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Montana Legislative Update for the Energy and Natural Resources Industries

Under Montana law, most new statutes will take effect on October 1, unless otherwise stated in the enacting legislation. The 2017 Montana Legislature passed a number of bills impacting the energy and natural resources industries that have already, or will soon, take effect. Just as these new laws hit the books, the 2017-2018 Interim Legislative Committees are already hard at work studying the issues and preparing legislation for the next Session. Below are summaries of some of the key legislation passed into law during the 2017 Session and an update on the topics of study currently taking place during interim.

NEW LEGISLATION

Bonding and Decommissioning for Wind Development: **HB 216** requires owners of wind generation facilities 25 megawatts or greater to submit a surety bond to the Montana Department of Environmental Quality (DEQ) for the eventual decommissioning of each facility. Depending on the circumstances, owners have until the conclusion of their 15th or 16th year of operation to submit a bond. Failure to do so may result in penalties up to \$1,500 per day. DEQ will determine the bond amount based on information provided by the owner, and to facilitate that process, owners are required to submit by July 1, 2018 a detailed decommissioning plan that includes a scope of work to be completed and cost estimates. DEQ is currently in the process of adopting rules implementing the program, which will address the standards and procedures for submission of bonds, collection of penalties, criteria and process for bond release, and DEQ's use of a bond in the event an owner fails to decommission a facility. A final rule will be promulgated no later than January 1, 2018.

Cost-Benefit Analysis of Net Metering: **HB 219** amends the net metering statute to require NorthWestern Energy (NWE) to conduct a study by April 1, 2018 on the costs and benefits of customer-generators. The study must be conducted within parameters established by the Public Service Commission (PSC). Once complete, NWE must submit the study to the PSC as part of a general rate application. The PSC will evaluate the study and make findings regarding whether customer-generators should be classified separately from other customers for rate design purposes. The PSC's findings must relate to the utility system benefits of net metering and the costs of serving customer-generators. Existing net metering customers will have the option to be grandfathered under the current framework.

Tax Incentives and Exemptions: SB 86 revised the tax incentive for new or expanded secondary and tertiary oil production by increasing the trigger price from \$30 to \$54 a barrel (WTI) when calculating the applicable tax rate. This means that the lower tax rate for incremental oil production will apply so long as the price of oil remains below \$54 a barrel for a calendar quarter. **SB 132** makes permanent the tax exemption for certain air and water pollution control equipment and carbon capture equipment, and repeals the termination date for the reduction in value for carbon transportation and sequestration equipment.

Disclosure of Hydraulic Fracturing Fluids: SB 299 requires oil field owners, operators, and service providers to disclose to the Montana Board of Oil & Gas (MBOGC) all chemical compounds and additives used as fluids in the hydraulic fracturing process. MBOGC is required to post the fracturing fluid disclosure on its website, or another qualifying website, for public consumption. If the owner/operator/service company believes that disclosing the composition of the fracturing fluid reveals protected trade secrets exempt from public disclosure, it may request that MBOGC withhold the information. Applying certain statutory criteria, MBOGC will determine whether the information is confidential and protected from public disclosure. Owners/operators/ service providers may appeal MBOGC confidentiality decisions to a court of competent jurisdiction. In enacting SB 299, the Legislature sought to balance transparency in disclosing fracturing fluids while protecting valuable trade secrets and competition in the marketplace.

Major Facility Siting Act Revision: SB 42 amends the Major Facility Siting Act by reducing facility siting corridors from 1 mile wide to 500 feet. It also requires DEQ to consult with the applicant and affected landowners to identify areas along the corridor that may need to be wider or narrower than 500 feet, or if a modification or amendment to the proposed facility is needed. In enacting SB 42, the Montana Legislature also expanded landowner notice requirements and provided for public notice and comment on any adjustment to the location of a facility outside the approved siting corridor. Although the siting corridor will generally be narrower under SB 42, DEQ may still consider environmental impacts to lands outside the designated corridor as secondary impacts.

811 Call Program: HB 365 updates and revises laws pertaining to excavations near underground facilities and strengthens the state's enforcement program as recommended by the federal Pipeline and Hazardous Materials Safety Administration. The bill establishes that an excavator who damages an underground facility is liable for the entire cost of repair unless the damage was due to the underground facility owner giving inaccurate or incomplete locates or marks. Liability under HB 365 is nonexclusive and will not bar other appropriate civil remedies for damages. Moreover, the bill authorizes the Department of Labor and Industry (DLI) to assess and collect civil penalties against excavators and underground facility owners for incidents occurring after October 1, 2017. The newly established underground facility protection advisory council will provide guidance and advice to DLI regarding ongoing administration and enforcement of the 811 call program. The bill also provides for incident notification reports, grants to one-call notification centers, and a review and mediation process relating to assessment of civil penalties.

INTERIM COMMITTEE UPDATE

The **Energy and Telecommunications Interim Committee (ETIC)** will focus its resources on studying natural gas consumer choice (HJ 28), regulated utility decoupling policy (SJ 31), and renewable energy credits (SJ 2). ETIC will also monitor NWE's study of the costs and benefits of net metering and the PSC's review of net metering rate classifications, both of which were authorized by HB 219. Additionally, ETIC will review the regulatory climate for energy generation in Montana, with a focus on opportunities, regulatory obstacles, and incentives. ETIC's next meeting is January 16, 2018.

The ***Environmental Quality Council (EQC)*** intends to study, among other things, the future outlook of the coal industry in Montana including the consequences of reduced coal production (SJ 5). The EQC will also study chronic wasting disease (SJ 9), provide an updated evaluation of the hard rock mining program, and prepare a report on the status of Montana's natural resources, including trends, changes, and interpretation of underlying causes. The EQC's next meeting will be January 17-18, 2018.

The ***Revenue and Transportation Interim Committee (RTIC)*** will concentrate its efforts on studying the valuation of centrally assessed and industrial property (SJ 23), tax increment financing (HJ 18), and agricultural property valuation (HJ 22). RTIC's next meeting is December 4-5, 2017.

The ***Economic Affairs Interim Committee (EAIC)*** will devote approximately half of its meeting time to studying Montana's workers' compensation system (SJ27). EAIC's next meeting is November 7-8, 2017.

The ***Water Policy Interim Committee (WPIC)*** plans to study exempt groundwater wells, which have long facilitated subdivision development in Montana. WPIC will also review the Department of Natural Resources water rights change process, with an emphasis on how DNRC calculates a water user's historic consumptive use.

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