind farm, wants to sell power to another utility. In that case, she stated, the developer has to pay the wheeling cost. In response to further questions, she stated that the ratepayer always has, factored into their rate, the prudently incurred utility costs. She also explained that in 2011 the Commission put a cap on the size of wind and solar projects that would qualify for the Commission-published, avoided cost rate. She stated that if the electric utility buys a PURPA contract, it is bound to buy at the contract rate and that the contract becomes more valuable if the market rate decreases.

**Commissioner Smith** explained two charts about the Integrated Resource Plan Methodology and of the Idaho PURPA Contracts. She said that the first chart was an example of the a 20-year plan demonstrating how the state would meet needed-power projections. The second chart illustrated the contracted megawatts and the varied power sources in Idaho. (The charts will be in the Committee Secretary's office until the end of the session. Following the end of the session, they will be filed with the minutes in the Legislative Services Library.) Commissioner Smith also referenced a legal case (Case No. GNR-E-111-03) wherein the outcome should produce a methodology for calculating published avoided-cost rates.

Responding to questions from the committee, **Commissioner Smith** stated that the return on the investment for a regulated utilities is in the nine to ten percent range.

**Paul Kjellander**, Idaho Public Utilities Commissioner, presented Renewable Energy Credits (REC) portion of the IPUC report. He explained that with or without PURPA, RECs would exist. He also explained that RECs or "greentags" are an environmental commodity that represents the added value, environmental benefits and cost of renewable energy above conventional methods of producing electricity, namely burning coal and natural gas. RECs make other renewable energy facilities grow by making them more financially viable, thereby incentivizing development. He stated that the ownership of RECs is not clear; there is no statute specifying ownership. Purchasing these credits is the widely accepted way to reduce the environmental footprint of electricity consumption and help fund renewable energy development. He also stated that REC's are a tradable commodity and are priced at "what the market will bear" and are properly monitored so no "double-selling" occurs.

In response to questions from the committee, **Commissioner Kjellander** explained that a REC is a tradeable watt of electricity, that FERC says it does not have authority to regulate RECs, and that RECs only exist when the power is generated. He also said that RECs have to be sold or banked and that, if banked, RECs remain with the owner of the energy-supplying project. Regarding the regulation of RECs by a state, Commissioner Kjellander noted that some states have statutes, other states have taken the issue before the Courts, some have taken their issues, pertaining to RECs, to FERC. Regarding the artificial stature of the REC as a commodity, he stated that the REC is a "piece of paper" commodity.

**Commissioner Kjellander** explained that private utility companies have renewable energy as part of their portfolios. He said that some states are requiring that 33 percent of their portfolio must be renewable by 2020 and that there may be a federal statute regulating a utility's or a state's portfolio composition.

**HJM 9:**

**Rep. McMillan** presented **HJM 9** and explained that the purpose of the memorial is to remove the Environmental Protection Agency's (EPA) declaration of "Superfund Site" from the Silver Valley of the Coeur d'Alene Mining District in Shoshone County. She stated that testing of local residents for levels of lead in their blood has shown the hazard no longer exists and that, with existing technology, the cleanup of mining waste should be accomplished within the allotted time. She said the EPA's negative listing of the area should be withdrawn and that the restoration of roads and infrastructure was currently the responsibility of the EPA. Rep. McMillan also indicated that the EPA's constantly changing cleanup plans had stigmatized the once-prosperous but now economically depressed region.

**Rep. McMillan** read a letter into the record from **Chuck Reitz**, City Councilman, Mullan, Idaho. (A copy of the letter will be in the Committee Secretary's office until the end of the session. Following the end of the session, this will be filed with the minutes in the Legislative Services Library.)

**Rep. Simpson** invoked Rule 38 stating a possible conflict of interest and that he would not be voting on the legislation since he is a Community Relations Plans Coordinator for the Superfund Cleanup Program for the Idaho National Laboratory.

In response to questions from the committee, **Rep. McMillan** said that the lost tax base in Shoshone County was the result of lost businesses and permanent jobs. She explained that the remediation jobs were done by college kids and others not living within the Silver Valley.

Regarding the language in lines 11 and 12 of **HJM 9**, **Rep. Simpson** argued that typically it was a tri-party decision between local and federal agencies that decide on the course of action in a Superfund Site and not a decision "based on highly questionable scientific data." He said that it seemed inappropriate as a legislative body, to support the language.

**James McMillan**, testified in support of **HJM 9** and explained the circumstances that brought the EPA into the Silver Valley during the 80's and 90's. He referenced *North Idaho's Superfund* by Fred C. Traxler and Robert Hopper, stating that the book supported the premise that the Silver Valley Superfund Site had been mishandled by the EPA. He also cited the National Academy of Science's findings as evidence in the misdiagnosis of the impact to the environment and as evidence that a 50 to 100 year moratorium on reuse of, and reconstruction on, the land would permanently cripple the region.

**Toni Hardesty**, Director, DEQ, testified that the EPA had received significant public comment and was in the process of re-evaluating the Record of Decision (ROD). She stated that work and negotiations had been on-going for the Superfund designated site and that the agencies could not legally leave the area with the \$800 Million trust still earmarked for the remediation. She stated that the trust was collected in non-refundable fines from the Hecla and Sarco Mining Companies and that state and local agencies must be involved in administering the trust. She indicated that EPA's responsibility for the reconstruction and repair of roads was a valid issue. She also indicated that since the human health issue was winding to a satisfactory close, the issues of water quality and yard remediation still needed to be addressed.

In response to a question from the committee regarding the public perception that the cleanup was complete, **Director Hardesty** said that human health had been the first priority and that the yards within the acreage referred to as the "BOX" was complete but that yard remediation in the outlying areas was not. She explained that the yard cleanup required the top 6 inches of soil be removed as a remedy barrier. The water quality assessment and cleanup were also incomplete.

**ORIGINAL MOTION:** **Rep. Harwood** made a motion to send **HJM 9** to the floor with a **DO PASS** recommendation. He stated that the population in the Silver Valley had gone from 127,000 to 30,000 and that local residents were frustrated with the never-ending government demands. He noted that the Washington DC establishment needed to hear from Idahoans.

**SUBSTITUTE MOTION:** **Rep. Gibbs** made a substitute motion to **HOLD HJM 9** in committee at the discretion of the chair. He argued that the memorial was premature in light of information presented to the committee by **Director Hardesty**.

**AMENDED SUBSTITUTE MOTION:** **Rep. Hartgen** made an amended substitute motion to **HOLD HJM 9** in committee for a time certain. He noted that the Basin Commission meeting to be held on February 15, 2012, plus the Energy, Environment and Technology Committee's suggestions made during today's hearing, could mandate amendments to the memorial. He said future amendments could be accomplished by the sponsor and the committee within a week to 10 days.

**ROLL CALL VOTE ON AMENDED SUBSTITUTE MOTION:** Roll call vote was requested on the amended substitute motion to **HOLD HJM 9** in committee for a time certain. **Amended substitute motion failed by a vote of 10 NAY, 3 AYE, 2 absent/excused and 1 abstained. Voting in opposition to the amended substitute motion: Reps. Anderson, Eskridge, Vander Woude, Block, DeMordaunt, Gibbs, Smith (30), Jaquet, Cronin, and Raybould. Voting in favor of the amended substitute motion: Reps. Harwood, Hartgen, and Schaefer. Reps. Nielsen and Thompson absent/excused. Rep. Simpson abstained.**

**VOTE ON SUBSTITUTE MOTION:** **Chairman Raybould** called for a vote on the substitute motion to **HOLD HJM 9** in committee at the discretion of the chair. **Motion carried by voice vote.**

**ADJOURNED:** There being no further business to come before the committee, the meeting was adjourned at 3:55 p.m.

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Representative Raybould  
Chair

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Jean Vance  
Secretary