48TH LEGISLATIVE SESSION

MINUTES OF
NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE

February 18, 1983

A regularly scheduled meeting of the Senate Natural Resources Committee was called to order at 12:30 p.m. by Chairman, Senator Harold L. Dover, on Friday, February 18, 1983 in Room 405, State Capitol, Helena, MT.

ROLL CALL: Roll was called with all members of the Committee being present.

SENATE BILL 406: Chairman Dover opened hearing by calling on Senator Delwyn Gage, sponsor. Senator Gage stated the bill relates to use of environmental assessments by the Dept. of Health in subdivisions. He has spoken with real estate people and there is duplication of effort, in that they have to get a statement for review, they have local review, and then do the same for the Health and Environmental Sciences Department. Senator Eck stated she would like to speak to the bill, that she believed the information would be needed. There should be a provision for a chance to look at the cumulative effect with the EIS. This is true especially in the Flathead area where there has been a great deal of concern on what is being done, and there has not been an EIS to address the situation.

Senator Gage asked Howard Johnson to speak to the bill if there were questions ask him. Mr. Johnson stated there has been concern that the cumulative effect may not be taken into consideration. There are relatively few people involved in subdivisions. The developer has approval at the local level before the state has the opportunity to assess the impact.

Senator Lee inquired if the bill would preclude the department for the process? It was not believed so.

There were no further Proponents and no Opponents to the bill.

Chairman Dover then announced that the committee would meet after session, on adjournment since session was beginning early. There was time now, however to hear another bill.

SENATE BILL 416: Chairman Dover called on Senator Donald Oschsner, sponsor. Senator Ochsner stated this bill would include "railroads consisting of new track to be constructed between the proposed mine and existing tracks" under the definition of preparatory work in the Mine Siting Act. The bill will simply take care of one problem - a loophole in

SB 416 (cont.)
existing law means that a railroad can be built to a mine before that mine has a permit under Montana law. It means that the state must turn its back on a major aspect of a mine proposal - transporation. Montana can exercise its authority over railroads, as long as statutes don't conflict with federal statutes. A memo from an Attorney was passed out to the committee which addresses this issue. Attached as Exhibit '1'. Senator Ochsner said that Wyoming included railroads in their Industrial Siting Act in 1981. They defended their law against constitutional challenges, by saying that their provision is a legitimate exercise of state police power. The bill would close a loophole in the Reclamation Act and provide the state with a handle on facilities being built within the state. There were to be proponents.

PROPONENTS: Keith Powell, rancher, stated this is a state blessed with natural resources, that he believes railroads are necessary, and most of us believe in free enterprise, but the railroads seem to be taking productive agricultural lands. He is asking that the railroad not be able to construct lines until a mine has a permit. He thought that in these cases the citizens have little or no say. There was an ICC hearing in 1980 in Miles City, there was no say by the people, the county commissioners were not included in the EIS, and two engineers were asked to leave, and they stated the draft was not to be made public. He also introduced Art Hayes, Jr., who stated briefly that he felt there should be more say from the people

Herb Mobley, Ashland, stated this bill may keep the railroad from cutting across areas such as the creek. If there was no permit for a mine, they couldn't build. He said the ICC has seemed to admit they have no enforcement rules. He thinks the state should be involved in any long range plans.

Joe Brand, Rep. from Deer Lodge, stated he is on this bill, and that it would be a good bill for the people as well as the workers and the industry. It means that railroad construction would have to follow the rules, and do the building one step at a time. Sometimes there is a tendency to forget about the people who have to live by these tracks, and any development has far reaching effects.

OPPONENTS: Mike Gustafson, President of Wesco, and on behalf of Tongue River Railroad opposed the bill. The bill would give the Dept. of State Lands jurisdiction on all new rail lines built, not just spurs or loops. His testimony is attached, Exhibit '2'.

SB 416 (cont.)
Pat Wilson, representing Montco and Thermal Energy, who are developing a coal mine sw of Ashland oppose the bill, because it is aimed at stopping building of railroads and strip coal mines. Her testimony is attached, Exhibit '3'.

Dennis Hemmer, Department of State Lands, stated they are not opposed or in support, but would request an amendment, stating that spurs or loops could be constructed. It appears to have been left out of the bill unintentionally. His testimony is attached, Exhibit '4'.

Mike Fitzgerald, President of Montana Trade Commission, stated this bill appears to be an obstacle to the Tongue River Railroad, and to coal mining. It would hinder coal mine development and add further delay and expense. His testimony is attached, Exhibit '5'.

Senator Van Valkenburg inquired if this bill, then wasn't to stop the Tongue River railroad. Senator Oschner stated it wasn't, that the railroad had been built and then they put in for the mine, and that now the questions arises, how could they deny the mine. The bill couldn't apply to this situation, because it would come in after the fact.

Mr. Gustafson stated they have been doing the preliminary work, doing the EIS that is necessary and working with the agencies, and it will probably take a year before anything is issued.

Senator Van Valkenburg inquired of Mr. Mobley as to his statement of the railroad ruining all the creeks, and that construction would not be advantageous to them, and would not be good economics just to be building for the sake of building. Mr. Mobley stated he felt they would build the railroad and use it as leverage with the Dept. of State Lands to get their permit and that was his objection.

Senator Ochsner made closing remarks, stating he felt the state should have a say in new railroads. The reason the Montco project hasn't gone anywhere is not because of red tape, but because they don't have a proposal that is satisfactory and haven't shown they can reclaim the area. The bill is not an attempt to obstruct any project, it means that before they can start work they need a permit. The bill does not conflict with the ICC, they still have responsibility for showing public convenience and necessity, but they don't appear to be interested in whether the mine is permitted. The railroads that serve the mines should be under the siting act, and they are only built for the mine and should be treated as part of the project.
Hearing was then closed.

SENATE BILL 430: Chairman Dover opened hearing and asked Senator Mike Halligan to speak on this bill. Senator Halligan stated this bill is to include cogeneration and conservation as small power facilities. This bill would add to the definitions. During the interim the EQC studied cogeneration and conservation, and the council decided to submit a bill that would include these two forms of energy. There are other proponents to the bill.

PROPONENTS: Tom Schneider, PSC Chairman, stated he is in support of the bill, but would like to submit a clarifying amendment, which was also submitted to the House on a similar bill. That amendment is attached, Exhibit '1', SB430. This could be administered by the Dept. of Natural Resources, the rules are in place now, and it would take no additional funding or staff. The amendment would limit this utility to residential. The PSC supports the bill with the amendment.

Max Deibert, Engineer from Billings, stated that in 1981 the legislature passed authority for the sale of electricity from small power facilities to come under the public utility regulatory act. The PSC has adopted rules which cover cogeneration and small power production, and approved rates to be paid for energy supplied by cogeneration. Montana law currently does not reference cogeneration. He presented testimony outlining the advantages, which is attached, Exhibit '2', SB 430. Also included are regulations referenced in his testimony.

Don Reed, Montana Environmental Information Center, stated they are in support of the bill, for reasons already presented by previous proponents.

OPPONENTS: John Alke, Montana Dakota Utility Co., stated they are in opposition. This bill would cause their company to have to pay out money. They are not opposed to conservation.

If a party generated power and installed a facility for say $400, and generated power, they would have to pay back to that person every year. There are portions of the bill they would agree to.

Gene Phillips, Pacific Power and Light also objected to the bill, and the terminology used. This would be the only state in a 6 state area that would have this requirement where they would have to pay back more for conservation.

Jim Walsh, Montana Power company stated they also oppose for the same reasons stated. Conservation does not produce power. They do, however encourage conservation.

SB 430 (cont.)
Senator Mohar inquired further of the man from MDU as to their having to pay back to customers. Mr. Alke stated that is what would happen according to their rates at present. It was stated the proposed amendment would not cause this to happen.

Senator Halligan stated he had worked with the utility companies in the past, and if there is a problem with the wording, it would be fine with him to make the changes, and to have the bill deal just with cogeneration if that was necessary. Hearing was then closed.

SENATE BILL 441: Chairman Dover opened hearing and asked Senator Larry Tveit, Dist. 27 to speak on the bill. Senator Shaw said this is to provide for a record of royalty payments and that sometimes small companies do not provide a record every month. Some companies go 2-3 months without showing accounting, and if they don't pay the tax, then a check can come deducting all the tax and no payment of royalty. Sen. Shaw spoke for Senator Tveit.
PROPONENTS: There were no other proponents.
OPPONENTS: Carl Rieckmann, Montana Petroleum Association said the accounting being asked could be a big burden, perhaps it could be worked out, but a lot of smaller companies would have a problem trying to provide this type of information. The penalty also seemed excessive.

Senator Mohar stated he was surprised at the fine and six months sentence for violation. Senator Tveit stated this was to show that it was important to have the tax accounting. Hearing was then closed.

SENATE BILL 442: Chairman Dover opened hearing and asked Senator Larry Tveit, to speak on this bill. Senator Tveit stated this is to measure the oil and gas produced from wells in the state, and that it be open to the public for inspection. This is on the books, but not all of the bill. He stated it is not to his satisfaction, and moved to table SB 442, vote was called, all voted 'aye' and motion carried.

SENATE BILL 444: This bill had been scheduled, but was not heard at this time due to absence of the sponsor.

ACTION ON SENATE BILL 430: Senator Halligan moved that SB 430 be amended, page 2, line 5-7, strike subsection (c); page 2, line 18, following (a), strike "through", insert "and (4)(b); page 2, line 19, strike "(4)(c), following "69-3-601", strike "or any"; p. 2, line 25, strike "combination of those sources". Vote was called on amendment, all voted 'aye' and motion carried.

SB 430 (action cont.)
Senator Halligan then moved that SB 430 Do Pass as Amended, there was no further discussion, vote was called, all voted 'aye' and motion carried.

ACTION ON SENATE BILL 416: Senator VanValkenburg moved that SB 416 be amended with the Department of state lands proposed amendments, page 2, line 17, following "of" insert: "railroad spurs or loops". Vote was called on amendment, all voted 'aye' and motion carried. Senator Van Valkenburg moved that SB 416 Do Pass as amended. He stated he believed the people should be protected, they have found a problem in dealing with the ICC on railroad lines, and this bill determines how they go through. It is important that the state be able to have some control on what happens within our boundaries. Senator Manning said the bill is reasonable, that he has had experience where there were three railroad crossings put where the school bus has to go through, and this should have been considered. They since have had to put up crossing arms, but this all could have been prevented. Senator Keating inquired if this would become part of a project and that a project gets a permit before it could go through? Mr. Wilson stated he didn't believe the ICC would relinquish their jurisdiction. The Dept. of State Lands would have an additional opportunity to speak, however. Vote was called, a majority voted 'aye' Senators Dover and Keating voted 'no', motion carried. (This bill was later reconsidered.)

ACTION ON SENATE BILL 406: Senator Van Valkenburg moved that SB 406 Do Not Pass due to not having enough information. There was discussion as to what is considered by local agencies on subdivisions, whether it was just water and sewer and if the EIS should be done. It was pointed out that the quality of assessments received from developers varies, as well as actions of planning boards. Senator Van Valkenburg withdrew his motion, Senator Lee moved to Pass Consideration, vote was called and all voted "aye". Motion carried. (This bill was later reconsidered.)

ACTION ON SENATE BILL 368: Senator Lee offered amendment to the bill, page 1, line 16-19, strike "subsection (2) in its entirety" and insert "however, nothing in this chapter creates or expands decisionmaking authority granted by or referred to in subsection (1), and to amend the title. Vote was called on the motion, all voted "aye" and motion carried. Senator Lee moved the bill as amended Do Pass. Senators discussed the bill, Senator Van Valkenburg stated there is the resolution proposed to study this matter, it is already considered procedural and the bill shouldn't be rewritten until after it is determined what the Supreme Court is going to do. It should be taken care of in court. Senator Story agreed it may be well to leave it as it is. Senator Mohar agreed that it is now considered procedural by the Governor and administration and will probably continue that way.

SB 368 (cont.)
Senator Lee stated this bill would not affect those cases that are in court. Request was made to have legal council refine the amendment. Vote was called on the motion that SB 368 Do Pass as Amended, roll was taken, vote was 7-4 and motion carried.

ACTION ON SENATE BILL 396: Amendments were proposed to the bill, title, line 9, following "76-6-203" strike "76-6-206", page 4, line 25 and line 1 on page 5, following "areas" strike "within the floodplain of or"; page 5, lines 4-6, following "species" strike remainder of lines 4-6, insert '.'; page 6, line 22 through line 16 on page 7, following line 21, strike section 4 in its entirety; renumber subsequent sections. There was short discussion, vote was called on Motion of Senator Eck to amend SB 396, motion carried. There was further discussion, Senator Eck moved to pass Consideration of SB 396, vote was called, all voted 'aye' and motion carried. Senator Lee voted no.

ACTION ON SENATE BILL 416: Senator Etchart moved that SB 416 be reconsidered, vote was called, a majority voted 'aye', Senator Mohar voted 'no', motion carried.

ACTION ON SENATE BILL 362: Senator Etchart moved that this bill be tabled, that he had put a lot of work into it, but felt the amendments needed to be made and worked out. There was discussion by the committee, members agreed to look further into the amendments and Senator Etchart withdrew the motion.

SENATE BILL 444: Chairman Dover opened hearing on SB 444, calling on Senator Reed Marbut, Missoula. Senator Marbut stated this bill is to clear up very old easements for utility lines that were given without any definition of exactly where they are to be located. This would allow for surveys to be made and the property identified showing clearly which are and are not being used. There were no other proponents.

OPPONENTS: John Alke, Montana Dakota Utilities spoke in opposition. As the bill is written, easements could be cut back to only the area where the utility is located, that the 15 or 20 foot easements are needed to allow trucks to go into the areas for work. He recommended a do not pass. There were no other opponents.

Senator Eck inquired further as to what area Senator Marbut was talking about, Senator Marbut stated on old easements there was no definition. His intent is to erase from titles the things not needed and not utilized by utilities, and to define those old easements. Senator Story said some of the easements on his property for utilities could not even be reached by a truck, but they need easement to cut across other property to reach the lines. Senator Keating inquired

SB 444 (cont.)
if some of the old easements are causing subdivisions to have problems? Senator Marbut stated they do, because there is no definition of where they would go through the property.

Mr. Alke stated the bill would cause them to have to survey every easement they own, and he thought that if a utility was only utilizing four feet, this bill would only allow that easement, and they couldn't then go in for repairs. There was no further discussion and hearing was closed. Committee then recessed to go into Senate session, and would meet again on adjournment for further executive session.

Roll was called again, all members of the committee were present.

ACTION ON SENATE BILL 441: Senator Tveit moved that SB 441 be amended, amendments proposed are on committee report attached to minutes. Senator Dover inquired if the misdemeanor penalty would be automatically set? Senator Van Valkenburg stated if it is not specifically set, then it would be automatic 6 months or $500 fine, a different fine could be established and this is what the amendment is doing. Senators called for question, vote was called on amendment, a majority voted 'aye' and motion carried. Senator Shaw then moved that SB 441 Do Not Pass, since this came in the last day and there were revisions to be made If you have to rewrite a bill on the last day you might as well kill it. Senator Mohar made a substitute motion and moved that SB 441 Do Pass as Amended, vote was called, motion carried, Senator Shaw voted no.

ACTION ON SENATE BILL 444: Senator Halligan moved that SB 444 Do Not Pass, Senator Mohar entered substitute motion that SB 444 be tabled, vote was called and motion carried, Senators Lee and Tveit voted no.

ACTION ON SENATE BILL 400: Senator Van Valkenburg moved that SB 400 Do Pass. Senator Dover reminded the committee that with this vote, the committee would be setting a precedent. Senator Van Valkenburg said we are the ones that have a problem with polution from British Columbia and Saskatchewan, we need to take the lead and pass it, and it gives us a base to have something to talk about. Senator Keating noted we are downwind from Oregon and Washington and upwind from Dakota, and our air and water quality would preclude us from any acts against us from that side. We are a headwater state, but our clean water runs waste as well. He concurred with Senator Van Valkenburg. Senator Story stated he thought we should sign the effort, but not before the others. The one that might fall short is Dakota, and that might be so they could sue us. Vote was called on motion that SB 400 Do Pass, motion carried, majority voting 'aye', Senators Story, Shaw, Etchart and Dover voted 'no'.

ACTION ON SENATE BILL 362: Senator Etchart asked Howard Johnson of EQC to further explain the amendments. Motion was made by Senator Shaw that SB 362 be tabled. Senator Eck made substitute motion, and moved that the bill be passed unamended and worked on in the House. Senator Etchart did not favor that idea. Senator Mohar said if we don't pass a bill similar to this, a lot of people would have difficulty obtaining funding. Vote was called on substitute motion, and failed, 4-6.

Senator Keating moved to pass the amendments with further modifications. Senator Shaw entered substitute motion that SB 362 be tabled. Vote was called, motion defeated. Senator Keatings motion to pass amendment was discussed as to the change and to include "tailings". Amendments are shown on the committee report attached. Vote was called, amendments passed.

Senator Keating moved that SB 362 Do Pass As Amended, vote was called, motion passed, Senator Shaw voted 'no'.

ACTION ON SENATE BILL 416: Senator Lee moved that SB 416 Do Not Pass. Senator Mohar entered substitute motion that SB 416 Do Pass. He said that if Senator Etchart had problems with the bill, it should be held on the floor as amended. Vote was called, motion failed 7-5. Senator Etchart moved to reverse the vote 7-5 Do Not Pass, motion carried. Senator Lee moved that SB 406 Do Pass, motion failed on a tie vote.

There being no further business to come before the committee the meeting was duly adjourned.

Harold L. Dover

SENATOR HAROLD L. DOVER, CHAIRMAN
SENATE NATURAL RESOURCES COMMITTEE

Patricia Hatfield

Patricia Hatfield
Committee Secretary

ROLL CALL

SENATE NATURAL RESOURCES COMMITTEE

48th LEGISLATIVE SESSION -- 1983 Date 2/8

NAME	PRESENT	ABSENT	EXCUSED
ECK, Dorothy (D)	✓		
HALLIGAN, Mike (D)	✓		
KEATING, Thomas F. (R)	✓	late	
LEE, Gary P. (R)	✓		
MANNING, Dave (D)	✓		
MOHAR, John (D)	✓		
SHAW, James N. (R)	✓		
STORY, Pete (R)	✓		
TVEIT, Larry J. (R)	✓		
VAN VALKENBURG, Fred (D)	✓		
ETCHART, Mark (R) Vice Chairman	✓		
DOVER, Harold L. (R) Chairman	✓		

DATE 2-18-83

COMMITTEE ON Senate Natural Resources.

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Jim Mockler	Mt. Coal Council	SB416		←
Pat Wilson	Montco/Thermal Energy	SB416		✓
Bob Mobley	Rancher-Owner	SB416	X	
Keith Fosdell	Rancher	SB416	X	
Lee V. Tollefson	WESCO Ranchers.	SB416		X
Art Hayes Jr	Ranchr		X	
Tom Schneider	Montana PSC	430	✓ Amend	
Max C. Dehert	Self	430	✓	
James Jurgens	Montana Power Co.	430		✓
Tom Staples	Mt Int'l Trade Comm.			✓
Dennis Hemmer	Dept. of State Lands	SB 416	—	—
Gary Amestoy	Dept. of State Lands	SB 416	—	—
Dave Woodgerd	Dept. of State Lands	SB 416	—	—
Lawrence D. Kennedy	Mont Assoc. of Realtors	SB406	X	
Nina Parker	Montana Assoc of Realtors	SB406	X	
Bill Gillin	Rancher M.P.A.		✓	
GENE PHILLIPS	PACIFIC POWER & LIGHT	SB 430		X
Carl Rieckmann	Mont. Pet. Assoc.	SB441		?
[illegible] Mike Roberts	INDEPENDENT PRODUCER	SB 441		X

(Please leave prepared statement with Secretary)

Exhibit #1
Sen. Nat. Res.
2/18/83
SB 416

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(406) 252-6782

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OF COUNSEL
FRED N. DUGAN

February 17, 1983

Honorable Harold Dover
Chairman, Senate Natural Resources Committee
Montana Senate
Capitol Station
Helena, MT 59620

RE: SB 416

Dear Senator Dover:

We have been asked to give a legal opinion as to the constitutionality of SB 416, a bill for an Act entitled "An Act to amend the definition of 'preparatory work' to include construction of railroads in the Strip and Underground Mine Siting Act; amending Section 82-4-103, MCA."

This bill amends Section 82-4-103(8), such that all disturbances associated with the initiation of a new strip or underground mine, including construction of railroads to serve the mine, are considered as "preparatory work." Preparatory work is prohibited until and unless a mining permit is obtained from the Department of State Lands.

During discussion of SB 416, a question was raised concerning its "constitutionality." We have concluded that SB 416 is not unconstitutional. This question is addressed in the attached memorandum.

If you have any questions about this, please feel free to contact us. Thank you for your consideration.

Sincerely,

PATTEN & RENZ

Jeffrey T. Renz

JTR:kkb

Encl.

cc: Senate Natural Resources Committee

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3/18/83

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MEMORANDUM

To: Honorable Harold Dover

From: Patten & Renz, Attorneys at Law

Re: Constitutionality of SB 416

QUESTION

1) Will the Montana Strip and Underground Mine Siting Act (as amended by SB 416) violate the Commerce Clause, Article I, Section 3, clause 8, of the U.S. Constitution?

2) Does the proposed legislation conflict with the Interstate Commerce Act, 49 U.S.C. sec. 10901?

3) Has Congress preempted the proposed legislation?

CONCLUSION

1) The proposed legislation does not violate the Commerce Clause, Article I, Section 8, clause 3, of the U.S. Constitution as there is no direct conflict with the Commerce Clause and there will be no direct burden on interstate commerce.

2) The proposed legislation does not conflict with the Interstate Commerce Act, 49 U.S.C. sec. 10901.

2-18-83

3) Congress has not preempted the area to be regulated by the proposed legislation.

DISCUSSION

1. Introduction.

Presently, the Montana Strip and Underground Mine Siting Act, sec. 82-4-101, et seq. ("the Act"), contains a loophole which would allow a mine operator or any other person to conduct preparatory work off of the site of the proposed mine. This work can and does result in serious harm to the area where it takes place -- harm which occurs needlessly in the event that the mining permit is not granted. Montana presently has no control over these activities under the Act. SB 416 extends the State's control to off site preparatory work. At the same time, it eliminates the vague and undefined terms, "railroad spurs and loops." Retention of these terms, which are subject to a number of conflicting definitions, would invite needless litigation. By substituting "railroads", this problem is cured.

Read as a whole, SB 416 is clearly intended to control construction of railroads intended to serve the proposed mine or, in the words of the bill, "construction of railroads consisting of new track between the proposed mine and an existing railroad."

2. The Commerce Clause.

Article I, Section 8, clause 3 of the U.S. Constitution declares:

> The congress shall have the power --
>
> * * *
>
> to regulate commerce with foreign nations, and among the several states....
>
> * * *

The states, however, may affect interstate commerce in areas where Congress has not acted, Willson v. Blackbird Creek Marsh Co., 27 U.S.(2 Pet.) 245 (1829); Gilman v. Philadelphia, 70 U.S.(3 Wall.) 713 (1866), as long as there is no direct conflict with the Commerce Clause or no direct burden on interstate commerce. Board of Hudson River Regulating District v. Fonda, J. & G. R. Co., 223 App. Div. 358, 228 N.Y.S. 686 (1928), and the States are free "to adopt protective measures of a reasonable character in the interest of the health, safety, morals, and welfare of its people although interstate commerce may incidentally or indirectly be involved." Id.

Montana is, of course, free to regulate surface coal mines and associated facilities even though they operate in interstate commerce. 30 U.S.C. sec. 1255. Furthermore, it appears that Congress has not specifically addressed railroads associated with the initiation of a new mine, except to the limited extent discussed below.

Forbidding construction of a railroad identified in SB 416 until a permit is granted to the mine operator, then, cannot burden interstate commerce. The proposed railroad could not operate in interstate commerce until it had coal to ship, that is, until the mine was permitted, therefore the effect on interstate commerce, if any, is the result of permitting of the mine, and not a result of the delay in the construction of the railroad.

3. The Interstate Commerce Act.

The Interstate Commerce Act, 49 U.S.C. sec. 10901 provides:

> (a) A rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission ... may --
>
> (1) construct an extension to any of its railroad lines;
> (2) construct an additional railroad line;
>
> * * *
>
> only if the Commission finds that the present and future public convenience and necessity require or will be enhanced by the construction ... of the railroad line.
>
> * * *

This provision commits approval or disapproval of construction of a rail line which will operate in interstate commerce to the Interstate Commerce Commission, and is an

area in which Congress has elected to exercise its constitutional powers. Therefore, if SB 416 were to conflict with this provision, it would be unconstitutional -- but it does not.

First, this provision (and Congress's commerce power), does not extend to intrastate commerce. Texas N.O.R. Co. v. North Side Belt Ry. Co., 8 F.2d 153 (S.D. Texas 1925), aff'd, 276 U.S. 475 (1928). Control over intrastate commerce is left to the States. Texas v. Eastern Texas R. Co., 258 U.S. 204 (1922). Therefore if the operator of a coal mine, or its contractor, were to ship coal by its privately owned rail line to its processing plant, for example, the construction and operation of the rail line would be wholly subject to state control, even if the coal crossed state lines. See Pennsylvania R. Co. v. Public Utilities Commission of Ohio, 298 U.S. 170 (1936).

Second, the purpose of 49 U.S.C. sec. 10901 is to prevent and avoid debilitating competition among rail carriers, Texas N. O. R. Co., supra; Buck v. Kuykendall, 267 U.S. 307 (1925), and the Interstate Commerce Act, in general, reflects an intent to refrain from regulating in areas of purely state concern. Texas v. Eastern Texas R. Co., supra.

So, although Montana cannot prevent a rail carrier from constructing a line to operate in interstate commerce on the basis of competition or public need, a power expressly exercised by Congress, it can prevent a carrier from building a rail line to serve a proposed coal mine until such time as the mine received an operating permit, because that form of control lies outside the scope of 49 U.S.C. sec. 10901, and is a valid exercise of the State's power to protect the health and welfare of its people.

4. Preemption.

Congress may expressly or impliedly preempt State laws. That is, if Congress states expressly in its legislation that state law may no longer operate in the area addressed by the legislation, or if it otherwise evinces a clear intent to displace state law in favor of the federal enactment, the supremacy clause of the Constitution comes into play, and the federal law prevails over the state law.

There is no expression of intent to preempt state law in either the Interstate Commerce Act or (except to the extent that a State's standards are less stringent than federal standards) in the federal Surface Mine Control and Reclamation Act. Therefore SB 416 is not expressly preempted.

Congress may also impliedly preempt state law where it shows strong evidence of its intent to do so, or where the state law conflicts directly with the federal act. Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132 (1963).

As we discussed above, the Congressional intent evinced in the Interstate Commerce Act is to preempt state law which regulates construction of interstate rail service on the basis of public need and conveniences -- not to preempt state strip mine siting laws to the extent that they regulate rail lines to be constructed to serve a proposed mine. As we also discussed above, the purpose of the Interstate Commerce Act, 49 U.S.C. sec. 10901, is limited to regulation of the construction of new lines on the basis of competition.

The siting of major strip mines calls into play state interests that are not in conflict with the Interstate Commerce Act or Commerce Clause. With strip mine siting, the state's police powers are invoked to protect the property rights of its citizens and to ensure that strip mining and associated facilities are sited so as to minimize impacts to adjacent landowners and other state interests (e.g., water, state lands). Thus, the state's interests are primarily concerned with pre-mining activities. By comparison, the Interstate Commerce Act and the Commerce

Clause are primarily concerned with post-mining activities. Once the coal is mined and loaded on trains destined for interstate markets, the federal interests inhere and are preeminent. Montana's strip mine siting laws, however, do not regulate post-mining transportation of coal. Because SB 416 only addresses regulation of impacts directly incident to new strip mines, there is no conflict between the federal and state provisions.

JTR:kkb

Dist. 6

NAME: Mike T. Gustafson DATE: 2-18-83

ADDRESS: 228 Emerald Hills dr.

PHONE: 248-5011

REPRESENTING WHOM? Water Resources

APPEARING ON WHICH PROPOSAL: SD 416

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

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2.14.83

TESTIMONY OF MIKE GUSTAFSON
IN OPPOSITION TO SB 416

Mr. Chairman and Members of the Committee:

My name is Mike Gustafson, President of Wesco Resources, Inc., of Billings, Montana, and I am appearing today on behalf of the Tongue River Railroad in opposition to Senate Bill 416. The effect of this legislation will be to frustrate and delay the development of the Tongue River Railroad. An almost identical bill, H.B. 465, was introduced two years ago and killed in Committee.

The bill, if enacted, would give jurisdiction to the Department of State Lands over "construction of railroads consisting of new tracks between the proposed mine and the existing railroad." The current jurisdiction of the Department of State Lands is limited to railroad spurs or loops but this bill, if enacted, would give jurisdiction to the Department of State Lands on all new rail lines developed in the State of Montana.

Wesco Transportation Inc., a subsidiary of Wesco Resources, Inc., is a partner in the Tongue River Railroad, a project commenced in 1980 to gain approval from the ICC to construct a rail line serving the Tongue River area of Southeastern Montana to the main line of the Burlington Northern Railroad and the Milwaukee Railroad.

To comply with all Federal and State requirements, the Tongue River Railroad has involved itself with lengthy studies including financial, feasibility reports, environmental, and engineering data in order to make an application to the Interstate Commerce Commission

who has exclusive jurisdiction over the construction and operation of railroads involved in interstate commerce. The coal hauled by this railroad will serve utility customers and other customers in the Upper Midwest and Pacific Northwest. Congress has provided for exclusive authority to regulate approvals for the construction of railroads with the Interstate Commerce Commission. Under Title 49 of the United States Code, the Commission is empowered to grant or deny a certificate of public convenience and necessity if the Commission determines that the construction will be in the public benefit.

Since March, 1980, when the project was commenced, the Tongue River Railroad Company has been following all ICC requirements, including the requirement that an environmental impact statement be prepared for the project. The ICC is the lead agency in the development of this document and the following are cooperating agencies: Department of State Lands, Custer County, Rosebud County and Powder River County planning offices.

Each of these agencies has had input into the EIS process and has reviewed the preliminary draft document. For example, the Department of State Lands took the lead in determining tonnage level scenarios for impact study analysis by the consultants. The ICC, through its third party consultant, has accepted the suggestion of the Department of State Lands and has modeled the impacts of five hypothetical mines in the Tongue River area. The impact analysis for the railroad project goes well beyond the requirements of NEPA but it is the desire of both the applicant and the ICC to obtain as much imput by the agencies as possible. Public scoping meetings

have been held on the project and a preliminary draft document was submitted last fall to the cooperating agencies for their review and comment. It is my understanding that those comments have been incorporated into a draft EIS which will be submitted to the ICC with the application for a certificate by the Railroad within six weeks.

The process has been lengthy and costly and approvals are necessary from not only the ICC but property owners and others who are affected by the project including the Army Corps of Engineers. To legislate the expansion of the Department of State Lands' jurisdiction to encompass the approval or disapproval of an interstate transportation system, is unwarranted, costly, and duplicative. This bill appears to be a ninth inning attempt to add obstacles and frustrate a project which we believe will provide needed jobs, stimulate Montana's economy, and provide coal to the boiler industry of the Midwest and Pacific Northwest.

I am taking the liberty of distributing a fact sheet about the Tongue River Railroad which outlines the participants, the cost (approximately $163 million), and the proposed timetable. An application will be filed very soon and approval is possible some time in 1984.

It has been suggested today and throughout the process that there is no need for this railroad and that there is no demand because of excess coal capacity. It is our contention that the ICC, who has preempted jurisdiction of this area, will make a determination of need and proponents to Senate Bill 416 should address their concerns to the ICC and the cooperating agencies. I recommend that the legislation does not pass.

SB416
2-14-83

February, 1983

FACT SHEET - TONGUE RIVER RAILROAD

Participants:	Wesco Resources, Billings, Montana Diamond Shamrock, Dallas, Texas Washington Energy, Seattle, Washington Consolidation Coal, Pittsburgh, PA
Purpose:	Construct an 89 mile long railroad to facilitate movement of coal in the Ashland/Birney/Otter Creek area of southeastern Montana estimated to contain 10 billion tons of low sulfur, strippable coal.
Approvals:	Certificate of Public Convenience and Necessity from the Interstate Commerce Commission under Title 49 Part 1120. An Environmental Impact Statement is required under the provisions of the National Environmental Policy Act.
Other Approvals:	Right of way easement deeds across lands owned by the United States and maintained by the Bureau of Land Management and U.S. Department of Agriculture. U.S. Army 404 Permits (Dredge and Fill) for two crossings of Otter Creek and one of the Tongue River. Approximately three state school section lands maintained by the Department of State Lands.
Estimated Cost:	$163 million.
Jurisdiction:	Under 49 U.S.C. 10901, the Interstate Commerce Commission is vested with exclusive jurisdiction to approve applications to construct and operate railroad lines. Under Section 10901, a rail carrier is expressly authorized to construct and operate a new line of railroad, or an extension of an existing line, if the ICC determines upon application by the carrier that public convenience and necessity require or permit such construction or extension and operation.

2.18.83

EIS Process: The ICC determined in March, 1980, that construction of this line was deemed to be a "major federal action" and an environmental impact statement was necessary to comply with the National Environmental Policy Act (NEPA).

The ICC was designated the lead agency and the following agencies were named Cooperating Agencies:

1. Department of State Lands - This agency is currently responsible for the EIS on the Montco project and any other mine projects in which the proposed railroad would serve. DSL has been involved in the development of the outline used by the consultant in developing the document and has reviewed and commented on the preliminary document.

2. Custer County Planning Office - This office was designated to coordinate EIS review efforts with the Commissioners and planning offices in Custer, Rosebud, and Powder River Counties. The planning offices were also involved in development of the outline, workshops on alternative alignments and have reviewed the preliminary document.

3. Northern Cheyenne Tribe - Because of close proximity to the Northern Cheyenne Reservation, the tribe was deemed a cooperating agency and has assisted the ICC and consultants in the process.

4. U.S.D.A. - The crossing of the Livestock & Range Research Station near Miles City dictated close involvement with the U.S.D.A.

5. U.S. Army Corps of Engineers - Two crossings of Otter Creek and one of the Tongue River require approvals and the agency is participating in the EIS process.

J-18-83

Landowners Affected By Project:

The Tongue River Railroad has identified approximately 40-45 landowners who will be affected by the proposed line. The number varies due to the two options in the Ashland area.

Since 1980, the TRRC has visited with the affected landowners and has enlisted their assistance in location of proposed cattle passes and overpasses and other possible mitigation measures. The landowners have been visited by railroad personnel at least three times and consultants working on the EIS have interviewed all affected parties for socio-economic impact analysis.

No purchase of right of way has occurred and will not until 1984 at the earliest.

Project Schedule:

March 1980 - Commence project and work on EIR/EIS.

March 1983 - Submit Application for Certificate of Public Convenience and Necessity to Interstate Commerce Commission. A Draft Environmental Impact Statement will be released to the public.

Summer 1983 - Hearings on Draft EIS and ICC Application.

Late 1983 or early 1984 - Approval of Application to ICC and other approvals.

1984 - Completion of right of way purchases.

1985 - Construction begins.

1986 or early 1987 - Project complete.

Alignment:

The proposed line commences approximately one mile west of Miles City and proceeds south along the west side of the Tongue River approximately 63 miles where it crosses the Tongue River 8 miles north of Ashland, Montana. From this location, the line continues on the east side of the Tongue River around Ashland where it divides into two points. The first is along the Tongue River 8.9 miles to the Montco project site and the second is 7.6 miles along Otter Creek.

2-18-83

Alignment Criteria: The alignment was designed to:

- Avoid people, homes and subdivisions
- Avoid irrigated agricultural lands
- Avoid floodplains
- Achieve railroad engineering standards of 1% grade and 4% curvature.

Facilities: An interchange yard as well as office and shop facilities in Miles City. In Ashland, a maintenance of way and signals and communication shop is planned.

Employees: The labor force for the railroad will be based primarily in Miles City. It is estimated that approximately 500 employees will be used in the construction phase and 50-60 permanent employees once construction is completed. They will be based in Miles City.

Project Manager: Thomas E. Ebzery, Esq.
1500 Poly Drive
Billings, MT 59102
(406) 245-4881

EX 2.
2-18-83

COMMENTS BY MIKE GUSTAFSON ON SB 416

As to the mechanics of the bill itself, I think the Committee should be aware of the possible confusion, as well as delays, which might arise if the bill is passed. I would hope, at least in the case of the Tongue River Railroad, that the Committee clearly obtain answers to the following questions:

(1) If this legislation is enacted, who is responsible for obtaining the permit? Is it Montco who has applied for a strip mine permit, and if so, why are they responsible for obtaining a permit for a railroad which begins in Miles City, 89 miles distant, and connects to two or more terminal points, one of which may be Montco? [Keep in mind that Montco is owned only by Diamond Shamrock and Washington Energy.]

(2) What about the permit which the Tongue River Railroad Company is filing with the Interstate Commerce Commission? Are they consistent or is preemption an issue here?

(3) Is it the responsibility of the Tongue River Railroad to obtain this permit? The Tongue River Railroad has maintained since its existence in 1980 that the individual companies obtaining mine permits were responsible for the rail loops and spur to the point where it joins the railroad. Bear also in mind that the ownership of the Tongue River Railroad Company is different than Montco and this ownership includes subsidiaries of companies with absolutely no relationship with one another other than being a partner in the railroad.

2-18-83

(4) When Consolidation Coal Company, whose subsidiary is a partner in the railroad, files for its mine permit, must it also file for a siting permit or must the Tongue River Railroad Company do this? Is it necessary to obtain a permit each time an applicant who will utilize the railroad files for a mine permit? Finally, what happens after the railroad is constructed? Is it still necessary to obtain a permit each time and by whom?

As you can see, the bill is intended to delay, or in our case, bring confusion to the process.

Exh 3
2-18-83

SB 416 - Opposed

Mr. Chairman, my name is Pat Wilson and I represent Montco and Thermal Energy who are presently in the permitting stage of developing a coal mine 7.5 miles southwest of Ashland, Montana. We rise in opposition to this special interest legislation aimed directly at the permitting of the Montco mine and the railroad company servicing the mine, the Tongue River Railroad. This bill duplicates statutes already in place which address the siting of railroads and strip coal mines. Attempts at this legislation during last session revealed that proponents aimed to stop the construction and the development of the mine and/or the railroad at any cost. I would further remind you of Mr. Bill McKay Jr.'s remarks from last week's MEPA hearing. Montco's mine is regulated by a myriad of laws, regulations, and guidelines. The Montana Strip and Underground Mine Reclamation Act and the Montana Environmental Policy Act (MEPA) regulate the permitting of the mine and its facilities. The Montana Clean Air Act, Clean Water Act, Pollution and Discharge Act, etc., regulate the activities associated with the activities at the mine. Montco, after 3 years of collecting baseline data related to air quality, geology, history, archeology, vegetation, wildlife, aquatic, ecology and surface and groundwater hydrology, filed an application with the Department of State Lands for a strip mine permit. This permit application reflects hundreds of man hours and at a cost of $5 million. When Montco filed this 27 volume application, two copies were submitted to the Department of State Lands' Reclamation Bureau and a third copy went to the Department of

2-18-83

State Lands' Environmental Impact Team. This EIS Team reviewed Montco's permit application specific to the Montana Environmental Policy Act (MEPA). In May of this last year, the EIS team released Montco's Draft Environmental Impact Statement. The document describes Montco's proposal, the agencies responsibilities, the existing environment, impacts of the proposal, and mitigating measures.

In Montco's DEIS, the transportation mode for the coal, i.e., the railroad, is discussed. The U.S. Interstate Commerce Commission was a cooperating agency in the preparation of the Montco DEIS. Montco paid for DSL personnel to travel to Washington, DC, to coordinate efforts between the two agencies.

Montco has already paid $518,000 for the preparation of the DEIS. We are anticipating another $20,000 to $50,000 to be paid to the EIS Team before completion of the Final EIS. With this bill, we would hesitate to say whether the state could put an impact statement together let alone what the cost of such a document would be and the time involved in preparing it. Under current laws Montco is aware of its responsibilities to the Department of State Lands Reclamation Bureau and to the EIS Team. With this bill we would be unclear who does the baseline studies for the railroad corridor. Would the railroad company or Montco file for a permit? How would the expenses of the preparation of the EIS be determined and who would pay for it?

I contend that Montco has made a consorted effort to coordinate our activities with the Department of State Lands, the Interstate Commerce Commission and other state and local agencies

and therefore this piece of legislation only duplicates and delays the permitting of our and other such projects. We ask this committee give a do not pass to SB 416.

F17
SB 416

NAME: Dennis Hemmer DATE: 2-18-83

ADDRESS: Helena

PHONE:

REPRESENTING WHOM? Dept of State Lands

APPEARING ON WHICH PROPOSAL:

DO YOU: SUPPORT? AMEND? ✓ OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

EXH H
2-18-83

DEPARTMENT OF STATE LAND'S TESTIMONY ON

SENATE BILL 416

BEFORE THE SENATE NATURAL RESOURCES COMMITTEE

The Department of State Lands does not support or oppose Senate Bill 416, but does request that it be amended. The bill as currently written deletes the phrase "railroad spurs or loops" on page 2, line 17, from the definition of prepatory work. It appears that the new language on page 2, lines 21 and 22 may have been intended to include railroad spurs and loops but it may not since spurs and loops are usually on the mine itself rather than between the mine and existing railroad. Therefore, if the bill passed in its present form, a permit would be required to construct a railroad from the mine to the existing railroad but not to construct spurs and loops on the actual mine. This would not make good sense and probably was not the intent of the bill.

Furthermore, the department questions the purpose of the change on page 2, line 14. The department would prefer the original language unless a purpose is shown.

Exh 5
2-18-83

TESTIMONY

IN OPPOSITION TO SB 416

FROM
MIKE FITZGERALD
PRESIDENT
MONTANA TRADE COMMISSION
SUITE 612 - POWER BUILDING
HELENA, MONTANA

Before the Senate Natural Resources Committee
February 18, 1983
Helena, Montana

F1
2.18.83

SB 416 is a coal development issue. If passed SB 416 will become an obstacle to the Tongue River Railroad, which, if built, will access many millions of tons of Montana coal to the main rail line.

We have and continue to support the Tongue River Railroad. The developers of the railroad, most of whom own coal deposits which will be served by the railroad, have already invested millions of dollars planning and organizing the development.

The developers are private business people involving a substantial investment in Montana's economy. They are adhereing to Montana's very strict laws and regulations.

If successful, they will provide high paying, direct primary jobs on the railroad as well as helping to create new primary jobs in the coal mines which the railroad will serve.

From the outset I have supported Initiative 95 and related development programs. I voted for the Initiative and served on the Governor's Development Finance Committee that drafted the package of bills for I 95 and the Build Montana Program. I support the concept of using tax revenues from non-renewable resource development to diversify Montana's economy. However, I also support expanded resource development in Montana.

Montana coal producers are the benefactors of I 95. I 95 and related economic development programs are dependent upon continued and expanded coal production in Montana.

2-18-83

In the mid 1970's the Department of State Lands projected that Montana coal production would be over 120 million tons per year by 1990 increasing to 270 million tons annually by the year 2000. Those projections have been adjusted downward to a liberal projection that Montana's coal production may reach 100 million tons annually by the year 2000!

Last year Montana's coal production was 32,160,075 tons. 1982 coal severance taxes totaled $86,186,845.61. In comparison, Wyoming's 1982 coal production was 104 million tons and is projected to be 128 million tons annually by 1986.

If we could increase coal production in Montana by 10 million additional tons annually at an average price of $10.00 per ton, Montana would collect an additional $30 million in severance taxes annually.

If we could increase Montana's coal production by an additional 25 million tons annually at an average price of $10.00 per ton, Montana would collect an additional $75 million per year in severance taxes.

Under the best of circumstances it will be difficult for Montana's coal producers to expand sales because of the national and world recession energy demands have plummeted.

We need to do everything we can to help Montana coal producers to become more competitive with regional, national and international coal producers.

EX. 2
2-18-83

SB 416 will unnecessarily hinder coal mine development in Montana with further time delays and added expenses which have the net effect of lessening Montana coal producers competitiveness.

I recommend that you do not pass SB 416.

WITNESS STATEMENT

Name Calvin Burr, Jr. Committee On Natural Resources

Address 509 7th Ave. No., Havre, Mt. 59501 Date 2/18/83

Representing Brotherhood of Locomotive Engr. Support

Bill No. SB 416 Oppose Oppose X

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Our organizations oppose SB 416 in its amended form. The amendment enlarges on site disturbances by expanding the mining site to an unknown distant point from mine mouth to a interstate railroad. This distance could be from 1 mile to two hundred miles. We feel that this amendment preempts the Interstate Commerces' jurisdiction over construction of new
2. railroads, would be a detriment in the issuance of a certificate of public convenience and necessity.

   The present section of law addresses railroad spurs and loops within the mining operation situs.

3. Our organization alleges that this amendment is violative of the U.S. Commerce Clause. Inasmuch as it preemts the constant inter-lining flow of commerce.

4. We strongly urge that your committee deny the amendment contained in SB 416

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

NAME: Tom Schneider DATE: 2/14/83

ADDRESS: 1227 11th Ave

PHONE: 449-3018

REPRESENTING WHOM? Mt PSC

APPEARING ON WHICH PROPOSAL: SB 430

DO YOU: SUPPORT? ✓ AMEND? ✓ OPPOSE? _____

COMMENTS:

PSC has submitted amendments to limit conservation provision to residential dwellings as defined by RCS program administered by DNRC. Also, a grandfather provision is important

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

SB430 - Pg. 1
Nat. Res
2-4-83

PUBLIC SERVICE COMMISSION 1227 11th Avenue • Helena, Montana 59620
Telephone: (406) 449-3007 or 449-3008

PROPOSED AMENDMENTS

SENATE BILL 430

1. Page 1

Following: Line ~~25~~ 18

Insert: NEW SECTION. (3) "Residential building" means any building used for residential occupancy which:

(a) was fully constructed and habitable as of January 1, 1983; and

(b) has a system for heating, cooling or both which uses a fuel supplied by the utility; and

(c) contains at least one, but not more than four separately or centrally heated dwelling units; or contains more than four separately heated and/or cooled units.

Renumber: Subsequent subsections accordingly

2. Page 2, Line 6

Following: "of"

Insert: "a residential building; and"

Strike: "building shells, equipment or processes through cost effective conservation measure; and"

Exhibit #2.
Att. Gen.

NAME: Max C. Dobert DATE: 2/18/83

ADDRESS: P.O. Box 3574 Billings, MT 59103

PHONE: (406) 248-1218

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: SB 430

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

Presenting testimony in favor.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

2-18-83

S.B. 430 "An Act to Include Cogeneration and Conservation in the Definition of a Qualifying Small Power Production Facility: Amending Sections 69-3-601, 69-3-602 & 69-3-604 MCA"

Testimony before Senate Natural Resources Committee 2/18/83

by: Max C. Deibert, P.E.
Consulting Engineer
P. O. Box 3574
Billings, MT 59103 Ph. 406-248-1218

The 1981 Montana Legislature passed SB 139 (69-3-601 through 69-3-604 MCA) which provides authorization for the sale of electricity from qualifying small power production facilities to utilities under rates and conditions mutually agreed upon or as established by the (Montana) Public Service Commission or to electric cooperatives under terms and conditions mutually agreed upon and in compliance with the "Public Utility Regulatory Policy Act."

Background

1) Public Utility Regulatory Policy Act of 1978
   - On November 9, 1978, public law 95-617 the "Public Utility Regulatory Policy Act (PURPA), 16 U.S.C. 2601 et. seq. became law.
   - Title II of PURPA provides "Certain Federal Energy Regulatory Commissions and Department of Energy Authorities."
   - Section 210 of Title II of PURPA covers "Cogeneration and Small Power Production."
   - Section 210 porvides a definition for both cogeneration and small power production and provides for the encouragement and implementation of regulations to cover their utilization.

2) On November 10, 1980, the rules and regulations were adopted which implemented Section 210, Title II of PURPA. These regulations, 18CFR, Part 292, are administered by the Federal Energy Regulatory Commission (FERC). The title of these regulations is "Regulations under Section 201 and 210 of the

2-18-83

Public Utility Regulatory Policies Act of 1978 with Regard to Small Power Production and Cogeneration".

Included in these regulations are:

Subpart B - Qualifying Cogeneration and Small Power Production Facilities

Section 292.204 - Criteria for qualifying small power production facilities

Section 292.205 - Criteria for qualifying cogeneration facilities

Section 292.207 - Procedures for obtaining qualifying status

3) On May 4, 1981, the Montana Public Service Commission (MPSC) adopted rules and regulations covering Cogeneration and Small Power Production. These rules and regulations (Administrative Rules of Montana, 38.5.1901 through 38.5.1908) site for their authority Sections 201 and 210 of PURPA and the FERC regulations 18 CFR 292. These MPSC rules and regulations include the following provisions:

- 38.5.1901 includes a definition of small power production and cogeneration facilities.
- 38.5.1903 the obligations of utilities to purchase electric power from small power production and cogeneration facilities.
- 38.5.1905 the mechanism by which the MPSC will establish the rate to be paid by utilities for power supplied by small power production and cogeneration facilities.

4) On August 3, 1982, the MPSC approved the rate to be paid by each utility company for electric energy supplied by Cogeneration and Small Power Production facilities. These rates were established by the MPSC at the cost of energy and capacity which are avoided by each utility company because of the energy supplied by Cogenerators and Small Power Production facilities. These rules for the Montana Power Company are specified in MPSC Docket 81.1.15 order 4865b and 4865c.

5) In May, 1982, the Montana Power Company published "Guidelines for the Interfacing of Co-Generators and Small Power Producers with the Montana Power Company System."

This document includes an example contract between the Montana Power Company and a Cogenerator or a Small Power Production facility.

AND

6) The 1981 Montana Legislature enacted SB 139 (69-3-601ff MCA) which addresses small power production facilities, but does not reference cogeneration facilities.

The purpose of SB 430 is to include cogeneration in 69-3-601ff MCA to demonstrate the intention of the State of Montana to encourage the development and utilization of both Small Power Production and Cogeneration facilities.

By enacting SB 340, the 1983 Montana Legislature will:

- Declare its support for the development of the most efficient and cost effective energy utilization by business enterprises in Montana.
- Support the efficient utilization of existing small energy facilities in Montana to produce electric power.
- Demonstrate that both renewable energy sources in small power production facilities and the most efficient use of nonrenewable resources in cogeneration facilities is supported by the state.
- Demonstrate that Montana supports both cogeneration and small power production.
- Provide a base in Montana law for both cogeneration and small power production which will help insulate the viability of these facilities from any challenges to federal laws (PURPA) and the FERC rules and regulations associated with these types of facilities.

2.18.83

There are several important advantages which result from the development of electric cogeneration facilities in Montana. These include:

Capital Investment

The engineering design efficiencies resulting from the combination of co-generated electric power production and a separate energy consuming process using a single set of boilers, results in significant capital investment savings. The total savings in capital investment can amount to hundreds of millions of dollars when several small cogeneration projects replace a single large power plant of the same total electric power generation capacity.

Size Efficiency

The power generation capacity of a cogenerator is much smaller than that of a major utility-owned power plant. Providing cogenerated power, therefore, avoids the large and expensive overcapacity which occurs when a large power plant is brought on line. Electric power consumers are also spared from the large rate increases which occur when a major new power plant is added to a utility's rate base.

Energy Efficiency

The utilization of non-renewable fossil fuel, such as coal, is much more efficient in cogeneration operations. While the new processing facilities associated with cogeneration require additional coal to operate, the increase in coal usage is 10 to 25 percent less than for separately located and operated power production and processing facilities.

Business Development

Revenue from the sale of cogenerated electric power encourages the development of small and attractive new industries which provide important employment and economic benefits at several locations. Since cogeneration projects are not concentrated at one location, their economic benefits are spread through several communities.

Environmental Impacts

A large number of separately located cogeneration projects each have much less local impact and disruption during construction than a single large power plant. Each cogeneration project must comply with all applicable environmental requirements. Since cogeneration projects are relatively small, they have much less impact than large projects and they are readily accepted and accommodated by established communities.

2-18-83

In addition, the "Regional Conservation and Electric Power Plan 1983; Meeting the Regions' Energy Needs With Confidence, Flexability and at Lowest Possible Cost", prepared by the Northwest Power Planning Council includes in key elements of the plan "Industries will be encouraged to develop cogeneration facilities that would provide power for the region." It proceeds to present an analysis of the advantages of electric cogeneration development.

I support the enactment of SB 430 by the 1983 Montana Legislature.

ATTACHMENTS

1. Public Law 95-617; PURPA, 1978. Title II, Section 201 & 210
2. FERC Regulations Part 292, subpart B.
3. MPSC Regulatons 38.5.1901 through 38.5.1908.
4. MPSC Docket 81.2.15, Order 4865b and 4865c.
5. "Guidelines . . ." Montana Power Company, May 1982.
6. Montana Law 69-3-601 through 604 MCA.
7. Advantage of Electrical Cogeneration, Deibert 1983.
8. Excerpts from Regional Conservation and Electric Plan 1983, Northwest Power Planning Council.

blic Law 95-617
th Congress

An Act

suspend until the close of June 30, 1980, the duty on certain doxorubicin hydrochloride antibiotics.

Nov. 9, 1978
[H.R. 4018]

e it enacted by the Senate and House of Representatives of the ted States of America in Congress assembled,

TION 1. SHORT TITLE AND TABLE OF CONTENTS.

a) SHORT TITLE.—This Act may be cited as the "Public Utility ulatory Policies Act of 1978".

Public Utility Regulatory Policies Act of 1978.
16 USC 2601 note.

b) TABLE OF CONTENTS.—

USC 6808. USC 6801.

SEC. 142. AUTHORIZATIONS.

Title II of the Energy Conservation and Production Act is amended by adding the following at the end thereof:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 208. There are authorized to be appropriated—

"(1) not to exceed $40,000,000 for each of the fiscal years 1979 and 1980 to carry out section 207 (relating to State utility regulatory assistance);

"(2) not to exceed $10,000,000 for each of the fiscal years 1979 and 1980 to carry out section 205 (relating to State offices of consumer services); and

"(3) not to exceed $8,000,000 for the fiscal year 1979, and $10,000,000 for the fiscal year 1980 to carry out section 204(1)(B) (relating to innovative rate structures).".

SEC. 143. CONFORMING AMENDMENTS.

USC 01-6806.

(a) ADMINISTRATOR.—Title II of the Energy Conservation and Production Act is amended by striking out "Administrator" in each place it appears and substituting "Secretary". Section 202(1) of the Energy Conservation and Production Act is amended to read as follows:

"(b) DEFINITION.—

"(1) The term 'Secretary' means the Secretary of Energy.".

TITLE II—CERTAIN FEDERAL ENERGY REGULATORY COMMISSION AND DEPARTMENT OF ENERGY AUTHORITIES

SEC. 201. DEFINITIONS.

USC 796.

Section 3 of the Federal Power Act is amended by inserting the following before the period at the end thereof:

"(17)(A) 'small power production facility' means a facility which—

"(i) produces electric energy solely by the use, as a primary energy source, of biomass, waste, renewable resources, or any combination thereof; and

"(ii) has a power production capacity which, together with any other facilities located at the same site (as determined by the Commission), is not greater than 80 megawatts;

"(B) 'primary energy source' means the fuel or fuels used for the generation of electric energy, except that such term does not include, as determined under rules prescribed by the Commission, in consultation with the Secretary of Energy—

"(i) the minimum amounts of fuel required for ignition, startup, testing, flame stabilization, and control uses, and

"(ii) the minimum amounts of fuel required to alleviate or prevent—

"(I) unanticipated equipment outages, and

"(II) emergencies, directly affecting the public health, safety, or welfare, which would result from electric power outages;

"(C) 'qualifying small power production facility' means a small power production facility—

"(i) which the Commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe; and

"(ii) which is owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities);

"(D) 'qualifying small power producer' means the owner or operator of a qualifying small power production facility;

"(18)(A) 'cogeneration facility' means a facility which produces—

"(i) electric energy, and

"(ii) steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes;

"(B) 'qualifying cogeneration facility' means a cogeneration facility which—

"(i) the Commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe; and

"(ii) is owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities);

"(C) 'qualifying cogenerator' means the owner or operator of a qualifying cogeneration facility;

"(19) 'Federal power marketing agency' means any agency or instrumentality of the United States (other than the Tennessee Valley Authority) which sells electric energy;

"(20) 'evidentiary hearings' and 'evidentiary proceeding' mean a proceeding conducted as provided in sections 554, 556, and 557 of title 5, United States Code;

"(21) 'State regulatory authority' has the same meaning as the term 'State commission', except that in the case of an electric utility with respect to which the Tennessee Valley Authority has ratemaking authority (as defined in section 3 of the Public Utility Regulatory Policies Act of 1978), such term means the Tennessee Valley Authority;

"(22) 'electric utility' means any person or State agency which sells electric energy; such term includes the Tennessee Valley Authority, but does not include any Federal power marketing agency".

SEC. 202. INTERCONNECTION.

Part II of the Federal Power Act is amended by adding the following new section at the end thereof:

"CERTAIN INTERCONNECTION AUTHORITY

"SEC. 210. (a)(1) Upon application of any electric utility, Federal power marketing agency, qualifying cogenerator, or qualifying small power producer, the Commission may issue an order requiring—

"(A) the physical connection of any cogeneration facility, any small power production facility, or the transmission facilities of any electric utility, with the facilities of such applicant,

"(B) such action as may be necessary to make effective any physical connection described in subparagraph (A), which physical connection is ineffective for any reason, such as inadequate

any electric utility reliability issue. The Secretary shall report to the Congress (in its annual report or in the report required under subsection (a) if appropriate) the results of any examination under the preceding sentence.

Report to Congress.

(c) DEPARTMENT OF ENERGY RECOMMENDATIONS.—The Secretary, in consultation with the Commission, and after opportunity for public comment, may recommend industry standards for reliability to the electric utility industry, including standards with respect to equipment, operating procedures and training of personnel, and standards relating to the level or levels of reliability appropriate to adequately and reliably serve the needs of electric consumers. The Secretary shall include in his annual report—

(1) any recommendations made under this subsection or any recommendations respecting electric utility reliability problems under any other provision of law, and

(2) a description of actions taken by electric utilities with respect to such recommendations.

16 USC 824a-3.

SEC. 210. COGENERATION AND SMALL POWER PRODUCTION.

(a) COGENERATION AND SMALL POWER PRODUCTION RULES.—Not later than 1 year after the date of enactment of this Act, the Commission shall prescribe, and from time to time thereafter revise, such rules as it determines necessary to encourage cogeneration and small power production which rules require electric utilities to offer to—

(1) sell electric energy to qualifying cogeneration facilities and qualifying small power production facilities and

(2) purchase electric energy from such facilities.

Such rules shall be prescribed, after consultation with representatives of Federal and State regulatory agencies having ratemaking authority for electric utilities, and after public notice and a reasonable opportunity for interested persons (including State and Federal agencies) to submit oral as well as written data, views, and arguments. Such rules shall include provisions respecting minimum reliability of qualifying cogeneration facilities and qualifying small power production facilities (including reliability of such facilities during emergencies) and rules respecting reliability of electric energy service to be available to such facilities from electric utilities during emergencies. Such rules may not authorize a qualifying cogeneration facility or qualifying small power production facility to make any sale for purposes other than resale.

(b) RATES FOR PURCHASES BY ELECTRIC UTILITIES.—The rules prescribed under subsection (a) shall insure that, in requiring any electric utility to offer to purchase electric energy from any qualifying cogeneration facility or qualifying small power production facility, the rates for such purchase—

(1) shall be just and reasonable to the electric consumers of the electric utility and in the public interest, and

(2) shall not discriminate against qualifying cogenerators or qualifying small power producers.

No such rule prescribed under subsection (a) shall provide for a rate which exceeds the incremental cost to the electric utility of alternative electric energy.

(c) RATES FOR SALES BY UTILITIES.—The rules prescribed under subsection (a) shall insure that, in requiring any electric utility to offer to sell electric energy to any qualifying cogeneration facility or qualifying small power production facility, the rates for such sale—

(1) shall be just and reasonable and in the public interest, and

(2) shall not discriminate against the qualifying cogenerators or qualifying small power producers.

(d) DEFINITION.—For purposes of this section, the term "incremental cost of alternative electric energy" means, with respect to electric energy purchased from a qualifying cogenerator or qualifying small power producer, the cost to the electric utility of the electric energy which, but for the purchase from such cogenerator or small power producer, such utility would generate or purchase from another source.

(e) EXEMPTIONS.—(1) Not later than 1 year after the date of enactment of this Act and from time to time thereafter, the Commission shall, after consultation with representatives of State regulatory authorities, electric utilities, owners of cogeneration facilities and owners of small power production facilities, and after public notice and a reasonable opportunity for interested persons (including State and Federal agencies) to submit oral as well as written data, views, and arguments, prescribe rules under which qualifying cogeneration facilities and [illegible] are exempted in whole or part from the Federal Power Act, from the Public Utility Holding Company Act, from State laws and regulations respecting the rates, or respecting the financial or organizational regulation, of electric utilities, or from any combination of the foregoing, if the Commission determines such exemption is necessary to encourage cogeneration and small power production.

Rules.

16 USC 7
15 USC 7

(2) No qualifying small power production facility which has a power production capacity which, together with any other facilities located at the same site (as determined by the Commission), exceeds 80 megawatts may be exempted under rules under paragraph (1) from any provision of law or regulation referred to in paragraph (1), except that any qualifying small power production facility which produces electric energy solely by the use of biomass as a primary energy source, may be exempted by the Commission under such rules from the Public Utility Holding Company Act and from State laws and regulations referred to in such paragraph (1).

(3) No qualifying small power production facility or qualifying cogeneration facility may be exempted under this subsection from—

(A) any State law or regulation in effect in a State pursuant to subsection (f),

(B) the provisions of section 210, 211, or 212 of the Federal Power Act or the necessary authorities for enforcement of any such provision under the Federal Power Act, or

(C) any license or permit requirement under part I of the Federal Power Act, any provision under such Act related to such a license or permit requirement, or the necessary authorities for enforcement of any such requirement.

Ante, pp. 3137, 3138.

(f) IMPLEMENTATION OF RULES FOR QUALIFYING COGENERATION AND QUALIFYING SMALL POWER PRODUCTION FACILITIES.—(1) Beginning on or before the date one year after any rule is prescribed by the Commission under subsection (a) or revised under such subsection, each State regulatory authority shall, after notice and opportunity for public hearing, implement such rule (or revised rule) for each electric utility for which it has ratemaking authority.

Notice and hearing.

(2) Beginning on or before the date one year after any rule is prescribed by the Commission under subsection (a) or revised under such subsection, each nonregulated electric utility shall, after notice and opportunity for public hearing, implement such rule (or revised rule).

Notice and hearing.

(g) JUDICIAL REVIEW AND ENFORCEMENT.—(1) Judicial review may

be obtained respecting any proceeding conducted by a State regulatory authority or nonregulated electric utility for purposes of implementing any requirement of a rule under subsection (a) in the same manner, and under the same requirements, as judicial review may be obtained under section 123 in the case of a proceeding to which section 123 applies.

(2) Any person (including the Secretary) may bring an action against any electric utility, qualifying small power producer, or qualifying cogenerator to enforce any requirement established by a State regulatory authority or nonregulated electric utility pursuant to subsection (f). Any such action shall be brought only in the manner, and under the requirements, as provided under section 123 with respect to an action to which section 123 applies.

(h) COMMISSION ENFORCEMENT.—(1) For purposes of enforcement of any rule prescribed by the Commission under subsection (a) with respect to any operations of an electric utility, a qualifying cogeneration facility or a qualifying small power production facility which are subject to the jurisdiction of the Commission under part II of the Federal Power Act, such rule shall be treated as a rule under the Federal Power Act. Nothing in subsection (g) shall apply to so much of the operations of an electric utility, a qualifying cogeneration facility or a qualifying small power production facility as are subject to the jurisdiction of the Commission under part II of the Federal Power Act.

16 USC 824.

(2) (A) The Commission may enforce the requirements of subsection (f) against any State regulatory authority or nonregulated electric utility. For purposes of any such enforcement, the requirements of subsection (f) (1) shall be treated as a rule enforceable under the Federal Power Act. For purposes of any such action, a State regulatory authority or nonregulated electric utility shall be treated as a person within the meaning of the Federal Power Act. No enforcement action may be brought by the Commission under this section other than—

16 USC 791a.

(i) an action against the State regulatory authority or nonregulated electric utility for failure to comply with the requirements of subsection (f) or

(ii) an action under paragraph (1).

(B) Any electric utility, qualifying cogenerator, or qualifying small power producer may petition the Commission to enforce the requirements of subsection (f) as provided in subparagraph (A) of this paragraph. If the Commission does not initiate an enforcement action under subparagraph (A) against a State regulatory authority or nonregulated electric utility within 60 days following the date on which a petition is filed under this subparagraph with respect to such authority, the petitioner may bring an action in the appropriate United States district court to require such State regulatory authority or nonregulated electric utility to comply with such requirements, and such court may issue such injunctive or other relief as may be appropriate. The Commission may intervene as a matter of right in any such action.

(i) FEDERAL CONTRACTS.—No contract between a Federal agency and any electric utility for the sale of electric energy by such Federal agency for resale which is entered into after the date of the enactment of this Act may contain any provision which will have the effect of preventing the implementation of any rule under this section with respect to such utility. Any provision in any such contract which has such effect shall be null and void.

(j) DEFINITIONS.—For purposes of this section, the terms "small power production facility", "qualifying small power production facility", "qualifying small power producer", "primary energy source", "cogeneration facility", "qualifying cogeneration facility", and "qualifying cogenerator" have the respective meanings provided for such terms under section 3 (17) and (18) of the Federal Power Act.

16

SEC. 211. INTERLOCKING DIRECTORATES.

(a) AMENDMENT OF FEDERAL POWER ACT.—Section 305 of the Federal Power Act is amended by adding the following new subsection at the end thereof:

16

"(c) (1) On or before April 30 of each year, any person, who, during the calendar year preceding the filing date under this subsection, was an officer or director of a public utility and who held, during such calendar year, the position of officer, director, partner, appointee, or representative of any other entity listed in paragraph (2) shall file with the Commission, in such form and manner as the Commission shall by rule prescribe, a written statement concerning such positions held by such person. Such statement shall be available to the public.

"(2) The entities listed for purposes of paragraph (1) are as follows—

"(A) any investment bank, bank holding company, foreign bank or subsidiary thereof doing business in the United States, insurance company, or any other organization primarily engaged in the business of providing financial services or credit, a mutual savings bank, or a savings and loan association;

"(B) any company, firm, or organization which is authorized by law to underwrite or participate in the marketing of securities of a public utility;

"(C) any company, firm, or organization which produces or supplies electrical equipment or coal, natural gas, oil, nuclear fuel, or other fuel, for the use of any public utility;

"(D) any company, firm, or organization which during any one of the 3 calendar years immediately preceding the filing date was one of the 20 purchasers of electric energy which purchased (for purposes other than for resale) one of the 20 largest annual amounts of electric energy sold by such public utility (or by any public utility which is part of the same holding company system) during any one of such three calendar years;

"(E) any entity referred to in subsection (b); and

"(F) any company, firm, or organization which is controlled by any company, firm, or organization referred to in this paragraph.

On or before January 31 of each calendar year, each public utility shall publish a list, pursuant to rules prescribed by the Commission, of the purchasers to which subparagraph (D) applies, for purposes of any filing under paragraph (1) of such calendar year.

Defini

"(3) For purposes of this subsection—

"(A) The term 'public utility' includes any company which is a part of a holding company system which includes a registered holding company, unless no company in such system is an electric utility.

"(B) The terms 'holding company', 'registered holding company', and 'holding company system' have the same meaning as when used in the Public Utility Holding Company Act of 1935.".

(b) EFFECTIVE DATE.—No person shall be required to file a statement under section 305(c)(1) of the Federal Power Act before April

16 US
note.

Part 292—Regulations under Sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 with Regard to Small Power Production and Cogeneration.

[¶ 25,110]

Subpart A—General Provisions

Sec.

Subpart B—Qualifying Cogeneration and Small Power Production Facilities

Sec.

Subpart C—Arrangements Between Electric Utilities and Qualifying Cogeneration and Small Power Production Facilities Under Section 210 of the Public Utility Regulatory Policies Act of 1978

Sec.

Subpart D—Implementation

Sec.

Subpart E—Qualification of Cogeneration Facilities for Incremental Pricing Exemption

Sec.

2-18-83

Subpart F—Exemption of Qualifying Small Power Production Facilities and Cogeneration Facilities From Certain Federal and State Laws and Regulations

Sec.

AUTHORITY: Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 2601 *et seq.*; Energy Supply and Environmental Coordination Act, 15 U.S.C. § 791 *et seq.*; Federal Power Act, as amended, 16 U.S.C. § 792 *et seq.*; Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*, E.O. 12009, 42 FR 46267; Natural Gas Policy Act of 1978 (15 U.S.C. 3301, *et seq.*).

SOURCE: The provisions of Subpart A are contained in 45 *Federal Register* 12214, February 25, 1980, effective March 20, 1980, unless otherwise noted. The provisions of Subpart B are contained in 45 *Federal Register* 17959, March 20, 1980, effective March 13, 1980, unless otherwise noted. The provisions of Subparts C and D are contained in 45 *Federal Register* 12214, February 25, 1980, effective March 20, 1980, unless otherwise noted. The provisions of Subpart E are contained in 44 *Federal Register* 65744, November 15, 1979, effective November 9, 1979, unless otherwise noted. The provisions of Subpart F are contained in 45 *Federal Register* 12214, February 25, 1980, effective March 20, 1980, unless otherwise noted.

Subpart A—General Provisions

[¶ 25,111]

§ 292.101 Definitions.

(a) *General rule.* Terms defined in the Public Utility Regulatory Policies Act of 1978 (PURPA) shall have the same meaning for purposes of this part as they have under PURPA, unless further defined in this part.

(b) *Definitions.* The following definitions apply for purposes of this part.

(1) "Qualifying facility" means a cogeneration facility or a small power production facility which is a qualifying facility under Subpart B of this part of the Commission's regulations.

(2) "Purchase" means the purchase of electric energy or capacity or both from a qualifying facility by an electric utility.

(3) "Sale" means the sale of electric energy or capacity or both by an electric utility to a qualifying facility.

(4) "System emergency" means a condition on a utility's system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

(5) "Rate" means any price, rate, charge, or classification made, demanded, observed or received with respect to the sale or purchase of electric energy or capacity, or any rule, regulation, or practice respecting any such rate, charge, or classification, and any contract pertaining to the sale or purchase of electric energy or capacity.

(6) "Avoided costs" means the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source.

(7) "Interconnection costs" means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions and administrative costs incurred by the electric utility directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operations with a qualifying facility, to the extent such costs are in excess of the corresponding costs which the electric utility would have incurred if it had not engaged in interconnected operations, but instead generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity from other sources. Interconnection costs do not include any costs included in the calculation of avoided costs.

(8) "Supplementary power" means electric energy or capacity supplied by an electric utility, regularly used by a qualifying facility in addition to that which the facility generates itself.

(9) "Back-up power" means electric energy or capacity supplied by an electric utility to replace energy ordinarily generated by a facility's own generation equipment during an unscheduled outage of the facility.

#12
2-18-83

(10) "Interruptible power" means electric energy or capacity supplied by an electric utility subject to interruption by the electric utility under specified conditions.

(11) "Maintenance power" means electric energy or capacity supplied by an electric utility during scheduled outages of the qualifying facility.

[The next page is 15,469.]

2-18-83

Subpart B—Qualifying Cogeneration and Small Power Production Facilities

[¶ 25,121]

§ 292.201 Scope.

This subpart applies to the criteria for and manner of becoming a qualifying small power production facility and a qualifying cogeneration facility under sections 3(17)(C) and 3(18)(B), respectively, of the Federal Power Act, as amended by section 201 of the Public Utility Regulatory Policies Act of 1978 (PURPA).

[¶ 25,122]

§ 292.202 Definitions.

For purposes of this subpart:

(a) "Biomass" means any organic material not derived from fossil fuels;

(b) "Waste" means by-product materials other than biomass;

(c) "Cogeneration facility" means equipment used to produce electric energy and forms of useful thermal energy (such as heat or steam), used for industrial, commercial, heating, or cooling purposes, through the sequential use of energy;

(d) "Topping-cycle cogeneration facility" means a cogeneration facility in which the energy input to the facility is first used to produce useful power output, and the reject heat from power production is then used to provide useful thermal energy;

(e) "Bottoming-cycle cogeneration facility" means a cogeneration facility in which the energy input to the system is first applied to a useful thermal energy process, and the reject heat emerging from the process is then used for power production;

(f) "Supplementary firing" means an energy input to the cogeneration facility used only in the thermal process of a topping-cycle cogeneration facility, or only in the electric generating process of a bottoming-cycle cogeneration facility;

(g) "Useful power output" of a cogeneration facility means the electric or mechanical energy made available for use, exclusive of any such energy used in the power production process;

(h) "Useful thermal energy output" of a topping-cycle cogeneration facility means the thermal energy made available for use in any industrial or commercial process, or used in any heating or cooling application;

(i) "Total energy output" of a topping-cycle cogeneration facility is the sum of the useful power output and useful thermal energy output;

(j) "Total energy input" means the total energy of all forms supplied from external sources.

(k) "Natural gas" means either natural gas unmixed, or any mixture of natural gas and artificial gas;

2-18-83

(l) "Oil" means crude oil, residual fuel oil, natural gas liquids, or any refined petroleum products; and

(m) Energy input in the case of energy in the form of natural gas or oil is to be measured by the lower heating value of the natural gas or oil.

(n) "Electric utility holding company" means a holding company, as defined in section 2(a)(7) of the Public Utility Holding Company Act of 1935, 15 U.S.C. § 79b(a)(7) which owns one or more electric utilities, as defined in section 2(a)(3) of that Act, 15 U.S.C. § 79b(a)(3), but does not include any holding company which is exempt by rule or order adopted or issued pursuant to sections 3(a)(3) or 3(a)(5) of the Public Utility Holding Company Act of 1935, 15 U.S.C. § 79c(a)(3) or § 79c(a)(5).

(o) "Utility geothermal small power production facility" means a small power production facility which uses geothermal energy as the primary energy resource and of which more than 50 percent is owned either:

(1) By an electric utility or utilities, electric utility holding company or companies, or any combination thereof; or

(2) By any company 50 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote by an electric utility, electric utility holding company, or any combination thereof.

.01 Subsections (a)-(i), 45 F.R. 17959 (March 20, 1980); subsection (j), 45 F.R. 33958 (May 21, 1980); subsections (k)-(m), 45 F.R. 17959 (March 20, 1980); subsection (n), 45 F.R. 66787 (October 8, 1980); subsection (o), 46 F.R. 19229 (March 30, 1981).

.05 *Historical record.*—Section 292.202 originated in 45 F.R. 17959 (3/20/80), effective 3/13/80.

Subsection (j), appearing in 45 F.R. 17959 (3/20/80), effective 3/13/80, read as follows until it was amended in 45 F.R. 33958 (5/21/80), effective 5/15/80:

(j) "Total energy input" means the total energy of all forms supplied from external sources other than supplementary firing to the facility;

Subsection (n) was added by 45 F.R. 52779 (8/8/80), effective 8/4/80, and read as follows until it was amended in 45 F.R. 66787 (10/8/80), effective 9/26/80:

(n) "Electric utility holding company" means a holding company as defined in section 2(a)(7) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79b(a)(7) which owns one or more electric utility companies, as defined in section 2(a)(3) of that Act, 15 U.S.C. 79b(a)(3).

Subsection (o) newly originated in 46 F.R. 19229 (3/30/81), effective 5/1/81.

[¶ 25,123]

§ 292.203 General requirements for qualification.

(a) *Small power production facilities.* A small power production facility is a qualifying facility if it:

(1) Meets the maximum size criteria specified in § 292.204(a);

(2) Meets the fuel use criteria specified in § 292.204(b); and

(3) Meets the ownership criteria specified in § 292.206.

(b) *Cogeneration facilities.* (1) A cogeneration facility, including any diesel and dual-fuel cogeneration facility, is a qualifying facility if it:

(i) Meets any applicable operating and efficiency standards specified in § 292.205(a) and (b); and

(ii) Meets the ownership criteria specified in § 292.206.

(2) For purposes of qualification of a cogeneration facility for exemption from incremental pricing, a cogeneration facility must qualify under § 292.205(c).

.01 Subsection (a), 45 F.R. 17959 (March 20, 1980); subsection (b), 46 F.R. 33025 (June 26, 1981).

.05 *Historical record.*—Section 292.203 originated in 45 F.R. 17959 (3/20/80), effective 3/13/80.

Subsection (b), appearing in 45 F.R. 17959 (3/20/80), effective 3/13/80, read as follows until it was amended in 46 F.R. 33025 (6/26/81), effective 7/27/81:

(b) *Cogeneration facilities.* (1) Unless excluded under paragraph (c), a cogeneration facility is a qualifying facility if it:

(i) Meets any applicable operating and efficiency standards specified in § 292.205(a) and (b); and

(ii) Meets the ownership criteria specified in § 292.206.

(2) For purposes of qualification of a cogeneration facility for exemption from incremental pricing, a cogeneration facility must qualify under § 292.205(c).

Subsection (c), appearing in 45 F.R. 17959 (3/20/80), effective 3/13/80, read as follows until it was amended in 45 F.R. 33958 (5/21/80), effective 5/15/80:

(c) *Interim exclusion.* (1) Pending further Commission action, any cogeneration facility which is a new diesel cogeneration facility may not be a qualifying facility.

(2) A new diesel cogeneration facility is a cogeneration facility:

(i) Which derives its useful power output from a diesel engine, and

(ii) The installation of which began on or after March 13, 1980.

Subsection (c), appearing in 45 F.R. 33958 (5/21/80), effective 5/15/80, read as follows until it was deleted in 46 F.R. 33025 (6/26/81), effective 7/27/81:

(c) *Interim exclusion* (1) Pending further Commission action, any cogeneration facility which is a new diesel cogeneration facility may not be a qualifying facility.

(2) A new diesel cogeneration facility is a cogeneration facility:

(i) Which derives its useful power output from a diesel engine, and

(ii) The installation of which began on or after March 13, 1980.

(3) Pending further Commission action, any cogeneration facility which is a new dual-fuel cogeneration facility which seeks to obtain qualifying status must follow the procedures set forth in § 292.207(b) of this section.

(4) A new dual-fuel cogeneration facility is a cogeneration facility:

(i) which derives its useful power output from an internal combustion piston engine capable of changing automatically between gas and oil operation, and

(ii) the installation of which began on or after May 15, 1980.

[¶ 25,124]

§ 292.204 Criteria for qualifying small power production facilities.

(a) *Size of the facility*—(1) *Maximum size.* The power production capacity of the facility for which qualification is sought, together with the capacity of any other facilities which use the same energy resource, are owned by the same person, and are located at the same site, may not exceed 80 megawatts.

(2) *Method of calculation.* (i) For purposes of this paragraph, facilities are considered to be located at the same site as the facility for which qualification is sought if they are located within one mile of the facility for which qualification is sought and, for hydroelectric facilities, if they use water from the same impoundment for power generation.

(ii) For purposes of making the determination in clause (i), the distance between facilities shall be measured from the electrical generating equipment of a facility.

2-18-83

(3) *Waiver.* The Commission may modify the application of subparagraph (2) for good cause.

(b) *Fuel use.* (1)(i) The primary energy source of the facility must be biomass, waste, renewable resources, geothermal resources, or any combination thereof, and 75 percent or more of the total energy input must be from these sources.

(ii) Any primary energy source which, on the basis of its energy content, is 50 percent or more biomass shall be considered biomass.

(2) Use of oil, natural gas, and coal by a facility may not, in the aggregate, exceed 25 percent of the total energy input of the facility during any calendar year period.

.01 Subsection (a), 45 F.R. 17959 (March 20, 1980); subsection (b), 46 F.R. 19229 (March 30, 1981)

.05 *Historical record.*—Section 292.204 originated in 45 F.R. 17959 (3/20/80), effective 3/13/80.

Subsection (b), appearing in 45 F.R. 17959 (3/20/80), effective 3/13/80, read as follows until it was amended in 45 F.R. 33958 (5/21/80), effective 5/15/80:

(b) *Fuel use.* (1)(i) The primary energy source of the facility must be biomass, waste, renewable resources, or any combination thereof, and more than 50 percent of the total energy input must be from these sources.

(ii) Any primary energy source which, on the basis of its energy content, is 50 percent or more biomass shall be considered biomass.

(2) Use of oil, natural gas, and coal by a facility may not, in the aggregate, exceed 25 percent of the total energy input of the facility during any calendar year period.

Subsection (b), appearing in 45 F.R. 33958 (5/21/80), effective 5/15/80, read as follows until it was amended in 46 F.R. 19229 (3/30/81), effective 5/1/81:

(b) *Fuel use.* (1)(i) The primary energy source of the facility must be biomass, waste, renewable resources, or any combination thereof, and more than 75 percent of the total energy input must be from these sources.

(ii) Any primary energy source which, on the basis of its energy content, is 50 percent of more biomass shall be considered biomass.

(2) Use of oil, natural gas, and coal by a facility may not, in the aggregate, exceed 25 percent of the total energy input of the facility during any calendar year period.

[¶ 25,125]

§ 292.205 Criteria for qualifying cogeneration facilities.

(a) *Operating and efficiency standards for topping-cycle facilities.*—(1) *Operating standard.* For any topping-cycle cogeneration facility, the useful thermal energy output of the facility must, during any calendar year period, be no less than 5 percent of the total energy output.

(2) *Efficiency standard.* (i) For any topping-cycle cogeneration facility for which any of the energy input is natural gas or oil, and the installation of which began on or after March 13, 1980, the useful power output of the facility plus one-half the useful thermal energy output, during any calendar year period, must:

(A) Subject to paragraph (a)(2)(i)(B) of this section be no less than 42.5 percent of the total energy input of natural gas and oil to the facility; or

(B) If the useful thermal energy output is less than 15 percent of the total energy output of the facility, be no less than 45 percent of the total energy input of natural gas and oil to the facility.

(ii) For any topping-cycle cogeneration facility not subject to paragraph (a)(2)(i) of this section there is no efficiency standard.

(b) *Efficiency standards for bottoming-cycle facilities.* (1) For any bottoming-cycle cogeneration facility for which any of the energy input as supplementary firing is natural gas or oil, and the installation of which began on or after March 13, 1980, the useful power output of the facility must, during any calendar year period, be no less than 45 percent of the energy input of natural gas and oil for supplementary firing.

(2) For any bottoming-cycle cogeneration facility not covered by subparagraph (1) of this paragraph, there is no efficiency standard.

(c) *Exemption from incremental pricing.* (1) Natural gas used in any topping-cycle cogeneration facility is eligible for an exemption from incremental pricing under Title II of the Natural Gas Policy Act of 1978 (NGPA) and Part 282 of the Commission's rules if:

(i) The facility meets the operating and efficiency standards under paragraphs (a)(1) and (2)(i) of this section and is a qualifying facility under § 292.203(b)(1); or

(ii) The facility is a qualifying facility under Subpart E of this part.

(2) Natural gas used in any bottoming-cycle cogeneration facility, not subject to an exemption from incremental pricing under Subpart E of this part, is eligible for an exemption under Title II of the NGPA and Part 282 of the Commission's rules to the extent that reject heat emerging from the useful thermal energy process is made available for use for power production.

(3) Nothing in this subpart affects any exemption provided under Subpart E of this part.

(4) Natural gas used for supplementary firing in any cogeneration facility is not eligible under this part for exemption from incremental pricing.

(d) *Waiver.* The Commission may waive any of the requirements of paragraphs (a), (b) and (c) of this section upon a showing that the facility will produce significant energy savings.

[¶ 25,126]

§ 292.206 Ownership criteria.

(a) *General rule.* A cogeneration facility or small power production facility may not be owned by a person primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities).

(b) *Ownership test.* For purposes of this section, a cogeneration or small power production facility shall be considered to be owned by a person primarily engaged in the generation or sale of electric power, if more than 50 percent of the equity interest in the facility is held by an electric utility or utilities, or by an electric utility holding company, or companies, or any combination thereof. If a wholly or partially owned subsidiary of an electric utility or public utility holding company has an ownership interest of a facility, the subsidiary's ownership interest shall be considered as ownership by an electric utility or public utility holding company.

(c) *Exceptions.* For purposes of this section a company shall not be considered to be an "electric utility" company if it:

(1) Is a subsidiary of an electric utility holding company which is exempt by rule or order adopted or issued pursuant to section 3(a)(3) or 3(a)(5) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79c(a)(3), 79c(a)(5); or

(2) Is declared not to be an electric utility company by rule or order of the Securities and Exchange Commission pursuant to section 2(a)(3)(A) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79b(a)(3)(A).

.01 Subsection (a), 45 F.R. 17959 (March 20, 1980); subsection (b), 45 F.R. 52779 (August 8, 1980); subsection (c), 46 F.R. 11251 (2/6/81), effective 1/28/81.

.05 *Historical record.*—Section 292.206 originated in 45 F.R. 17959 (3/20/80), effective 3/13/80.

Subsection (b), appearing in 45 F.R. 17959 (3/20/80), effective 3/13/80, was amended in 45 F.R. 52779 (8/8/80), effective 8/4/80 by deleting the word "public" and inserting in lieu thereof the word "electric."

Subsection (c) newly originated in 46 F.R. 11251 (2/6/81), effective 1/28/81.

[¶ 25,127]

§ 292.207 Procedures for obtaining qualifying status.

(a) *Qualification.* (1) A small power production facility or cogeneration facility which meets the criteria for qualification set forth in § 292.203 is a qualifying facility.

FI-2 2-18-83

(2) The owner or operator of any facility qualifying under this paragraph shall furnish notice to the Commission providing the information set forth in paragraph (b)(2)(i) through (iv) of this section.

(b) *Optional procedure*—(1) *Application for Commission certification.* Pursuant to the provisions of this paragraph, the owner or operator of the facility may file with this Commission an application for Commission certification that the facility is a qualifying facility.

(2) *General contents of application.* The application shall contain the following information:

(i) The name and address of the applicant and location of the facility;

(ii) A brief description of the facility, including a statement indicating whether such facility is a small power production facility or a cogeneration facility;

(iii) The primary energy source used or to be used by the facility;

(iv) The power production capacity of the facility; and

(v) The percentage of ownership by any electric utility or by any electric utility holding company, or by any person owned by either.

(3) *Additional application requirements for small power production facilities.* An application by a small power producer for Commission certification shall contain the following additional information:

(i) The location of the facility in relation to any other small power production facilities located within one mile of the facility owned by the applicant which use the same energy source; and

(ii) Information identifying any planned usage of natural gas, oil or coal.

(4) *Additional application requirements for cogeneration facilities.* An application by a cogenerator for Commission certification shall contain the following additional information:

(i) A description of the cogeneration system, including whether the facility is a topping or bottoming cycle and sufficient information to determine that any applicable requirements under § 292.205 will be met; and

(ii) The date installation of the facility began or will begin.

(5) *Commission action.* Within 90 days of the filing of an application, the Commission shall issue an order granting or denying the application, tolling the time for issuance of an order, or setting the matter for hearing. Any order denying certification shall identify the specific requirements which were not met. If no order is issued within 90 days of the filing of the complete application, it shall be deemed to have been granted.

(6) *Notice.* (i) Applications for certification filed under this paragraph shall include a copy of a notice of the request for certification for publication in the Federal Register. The notice shall state the applicant's name, the date of the application, and a brief description of the facility for which qualification is sought. This description shall include:

(A) A statement indicating whether such facility is a small power production facility or a cogeneration facility;

(B) The primary energy source used or to be used by the facility;

(C) The power production capacity of the facility; and

(D) The location of the facility.

(ii) The notice shall be in the following form:

(Name of Applicant)

Docket No. QF-

Notice of Application for Commission Certification of Qualifying Status of a (Small Power Production) (Cogeneration) Facility

On (date application was filed), (name and address of applicant) filed with the Federal Energy Regulatory Commission an application to be certified as a qualifying (small power production) (cogeneration) facility pursuant to § 292.207 of the Commission's rules.

[Brief description of the facility].

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

(c) *Notice requirements for facilities of 500 kW or more.* An electric utility is not required to purchase electric energy from a facility with a design capacity of 500 kW or more until 90 days after the facility notifies the utility that it is a qualifying facility, or 90 days after the facility has applied to the Commission under paragraph (b) of this section.

(d) *Revocation of qualifying status.* (1) The Commission may revoke the qualifying status of a qualifying facility which has been certified under this section if such facility fails to comply with any of the statements contained in its application for Commission certification.

(2) Prior to undertaking any substantial alteration or modification of a qualifying facility which has been certified under this section, a small power producer or cogenerator may apply to the Commission for a determination that the proposed alteration or modification will not result in a revocation of qualifying status.

.01 Subsection (a), 45 F.R. 17959 (March 20, 1980); subsection (b), 45 F.R. 52779 (August 8, 1980); subsection (c), 45 F.R. 17959 (March 20, 1980).

.05 *Historical record.*—Section 292.207 originated in 45 F.R. 17959 (3/20/80), effective 3/13/80.

#12 2-18-83

Subsection (b), appearing in 45 F.R. 17959 (3/20/80), effective 3/13/80, read as follows until its amendment in 45 F.R. 33603 (5/20/80), effective 5/5/80:

(b) *Optional procedure*—(1) *Application for Commission certification.* Pursuant to the provisions of this paragraph, the owner or operator of the facility may file with this Commission an application for Commission certification that the facility is a qualifying facility.

(2) *General contents of application.* The application shall contain the following information:

(i) The name and address of the applicant and location of the facility.

(ii) A brief description of the facility, including a statement indicating whether such facility is a small power production facility or a cogeneration facility.

(iii) The primary energy source used or to be used by the facility;

(iv) The power production capacity of the facility; and

(v) The percentage of ownership by any electric utility or by any public utility holding company, or by any person owned by either.

(3) *Additional application requirements for small power production facilities.* An application by a small power producer for Commission certification shall contain the following additional information:

(i) The location of the facility in relation to any other small power production facilities located within one mile of the facility owned by the applicant which use the same energy source; and

(ii) Information identifying any planned usage of natural gas, oil or coal.

(4) *Additional application requirements for cogeneration facilities.* An application by a cogenerator for Commission certification shall contain the following additional information:

(i) A description of the cogeneration system, including whether the facility is a topping or bottoming cycle and sufficient information to determine that any applicable requirements under § 292.205 will be met; and

(ii) The date installation of the facility began or will begin.

(5) *Commission action.* Within 90 days of the filing of an application, the Commission shall issue an order granting or denying the application, tolling the time for issuance of an order, or setting the matter for hearing. Any order denying certification shall identify the specific requirements which were not met. If no order is issued within 90 days of the filing of the complete application, it shall be deemed to have been granted.

Subsection (b), appearing in 45 F.R. 33603 (5/20/80), effective 5/5/80, was amended in 45 F.R. 52779 (8/8/80), effective 8/4/80, in (b)(2)(v) by deleting the word "public" and inserting in lieu thereof the word "electric."

[The next page is 15,519.]

2-18-83

38.5.1811 EXEMPTION BASED ON THE PUBLIC INTEREST (1) Scope. A customer, or any interested person, may petition the commission for an exemption from the prohibitions set forth in 38.5.1803 on the basis of the public interest and consistency with the purposes of the Act, if such natural gas was being supplied on November 9, 1978.

(2) Criteria. The criteria for an exemption on the basis of the public interest and consistency with the purposes of the Act shall be satisfied upon a finding that converting a specific natural gas outdoor lighting fixture(s) to substitute lighting would not reduce the use of natural gas. (History: Secs. 69-3-101, 69-3-102, 69-3-103(1) and 69-3-106, MCA; IMP, Secs. 69-3-102 and 69-3-103(1), MCA; NEW, 1980 MAR p. 3068; Eff. 5/15/81.)

Sub-Chapter 19

Cogeneration and Small Power Production

38.5.1901 DEFINITIONS (1) The Commission hereby adopts and incorporates by reference 18 CFR, Part 292, which sets forth general requirements and criteria for cogeneration and small power production facilities which are eligible for consideration under Sections 201 and 210 of the federal Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617. A copy of this incorporated material may be obtained from the Commission, 1227 11th Avenue, Helena, Montana 59620.

(2) For purposes of these rules, the following definitions apply:

(a) "Avoided costs" means the incremental costs as determined by the Commission to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source.

(b) "Cogeneration facility" means equipment used to produce electric energy and forms of useful thermal energy such as heat or steam, used for industrial, commercial, heating or cooling purposes, through the sequential use of energy.

(c) "Commission" means the Montana Public Service Commission.

(d) "Interconnection costs" means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions, and administrative costs incurred by the utility directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operations with a qualifying facility, to the extent such costs are in excess of the corresponding interconnection costs which the electric utility would have incurred if it had not engaged in interconnected operations, but instead generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity from other sources. Interconnection costs do not include any costs

included in the calculation of avoided costs.

(e) "Purchase" means the purchase of electric energy or capacity or both from a qualifying facility by an electric utility.

(f) "Qualifying facility" or "facility" means:

(i) A cogeneration facility which meets the operating, efficiency, and ownership standards established by FERC regulations, 18 CFR, Part 292, as incorporated in ARM 38.5.1901(1); or

(ii) A small power production facility which meets the production capacity, energy source, and ownership criteria established by FERC regulations, 18 CFR, Part 292, as incorporated in 38.5.1901(1).

(g) "Rate" means any price, rate, charge, or classification made, demanded, observed or received with respect to the sale or purchase of electric energy or capacity, or any rule, regulation, or practice respecting any such rate, charge, or classification and any contract pertaining to the sale or purchase of electric energy or capacity.

(h) "Sale" means the sale of electric energy or capacity or both by an electric utility to a qualifying facility.

(i) "Small power production facility" means a facility with a power production capacity which, together with any other facilities located at the same site, does not exceed 50 megawatts of electricity, and which depends upon biomass, waste, or renewable resources for its primary source of energy. At least 50 percent of the equity interest in a small power production facility must be owned by a person not primarily engaged in the generation or sale of electric energy. The provisions of FERC regulations, 18 CFR, Part 292, as incorporated in ARM 38.5.1901(1), respecting site location and primary energy sources are incorporated by reference in this definition.

(j) "Standard rates" means those rates calculated by a means approved by the Commission which:

(i) In the case of purchases, are based on avoided costs to the utility, are computed annually by the utility and made available to the public, are reviewed by the Commission, and are applicable to all contracts with qualifying facilities which do not choose to negotiate a different rate; or

(ii) In the case of sales by a utility to a qualifying facility, are the utility's tariff schedules in effect for members of the same class as the qualifying facility.

(k) "System emergency" means a condition on a utility's system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

(l) "Utility" means any public utility, as defined in 69-3-101, MCA, which provides electric service subject to the jurisdiction of the Montana Public Service Commission. (History: Sec. 69-3-103, MCA; IMP, 69-3-102, MCA; NEW, 1981 MAR p. 242; Eff. 5/15/81.)

2-18-83

38.5.1902 GENERAL PROVISIONS (1) The Commission hereby adopts and incorporates by reference 18 CFR, Part 292, which sets forth general requirements and criteria for cogeneration and small power production facilities which are eligible for consideration under Sections 201 and 210 of the federal Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617. A copy of this incorporated material may be obtained from the Commission, 1227 11th Avenue, Helena, Montana 59620.

(2) Any cogeneration or small power production facility in Montana, which is a qualifying facility under the criteria for size, fuel-use, and ownership established by FERC regulations, 18 CFR, Part 292, as incorporated in ARM 38.5.1901(1), is a qualifying facility eligible to participate, under these rules, in arrangements for purchases and sales of electric power with electric utilities regulated by the Commission.

(3) Any qualifying facility in Montana which produces electric energy or capacity, or both, available for purchase by any public utility regulated by the Commission, shall not be considered a public utility within the meaning of 69-3-101, MCA, and shall be exempt from regulation by the Commission as a public utility, except insofar as these rules or any other Commission order, tariff, requirement, or rule governing the activities of public utilities may affect the facility in its dealings with such regulated utilities. Nothing in these rules is to be construed to limit the full powers of regulation, supervision, and control of public utilities vested by law in the Commission.

(4) Nothing in these rules shall exempt any qualifying facility from the applicable licensing or permit requirements which may by imposed on facilities by Montana laws and regulations governing water use, land use, community development and planning, zoning, air quality, environmental protection, or any other existing pertinent law or regulation administered by state agencies other than the Commission.

(5) All purchases and sales of electric power between a utility and a qualifying facility shall be accomplished according to the terms of a written contract between the parties or in accordance with the standard tariff provisions as approved by the Commission. The contract shall specify:

(a) The nature of the purchases and sales;

(b) The applicable rate schedule or negotiated rates for the purchases and sales;

(c) The amount and manner of payment of interconnection costs;

(d) The means for measurement of the energy or capacity purchased or sold by the utility;

(e) The method of payment by the utility for purchases, and the method of payment by the facility for utility sales;

(f) Any installation and performance incentives to be provided by the utility to the qualifying facility;

(g) The services to be provided or discontinued by either party during system emergencies;

(h) The term of the contract;
(i) Applicable operating safety and reliability standards with which the qualifying facility must comply;
(j) Appropriate insurance indemnity and liability provisions. (History: Sec. 69-3-103, MCA; IMP, 69-3-102, MCA; NEW, 1981 MAR p. 244; Eff. 5/15/81.)

38.5.1903 OBLIGATIONS OF UTILITIES TO QUALIFYING FACILITIES (1) Each utility shall purchase any energy and capacity made available by a qualifying facility, except that a utility is not obligated to make purchases from an interconnected qualifying facility:
(i) during system emergencies if such purchase would contribute to the emergency;
(ii) as stipulated in the contract between the utility and the qualifying facility;
(iii) if, due to operational circumstances, purchases from a qualifying facility will result in costs greater than those which the utility would incur if it did not make such purchases. This provision is only applicable in the case of light loading periods in which the utility must cut back base load generation in order to purchase the qualifying facility's production followed by an immediate need to utilize less efficient generating capacity to meet a sudden high peak. Any utility seeking to invoke this exception must notify each affected qualifying facility and the Commission one month prior to the time it intends to invoke this provision. Failure to properly notify the qualifying facilities and the Commission or incorrect identification of such a period will result in reimbursement to the qualifying facility by the utility in an amount equal to that amount due had the qualifying facility's production been purchased.
(2) Except as provided in ARM 38.5.1903(1), each utility shall purchase any energy and capacity made available by a qualifying facility:
(a) At a standard rate for such purchases which is based on avoided costs to the utility as determined by the Commission; or
(b) If the qualifying facility agrees, at a rate which is a negotiated term of the contract between the utility and the facility and not to exceed avoided cost to the utility. However, the utility shall offer long-term contracts with qualifying facilities which permit a rate higher than avoided costs in the early years of the contract and a lower rate in the latter years.
(3) Each utility shall sell to any qualifying facility all electricity requested by the facility.
(4) Each utility shall make such interconnections with a qualifying facility in accordance with the provisions of ARM 38.5.1904.
(5) Each utility shall offer each qualifying facility the option of:

(a) operating in parallel with the utility grid, with a single meter monitoring only the net amount of electricity purchased or sold, or

(b) operating in a simultaneous purchase and sale arrangement with separate meters whereby all power produced by the qualifying facility is sold to the utility at the standard or negotiated purchase rate and all power used by the facility is sold to the facility by the utility at the tariff rate; provided that the requirements of ARM 38.5.1907 are met by the qualifying facility.

(6) Any utility which is otherwise obligated to purchase energy or capacity from a qualifying facility may, if the affected qualifying facility agrees, transmit energy or capacity purchased from the facility to any other electric utility. Any electric utility subject to the Commission's jurisdiction that receives this energy or capacity shall be subject to the pricing provisions contained in these rules. The cost of transmission may be assigned to the qualifying facility.

(7) Each utility shall, if required by the Commission, include installation and performance incentive provisions in any contract with a qualifying facility. Such provisions shall offer a maximum dollar amount per kw per month for any month in which the facility's energy output meets or exceeds specified levels of performance.

(8) Each utility shall, upon initial contact with a potential qualifying facility, provide the potential qualifying facility with one (1) copy of:

(a) these rules,

(b) the Commission's approved standard provisions tariff, and

(c) the Commission's standard complaint procedure. (History: Sec. 69-3-103, MCA; IMP, 69-3-102, MCA; NEW, 1981 MAR p. 245; Eff. 5/15/81.)

38.5.1904 OBLIGATIONS OF QUALIFYING FACILITIES TO UTILITIES (1) A qualifying facility shall specify in its contract with a utility the nature of the purchases undertaken in the contract, including:

(a) The technology used in the production of energy or capacity by the qualifying facility;

(b) The qualifying facility's best estimate of the facility's energy and/or capacity supply characteristics, including its availability during utility system daily and seasonal peak periods and during system emergencies.

(2) A qualifying facility shall be fully responsible for interconnection costs and shall:

(a) Submit, for written approval prior to actual installation equipment specifications and detailed plans to the utility for the installation of its interconnection facilities, control and protective devices, and facilities to accommodate utility meter(s).

(b) Provide and install necessary meter socket and enclosure equipment at or near the point of interconnection, unless the utility has agreed to install the equipment and the facility has agreed to pay for this service;

(c) Reimburse the utility for special or additional interconnection facilities, including control or protective devices, time of delivery metering, and reinforcement of the utility's system to receive or continue to receive the power delivered under the contract. Such reimbursement may be accomplished by means of amortization over a reasonable period of time within the term of the contract and such costs must be reasonable according to industry standards.

(3) Interconnection costs undertaken by the utility shall be reimbursed by the qualifying facility on a nondiscriminatory basis with respect to other customers with similar load characteristics.

(4) A qualifying facility shall be required to provide power to a utility during a system emergency only to the extent specified in the contract between the facility and the utility, unless the qualifying facility is able to supply additional power and agrees to do so. (History: Sec. 69-3-103, MCA; IMP, 69-3-102, MCA; NEW, 1981 MAR p. 246; Eff. 5/15/81.)

38.5.1905 RATES FOR PURCHASES (1) Each utility shall submit to the Commission by November 1, 1981, and on June 1st every year thereafter, the following cost data for use by the Commission in determining avoided costs and standard rates therefrom.

(a) The estimated avoided cost on the electric utility's system, solely with respect to the energy component, for various levels of purchases from qualifying facilities. Such levels of purchases shall be stated in blocks of 10 megawatts and in blocks of 100 megawatts for systems with peak demand of 1000 megawatts or more, and in blocks of 10 megawatts and in blocks equivalent to 10 percent of the system peak demand for systems of less than 1000 megawatts. The avoided costs shall be stated on a cents per kilowatt-hour basis, during daily and seasonal peak and off-peak periods, by year, for the current calendar year and each of the next five years;

(b) The electric utility's plan for the addition of capacity by amount and type, for purchases of firm energy and capacity, and for capacity retirements for each year during the succeeding ten years; and

(c) The estimated capacity costs at completion of the planned capacity additions and planned capacity firm purchases, on the basis of dollars per kilowatt, and the associated energy costs of each unit, expressed in cents per kilowatt hour. These costs shall be expressed in terms of individual generating units and of individual planned firm purchases.

(2) Each utility shall purchase available power from any qualifying facility at either the standard rate determined by the Commission to be appropriate for the utility, or at a rate

2-18-83

which is a negotiated term of the contract between the utility and the qualifying facility.

(3) The rate paid by the utility for any purchase shall not exceed the avoided costs to the utility, calculated:

(i) At the time of delivery of the facility's energy or capacity, for "as available" purchases; or

(ii) At either the time of delivery or the time the obligation is incurred, at the facility's option, for purchases of firm power over the term of the contract.

(4) The standard rate for purchases from a qualifying facility shall be that rate calculated on the basis of avoided costs to the utility which is determined by the Commission to be appropriate for the particular utility after consideration, to the extent practicable, of the avoided cost data submitted to the Commission by the utility and other interested persons.

(5) Assignment of a particular qualifying facility to the appropriate standard rate schedule for purchases by the utility should consider:

(a) The availability of capacity and energy from the qualifying facility during system daily and seasonal peak periods;

(b) The expected or demonstrated reliability of the qualifying facility;

(c) The relationship of the availability of energy or capacity from the qualifying facility to the ability of the utility to avoid cost;

(d) The contractual obligations the owner or operator of the qualifying facility is willing to undertake.

(6) If a qualifying facility has provided in its contract with a utility that measurement of facility energy input to the utility system and measurement of facility load will be accomplished with one meter, the qualifying facility shall be subject to a net billing system, whereby the utility shall pay the standard rate or the negotiated rate for purchases only for the facility's input to the system which is in excess of the facility's load.

(7) If the qualifying facility has agreed in its contract with a utility that measurement of facility input to the utility system shall be accomplished by metering separate from that measuring the facility load, the qualifying facility may receive payment for all of the energy it supplies to the utility according to the applicable schedule of standard rates for purchases. Unless the qualifying facility has contracted for a different rate, the standard rate is applicable regardless of whether the qualifying facility is simultaneously served by the utility for the facility's load, and regardless of the rate charged by the utility for such simultaneous sales. (History: Sec. 69-3-103, MCA; IMP, 69-3-102, MCA; NEW, 1981 MAR p. 247; Eff. 5/15/81.)

38.5.1906 RATES FOR SALES (1) Each utility shall sell power delivered to a qualifying facility under the terms of the

2-18-83

contract at the same rate applicable to the utility's non-generating customers belonging to the same class as the qualifying facility or having similar load or other cost-related characteristics.

(2) The standard rates for sales of power to interconnected qualifying facilities shall be each utility's current applicable tariff schedules approved by the Commission. (History: Sec. 69-3-103, MCA; IMP, 69-3-102, MCA; NEW, 1981 MAR p. 248; Eff. 5/15/81.)

38.5.1907 OPERATING SAFETY PROVISIONS (1) The Commission hereby adopts and incorporates by reference the national electric safety code approved by the American national standards institute as published by the institute of electrical and electronic engineers which sets forth generally accepted safety standards for electric facilities. A copy of this incorporated material may be obtained from the Commission, 1227 11th Avenue, Helena, Montana 59620 or from the Institute of Electrical and Electronics Engineers, Inc., 345 East 47th Street, New York, NY 10017.

(2) Each qualifying facility shall, in the design, installation, interconnection, maintenance, and operation of the facility, comply with the requirements of the national electrical safety code.

(3) Each qualifying facility seeking parallel operation with any utility shall provide such control and protective devices as required by the utility for such operation.

(4) Each utility shall have the right:

(a) To enter the premises of the qualifying facility at reasonable times and with reasonable notice for inspection of the facility's protective devices, and

(b) To disconnect without notice if a hazardous condition exists in the generation or other equipment of the qualifying facility, and such immediate action is necessary to protect persons, utility facilities or other customers' facilities from damage or interference imminently likely to result from the hazardous condition.

(5) The Commission shall have the same power to investigate accidents occuring in the operation of any qualifying facility which result in death or serious injury to any person as it has under Section 69-3-107, MCA, with respect to public utilities. (History: Sec. 69-3-103, MCA; IMP, 69-3-102, MCA; NEW, 1981 MAR p. 248; Eff. 5/15/81.)

38.5.1908 INFORMATION TO BE PROVIDED TO THE COMMISSION (1) Pursuant to initial contact with a potential qualifying facility, each utility shall provide the Commission with one (1) copy of the utility's initial written response. (History: Sec. 69-3-103, MCA; IMP, 69-3-102, MCA; NEW, 1981 MAR p. 248; Eff. 5/15/81.)

NEXT PAGE IS 38-801

SB430- #2.
2-18-83

69-3-505. Issuance of certain short-term obligations. Such public utility may issue notes or drafts maturing not more than 1 year after the date of such issue, renewal, or assumption of liability and aggregating, together with all other then outstanding notes and drafts of a maturity of 1 year or less on which such public utility is primarily or secondarily liable, not more than 5% of the par value of the other securities of the public utility then outstanding, without application to or order of the commission. In the case of securities having no par value, the par value for the purpose of this section shall be the fair market value as of the date of issuance of such notes or drafts.

History: En. Sec. 3, Ch. 74, L. 1961; R.C.M. 1947, 70-117.3.

69-3-506. Unapproved securities void. Except as provided in 69-3-505, all securities issued, assumed, or guaranteed after July 1, 1961, without approval by the commission as provided herein shall be void.

History: En. Sec. 5, Ch. 74, L. 1961; R.C.M. 1947, 70-117.5.

69-3-507. State not obligated on securities. No provision of this part or any act or deed done or performed in connection therewith shall be construed to obligate the state to pay or guarantee in any manner whatsoever any security authorized, issued, assumed, or guaranteed under the provisions of this part.

History: En. Sec. 6, Ch. 74, L. 1961; R.C.M. 1947, 70-117.6.

Part 6

Small Power Production Facilities

Part Compiler's Comments

1981 Title: The title to SB 139 (Ch. 436, L. 1981) read: "An act to authorize the sale of electricity from qualifying small power production facilities to utilities under rates and conditions mutually agreed upon or established by the public service commission or to electric cooperatives under terms and conditions mutually agreed upon and in compliance with the Public Utility Regulatory Policies Act."

Interim Study Bill: Chapter 436, L. 1981 (SB 139), was introduced at the request of the Environmental Quality Council, as a result of a study conducted by the EQC and the National Conference of State Legislatures. See 1980 report available from EQC.

69-3-601. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means the Montana public service commission.

(2) "Electric cooperative" means a rural electric cooperative organized under the laws of Montana, or a foreign corporation admitted to do business in Montana.

(3) "Utility" means any public utility supplying electricity and regulated by the commission.

(4) "Qualifying small power production facility" means a facility that:

(a) produces electricity by the use, as a primary energy source, of biomass, waste, water, wind, or other renewable resource, or any combination of those sources;

(b) has a power production capacity that together with any other facilities located at the same site is not greater than 80 megawatts; and

SB430 #2
2-18-83

(c) is owned by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility.

History: En. Sec. 1, Ch. 436, L. 1981.

69-3-602. Generation and sale of electricity by qualifying small power production facility. (1) A qualifying small power production facility may generate electricity from the sources described in 69-3-601(4)(a) and may contract for the sale of that electricity with a utility.

(2) A qualifying small power production facility may generate electricity from the sources described in 69-3-601(4)(a) and may contract for the sale of that electricity with an electric cooperative under terms and conditions mutually agreed upon between the parties and in compliance with the rates and regulations established by the Public Utility Regulatory Policies Act.

History: En. Sec. 2, Ch. 436, L. 1981.

69-3-603. Required sale of electricity under rates and conditions prescribed by commission. (1) If a qualifying small power production facility and a utility are unable to mutually agree to a contract for the sale of electricity or a price for the electricity to be purchased by the utility, the commission shall require the utility to purchase the electricity under rates and conditions established under the provisions of subsection (2).

(2) The commission shall determine the rates and conditions of the contract upon petition of a qualifying small power production facility or a utility or during a rate proceeding involving the review of rates paid by a utility for electricity purchased from a qualifying small power production facility. The commission shall render a decision within 120 days of receipt of the petition or before the completion of the rate proceeding. The rates and conditions of the determination shall be made according to the standards prescribed in 69-3-604.

History: En. Sec. 3, Ch. 436, L. 1981.

69-3-604. Standards for determination of rates and conditions. (1) The commission shall determine the rates and conditions of the contract for the sale of electricity by a qualifying small power production facility according to the standards in subsections (2) through (4).

(2) Long-term contracts for the purchase of electricity by the utility from a qualifying small power production facility shall be encouraged in order to enhance the economic feasibility of qualifying small power production facilities.

(3) The rates to be paid by a utility for electricity purchased from a qualifying small power production facility shall be established with consideration of the availability and reliability of the electricity produced.

(4) The commission may set these rates by use of any of the following methods:

(a) the avoided cost over the term of the contract;

(b) the cost of production for the qualifying small power production facility plus a just and reasonable return; or

(c) any other method that will promote the development of qualifying small power production facilities.

History: En. Sec. 4, Ch. 436, L. 1981.

Section
69-4-101. Use of
69-4-102. Undergr

69-4-201. Applica
69-4-202. Repeale
69-4-203. Scope o
69-4-204. Regulat
69-4-205. Violatio
Sections
69-4-211 through 6

69-4-301. Short ti
69-4-302. Stateme
69-4-303. Definiti
69-4-304. Exclusi
69-4-305. Effect o
Sections
69-4-311. Authori
69-4-312. Procedu
69-4-313. Cost an
69-4-314. Determ
69-4-315. Resolut
69-4-316. Notice
69-4-317. Publica
69-4-318. Right t
69-4-319. Hearing
69-4-320. Ordinar
69-4-321. Waiver
69-4-322. Propose
69-4-323. Basis o
69-4-324. Propose
69-4-325. Notice
69-4-326. Hearing
69-4-327. Adoptic
69-4-328. Paymer
69-4-329. Advanc
69-4-330. Collecti
69-4-331. Assessn
69-4-332. Issuanc
69-4-333. Challen
Section
69-4-351. Mainte
69-4-352. Title to
69-4-353. Conver
69-4-354. Conver
69-4-355. Proced
69-4-356. Paymer
69-4-357. Prohibi
69-4-358. Postpo

Public Service Commission of Montana

The Montana Power Company
(Name of Company)

Sheet No. LTPP-82 Supp. #1
Cancelling Sheet No. LTPP-82

Schedule LTPP-82 Supp. #1

Long-Term Power Purchase Service

AVAILABILITY: To any Seller who operates facilities for the purpose of generating long-term electric energy in parallel with the Company's system. This schedule is applicable to Cogeneration and Small Power Production (COG/SPP) facilities that are Qualifying Facilities under the Rules of the MPSC.

DEFINITIONS: "Seller," for purposes of this schedule, is any individual, partnership, corporation, association, government agency, political subdivision, municipality, or other entity that:

1. Operates a qualifying COG/SPP facility;
2. Has signed the standard written contract with the Company stipulating the terms and conditions of the interconnection and sale of electricity to the Company;
3. Has agreed in the standard contract to provide electricity to the Company on a long-term basis as defined in the contract.

"Company" means The Montana Power Company.

"MPSC" means The Montana Public Service Commission.

"Contract Year" means twelve months beginning on July 1.

RATE: Energy: $0.0533/kWh

Capacity: The Seller will be compensated monthly for capacity according to the following formula:

$$\$/\text{Annual Contract kW/month} = \frac{\$6.74 \times \text{ACCF}}{.85}$$

where: ACCF = Annual Contract Capacity Factor

Annual Capacity Payment Adjustment: At the end of each Contract Year, a reconciliation of the accumulated monthly capacity payments made to the Seller for the Contract Year and actual capacity value to the Company for the Contract Year will be made utilizing the following formula:

Issued July 30, 1982 (Date) By [signature] (Signature of Officer of Utility)

Approved August 3, 1982 (Date) Effective for electric service rendered on and after (Date) August 3, 1982

(Space for Stamp or

PUBLIC SERVICE COMMISSION OF MONTANA

Public Service Commission of Montana

The Montana Power Company

Name of Company)

Sheet No. LTPP-82 Supp. #1

Cancelling Sheet No. LTPP-82

Schedule LTPP-82 Supp. #1

Long-Term Power Purchase Service

$$\$/AAKW = \frac{(80.92 \times ACCF)}{(\quad .85 \quad)} \times \frac{(AACF)}{(ACCF)} \times \frac{(AAKW)}{(ACKW)}$$

Refund to Company = (Dollars Paid to Seller) - ($/AAKW) (AAKW)

Where AAKW = Annual Actual kW (for Contract Year)
ACCF = Annual Contract Capacity Factor
AACF = Annual Actual Capacity Factor (for Contract Year)
ACKW = Annual Contract kW
If AAKW is greater than ACKW then AAKW = ACKW

SPECIAL TERMS AND CONDITIONS:

1. Change of Rate: This schedule will be reviewed annually for each Contract Year and revised upon MPSC approval.

2. Net Billing Option: (A) If the Seller opts for Long-Term Net Billing in the standard contract and the Seller's consumption kWh exceeds the production kWh, the Seller will be billed for only the consumption kWh in excess of production kWh according to the Company's applicable Retail Sales Rate Schedule. If the Seller's consumption kWh is less than the production kWh, the Seller will receive payment for only the production kWh in excess of consumption kWh according to the energy rate in this schedule.

   (B) To meet the conditions of this Option and to receive a separate capacity payment, the Seller's consumption must be measured and billed on a demand basis and a separate kW/kWh meter to measure production is required. Under this Option, the Seller will be billed at the Company's applicable Retail Sales Rate Schedule for only the consumption kW in excess of the production kW. If the Seller's production kW exceeds the consumption kW, the Seller will be compensated for only the production kW in excess of the consumption kW according to the Production Capacity Payment Procedure detailed in this Schedule. The calculation of monthly capacity payments for the expected excess production kW will utilize the expected annual net production capacity factor. The Annual Capacity Payment Adjustment is to be applied to the actual excess production kW for the Contract Year. The procedure will utilize the annual contracted and annual gross production kW and gross capacity factor information for payment reconciliation.

Issued July 30, 1982 (Date) By Steven Paul Cook (Signature of Officer of Utility)

Approved August 3, 1982 (Date) Effective for electric service rendered On and after (Date) August 3, 1982

Docket 8[illegible]
Order 4865D & 4865E

PUBLIC SERVICE COMMISSION OF MONTANA

2-18-82

Form 433-B

Public Service Commission of Montana

The Montana Power Company

(Name of Company)

Sheet No. LTPP-82 Supp.

Cancelling Sheet No. LTPP-82

Schedule LTPP-82 Supp. #1

Long-Term Power Purchase Service

3. All service provided by the Company under this and all other schedules is governed by the rules and regulations approved by the MPSC.

330378

Issued July 30, 1982 (Date) By Steven Paul Corell (Signature of Officer of Utility)

Approved August 3, 1982 (Date) Effective for electric service rendered on and after (Date) August 3, 1982

2-18-82

ADVANTAGES OF ELECTRICAL COGENERATION

SUMMARY

Capital Investment

The engineering design efficiencies resulting from the combination of co-generated electric power production and a separate energy consuming process using a single set of boilers, results in significant capital investment savings. The total savings in capital investment can amount to hundreds of millions of dollars when several small cogeneration projects replace a single large power plant of the same total electric power generation capacity.

Size Efficiency

The power generation capacity of a cogenerator is much smaller than that of a major utility-owned power plant. Providing cogenerated power, therefore, avoids the large and expensive overcapacity which occurs when a large power plant is brought on line. Electric power consumers are also spared from the large rate increases which occur when a major new power plant is added to a utility's rate base.

Energy Efficiency

The utilization of non-renewable fossil fuel, such as coal, is much more efficient in cogeneration operations. While the new processing facilities associated with cogeneration require additional coal to operate, the increase in coal usage is 10 to 25 percent less than for separately located and operated power production and processing facilities.

Business Development

Revenue from the sale of cogenerated electric power encourages the development of small and attractive new industries which provide important employment and economic benefits at several locations. Since cogeneration projects are not concentrated at one location, their economic benefits are spread through several communities.

Environmental Impacts

A large number of separately located cogeneration projects each have much less local impact and disruption during construction than a single large power plant. Each cogeneration project must comply with all applicable environmental requirements. Since cogeneration projects are relatively small, they have much less impact than large projects and they are readily accepted and accommodated by established communities.

2-18-88

ADVANTAGES OF ELECTRICAL COGENERATION

Cogeneration is a demonstrated means of improving the overall efficiency of generating electric energy. Cogeneration combines the generation of electric power with the supply of thermal energy to a co-located operation or process. This combination insures that fossil fuel fired boiler capacity is efficiently utilized and that what would otherwise be waste heat from the power generation process is utilized to provide useful energy.

The major advantages for the combination of electric power generation with the supply of process energy include:

- Reduced Capital Investment Requirements
- Improved Size Efficiency for Power Generation
- Higher Total Energy Efficiency
- Provides a Solid Economic Base for Small to Medium Sized Business Development
- Reduced Environmental Impacts

Capital Investment

Since the boilers in a cogeneration project provide both process energy and steam for electrical power generation, the combination can be efficiently designed to reduce total boiler capacity below that required for two separate sets of boilers in independent projects. This reduction in the required boiler size and capacity represents a significant savings in the amount of investment capital required by the combined projects. Although the amount of the savings is different for each specific case, cogeneration projects generally require from one-half to two-thirds of the capital required per unit of electrical power output when compared to large independent fossil fuel electrical generation plants in the size range currently constructed by electric utilities. This savings in investment can amount to hundreds of millions of dollars when several cogeneration projects provide the same total power output as a single large independent power plant. This savings in capital investment is then available for investment in other needed areas.

The regulated rate paid by consumers for electrical energy is based on what is considered a fair rate of return on the capital investment of the

electrical utility. Since cogenerating projects are not owned by utility companies (a requirement of law), their power is provided to electrical consumers without the coincident increase in electric rates which occur when new utility-owned power plants are constructed.

Size Efficiency

Each cogeneration project has an electric output which is significantly smaller than that of a typical new power plant designed only to produce electric energy. Cogeneration projects generally have power generation rates in the range of 5 to 50 megawatts each, while utilities now build power plants in the 200 to 1000 megawatt size range. Since change in electrical demand is gradual, the construction of a large new utility owned power plant results in a large excess generation capacity for several years, or possibly decades. The smaller cogeneration projects do not result in these large excess electrical generation capacities as each unit is introduced into the electrical distribution system. The smaller cogeneration projects generally require much less time to plan, review, permit and construct, resulting in much shorter lead times than major power plants.

More importantly perhaps, the addition of cogeneration projects to a power distribution network even during a period of excess generation capacity can supply the electrical energy necessary to delay or cancel the need for subsequent major new utility-owned power plants. The electrical consumer is therefore spared the high rate increases which occur at the time the regulated utility initiates operation of a major new power plant.

Energy Efficiency

The boilers needed to supply the steam for electric generation and/or to provide process energy generally use a non-renewable fossil fuel, usually coal. The use of what would otherwise be waste energy from a power plant to provide useful process energy in a cogeneration project reduces the total consumption of fossil fuel, conserving non-renewable resources. While the new process facilities associated with cogeneration require additional coal to operate, the increase in coal usage is much less than for separately located and operated power production and processing facilities. The production of electric energy and process energy using a common steam generation system generally reduces the

total consumption of coal or other fossil fuel by ten to twenty-five percent below the total fuel requirements for independently located operations. This more efficient fuel consuption is an important savings in operating cost and in resources.

Business Development

The federal and state legal and regulatory requirements for cogeneration projects establish a tariff which each electric utility company must pay for the electric energy supplied by a cogenerator to a distribution network. This tariff is established by the state regulatory agency having authority over each utility. The tariff is set by the regulatory agency at the rate which represents the energy and capacity costs which are avoided by the regulated utility by the supply of the cogenerated electric power. While these tariffs for cogenerated power are often higher than ongoing retail power rates, they are significantly lower than the retail rates that would be charged by the utility company for new large power plant capacity which will be offset in future years by the co-generation capacity. The utility customer is therefore spared large rate increases in future years by the timely development of cogeneration projects.

The payments for electric power made to cogenerators by utility companies provide a solid financial base and economic stability to the development of the co-located business. Because the nature of cogeneration projects is prescribed by law, (five percent or more of the total thermal energy produced in the co-generator's boilers must be utilized as useful process energy) the total size of each cogeneration project is practically limited. This encourages the development of a number of small separately located power producing units with their associated industries and economic/employment benefits. Under this type of development, a series of dispersed cogeneration business enterprises with high operating labor requirements and ongoing economic benefits replaces a single large utility-owned power plant at one location which has a lower total operating labor requirement, but a significant impact in power rates due to its capital costs. The development of cogeneration creates a greater number of better paying jobs in several communities, rather than fewer total jobs concentrated in one community.

Environmental Impacts

Each cogeneration project is required to comply with all applicable preconstruction and operational environmental requirements. Cogeneration development will disperse the location of power generation and associated business enterprises, which will mitigate local disruptions which occur when very large power plants are constructed and operated. The economic benefits resulting from the development of cogeneration business enterprises will be dispersed over a wide geographic and population base, resulting in a much more uniformly healthy economy, rather than concentrated economic influences near a single large project. A large number of small, dispersed boiler stacks from cogeneration operations, each of which must be in full compliance with stack emission and ambient air quality impact regulations, will have smaller local impacts on air quality than a single stack at a large utility power plant.

DRAFT

Regional Conservation and Electric Power Plan 1983

Meeting the region's energy needs...
with confidence, flexibility, and
at the lowest possible cost

NORTHWEST POWER PLANNING COUNCIL

NAME: John Alke DATE: 2/18

ADDRESS: 406 Fuller

PHONE: 442-3690

REPRESENTING WHOM? MDU

APPEARING ON WHICH PROPOSAL: 430

DO YOU: SUPPORT?_____ AMEND? _____ OPPOSE? X

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

4/1

OIL and/or GAS STATEMENT Sun Exploration and Production Company - Sun Production Division - P.O. Box 2880, DALLAS, TEXAS 7

FROM MO.	FROM YR.	THRU MO.	THRU YR.	PROPERTY NUMBER	SUB STR TR	MTR	*	QUANTITY	WINDFALL PROFIT TAX	SEVERANCE TAX	NET VALUE	*	DECIMAL
		06	82	4160700			1	.00				2	00390625
		06	82	4160700			1	ADVALOREM TAX		3953.69	3953.69-	2	00390625
		11	82	4160700			1	329.71	706.17	543.22	9571.69	2	00390625
		11	82	4160710			1	258.50	556.36	425.89	7501.72	2	00585938
YEAR-TO-DATE:								GROSS EARNINGS 626.55	WINDFALL TAX 40.39	NET	EARNINGS 539.16		

CHECK DATE	OWNER NUMBER	CHECK NUMBER	* 1 OIL 2 GAS 3 CONDENSATE	* 1 WI 3 ORI 2 RI 4 PP	TOTAL	REGISTER
12-23-82	061748	605312			65.90	0605312

* DENOTES DEDUCTION

KEEP THIS STATEMENT FOR TAX PURPOSES. DUPLICATE WILL NOT BE FURNISHED REFER TO PROPERTY NO AND OWNER NO WHEN WRITING

DOME PETROLEUM CORP.
1625 BROADWAY • SUITE 2900
DENVER, COLORADO 80202

OWNER NO. 89627 12/14/82 No. 241411 VOUCHER NUMBER R212016

REFERENCE	DATE MO. YR.	LEASE NUMBER	FLOW	GROSS VOLUME	PRODUCTION TAX	NET VALUE	DECIMAL INTEREST	WINDFALL PROFIT TAX	OWNER NET VALUE
J211591	07 82	2501800627			514.29	514.29-	.00390625		2.01-
J211591	08 82	2501800627			1,019.64	1,019.64-	.00390625		3.98-
J211591	09 82	2501800627			543.65	543.65-	.00390625		2.12-
J211591	07 82	2501801527			427.14	427.14-	.00585937		2.50-
J211591	08 82	2501801527			520.08	520.08-	.00585937		3.05-
J211591	09 82	2501801527			559.36	559.36-	.00585937		3.28-
J212458	10 82	2501801527		268.41		8,689.77	.00585937	3.96	46.96

1 - LOWER TIER 2 - UPPER TIER 3 - MARKET LEVEL M - MARGINAL WELL S - STRIPPER
4 - NAT. REG. 7 - NEWLY DISC. H - HEAVY I - INC. TERT. G - GAS
C - CONDENSATE N - N.G.L. O - OTHER

DETACH & RETAIN FOR YOUR RECORDS

AMOUNT OF CHECK 30.02

2-18-83 Nat. Res.

NAME: James D. Mockler DATE: 2/18

ADDRESS: 2301 Colonial Dr

PHONE: 442-6223

REPRESENTING WHOM? Mt. Coal Council

APPEARING ON WHICH PROPOSAL: SB 214

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: John Allen DATE: 2/18

ADDRESS: 406 Fuller

PHONE: 442-3690

REPRESENTING WHOM? MD

APPEARING ON WHICH PROPOSAL: 444

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

February 18 19 83

MR. PRESIDENT:

We, your committee on NATURAL RESOURCES

having had under consideration SENATE Bill No. 442

Respectfully report as follows: That SENATE Bill No. 442

DO NOT PASS

~~DO PASS~~

SEN. HAROLD L. DOVER, Chairman.

n/c

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 18 19 83

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration SENATE Bill No. 430

Respectfully report as follows: That SENATE Bill No. 430

1. Page 2, line 5 through 7.
   Strike: Subsection (c) in its entirety.
   Renumber: Subsequent subsections.

2. Page 2, line 18.
   Following: "(a)"
   Strike: "through"
   Insert: "and (4) (b)"

3. Page 2, line 19.
   Strike: "(4) (c)"
   Following: "69-3-601
   Strike: "or any combination of those sources"

~~AMENDS~~

Chairman.

STATE PUB. CO.
Helena, Mont.

NO

Natural Resources Committee
Senate Bill 430
page 2

4. Page 2, line 24
Following: "(4) (a)"
Strike: "through (4) (c)"
Following: "69-3-601"
Strike: "or any"

5. Page 2, line 25.
Strike: "combination of those sources"

AND AS SO AMENDED
DO PASS

DOVER

Chairman.

HC.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 18 19 83

MR. President

We, your committee on Natural Resources

having had under consideration Senate Bill No. 406

Respectfully report as follows: That Senate Bill No. 406

DO NOT PASS

~~DO PASS~~

Senator Dover
Chairman.

STATE PUB. CO.
Helena, Mont.

J/C.

SENATE COMMITTEE SENATE NATURAL RESOURCES

Date 2-18-83 Bill No. 404 Time

NAME	YES	NO
ECK, Dorothy (D)		✓
HALLIGAN, Mike (D)		✓
KEATING, Thomas F. (R)	✓	✓
LEE, Gary P. (R)	✓	
MANNING, Dave (D)		✓
MOHAR, John (D)		✓
SHAW, James N. (R)		✓
STORY, Pete (R)	✓	
TVEIT, Larry J. (R)	✓	
VAN VALKENBURG, Fred (D)		✓
ETCHART, Mark (R) Vice Chairman	✓	
DOVER, Harold L. (R) Chairman	✓	
	6	6

Secretary
Patricia A. Hatfield

Chairman
Harold L. Dover

Motion: 116

Failed on Tie Vote

(include enough information on motion--put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

February 18, 19 83

MR. PRESIDENT:

We, your committee on NATURAL RESOURCES

having had under consideration SENATE Bill No. 368

Respectfully report as follows: That SENATE Bill No. 368,
introduced bill, be amended as follows:

1. Title, line 6.
   Following: "AUTHORITY"
   Strike: "OR CREATE ANY RIGHT OF ACTION BEYOND ONE TO REQUIRE AN ENVIRONMENTAL IMPACT STATEMENT"

2. Page 1, line 16.
   Following: "chapter"
   Strike: "creates any right of action beyond one to require an environmental impact statement or"

And, as so amended,
DO PASS

HAROLD C. DOVER, Chairman.

STATE PUB. CO.
Helena, Mont.

SENATE COMMITTEE SENATE NATURAL RESOURCES

Date 2-18 Bill No. 368 Time 1:50

NAME	YES	NO
ECK, Dorothy (D)		✓
HALLIGAN, Mike (D)		✓
KEATING, Thomas F. (R)	✓	
LEE, Gary P. (R)	✓	
MANNING, Dave (D)	✓	
MOHAR, John (D)		✓
SHAW, James N. (R)	✓	
STORY, Pete (R)	✓	
TVEIT, Larry J. (R)	✓	
VAN VALKENBURG, Fred (D)		✓
ETCHART, Mark (R) Vice Chairman		
DOVER, Harold L. (R) Chairman	✓	

Secretary
Patricia A. Hatfield

Chairman
Harold L. Dover

Motion: Do Pass as Amended.

(include enough information on motion--put with yellow copy of committee report.)

PROPOSED AMENDMENTS TO SB 368

1. Title, line 6.
   Following: "AUTHORITY"
   Strike: "OR CREATE ANY RIGHT OF ACTION BEYOND ONE TO REQUIRE AN ENVIRONMENTAL IMPACT STATEMENT"

2. Page 1, line 16.
   Following: "chapter"
   Strike: "creates any right of action beyond one to require an environmental impact statement or"

STANDING COMMITTEE REPORT

February 18 19 83

MR. President

We, your committee on Natural Resources

having had under consideration Senate Bill No. 416

Respectfully report as follows: That Senate Bill No. 416

DO NOT PASS

~~DO PASS~~ XXXXX

Senator Dover Chairman.

STATE PUB. CO.
Helena, Mont.

SENATE COMMITTEE SENATE NATURAL RESOURCES

Date 2-18-83 Bill No. 416 Time 3:55

NAME	YES	NO
ECK, Dorothy (D)	✓	
HALLIGAN, Mike (D)	✓	
KEATING, Thomas F. (R)		✓
LEE, Gary P. (R)		✓
MANNING, Dave (D)	✓	
MOHAR, John (D)	✓	
SHAW, James N. (R)		✓
STORY, Pete (R)		✓
TVEIT, Larry J. (R)		✓
VAN VALKENBURG, Fred (D)	✓	
ETCHART, Mark (R) Vice Chairman		✓
DOVER, Harold L. (R) Chairman		✓
	5	7

Secretary
Patricia A. Hatfield

Chairman
Harold L. Dover

Motion: 416 do

(include enough information on motion--put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

February 18 19 83

MR. President

We, your committee on Natural Resources

having had under consideration Senate Bill No. 362

Respectfully report as follows: That Senate Bill No. 362,
introduced bill, be amended as follows:

1. Title, line 6, and 7.
Strike: "AN INSPECTION COMMISSION"
Insert: "A TECHNICAL REVIEW COMMITTEE"

2. Title, line 7.
Strike: "85-15-102,"

3. Title, lines 8 and 9.
Following: "MCA"
Strike: The remainder of line 8 and line 9 in their entirety.
Insert: "."

4. Page 2, line 1.
Insert: "(3) 'Board' means the board of natural resources and conservation provided for in 2-15-3302."
Renumber: All subsequent subsections

5. Page 2, line 1.
Strike: "Commission"
Insert: "Committee"
Strike: "dam inspection commission"
Insert: "technical review committee"

(con't)

Chairman.

STATE PUB. CO.
Helena, Mont.

pc.

February 18 83
19

6. Page 2, line 7.
Following: "greater"
Insert: "exclusive of mine tailing impoundment structures"

7. Page 3, line 21.
Following: "water"
Insert: "exclusive of mine tailing impoundment structures"

8. Page 4, line 2.
Following: line 2
Insert: "NEW SECTION. Section 4. Construction in a secure manner. A person may not construct or cause to be constructed a dam or reservoir for the purpose of accumulating, storing, appropriating, or diverting any of the waters of this state, except in a thorough, secure, and substantial manner."

9. Page 4, line 3.
Strike: Section 4 in its entirety

10. Page 6, line 12.
Following: "department"
Insert: "sufficient for supporting the design"

11. Page 6, lines 13 through 17.
Strike: lines 13 through 17 in their entirety
Renumber: subsequent subsections

12. Page 6, line 19 and 20.
Strike: "and any additional information requested by the department,"

13. Page 7, line 2.
Following: "construction"
Strike: "--"

14. Page 7, line 3.
Following: "construction"
Insert: "inspection"

15. Page 7, line 5 and 6.
Strike: "The engineer in charge shall provide for inspections"
Insert: Inspections during construction shall be performed"

16. Page 7, line 10.
Strike: "and report"
Insert: "reports"

17. Page 7, line 11.
Following: "department"
Insert: "of"

18. Page 7, lines 12 and 13.
Strike: "The department shall set the time for reporting."
Insert: "(4) The department may inspect the dam during construction to insure conformity with the permit."
Renumber: subsequent subsections

Chairman.

STATE PUB. CO.
Helena, Mont.

February 18, 1983

19.

19. Page 7, lines 15 through 25.
Following: "Section 9."
Strike: remainder of lines 15 through 25
Insert: "Operating certificate."

20. Page 8, lines 1 through 8.
Strike: lines 1 through 8
Insert: "(1) An operation plan must be prepared by the owner and approved by the department prior to operation of the dam or reservoir. The operation plan must set forth at a minimum:
(a) a reservoir operational procedure;
(b) a maintenance procedure for the dam and appurtenant works;
(c) emergency procedures and warning plans."
Renumber: subsequent subsections

21. Page 8, line 10 and 11.
Strike: "as determined under (Section 8) and this section,"
Insert: "and upon approval of an operational plan,"

22. Page 8, line 12.
Strike: "permit"
Insert: "certificate"

23. Page 8, line 13.
Following: "inspections"
Insert: "and recertification."

24. Page 8, line 14.
Following: "inspected"
Insert: "and recertified"

25. Page 8, lines 18 through 21
Following: "(2)"
Strike: the remainder of lines 18 through 21.
Insert: "Any inspections required in this section must be done by a qualified engineer."

26. Page 8, line 22.
Strike: "pay the costs of"
Insert: "be responsible for"

27. Page 9, line 17
Following: "inspection."
Strike: the remainder of lines 17 through "and" on line 20
Insert: "The costs"

28. Page 10, line 5.
Strike: lines 5 through 9 in their entirety.
Insert: "take necessary steps to make these structures safe."

29. Page 10, line 25
Following: "department"
Strike: "may"
Insert: "shall"

Chairman.

STATE PUB. CO.
Helena, Mont.

MC

February 18 19 83

30. Page 11, line 1.
Strike: lines 1 through 2 in their entirety.
Insert: "take necessary steps to safeguard life and property."

31. Page 11, line 14.
Following: "department."
Strike: the remainder of line 14 through "and" on line 15
Insert: "Costs"

32. Page 11, line 18.
Strike: Section 14 in its entirety
Insert: "(4) In case of a dispute between the owner and the department, a technical review committee may be appointed by the board to review the technical merits of a project. The committee shall be made up of 5 members appointed as follows:

(a) one member who is a board member and shall serve as committee chairman;
(b) two members who are selected by the owner;
(c) two members who are selected by the department, at least one of whom must be from outside the department.

All committee members except the chairman must have technical qualifications in the disciplines of dam design or dam construction or both.

(5) The committee may be called by any of the following methods:
(a) by the board on its own motion
(b) by the request of the department
(c) by the request of the owner

(6) The committee shall make recommendations to the board. The board shall make final decisions of approval or disapproval of permits and certification in the context of the dispute.

(7) The technical committee is entitled to a reasonable compensation for their services to be allowed by the board.
(8) The board shall set a schedule of costs of the technical review committee based on the project size and complexity to be paid by the person requesting the review process."
Renumber: subsequent subsections

33. Page 15, line 4
Strike: Section 25 in its entirety
Renumber: subsequent sections

34. Page 15, line 8.
Strike: "23"
Insert: "22"

.....
Chairman.

STATE PUB. CO.
Helena, Mont.

February 18, 1983 19

35. Page 15, line 11
Strike: "23"
Insert: "22"

AND AS SO AMENDED,
DO PASS

Senator Dover Chairman.

STATE PUB. CO.
Helena, Mont.

SENATE COMMITTEE SENATE NATURAL RESOURCES

Date 2-18-83 Bill No. SB 62 Time

NAME	YES	NO
ECK, Dorothy (D)	✓	
HALLIGAN, Mike (D)	✓	
KEATING, Thomas F. (R)		✓
LEE, Gary P. (R)		✓
MANNING, Dave (D)	✓	
MOHAR, John (D)	✓	
SHAW, James N. (R)		✓
STORY, Pete (R)		
TVEIT, Larry J. (R)		✓
VAN VALKENBURG, Fred (D)		
ETCHART, Mark (R) Vice Chairman		✓
DOVER, Harold L. (R) Chairman		✓
	4	6

Secretary
Patricia A. Hatfield

Chairman
Harold L. Dover

Motion: Sent. Motion

Do Pass

(include enough information on motion--put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

February 10, 1983

MR. PRESIDENT:

We, your committee on NATURAL RESOURCES

having had under consideration SENATE Bill No. 441

Respectfully report as follows: That SENATE Bill No. 441,
introduced bill, be amended as follows:

1. Page 2, lines 4 and 5.
   Strike: lines 4 and 5 in their entirety
   Renumber: subsequent subsections
2. Page 2, lines 6 and 7.
   Strike: lines 6 and 7 in their entirety
   Insert: "(g) barrels of oil and/or cubic feet of gas for which payment is made;"
   Renumber: subsequent subsections
3. Page 2, line 8.
   Strike: line 8 in its entirety
   Renumber: subsequent subsections
4. Page 2, line 9.
   Strike: "any state"
   Following: "withheld"
   Insert: ";"

~~XXXXX~~ 5. Page 2, line 10.
   Strike: line 10 in its entirety
   Renumber: subsequent subsections

(Continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

M.C.

February 18, 1983

6. Page 2, line 11.
Strike: "the product produced; and"
Insert: "production;"

7. Page 2, lines 12 and 13.
Strike: lines 12 and 13 in their entirety
Renumber: subsequent subsections

8. Page 2, line 14.
Following: "interest"
Strike: ";"

9. Page 2, line 15.
Strike: "(ii)"

10. Page 2, line 16.
Following: "person"
Insert: "purposely and knowingly"

11. Page 2, line 18.
Strike: "less"
Insert: "more"
Strike: "$10,000 or imprisoned"
Insert: "$1,000 "

12. Page 2, lines 19 and 20.
Strike: lines 19 and 20 in their entirety

13. Page 4, line 21.
Strike: "on passage and approval"
Insert: "October 1, 1983"

And, as so amended,
DO PASS

HAROLD C. DOVER, Chairman.

STATE PUB. CO.
Helena, Mont.

A. C.

STANDING COMMITTEE REPORT

8 February 18 19 83

MR. President

We, your committee on Natural Resources

having had under consideration Senate Bill No. 400

Respectfully report as follows: That Senate Bill No. 400

DO PASS

Senator Dover Chairman.

STATE PUB. CO.
Helena, Mont.