

Rural Electric Cooperatives: Addressing Concerns about Transparency and Participation

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Introduction

In October 2011 Southern Montana Electric Generation and Transmission filed for reorganization under Chapter 11 bankruptcy. With its decision, a number of questions concerning generation and transmission cooperatives related to transparency, organization, and decision-making processes were brought to the Energy and Telecommunications Interim Committee.

Five rural electric cooperatives -- Beartooth, Fergus, Mid-Yellowstone, Tongue River, and Yellowstone Valley -- and the city of Great Falls are included in Southern Montana Electric Generation and Transmission Cooperative's membership. ETIC Chairman Alan Olson requested members of Southern be invited to the ETIC's January 13 meeting. With questions about the effects of the bankruptcy on Montana customers, potential Public Service Commission intervention in the bankruptcy hearings, and past (SB 205, SB 245, 2011) and potential legislation related to Southern and electric cooperatives, the chairman indicated that the committee needed to receive information and discuss the cooperative's decision to seek bankruptcy protection.

During the ETIC's January meeting Southern's five rural electric cooperative board members were asked to share their perspectives on the wholesale power cooperative and its future. Electric City Power, also a member of Southern, also was invited to the January meeting. Southern Montana, Mid-Yellowstone, and Electric City Power chose not to take part in the discussion. Some cooperative members expressed their frustration with Southern's actions and discussed their concerns about transparency in Southern's decision-making processes.

Following nearly three hours of testimony during the January meeting, the committee discussed whether changes in law are needed to provide more oversight of rural electric cooperatives that own generation in Montana. ETIC members requested staff complete additional research and compile potential draft legislation based on the committee's instructions. ETIC members requested staff prepare potential legislation that would require a majority vote by individual members of rural electric cooperatives that are part of generation and transmission cooperatives before financing construction of new power plants or entering into long-term power contracts that exceed consumption forecasts. Options to allow for member cooperative review of forecasts also was included in the request.

This brief report includes background information requested by the ETIC and a starting point for discussion of potential draft legislation. Included in **Appendix A** is a draft bill that roughs out the points discussed by the ETIC in January. The conclusion of this report notes a series of questions that ETIC members will need to address before proceeding with draft legislation. It

should be noted at this time the draft is not an official bill draft or bill draft request. It is intended as a starting point for discussion.

If the ETIC chooses to move forward with draft legislation during its May meeting, staff will revise the draft legislation, as instructed by the committee. The draft would then be posted for a 30-day public comment period. The ETIC in July would consider the public comment, respond, and potentially revise the draft. The ETIC would, before September 15, determine if it intends to bring the draft before the 2013 Legislature.

Rural Electric Cooperatives Recent Activity

The Montana Electric Cooperatives' Association (MECA) is a not-for-profit, statewide trade association representing 24 rural electric distribution cooperatives and three generation and transmission cooperatives serving more than 250,000 people across Montana and in the Dakotas, Wyoming and Idaho. MECA is working to respond to questions and concerns raised about the regulation of rural electric cooperatives in Montana.

In early April MECA met and discussed transparency standards for distribution cooperatives and model standards for generation and transmission cooperatives (G&T's). On April 5 the MECA Board of Directors unanimously adopted transparency standards for distribution cooperatives. The standards relate to member involvement and range from requiring disclosure of financial audits to requiring cooperatives to post, on a website or at another public location, information on how members access documents about cooperatives. MECA is asking distribution cooperatives to adopt the standards, or even higher standards, by May 1, 2012. Each distribution cooperative would then incorporate the standards into their policies or bylaws.

The MECA Power and Load Forecasting Legislative Subcommittee also voted unanimously to adopt model accountability standards. The model standards are in response to questions raised by the ETIC and other lawmakers about Southern Montana. The model standards allow distribution system trustees to be present at G&T board meetings and teleconferences; outline limitations on executive sessions; make audited financial reports available to member system trustees; and place significant restrictions on power supply decisions. The standards would require a 2/3 member vote of member system boards of trustees for certain power supply contracts that exceeded 20 percent of load or generation with an output of 10 MW. (The power output or percent of load may vary, but the intent is to require a vote for all supply decisions that would have a significant financial impact on a G&T.) Load forecast studies and power supply contracts also would be made available to the G&T members a minimum of 30 days before the vote.

Distribution cooperatives are asked to request that the G&T's that they are members of adopt the proposed model standards. Central Montana Electric Power Cooperative has already adopted the model standards and incorporated them into their bylaws. Southern Montana is not expected to adopt the standards until it emerges from bankruptcy. Other G&T's are reviewing the documents.

The model standards are attached in **Appendix B**. There is not a penalty if a cooperative does not adopt the standards, but MECA representatives indicate that they expect all distribution and G&T's to adopt the new policies.

Background

Southern Montana Electric Generation and Transmission took shape in 2003 and 2004. Central Montana Electric Generation and Transmission was divided into two different generation and transmission cooperatives -- Southern and Central Montana.

Southern had contracts with Bonneville Power Administration and Western Area Power Administration to meet the needs of the five member cooperatives and Electric City Power. In 2004 and 2005 Southern began purchasing blocks of power from PPL Energy to meet Electric City Power needs. Southern's contracts with Bonneville Power expired in 2011. The contract with Western Area Power is for 20 megawatts and expires in 2020.¹

As Bonneville Power purchase agreements were phased out, Southern began to pursue financing to build the Highwood Generating Station near Great Falls. The plant was to provide a wholesale power supply resource for the cooperative. Originally a 250-megawatt coal-fired plant was proposed. Due to environmental and financial pressures, Southern changed Highwood to a two-phase project, with the first phase being a 40-megawatt natural gas project. The first phase was complete in September of 2011. The second phase of the project, to expand to a 120-megawatt operation by 2014 is on hold. The change from coal to natural gas required Highwood to write off about \$9 million, according to published reports.²

In 2009, Southern also began purchasing more PPL power, to account for the expiring Bonneville Power contract. The PPL contract entered into by Southern expires in 2019 and requires Southern to purchase up to 245 megawatts by 2017. That contract has since been terminated.

Struggling with losses caused by a depressed wholesale power market, paying more for power from PPL Montana than it was earning from sales, and faced with a contract to purchase power considerably greater than load forecasts, led to growing financial problems for the cooperative in 2011. Southern also was unable to sell its excess power, as electricity prices across the country plummeted and unusually high runoff depressed energy markets in the Pacific Northwest.

In addition both Yellowstone Valley and Great Falls are suing Southern to end their contracts with the generation and transmission cooperative. Some large Great Falls customers also have left Electric City Power and found another energy supplier.

¹<http://www.usda.gov/rus/water/ees/pdf/SME%20FEIS%20ExecSum.pdf>

² "Southern Montana Electric \$9.1 million on power plant", Associated Press, *Billings Gazette*, November 23, 2009.

Southern lost \$7.2 million in the first six months of 2011 and imposed a growing number of rate increases on its members. Those increases totaled about 13.2 percent and required member distribution cooperatives to increase their rates.³ In October of 2011 a 20 percent increase that had been proposed was rescinded. In that same month, Southern filed for bankruptcy. A look at utility rates in Montana is included in **Appendix C**.

Southern Montana continues to operate as it pays off its creditors. In late November a federal bankruptcy court appointed a trustee to oversee the Southern Montana Electric Generation and Transmission Cooperative as it reorganizes its finances. Lee A. Freeman Jr., an attorney who lives in Livingston, was appointed as trustee to temporarily operate the electric cooperative until it is reorganized under Chapter 11 or liquidated under Chapter 7 of the federal bankruptcy code.

Regulation of Rural Electric Cooperatives

The framework for organizing and incorporating rural electric cooperatives in Montana is located in Title 35, Chapter 18 of the Montana Code Annotated. Customers who are members of Montana rural electric cooperatives are considered part owners of that cooperative. Rural electric cooperatives are not-for-profit entities that are democratically controlled by the members of the cooperative. The rural electric cooperatives are self-regulated by their members. Cooperative members democratically elect a board of directors that sets customer protection policies and establishes the rates for electricity distribution and supply.

In Montana there are different types of rural electric cooperatives. There are 25 distribution cooperatives that supply electric service to Montana consumers. Those cooperatives are typically operated by a manager and board of trustees, elected by the cooperative members. Distribution cooperatives own and operate the distribution system and customer meters and are directly responsible for serving and billing members. They generally buy the energy and capacity that they need under contracts with G&T's.

G&T cooperatives are typically owned by distribution cooperatives and aggregate rural customer loads to take advantage of economies of scale. They can own and operate transmission lines and generation or enter into wholesale power purchase contracts with other generators. G&T cooperatives are governed by a board that contains the managers or trustees from the member distribution cooperatives. The four G&T cooperatives that serve Montana distribution cooperatives are Upper Missouri, Central Montana, Southern Montana, and Basin Electric.

Historically, Montana has not exercised its authority to regulate rural electric cooperatives, as evidenced in 35-18-104, MCA. The statute states, "Cooperatives and foreign corporations transacting business in this state pursuant to this chapter are exempt in all respects from the jurisdiction and control of the Public Service Commission of this state." While examples of control of rural electric cooperatives by the Public Service Commission (PSC) are absent in

³"Southern Montana Electric files for bankruptcy," Clair Johnson, *Billings Gazette*, October 22, 2011.

Montana, there are examples in law where the state has exercised some regulatory control. As noted above state law also provides the framework for how rural electric cooperatives are created and organized in Montana.

- The Territorial Integrity Act in Title 69, chapter 5, part 1 has been cited as the state asserting some regulatory authority over electric cooperatives. In 1997 amid electric deregulation in Montana, the act was amended to allow electric service providers, including rural electric cooperatives, the right to serve current customers and to serve new customers who are near their lines. PSC approval is required for agreements that set up geographical service areas between electrical facilities providers.
- Rural electric cooperatives are also subject to Montana's Universal System Benefits Programs (USB) in accordance with 69-8-402, MCA. USB programs fund energy conservation, renewable resource projects and applications, and low-income energy assistance. Cooperatives, like all utilities, must fund the programs at 2.4% of their 1995 retail sales revenue in Montana. The funding can be recovered by assessing each customer at the meter. Utilities also receive credits for internal USB programs, and rural electric cooperatives are allowed to collectively pool their credits statewide. Their annual USB reports are not filed with the PSC.
- In Montana's renewable portfolio standard enacted in 2005 rural electric cooperatives are exempt. The board of trustees for cooperatives that serve 5,000 or more customers are "responsible for implementing and enforcing a renewable energy standard for that cooperative utility that recognizes the intent of the legislature to encourage new renewable energy production and rural economic development, while taking into consideration the effect of the standard on rates, reliability, and financial resources."

Other States

The ETIC has not indicated an interest in pursuing state regulation of rural electric cooperatives through the Public Service Commission. Members requested additional information about transparency and regulation of rural electric cooperatives.

There are 841 distribution cooperatives and G&T cooperatives in the country. In all but 16 of the 47 states where distribution cooperatives are operating, they are effectively self-regulated by locally elected boards of directors.⁴ In those 16 states where state regulation of rural electric cooperatives exists, the extent of regulation greatly varies, as does the definition of "regulation".

In Minnesota a cooperative electric association may elect to become subject to rate regulation by the Minnesota Public Utilities Commission. The Minnesota regulations were changed, following a series of events in the late 70s. As a result of costs passed down from Cooperative Power Association in Minnesota to build a generation station and related transmission lines, Dakota

⁴<http://www.nreca.coop/members/Co-opFacts/Pages/default.aspx>

Electric members experienced the cooperative's largest ever rate increase in 1979. Following the increase, members started a grassroots effort to place Dakota Electric back under Minnesota Public Utilities Commission regulation, which was removed from all Minnesota distribution cooperatives in 1978. Dakota Electric was again regulated in 1981 and is currently the only regulated electric distribution cooperative in Minnesota.⁵ In Minnesota, G&T cooperatives are also required to prepare integrated resource plans for review and approval by the Minnesota Public Utilities Commission.⁶

The Wyoming Public Service Commission is granted regulatory oversight of the 18 retail rural electric cooperatives that provide electric service within the state. However, the board of directors of an electric cooperative that has net annual sales less than two billion kilowatt hours may adopt a resolution for exemption from PSC retail rate regulation and submit the resolution to the members for a vote.⁷ Wyoming law also requires a cooperative electric utility that is exempt from PSC regulation to provide written notice to all member owners, prior to the effective date of any retail rate adjustment, including procedures for member consumers to comment on proposed rates. If requested by 5 percent of the members, a hearing is required. Retail rates also must be filed with the Wyoming PSC. If within two months of final implementation of a retail rate a complaint is made by 5 percent of the member owners in any rate class, the cooperative is required to resolve the complaint. The complaint also may be filed with the PSC after the expiration of the two month period. The PSC investigates complaints and resolves the complaints in accordance with PSC hearing and enforcement procedures. The PSC is authorized to require a revision in rates if it finds, after investigation, that the rates are inadequate, unremunerative, unjust, unreasonable, unjustly discriminatory, or unduly preferential.⁸

Draft Legislation and Remaining Questions

The ETIC indicated that potential "oversight" of some rural electric cooperatives may be needed. The committee members did not indicate an interest in regulation of retail rates by the PSC or a new regulatory function. The committee requested staff review 35-18-318, MCA and provide language similar to the requirements in statute for cooperatives building nuclear facilities.

A legislative history for 35-18-318, MCA shows that in 1983 Senate Bill 423 was introduced to address the failure of nuclear power development -- the Washington Public Power Supply System or "Whoops". It was a consortium of publicly-owned utilities that intended to build and operate generation under contracts with BPA, about 100 public utilities, including five Montana rural electric cooperatives, and four investor-owned utilities. "Whoops" gained its namesake

⁵ https://www.dakotaelectric.com/about_us/history

⁶ Minnesota Statute, 216B.2422

⁷ Wyoming Statute, 37-17-103

⁸ Wyoming Statute, 37-17-104

when the proposed supply system defaulted on \$2.25 billion in bonds for projects that were canceled -- two nuclear facilities.⁹ Five Montana rural electric cooperatives were left with loan obligations ranging from \$4 million to \$11 million for the failed nuclear projects. The bonds had been issued, so the cooperatives had to raise member rates to cover the expenses. In 1983 the bill's sponsor said the proposal was needed to "put red flags up in the future for long-term bonding to the utilities." In meeting minutes from a March 8, 1983 hearing before the House Business and Industry Committee, one of the bill's proponents noted, "I would suggest this bill be amended to reflect the size of new generation, not the source. Both coal plants and hydroelectric plants are just as susceptible to inflation, cost over-run, high interest rates, and design changes as are nuclear plants."

The ETIC requested staff develop a draft bill that builds off 35-18-318, MCA. The first section, or the incorporation of 35-18-317, MCA, is clean-up to accommodate the changes proposed in Section 2 of the draft. The heart of the draft is contained in the second section of the bill. As drafted, the bill would require a majority vote by the board of trustees of each distribution cooperative that make up a G&T cooperative, before the G&T entered into a contract to build new generation or before the G&T entered into a contract that would exceed the actual loads of the G&T cooperative. The committee also requested review or disclosure of load forecasts or related information. Draft language is incorporated into Section 2, new subsections (4) and (5). Staff drafted the bill based on the committee's January direction. In the drafting process, however, a few issues came up that the committee will need to discuss in May and provide staff with additional direction. A few questions for the committee to consider in reviewing the draft:

✓Should there be parameters around the size of the new generation -- in terms of megawatts or percentage of existing nameplate capacity -- before triggering the required vote?

✓Should the voting requirement apply to all contracts that exceed actual load? If not, how should it be tailored?

✓Should the required vote be a simple majority vote or a two-thirds majority vote?

✓Do subsections 35-18-318(4) and (5) address the committee's request for transparency?

✓Should a vote by distribution cooperatives also be required for load forecasts?

✓Should additional financial information be required to be disclosed to distribution cooperatives or is the load forecast disclosure adequate? If so, what type of information and at what intervals?

✓What additional changes would the committee like in the draft?

⁹<http://columbia.washingtonhistory.org/anthology/maturingstate/seduced.aspx>

✓ Does the committee wish to proceed?

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**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act requiring a vote of individual rural electric cooperative boards of trustees when entering into agreements for construction of electric generating facilities or entering into contracts to purchase more electricity than required based on actual loads; requiring disclosure of load forecasts; amending sections 35-18-317, and 35-18-318, MCA; and providing an effective date and an applicability date."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-18-317, MCA, is amended to read:

"35-18-317. Disposition or encumbrance of property. (1)

Except as provided in subsection (2), a cooperative may not sell, mortgage, lease, or otherwise dispose of or encumber all or any substantial portion of its property unless ~~such~~ the sale, mortgage, lease, or other disposition or encumbrance is:

(a) authorized at a duly held meeting of cooperative members thereof

(b) approved by ~~the affirmative vote of not less than two-thirds of all the members of the cooperative; and unless the notice of such proposed sale, mortgage, lease, or other disposition or encumbrance shall have been contained~~

(c) described in the notice of the meeting.

(2) ~~The Except as provided in 35-18-318(1) through (3), the board of trustees of a cooperative, without authorization by the cooperative members, thereof, shall have full power and authority to may:~~

(a) authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon or the pledging or encumbrancing of any or all of:

(i) the property, assets, rights, privileges, licenses, franchises, and permits of the cooperative, whether acquired or to be acquired and wherever situated, ~~as well as, ; and~~

(ii) the revenues and income ~~therefrom~~ from property, assets, rights, privileges, licenses, franchises, and permits; or all upon such

(b) ~~determine the~~ terms and conditions ~~as the board of trustees shall determine,~~ necessary to secure any indebtedness of the cooperative to the:

(i) ~~the~~ United States of America or

(ii) any instrumentality or agency thereof of the United States; or to

(iii) any other financing sources within the United States.

(3) Before a meeting is held to vote on authorization of disposition of cooperative property, the board of trustees shall:

(a) have the property appraised by three appraisers chosen by the board and not associated with the cooperative or a proposed buyer of cooperative property;

(b) notify all cooperative members, at least 90 days in

advance, of a meeting to vote on disposition of cooperative property. Detailed proposals for disposition of ~~such~~ the property must accompany the notice.

(c) at least 30 days before the meeting, notify all other cooperatives situated and operating in the state that the property is available for disposition and include with the notice one copy of each appraisal on the cooperative property; and

(d) at least 30 days before the meeting, mail to all members any alternative proposal made by cooperative members if it has been submitted to the board and signed by 50 or more members.

(4) The vote on property disposition may take place at an annual meeting if the board notifies the members as provided in this section.

(5) This section does not apply to the transfer of cooperative property in a merger or consolidation of cooperatives."

{*Internal References to 35-18-317: None.*}

Section 2. Section 35-18-318, MCA, is amended to read:

"35-18-318. Long-term indebtedness -- membership approval and review. (1) Before a cooperative ~~may create~~ creates or ~~enter~~ enters into an agreement that results in any direct or indirect obligation for the repayment of long-term bonded indebtedness for financing directly or indirectly the construction, maintenance, or operation of nuclear power generating facilities that may result in a rate increase to the cooperative's members for

repayment of the obligation, the cooperative must receive approval from a majority of those members present and voting at the meeting. The approval must be obtained at a special meeting held for that purpose.

(2) A generation and transmission cooperative must receive approval from a simple majority of the board of trustees of each distribution cooperative that is a member of the generation and transmission cooperative before the generation and transmission cooperative:

(a) creates or enters into an agreement that results in direct or indirect obligation for the repayment of long-term bonded indebtedness for financing directly or indirectly the construction of electric generating facilities that may result in a rate increase to distribution cooperative members for repayment of the obligation; or

(b) enters into an energy contract allowing for the purchase of electricity that exceeds the generation and transmission cooperative's actual loads.

(3) Approval of each distribution cooperative's board of trustees pursuant to subsection (2) must be obtained at a special meeting held for that purpose.

(4) A generation and transmission cooperative must provide each distribution cooperative that is a member of the generation and transmission cooperative with annual load forecasts for the generation and transmission cooperative.

(5) A member of a distribution cooperative may inspect the annual load forecasts provided pursuant to subsection (4).

(6) As used in this section, the following definitions apply:

(a) "Distribution cooperative" means a cooperative organized in accordance with this chapter that is directly responsible for supplying electricity to and billing its members who are the ultimate consumers of the electricity.

(b) "Generation and transmission cooperative" means a Montana-based cooperative organized in accordance with this chapter that files articles of incorporation pursuant to 35-18-203, generates power, enters into contracts for power, or both. It enters into contracts for the sale of wholesale electricity to two or more distribution cooperatives and may or may not own transmission services.

(c) "Load forecast" means an estimate or projection of end-use electricity consumption based on projected changes in future end-use, taking into account residential, commercial, industrial, and irrigation loads, populations, business cycles, appliance saturation, and efficiencies. It may be forecasted by sector or consumer class."

{Internal References to 35-18-318: None.}

NEW SECTION. Section 3. {standard} Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 4. {standard} Effective date. [This

act] is effective July 1, 2013.

NEW SECTION. **Section 5. {standard} Applicability.** [This act] applies to contracts, agreements, and forecasts begun after July 1, 2013.

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CO-OP TRANSPARENCY STANDARDS

Recommended by Unanimous Vote of MECA Board of Directors

April 5, 2012

1. The process governing election of trustees shall be described in co-op bylaws.
2. Information regarding the election of trustees shall be made available to co-op members via mailing, website, newsletter or similar means of communication.
3. The co-op shall clearly define for members and have available to them information regarding eligibility requirements for becoming a candidate for co-op director, how to become a candidate for director, director district boundaries, the date of the next director election, and other pertinent information.
4. Voting results in co-op director or other elections shall be available to members upon request.
5. Co-op members shall be informed of vacancies on the co-op board occurring before the director's term has expired.
6. The co-op shall post information – on a website or other public location – on how members can access information regarding their co-op.
7. Members shall have access to the following information upon request:
 - a. Rate schedules;
 - b. Service rules, policies and regulations;
 - c. Articles of incorporation;
 - d. Bylaws;
 - e. Most recent approved board meeting minutes;
 - f. Member publications;
 - g. Financials reported on RUS Form 7;
 - h. Billing history for the member requesting the information;
 - i. List of names and addresses of current directors and officers;
 - j. Most recent co-op financial audit;
 - k. Most recent co-op annual report;
 - l. Tentative agendas for monthly board meetings;
 - m. Any other records authorized pursuant to Montana code.
8. Members will be provided advance notice of all member meetings;
9. Notices of member annual or special member meetings, shall, at a minimum, include the following:
 - a. Date, time and location of the upcoming meeting;
 - b. Meeting agenda;
 - c. Financial information, if applicable;
 - d. Candidates for director, if applicable;
 - e. Unapproved minutes of a previous member meeting.
10. Notices and current agendas of upcoming board meetings shall be available to members.
11. The co-op shall follow recognized procedural rules for operation of meetings, such as "Roberts Rules of Order."
12. Any member may attend board meetings and address the board.

SAMPLE DRAFT RESOLUTION – Endorsing Transparency Standards

Whereas the Board of Directors of Montana Electric Cooperatives' Association has recommended Transparency Standards for electric cooperatives related to openness and member involvement;

And whereas the Transparency Standards represent concepts that the _____ Electric Cooperative Board of Trustees believes important for its electric cooperative to embrace;

Therefore it be resolved that the _____ Electric Cooperative Board of Trustees supports these standards and will do one or more of the following:

- 1) Incorporate them as policies of the electric cooperative;
- 2) Adopt or retain even higher transparency standards as policies of the electric cooperative.

“G&T COOPERATIVE MINIMUM MODEL ACCOUNTABILITY STANDARDS”

*Recommended by Unanimous Vote of MECA Power & Load Forecasting Legislative Subcommittee
March 14, 2012*

**Presented to MECA Legislative Committee on April 4, 2012 and passed
unanimously**

Background Information

Each of the Standards presented below seeks to address specific concerns raised by individual legislators. In other words, each one is a specific response to a specific concern of legislators as opposed to being a shotgun approach to perceptions or misperceptions of any co-op actions, real or imagined. The intent is that by voluntary adoption of these standards, G & T's would take significant pressure off legislators who believe passage of new laws restricting co-op actions may be necessary. Such legislation – subject to the scrutiny and input of 150 lawmakers and dozens of sometimes-less-than-friendly lobbyists during a fast-paced, harried legislative session – could not be counted on to be less onerous than voluntary standards.

PROPOSED STANDARDS

- 1. Member distribution cooperative has sole right of determining who serves as its representative on the G & T board.**

Sample Bylaw Language: “Each member shall be entitled to elect one Trustee, who shall serve at the pleasure of and for such a term as the governing board of that member shall, in its sole discretion, determine.”

- 2. Member distribution cooperative has sole authority to certify the replacement of a trustee to fill that co-op's seat on the G & T board in the event of a vacancy.**

Sample Bylaw Language: “In the event that a trustee indicates in writing to his member organization(s) that he is temporarily unable to serve as a member of the board of trustees of this cooperative or that he simply is unable or simply fails to attend any meeting of the Board of Trustees, the governing board(s) of such member organization(s) shall as soon thereafter as possible designate some other person, otherwise eligible to be a trustee pursuant to (separate section of G & T bylaws containing trustee eligibility requirements), to act as its temporary trustees.”

Sample Bylaw Language: “If there shall be a vacancy other than a temporary inability to serve (as described in section above) amongst the Trustees appointed by one of the members, that member shall be notified of its obligation to elect a replacement trustee and to notify the Cooperative of that replacement.”

3. All member distribution system trustees can be present at all G & T board meetings and teleconferences.

Sample Bylaw Language: “Any manager, president or trustee of any Member shall be entitled to be present at any board meeting. When the Board of Trustees has elected to meet by telephone conference call pursuant to (separate section of G & T bylaws authorizing and explaining teleconferences), the participation of any manager or trustee of any Member shall be without additional cost to the Cooperative, i.e., typically by being in the same room as a Trustee, who in turn is using a speaker phone.”

4. Executive sessions of the G & T Board of Trustees are limited to confidential matters and matters of individual privacy.

Sample Bylaw Language: “An executive session of the Board of Trustees may be called by the President or a majority of the Board of Trustees to discuss employee issues, confidential matters and matters of individual privacy. Notwithstanding the provisions of (separate section of bylaws authorizing attendance at G & T board meetings of any member distribution system trustees and managers), during executive session of the Board of Trustees, those present may be limited to Trustees or those invited to address the Board of Trustees to discuss other business.”

5. A manager only has the authority that is delegated to that person by the Board of Trustees.

Sample Bylaw Language: “The Board of Trustees may appoint a manager who shall perform such duties and shall exercise such authority as the Board of Trustees may from time to time vest in him. The Manager shall not be eligible to serve as a director of the Cooperative.”

6. Audited financial reports will be available to member system trustees.

Sample Bylaw Language: “Such audit reports shall be submitted to the members at the next following annual meeting and shall be made available upon request to the manager of any Member and to any member of the board of trustees of any Member of the Cooperative. The Cooperative may charge a reasonable fee for making a paper copy of such an audit report.”

7. Minutes are available to all member system trustees and managers.

Sample Bylaw Language: “The minutes of all meetings of the Members and of the Board of Trustees shall be made available upon request to the manager of any Member or to any member of the board of trustees of any Member of the Cooperative. The Cooperative may charge a reasonable fee for making a paper copy of such minutes.”

8. Restrictions on power supply decisions.

- a. 2/3 member vote of the Member system boards of trustees for take-or-pay power supply contracts exceeding 20 percent of load or generation with an output of 10 MW¹;

Sample Bylaw Language: “The Cooperative shall not (1) enter into any power supply contract in excess of 20% of the Cooperative’s existing load, or (2) build generation to be owned by the Cooperative which has an output in excess of 10 MW or of 20% of the Cooperative’s projected sales to its Members (whichever is less), without such power supply contract or generation project first having been approved by two-thirds majority of its Members.”

- b. Load forecasts must be consistent with RUS requirements (fairly current) and must be provided prior to power supply decisions:

Sample Bylaw Language: “The load forecast study must be undertaken in conformity with any applicable criteria or guidelines published by the Rural Utilities Services (RUS) of the United States Department of Agriculture or its successor agency.”

- c. Load forecast study and power supply contracts are to be made available to the G & T members a minimum of 30 days before the vote².

Sample Bylaw Language: “The load forecast study and proposed power supply contract and/or generation project pro forma shall be provided to each of the Members no less than thirty (30) days prior to such vote.”

- d. The load forecast study must provide justification for a proposed power supply contract or construction of a power generation:

Sample Bylaw Language: “The vote required in this section shall not be taken without the Cooperative having first conducted or commissioned a load forecast study, which study justifies the Cooperative’s execution of such a contract or construction of such generation.”

- e. If the vote involves generation investment, the load forecast and project pro forma demonstrating the expected effect of the proposed transaction on the

company's financial viability would be available a minimum of 30 days in advance.

Sample Bylaw Language: “The load forecast study and proposed power supply contract and/or generation project pro forma shall be provided to each of the Members no less than thirty (30) days prior to such vote.”

9. Annual and special meetings of the G & T cooperative will be open and any trustee or manager of a member distribution system will be permitted to speak on any item on the meeting agenda.³

Sample Language: “Conduct of Business. Every annual and special meeting of the Members shall be open and any trustee or manager of a Member shall be entitled to be recognized and speak on any agenda item at such a meeting.”

10. G & T Board of Trustee meetings will be open (except for executive sessions) and any trustee or manager of a distribution system will be permitted to speak on any item on the meeting agenda.³

Sample Bylaw Language: “Conduct of Business. Except for executive sessions called for the purposes described in (separate section of G & T bylaws explaining purposes for which executive sessions may be called), every meeting of the Board of Trustees shall be open, and any trustee or manager of a Member shall be entitled to be recognized and speak on any agenda item at such a meeting.”

¹As contemplated by the MECA Power & Load Forecasting Legislative Subcommittee, these numerical amounts – power output or percent of load – may vary for each G & T cooperative. The intent of this provision of the minimum model standard is that the 2/3 vote occur on power supply decisions with a potentially significant financial impact on the G & T and its individual distribution cooperatives.

²This could be done as two member meetings or by sending information but that decision would be left to the board as may be appropriate based on the magnitude of the question.

³The subcommittee’s intent is that “open” meetings – special and annual membership meetings as well as board meetings – would be defined by the G & T board in its policies rather than in the bylaws.

***SAMPLE DRAFT RESOLUTION – Endorsing G & T
Model Standards***

Whereas a committee of the Montana Electric Cooperatives' Association (MECA), of which _____ Electric Cooperative is a member, has worked on minimum model bylaw concepts for Generation and Transmission cooperatives related to openness and member involvement;

And whereas the MECA-recommended "G&T Cooperative Minimum Model Accountability Standards" represent concepts that the _____ Electric Cooperative Board of Trustees believes important for a Generation and Transmission cooperative to embrace;

Therefore it be resolved that the _____ Electric Cooperative Board of Trustees will work to amend the bylaws of any Generation & Transmission cooperative, of which the distribution cooperative is either a member or joins, for the purpose of incorporating, at a minimum, the MECA-approved "G&T Cooperative Minimum Model Accountability Standards."

Appendix C

Residential electric cost comparisons

Compiled by Sonja Nowakowski, ETIC staff and Montana Electric Cooperatives' Association

Table 1: Billing based on bundled supply and delivery costs

Average residential electric bill for customer who uses 750 kWh per month Includes the bundled supply and delivery cost				
Provider	January 2006	January 2011	July 2006	July 2011
NorthWestern Energy	\$70.98	\$64.86	\$80.19	\$80.33
Montana-Dakota Utilities	\$56.44	\$57.47	\$56.44	\$73.70
Beartooth Electric Cooperative	\$69.63	\$117.50	\$78.33	\$120.88
Big Flat Electric Cooperative	\$81.25	\$99.00	\$81.25	\$99.00
Fall River REC	\$78.86	\$87.55	\$78.86	\$87.55
Fergus Electric Cooperative	\$88.18	\$118.50	\$90.47	\$125.73
Flathead Electric Cooperative -- NW Region	\$60.75	\$58.16	\$60.75	\$60.99
Flathead Electric Cooperative -- Cooke City	\$68.25	\$84.02	\$68.25	\$92.50
Glacier Electric Cooperative	\$69.50	\$74.38	\$69.50	\$74.38
Goldenwest Electric Cooperative	\$75.00	\$94.25	\$75.00	\$94.25
Hill County Electric Cooperative	\$75.63	\$91.88	\$75.63	\$97.50
Lincoln Electric Cooperative	\$45.50	\$75.30	\$45.50	\$75.30
Lower Yellowstone REA	\$63.25	\$63.25	\$63.25	\$63.25
Marias River Electric Cooperative	\$38.25	\$58.09	\$38.25	\$58.09
McCone Electric Cooperative	\$79.62	\$103.23	\$79.62	\$103.23
Mid-Yellowstone Electric Cooperative	\$80.63	\$124.00	\$87.25	\$128.00
Missoula Electric Cooperative	\$65.91	\$75.50	\$75.70	\$75.70
Nor-Val Electric Cooperative	\$74.00	\$102.00	\$77.75	\$102.00
Northern Lights Inc.	\$67.98	\$72.70	\$67.98	\$72.70
Park Electric Cooperative	\$71.25	\$82.50	\$71.25	\$82.50
Ravalli County Electric Cooperative	\$63.13	\$66.90	\$63.13	\$79.70

Sheridan Electric Cooperative	\$52.50	\$61.88	\$52.50	\$61.88
Southeast Electric Cooperative	\$79.25	\$100.50	\$79.25	\$100.50
Sun River Electric Cooperative	\$68.85	\$91.23	\$68.85	\$91.23
Tongue River Electric Cooperative	\$63.95	\$104.73	\$67.40	\$114.63
Vigilante Electric Cooperative	\$53.75	\$57.25	\$53.75	\$57.25
Yellowstone Valley Electric Cooperative	\$71.13	\$97.60	\$71.13	\$103.23

1. Best estimates only for cooperatives. Cooperatives receive electricity costs in bundled bills.

2. Some cooperatives reported annual averages, in which case January and July costs are the same. Others reported actual costs for specific months only.

3. Variations in cooperative's load factors (the ration of average demand/load to peak demand/load) can result in different costs, even for cooperatives with similar power supply contracts.

Table 2: Unbundled costs, or simply the cost of electricity

Average residential electric bill for customer who uses 750 kWh per month Unbundled, cost of electricity, not including fixed charges				
Provider	January 2006	January 2011	July 2006	July 2011
NorthWestern Energy	\$37.89	\$46.70	\$31.97	\$45.29
Montana-Dakota Utilities	\$	\$	\$	\$
Beartooth Electric Cooperative	\$23.82	\$42.89	\$24.06	\$46.35
Big Flat Electric Cooperative	\$19.13	\$23.45	\$19.13	\$23.45
Fall River REC	\$17.02	\$20.30	\$15.23	\$14.87
Fergus Electric Cooperative	\$19.58	\$45.31	\$20.86	\$49.51
Flathead Electric Cooperative -- NW Region	\$25.41	\$21.60	\$27.73	\$18.11
Flathead Electric Cooperative -- Cooke City	\$41.25	\$44.72	\$41.25	\$62.42
Glacier Electric Cooperative	\$15.62	\$16.02	\$15.62	\$16.02
Goldenwest Electric Cooperative	\$12.73	\$24.81	\$12.73	\$25.14

Hill County Electric Cooperative	\$14.31	\$25.56	\$14.31	\$25.56
Lincoln Electric Cooperative	\$16.88	\$19.12	\$10.07	\$10.22
Lower Yellowstone REA	\$16.64	\$26.10	\$16.64	\$26.10
Marias River Electric Cooperative	\$14.23	\$25.42	\$14.23	\$25.42
McCone Electric Cooperative	\$17.72	\$32.33	\$17.72	\$32.33
Mid-Yellowstone Electric Cooperative	\$20.34	\$42.02	\$19.36	\$47.48
Missoula Electric Cooperative	\$14.94	\$15.47	\$14.94	\$15.47
Nor-Val Electric Cooperative	\$13.00	\$24.92	\$13.00	\$24.92
Northern Lights Inc.	\$21.59	\$23.17	\$15.30	\$14.73
Park Electric Cooperative	\$14.99	\$25.38	\$14.99	\$25.38
Ravalli County Electric Cooperative	\$22.03	\$22.03	\$22.03	\$30.02
Sheridan Electric Cooperative	\$33.36	\$35.44	\$33.34	\$30.98
Southeast Electric Cooperative	\$11.92	\$19.55	\$11.92	\$19.55
Sun River Electric Cooperative	\$14.44	\$25.79	\$14.44	\$25.79
Tongue River Electric Cooperative	\$22.41	\$46.50	\$22.43	\$47.70
Vigilante Electric Cooperative	\$16.80	\$16.76	\$10.34	\$10.19
Yellowstone Valley Electric Cooperative	\$21.93	\$56.12	\$20.63	\$63.92

1. Best estimates only for cooperatives. Cooperatives receive electricity costs in bundled bills.

2. Some cooperatives reported annual averages, in which case January and July costs are the same. Others reported actual costs for specific months only.

3. Variations in cooperative's load factors (the ration of average demand/load to peak demand/load) can result in different costs, even for cooperatives with similar power supply contracts.

4. Line loss costs are generally added into unbundled electricity costs shown by cooperatives.