Environmental Quality Council
Energy Subcommittee
July 19, 2004
Exhibit 4

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The Electricity Law Handbook: A Montanan's Guide to Understanding Electricity Law

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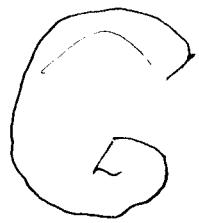

2002

The Electricity Law Handbook: A Montanan's Guide to Understanding Electricity Law

Table of Contents

Members and Staff i

Acknowledgments ii

Disclaimer iii

Forward iv

Chapter 1: Introduction: Electricity and Montanans--How does it all Work? . . . . . .

- A simplified primer on electricity: what is electricity and how is it generated, transmitted and measured?
- What is electricity law? . . . . . .
- Who are the electricity players in Montana and what role do they play?

Chapter 2: The Montana Consumer . . . . . .

- Who and what is a "Montana consumer"? . . . . . .
- What electricity laws protect you as a Montana consumer and how do they work? . . . . . .
- Who is the Montana Consumer Counsel and what is the Montana Consumer Counsel's Role? . . . . . .
- Are there laws and programs that help low-income Montana consumers? . . . . . .

Chapter 3: Producing the Fuels that Feed Montana's Energy Engine . . . . . .
- What are the fuels or processes that produce electricity in Montana? . . . . . .
- What are the laws that regulate, tax, and provide incentives for electricity production fuel sources? . . . .

Chapter 4: Generating Electricity in Montana . . . . . .
- How is electricity generated in Montana? . . . . . .
- Who generates electricity in Montana? . . . . . .
- What laws regulate the generation of electricity in Montana? . . . . . .
- What laws provide incentives for the generation of electricity in Montana? . . . . . .

Chapter 5: Transmitting and Distributing Electricity and in Montana . . . . . .
- Who transmits and distributes electricity in Montana? . . . . . .
- How do our neighboring states and the federal government impact our electricity transmission? . . . . . .
- What laws regulate the transmission and distribution of electricity in Montana? . . . . . .
- What laws provide incentives for the transmission and distribution of electricity in Montana? . . . . . .

Chapter 6: Conserving Electric Energy . . . . . .
- What is electric energy conservation? . . . . . .
- How can conserving electricity save you money? . . . . . .
- What laws either regulate or provide incentives for electricity conservation in Montana? . . . . . .
- Who can you contact about energy conservation in your home, school,

or business? . . . . . .

Chapter 7: Pricing Electricity Supply, Transmission, and Distribution . . . . . .

- Who sets our electricity supply prices in Montana and how is it done? . . . . . .
- Who sets our transmission and distribution costs in Montana and how is it done? . . . . . .

Chapter 8: Montana's Electric Restructuring Laws . . . . . .

- What is electric industry restructuring? . . . . . .
- Why did Montana decide to restructure its electric industries? . . . . . .
- What is the status of electric restructuring today? . . .

Glossary of Electricity Terms . . . . . .

Appendix A: Information Resources

Appendix B: Reference Sources

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ACKNOWLEDGMENTS

This Electricity Law Handbook was developed by the legislative Environmental Quality Council in an effort to help Montana citizens better understand our electricity laws. The information contained in this handbook is a result of input and review from legislators, consumers, public interest groups, industry representatives, state regulators, and interested citizens.

DISCLAIMER

The Electricity Law Handbook should not be used as a legal reference. This handbook was developed to serve solely as an educational tool. When in doubt, always refer to the applicable statutes, case law, or the agency's administrative rules.

FORWARD

Electricity. Shockingly, we can't do without it --it has become a necessity in our daily lives. We take it for granted until we receive our monthly power bill. Most of us don't think about where our electricity comes from or who delivers it to us unless the power goes out. The only time we seem to stand up and take notice is if the price of electricity rises. Montana's electricity laws, especially deregulation of our energy supply prices, have generated a lot of public attention and scrutiny over the past several years.

The morass of laws governing electricity generation, transmission, distribution, conservation, price, and consumption are complicated, sometimes conflicting, very voluminous, full technical jargon, and down-right tough to understand. We continually receive countless inquiries from Montana legislators, citizens, and businesses, seeking understandable and usable information on our electricity laws.

The purpose of this handbook is to explain in straight forward, easy to understand manner, how electricity law works in Montana, and more importantly, how those laws impact Montana's consumers. Our goal is to encourage thoughtful effective involvement in Montana's electricity law development and implementation.

The Legislative Environmental Quality Council, 2002.

Chapter 1: Introduction: Electricity and Montanans--How does it all Work?

- A simplified primer on Electricity: What is electricity and how is it generated, transmitted, and measured?

What is Electricity?

Montanans like most Americans do not stop to think about the electricity that powers our computers, lights our houses, washes our clothes, cooks our meals, heats our house, powers the tools we use in our jobs, directs traffic around town, and profoundly touches all facets of our lives. Electricity is easy to take for granted because we do not see it, smell it, taste it, or feel it --- it is just there at our beck and call. What would life be like without electricity? The only time that we don't seem to take electricity for granted is when we pay our power bills. So what is electricity? Electricity is a form of energy. If you get down to the very basics, electricity is the flow of little charged particles called electrons that were separated from atoms by some outside force (see figure 1). The free movement of those electrons constitutes an electric current.

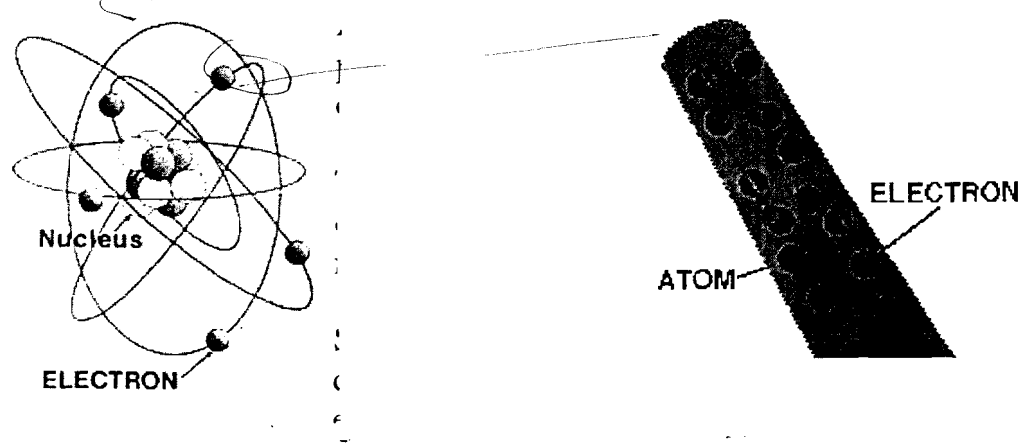

Figure 1. The Source of Electricity

How is Electricity Generated?

Electricity is considered a secondary source of energy. In order to produce electricity here in Montana, we need to convert other sources of energy like water, coal, natural gas, geothermal, biomass, wind, and solar, called primary sources (see figure 2). The process of converting primary sources of energy to electricity is called electricity generation. When the wind blows, the water flows, the sun shines or coal and natural gas is burned to heat water to create pressurized steam, all of these primary sources of

energy create what is called chemical or mechanical (or working) energy. This work horse energy drives an electric turbine generator or a devise that converts chemical or mechanical energy to electricity by forcing electrons to separate from atoms and begin flowing over wires (see figure 3). Electric generators include steam turbines, wind turbines, water turbines, gas combustion turbines, and internal combustion engines.

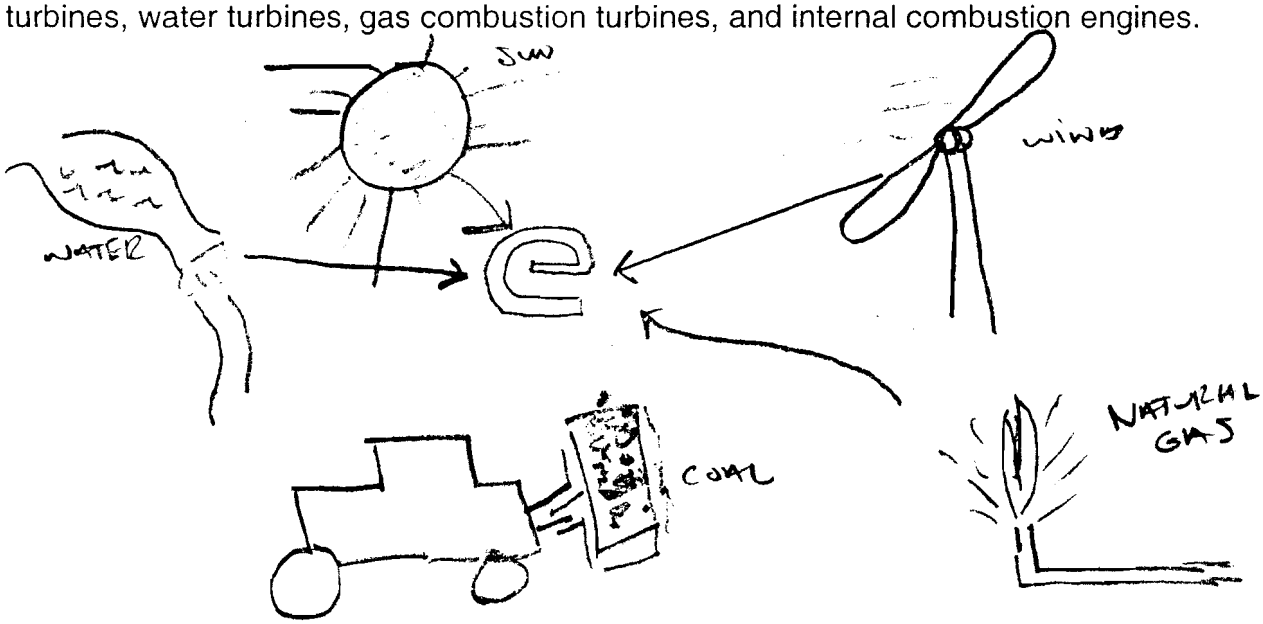

Figure 2. The Primary Sources of Energy

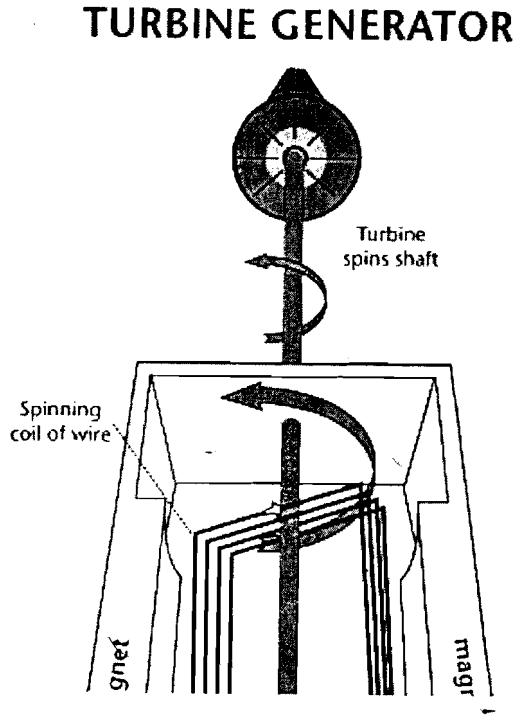

Figure 3. Electric generator.

Once electricity is generated, how does it get to my house or business?

When a generator produces electricity, the electricity moves along cables to a substation that has transformers. A transformer is a devise that concentrates electricity from low voltage to high voltage. It is more efficient to move electricity over long distances using high voltage. High voltage electricity is transported over transmission lines to other substations that convert high voltage electricity into lower voltage electricity. From there the lower voltage electricity moves over distribution lines to our homes and businesses. (see figure 4).

The physical operation of transporting electricity gets complicated when you think in terms of multiple generators pouring electricity onto transmission and distribution systems owned by multiple entities and then delivering that electricity to millions of customers throughout the system. How does it all work? Think of the transmission systems as interstate highways and the distribution systems as your typical two lane roads. The interconnection of this electricity highway and road system makes up what is know as the power grid.

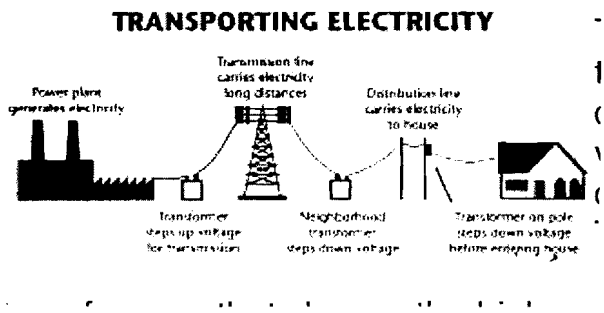

Figure 4. Transmitting and distributing electricity.

Montana's transmission and distribution system is a small part of what is known as the Western Interconnection transmission system (see figure 5) which in turn, a part of a three region system of interconnections that transmits and distributes electricity across the United States as well as parts of Canada and Mexico (see figure 6). The key point here is that we don't produce, consume, or transmit electricity in Montana in isolation of our neighboring western states. Because Montana is interconnected, we are

interdependent and whatever happens in Washington, Oregon, or California for example, could potentially impact us here in Montana.

The Western U.S. Transmission Grid
- A Single Interconnected Market

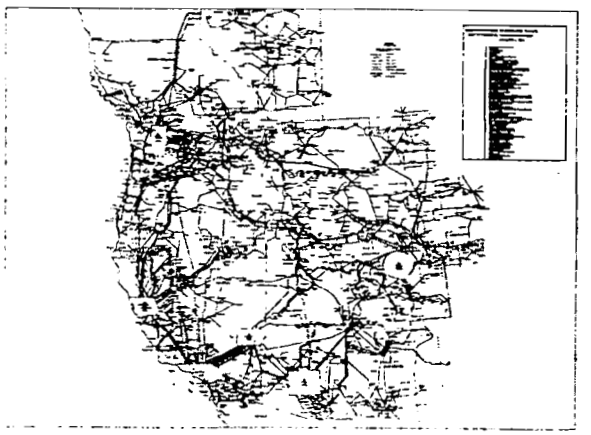

Figure 5. Western Interconnection System

System Interconnections

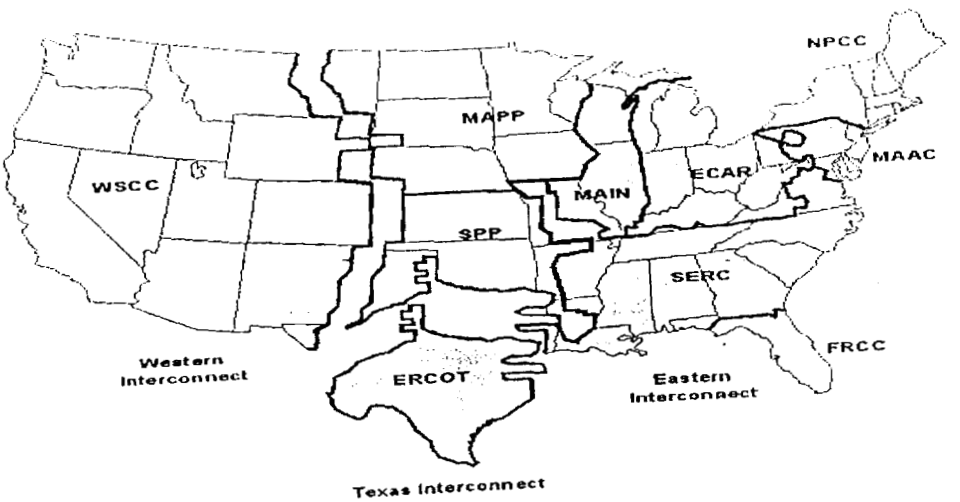

Figure 6. U.S. System

How does electricity flow over this spider web network of transmission and distribution lines? Visualize the flow electricity as water flowing down the transmission and distribution lines. When electricity is generated at point on the system and sent to a distant point on the system the electricity flows over all of the connected network of roads. Like water, electricity flows and distributes itself over the paths with the least amount of resistence (or impedance). It is tough to constrain the flow of electricity to any given path. Unlike water, electricity can flow in opposite directions at the same time, over the same cable or wire. Also unlike water, electricity cannot be stored, so entities that generate and transmit electricity must coordinate and plan production and transmission of electricity very carefully. The amount of available energy in a particular load center (an area where the electricity is being consumed) depends on the amount of electricity generated, where its generated, as well as the amount the transmission and distribution lines can carry.

The flow of electricity on the entire transmission and distribution network is really like one big giant swimming pool of electricity produced from thousands of generators (see figure 7). This giant swimming pool has millions of spigots that funnel the electricity to electricity users or loads (see figure 7). Once electricity has been produced and dumped into the giant transmission and distribution swimming pool you can't tell a Montana produced electron from Canadian produced electron -- you can't put a label on an electron that says something like " produced in Montana". Sometimes this swimming pool of transmission lines become physically congested -- meaning that the lines (or the pool) are fully loaded with electrons or the contractual rights to a particular line are fully allocated.

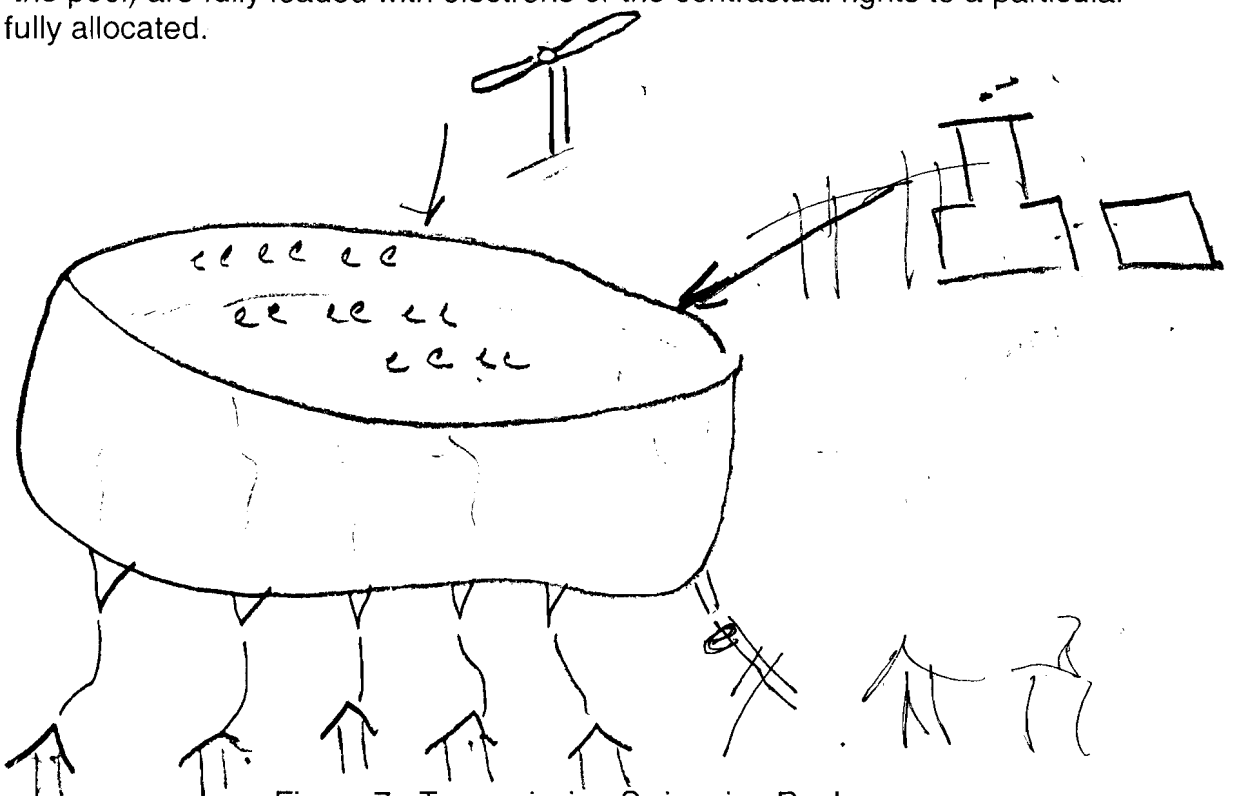

Figure 7. Transmission Swimming Pool

The physical realities of electricity transmission do not necessary reflect the way electricity is bought, sold, and transmitted. Typically, if you want to transmit electricity produce at point A to point B, you must purchase space (if available) on any transmission or distribution path that connects the two points (see figure 8). This is called a "contract path". Physically, a substantial portion of that electricity may flow from point A to point B, but some of the electricity may inadvertently flow across other paths (see figure 8). The contract must account for inadvertent flows. If you want to guarantee that your electricity gets from point A to point B you must contract for "firm" scheduled flows of electricity over the power lines. In getting your power from point A to point B you may have to contract with multiple transmission or distribution owners for firm access.

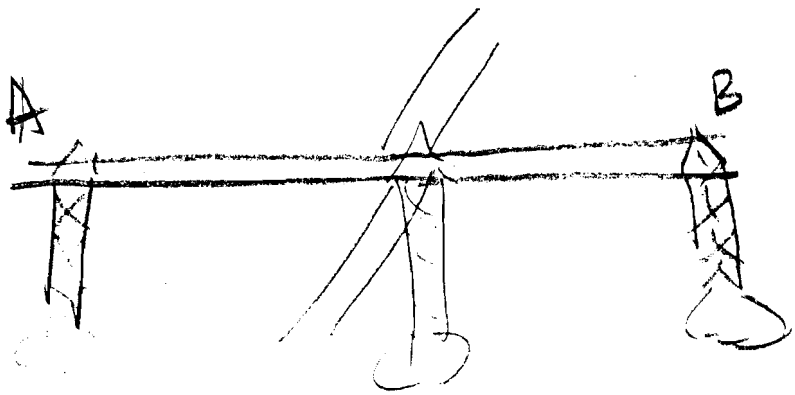

Figure 8. Contract Path

How is electricity measured?

If you are a typical consumer you receive a monthly bill that quantifies the amount of electricity you use per month. Generally, the more you use the more you pay. The utility installs a meter at your home or business that measures your electricity use. Electricity is measured in units of power called "watts" named after the inventor of the steam engine, James Watt. One watt is a very small unit of power. One horsepower translates into about 750 watts. The typical units of electricity measurement include:

1 kilowatt (kW) = 1,000 watts

1 kilowatt hour (kWh) = the energy of 1,000 watts working for 1 hour

1 megawatt (MW) = 1,000,000 watts

1 megawatt hour (MWh) = the energy of 1,000,000 watts working for 1 hour

Figure 9 illustrates what these measurements mean in the real world.

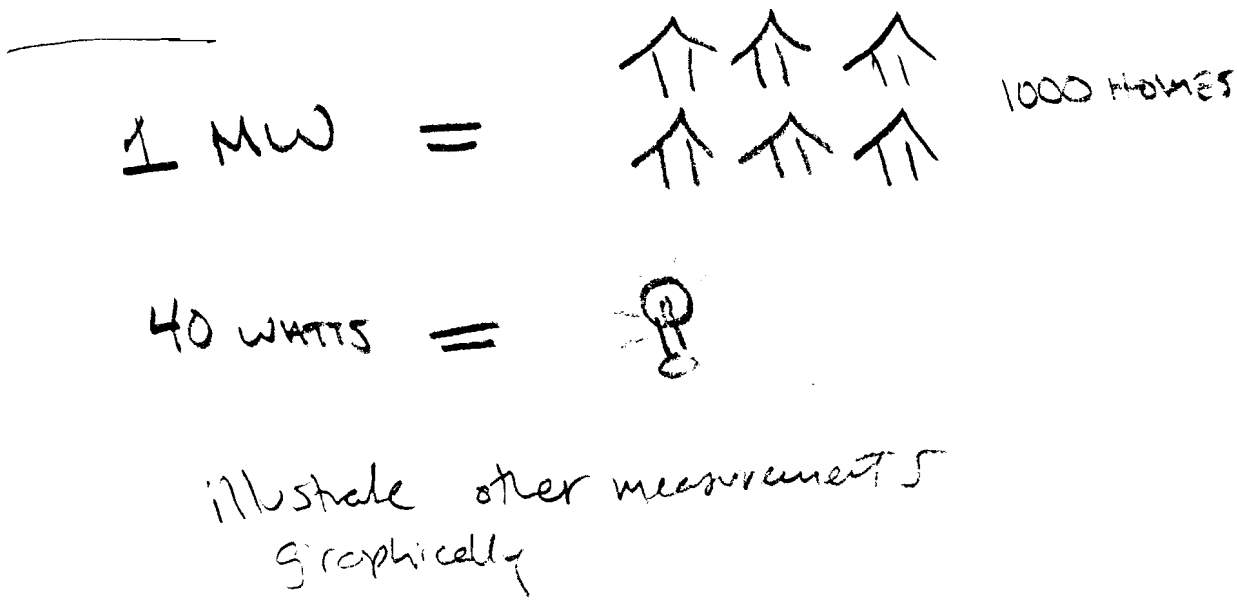

Figure 9. Measurements

♦ What is electricity law?

As you might imagine, electricity law covers many different and very diverse activities that either directly or indirectly involve electricity. Broadly speaking, electricity law can be organized into three areas:

1. Statutes, rules, orders, or local ordinances that regulate or tax electricity fuels, generation, service, service territories, transmission, and price.

2. Statutes, rules, orders, or local ordinances that provide incentives for electricity fuels, generation, service, transmission, and price.

3. Court cases that provide legal opinions on the regulation and taxation of electricity fuels, generation, service, service territories, transmission, and price.

In addition to these three organizational electricity law areas, there are three governmental sources of energy law:

1. The federal government
2. Montana state government
3. Local governments in Montana.

This handbook's primary focus is on Montana state government electricity law. Where possible this handbook will explain the interrelationships between federal, state, and local laws and the impact that those laws have on Montanans.

♦ Who are the electricity players in Montana and what role do they play?

Each chapter of this handbook explains in more detail the electricity players in Montana, but a quick overview is helpful here. Table 1, summarizes who the electricity players are in Montana and the role they play in electricity law.

Table 1. Electricity Players in Montana

Type of Electricity Player	Electricity Role and Function
GOVERNMENTAL ENTITIES:	
State Government:	
⇨ Montana State Legislature	Sets state electricity policy by passing legislation.
⇨ Montana Public Service Commission	Regulates public electric utility service, transmission, and default supply.
⇨ Montana Consumer Counsel	Represent Montana consumers in electric utility and proceedings before the Public Service Commission.
⇨ Montana Department of Environmental Quality	Issues air and water permits for electric generation facilities; conducts Montana Environmental Policy Act reviews; is responsible for Major Facility Siting Act review process for transmission facilities; provides

	assistance with energy efficiency projects; maintains an energy library facility.
⇨ Montana Department of Public Health and Human Services	Operates the low-income energy assistance program.
⇨ Montana Department of Commerce	Board of Investments offers low interest loans for energy generation and transmission projects.
⇨ Montana Power Authority	Is authorized to purchase, construct, and operate electrical generation facilities or electrical transmission or distribution facilities. The Authority is authorized to have the Board of Examiners issue up to $500 million dollars in revenue bonds to finance electricity projects.
⇨ Montana District Courts and Supreme Court	If initiated through a lawsuit, judicially reviews and provides legal opinions on state law electricity issues in Montana.
Federal Governmental Entities:	
⇨ United States Congress	Sets federal electricity policy by passing federal legislation.
⇨ Federal Energy Regulatory Commission	Regulates transmission and wholesale sales of electricity in interstate commerce and licenses hydro-electric projects.
⇨ Bonneville Power Administration	BPA is a federal agency headquartered in Portland, Ore., that markets wholesale electricity and transmission to the Pacific Northwest's public and private utilities as well as to some large industries. BPA provides about half the electricity used in the Northwest and operates over three-fourths of the region's high-voltage transmission.
⇨ Northwest Power Planning Council	Created by federal legislation, to give the citizens of Idaho, Montana, Oregon and Washington a stronger voice in determining the future of key resources common to all four states -- namely, the electricity generated at and fish and wildlife affected by the Columbia River Basin hydro-electric dams.
⇨ Regional Transmission Organizations	Organizations that are currently being formed under FERC order to management the

	transmission of electricity in a specific region of the United States.
⇨ Western Area Power Administration	Western Area Power Administration markets and delivers reliable, cost-based hydroelectric power and related services within a 15 state region of the central and western U.S. In Montana, the WAPA generates electricity from Canyon ferry, Fort Peck, and Yellowtail hydrofacilities.
⇨ U.S. Federal District Courts, Court of Appeals and Supreme Court	If initiated through a lawsuit, judicially reviews and ~~provides~~ rules legal opinions on federal electricity law issues.
Local Governmental Entities	
⇨ Montana cities, towns, and counties.	Local governments in Montana can impact electricity generation through local taxation and zoning. Local governments are also customers of electricity. One municipality (the City of Troy) is its own public utility.
ELECTRIC UTILITIES	
⇨ Montana Electric Cooperative Utilities	There are 26 non profit distribution electric cooperatives in the state of Montana that are locally owned and operated by their cooperative members and serve approximately 400,000 people in Montana. The elected board of each cooperative makes electricity policy and pricing decisions. Electric Cooperatives are not regulated by the public service commission.
⇨ NorthWestern Energy LLC Utility	A non vertically integrated public utility that is investor owned that provides electricity transmission, distribution, and default supply services to over 285,000 customers in Montana. This utility is regulated by the Public Service Commission.
⇨ Montana-Dakota Utility	A vertically integrated public utility that is investor owned that provides electricity supply, transmission, and distribution services 23,555 customers in Montana. This utility is regulated by the Public Service Commission.
⇨ City of Troy Municipal Electric Utility	Montana's one and only municipal electric utility.

Rate and policy decisions are by the city's governing body.

ELECTRICITY SUPPLIERS THAT SUPPLY ENERGY TO MONTANANS

⇨ PPL Montana	An exempt wholesale generator in Montana that owns and operates 11 hydroelectric plants along the Missouri River, the Flathead River, the Clark Fork River, the Rosebud Creek and the Madison River. These dams have 474 megawatts of generating capacity. PPL Montana also has ownership interests in Colstrip and J. E. Corrette coal-fired electric generation plants totaling about 683 megawatts of generating capacity. PPL Montana is regulated by FERC.
⇨ Qualifying Facilities	Federal legislation facilitated the emergence of small non utility electricity generating companies call qualifying facilities. In Montana we have 13 qualifying facilities that produce about 100 megawatts of electricity.
⇨ Montana Electric Buying Cooperative	A statewide cooperative created under state law to act as an electric energy supplier and promoter of renewable energy and conservation. This cooperative is not currently supplying electricity to Montanans.
⇨ Montana Electric Cooperative Utilities	There are 3 non profit electric cooperatives in the state of Montana that generate electricity for their customers.
⇨ Federal Agencies	BPA, Mission Valley Power, and Western Area Power Administration account for 16% of the electricity sold in Montana.
⇨ Other Energy Suppliers	Other investor owned utilities supplying Montana customers with electricity include Avista, Black Hills Power, and Energy Northwest. Energywest, a power marketer secures energy supply for some Montana customers.

MONTANA CONSUMERS

⇨ Residential Consumers	Montana residential consumers are private households

⇨ Commercial Consumers

Montana commercial consumers are non-manufacturing business establishments, including motels, restaurants, wholesale businesses, retail stores, health, social, and educational institutions, local, state, and federal governments.

⇨ Industrial Consumers

Montana industrial consumers are manufacturing, construction, mining, agriculture, fishing, and forestry establishments.

Chapter 2: The Montana Consumer

♦ Who and what is a "Montana consumer"?

Montana electricity consumers come in all shapes and sizes. Typical Montana electricity consumers include residential, small commercial, large industrial operations, local schools, cities, towns, hospitals, agricultural operations, large retail outlets, universities, state and federal government operations and buildings, and the list could go on and on. Montana consumers are divided into classes based on factors such as volume of electricity use, transformer and voltage needs, when and how the consumer uses electricity, the location of the consumer, the timing of electricity consumption, etc. Consumers in Montana are typically divided into the following classes\\ v Prodal in Agune?

- ⇨ Residential
- ⇨ Small Commercial
- ⇨ Large Commercial
- ⇨ Industrial
- ⇨ Irrigation
- ⇨ Lighting

The type of consumer that you are dictates your share of the electricity transmission, distribution, and supply costs that you pay.

♦ What electricity laws protect you as a Montana consumer and how do they work?

Electricity has become one of modern life's basic necessities. Power outages not only can cause extensive economic damage, but can result in physical harm and death. Electricity prices can dramatically impact almost every facet of Montana's economy. Most of Montana's electricity consumers do not have a choice of who provides them with electricity or who transmits and distributes that electricity --Montanans are part of a

captive monopolized market. Electricity potentially impacts the health, safety and welfare of every single Montanan. For all of these reasons, electricity transmission, distribution, generation, reliability, metering, billing, etc., have traditionally been highly regulated activities in Montana and the United States generally. These regulations are designed to protect Montana consumers while ensuring that the entities that serve those customers recover their legitimately incurred costs and/or receive a reasonable rate of return for their electricity services.

Public Utility Customers

The type of consumer protection laws that apply to you depend on what type of entity you receive your electricity and electricity services from. If you are a customer of Montana public utility such as NorthWestern Energy or Montana Dakota Utility, you can look to the Montana Public Service Commission (PSC) and the Montana Consumer Counsel as the state statutory and constitutional entities that are charge with ensuring that Montana public utility electricity customers are adequately protected.

The PSC has very broad sweeping regulatory, supervisory, and investigative powers over public utilities. The commission can investigate the management of the business of all public utilities. It can investigate and inspect the books, accounts, papers, records, and memoranda of any public utility and can examine under oath any officer or employee of a public utility. The PSC is charged with investigating accidents at public utilities. The Commission may formally investigate complaints filed against a public utility. The PSC sets standards for electricity products and services, including discontinuation and reestablishment of service. The PSC is charge with encouraging efficient utility operations and efficient use of utility services and efficient rates. The Commission ensures that every public utility furnishes reasonably adequate electricity services and facilities at reasonable and just prices. The PSC sets the rates that public utilities charge for distribution of electricity. For public utilities like NorthWestern Energy and Energy Northwest that have opted for deregulating energy supply, the PSC still regulates the cost recovery and to some extent price of electricity supplied to default customers (customers that have not chosen an alternative electricity supplier). The PSC still sets electricity supply rates for Montana Dakota Utility Customers.

When the PSC sets rates for electricity distribution and electricity supply, it must provide public notice of the proposed changes and conduct a hearing on those proposed changes. This provides those electricity customers affected by the increase or decrease in rates to petition the commission and testify on the rate change. The Montana Consumer Counsel (an entity of state government created by the Montana Constitution) may also represent Montana consumers interests in front of the PSC.

Electric Cooperative Customers

If you are a customer of a Montana electric cooperative, you are considered a part owner. Electric cooperatives are non profit entities that are democratically controlled (one person one vote) by the members of the cooperative. Electric cooperatives are not regulated by the Public Service Commission. The electric cooperatives are self regulated by their members. Electric cooperative members elect a board of directors that sets customer protection policies and establishes the rates for electricity distribution and supply.

Municipal Utility Customers

A municipal electric utility has the power and authority to regulate, establish, and change, as it considers proper, rates, charges and classifications imposed for electricity services to its citizens. Rates and charges must be reasonable and just. If a municipality proposes a change in electricity rates, it must hold a public hearing. A municipal electric utility is required to adopt rules with the concurrence of the governing body of the municipality for the operation of the utility that protects municipal customers.

♦ Who is the Montana Consumer Counsel and what is the Montana Consumer Counsel's Role?

The Montana Consumer Counsel is a state office created by the Montana Constitution. Under Article XIII, Section 2 of the Constitution, the Consumer Counsel is charged with the "duty of representing consumer interests in hearings before the public service commission or any other successor agency." The Consumer Council office is made up 5 individuals. There is a Consumer Counsel committee made up of four legislators that appoints and advises the Consumer Counsel. The goals of the Consumer Counsel are to:

- ⇨ Represent Montana consumers in utility and transportation proceedings before the Public Service Commission.
- ⇨ Represent Montana consumers in appropriate proceedings before the Federal Energy Regulatory Commission, Interstate Commerce Commission, Federal Communications Commission, and other federal administrative agencies.
- ⇨ Represent Montana consumers in appropriate state and federal court proceedings.
- ⇨ Monitor proposed legislation and participate in the legislative process before the Montana Legislature and U.S. Congress for Montana consumers.

⇒ Participate in activities that will help develop competitive markets in restructured utility industries.

If you have any questions or concerns regarding the activities that the Consumer Counsel is involved with or should be involved in, contact the Consumer Counsel at: 406 444-2771 or email at robnelson@state.mt.us.

♦ Are there laws and programs that help low-income Montana electricity consumers?

There are private and governmental programs in Montana that assist low-income electricity consumers. Mechanisms for assisting low-income consumers include bill discounts, deferred or delay payment, direct financial assistance, and home weatherization programs. Many of the low-income electricity programs are funded either through federal monies allocated to the state or through what's call a universal systems benefits program (USBP) charge assessed to electricity consumers. The entities that provide these low-income electricity assistance services are described below.

Low Income Energy Assistance Program (LIEAP):

LIEAP is a federal program administered by the state of Montana that pays a portion of eligible households' winter heating costs. In most cases, payments are made directly to utility companies and fuel vendors. With the exception of Montana's seven Indian reservations, the State Department of Public Health and Human Services (DPHHS)administers LIEAP throughout Montana. LIEAP is administered by DPHHS and operated by ten private non-profit Human Resource Development Councils and on Area Agency on Aging. Eligibility for LIEAP funds is limited to those at or below 150% of poverty. For a family of four to be eligible for LIEAP funds in 2002, they can not earn more than $26,475.

LIEAP also provides funding low-income household weatherization. Weatherization include heating system tune-ups, air infiltration reduction and attic, wall, and floor insulation. The weatherization program is operated statewide by ten private non-profit Human Resource Development Councils and two tribal governments.

For LIEAP contact information see Appendix A.

Energy Share of Montana

Energy Share of Montana is a nonprofit organization funded by USBP dollars and private donations. Energy Share helps Montanans faced with energy emergencies to meet their needs by providing bill assistance and furnace safety services. Energy Share

works with Human Resource Development Councils to determine eligibility. In order to receive assistance from Energy Share you must meet the following guidelines:

- Annual income must be at 150% of poverty or less or documented exceptions.
- The household's source of heating is threatened.
- Recommended maximum amount of financial assistance is $500.
- Assistance from Energy Share is only provided once in a lifetime, unless there are unusual or extreme circumstances, or if a portion of assistance is repaid.

For Energy Share contact information, see Appendix A.

Local Human Resource Development Councils

Local Human Resource Development Councils are private nonprofit local organizations that play a critical role in operating LIEAP programs and determining LIEAP and Energy Share eligibility. The HRDCs also operate the low-income weatherization programs across the state.

For HRDC contact information ,see Appendix A.

Public Utilities and Electric Cooperatives

Public utilities and electric cooperatives assist low-income Montanans by providing their LIEAP customers with an additional discount on their electric bills. Discounts range from 13% to 15%. Some cooperatives and utilities also provide flexible payment options and make every effort to avoid discontinuing electric service. Public utilities and electric cooperatives also help fund low-income hold weatherization.

For Public Utility and Electric Cooperative contact information, see Appendix A.

Chapter 3: Producing the Fuels that Feed Montana's Electric Energy Engine

♦ What are the fuels or processes that produce electricity in Montana?

As explained in Chapter 1, electricity is considered a secondary source of energy. It takes another source of energy to produce electricity. In Montana, we have such primary sources as water, coal, natural gas, geothermal, biomass, wind, and solar are converted into a useable form of working energy that drives an electric turbine generator. Primary sources of energy can be further broken down into renewable and nonrenewable sources. Renewable energy is obtained from sources that are essentially sustainable, unlike, for example, fossil fuels such as coal and natural gas, of which there is a finite supply. Renewable energy includes falling water, geothermal, biomass, wind, and solar. In Montana, we happen to be endowed with an abundance of primary sources of energy. Montana's coal reserves total 119,919 million tons, roughly 25.2% of the United States total reserves. Montana has been described as the Saudi Arabia of wind. We have an extensive system of hydroelectric dams. We are a resource rich state when it comes to fuels that can and do feed Montana's electric energy engines.

♦ What are the laws that regulate, tax, and provide incentives for electricity production fuel sources?

A variety of state laws have evolved over time to both regulate, tax, and incent the extraction of primary sources of energy used in the production of electricity. The list of these laws is very voluminous and will not be recited in their entirety in this handbook. Generally, Montana law allows for controlled energy source extraction and allocation. The regulatory controls are usually in the form of environmental restrictions. Incentives for energy source extraction and development are in the form of tax incentives or low interest state loans. Set out below is very abbreviated summary state laws organized by energy source. Under each energy source are the laws that regulate the extraction and development of the energy source, laws that tax that energy source, and laws that provide incentives for the extraction and development of the energy source.

COAL

Regulatory State Laws Impacting Coal Extraction and Development:

1. **Article IX, Section 2 of the Montana Constitution** requires that all lands which are disturbed by the taking of natural resources be reclaimed. Requires the legislature to provide effective requirements and standards

for reclamation of these disturbed lands.

2. The "**Montana Coal Mining Code**" imposes certain duties regarding safety requirements to be administered by the Department of Labor and Industry. (50-73-101, MCA)

3. The "**Clean Air Act of Montana**"; a permitting process administered by the Department of Environmental Quality (DEQ) to assure compliance with air emission standards that may apply to coal mining operations (75-2-101, MCA)

4. The "**Montana Water Quality Act**"; implements a policy of conserving water resources and protecting water quality; establishes a permitting process administered by DEQ for discharge of mining and industrial waste water; provides for enforcement, appeals, and penalties for violation of standards. (75-5-101, MCA)

5. The "**Strip and Underground Mine Siting Act**"; authorizes DEQ to review and regulate new strip-mine and underground mine site location and reclamation plans. Imposes permit requirements for strip and underground mines, and provides for the termination and suspension of permits for non compliance. (82-4-101, MCA)

6. The "**Montana Strip and Underground Mine Reclamation Act**"; creates a permitting process for strip and underground coal mining administered by DEQ; permit applications must contain comprehensive reclamation plans for all affected lands; investigative and enforcement powers are given to the Department. (82-4-201, MCA)

7. **Local Impact Account:** Establishes a special fund to provide grants and loans to assist local governments in dealing with the impacts of large-scale development of coal mines and coal burning energy facilities. (90-6-201, MCA)

8. **Montana Environmental Policy Act (MEPA):** MEPA is not a regulatory act but requires the State of Montana to conduct an environmental review of the impacts of permitting a coal mine. An environmental review document is required before an agency may issue a permit. (75-1-101, MCA)

Taxation of Coal

1. **Article IX, Section 5 of the Montana Constitution:** Constitutional provision providing for the creation of the coal severance tax trust fund;

requires the legislature to dedicate not less than one-fourth of the coal severance tax to the trust, from which interest and income may be appropriated. This provision also requires that the trust principal remain intact unless appropriated by three-fourths of the members of each house of the legislature. One half (50%) of the severance tax has been dedicated to the coal severance tax trust fund since December 31, 1979.

2. **Coal Severance Tax:** imposes a severance tax on coal mine operators which is computed on each quarter year's worth of production as shown on forms provided by the Department of Revenue. Contains the formula by which the tax is to be computed; rates are based on the heating quality of the coal and the amount of coal produced. Also provides incentives in the form of tax credits for new coal production. (15-35-101, MCA)

3. The **"Montana Resource Indemnity Trust Act"**; the purpose of which is to indemnify the citizens of Montana for the loss of long term value resulting from the depletion of Montana's mineral resource base and for damage caused by mineral development. This section establishes a permanent resource indemnity trust, funded through revenues generated from a tax levied on mineral extraction. Proceeds from the trust are to be expended for the purpose of protecting and restoring the environment from damages resulting from mineral development, and supporting a variety of economic development programs to benefit Montana and its citizens. Contains provisions which specify the amount of tax to be pad on different types of mineral production. (15-38-101, MCA)

4. The **coal gross proceeds tax**; provides for a system of reporting by producers and allocation of the tax by the Department of Revenue to local governments; directs county assessors to tax coal gross proceeds at 5% of reported value. (15-23-701, MCA)

Incentives for Coal Production:

1. **Property tax exemption**: Provides an exemption from property taxation of one-half the contract sales price of coal sold by a coal producer who extracts less than 50,000 tons of coal per year. (15-6-208).

2. **Clean coal technology tax exemption:** Procedural requirements for obtaining a clean coal technology tax exemption; under this chapter, the buildings, facilities, and equipment installed under a clean coal technology project are eligible for a property tax exemption. Projects must qualify as clean coal technology projects to be eligible for the exemption, and are subject to certain notice and hearing requirements. (15-24-2301, MCA)

3. **"Reclamation and Development Grants Program Act"**; authorizes the Department of Natural Resources and Conservation to fund projects which will indemnify the people of Montana against the effects of coal and other mineral development, and to repair and mitigate environmental damage resulting from the extraction of non-renewable resources. (90-3-1101)

NATURAL GAS

Regulatory State Laws Impacting Natural Gas Extraction and Development:

1. Like coal, the following laws discussed above apply to natural gas extraction and development: Article IX, Section 2 of the Constitution, the Clean Air Act of Montana, the Montana Water Quality Act, and the Montana Environmental Policy Act.

2. **Montana Major Facility Siting Act** administered by DEQ requires that any new natural gas pipeline that is greater than 25 inches in diameter and 50 miles in length go through a siting certification process. (75-20-101, MCA)

3. **Underground gas storage reservoirs**: Provides that it is the policy of the state that the conservation of natural gas by means of underground storage, and the creation of reserves of stored natural gas are in the public interest; gives natural gas public utilities the power of eminent domain in order to develop underground reservoirs, and outlines a certification procedure administered by the Board of Oil and Gas Conservation. (82-10-301, MCA)

4. **Abandoned Gas Wells and reclamation:** Requires that notice be given to the surface owner before any oil or gas well can be plugged or abandoned; requires the Board of Oil and Gas Conservation to maintain a record of plugged and abandoned oil and gas wells in the state. (82-10-401, MCA)

5. **Surface owner damage and disruption compensation:** Establishes a procedure for the compensation by means of "surface damage disruption payments" to the surface owner of lands disturbed by gas drilling operations; imposes liability on the part of the oil and gas developer or operator for damages to property; provides a procedure for the settlement of surface damage claims. (82-10-501, MCA)

6. **Regulation of gas wells by the Board of Oil and Gas:** Provides for the regulation of oil and gas development by the Board of Oil and Gas

Conservation; sets forth the powers and duties of the Board; establishes requirements for oil and gas operations; authorizes the Board of Oil and Gas Conservation to establish well spacing units and plans for unit operations. Directs the State of Montana to become a member of the Interstate Compact to Conserve Oil and Gas, and sets forth provisions of the Compact. (82-11-101)

Taxation of Natural Gas:

1. See discussion of Article IX, Section 2 and the Resource Indemnity Trust Act above.

2. **Montana Oil and Natural Gas Production Tax Act:** The oil and natural gas severance taxes; provides for state and local government severance taxes on the gross value of petroleum and other mineral crude oil and natural gas. Also provides for the allocation of tax revenue to state and local governments with certain exemptions and incentives for new production. (15-36-101, MCA)

3. **Privilege and license tax:** The oil and gas privilege and license tax; authorizes the imposition of a privilege and license tax for the purpose of funding the operations of the Board of Oil and Gas Conservation. The tax is to be collected by the Department of Revenue in the same manner as the Department collects the oil and gas severance tax under Chapter 36 of Title 15. The tax may not exceed 2/10th of 1% of the market value of each barrel of crude petroleum or each 10,000 cubic feet of natural gas produced. (82-11-131, MCA)

GEOTHERMAL

Regulatory State Laws Impacting Geothermal Development:

1. Like coal and natural gas, the following laws discussed above apply to geothermal development: Article IX, Section 2 of the Constitution, the Clean Air Act of Montana, the Montana Water Quality Act, and the Montana Environmental Policy Act.

2. **Montana Major Facility Siting Act** administered by DEQ requires that any use of geothermal resources capable of producing power equivalent to 25 million Btu's per hour or more, go through a siting certification process. (75-20-101, MCA)

3. **Geothermal exploration:** Directs the Board of Environmental Quality to regulate geothermal exploration. (75-20-1001, MCA)

4. Provisions of the "**Montana Water Use Act**" establishing an application and permitting process administered by the Department of Natural Resources and Conservation for the appropriation of water. (85-2-301, MCA)

Incentives for Geothermal Development:

1. **Tax credit:** Provides for a credit against individual income tax liability for taxpayers who install in their principal residence a geothermal energy generation system. A credit of up to $1,500 against the taxpayer's income tax liability is authorized. (15-32-115, MCA)

2. **Tax credit**: Provides an income tax credit for individual taxpayers who install in the taxpayer's principle dwelling an energy system using a recognized non-fossil form of energy generation. The credit may not exceed $500. (15-32-201, MCA).

3. "**Renewable Resource Development Loans, Grants and Bonds**"; authorizes the taxation of nonrenewable energy sources for the purpose of investing the revenues generated in an account from which loans and grants are made to encourage the replacement of nonrenewable resources with renewable resource development programs. (90-2-101, MCA)

4. The **"Reclamation and Development Grants Program Act"**; implements a legislative policy of funding projects designed to indemnify Montana citizens for the impact of mineral development. Section 90-2-1112(2)(a) authorizes, under certain circumstances, grants for projects that "enhance Montana's economy through the development of natural resources," which could include a qualifying geothermal energy project. (90-2-1101, MCA)

5. **Research and Development:** Implements a program administered by DNRC designed to promote research and development of energy conservation and renewable energy sources, and provides funding to meet this objective. Establishes the "alternative energy and energy conservation research development and demonstration account" funded by repayments of grants and loans which have been awarded from the account. DNRC must allocate the funds to five statutory loan and grant categories, but has the discretion to reallocate to insure that the program offers the greatest possible benefits during a particular fiscal year. (90-4-101, MCA)

WIND

Regulatory State Laws Impacting Wind Development:

1. **Easements:** imposes certain conditions on easements created for the purpose of insuring the flow of wind across real property in connection with the generation of wind energy. Wind energy easements are required to be in writing and must include, among other things, a description of both the servient and dominant tenements, a description of the dimensions of the easement, both horizontally and vertically, specify the restrictions imposed on the servient tenement, and specify the terms, if any, under which the easement may be modified or terminated. (70-17-303, MCA)

2. Associated activities surrounding wind development that effect air or water quality may require permits from DEQ. The federal endangered species and migratory bird act may be triggered with commercial wind development.

Incentives for Wind Development:

1. **Tax credit**: Provides an income tax credit for individual taxpayers who install in the taxpayer's principle dwelling an energy system using a recognized non-fossil form of energy generation. The credit may not exceed $500. (15-32-201, MCA).

2. **Wind tax credit:** Provides for an investment tax credit to any individual, corporation, partnership, or small business corporation that makes an investment of $5,000 or more for a commercial system which generates electricity by means of wind power. With certain limitations, a credit against individual or corporate income tax of up to 35% of the eligible costs of the system may be taken as a credit against taxes on taxable net income produced by certain specified activities related to wind energy. (15-32-402, MCA)

3. See the renewable resource grant and loans incentives and research and development incentives under geothermal resources .

SOLAR

Regulatory State Laws Impacting Solar Development:

1. **Easements**: Imposes certain conditions on easements created for the purpose of insuring the unencumbered exposure of solar energy devices

across real property in connection with the generation of solar energy. Solar energy easements are required to be in writing and must include, among other things, the vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the servient tenement, and any terms or conditions under which the solar easement is granted or may be terminated. (70-17-301, MCA)

Incentives for Solar Development:

1. **Tax credit**: Provides an income tax credit for individual taxpayers who install in the taxpayer's principle dwelling an energy system using a recognized non-fossil form of energy generation. The credit may not exceed $500. (15-32-201, MCA).

2. **Tax deduction:** Specific provision allowing a deduction from gross corporate income for computation of net income for expenditures for capital investments in buildings for energy conservation purposes in accordance with a specific schedule set forth in the statute. (15-32-103, MCA)

3. **Tax credit:** provides a resident individual taxpayer with a credit against state income tax for expenditures for capital investments in a building for energy conservation purposes in accordance with a specific schedule set forth in the statute. (15-32-109, MCA)

4. See the renewable resource grant and loans incentives and research and development incentives under geothermal resources .

FALLING WATER (HYDROELECTRIC FACILITIES)

Regulatory State and Federal Laws Impacting Hydro Electric Development:

1. Nonfederal hydroelectric power plants on navigable waters of the United States, those which occupy federal land or utilize water power from a government dam, or those which, under certain circumstances, affect the interest of interstate or foreign commerce, must be licensed by the Federal Energy Regulatory Commission (FERC). Navigable waters of the United States includes virtually all waters in Montana and the other 49 states. As a result, FERC is the lead agency in the licensing of new hydro power facilities and in the re-licensing of existing facilities. FERC, acting under the authority of the federal Power Act (as amended by the Electric Consumers Protection Act of 1986) and the National Energy Policy Act of 1992, processes and evaluates the federal applications required for all hydro power dams, diversions and other hydro power developments;

reviews and analyzes environmental impacts of hydro power projects and determines appropriate mitigation and enhancement measures; and sets requirements governing the sale of the hydro power generation at the wholesale level.

2. There are five primary subject areas where state regulation of hydroelectric power must be considered in addition to the federal requirements under FERC. These areas (and the responsible state agencies) are:

   (a) Water rights permits;
   (b) 310 permit for altering a perennial stream;
   (c) Water quality certification under Section 401 of the federal Clean Water Act;
   (d) Fish and wildlife impact evaluation (no permit required);
   (e) Major Facility Siting Act state filing with FERC for hydro facilities over 50 megawatts.

3. In addition, a 404 permit is required from the U.S. Department of the Army, Corps of Engineers for any dredge and fill activity or other work affecting United State's waters or wetlands.

BIOMASS

Regulatory State Laws Impacting Biomass Development:

1. Associated activities surrounding biomass development that effect air or water quality may require permits from DEQ.

Incentives for Biomass Development:

1. **Property Tax Abatement:** Provides for the classification of gasohol production facilities, during construction and for the first three years of operation, as class 5 property, taxable at 3% of market value. (15-6-135, MCA)

2. **Property Tax Exemption:** provides a property tax exemption for all property used in the production of ethanol from grain during the course of construction of an ethanol manufacturing facility and for 10 years after initial production of ethanol from the facility.

3. **Tax credit**: Provides an income tax credit for individual taxpayers who install in the taxpayer's principle dwelling an energy system using a recognized non-fossil form of energy generation. The credit may not

exceed $500. (15-32-201, MCA).

4. **Tax incentive:** The "Alcohol Tax Incentive and Administration Act of 1983"; establishes various tax incentives for the production of alcohol to be blended for gasohol and provides for a system of record keeping. (15-70-501)

5. See the renewable resource grant and loans incentives and research and development incentives under geothermal resources .

COGENERATION:

Regulatory State Laws Impacting Cogeneration Development:

1. The Public Service Commission regulates "qualifying small power production facilities;" authorizes cogeneration by qualifying small power production facilities and the sale of such electricity under rates and conditions prescribed by the Commission. (69-3-601, MCA)

Incentives for Cogeneration:

1. **Montana In-State Investment in Electrical Generation Facilities:** sets up a program to provide low-interest loans through the Montana In-State Investment Act of 1983, with certain conditions, to purchase of up to 120 megawatts from existing qualifying facilities.

2. **The federal Public Utility Regulatory Policies Act of 1978 (PURPA),** Pub. L. 95-617; establishing requirements for the participation by qualifying small power production facilities and arrangements for purchases and sales of electric power with electric utilities under the regulation of the Public Service Commission.

Chapter 4: Generating Electricity in Montana

♦ How is electricity generated in Montana?

Montana currently has 45 generating facilities located across the state with an average generating capacity of 3178 megawatts (DEQ, 2002). Coal fired generation makes up 54% of Montana's generation capacity. Hydro facilities account for 44% and petroleum coke makes up less than 2% and natural gas and wind account for the remainder (DEQ, 2002). See figure 10.

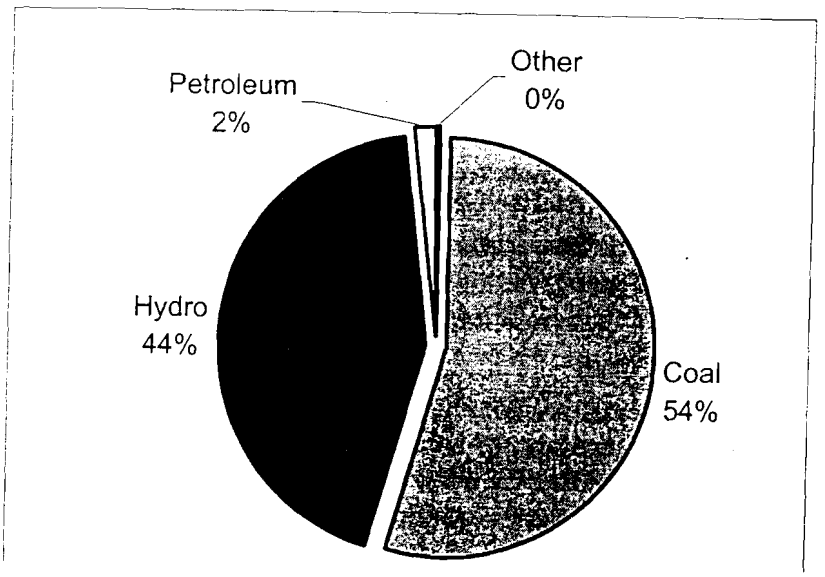

Figure 10. Generation Graphic

♦ Who generates electricity in Montana?

Electricity is generated by a variety of companies and governmental entities in Montana (see Table 2). Montana is a net electricity exporter -- in other words, Montana generates 60% more electricity than it consumes. Obviously the policy question arises that if Montana is an net exporter why should additional generation facilities be built in the state? Much of Montana's power is obligated through contracts to other customers, most of which are out of state. Utilities from Oregon and Washington own 33% of Montana's power production that they use for their customers. BPA and WAPPA own plants that generate 25% of Montana's power production, some of which goes to electric cooperatives in state and the rest is moved out state. Seven percent of NorthWestern Energy electricity production is committed to out-of-state customers. The bulk of the remaining power in the state (30%), is owned by PPL Montana. The 2001 Legislature opted for creating statutory incentives to build additional electricity

generation in the state, but the debate continues as to whether additional generation should be built.

Table 2. Average Generation by Company or Governmental Entity in Montana 1995-1999.

Average Generation by Company, 1995-1999	
Company	**aMW**
PPL Montana[1,2]	940
Puget Sound Power & Light[2]	509
Avista (WPP)[2]	403
Bonneville Power Administration[3]	382
Western Area Power Administration[3]	323
Portland General Electric[2]	223
NorthWestern Energy[2,4]	169
PacificCorp[2]	114
Yellowstone Energy Partnership	48
Other	69
TOTAL	3178

♦ What laws regulate the generation of electricity in Montana?

Chapter 3 thoroughly inventories those laws that regulate primary fuel sources for electricity in Montana. Electric generation facilities are no longer required to go through Montana siting certification process. Generation facilities typically require air and water quality permits from DEQ. Those permits trigger the Montana Environmental Policy Act which requires the state to conduct an environmental review on a proposed generation facility. Local governments may regulate the siting of a generation facility through land use and zoning restrictions.

♦ What laws provide incentives for the generation of electricity in Montana?

In addition to the incentives identified in Chapter 3, the 2001 Montana Legislature provided the following incentives for electric generation facilities.

1. **Montana In-State Investment in Electrical Generation Facilities (17-6-301 through 17-6-331, MCA)** Sets up a program to provide low-interest loans through the Montana In-State Investment Act of 1983, with certain conditions, to create up to 450 megawatts from the construction of new

generation projects in Montana and allows the purchase of up to 120 megawatts from existing qualifying facilities.

2. **Montana Power Authority (69-9-101 through 69-9-115, MCA)** The Montana Power Authority is authorized to purchase, construct, and operate electrical generation facilities or electrical energy transmission or distribution systems and to enter into joint ventures for these purposes. The Board of Examiners is authorized to issue revenue bonds for the Montana Power Authority (not to exceed $500 million), acquire electrical generation facilities, and build electrical energy transmission or distribution systems. The principal and interest on the bonds is payable from the sale of electrical energy from the facilities and from electrical energy transmission and distribution charges.

3. **Property tax exemption for electric generation facilities (15-24-3001 through 15-24-3007, MCA)** An electrical generation facility and related facilities constructed after May 5, 2001, may be exempt from property taxation. In order to qualify for the exemption, the owner of the facility must offer contracts to sell at least 50% of the facility's net generating output to customers at a cost-based rate plus a rate of return not to exceed 12% for a 20-year period from the date of the completion of the facility. The property tax exemption is limited to 5 years for a generation facility powered by oil or natural gas turbines.

4. **Exempted** electric generation facilities from the Montana Major Facility Siting Act.

5. **Revenue bonds.** Electrical energy generation facilities, regardless of size or fuel source, are eligible for county or municipal revenue bonds issued to finance economic development projects (Title 90, chapter 5, part 1, MCA)

Chapter 5: Transmitting and Distributing Electricity and in Montana

♦ Who transmits and distributes electricity in Montana?

Chapter 1 provided a good overview of how electricity is transmitted and distributed in Montana. Under Montana law, an entity that transmits or distributes electricity is called a distribution services provider (69-8-103, MCA). Transmission and distribution wires seem to cris-cross the state in a haphazard manner, but there is an imposed organization scheme for distribution placement. The state of Montana is divided up into service territories (see figure 11). All 26 electric cooperatives, Montana Dakota Utility, and NorthWestern Energy have their own distribution service territories. State law strictly protects the territorial integrity of each service territory (69-5-101 et. seq.). In addition to the distribution service territories, there are several government and private entities that own and operate transmission lines throughout the state (see figure 12). NorthWestern Energy, PacificCorp, BPA, and WAPA all own transmission lines in Montana.

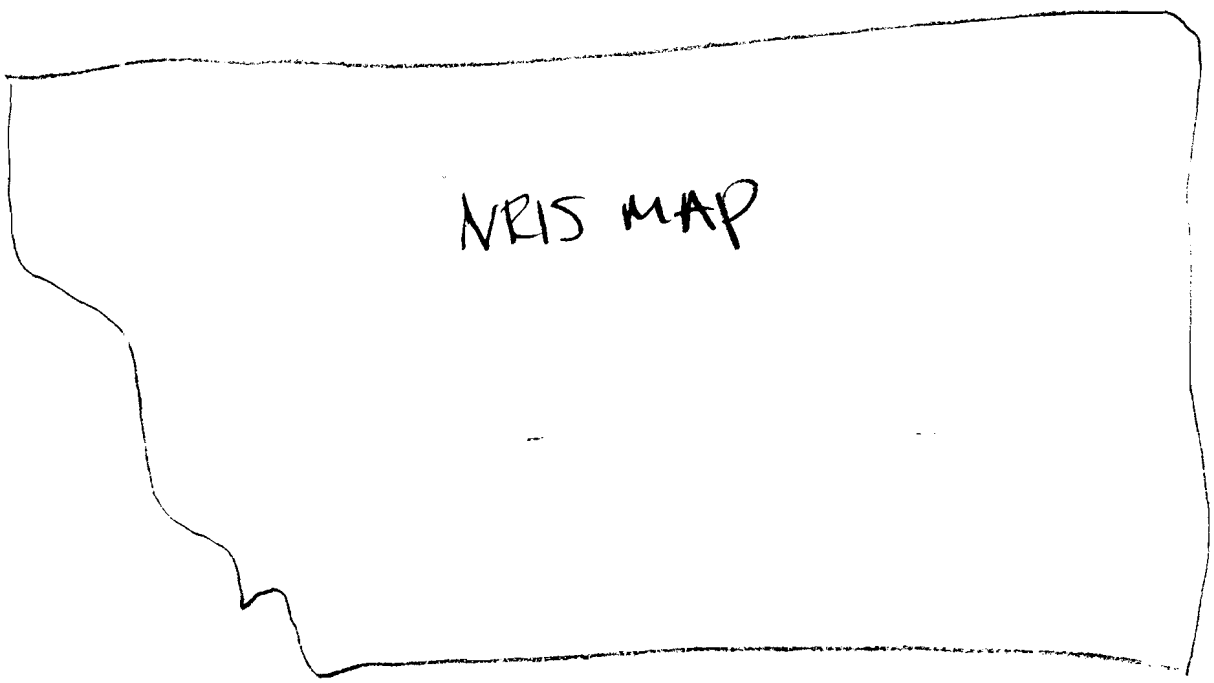

Figure 11. Service Territory Map

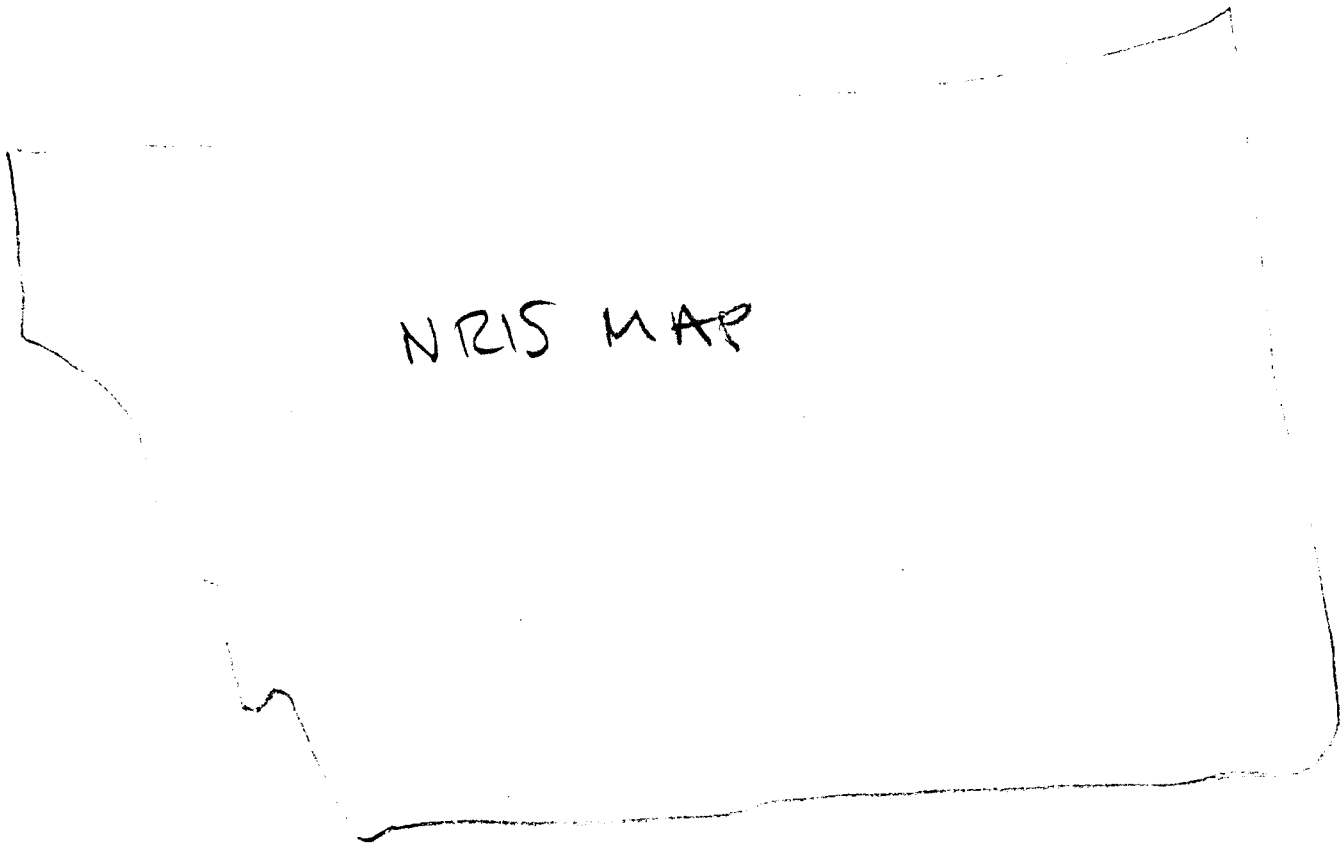

Figure 12. Transmission and Distribution Line Map

- How do our neighboring states and the federal government impact our electricity transmission?

As discussed in Chapter 1, Montana's transmission system is a small part of what is known as the Western Interconnection transmission system which in turn, is a part of a three region system of interconnections that transmits and distributes electricity across. the United States as well as parts of Canada and Mexico. We do not transmit electricity in Montana in isolation of our neighboring western states. Because Montana is interconnected, we are interdependent with our neighboring Western states.

Because transmission lines cross state boundaries, the federal government through the Federal Energy Regulatory Commission (FERC) has primary regulatory jurisdiction. FERC sets policies and adopts regulations for the management of transmission systems. FERC also establishes transmission rates for transmission customers. In recent years FERC has been increasingly active in trying to boost the efficiency the transmission system. The interstate transmission system is made up of multiple owners that control access to their piece of transmission wire on the system. Think of these owners as having a toll bridge booths at both ends of their transmission wire. There are

literally hundreds of toll booths on the Western transmission system (see figure 13). Each toll booth demands a contractual payment before you can transmit your electricity. Some transmission facility owners historically owned power marketing operations allowing themselves to charge higher prices for transmission services to other power marketers. In 1997, FERC issued Order 888 requiring transmission owners to functionally separate their power marketing operations. Under Order 888 the transmission owners must allow open access to their system that do not discriminate against other parties that use their systems. In addition, FERC issued Order 2000 requiring that an independent regional transmission organization (RTO) take over operation, control, ownership of the transmission system. The transmission owners and various stakeholders are currently in the process of formulating an organizational and operational structure for RTO west and have made a filing with FERC in March of 2002.

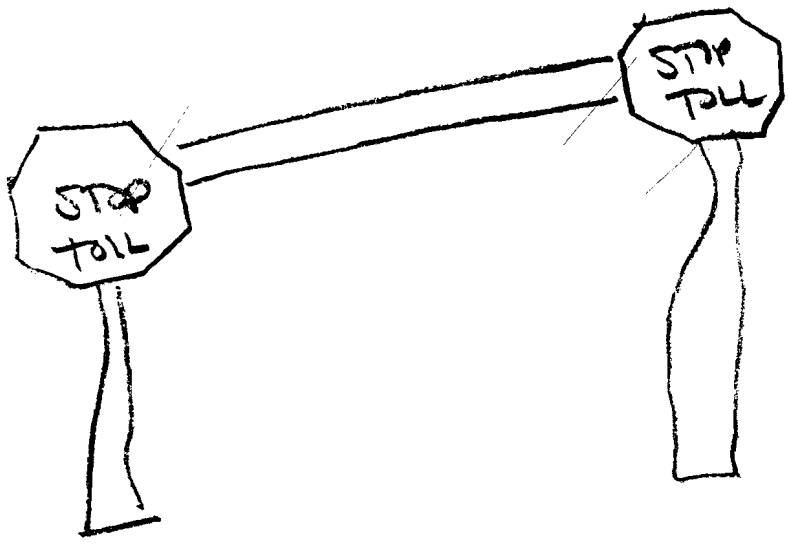

Figure 13. Transmission Toll Booths

♦ What state laws regulate the transmission and distribution of electricity in Montana?

Although the FERC has primary jurisdiction over transmission pricing and policy, Montana regulates transmission siting through the Montana Major Facility Siting Act (MMFSA) (75-20-101 et. seq.). MMFSA requires that any proposed transmission line receive siting certification before it is constructed. MMFSA supercedes local zoning and land use laws, making transmission siting strictly a state decision. Other water quality and stream crossing permits would apply. The Montana Environmental Policy

Act would require an environmental review on any proposed transmission line.

The PSC has broad regulatory authority over public utility distribution services providers (see Chapter 2 for a complete discussion of the PSC's authority). The PSC not only has the ability to set distribution rates for customers, but also approves the acquisition or construction of new distribution facilities and regulates reliability and facility maintenance. Montana electric cooperatives self regulate their distribution services. State law protects the territorial integrity of each service territory (69-5-101 et. seq.) and prohibits duplication of distribution services.

♦ What laws provide incentives for the transmission and distribution of electricity in Montana?

The PSC is required to include in distribution rates a reasonable rate of return for the public utility distribution services provider. This profit margin gives the public utility an incentive maintain and expand its services. Electric cooperatives are nonprofit entities that are customer owned that recoup their distribution costs in membership rates. State incentives for transmission and distribution facilities include:

1. **Montana Power Authority (69-9-101 through 69-9-115, MCA)** The Montana Power Authority is authorized to purchase, construct, and operate electrical generation facilities or *electrical energy transmission or distribution systems* and to enter into joint ventures for these purposes. The Board of Examiners is authorized to issue revenue bonds for the Montana Power Authority (not to exceed $500 million), acquire electrical generation facilities, and build electrical energy transmission or distribution systems. The principal and interest on the bonds is payable from the sale of electrical energy from the facilities and from electrical energy transmission and distribution charges.

Chapter 6: Conserving Electric Energy

♦ What is electric energy conservation?

Energy conservation refers to activities that reduce the amount of electricity used by a consumer. Examples of energy conservation include efficient appliances, lighting fixtures, high efficiency heating and cooling systems, efficient building design, weatherization of buildings, the use of advanced electric motors and heat recovery systems.

♦ How can conserving electricity save Montanans money?

Conservation is really a very simple concept -- if you use less electricity you lower your electricity bill. If a large block of customers use less electricity, it reduces the overall demand on the transmission and generation system; it reduces customer exposure to volatile fuel prices and electric market prices; and it eliminates the need to purchase or construct new and very expensive generation and transmission facilities. Conservation saves consumers money.

♦ What laws provide incentives for electricity conservation in Montana?

There are a variety of state law incentives for electricity conservation:

1. **Universal System Benefits Programs (USBP)**: When Montana restructured it electric industry, it created a USBP charge and fund to ensure, among other things, the continued funding of and new expenditures for cost-effective local energy conservation and low-income weatherization. Public utilities, cooperatives, and large customers can self direct and receive credit for cost effective local energy conservation and low-income weatherization. (69-8-402, MCA).

2. **Tax deduction:** Specific provision allowing a deduction from gross corporate income for computation of net income for expenditures for capital investments in buildings for energy conservation purposes in accordance with a specific schedule set forth in the statute. (15-32-103, MCA)

3. **Tax credit:** provides a resident individual taxpayer with a credit against state income tax for expenditures for capital investments in a building for energy conservation purposes not to exceed $500. (15-32-109, MCA)

4. The "**Montana In-State Investment Act of 1983**"; expresses legislative policy and purpose of the permanent coal tax trust fund, which are to: (1) compensate future generations for the depletion of resources caused by coal development; and (2) to develop a strong economy for Montana. States that the Board of Investments shall endeavor to invest up to 25% of the fund in the Montana economy, with special emphasis on local enterprises. This section also sets forth authorized investments, limitations on investments, and preferences for investments of revenue from the coal tax trust fund, which, under Section 17-6-309(1)(f), expressly includes energy efficiency investments. (17-6-301, MCA)

5. Provisions of the "**Montana State Building Code.**" This law is designed to accomplish several objectives, including the following: encouraging, to the fullest extent feasible, the use of modern technical methods, devices, and improvements for the purpose of reducing the cost of construction, consistent with the conservation of energy and the efficient utilization of energy; to encourage efficient design and installation which will result in consumption of the least possible quantities of energy and to reduce the need for heating in the winter and air conditioning in the summer; to encourage efficient design of building envelopes with high thermal resistance and low air leakage, and to require design and selection practices which will promote the efficient use of energy. The Department of Commerce is responsible for adopting rules relating to the construction of, installation of equipment in, and standards for materials to be used in all buildings subject to the code. (50-60-201, MCA)

6. **Purchase of Conservation:** Authorizes utilities to purchase conservation or directly engage in conservation investments which have been approved by the Public Service Commission, with the cost-effective conservation measures to be at the customer's discretion, installed by either a private firm, the customer, or the utility. Also authorizes the Commission to make on-site audits to insure compliance with the criteria set out in this section. Prohibits a utility which has placed the conservation in its rate base to claim a conservation tax credit. (69-3-701, MCA)

7. **Research and Development of Energy Conservation:** Implements a program administered by DEQ designed to promote research and development of energy conservation and renewable energy sources, and authorizes the receipt of money from repayment of grants and loans "previously awarded" by the DEQ. Establishes the "alternative energy and energy conservation research development and demonstration account," funded by repayments of grants and loans which have been awarded from the account. DEQ may allocate the funds to statutory loan and grant categories, but has the discretion to reallocate to insure that the program

offers the greatest possible benefits during a particular fiscal year. (90-4-101, MCA)

8. **Low-income weatherization:** Appropriates to the State Department of Public Health and Human Services all federal funds and grants available under the U.S. Department of Energy low-income weatherization assistance programs, U.S. Department of Health and Human Services low-income home energy assistance program, or any similar federal program designed to increase the energy efficiency of dwellings inhabited by low-income individuals. Directs the DPHHS to allocate at least 5% of funds received from the U.S. Department of Health and Human Services low-income home energy assistance program, if federal law allows. (90-4-201, MCA)

9. **Energy Supply Emergency Powers**: Establishes the necessary planning, information gathering, and energy emergency powers for the governor and defines the conditions under which these powers are to be exercised. Also provides for the regular monitoring of energy supplies and demand. This section is intended to enable the governor and other state agencies to deal with possible energy shortage emergency situations. Grants to the governor emergency powers which are intended to enable the governor's office to gather information, to regularly monitor energy supplies and demand, to formulate plans, and to institute appropriate emergency measures designed to reduce or allocate the usage of energy. (90-4-301, MCA)

10. **Participation in the Pacific Northwest Power and Conservation Planning Council:** Legislative expression of agreement to participate in the Pacific Northwest Electric Power Planning and Conservation Act, and the Pacific Northwest Electric Power and Conservation Planning Council. Authorizes the governor to appoint two members to the council. (90-4-402, MCA)

11. **State Building Energy Conservation Act:** DEQ is required to work with state agencies to identify buildings that have potential for energy savings, based on age, energy use, function, and condition of the building. DEQ is required to compile a report to be submitted to the Governor before September 1 of each even numbered year. The Governor is required to submit proposed projects to be funded as a part of the budget. If two-thirds of the legislature approves, energy conservation bonds may be issued to finance energy conservation projects. (90-4-601, MCA)

- Who can you contact about energy conservation in your home, school, or business?

For local conservation programs contact your public utility or local electric cooperative. If you have questions about state building energy conservation programs, contact DEQ at 406 444-6778.

Chapter 7: Pricing Electricity Supply, Transmission, and Distribution

♦ Who sets our retail electricity supply prices in Montana and how is it done?

The process for determining retail electricity supply prices in Montana depends on who you receive utility services from and in some circumstances, what type of customer you are. If you a member of most Montana electric cooperatives, the elected board of the cooperative sets the rates for electricity supply. If you are a member of the Flathead or Mission Electric Cooperatives your electricity supply prices are set by the market and approved by the elected board. If you are a customer of Montana Dakota Utility, the PSC sets the rates for electricity supply. For NorthWestern Energy, if you are a small customer that has not chosen an alternative electricity supplier, you are part of the default supply load which is regulated by the PSC. Since NorthWestern Energy is distribution services provider that does not currently own sufficient generation assets to cover the default supply load, NorthWestern must purchase electricity from the market. The PSC must approve those purchases. The market determines the price that small NorthWestern customers will pay for their electricity supply starting July 1, 2002. If you are a large or small NorthWestern customer that has chosen an alternative electricity supplier, the price of your electricity supply is dictated by that electricity supplier.

♦ Who sets our transmission and distribution costs in Montanan and how is it done?

FERC has jurisdiction over transmission pricing. FERC sets transmission rates that transmission owners can charge and those charges are passed on to customers. For NorthWestern and Montana Dakota Utility customers, the PSC regulates the distribution costs. A public utility may request a distribution rate increase, but that rate increase must be approved or rejected through a formal PSC rate hearing process. If you are a Montana electric cooperative member, distribution costs are set by the elected governing board.

Chapter 8: Montana's Electric Restructuring Laws

♦ What is electric industry restructuring?

Montana's electricity laws and polices have receive a lot of public attention and scrutiny since 1997, when Montana decided to deregulate electricity supply and eventually allow all Montana consumers to choose (if markets develop), their own electricity supplier. This was, and continues to be, a fundamental policy shift from the State of Montana regulating of the price of electricity supply to allowing the markets to set the price of electricity supply. Markets have not developed for small residential and commercial customers in the state.

Specifically, if you are a NorthWestern customer or a member of an electric cooperative that has opened itself up to competition, electricity industry restructuring is the deregulation of the price of retail energy supply which allows a competitive market dictate the price, and allows the customer to choose an electricity supplier that gives them the best deal and/or the best product. If you are member of a cooperative that has not opened itself up to competition or a Montana Dakota Utility customer the price of your retail electricity supply is set either by the cooperative board or the PSC in the case of MDU. Under Montana's electric industry restructuring laws, the distribution poles and wires of a public utility are regulated by the PSC. The original Montana electricity restructuring law set up a transition period for all NorthWestern customer to choose an electricity supplier by July 1, 2002. Market volatility and the lack of any real small customer retail competition of electricity supply forced the 2001 Montana Legislature to effectively delay full customer choice until July 1, 2007.

♦ Why did Montana decide to restructure its electric industries?

The fundamental premise of Montana's restructuring law is that competition will provide greater benefits to consumers than they would otherwise have under a traditional regulated environment. One of the driving forces behind restructuring generally, was FERC's decision in 1996 to deregulate electricity supply markets at the wholesale level. Wholesale transactions involve the sale of electricity from large suppliers (i.e., non utility power producers) to large electricity buyers and sellers (utilities, power marketers, etc.).

So, in January of 1997, the Montana Power Company (now NorthWestern Energy) and the number of Montana large customers, brought forward a legislative proposal (Senate Bill 390) to deregulate retail electricity supply. The reasons stated in the testimony before the Montana Legislature to pass Senate Bill 390 were:

- Competitive markets would provide Montana electricity consumers with

cheaper prices.

- That Congress was seriously contemplating national deregulation legislation and that Montana should take the lead so that the federal government would grandfather in our policy choices.

- Montana's large industrial customers were looking at a electricity supply market that was cheaper than the traditional regulated utility supply and that if they could get better prices it enhanced economic development in Montana.

- Montana Power Company needed to be proactive in this newly emerging competitive environment that was emerging as opposed to reactive.

- That competition is here, that power supply markets are competitive, and that customers are demanding retail access.

In passing Senate Bill 390, the 1997 Legislature noted that competitive markets exist, that Montana customers should have the freedom to choose their electricity supplier, that Montana consumers should be protected, and that the financial integrity of Montana utilities should be maintained. (69-8-102, MCA)

♦ What is the status of electric restructuring today?

Market volatility and the lack of any real small customer retail competition of electricity supply forced the 2001 Montana Legislature to effectively put full customer choice on hold until July 1, 2007. If you are a small customer of NorthWestern that has not chosen an alternative electricity supplier, you are part of the default electricity supply load which is regulated by the PSC. Since NorthWestern Energy is distribution services provider that does not currently own sufficient generation assets to cover the default supply load, NorthWestern must purchase electricity from the wholesale market. The PSC must approve those purchases. The market determines the price that small NorthWestern customers will pay for their electricity supply starting July 1, 2002. For the most part, markets have developed to serve large industrial electricity customers and most of those customers have chosen alternative electricity suppliers.

GLOSSARY OF ELECTRICITY TERMS

Appendix A: Information Resources

Appendix B: Reference Sources