

## **APPENDIX III – FREQUENTLY ASKED QUESTIONS about Missoula Electricity Landscape and Montana laws and regulations**

To inform Missoula’s 100% Clean Electricity Options Report

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**Appendix III** helps explain the current Missoula electricity landscape via twelve questions and answers.

We consider this a draft and seek input to ensure that it is both up-to-date and accurate. The primary 100% Options Report and all Appendices will be housed, along with a comment form, at [missoulaclimate.org/100-percent.html](http://missoulaclimate.org/100-percent.html). Please provide feedback via this weblink.

We answer the following questions:

- When and how did Missoula electrify?
- What utilities operate within boundary and who controls distribution and transmission?
- Is Missoula a “choice” customer? What does that mean?
- Is Missoula a “large” customer? What does that mean?
- Are there franchise agreements in Montana? Describe.
- Is there a clean energy tariff? Describe.
- What is Community Choice Aggregation? Is it enabled?
- What is Third Party Ownership? Is it enabled?
- Is there a Renewable Energy Portfolio Standard? Describe.
- What is decoupling? Is it enabled?
- What Montana cities have evaluated and/or attempted to establish municipal power utilities and what were the outcomes? Lessons learned?
- How much latitude under state and federal law does the community have to use municipal rights-of-way to facilitate micro-grids and direct supply of electricity to consumers?

### **When and how did Missoula electrify?**

Electricity came to Missoula in 1889 and the Missoula Electric Light Company entered its first contract with the City of Missoula in 1890. In 1906 William A. Clark purchased the renamed Missoula Light and Power Company and merged it with the electrified Missoula Street Railway Company to become the Missoula Public Service Company in 1924. The consolidated company was sold to the Montana Power Company in 1929, which was subsequently purchased by NorthWestern Energy in 2002. More about how Montana Power became NorthWestern Energy can be found in Appendix II.

In 1936 the Missoula County Farm Bureau and the county extension agent worked with local farmers to form the Missoula County Electrification Association, renamed the Missoula Electric Cooperative in 1939.

**What regulated utilities or cooperatives operate within boundary and who controls distribution and transmission?**

The Missoula community continues to be served by NorthWestern Energy and the Missoula Electric Cooperative. NorthWestern Energy is a regulated, privately owned monopoly utility based in South Dakota, serving approximately 370,000 customers in Montana. Approximately 80% of these customers are residential. NorthWestern is vertically integrated which means the state of Montana and the federal government allow it to own electricity generation facilities (coal, natural gas, hydroelectric, and renewable), to operate electrical transmission and distribution lines, and to serve retail customers in Montana. Missoula Electric Cooperative is a member-owned electric cooperative that operates an electric transmission and distribution network in five western Montana counties and one county in Idaho. The Missoula Electric Cooperative owns a small amount of electrical generation but purchases most of its electricity from independent generators, including approximately 95% of its power from the Bonneville Power Administration, a federally-owned utility that operates many hydroelectric dams in the Pacific Northwest (Mark Hayden, MEC, pers. com.).

In addition to NorthWestern Energy and the Missoula Electric Cooperative, the City of Missoula established a municipal electric and gas utility in 1999 (Ordinance 3101, Title 12.28 of the Missoula Code). The origin of this municipal ordinance corresponds with statewide deregulation legislation that was adopted by the Montana Legislature in 1997. The Montana Public Service Commission granted Missoula an electricity supply license on August 10, 1999. The Missoula ordinance empowers the City to provide services that “would be competitive with those offered by private utility companies, and will make customer choice available to residents and businesses in the City on free-choice basis,” although state legislation in 2007 re-regulated utility operations and restricts competing local utilities from offering retail electric choice to small customers served by regulated utilities. The City has never provided such services and has never acted as a municipal utility.

**Is Missoula a “choice” customer? What does that mean?**

The City of Missoula did not choose to be a designated “choice” customer as defined by the Montana Public Service Commission. In 1997 the Montana legislature passed the Montana Electric Utility Industry Restructuring and Consumer Choice Act which deregulated electric utility operations in Montana. Deregulation allowed the Montana Power Company, the default electric supplier to most utility customers in Missoula, to sell its generation assets to PPL Montana (a Billings-based subsidiary of Pennsylvania Power and Light) while retaining its electricity transmission and distribution (T&D) network. In 2002 the T&D assets were sold to NorthWestern Energy. Under deregulation all residential, commercial and industrial electricity service customers were given the opportunity to choose their own electric service provider. Customers that did not select an electric supply service provider remained in the default supply portfolio of NorthWestern Energy.

With PPL Montana the owner of almost all generation assets in the state there was effectively no retail choice available to most residential and commercial customers. Deregulation included a policy – the deregulatory rate grace period – that froze electricity rates for four years after deregulation. In 2002 the deregulatory rate grace period ended and power prices began to climb rapidly, leading to public anger and pressure to rescind deregulation. In 2007 the Montana legislature passed the Electric Utility Industry Generation Reintegration Act, effectively repealing deregulation. Reintegration allowed the default utility provider NorthWestern Energy to re-purchase and operate electricity generation assets

under regulatory oversight by the Montana Public Service Commission. It also established NorthWestern Energy as the sole regulated utility in western Montana but allowed residential, commercial and industrial customers consuming less than 5,000 kilowatts per month a window during which they could choose to remain energy “choice” customers authorized to purchase power on the open market. The energy choice designation period ended on October 1, 2007 leaving only a handful of large industrial and commercial customers in the state as designated choice customers eligible to purchase power directly from wholesale providers under the program. No retail customers in the Missoula area are currently designated as choice customers.

**Is Missoula a “large” customer? What does that mean?**

Montana utility law specifically defines “small” utility customers and by default identifies “large” customers with special status related to monthly energy demand. Large versus small is relevant because new small customers are automatically allocated to either NorthWestern Energy or the Missoula Electric Cooperative customer territories under existing state law, while new large customers may select to obtain their electric power from either the default supplier or on the open wholesale market.

Under the Montana Code Annotated (MCA) 69-3-2003 a “small” customer is a customer with an individual load with an average monthly demand of less than 5,000 kilowatts (kW). In MCA section 69-8-201 the 5,000 kW demand threshold is used to distinguish between retail customers with demand less than 5,000 kW monthly average and those with demand greater than or equal to 5,000 kW, thus offering a default “large” category. This is confused by MCA 69-5-102 which offers an apples-to-oranges definition of “large” customer to mean “any premises, except subdivisions, with the estimated connected load for full operation at an individual service for the premises of 500 kilowatts or larger.” “Premises” are defined as “a building, residence, structure, irrigation pump, or facility to which electric service facilities are provided or are to be installed. However, two or more buildings, structures, irrigation pumps, or facilities that are located on one tract or contiguous tracts of land and that are used by one electric consumer for farming, business, commercial, industrial, institutional, governmental, or trailer court purposes must together constitute one premises, except that any building, structure, irrigation pump, or facility, other than a trailer court, may not, together with any other building, structure, irrigation pump, or facility, constitute one premises if the electric service to it is separately metered and the charges for that service are calculated independently of charges for service to any other building, structure, irrigation pump, or facility.”<sup>1</sup> Based on the above definitions the city of Missoula would most likely be considered multiple small utility customers.

**Are there franchise agreements in Montana? Describe.**

Montana municipalities are allowed to regulate the private use of public rights-of-way within their boundaries, by establishing business practices and levying fees on utilities under “franchise

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<sup>1</sup> According to NorthWestern Energy website Montana initially passed laws enabling electric and gas supply choice in 1997 allowing consumers to purchase electric or natural gas supply from competitive markets. In 2007, Montana passed new laws curtailing the ability for consumers under 5 MW peak demand to purchase electricity from alternative suppliers. This law requires consumers under 5 MW peak demand to permanently remain with the utility for their electric supply, but consumers under the 5 MW threshold who already received electricity from alternate suppliers were allowed by law to continue to receive supply from a third party. New consumers greater than 5 MW may contact the NorthWestern Energy for guidance on electric supply options and impacts of the 2007 laws. NorthWestern Energy transportation and delivery costs remain regulated by the Montana Public Service Commission and the Federal Energy Regulatory Commission.

agreements.” Franchise agreements are established by municipal ordinance or election and specify rights and responsibilities guiding the creation and maintenance of facilities encroaching on roads and other public rights-of-way for services provided by private companies that benefit the public, a "special privilege in the streets, highways, and public places of the city, whether granted by the state or the city, which does not belong to citizens generally by common right."<sup>2</sup>

Many cities in Montana regulate private companies via franchise agreements, including Missoula. The City of Billings has established municipal authority to create franchise agreements with utility providers,<sup>3</sup> and has created a franchise agreement under municipal ordinance with its natural gas utility, Montana-Dakota Utilities.<sup>4</sup> Missoula does not have an electric or gas franchise agreement regulating service from NorthWestern Energy, or one regulating electric service with the Missoula Electric Cooperative. However, the city does have authority to establish franchise agreements with private utility companies and has established such an agreement with Charter Communications, a cable service provider, under Title 5 Chapter 5.80 of the Missoula Municipal Code. Montana law is not precise in defining the scope of franchise agreements but legal opinions and court cases have established clear municipal authority to create such agreements and have helped clarify the range of municipal options for ordinances seeking to protect the public interest.<sup>5</sup>

Options that Missoula may wish to consider include creating a municipal electric utility franchise agreement similar to the agreement established by Minneapolis, MN under its Climate Action Plan (levies utility fees to finance conservation, encourage renewable energy, and advance equity) and Ann Arbor, MI (mandates renewable energy targets).<sup>6 7 8</sup> Other franchise options include program cost sharing and information sharing provisions such as those utilized by Billings, including fees to defray municipal oversight of activities authorized under the franchise agreement,<sup>9</sup> access to planning and engineering documents,<sup>10</sup> and access to facility location maps and records in GIS and paper format.<sup>11</sup> Additional information the city might consider requiring NorthWestern Energy to share via a franchise agreement are details related to the operating cost, service history, and location of all street lighting in Missoula. Access to electrical usage data that informs municipal planning under the Climate and Energy action plan, or usage data for the broader community, could be required under the franchise agreement, with information confidentiality established in the agreement.<sup>12</sup> Finally, the city may seek to create a separate Electric Vehicle charging franchise agreement to incentivize private companies to propose creation of a new network of charging stations.

**Is there a clean energy tariff? Describe.**

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<sup>2</sup> <http://leg.mt.gov/bills/mca/7/3/7-3-4201.htm>

<sup>3</sup> [http://billings-mt.elaws.us/code/coor\\_apxid1043\\_ch7\\_art7-1400](http://billings-mt.elaws.us/code/coor_apxid1043_ch7_art7-1400)

<sup>4</sup> [http://billings-mt.elaws.us/code/coor\\_apxid1043\\_ch7\\_art7-1500](http://billings-mt.elaws.us/code/coor_apxid1043_ch7_art7-1500)

<sup>5</sup> <http://www.cityofwhitefish.org/large-files/pdf/mayor-council/meetings/Packet.2013-08-05.pdf>

<sup>6</sup> <http://www.ci.minneapolis.mn.us/energyfranchise/index.htm>

<sup>7</sup> <http://www.minneapolismn.gov/www/groups/public/@citycoordinator/documents/webcontent/wcms1p-098849.pdf>

<sup>8</sup> [http://www.mml.org/pdf/opp/opp\\_electric\\_franchise.pdf](http://www.mml.org/pdf/opp/opp_electric_franchise.pdf)

<sup>9</sup> [http://billings-mt.elaws.us/code/coor\\_apxid1043\\_ch7\\_art7-1400\\_sec7-1411](http://billings-mt.elaws.us/code/coor_apxid1043_ch7_art7-1400_sec7-1411)

<sup>10</sup> [http://billings-mt.elaws.us/code/coor\\_apxid1043\\_ch7\\_art7-1400\\_sec7-1415](http://billings-mt.elaws.us/code/coor_apxid1043_ch7_art7-1400_sec7-1415)

<sup>11</sup> [http://billings-mt.elaws.us/code/coor\\_apxid1043\\_ch7\\_art7-1500\\_sec7-1506](http://billings-mt.elaws.us/code/coor_apxid1043_ch7_art7-1500_sec7-1506)

<sup>12</sup> [http://billings-mt.elaws.us/code/coor\\_apxid1043\\_ch7\\_art7-1500\\_sec7-1506](http://billings-mt.elaws.us/code/coor_apxid1043_ch7_art7-1500_sec7-1506)

In response to Montana legislation the Montana Public Service Commission has authorized several clean energy tariffs to encourage the development of renewable energy. NorthWestern Energy operates their E+ Green tariff and the allowance of net metered systems

The E+ Green program was originally mandated by the Montana legislature in June, 2003. The tariff requires regulated electric utilities to offer customers an option to purchase environmental attributes from certified renewable energy sources including wind, solar, geothermal, and biomass. Environmental attributes are quantified in the form of Renewable Energy Credits (RECs), where a single REC represents one million kilowatt hours of certified renewable energy production. RECs do not guarantee that participating customers are actually receiving renewable energy. Rather, RECs represent proof that a certified renewable energy system has generated a certain amount of electricity and the purchase of each REC allows E+ Green customers to contribute financially to the economic viability of the associated renewable energy project. In the case of Missoula, NorthWestern Energy customers participating in the E+ Green program pay a premium of \$2 per REC as an add-on to their utility bill. NorthWestern Energy RECs are solar, geothermal, biogas and wind energy attributes purchased by the utility from the Bonneville Environmental Foundation, a certified broker of environmental products and services based in Portland, Oregon. These energy attributes are not required to be produced in Montana.

Another clean energy tariff available to NorthWestern Energy customers was created by Montana's net energy metering law, enacted in July, 1999. Net metering allows retail customers of investor-owned utilities to construct self-generation systems up to 50 kilowatts in capacity that generate electricity using wind, solar or hydroelectric power. Systems interconnect with utility electric service meters located on customer premises. When on-site generation is less than consumption then utility electricity flows from the grid to fully supply energy demand and the customer is charged for that quantity of electricity at the retail customer rate. When on-site generation produces more power than the customer is using at the location electricity flows back to the grid and the customer is credited with the excess production on their monthly bill. If production exceeds consumption then the net energy balance accumulates over the course of the year, each month helping to reduce the customer-generator's utility bill. At the end of each year if any excess electricity credit still remains then it is confiscated by the utility at no compensation to the customer-generator. Net metering customers are also charged a monthly fee like every other customer to help cover the cost of utility operations. Similar net metering policies apply to member-owned electricity coops including Missoula Electric Cooperative. Each cooperative sets its own net metering rules. For Missoula Electric Cooperative the maximum system size is limited to 10 kilowatts.

### **What is Community Choice Aggregation? Is it enabled?**

Community Choice Aggregation (CCA) is a regulatory framework authorized by state legislatures that enables local governments to create nonprofit public agencies to serve as a public utility provider on behalf of residents, offering an alternative to regulated utility company service to customers. CCA legislation allows community choice aggregators to establish a territory and become the default provider of electricity to participating customers. The CCA provider purchases energy products, oftentimes renewable energy, on the wholesale market or from individual projects but contracts with the regulated utility to provide transmission, distribution and customer service to the CCA customer. The CCA provider makes purchasing decisions about the energy supply mix and maintains contracts with independent wholesale energy providers on behalf of customers. In general CCAs have been created to provide clean energy portfolio mixes that help participating municipalities respond to customer demand and achieve greenhouse gas reduction goals. The first CCA was proposed in Massachusetts in 1995.

Since then seven states have passed CCA enabling legislation and dozens of community power agencies have been formed to serve customers.

Advantages of community choice aggregation are increased customer choice and local control, combined with amplified market power to purchase or develop renewable energy projects that respond to customer demand. Customers under CCA can enjoy reduced energy costs while supporting clean energy objectives. The environmental and economic benefits of CCA agencies have been recognized by both the Environmental Protection Agency and the National Renewable Energy Laboratory.

Disadvantages of CCA are the sometimes high opt-out costs associated with customer defection from regulated utilities. When CCA agencies enter into competition with utilities to provide electricity supply the incumbent utility is sometimes able to assess exit fees and compensation for existing assets authorized by regulators and purchased to serve the customers who are leaving the utility. Such fees and charges, along with legal and regulatory expenses, can result in significant upfront costs for new CCAs that have a chilling effect on formation and customer participation. However, markets with successful CCA development illustrate that cost savings from efficient operations and popular support for a clean energy supply mix can offset any startup charges.

Community Choice Aggregation is not currently enabled in Montana and the legislature has not previously considered CCA enabling legislation.

#### **What is Third Party Ownership? Is it enabled?**

Specialized financial models exist to allow consumers interested in renewable energy but lacking resources to self-finance a project to partner with developers able to utilize federal renewable energy investment incentives such as tax credits (the investment tax credit or ITC, and production tax credit or PTC) and accelerated asset depreciation (Modified Accelerated Cost Recovery System - MACRS). Such approaches include system leases and direct customer power purchase agreements. One strategy of particular interest to local governments and nonprofit organizations is known as the third party ownership model. Third party ownership has been developed specifically to bring qualified investors into partnerships with non-taxable entities including nonprofit organizations and municipalities. Since tax benefits can comprise as much as two thirds of the investment value of some renewable energy projects, nontaxable entities are unable to utilize a significant portion of the return value of a project.

The third party strategy creates an ownership structure where an investor group with a tax appetite (i.e. the ability to use tax benefits to offset taxable income) finances and builds a renewable energy project and sells power under contract to a non-taxable entity for the duration of the period where tax benefits apply, generally six to ten years after project commissioning. The investor partner owns the project and is entitled to claim the tax benefits and cash income from the project, while the consumer partner enjoys the benefit of receiving the renewable energy at a predetermined price. Once the investor partner has recovered their contractual investment return and met specific tax-related ownership conditions, the consumer partner is either given the project for donation value (in the case of a tax exempt nonprofit entity) or purchases the project at a reduced price based on the depreciated basis of the project below the original cost of construction.

Third party ownership has not been legally tested in the state of Montana and Montana Public Service Commission places limitations on independent power providers and power purchase agreement offerings which make third party ownership for renewable energy projects legally complex. Presently there simply is not a clear regulatory framework for third party ownership or leasing of on-site generation in Montana.

**Is there a Renewable Energy Portfolio Standard? Describe.**

The Montana Legislature established a Renewable Energy Portfolio Standard (RPS) in 2005, mandating that regulated Montana utilities obtain a minimum of 15% of their retail electricity sales be generated from authorized renewable energy sources by 2015. The RPS defined eligible renewable energy generation systems as those producing electricity from wind, solar, certain hydroelectric systems, landfill gas, biomass, and fuel cells using renewable fuel. A revision of the RPS added energy obtained from storage of renewable fuels as also qualifying. The 2005 legislation created a phased compliance timeline to achieve the target percentages of power, which was met easily through purchases of wind energy by Montana's main regulated utility NorthWestern Energy. The RPS primarily applies to Montana's regulated, investor owned utilities NorthWestern Energy and Montana-Dakota Utilities, but it does affect other out-of-state utilities with small customer bases that comply with the RPS by buying qualifying RECs or paying fines. The legislature exempted public electric cooperatives and municipal utilities from compliance under the RPS standard.

Currently, approximately 58% of the energy coming from power plants NorthWestern Energy owns is from carbon-free sources: 14% from RPS compliant owned and contracted wind projects, 2% from RPS compliant small solar and hydroelectric qualifying facilities, and 42% from owned and contracted non-RPS compliant hydroelectric facilities. The remainder of the NorthWestern Energy's owned asset portfolio is composed of 22% owned coal generation, 5% owned natural gas generation, and 15% contracted natural gas generation. However, NorthWestern Energy also purchases significant amounts of electricity from the open market, the fuel sources of which are not disclosed, making it impossible to determine the actual fuel-source percentages as delivered to customers.

**What is decoupling? Is it enabled?**

Decoupling refers to a utility rate incentive structure that allows utilities to generate a greater proportion of their revenue from electricity delivery and balancing services while reducing income reliance on bulk electricity sales, thereby reducing the business incentive to sell more electricity and increasing the incentive to provide better and more innovative services.<sup>13</sup> This "decoupling" of sales revenue from service revenue encourages and rewards utilities for fostering energy conservation and innovation rather than merely selling bulk power. Enabling rate decoupling could be achieved in two ways. The legislature could pass a law authorizing a decoupling policy that directs the PSC to open a utility rate implementation docket, or a utility could include a decoupling proposal as part of a scheduled rate case before the PSC. Decoupling is currently not enabled in Montana.

**What Montana cities have evaluated and/or attempted to establish municipal power utilities and what were the outcomes? Lessons learned?**

In the wake of 1997 utility deregulation by the Montana Legislature a coalition of Montana cities proposed a statewide public power company that could purchase the Montana Power Company transmission and distribution assets.<sup>14</sup> Six cities – Missoula, Great Falls, Helena, Butte-Silverbow, Bozeman, and Billings – sought to purchase Montana Power Company transmission and distribution assets but were not able to make a competitive bid in 1999 and the utility assets were sold to NorthWestern Corporation in 2000. NorthWestern Corporation's subsidiary NorthWestern Energy subsequently filed for bankruptcy in 2003.

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<sup>13</sup> <https://www.nrdc.org/experts/ralph-cavanagh/report-decoupling-transforming-utility-industry>

<sup>14</sup> [http://leg.mt.gov/content/Committees/Interim/2007\\_2008/energy\\_telecom/staff\\_reports/2008publicpower.pdf](http://leg.mt.gov/content/Committees/Interim/2007_2008/energy_telecom/staff_reports/2008publicpower.pdf)

In the wake of the bankruptcy and to protect the public's interest in reliable utility management in 2004 the same group of cities again attempted to purchase the T&D assets, entering into an interlocal agreement to form the Montana Public Power Authority (MPPA) which in turn incorporated Montana Public Power Incorporated (MPPI), a public benefit corporation established to purchase NorthWestern Energy and serve as a public utility provider for the participating cities and customers within the NorthWestern Energy utility service territory. The city of Billings failed to authorize participation in MPPA but the remaining five cities authorized participation and MPPI secured sufficient bonding authority to place a \$2 billion bid for NorthWestern Energy in 2005. The NorthWestern Corporation board of directors rejected the MPPI offer and the Montana state legislature subsequently failed to pass remedial legislation to address deficiencies in the MPPI bonding authority, thus ending the effort to purchase the utility. The NorthWestern Corporation subsequently accepted a purchase offer for the utility from Babcock & Brown Infrastructure of Sydney, Australia but the Montana Public Service Commission did not authorize the purchase and the sale was cancelled. No further public or private attempts to purchase NorthWestern have occurred.

Also in the wake of deregulation several Montana municipalities formed public utilities to provide local services, including Missoula. The most successful was formed by the city of Great Falls, which created Electric City Power Inc. to purchase wholesale electricity for retail sale to community customers under deregulation's energy choice provisions. Electric City Power was licensed by the PSC to sell electricity as a wholesale distributor, and successfully recruited a number of large commercial customers in the Great Falls area that were served through the NorthWestern Energy distribution grid for a number of years. In 2003 the city of Great Falls joined the Southern Montana Electric Generation and Transmission Cooperative, which then embarked on a plan to build a coal-fired generation station to supply power under long term contract to the city via Electric City Power. Financial mismanagement resulted in the bankruptcy of Southern Montana Electric and significant financial losses to the city of Great Falls and Electric City Power. Great Falls dissolved Electric City Power in 2013.

The city of Missoula formed an electric and natural gas utility in 1999 and obtained an electric supply license from the PSC. While the Missoula electric utility remains authorized it has never been used to purchase or sell electricity. Currently the only municipal utility operating in the state is operated by the City of Troy, Montana.

**How much latitude under state and federal law does the community have to use municipal rights-of-way to facilitate micro-grids and direct supply of electricity to consumers?**

Municipalities in Montana have broad latitude to use and regulate public rights-of-way for public benefit. Montana law addresses rights-of-way access across state lands for public access and roadways, "the right-of-way is given, dedicated, and set apart to locate, construct, and maintain district works over and through any lands which are the property of this state, and the district has the same rights and privileges relating to the right-of-way as are granted to municipalities."<sup>15</sup>

Referring to local government authority the Montana Code Annotated states that "the commission shall have all powers to grant rights to occupy or use the streets, highways, bridges, or public places in the municipality that now are or hereafter may be granted to municipalities by the constitution or laws of Montana. Every ordinance or resolution passed by the commission granting the right to occupy or use streets, highways, or public places of municipalities shall be complete in the form in which it is finally

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<sup>15</sup> <http://leg.mt.gov/bills/mca/7/13/7-13-2220.htm>



passed and remain on file with the commission for inspection by the public for at least 1 week before the final adoption or passage thereof.”<sup>16</sup>

Further, “local government may regulate and prevent the use or obstruction of streets, sidewalks and public grounds by signs, poles, wires, or any obstruction.”<sup>17</sup>

Finally, the MCA states “a telegraph, telephone, electric light, or electric power line corporation or public body or any other person owning or operating such is hereby authorized to install its respective plants and appliances necessary for service and to supply and distribute electricity for lighting, heating, power, and other purposes and to that end, to construct such telegraph, telephone, electric light, or electric power lines, from point to point, along and upon any of the public roads, streets, and highways in the state, by the erection of necessary fixtures, including posts, piers, and abutments necessary for the wires. The same shall be so constructed as not to incommode or endanger the public in the use of said roads, streets, or highways, and nothing herein shall be so construed as to restrict the powers of city or town councils.”<sup>18</sup>

The Missoula city council authorized and licensed a municipal electric and gas utility to provide service to customers in the community. Federal utility regulations do not apply to municipalities. However, the municipal utility appears to be limited by state law in its ability to provide services to existing residential, commercial or industrial “small” customers of the default regulated utility, or to existing “large” customers. Provision of services and construction of facilities that do not compete with services to default utility customers may be permitted, such as serving loads in new buildings, serving loads in a way that does not interact with utility company grid services, serving local street lighting needs, serving electric vehicle charging facilities, and offering other local service and construction of facilities to serve such customers.

#### **Additional References:**

Understanding Energy in Montana: A Guide to Electricity, Natural Gas, Coal, and Petroleum Produced and Consumed in Montana. <http://leg.mt.gov/content/Publications/Environmental/2009-understanding-energy.pdf>

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<sup>16</sup> <http://leg.mt.gov/bills/mca/7/3/7-3-4449.htm>

<sup>17</sup> <http://leg.mt.gov/bills/mca/7/14/7-14-4102.htm>

<sup>18</sup> <http://leg.mt.gov/bills/mca/69/4/69-4-101.htm>