

Exhibit 1

South Dakota Legislative History

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7 TRANSCRIPT OF AUDIO-RECORDED

8 SOUTH DAKOTA LEGISLATIVE SESSION

9 ON SENATE BILL 132

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11 FEBRUARY 8, 2011

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<p style="text-align: right;">Page 2</p> <p>1 MR. CHAIRMAN: Senate Bill 132 and act to provide 2 the right of first refusal to construct and own 3 electronic transmission lines to incumbent electric 4 utilities. Senator Rave.</p> <p>5 MR. RAVE: Good morning, Mr. Chair, members of 6 the committee, Tim Rave State Senator, District 25. 7 Today, I bring before you Senate Bill 132, and act to 8 provide the first rate of refusal to construct and own 9 electric transmission lines to incumbent utilities.</p> <p>10 One thing I've learned since I, uh, agreed to be 11 the prime sponsor of this bill, I now know what a 12 FERC, a NERC, and a MISO are. [Laughing] I firmly 13 believe there's a MERC, PERC, and SERC, but I'm not 14 sure what they stand for.</p> <p>15 Mr. Chairman, members of the committee, electric 16 utilities that are members of the Midwest Independent 17 Transmission System Operator, or MISO, presently have 18 a first right to construct and operate new 19 transmission that connects with their existing 20 transmission systems.</p> <p>21 Recent action by the Federal Energy Regulatory 22 Commission, or FERC, threatens to eliminate this first 23 right. Senate Bill 132 would preserve that first right 24 in South Dakota. The customers and shareholders of the 25 transmission owning utility companies in South Dakota</p>	<p style="text-align: right;">Page 4</p> <p>1 lobbyist and the executive director for South Dakota 2 Electric Utility Companies.</p> <p>3 They're the investor-owned electric utility 4 companies. And, um, I want to thank Senator Rave for, 5 um, for the introduction. Uh, this has been a 6 challenging issue, not in the sense that, uh, 7 contextually, I think, uh, it's one of those devils in 8 the details.</p> <p>9 We have been spending since early December on 10 this bill, trying to get, uh, reconciling engineer's 11 opinions, uh, to essentially come to closure, so with 12 your permission, if, um, with your permission, sir, 13 uh, Senator Rave has distributed an amendment that, 14 uh, is -- is our own.</p> <p>15 And then I took the liberty of -- of assuming, or 16 at least hoping that, uh, the amendment would be acted 17 on and then I put that into the bill that was handed 18 out so that I can take you through the bill with some 19 clarity and show you just exactly what it means, 20 because sometimes it's challenging to read amendments 21 in pieces.</p> <p>22 MALE 2: May I move the amendment?</p> <p>23 MR. CHAIRMAN: You may. Move by Elsing, second by 24 Nygaard, the amendment 132 FB. Please continue, Mr. 25 Willard.</p>
<p style="text-align: right;">Page 3</p> <p>1 would be adversely affected by FERCs elimination of 2 this first right.</p> <p>3 FERCs action could require the public utilities 4 and their customers to bear the transmission 5 development costs of out-of-state transmission 6 developers. The developers do not have the obligation, 7 like our public utilities, to serve the public 8 reliably and economically.</p> <p>9 Our public utilities original decisions to join 10 MISO were premised on the first right to construct and 11 operate and their customers and shareholders sharing 12 the benefits of that right. Passage of Senate Bill 132 13 will ensure the first right continues in South Dakota. 14 [Sneezing] Bless you.</p> <p>15 Mr. Chairman, I have an amendment and I will have 16 the pages handed out and I will, um, uh, hand off to 17 someone who understands what a FERC, NERC, and MISO 18 are more than I do, um, uh, to explain the amendment 19 and then, uh, a little more detail about the bill. 20 Thank you for your attention.</p> <p>21 MR. CHAIRMAN: Thank you Senator Rave. Additional 22 proponents for Senate Bill 132.</p> <p>23 MR. WILLARD: Thank you. Good morning. Good 24 morning, Mr. Chairman, uh, members of the committee. 25 Uh, my name is Steve Willard. I'm a registered</p>	<p style="text-align: right;">Page 5</p> <p>1 MR. WILLARD: Thank you very much, sir. Um, I'm 2 going to take you through the bill. Um, before I do 3 that, uh, I'm going to add one more acronym and that's 4 ROFR, which is essentially a short version for right 5 of first refusal. Uh, Senator Rave made reference to 6 FERC and MISO and the like.</p> <p>7 Uh, when we started, I thought ROFR were the, uh, 8 cowboy pants with no pockets, but, uh, they tell me 9 they're the boots with no laces. So, um, uh ROFR is 10 essentially the acronym for right of first refusal.</p> <p>11 Um, the federal energy regulatory commission, um, 12 went out a notice of proposed rulemaking in June of 13 this last year. And it's a long laundry list of things 14 that they're suggesting that they want to accomplish 15 in that rule making of which one of those has to do 16 with ROFR.</p> <p>17 Um, we expect the decision to come down from them 18 sometime in the middle of May, which means that for 19 us, it'll be effective sometime this summer. And what 20 that decision does is essentially take a contractual 21 rate that's been extended through MISO that the 22 companies that are members have today.</p> <p>23 Um, it's not unique to MISO. MISO is one of six 24 different regional transmission organizations across 25 the country. Uh, the reason they've come together is</p>

<p style="text-align: right;">Page 6</p> <p>1 that transmission is expensive, and transmission is 2 bigger than -- than a state.</p> <p>3 So, um, starting in the year, about 2000, the 4 feds tried to incite transmission, uh, these regional 5 organizations have come together and, uh, they spend a 6 lot of time on cost allocation. They spend a lot of 7 time bickering these processes. They spend a lot of time 8 on transmission because essentially, it's bigger than 9 a state can manage.</p> <p>10 So, in our particular case, uh, MISO, along with 11 a couple of the other RTOs, extended, right off first 12 refusal to the -- to the income utilities. What that 13 means essentially is, that if an outsider comes in to 14 your service area and wants to connect to your 15 facility, and that's important, then the first right 16 goes to that income utility to look at the project and 17 decide whether or not it's got merit to their 18 customers and merit within the project.</p> <p>19 Um, MISO extended that right, because as you'll 20 understand, uh, transmission, because it's so 21 expensive is expensive and is difficult and is 22 detailed. So, all of the MISO shareholders, all of the 23 stakeholders, all of the member states, all of the 24 public utility commissions are affected.</p> <p>25 They participate in this very transparent, very</p>	<p style="text-align: right;">Page 8</p> <p>1 explain that in a minute, but connect is important 2 there. It also means that facilities I've talked 3 about, but 115 KV or greater, which means essentially 4 these are the larger lines. These aren't the smaller 5 distribution lines that you see out there. These 6 aren't the 69 KV. These are the larger lines.</p> <p>7 And then the last qualifier we put in there 8 ourselves, the other line solely for connecting a 9 generation facility to facilities owned by utility.</p> <p>10 It's not our desire. We specifically tried not to, to 11 do anything to, um, interfere or interrupt or even 12 affect the lines that would run from a particular wind 13 project to a particular facility.</p> <p>14 So, we wrote a specific exception in there for 15 those projects. It's not our desire to get in the 16 middle of that. Uh, we've got companies involved in 17 that prospect. It's not our desire to get involved 18 with those. So, it's essentially 115 KV line or larger 19 connecting to our facility, section one.</p> <p>20 Section two, defines incumbent electricity, our 21 incumbent transmission owner, which now we try to be 22 palms up on this one. We've involved everybody that we 23 could think of. Um, you can see that includes an 24 electric utility, a public utility, wholesale, co-op, 25 um, municipal power, uh, consumers power district, um,</p>
<p style="text-align: right;">Page 7</p> <p>1 laborious prospect project to come to some closure 2 about what to do with transmission. So it's, for that 3 reason that we came the bill, because it's the 4 engineers brought the bill to us because the idea 5 of -- of taking ROFR away and disrupting 6 transmission, um, it just sends them running, 7 screaming from the room.</p> <p>8 So what the bill does, I'll only take you through 9 the bill, because I think it's fairly as -- as 10 difficult conceptually as it is. I think you'll 11 understand just exactly what we're doing. So I'll 12 spend a little bit of time on the bill.</p> <p>13 Section one is essentially definitions, but, um, 14 in this case words have particular meaning because if 15 you go through the line, what you're looking at is 16 electric transmission line and there's a couple of 17 things in there that really matter.</p> <p>18 First one is, um, connecting. Because what that 19 means is, that if you want to connect to my facility, 20 and the reason we use facility is because, in about 95 21 percent, 98 percent of occasions, it's a substation, 22 but occasionally it's a line.</p> <p>23 So we want facility to be a little broader. If 24 you want to connect to my facility, then that's 25 essentially the second step of this process, and I'll</p>	<p style="text-align: right;">Page 9</p> <p>1 and I think you'll probably hear, uh, you know, a 2 possible amendment.</p> <p>3 I think the consumer power individuals have got 4 some issues with the bill and we can talk about those 5 when the time comes, but it was our desire to extend 6 the same role for right to everybody that's in 7 business at this time. If, um, they want out, then 8 we're glad to let them out.</p> <p>9 Um, it's a right that they get by contract right 10 now. It was our desire to include everybody. So we 11 didn't favor ourselves. We're not trying to favor 12 anybody. And at this point, um, the, um, the IOUs, 13 most of these people that we asked, um, the consumers 14 power district, you know, that's a different story.</p> <p>15 So, the action really is in section three. Now, 16 the first sentence reads a little bit like a policy 17 statement, and that essentially extends our right to 18 construct owner maintain to facilities owned by the 19 incumbent electric transmission owner. And, um, that 20 seems a little obvious, but I can tell you exactly 21 where that came from.</p> <p>22 Um, my soul language, one of the appendixes 23 within MISO, essentially that's a portion of the 24 language that FERC has signed off on. So we tried as best we could to emulate the federal language because</p>

<p style="text-align: right;">Page 10</p> <p>1 it's got federal approval. And so we extended that 2 sentence into the statute.</p> <p>3 The second sentence speaks to, if you've got a 4 facility that's owned by two or more, because that's 5 not uncommon. So the magic to the second sentence is, 6 that if there's two or more facilities, or two or more 7 owners, that the right belongs to them individually 8 and proportionately. Now, proportionately sometimes is 9 by miles, sometimes it's by laws, sometimes it's by 10 facilities, sometimes it's 20/80, sometimes it's 11 50/50, sometimes it's 60/40.</p> <p>12 So, uh, someone used the phrase earlier I thought 13 that, um, that I've really grown to like, that we try 14 to write the language that would be agile enough to 15 accomplish every circumstance, because it was 16 impossible for us to list every circumstance. So the 17 point being that you still have an individual right 18 and a shared right to do what you want with your own 19 facilities.</p> <p>20 So then the next sentence is essentially the 21 first trigger or for those of you that are, you know, 22 are a little more artistic, this could be the first 23 step of our two steps. If an electric transmission 24 line is approved for construction in a federally 25 registered planning authority transmission plan, what</p>	<p style="text-align: right;">Page 12</p> <p>1 essentially, we give it up. So it's clear now, it's -- 2 it's a big deal and we understand that, um, it's a 3 contractual right that all of the members of MISO have 4 today.</p> <p>5 So it's a contractual, right that's been granted 6 by for those guys that have been participating with 7 MISO for the companies. It's a contractual, right, 8 that's been signed off by -- by the federal 9 government. So FERC has signed off on this. It's a 10 contractual right that is not unique to MISO. It's a 11 contractual right that exists within a couple of the 12 RTOs.</p> <p>13 So it's not an unusual mechanism. And first 14 refusal for those of you -- probably you've crossed 15 paths. You've seen it in AG lending, you've seen it in 16 other places, the contractors and lean. So right of 17 first refusal is not an uncommon concept.</p> <p>18 What we're trying to do in a nutshell is extend 19 that contractual right, that we have at this time, and 20 extending it into state statute. And we're doing that 21 in anticipation of the federal action. Now, maybe the 22 fact that we've done that sends a message to the feds 23 and, uh, they say, no, no, we just, we won't try to 24 take ROFR away.</p> <p>25 Um, North Dakota's doing the same thing. I saw</p>
<p style="text-align: right;">Page 11</p> <p>1 that means is that if you survive the vetting process 2 in MISO and 17 projects have gained multi-value 3 status, and there's a queue of 17 projects lined up 4 right now, which South Dakota's got three.</p> <p>5 If you survive that process and you're approved 6 for construction, that's essentially the first step. 7 That's the first trigger. That's when this process 8 begins for us. The second step means that if you want 9 to connect to our facilities. So it doesn't mean that 10 if it's approved in a project, that it's unrelated to 11 me, and it doesn't mean that because Senator Rave has 12 got a wallet full of gift cards, as does Senator 13 Johnston, that he gets his gift cards if I want to 14 give him one, it just means that if I'm connecting 15 into a particular facility, once I've been approved, 16 that's the second step.</p> <p>17 So one step, two step. So then it was important 18 to us that we make sure that we clearly, um, identify 19 that we're not trying to -- to disrupt the project, 20 we're not trying to intervene, we're not trying to 21 exercise veto authorities.</p> <p>22 So the next sentence essentially says that once 23 that approval happens, we've got 90 days to assert our 24 desire to build a project, so. And at the end of the 25 90 days, if we don't exercise that right, then</p>	<p style="text-align: right;">Page 13</p> <p>1 Jeff Simon came down this morning from MDU in North 2 Dakota, came out of committee, and essentially tried 3 to do the same thing. So maybe if enough staying -- 4 states gang up and send a message to FERC, they'll say 5 no, no, we understand, we'll leave it alone.</p> <p>6 I can't speak to that, but if they take it away, 7 then our attorneys and our engineers are convinced 8 that if they take it away, that, uh, we will 9 essentially have manifested that right in state 10 statute. A right that we already have today by 11 contract.</p> <p>12 Now the reason that ROFR exists, and the reason 13 that it's important to us is that the public utilities 14 have got an obligation to serve here in South Dakota. 15 They also have got a public utilities commission 16 downstairs with a very capable staff and, uh, 17 committed commissioners that have jurisdiction over 18 the actions of the incumbent utilities.</p> <p>19 So we've got jurisdiction, we've got 20 accountability out here. We also have a vested 21 interest in providing that service, because we're the 22 ones that are providing customers a retail. So we're 23 the ones that aren't going away.</p> <p>24 So, um, the public utilities commission is up here this morning, and I think they'll speak to the</p>

<p style="text-align: right;">Page 14</p> <p>1 bell. Uh, they submitted comments on behalf of this 2 issue, uh, this July, um, I think for us, um, it makes 3 a lot of sense. I think it's a little bit of a 4 challenge. I think, um, probably when it comes right 5 down to it, um, transmission, the single biggest issue 6 that, uh, has kept transmission from occurring is 7 essentially the allocation of cost.</p> <p>8 Uh, MISO has given us a means to conquer that 9 cost allocation and that cost allocation process has 10 been signed off on FERC. There's a long queue of 11 projects that are ready to explode of which we've got 12 a bunch of them, three of them. Uh, we're excited 13 about the future.</p> <p>14 Anything that is disruptive to that process, 15 anything that injects uncertainty into that process, 16 anything that makes that process more expensive and 17 laborious than it is now, I think, um, just makes it a 18 -- a tough subject even tougher.</p> <p>19 So there's a couple of guys who are going to 20 follow behind me. Uh, I'll be available for questions. 21 Um, it's a technical issue. Um, we've had the blessing 22 of probably 60 engineers helping with the bill and, 23 um, that's definitely the layperson opinion. Uh, we've 24 got access to those.</p> <p>25 So if you want to get in the technicalities, we'd</p>	<p style="text-align: right;">Page 16</p> <p>1 Um, there is a current rate of return that's been 2 established on these projects that's ex -- extremely 3 favorable and it's causing some interest by other 4 parties and that's -- that's certainly a part of, uh, 5 why we're here with Senate Bill 132.</p> <p>6 Finally, I -- when you all go home, I stick 7 around here and represent electric utilities in front 8 of the PUC. It's been my experience that utilities 9 routinely formed partnerships to do projects that 10 might not make sense for them to handle all by 11 themselves.</p> <p>12 We've talked a lot about the big stone project 13 that's currently in place. That's an existing 14 partnership of utilities that utilizes that facility 15 because of the -- the, uh, you know, return on 16 investment and the ability to, uh, do things 17 collectively better than they could by themselves.</p> <p>18 Transmission is no different. There are 19 transmission projects that are partnerships, but 20 currently nothing in 132 that I can see would change 21 that calculus currently. So, thank you for your time. 22 I support the bill.</p> <p>23 MR. CHAIRMAN: Thank you. Additional proponents 24 for Senate Bill 132 proponents. Commissioner --</p> <p>25 MR. C. NELSON: Good morning, Mr. Chairman,</p>
<p style="text-align: right;">Page 15</p> <p>1 be glad to go there. But, uh, I think you'll 2 understand exactly what we're trying to do, and I 3 appreciate, very much, the time.</p> <p>4 MR. CHAIRMAN: Thank you Mr. Willard. Additional 5 proponents for Senate Bill 132, proponent testimony. 6 Good morning.</p> <p>7 MR. KENEKE: Good morning, Mr. Chairman, members 8 of the committee. My name is Brett Keneke. I'm a 9 lawyer from Pier and a registered lobbyist for the 10 South Dakota Electric Utility Companies. I'll try not 11 to belabor the points made by the previous, uh, 12 witnesses.</p> <p>13 Uh, I would want to point out that, uh, I think 14 of -- of MISO as being a clearing house for 15 electricity, where -- where bills are generated based 16 on tariffs and they're charged back to people based on 17 their use of the grid.</p> <p>18 And I look at Senate Bill 132 as being the 19 mechanism by which South Dakotans, both rate payers 20 and electric users, of -- of other entities and the -- 21 the utilities that provide that electricity, it's 22 their mechanism to reserve our place at the table so 23 we get a chance to build the projects and earn the 24 rates of return that are prescribed in the tariffs at 25 our option, rather than somebody else's.</p>	<p style="text-align: right;">Page 17</p> <p>1 members of the committee, Chris Nelson, Public 2 Utilities Commission, speaking on behalf of the 3 commission today. Uh, we do support this bill, uh, 4 four very brief points as to why we're on board with 5 it.</p> <p>6 Uh, number one, uh, the FERC notice seemed to 7 imply that they would defer to state policy if we were 8 willing to set that policy. And I firmly believe 9 anytime Washington is willing to let us do something, 10 we ought to take advantage of it, and this is our 11 opportunity.</p> <p>12 Uh, secondly, we don't see this as inhibiting 13 needed transmission construction and, uh, hopefully 14 we'll, uh, we'll add to that.</p> <p>15 Uh, thirdly, when that needed, uh, transmission 16 is constructed, uh, we believe it is in the best 17 interest of South Dakotans to have that done by our 18 incumbent utility companies, uh, that we know and, uh, 19 we believe will best service that transmission.</p> <p>20 And then fourthly, uh, we believe it has the best 21 potential, uh, to have a positive impact on South 22 Dakota rate payers, as opposed to transmission being 23 built by, uh, some entity from outside of this state. 24 And so, with that, Mr. Chairman, uh, we do support the 25 bill.</p>

<p style="text-align: right;">Page 18</p> <p>1 MR. CHAIRMAN: Thank you, Commissioner.</p> <p>2 Additional proponents, uh, proponent testimony for</p> <p>3 Senate Bill 132. Any other proponents for Senate Bill</p> <p>4 132. Hearing none. Is there opponent testimony to</p> <p>5 Senate Bill 132 that was in opposition. Good morning.</p> <p>6 MS. BERGEN: Good morning. My name is Deborah</p> <p>7 Bergen. I'm with Missouri River Energy Services. We</p> <p>8 are a municipal power agency located in Sioux Falls,</p> <p>9 South Dakota. We serve 60 member municipal --</p> <p>10 municipal utilities in the four state area, 12 of</p> <p>11 which are here in South Dakota.</p> <p>12 I'm here to speak on Senate Bill 132, and</p> <p>13 specifically to offer an amendment on 132. Missouri</p> <p>14 River Energy Services has some concerns and yes, it</p> <p>15 comes out of the FERC pending rule making.</p> <p>16 We have filed comments through TAPS, the</p> <p>17 Transmission Access Study Policy Group, and we have</p> <p>18 recommended to FERC if they consider restricting the</p> <p>19 right of first refusal one of the things we would like</p> <p>20 to see, is that transmission dependent utilities,</p> <p>21 which Missouri River Energy Services, particularly in</p> <p>22 South Dakota is, would have a right to invest in that</p> <p>23 line, a right, representing our load that would be</p> <p>24 served by any new line.</p> <p>25 Right now, under MISO, if we have load in a -- in</p>	<p style="text-align: right;">Page 20</p> <p>1 opportunity.</p> <p>2 We believe from Missouri River Energy Services,</p> <p>3 this would give us the opportunity to invest in pot on</p> <p>4 behalf of our 12 South Dakota members who could be</p> <p>5 impacted by a new line, that they would not otherwise</p> <p>6 have an opportunity to invest in but would certainly</p> <p>7 be paying for.</p> <p>8 The second thing we ask for is to insert some</p> <p>9 sort of timeline. That within one year of the</p> <p>10 incumbent -- the invoking of the right of first</p> <p>11 refusal, the incumbent will have transmission or shall</p> <p>12 file an application for a permit in accordance with</p> <p>13 49-41B.</p> <p>14 What we're asking here is simply this. If you</p> <p>15 invoke the right of first refusal so far, you've just</p> <p>16 invoked the right. We ask that there be something done</p> <p>17 in a certain timeframe to show that you are moving</p> <p>18 forward with the line.</p> <p>19 So we ask that something be added to this</p> <p>20 statute, this, um, one year notice or -- or this, um,</p> <p>21 application timeline so that some affirmative action</p> <p>22 is taken so that we aren't waiting for a transmission</p> <p>23 line to be constructed.</p> <p>24 MR. CHAIRMAN: Thank you.</p> <p>25 MS. BERGEN: Thank you.</p>
<p style="text-align: right;">Page 19</p> <p>1 a MISO load zone and our members are impacted, our</p> <p>2 members would pay for a new line. And we are asking</p> <p>3 that when that occurs that our members, or Missouri</p> <p>4 River Energy Services, be allowed or be offered an</p> <p>5 opportunity to invest in that line to represent our</p> <p>6 interest.</p> <p>7 And to that end, I offer amendment today. Granted</p> <p>8 this amendment was drafted prior to the amendment</p> <p>9 brought forward earlier today. Uh, the first thing</p> <p>10 this would -- amendment would do would primarily</p> <p>11 insert a municipal power agency who serve electric</p> <p>12 service in this state. Um, I realize the other</p> <p>13 amendment also does the same and I guess we would be</p> <p>14 fine with either version of that.</p> <p>15 More importantly, what we do ask is that we</p> <p>16 insert this right, the right of first refusal, is only</p> <p>17 available if the incumbent transmission owner offers</p> <p>18 to other incumbent transmission owners who serve load</p> <p>19 in the owner's load zone, commercially reasonable</p> <p>20 terms and condition of joint ownership in the line.</p> <p>21 We also ask that this goal through the PUC and</p> <p>22 that the PUC not approve the electric transmission</p> <p>23 line, unless they've received written notice, then</p> <p>24 offer from the impacted electric transmission owners</p> <p>25 who serve load in the low zone have been given that</p>	<p style="text-align: right;">Page 21</p> <p>1 MR. CHAIRMAN: Okay. Any other opponents --</p> <p>2 opponent testimony to 132.</p> <p>3 MR. L. NELSON: Mr. Chairman.</p> <p>4 MR. CHAIRMAN: Mr. Nelson.</p> <p>5 MR. L. NELSON: Thank you, Mr. Chairman. My name</p> <p>6 is Larry Nelson. I'm a registered lobbyist for the,</p> <p>7 uh, South Dakota Municipal Electric Association.</p> <p>8 That's an association of municipal utilities that own</p> <p>9 and operate their own electrical distribution systems.</p> <p>10 Uh, examples are the city of Brookings, the city of,</p> <p>11 uh, Beresford, the city of Watertown, city of</p> <p>12 Vermillion.</p> <p>13 Um, and I've heard the testimony today and we</p> <p>14 wanted to go on record supporting the amendment of the</p> <p>15 Missouri River Energy Systems and -- and wanted to</p> <p>16 note that some of the testimony today suggested it was</p> <p>17 important that we preserve our place at the table,</p> <p>18 referring to electric utilities in the state of South</p> <p>19 Dakota.</p> <p>20 And the intent of the, uh, amendment is to do</p> <p>21 exactly that, to preserve our place at the table, as</p> <p>22 it always has been in the state of South Dakota. I</p> <p>23 will tell you that Missouri River Energy Systems and</p> <p>24 others participated, uh, in -- in Big Stone through</p> <p>25 the construction of that plant.</p>

<p style="text-align: right;">Page 22</p> <p>1 Uh, I will tell you there's another electric 2 utility line that Missouri River Energy Systems is 3 participating in for the benefit of its members, and 4 they've done that to preserve its -- its place at the 5 table and also, to afford lower electric rates for 6 those people that they serve.</p> <p>7 Um, it appeared to be from the proponent 8 testimony that it was important that South Dakota have 9 this done, transmission done by incumbent utilities. 10 And for our cities that, uh, are served by Missouri 11 River Energy Systems, they are our incumbent, uh, 12 electrical provider, our transmission folks.</p> <p>13 And we would like to have the amendment in so 14 they could continue to -- to provide service at a 15 cheap rate and be part of the transmission process. 16 I'd be happy to answer any questions.</p> <p>17 MR. CHAIRMAN: Thank you, Mr. Nelson. Further 18 opponent testimony, Senate Bill 132. Opponent 19 testimony for Senate Bill 132. Hearing none. Uh, I'll 20 give a few minutes. Senator Rave for rebuttal or pass 21 it off to another --</p> <p>22 MR. RAVE: Uh, if I could pass it off to, um, Mr. 23 Willard, I'd appreciate it Mr. Chair.</p> <p>24 MR. CHAIRMAN: Mr. Willard.</p> <p>25 MR. WILLARD: A couple minutes of rebut -- ?</p>	<p style="text-align: right;">Page 24</p> <p>1 It's not our desire to insert anybody else into 2 this process that, uh, doesn't rightfully have a place 3 at this process if, um, it's not our desire to insert 4 particular utilities, um, I'm not going to insert 5 Black Hills Power into a situation that's between 6 Excel and another company.</p> <p>7 Um, so for us, uh, it's important that we're 8 talking about facilities that are connected specific 9 to their amendment. Um, if you read the -- the reason 10 that we've had this conversation, and kind of 11 resisted it, is that if you read the language, 12 essentially writes only available when the incumbent 13 transmission owner who offers to power suppliers and 14 state commercially reasonable terms and conditions of 15 joint ownership.</p> <p>16 Um, there's two issues with that. First, um, the 17 engineers and our attorneys are all of the collective 18 opinion that commercially reasonable could delay a 19 project to the end of time. Um, commercially 20 reasonable means different things to me than it does 21 to somebody else.</p> <p>22 Um, it could be fair. It could be at, at -- at a 23 bargain rate. Um, but until we decide what 24 commercially reasonable is, um, essentially, we'll 25 never, ever, reach and we'll be at impasse and, uh,</p>
<p style="text-align: right;">Page 23</p> <p>1 MR. CHAIRMAN: Yeah. Any rebut on the, uh, 2 opponent testimony and/or in the proposed amendment? I 3 will remind the committee we do have an amendment that 4 has been moved and seconded and, uh, that is on the 5 floor right now.</p> <p>6 MR. WILLARD: Well, I appreciate the opportunity 7 Mr. Chairman. Uh, again, Steve Willard with the 8 investor on electric utilities. So, I'm -- and I guess 9 it was my mistake not hearing the move -- motion on 10 second.</p> <p>11 MR. CHAIRMAN: Your amendment.</p> <p>12 MR. WILLARD: Yeah.</p> <p>13 MR. CHAIRMAN: The original amendment is --</p> <p>14 MR. WILLARD: Yeah, and I would sure, I guess, 15 um, um, we would resist, uh, the second suggested 16 amendment. I appreciate the latitude of the Chairman 17 and it's, uh, credit to this group that, you know, 18 we're talking about the suggested amendment, so we can 19 do all this in some context.</p> <p>20 Um, uh, I have a copy of the amendments, um, in 21 front of me, I believe. And there's a couple of 22 specific objections that we've got. Um, and -- and I 23 guess I would suggest that it's not our desire to take 24 ROFR, um, and distort it into some sort of -- of a 25 grab for anything beyond which it is exactly.</p>	<p style="text-align: right;">Page 25</p> <p>1 it's not our desire to hold these projects up.</p> <p>2 It's the reason we went 90 days and -- and on.</p> <p>3 So, that would probably be first. Um, but the other 4 conditions of joint ownership, um, Larry Nelson made 5 comments to the fact that, uh, their party to a couple 6 of projects, our experience has been is, that none of 7 these things happen in a vacuum.</p> <p>8 The transmission projects are immense enough, and 9 have enough stakeholders, and a broad enough 10 participation that by the time you get to the point of 11 construction approval, everybody's aware. And our 12 experience is that you don't build a transmission line 13 autonomously, because you're going to have to connect 14 somewhere.</p> <p>15 You're going to have to provide a service. You're 16 going to have to connect to a load. It doesn't just -- 17 it doesn't just spring up. And our experience has been 18 that we're appropriate then, uh, joint ownership is 19 extended. Um, because a lot of times, sometimes it's 20 maintenance, sometimes it's -- but it's a collective 21 deal. It's a business decision.</p> <p>22 And we thought that taking ROFR and distorting it 23 for the purpose of asserting ownership is just wrong.</p> <p>24 I don't -- I don't think it's appropriate. I don't 25 think it has a place in the bill. Um, and -- and</p>

<p style="text-align: right;">Page 26</p> <p>1 frankly, I think it's kind of obnoxious.</p> <p>2 Um, and then last, shall not approve the project 3 unless the incumbent receives a written release from 4 the power supplier. It's not our desire to deny 5 anybody a place at the table. It's for that reason 6 that we're extending ROFR, but it's also not our 7 desire to give essentially veto authority to an 8 individual at the table that may be unrelated to the 9 project that we're working on.</p> <p>10 So, uh, we thought the amendment that, uh, 11 they've suggested is a little assertive. We thought 12 it's a little far afield and we don't think it's 13 appropriate than that would strongly resist. So I 14 appreciate the time.</p> <p>15 MR. CHAIRMAN: Thank you, Mr. Willard. With that, 16 I will close testimony on Senate Bill 132 and open up 17 for a committee question.</p> <p>18 Senator Lederman.</p> <p>19 MR. LEDERMAN: This is for Mr. Willard. Mr. 20 Willard, uh, I appreciate your opinions on portions of 21 the amendment, but I do have one question for you as 22 far as the last sentence. Um, on page two, line 12 23 after.</p> <p>24 MR. WILLARD: That would be the one year, within 25 one year of the notice, sir?</p>	<p style="text-align: right;">Page 28</p> <p>1 forward with it.</p> <p>2 So I think it's arbitrary. Uh, I think it's 3 unnecessary. Probably, um, the only part, you know, 4 the other -- the other portion of the amendment that 5 we haven't really talked about is that, um, you know, 6 and I understand, you know, where the group is coming 7 from.</p> <p>8 Um, but I guess we're of the collective opinion 9 as well, that if they don't want ROFR and the 10 manifestation that we've -- that we've suggested it, 11 then I just -- I'd accept an amendment just to take 12 them out. So, um, if they don't want the right of 13 first refusal, then we're entirely comfortable with 14 their being taken out of it.</p> <p>15 It's not our desire to -- to force them to 16 participate. It's our desire to extend the same right 17 that we have by contract to all of the incumbent 18 utilities. If, uh, they don't like the manifestation 19 then which we take them out. So does that answer your 20 question, sir?</p> <p>21 MR. CHAIRMAN: Further questions?</p> <p>22 MS. BUHL: Yes.</p> <p>23 MR. CHAIRMAN: Senator Buhl.</p> <p>24 MS. BUHL: Thank you, Mr. Chair. Question for Mr. 25 Willard. Uh, you had mentioned that part of the, uh,</p>
<p style="text-align: right;">Page 27</p> <p>1 MR. LEDERMAN: Yes, sir. And my question is, do 2 you find merit in that portion of the amendment?</p> <p>3 MR. WILLARD: Mr. Chairman.</p> <p>4 MR. CHAIRMAN: Mr. Willard.</p> <p>5 MR. WILLARD: Um, sort of. Um, I probably -- 6 first it's a little, um, it's a little poorly written 7 in a sense that, um, the nature of construction for 8 citing approval in South Dakota means that you've got 9 about six months before you adopted a permit for 10 construction and then six months to ag. So the one 11 year is essentially out of context and has no 12 relevance to existing statutes.</p> <p>13 So it's essentially a made up timeframe. Um, the 14 reason that the group has put the 90 days and the 15 reason that we cut it off at 90 days is that it's at 16 least the collective opinion of the IOUs, is that 17 you're not going to exercise ROFR unless you intend to 18 act.</p> <p>19 So it's an arbitrary deadline that really has no 20 context within statute. It's just a made-up timeframe. 21 Um, but it's our opinion that if it doesn't make sense 22 and you don't want the project and it doesn't serve 23 the rate payers and it doesn't serve the citizens, 24 then, uh, we won't act. If, um, we exercise ROFR, then 25 it's our intention and it's that -- that we'll go</p>	<p style="text-align: right;">Page 29</p> <p>1 reason this bill is coming forward is that, uh, FERC 2 is potentially taking action, or is going to take 3 action, um, on the right of first refusal. Uh, do you 4 have an idea what motivated them to, uh, initiate 5 those proceedings?</p> <p>6 MR. WILLARD: Uh, Mr. -- Mr. Chairman? Uh, yes. 7 And that's a very good question. Um, first, uh, let me 8 be clear that ROFR is one element in a lengthy notice 9 of proposed rulemaking. Um, so it's one piece of a 10 lengthy docket. Um, it was done in June. Um, we 11 anticipate action in sometime mid-May with an 12 effective date around this time.</p> <p>13 Um, the reason, and there's been a zillion 14 comments submitted on ROFR specifically, um, the 15 reason that FERC is suggesting to the region -- to the 16 RTOs, to the MISOs of the world and the others, is 17 that it's discriminatory in favor of the incumbents 18 and they don't knock the incumbents.</p> <p>19 Um, they just say that it gives rights to one 20 jurisdiction more than another, um, in a generic 21 sense. So, uh, they go out of their way to say that 22 they will defer to the states on the subject, and they 23 go out of their way to not be critical of -- of the 24 incumbent utilities in this case.</p> <p>25 They just say that it's weighed one side more</p>

<p style="text-align: right;">Page 30</p> <p>1 than the other. So in kind of a generic sense. Um, 2 there's a lot of other things that would go to ROFR 3 that we didn't talk about, that we can talk about. Um, 4 and I think with Missouri River, one of, you know, 5 part of it is to establish a threshold for those 6 people that want to participate.</p> <p>7 So, um, part of their ROFR comments that they're 8 -- that they're taking comments on, or the proposed 9 rules they're taking comments on is let's establish 10 the credentials of the guys that want to participate 11 in this process. Um, so there's a threshold part of 12 it.</p> <p>13 There's a lot of things that are intricate within 14 the rule making, uh, that's one part. That was a very 15 good question.</p> <p>16 MR. CHAIRMAN: Senator Johnson.</p> <p>17 MR. JOHNSON: Thank you, Mr. Chair. Question for 18 Mr. Willard. Mr. Willard, you talked about 17 19 different MISO projects in the -- in the queue right 20 now and a handful, I think three are -- are in South 21 Dakota. Can you put a little context to this for me, 22 as far as what those projects are for South Dakota?</p> <p>23 MR. WILLARD: Um, Mr. Chairman, with your 24 permission and I've got -- I'm surrounded by a battery 25 of experts behind me. You've got a couple of those,</p>	<p style="text-align: right;">Page 32</p> <p>1 MR. NYGAARD: Thank you. Um, Mr. Nelson, you've 2 reviewed, uh, I presume you reviewed 132 FB, the 3 first, uh, amendment that was moved.</p> <p>4 MR. L. NELSON: Yes, sir.</p> <p>5 MR. NYGAARD: And, uh, I don't see a whole lot of 6 difference between, uh, the two amendments. The one, 7 uh, question I have for you is, uh, in both 8 amendments, we're inserting the -- the word municipal 9 power agency, and that's of course, being from 10 district 17 and having a -- our largest city, uh, 11 owning, uh, their own power agency, um, I see they're 12 protected in both, uh, from that aspect and enumerated 13 in each of these amendments.</p> <p>14 Uh, could you tell me the difference, um, uh -- 15 would you be willing to accept a, uh, 132 FB, uh, 16 amendment over JA?</p> <p>17 MR. L. NELSON: Mr. Chairman. Um, I'm trying 18 to -- I'm not trying to avoid your question, but, but 19 I want to make sure you understand our position. It 20 appears to me that, uh, the key to, to be part of the 21 process and to be involved in transmission is to 22 qualify, um, for the term of being an incumbent 23 electric transmission owner.</p> <p>24 And if I understand the bill correctly, to play, 25 you have to hook up to an existing facility, um,</p>
<p style="text-align: right;">Page 31</p> <p>1 um, are Otter Tail specific and Excel specific. So 2 with your permission, I'd let one of the -- one of the 3 affected companies come up and speak to that.</p> <p>4 MR. CHAIRMAN: Granted. Okay.</p> <p>5 MR. KOUBA: Mr. Chair, members of the committee, 6 Kevin Kouba, I'm a registered lobbyist for Otter Tail 7 Power. Uh, we are a, uh, investor-owned utility in 8 South Dakota based out of Fergus Falls, Minnesota. I 9 work out of Millbank, South Dakota.</p> <p>10 Um, to Senator Johnson's question, I don't know 11 that I have enough information to speak to those 12 specific projects. Although I, uh, can say that they 13 are, uh, multi value projects, um, that have been 14 through the planning process in MISO. Um, that, uh, 15 are, have moved along to the point where they have -- 16 they're showing up on diagrams, is I guess the best I 17 can say to that. I can't speak to the specifics on 18 them.</p> <p>19 MR. JOHNSON: Thank you. Mr. Chairman.</p> <p>20 MR. CHAIRMAN: Senator Nygaard.</p> <p>21 MR. NYGAARD: Thank you, Mr. Chairman. Uh, I'd 22 like to speak with, uh, Larry Nelson and ask him a 23 question.</p> <p>24 MR. CHAIRMAN: Mr. Nelson.</p> <p>25 MR. L. NELSON: Mr. Chairman. Senator Nygaard.</p>	<p style="text-align: right;">Page 33</p> <p>1 somebody else's facility, and if they say, no, you 2 can't play. Uh, we want an amendment that says 3 Missouri River Energy Systems, as being our electrical 4 wholesale provider and being our transmission 5 authority, whether they do that through lines that 6 they actually own, which are minimal, or they do it 7 through wheeling agreements and wheeling agreements 8 where someone else transfers the power for us and we 9 pay whatever they -- they tell us, um, we want to be 10 able to follow what I'm going to call the Lewis and, 11 and -- and Clark model.</p> <p>12 And when we put together that water system, 13 everybody got to say, I want X amount of water, I'm 14 willing to pay my fair share of what that project is, 15 and as the, uh, bill is drafted now, I can't see how 16 Missouri River Energy Systems, or the cities that are 17 members of it, get to play unless somebody says that 18 they want -- they want to let us play.</p> <p>19 So, my goal, Senator, is to get to the point 20 where we have a right and that's where I would prefer 21 the amendment that Missouri River Energy System has 22 offered.</p> <p>23 MR. CHAIRMAN: Senator Nygaard.</p> <p>24 MR. NYGAARD: Thank you. Just to follow up on 25 that, I -- I guess I -- I share some of the concerns</p>

<p style="text-align: right;">Page 34</p> <p>1 of, um, Steve Willard when -- when we look at the 2 third sentence of your page two, uh, amendment, 3 proposed amendment, commercially reasonable terms and 4 conditions of joint ownership.</p> <p>5 And so, determining what is commercially 6 reasonable, um, is that a job of the PUC, is that a 7 job of the, uh, uh, the court system or both? Uh, how 8 do we arrive at who determines what's commercially 9 reasonable terms and conditions?</p> <p>10 MR. L. NELSON: Well, I would -- Mr. Chairman, 11 I'm sorry. Uh, first, uh, off, I think it's a -- a 12 term that -- that can be defined. And you may recall 13 that in -- in a lot of the legislation that goes 14 through here, we always add the word reasonable in 15 front of a -- a criteria, just to make sure that if 16 you have the ability to set a term, it has to be in 17 all things reasonable.</p> <p>18 By adding the term commercially, I think that 19 further refines the term. Um, my point Senator is 20 that, uh, we don't have a -- a right to play in my 21 opinion, and we want to be able to play in the process 22 of transmission.</p> <p>23 MR. NYGAARD: Thank you.</p> <p>24 MR. CHAIRMAN: Additional questions from the 25 committee? Senator Johnson.</p>	<p style="text-align: right;">Page 36</p> <p>1 part owner of that, and that, uh, power is sent out to 2 serve, um, its member cities. I think it has 3 facilities in other places in Minnesota and Iowa, but 4 I'd have to defer to Deb Bergen to do better than what 5 I've told you Senator Johnson.</p> <p>6 MR. JOHNSON: Thank you.</p> <p>7 MR. CHAIRMAN: Senator Elsing.</p> <p>8 MR. ELSING: Mr. Willard, in your preface you 9 mentioned that you are dealing only with lines of 10 connect to the utilities that you're representing and 11 that you're not doing anything in terms of wind 12 facilities. Do you understand that correctly?</p> <p>13 MR. WILLARD: Mr. Chairman. The, um -- we 14 specifically saw it in section one of the bill as part 15 of the two steps to this process is that the action 16 word there is connecting to the existing transmission 17 networks.</p> <p>18 So connecting now would be our facilities, but it 19 also depends if we extend the incumbent transmission 20 owner status to everybody else, then it would be them 21 as well, in addition to ourselves.</p> <p>22 But then we put a qualifier on the last -- the 23 last sentence of section one says, other than aligned 24 solely for connecting a generation facility to 25 facilities owned by a utility. Because it's not our</p>
<p style="text-align: right;">Page 35</p> <p>1 MR. JOHNSON: I don't know if this is a relevant 2 question or not, but I just don't know. Mr. Nelson, 3 how much of your -- for the members that you serve, 4 how much of your existing power comes from the 5 investor-owned utilities?</p> <p>6 MR. L. NELSON: Um, Mr. Chairman. Um, I -- I can 7 -- I can tell you what I know and what I -- what I 8 don't know. Um, I can -- I can tell you that, um, most 9 of our cities are hooked up to one of -- of two 10 providers that provide power to them. And that ends up 11 being Heartland Consumers Power District and it also 12 ends up being Missouri River Energy Systems.</p> <p>13 Heartland, by example, uh, has a wind farm out by 14 Wessington Springs and that provides power to their 15 system and beyond that, I don't know where they buy 16 their power from.</p> <p>17 I can tell you that Missouri River Energy 18 Systems, um, and Heartland were both, um, part of the 19 Big Stone 2 project at one point in time, recognizing 20 a need for them to be involved in generation and also 21 in transmission, and then of course, in distribution, 22 through its member cities.</p> <p>23 Missouri River Energy Systems, uh, has a -- a -- 24 a plant, and I think it's called Laramie Plant, 25 somewhere out in -- in Wyoming where, uh, they're a</p>	<p style="text-align: right;">Page 37</p> <p>1 desire to get into the feeder lines and the line 2 between that. That's not our desire. So, I think the 3 answer to your question, sir is, yes.</p> <p>4 MR. ELSING: Mr. Chairman. Uh, and -- and 5 frankly, I rephrase this question because I -- I've, 6 um, I failed my course in electrical engineering, then 7 all the other engineers had to take my pass; the 8 second time we just memorized formulas. [Laughing]</p> <p>9 The, uh, the question is if you have a -- if you 10 have a -- a, uh, wind facility, somewhere, and they 11 have to connect to somewhere to get their power out 12 and you don't -- I -- I don't understand. Weren't you 13 automatically, if they connect somewhere, they've got 14 to connect to you, to -- to one of your people, so 15 they -- they really will be included. Am -- am I 16 correct?</p> <p>17 MR. WILLARD: Mr. Chairman. Um, that may be the 18 case. Um, we came -- when we came with the bill, 19 probably our primary concern is that we didn't want to 20 do anything to interrupt the planning process that 21 comes along with wind.</p> <p>22 And so we thought by extending ROFR to those 23 lines from the wind projects to our facilities, um, it 24 is going to just create some uncertainty and make 25 everybody a little bit nervous and that wasn't our</p>

<p style="text-align: right;">Page 38</p> <p>1 intention in some of those cases, but it's analysis 2 that the companies will make and they'll do that with 3 the participation of the PUC.</p> <p>4 And you'll do that participation with the fans. 5 If you, um, if you want to get your transmission, if 6 you want to work through the feds and get your 7 transmission allowance and you have the ability to do 8 some cost recovery in that direction. If you want to 9 do it with your rate payers, then we deal with the 10 public utilities commission.</p> <p>11 So there may be some circumstances where we build 12 that line. We wanted to specifically make sure that 13 we're not trying to extend ROFR to those lines 14 because, uh, we're sensitive to everybody about what's 15 going on with wind and transmission out here.</p> <p>16 So in some of those cases, we may build a line, 17 in some of those, we may not. We're going to make the 18 best decision we can for the rate payers. Um, but in 19 no cases, are we trying to extend ROFR to include 20 those lines.</p> <p>21 MR. ELSING: Mr. Chairman.</p> <p>22 MR. CHAIRMAN: Senator.</p> <p>23 MR. ELSING: As I understand it, there are -- one 24 of the big problems we have with the -- we -- we don't 25 have a problem with the existence of wind, we have a</p>	<p style="text-align: right;">Page 40</p> <p>1 confusing issue and I've made it certainly more 2 confusing I'm sure.</p> <p>3 MR. WILLARD: Mr. Chairman, I'll take a crack at 4 that.</p> <p>5 MR. CHAIRMAN: Please clarify.</p> <p>6 MR. WILLARD: Um, probably the -- the single 7 biggest issue with transmission is cost allocation and 8 who pays for it? I mean, if -- if it can boil to 9 a silver bullet, then that particular transmission is 10 cost allocation.</p> <p>11 One of the magic to, um, MISO is that if you're 12 trying to recover your costs from a transmission 13 project, they've created what they call a multi value 14 project process, which means you have a set of 15 criteria, everything from enhanced wind to increased 16 reliability along the laundry list of criteria.</p> <p>17 If you satisfy more than one of that criteria and 18 essentially achieve a critical mass, then you achieve 19 multi value status. And now that cost allocation 20 formula and that process through MISO has been 21 approved by the feds, they've signed off on that cost 22 allocation.</p> <p>23 So we've been wrestling with cost allocation for 24 a long time and an awful lot of it is done for the 25 purpose of building out transmission so that we can</p>
<p style="text-align: right;">Page 39</p> <p>1 problem with what to do with it, so that if -- if 2 there are a series of -- of wind farms, and as I 3 understand, that people are talking about having some 4 new enterprise come in that will then build the 5 connections to all of them.</p> <p>6 So now you have this large enterprise from 7 somewhere else that comes in that, uh, wants to 8 connect, but they're going to end up ending -- that 9 will end up having to connect to a -- a different 10 number of locals.</p> <p>11 So which -- it strikes me that this may be a 12 rather complicated process I'm visualizing and maybe 13 you can correct me. That's going to get a really 14 question out of this.</p> <p>15 Uh, now one of the members, Black Hills, uh, 16 Corporation, which is outstanding and does everything 17 right, uh, then says, yes, we want to participate, but 18 firm X, uh, over, uh, East River, uh, says, no, we 19 don't want to participate or yes, we want to 20 participate too. But then, uh, company Y doesn't -- 21 elects not to and they're the only way that, uh, this 22 wind farm can get on the line.</p> <p>23 They don't participate, but the -- but the 24 project then dies for the -- the people that would've 25 been on Y. This strikes -- strikes me as a rather</p>	<p style="text-align: right;">Page 41</p> <p>1 take advantage of some wind capabilities. MISO came at 2 that with their multi value process, uh, FERC has 3 signed off on it. There's now 17 projects in the MISO 4 queue.</p> <p>5 Um, the three that -- that Senator Johnson -- I 6 made reference to when he asked about, uh, Big Stone 7 to Brookings, Brookings to Southeastern Twin Cities, 8 Ellendale to Big Stone are a great -- have all 9 achieved multi value status, which one of those 10 things, of that criteria, is it's going to give us an 11 opportunity to take advantage of the wind that's out 12 there.</p> <p>13 Um, we did not want to interject ourselves in the 14 middle of an issue that was not our own. Um, so we did 15 not try to take on the wind project to the facility. 16 If they're connecting, then we'll be having the 17 dialogue, but it wasn't our desire to extend ROFR into 18 that because we didn't want to do anything to make 19 that process more disruptive than it is.</p> <p>20 MR. ELSING: One last question. What happens to 21 the local utilities if we do not pass this bill?</p> <p>22 MR. WILLARD: Um, Mr. Chairman.</p> <p>23 MR. CHAIRMAN: Mn-hmm.</p> <p>24 MR. WILLARD: Um, there's a couple of things. If 25 we don't pass this bill, then essentially if, um, if</p>

<p style="text-align: right;">Page 42</p> <p>1 the feds decide not to take away ROFR, then for those 2 guys that are participants in MISO right now, uh, 3 nothing really changes.</p> <p>4 If we don't pass this bill, and the feds take 5 ROFR away, then what happens is you've thrown what the 6 engineers call upheaval. You've thrown a giant wrench 7 into the planning process because it means that -- 8 that multi value process, it means that any 9 independent, any ITO, any transmission project you can 10 push yourself to the front of the line, you can throw 11 yourself into the middle of the line and you've taken 12 away the ability for the engineer to sit down in a 13 fairly transparent process that is definable. That's 14 got closure and we've just disrupted that process.</p> <p>15 It, um, it's for that reason that we came and 16 it's, the engineers have been all over the bill 17 because, um, they have high value, uh, to that 18 planning process. It means that value goes away.</p> <p>19 The other thing, sir, is that we were careful to 20 extend ROFR to all of the incumbent utilities. So for 21 Black Hills Corp, um, they would gain a contractual 22 rate that they don't have today because they're not a 23 MISO member.</p> <p>24 Four of the six independent members are, um, a 25 bunch of the others are, uh, the co-ops -- there's an</p>	<p style="text-align: right;">Page 44</p> <p>1 we give our incumbent utilities the ability to build 2 these transmission lines, we see that as a benefit to 3 the rate payers in South Dakota, as opposed to them 4 paying a tariff to use a transmission line that's 5 owned by somebody outside of this state and so that 6 money is leaving as opposed to staying with the 7 incumbent utilities here. And so we see this as a 8 benefit to the rate payers in South Dakota.</p> <p>9 MR. CHAIRMAN: Additional questions? Hearing 10 none.</p> <p>11 Then I will close to questions, open up for 12 committee discussion and or action. I -- I will remind 13 the committee that we do have a -- amendment -- 14 amendment 132 FB, which has been, uh, moved and 15 seconded. And we are in discussion of the -- we are in 16 discussion of that motion to amend.</p> <p>17 Senator Rave.</p> <p>18 MR. RAVE: I think just briefly I would encourage 19 the committee to support that amendment and, um, at 20 the very least let's get that on and continue the 21 discussion from there was to move the bill forward.</p> <p>22 MR. CHAIRMAN: There's no other discussion on 23 amendment FB?</p> <p>24 MR. NYGAARD: I -- I do have --.</p> <p>25 MR. CHAIRMAN: Senator, uh, Nygaard.</p>
<p style="text-align: right;">Page 43</p> <p>1 awful -- it's a long list of MISO members, but at this 2 time, Black Hills is not because they're essentially 3 out there by themselves. So they do not belong to a 4 regional transmission organization.</p> <p>5 So this would extend to right -- to the Black 6 Hills Corp that they don't have today, that the other 7 members do. So if you pass the bill, they gain it. If 8 we don't, they don't.</p> <p>9 MR. CHAIRMAN: Thank you, Mr. Willard. Additional 10 questions? Questions of the committee? Senator Buhl.</p> <p>11 MS. BUHL: I actually have a question for, uh, 12 Commissioner Nelson. Uh, if I may, Mr. Chair. Um, I'm 13 under the impression that, uh, under the current 14 system for, uh, the non-incumbent utilities, um, they 15 pay a, uh, wheeling tax to be able to use transmission 16 lines through subs -- or through lines that they don't 17 own. Is that accurate?</p> <p>18 MR. L. NELSON: That's my understanding, yes.</p> <p>19 MS. BUHL: Um, do you have any concerns about, 20 uh, if we pass this bill and retain the right of first 21 refusal, that, that would be, um, continue to pass on 22 to rate payers and that they would pay increased, uh, 23 utility rates?</p> <p>24 MR. L. NELSON: No. Actually, I think it's the -- 25 the opposite of that the way we're looking at that. If</p>	<p style="text-align: right;">Page 45</p> <p>1 MR. NYGAARD: Um, would make a substitute motion, 2 even though I seconded the prior motion. But to deal 3 with this matter of 132 JA, I would like to move that 4 as a substitute motion to amend with 132 JA.</p> <p>5 MR. CHAIRMAN: Is there a second?</p> <p>6 MS. BUHL: Second.</p> <p>7 MR. CHAIRMAN: Second, uh, move by Nygaard, 8 seconded by Buhl, substitute motion amendment 132 JA. 9 Discussion on the motion Senator Nygaard.</p> <p>10 MR. NYGAARD: Thank you, Mr. Chairman. Well, why 11 would we want this amendment to, without the ability 12 to participate in joint ownership, the incumbent 13 owners have a huge advantage.</p> <p>14 They can shape any and all transmission projects 15 to their own needs and use ROFR to discourage others 16 from processing -- proposing transmission projects 17 that may be cost effective. And without the ability 18 for other utilities to invest, a single entity could 19 monopolize the transmission rate or the guaranteed 20 rate of return benefits.</p> <p>21 And with the ability to invest, customers would 22 have their rates better protected as their utility has 23 a way to manage financial risk of transmission rate 24 increases that are usually associated with new line 25 construction. So with that, that's why I wanted to,</p>

<p>1 uh, seek this amendment.</p> <p>2 MR. CHAIRMAN: Further discussion on the</p> <p>3 substitute motion to amend, uh, 132 JA. Further</p> <p>4 discussion? Senator Rave?</p> <p>5 MR. RAVE: [Inaudible].</p> <p>6 MR. CHAIRMAN: Senator Lederman?</p> <p>7 MR. LEDERMAN: Thank you, Mr. Chair. I -- I see</p> <p>8 where, uh, the good Senator's coming from, but I --</p> <p>9 and I agree with one portion of the amendment. I think</p> <p>10 the last one holds the feet to the fire for the</p> <p>11 companies if they're going to -- if they're going to</p> <p>12 utilize ROFR that they're actually going to come</p> <p>13 through with the project.</p> <p>14 I understand that. And I think that, that makes</p> <p>15 sense, but I think we also have a right to honor the,</p> <p>16 uh, the utility companies that have made these</p> <p>17 investments that have the -- the lines put in and they</p> <p>18 do have a certain right to their -- to the use of</p> <p>19 their lines.</p> <p>20 So I'm going to ask you to oppose the amendment,</p> <p>21 not because I oppose every part of the amendment, but</p> <p>22 I do think that there's a better -- better route. Um,</p> <p>23 so I -- I would ask the, the -- the committee to</p> <p>24 oppose this amendment. Thank you.</p> <p>25 MR. CHAIRMAN: Further discussion on substitute</p>	<p>Page 46</p> <p>1 say aye. [All saying aye]. Those opposed nay. Motion</p> <p>2 carried. 132 is amended. Discussion on Senate Bill 132</p> <p>3 as amended.</p> <p>4 Senator Rave.</p> <p>5 MR. RAVE: Thank you, Mr. Chair. I move to pass</p> <p>6 Senate Bill 132 as amended.</p> <p>7 MR. JOHNSON: [Inaudible]</p> <p>8 MR. CHAIRMAN: Motion by Rave, seconded by</p> <p>9 Johnson, 132 as amended. Discussion on the motion.</p> <p>10 MR. ELSING: Thank you Mr. Chair. Well, I think</p> <p>11 ladies and gentlemen, just remember now as amending</p> <p>12 this bill, it is intended to benefit all South Dakota</p> <p>13 electric consumers. Um, it puts the PUC in charge of</p> <p>14 the oversight. It doesn't change the way we're doing</p> <p>15 business today. I am concerned that FERC, uh, could,</p> <p>16 uh, very easily change the ruling and, uh, eliminate</p> <p>17 ROFR.</p> <p>18 And I think that would, um, present some great</p> <p>19 hurdles to transmission, uh, lines in the state. So</p> <p>20 with that, I would, uh, ask you to support the bill as</p> <p>21 amended and send it to the floor. Thank you.</p> <p>22 MR. CHAIRMAN: Thank you Senator. Further</p> <p>23 discussion, 132 as amended. Hearing none. Then, uh,</p> <p>24 the secretary will call the roll.</p> <p>25 Those in favor signify by saying aye, those</p>
<p>1 motion to amend 132 JA.</p> <p>2 MR. ELSING: Mr. Chairman.</p> <p>3 MR. CHAIRMAN: Senator Elsing.</p> <p>4 MR. ELSING: I too would oppose the amendment for</p> <p>5 two reasons. Uncomfortable, very uncomfortable with</p> <p>6 commercially reasonable terms and conditions. Because</p> <p>7 the conditions could be the real key there. And in</p> <p>8 addition, the commission may not approve the electric</p> <p>9 transmission line unless incumbent transmission owner</p> <p>10 receives a written release from all other incumbent</p> <p>11 electric -- it doesn't -- has no time for that</p> <p>12 release.</p> <p>13 And all that someone would have to do is just</p> <p>14 fold it up, put it in their basket and the whole bill</p> <p>15 then is meaningless. Thank you.</p> <p>16 MR. CHAIRMAN: Thank you, Senator. Further</p> <p>17 discussion on the Nygaard motion to amend, substitute</p> <p>18 motion 132 JA. Hearing none. Then this is a voice</p> <p>19 vote. All in favor of the motion, say aye.</p> <p>20 MR. BUHL: Aye.</p> <p>21 MR. CHAIRMAN: Those opposed nay. [Many people</p> <p>22 saying nay]. Motion failed. We are back to the</p> <p>23 original motion to amend 132 FB. Discussion on the</p> <p>24 motion. Hearing none.</p> <p>25 Another voice vote. All those in favor of 132 FB</p>	<p>Page 47</p> <p>1 opposed nay. The secretary will call the roll.</p> <p>2 FEMR. CHAIRMAN: Elsing.</p> <p>3 MR. ELSING: Aye.</p> <p>4 FEMR. CHAIRMAN: Buhl.</p> <p>5 BUHL: No.</p> <p>6 FEMR. CHAIRMAN: [Inaudible].</p> <p>7 MALE 3: Aye.</p> <p>8 FEMR. CHAIRMAN: Lederman.</p> <p>9 MR. LEDERMAN: Aye.</p> <p>10 FEMR. CHAIRMAN: Rave.</p> <p>11 MR. RAVE: Aye.</p> <p>12 FEMR. CHAIRMAN: Nygaard.</p> <p>13 MR. NYGAARD: Aye.</p> <p>14 FEMR. CHAIRMAN: Nelson.</p> <p>15 MR. L. NELSON: Aye.</p> <p>16 MR. CHAIRMAN: 132 as amended receiving an</p> <p>17 affirmative vote of the member's elect is sent to the</p> <p>18 floor of the due pass motion. Thank you everyone.</p> <p>19 MR. ELSING: Mr. Chairman.</p> <p>20 MR. CHAIRMAN: Senator Elsing.</p> <p>21 MR. ELSING: Appointing personal privilege.</p> <p>22 MR. CHAIRMAN: Granted.</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 50</p> <p>1 2 3 I, Chris Naaden, a transcriber, hereby declare 4 under penalty of perjury that to the best of my 5 ability the above 50 pages contain a full, true and 6 correct transcription of the tape-recording that I 7 received regarding the event listed on the caption on 8 page 1. 9 10 I further declare that I have no interest in the 11 event of the action. 12 13 August 8, 2022 14 Chris Naaden 15 16  17 18 19 (South Dakota Legislative Session, Senate Bill 132, 20 February 8, 2011) 21 22 23 24 25</p>	
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<p style="text-align: right;">Page 2</p> <p>1 MR. SOLUM: The next item on our agenda is Senate 2 Bill 132. Senate Bill 132 is an act to provide the 3 right of first refusal to construct and own electric 4 transmission lines to incumbent electric utilities. I 5 will now hear proponent testimony to Senate Bill 132. 6 Representative Willadsen. Good morning, again.</p> <p>7 MR. WILLADSEN: Thank you, Mr. Chair. Good 8 morning again. Representative Mark Willadsen from 9 Minnehaha and Lincoln counties. Mr. Chair and 10 Committee, this morning I bring to you Senate Bill 132 11 and urge your favorable support. Consent wouldn't hurt 12 either. [Laughter]</p> <p>13 Electric utilities that are members of the 14 Midwest Independent Transmission System Operator, 15 you've probably heard it most often referred to as 16 MISO, and that's what we'll use in the -- in the -- 17 in the future because that's a long title. But the 18 members of MISO presently have a first right to 19 construct and operate new transmission lines.</p> <p>20 These are the big, you know, the electric 21 transmission lines that carry electricity all across 22 our state. And they connect, you know, to the grid, so 23 to speak. Recent action by the Federal Energy 24 Regulatory Commission, or FERC, F-E-R-C, threatens to 25 eliminate this first right. Now, Senate Bill 132 would</p>	<p style="text-align: right;">Page 4</p> <p>1 is Steve Willard. I'm the Executive Director and 2 registered lobbyist for the investor-owned electric 3 utility companies. And I think Representative 4 Willadsen did a nice job of kind of putting the thing 5 into context.</p> <p>6 I'll give you a little bit more details and I'll 7 use again a couple of those acronyms just because 8 they're a mouthful. And I also probably the single 9 biggest challenge as I was sitting there is just we're 10 looking for kind of Goldilocks testimony because this 11 thing can either be really short or really long. So 12 I'll do the best I can to be just right.</p> <p>13 The -- I'll spend most of my time talking about 14 the Bill itself and tell you exactly how we came to 15 this process. So you all know because you're in the 16 business that every bill's got a story, and every 17 bill's got a back story. And sometimes, by the time 18 you get to the second house or the second floor, you 19 don't see the whole story. This is one of those cases.</p> <p>20 There was a time when we were time stamping this 21 particular bill, because the amendments and the 22 discussion was changing so fast that literally we were 23 putting the time on the bill. Well, we spent the 24 Senate in this last month getting to the -- the bill 25 that you have, this amended form in front of you.</p>
<p style="text-align: right;">Page 3</p> <p>1 preserve that first right here in South Dakota.</p> <p>2 Now the customers and shareholders of the 3 transmission, owning utility companies in South 4 Dakota, would be adversely affected by FERC's 5 elimination of this first right. FERC's action could 6 require these public utilities and their customers to 7 bear the transmission line development costs of out- 8 of-state transmission line developers.</p> <p>9 The developers, however, don't have the 10 obligation, like our local public utilities, to serve 11 the public reliably and economically. Now, our public 12 utilities' original decisions to join MISO were 13 premised on the first right to construct and operate 14 these transmission lines and their customers and their 15 shareholders' share in the benefits of this right.</p> <p>16 Passing Senate Bill 132 will ensure the first 17 right continues to exist in South Dakota. I urge your 18 support of Senate Bill 132 and I'll leave some of the 19 technical details to the proponents that follow me. 20 Thank you, Mr. Chair.</p> <p>21 MR. SOLUM: Thank you, Representative. Any other 22 proponents to Senate Bill 132?</p> <p>23 MR. WILLARD: Good morning, Mr. Chairman.</p> <p>24 MR. SOLUM: Good morning, sir.</p> <p>25 MR. WILLARD: Members of the committee, my name</p>	<p style="text-align: right;">Page 5</p> <p>1 And at this point, I don't think you're going to 2 see any opponents. I think we're all very satisfied 3 with it. Let me tell you why it was complicated. 4 Section one is easy. There's two things that I would 5 direct your attention to, line six and line seven. 6 It's essentially confined to the 115 KV enlarger, 7 which means the big lines. We're not talking about the 8 small lines.</p> <p>9 We're talking about the transmission lines. You 10 also see that predication there on the end of line 11 six, other than a line solely for connecting an 12 electric generation facility to facilities owned by an 13 electric utility. What that means is is there was no 14 desire on the part of the IOUs who had brought the bill 15 or the others to do anything to encumber any of the 16 transmission that's going on with wind.</p> <p>17 So, the magic to that line is that other than a 18 line solely for collecting a facility -- generation 19 facility to facilities owned by a means that we tried 20 to specifically step away from those transmission 21 lines that you would build in between a wind farm and 22 the facilities. Section two essentially means 23 everybody.</p> <p>24 The short version of all of that section is that, 25 we came in with the intention of, including the IOUs,</p>

<p style="text-align: right;">Page 6</p> <p>1 we included the cooperatives, we included Missouri 2 River Energy Services, excuse me, Heartland and the 3 municipalities. So it's not a right that we sought to 4 extend for ourselves. It's one that we sought to 5 extend for everybody. The action serves in section 6 three.</p> <p>7 And probably the biggest challenge for us in 8 section three was how to manage each other. Because 9 transmission is -- is a big deal and it's expensive 10 and it's regional. And it far transcends state lines, 11 and it far transcends service boundaries and service 12 territories. And so we had to spend a lot of time 13 trying to figure out how to manage, how to handle 14 transmission and construction of these rights amongst 15 each other, not only to protect ourselves from each 16 other, but to define them.</p> <p>17 So the magic in section three, line two says, 18 electric transmission line that connects to 19 facilities. The reason it says facilities is because 20 facilities are designed in statute to include 21 substations and the electric lines. The lion's share 22 of these times, the facilities means a substation. 23 Sometimes it's going to be an electric line. But 24 essentially ROFR in this case would extend to those 25 cases when you're attaching into our facilities.</p>	<p style="text-align: right;">Page 8</p> <p>1 specific to MISO. We wanted to make sure that we did 2 it for all of the federally registered authorities. 3 And then we spent a lot of time making sure that we 4 weren't just trying to disrupt the process, that our 5 intentions were pure and that we actually acted on 6 what we were doing.</p> <p>7 And we weren't trying to exercise a veto, that we 8 essentially going to actually accomplish what we would 9 intend to accomplish with these transmission lines. So 10 line five says that if we're going to do it, we're 11 going to do it within 90 days of approval. So once 12 FERC or MISO approves a transmission project, then 13 essentially, we have 90 days to act.</p> <p>14 If we don't act in 90 days, we surrender the 15 right, which we state that specifically in line seven. 16 And then one of the amendments that we accepted, and 17 it kind of makes sense, is in line eight, nine, ten. 18 It says that within 18 months after the notice that we 19 shall application for a permit and that's essentially 20 a construction permit.</p> <p>21 So the point being, is that if a transmission 22 line comes from outside the MISO process, and they 23 want to build independent, then we've got 90 days to 24 exercise ROFR once the plan has been approved. And 25 once we exercise the 90 days, then we've got 18 months</p>
<p style="text-align: right;">Page 7</p> <p>1 So if you're going by our facilities, you're not 2 connecting to our facilities, you can see it from the 3 distance, but it's not connected to facilities, then 4 frankly, we don't care and more power to them, no pun 5 intended. It just means that if you're connecting to 6 our facilities, then essentially, we have the right to 7 exercise ROFR.</p> <p>8 You go onto the second page, and you get into 9 line three, and it says if an electric transmission 10 line has been approved for construction of federally 11 registered planning authority transmission plan. The 12 reason that's generic is because MISO, that 13 Representative Willadsen made reference to, 14 essentially runs from Manitoba, North Dakota down the 15 south side of South Dakota, down to Missouri and about 16 over into Michigan.</p> <p>17 So it's a regional footprint. MISO is a 18 federally registered planning authority, but at the 19 same time, Black Hills Corp doesn't participate. 20 They're kind of an outpost. They're out there by 21 themselves. So if Black Hills wanted to do something 22 similar to this, then, and they want to get cost 23 recovery for transmission, then they're going to make 24 application directly to FERC.</p> <p>25 So we were generic enough that we weren't</p>	<p style="text-align: right;">Page 9</p> <p>1 to file the permit.</p> <p>2 The magic to ROFR, and I'll transition off of the 3 federal mandate, is that the right of first refusal is 4 not unique to MISO. There's six of these regional 5 transmission organizations, two of them, three of them 6 are independent state, individual ones. New York State 7 has their own, so it's not really as topical.</p> <p>8 The two bigs, the two big regionals have ROFR in 9 them and they do that because, we learned a lot about 10 this, was kind of transmission by fire hose from the 11 engineers. Transmission lines are so expensive and 12 they cross all the state lines, so the planning 13 process is beyond elaborate, because you sit down with 14 all the MISO stakeholders.</p> <p>15 Anything that they decide goes back to the 16 respective Public Utilities Commission and they all 17 try to come to some resolution because they're 18 expensive and because they cross state lines, and you 19 need to. Well, if -- with ROFR in the MISO statutes, 20 ROFR in the Southwest Power Pool statute, so it's not 21 an uncommon phenomenon, when FERC announced its 22 intentions to look at the rules governing these 23 regional transmission organizations, they were 24 deferential to the states.</p> <p>25 They recognized the state's role in this process</p>

<p style="text-align: right;">Page 10</p> <p>1 and citing, and the like, and they said that if you've 2 got something in statute that gives a nod to ROFR, 3 then we'll respect that. So the challenge for us was 4 to take a contractual right than we have today, those 5 members of MISOs that we currently have, and 6 translate that into statute. And that's exactly what 7 the bill does.</p> <p>8 It takes that contractual right that we enjoy at 9 this time, and the reason that matters is because 10 MISO has come to a planning process. They call it 11 multi-value projects, multi-value planning. We've got 12 17 projects lined up for construction that are 13 transmission related. In that MISO footprint, three 14 of them are in South Dakota and MISO's literally got 15 its arms around this construction process.</p> <p>16 And they're excited about the stuff that's 17 coming. We're excited about the stuff on the books. 18 And if we throw this -- we throw ROFR essentially out 19 the window, then it means that that process is 20 disrupted to the point that it's counterproductive. 21 And so what we're asking you to do is to support the 22 bill this morning. Help us take what's a contractual 23 right that we enjoy today, extend it into statute.</p> <p>24 And I think really there's a little bit of here 25 something for everybody. For those of you that are</p>	<p style="text-align: right;">Page 12</p> <p>1 MR. SOLUM: Commissioner. 2 MR. NELSON: Speaking on behalf of the Public 3 Utilities Commission, we do support this bill and we 4 have been actively involved in helping craft the 5 language as it evolved over the -- the early days of 6 this legislative session. Briefly, I want to just give 7 you the four reasons that we are supporting this.</p> <p>8 First of all, the notice that FERC put out seems 9 to indicate that they will defer to state law on this 10 policy of ROFR. And whenever the feds are inclined to 11 give the states the ability to exercise authority, we 12 ought to take that and that doesn't happen as 13 frequently as it should anymore. And so, in this case, 14 I believe we ought to take that.</p> <p>15 Secondly, we don't see this as inhibiting 16 transmission development in anyway. In fact, as you 17 look at the language of the bill, there are two 18 different locations where there's some specific 19 deadlines in place and so it's meant to move that 20 process along.</p> <p>21 Thirdly, we believe that if new transmission is 22 to be built, it is best built by our incumbent 23 utilities in South Dakota who we think are best 24 positioned to service that line and take care of it.</p> <p>25 And then fourthly, we believe that if new</p>
<p style="text-align: right;">Page 11</p> <p>1 little frustrated with the feds, then it's an 2 opportunity because they've essentially said that if 3 it's in state law, then we'll abide by it. Then we'll 4 have an opportunity to do just that. We'll be able 5 take a federal process and make it specific to the 6 state.</p> <p>7 For those of you that are supporters of wind, 8 what that will do is exceed to the process that we've 9 got at the time and say that go forward with the 17 10 multi-value projects. And that's a powerful thing. 11 Let's not disrupt that.</p> <p>12 And then probably last, for those of you that got 13 confidence in the Public Utilities Commission of which 14 I'm one, what it does is give a nod to the PUC, 15 because in the end, they're the ones that make sure we 16 take care of the customers.</p> <p>17 So with that, Mr. Chairman, I'll be available for 18 questions. I've got lot of technical expertise in the 19 back, if you've got technical questions. And I would 20 sure urge your favorable support this morning for the 21 bill and thanks for the time.</p> <p>22 MR. SOLUM: Thank you, Mr. Willard. Are there any 23 other proponents to Senate Bill 132?</p> <p>24 MR. NELSON: Mr. Chairman, members of the 25 committee, Chris Nelson.</p>	<p style="text-align: right;">Page 13</p> <p>1 transmission is built by our incumbent utilities that 2 is most advantageous for the rate payers and consumers 3 in South Dakota as opposed to having that transmission 4 built perhaps by somebody outside of this state.</p> <p>5 With that, Mr. Chairman, the PUC stands in 6 support of this bill and be happy to answer questions 7 when appropriate. Thank you.</p> <p>8 MR. SOLUM: Thank you, Commissioner. Appreciate 9 your comments. Are there any other proponents to 10 Senate Bill 132? Any other proponents? Seeing none, 11 are there any opponents to Senate Bill 132, any 12 opponents? Seeing no opponents, at this time, I would 13 open it up for committee questions. The testimony was 14 that good?</p> <p>15 MS. CONZET: [inaudible]</p> <p>16 MR. SOLUM: If you would like, Representative 17 Conzet.</p> <p>18 MS. CONZET: I would like to ask a question. I'm 19 going to put this out for anybody that's testified in 20 favor of this. Am I understanding this correctly that 21 this piece of legislation would allow incumbent 22 electric utilities the option to build transmission 23 before merchant companies, which are not regulated by 24 the PUC?</p> <p>25 MR. SOLUM: Mr. Berle is kind of consulting in</p>

<p style="text-align: right;">Page 14</p> <p>1 the back.</p> <p>2 MS. CONZET: Okay. That's fine.</p> <p>3 MR. WILLARD: Representative, Steve Willard again</p> <p>4 with the electric utility companies.</p> <p>5 MR. SOLUM: Please.</p> <p>6 MR. WILLARD: Mr. Chairman, with your permission,</p> <p>7 thanks very much for the question. It's a good</p> <p>8 question. Not necessarily before. What the bill does</p> <p>9 in the end, the trigger, if it will, is once you've</p> <p>10 received FERC approval. So the ROFR, you would be able</p> <p>11 to extend. So notwithstanding whomever presented the</p> <p>12 construction plan, whomever brought it forth, whether</p> <p>13 it be a merchant or anyone else, you know, ourselves</p> <p>14 or the like, essentially once that trigger is</p> <p>15 initiated, then the incumbent utility, whose facility</p> <p>16 it connects into, would have the ability to extend</p> <p>17 ROFR. Okay.</p> <p>18 MR. SOLUM: Any other questions? Seeing no</p> <p>19 further questions, I will now close the public hearing</p> <p>20 portion on Senate Bill 132 and open it up for</p> <p>21 committee discussion.</p> <p>22 MS. CONZET: Mr. Chair?</p> <p>23 MR. SOLUM: Representative Conzet.</p> <p>24 MS. CONZET: Thank you, Mr. Chair. I move do</p> <p>25 pass.</p>	<p style="text-align: right;">Page 16</p> <p>1 have this proverbial deer in the headlight stare that</p> <p>2 sometimes we often get.</p> <p>3 Well, with that, the motion is do pass on Senate</p> <p>4 Bill 132. Those in favor will say aye. Those opposed</p> <p>5 nay. The secretary will call the roll.</p> <p>6 CLERK: Representative Deelstra.</p> <p>7 MR. DEELSTRA: Aye.</p> <p>8 CLERK: Fargen.</p> <p>9 MR. FARGEN: Aye.</p> <p>10 CLERK: Greenfield.</p> <p>11 MR. GREENFIELD: Aye.</p> <p>12 CLERK: Hawley.</p> <p>13 MR. HAWLEY: Aye.</p> <p>14 CLERK: Hubbel.</p> <p>15 MR. HUBBEL: Aye.</p> <p>16 CLERK: Jensen. Jones.</p> <p>17 MR. JONES: Aye.</p> <p>18 CLERK: Kirschman.</p> <p>19 MR. KIRSCHMAN: Aye.</p> <p>20 CLERK: Miller. Novstrup.</p> <p>21 MR. NOVSTRUP: Aye.</p> <p>22 CLERK: Willadsen.</p> <p>23 MR. WILLADSEN: Aye.</p> <p>24 CLERK: Conzet.</p> <p>25 MS. CONZET: Aye.</p>
<p style="text-align: right;">Page 15</p> <p>1 MR. DEELSTRA: Second.</p> <p>2 MR. SOLUM: The motion do pass on Senate Bill 132</p> <p>3 by Representative Conzet, seconded by Representative</p> <p>4 Deelstra. Any comments, Representative?</p> <p>5 MS. CONZET: No, thank you.</p> <p>6 MR. HAWLEY: Mr. Chair?</p> <p>7 MR. SOLUM: Yes, Representative Hawley?</p> <p>8 MR. HAWLEY: I do need to make a quick comment. I</p> <p>9 think it's a good bill and I appreciate simplifying</p> <p>10 it. I was beginning to miss the military and it's</p> <p>11 acronyms and I'm real excited that the utilities are</p> <p>12 owned now between FERC and ROFR and MISO. I'm going</p> <p>13 to feel right at home here.</p> <p>14 MR. SOLUM: Thank you, Representative Hawley. You</p> <p>15 miss the one and that was an IOU. And that was in</p> <p>16 there as well. Well, hopefully, you know, this</p> <p>17 Committee, I certainly let me add, I certainly</p> <p>18 appreciate your indulgence. We did take on the extra</p> <p>19 little title in commerce and we added energy to that.</p> <p>20 And so that essentially exposes all of us to a</p> <p>21 whole new world of as Representative Hawley suggested,</p> <p>22 a whole new world of acronyms and what they stand for.</p> <p>23 I teach the stuff so I'm okay with it. But hopefully,</p> <p>24 as we go through this, if there are any questions,</p> <p>25 please, you know, don't be afraid to ask rather than</p>	<p style="text-align: right;">Page 17</p> <p>1 CLERK: Solum:</p> <p>2 MR. SOLUM: Aye.</p> <p>3 CLERK: We have 11 ayes and two not voting.</p> <p>4 MR. SOLUM: Senate Bill 132 having received a</p> <p>5 majority of the vote from the members present passes.</p> <p>6 MR. DEELSTRA: Mr. Chairman?</p> <p>7 MR. SOLUM: Representative Deelstra.</p> <p>8 MR. DEELSTRA: Move consent.</p> <p>9 MR. SOLUM: Representative Deelstra moves</p> <p>10 consent.</p> <p>11 MR. KIRSCHMAN: Second.</p> <p>12 MR. SOLUM: Seconded by Representative Kirschman.</p> <p>13 Those in favor will say aye.</p> <p>14 MULTIPLE: Aye.</p> <p>15 MR. SOLUM: Opposed. Senate Bill 132 is now on</p> <p>16 our consent calendar. Thank you very much.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 18</p> <p>1 2 3 I, Chris Naaden, a transcriber, hereby declare 4 under penalty of perjury that to the best of my 5 ability the above 18 pages contain a full, true and 6 correct transcription of the tape-recording that I 7 received regarding the event listed on the caption on 8 page 1. 9 10 I further declare that I have no interest in the 11 event of the action. 12 13 August 8, 2022 14 Chris Naaden 15 16  17 18 19 (South Dakota Legislative Session, Senate Bill 132, 20 March 2, 2011) 21 22 23 24 25</p>	
<p style="text-align: right;">Page 19</p> <p>1 HEALTH INFORMATION PRIVACY & SECURITY: CAUTIONARY NOTICE 2 Litigation Services is committed to compliance with applicable federal 3 and state laws and regulations ("Privacy Laws") governing the 4 protection and security of patient health information. Notice is 5 hereby given to all parties that transcripts of depositions and legal 6 proceedings, and transcript exhibits, may contain patient health 7 information that is protected from unauthorized access, use and 8 disclosure by Privacy Laws. Litigation Services requires that access, 9 maintenance, use, and disclosure (including but not limited to 10 electronic database maintenance and access, storage, distribution/ 11 dissemination and communication) of transcripts/exhibits containing 12 patient information be performed in compliance with Privacy Laws. 13 No transcript or exhibit containing protected patient health 14 information may be further disclosed except as permitted by Privacy 15 Laws. Litigation Services expects that all parties, parties' 16 attorneys, and their HIPAA Business Associates and Subcontractors will 17 make every reasonable effort to protect and secure patient health 18 information, and to comply with applicable Privacy Law mandates, 19 including but not limited to restrictions on access, storage, use, and 20 disclosure (sharing) of transcripts and transcript exhibits, and 21 applying "minimum necessary" standards where appropriate. It is 22 recommended that your office review its policies regarding sharing of 23 transcripts and exhibits - including access, storage, use, and 24 disclosure - for compliance with Privacy Laws. 25 © All Rights Reserved. Litigation Services (rev. 6/1/2019)</p>	

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Exhibit 2

Minnesota Legislative History

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

LSP Transmission Holdings, LLC,

Case No. 17-cv-04490 DWF/HB

Plaintiff,

vs.

AFFIDAVIT OF JULIE PEICK

Nancy Lange, Commissioner and Chair,
Minnesota Public Utilities Commission,
Dan Lipschultz, Commissioner,
Minnesota Public Utilities Commission,
Matt Schuerger, Commissioner,
Minnesota Public Utilities Commission,
John Tuma, Commissioner, Minnesota
Public Utilities Commission, Katie
Sieben, Commissioner, Minnesota Public
Utilities Commission, and Mike
Rothman, Commissioner, Minnesota
Department of Commerce, each in his or
her official capacity,

Defendants.

JULIE PEICK, being first duly sworn, states as follows:

1. I am a legal secretary with the Office of the Minnesota Attorney General, and I am a member of the legal team representing Defendants in the above-captioned matter.

2. Attached hereto as Exhibit A is a true and accurate copy of a written transcript of the March 20, 2012 hearing before the Minnesota Senate Committee on Energy, Utilities and Telecommunications, regarding Senate File 1815. I am not a professional court reporter or a trained stenographer. I created Exhibit A to serve as a

resource for the convenience of the Court. Exhibit A is accurate to the best of my abilities.

3. The audio of the above-mentioned committee hearing is public and publicly-accessible. I listened to the audio through the Minnesota Senate's audio services, available at: <http://www.senate.mn/media/index.php?ls=&type=audio>.

FURTHER YOUR AFFIANT SAYETH NOT.

s/ Julie Peick
JULIE PEICK

Subscribed and sworn to before me
this 7th day of November, 2017.

s/ Rea J. Bastian
NOTARY PUBLIC
My Commission expires January 31, 2020

EXHIBIT A TO PEICK AFFIDAVIT

SENATE AUDIO – MARCH 20, 2012
ENERGY, UTILITIES AND TELECOMMUNICATIONS COMMITTEE

00:00:00	Chair	Senate file 1815, Senator Brown's bill, the ROFR bill and Senate file 962 is a discussion only. Senator Howe's bill. Folks, I have the omnibus pension bill being voted on at about 4:15 today so I will be turning the gavel over to Senator Jungbauer and I'll have to leave early, but we need to get that bill out and going too, so with that, Senator Brown, senate file 1815.
00:00:28	David Brown	Thank you, madam chair and members who are here. I have before us Senate File 1815, the right of first refusal. In 2011, FERC issued order 1000 which did away with a federally recognized right of first refusal. The goal was to incorporate more renewable energy and independent power production into our system. Eliminating the ROFR, FERC argued, would create a robust competitive transmission line bidding process. However, order 1000 specifically stated that, if states choose to do so, they could enact their own ROFR laws, which many states already have done. There is a bigger issue here, and it's the issue of federalism versus states' rights. Absent ROFR legislation, the federal government will determine what lines get built, who will build them and to a certain extent where they will be located. State ROFR laws protect our sovereignty in determining those decisions through our state PUC. Our regulated system has served Minnesota well, and our system is reliable and our rates are fairly competitive. With that, madam chair, I would welcome testifiers.
00:01:45	Chair	Absolutely. Thank you Senator Brown. We do have the A3 Amendment, but we don't have a quorum yet, so that has been passed out. You all can take a look at it. It's a delete everything amendment, and we will have Rick Evans from Xcel and Joe Sullivan, please come up. Hello there, Mr. Rick Evans.
00:02:12	Rick Evans	Madam chair, members of the committee, I'm Rick Evans with Xcel Energy. In 2005, the Minnesota legislature, the Department of Commerce, the wind energy industry, the utilities, the Pawlenty administration all determined that Minnesota needed to start on a program of developing additional transmission in order to strengthen our grid and make sure that it was robust to deal with the challenges of the coming years. At that time, the Minnesota legislature passed legislation to assist the utilities in putting together what has come to be known as Cap X 2020 and in that time, the last seven years, the Minnesota utilities have joined together in partnerships through Cap X 2020 and succeeded in developing our transmission grid in a very quick, efficient, low cost and reliable fashion. Since that time we have built or planned 700 miles of additional transmission, and that's just the Cap X transmission. Meanwhile, some of the utilities, including Xcel Energy, have built additional transmission on top of that, in addition to the Cap X transmission. There have been hundreds of millions of dollars of

	<p>investment, and the Cap X process, and the Minnesota regulatory process that has allowed that to make that kind of progress, has been recognized around the country as a model for how transmission ought to be developed and how the grid ought to be maintained and kept robust in the face of the future demands for energy. The projects that have been completed, and as they continue to be completed, have resulted in a more robust grid, a low-cost construction and great cooperation among the utilities. Senate File 1815 effectively preserves the Minnesota regulatory model under which this progress has been made. Under current federal regulation, as Senator Brown pointed out, the utilities have enjoyed the right of first refusal—meaning that if a transmission line is proposed by a non-regulated utility or by a regulated utility, that the two utilities that are connected at either end of that line have the right to come in and say we want to build that line. That right goes away in July under the order 1000 that Senator Brown referred to. And what this bill does is restore the system that we've had over the last seven years that have resulted in such great progress. Maintaining the right of first refusal is important, and I'd like to touch on four reasons very quickly. First, the old maxim – if it ain't broke don't fix it. We have had a tremendous success here in Minnesota in developing our transmission lines and building a robust grid under the current regulatory scheme. To come in at this point and change a critical part of that regulatory scheme for reasons that are not readily apparent, given the progress we've already made in Minnesota, is only going to have unintended consequences for the future. Second, without the right of first refusal, critical decisions on transmission, as Senator Brown said, will shift from state regulation to federal regulation. Opponents of this bill like to argue that this will increase competition, but that is absolutely not true. The only thing that will happen is that somehow the selection process for who is going to build the lines will shift to a federal regulator instead of a state regulator. This is not a situation where consumers are going to get to sit down and decide, based on quality and price, which product they choose – that's competition. We don't work in that system, as you all know. We work in a regulated system. All this bill will accomplish, or all that will be accomplished if this bill fails, is that we will move that system from our state PUC regulated process to some kind of a federally regulated process. And I say some kind of federally regulated process because, in point of fact, FERC hasn't even decided how that process will work. The right of first refusal goes away – that part of state regulation is lost as of July and, at this point, FERC is still trying to figure out how the process will work. When people say, well, it will be a competitive system, there is no way they can know that because the system hasn't been designed, and it will not be competitive, it will just be a federal regulatory system. The third reason that ROFR needs to be preserved is because of the regulatory compact that we have here in Minnesota. Utilities in Minnesota have a monopoly right within their service territory—that is true, but, along with</p>
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		that comes an obligation to serve. We don't have the option of not serving customers that move into our territory. We are required to build and maintain whatever system is required to serve those customers. If utilities are not allowed to build the critical infrastructure that they need to serve their customers, how can we be held responsible for the quality of the service that we are providing to our customers? When power is lost in a community due to a downed transmission line that is owned by a non-regulated utility regulated by FERC, who in Washington, DC are you going to call to talk about when the power is going to be restored in the State of Minnesota? You could call Xcel Energy, but if we don't own the line and we don't maintain it and we didn't build it and we don't operate it, what kind of responsibility are we going to take for the fact that power is out? And, fourth, I'm just going to touch on this because I know Mr. Sullivan is going to talk about this in greater length, and that is that without the ROFR, the cost of transmission to our customers is going to increase. And I'll let Mr. Sullivan deal with that. Minnesota and its incumbent utilities have made great strides in building transmission, in building a robust grid. We've done it under a regulated scheme that has operated in the State of Minnesota for many years very successfully. To change that scheme at this point, it would be a mistake for the State of Minnesota, and we very much enthusiastically support the passage of Senate File 1815. I'd be happy to stay for questions.
00:08:20	Chair	Mr. Evans, I think we'll wait until after Mr. Sullivan, and then we'll have questions. Mr. Sullivan.
00:08:24	Joe Sullivan	Madam chair, members of the committee, thanks for having me. Again for the record, my name is Joe Sullivan. I represent Missouri River Energy Services. MRES is a 16 member municipal power agency. Twenty-four of our members are in Minnesota. They are mostly in southern Minnesota and western Minnesota. So to begin, MRES strongly supports everything that Mr. Evans and Xcel just testified to, and we also very strongly support Senator Brown's Senate File 1815, and we'd like to thank him for carrying this important legislation. So the two things that I would like to touch on are ROFR for us means continuing local control for us, that is our MRES board. And also it allows us to keep costs low and control cost. So first, like I said, I'm going to focus on cost. So MRES really fundamentally sees that this issue boils down to the following: do we want to encourage third party transmission owners to buy and build transmission service in Minnesota solely for the purpose of passing the FERC, the higher FERC transmission tariff rate, onto Minnesota ratepayers. I mean, this is transmission service. It's important that we know that this is transmission service that is going to be built already by Minnesota utilities. So we feel that we are really looking at a situation where we are going to pay more for the exact same thing, and that's what it boils down to for us and this is why we support the alternative, which is enacting Senate File 1815, and continue the thoughtful and deliberative process that is Minnesota's transmission

		planning service. As Mr. Evans testified to already, this is the model for the nation. We don't need to encourage more transmission in Minnesota. The system is doing perfectly well right now. And there is something I want to really focus on too, and I think it's important that members understand about the FERC rates and their relationship to local control and keeping our costs low. So first, in the context of today, if our members have a problem with costs, escalating costs, they can go directly to our board and complain about it, find out what's going on, and hopefully seek resolution for themselves or they can find out the answer to why rates have gone up. If we fail to enact ROFR this year, we are going to move the jurisdiction away from our boards, away from the PUC towards, as Mr. Evans said, the FERC in Washington, DC. And additionally, what is actually more important to us, is that we do also charge our members, we charge our members the FERC rate in some instances. However, in the context of Minnesota public power utilities and investor owned utilities regulated by the PUC, that higher FERC rate can flow back to our members as rate payers, as a benefit to them. So the way that I see it is, in a sense, it acts like a hedge. You know, this is not the case when somebody, an independent transmission owner comes in and takes the entire benefit of the higher FERC transmission rate, and thus bypassing our boards ability to redirect that higher tariff. So MRES is, as a municipal power agency, we are very sensitive to increased costs. You know, we cannot lessen the impact of large cost increases by spreading them out over a large service territory. Our members tend to be smaller cities, regional centers in greater Minnesota. Spikes in transmission cost will be felt immediately and severely by our members in southern and western Minnesota. And one last item that I just want to focus on, you know, we are not talking about freezing independent transmission owners out of Minnesota. Senate File 1815 simply gives Minnesota utilities and their customers the first opportunity to invest in federal regionally planned transmission projects that impact our customers so I'd be glad to stand for any questions.
00:12:46	Chair	Thank you Mr. Sullivan, Mr. Evans. Any questions? We may have some a little bit later, thank you. Senator Brown, you have the A3 Amendment. Members, we have that in front of us. All those in favor of the A3 Amendment say Aye.
00:13:05		Aye.
00:13:06	Chair	All those opposed? Nay? Amendment is adopted. Ms. Segner and Mr. Garvin please. Come up together. Yeah, it will be fine.
00:13:26	John Garvin	Hi. My name is John Garvin with American Transmission Company. Thank you for your time. I met with some of you before. You've got handouts of my testimony, so I won't repeat that. I just wanted to really highlight a few things that cause us pretty significant concern with this bill. I think at the macro level people can recognize that electricity does not recognize state borders, number one. And to move right into the bill, the folks before us are correct that last summer there was a significant

	<p>event on transmission regarding order 1000 and, in that bill, there was an encouragement to seek competition in transmission investments. Now from our perspective, within that bill, within FERC order 1000, they did express a lot of respect for state's rights, in particular issues like routing, siting, cost concerns and so on and things of that nature. But the thing that causes us the most concern about this is that we find it difficult to believe that the Federal Energy Regulatory Commission would issue an order of this significance while at the same time offering an invitation to state legislatures to pass legislation that would run completely counter to that. So, as I said, the state PUC has significant oversight over any transmission sighting in the state, and so I think that is preserved in many, many respects. But in terms of the overall concept of competition is good for transmission siting, I think that is something that FERC has recognized and, for example, the legislation that was passed in the Dakota's, that was before order 1000, so that's obviously grandfathered in. I think it's an open question as to whether legislation is passed subsequent to order 1000, where that stands so that, just in terms of state versus federal energy policy that causes us concern. And another thing that I think we'd like to just express is that this is a debate that is taking place in a wide variety of jurisdictions. For example, just this coming Friday for example, in Carmel, Indiana at the Midwest Independent System Operator, which has over slight over 11 states in the Canadian province of Manitoba for transmission, there is going to be a MISO order 1000 right of first refusal workshop. So this is a real time activity that is going on in a number of fronts. I'm willing to bet that virtually every utility in this room will have someone at that meeting. And proponents of the bill, for example, we've got an idea that we've developed along with Duke Energy called the sponsorship approach to selecting projects that would apply under what is currently being discussed at the federal and regional level like multi-value projects, for example. Other proponents in the room of the bill have another idea – competitive bidding. So there is going to be this long conversation about that and both issues and other issues will be developed. And I guess my point is that issues like this are being developed in a wide variety of venues, and so we think those conversations should obviously continue to take place and we do see that state ROFR legislation is a barrier to competition. We are an incumbent utility in Minnesota. And the other thing I guess we do want to just point out is that, in our reading of Senate File 1815, competition is somewhat situationally positive because if this bill were to pass as its drafted, competition in Minnesota as far as building and siting transmission will be significantly more difficult unless you are an incumbent utility. You have to connect to a system that you currently own and candidly, the flip side of the coin is that an incumbent utility in Minnesota can go outside of Minnesota and compete so it's, for us I guess, the competition argument is a little bit situational. So those are really the high level comments I guess we wanted to bring to the table</p>
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		today. It's just that these are topics that have been going on for or this is a topic that's been going on for a great length of time and as I said, transmission is, it's a significant, significant piece of the electricity puzzle so to speak, and it really isn't, electricity as I began with, it doesn't recognize state borders you know. We all import electricity from other states. Minnesota produces electricity that goes out of Minnesota. So those are just the comments I guess we'd like to make, and again you've got my testimony, so with that I turn it over to Susan.
00:18:05	Chair	Mr. Garvin, what do you expect at this MISO meeting in Carmel on this workshop, what's the outcome? Is conversations just need to continue on this or what are they expecting?
00:18:19	John Garvin	Thankfully that's not my lane. Our regulatory, we've got a whole regulatory shop like most utilities, and I think it's just, everyone are trying to figure out at these meetings like this, and there have been stakeholder meetings on this for some time. But I think what people would like to do is to determine, a) what large regional projects may be suitable for some of these multi-value projects or market efficiency projects, for example, just determining what projects might work and then, you know, how you would apportion costs, for example, and how you would choose the developer. So it's a very, there is a number of different topics being discussed and, like I said, the workshop on Friday, I'm not involved in those directly. Our regulatory folks are and they've been in meetings with, like I said, stakeholders for a long period of time. And all the utilities in the room are also involved in those discussions, and as I said, I suspect most if not all of them will have someone at MISO on Friday.
00:19:20	Chair	Okay, any other questions for Mr. Garvin? Thank you. Segner.
00:19:28	Sharon Segner	My name is Sharon Segner and I'm an Associate Vice President, LS Power Development. We appreciate the opportunity to voice a few of our strong concerns on this bill and to hopefully clearly articulate our concerns and why we are concerned about this bill and very much opposed to this bill. LS Power is a leading player in the independent power industry. We own over 7,000 megawatts of generation across the United States. And here in Minnesota we developed the Cottage Grove facility here in Minnesota. We have been active in all of these transmission ROFR issues at the Federal Energy Regulatory Commission and currently we have 500 miles of transmission that is currently under construction in the state of Texas and, as well as in the state of Nevada, and we have applied to become and are a state public utility under the state laws of Texas, as a part of that process. And so, even though there are new entrants coming into this market, the state very much in Texas has control over that because the new entrants are applying to be state public utilities. Basically this legislation, in a nutshell, steps into the middle of a national debate that has been occurring for the last several years at the federal level and in July, the Federal Energy Regulatory Commission rule that anti-competitive directives, such as a 90-day

	<p>ROFR, would not lead to just unreasonable rates for consumers, and at the heart of the Federal Energy Regulatory Commission's ruling was that the existence of ROFR, and the existence adjust and reasonable rates, were not consistent. And so, therefore, ROFR's and utility tariffs all over the United States needed to be removed because it was incompatible with consumer interest, and that is the problem and the issue that FERC was solving because it isn't compatible with just unreasonable rates for consumers. And so basically, FERC ordered that ROFR's all over the country be removed, and so regions all over the country are implementing what FERC has ordered. And as previous witness noted here in MISO, there is meetings that are going on on Friday regarding MISO's compliance. FERC was not alone in their stance to remove the federal right of first refusal. The following organizations stood strongly with FERC in supporting the fact that ROFR's do not lead to just unreasonable rates. For the record, I list off these organizations that supported FERC: The Federal Trade Commission, the Arizona Corporation Commission, the California Public Utilities Commission, the California Energy Commission, the California Department of Water Resources, the Connecticut Department of Public Utility Control, Rhode Island Public Utilities Commission, the Massachusetts Department of Public Utilities, the Public Utilities Commission of Nevada, the New England State Committee on Electricity, the New Jersey Board of Public Utilities, the Public Utilities Commission of Ohio, the Ohio Consumer's Counsel, the Pennsylvania Public Utility Commission, the Public Service Commission of Wisconsin, the Organization of MISO states. In terms of federal organizations that were strongly supporting FERC in the removal of these ROFR's and including the 90-day ROFR that's being proposed here at the state would be the American Anti-Trust Institute, the American Wind Energy Association, American Forced and Paper Association, American Chemistry Counsel, the Wisconsin Industrial Energy Group, the Project for Sustainable FERC policy. Basically, this Minnesota legislation flies in the face of this groundswell of consumer support for FERC. In addition, we believe there is no evidence that the removal of the ROFR harms consumers and so, therefore, no basis for this Minnesota driven legislation exists. There is no evidence that removing these ROFR's harms the consumers. In fact, the evidence is there in the FERC record that the ROFR's, the existence of the ROFR's, harm consumers. Basically, the Minnesota legislation creates barriers to entry. As the Federal Trade Commission wrote very clearly to FERC on this issue: The Federal Trade Commission concurs with FERC's proposed elimination of the ROFR. Consumers benefit from market competition that often takes the form of new entry. In general, sound competition policy calls for competition to be restricted when necessary to protect the public from significant demonstrated harm and for the restriction to be drawn narrowly to minimize anti-competitive impact. In LS Power, as a participant in this market, staring at a potential 90-day</p>
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		<p>ROFR can definitely say this would impact the type projects that we would propose and be able to build an estate. Now to address specific concerns that may exist about state versus federal issues. LS Power, in states like Texas, which has had and responded to these issues, basically held a competitive bidding process for the transmission that they needed, that Texas needed to support the growth of renewable energy. Texas had a so called crez process and in this crez process, there were 23 winners of a \$5 billion plus worth of transmission. It was competitively bid. What has happened in Texas is that the cost related to new entrants and independents coming into the industry in Texas have been 20 percent under the cost estimates for what they were initially were. In addition, it is also ratcheted down the rates of return. As the chairman of the Texas PUC said a couple of weeks ago, independents have been a good thing in Texas. And lastly, we would just close, and we appreciate the opportunity to express our strong opposition to this bill, but we would say that the biggest problem with this bill is not about the new entrants. The biggest problem with this bill is that it's bad for consumers. It's very good for the incumbent utilities in the state, it's very bad for consumers. And by giving a 90-day ROFR, it flies in the face of experts at the Federal Trade Commission and other commissions across the country, and basically makes Minnesota into somewhat of an island with South Dakota and North Dakota on this issue, while the rest of the country in states all over the country have weighed in strongly supporting the removal of this right of first refusal. We respectfully submit that there isn't evidence to prove that the removal of this right of first refusal that's been mandated by FERC, that there isn't evidence to prove that it harms Minnesota consumers. And the last thing we would say is that this bill does nothing to ensure that there is cost control for these multi-hundred million and billion dollar transmission projects. It does nothing to assure of what the ROE's will be and for these potential projects. It simply ensures that the walls will be up in the State of Minnesota. If Minnesota is concerned about new entrants and what that means for the process then a better way, in our view, to handle the situation is to require public, new entrants as they come into the State of Minnesota to apply to become a state public utility as part of their CPC an application. We view that's a better option than putting up walls around the State of Minnesota and that also do not provide any benefit to consumers. Thank you for this opportunity to express our strong opposition.</p>
00:28:17	Chair	Thank you, Ms. Segner. I'm sorry I said your name wrong but that's par for the course in this committee. Senator Jungbauer.
00:28:26	Michael Jungbauer	Thank you madam chair. Ms. Segner, or anybody who can answer it. I guess as we kind of try to look at the whole picture, I guess we can always pit expert against expert, but what I'm really trying to grasp is, as a free market guy, this isn't a free market to begin with. So it's hard to understand because, what it appears to me, so help me out with this, is that companies can come in and build transmission line and it's kind of

		like cherry picking. You get the easy part of the job but you don't have to be here for the rest of the consumers and so that's what we're, what I guess we get kind of concerned about is what, what's your vested interest and how do we understand that, you know, since you're not responsible for the whole meal deal, as it were, why should we not protect our guys that are responsible for the whole package?
00:29:23	Chair	Mr. Garvin?
00:29:24	John Garvin	To that question I would say that in our industry, we don't own generation, we don't own distribution, so transmission is our, that's the business that we're in. So the transmission system is, that's a place where there is competition available, where that's being discussed right now how to do it. That's the crux of order 1000, the transmission piece. That is an area where it's right for competition, so you can't really, you don't, as a customer, you don't have multiple sets of wires running to your house, you know, you have your utility provider and that makes complete sense but there has been conversations going on regarding energy policy and transmission for a long time and that's, I guess I would argue that FERC in its order 1000 is asking that very question. How do you get more competition and those are the discussions that like I said, those are being had right now at the federal, regional and state level.
00:30:28	Chair	Mr. Evans. Mr. Evans, I will have you come up here too to answer that question in a second.
00:30:34	Sharon Segner	I would just respond as well that basically FERC was very clear on what was driving them in this federal order, that basically that the existence of these type of ROFR's, whether it's one day or 90 days, basically was just inconsistent with just and reasonable rates. So how do you ensure that the new entrant is around for the long haul? Well, the new entrant when they are, they come up with the best idea or the cheapest idea ,so that's the only way they would get into a regional plan is that the new entrant will come up with the best and the cheapest idea, and when that idea goes before the state and the state PUC, then essentially that is the point to weigh in and to be very clear and with the permit conditions are and the CPC and application. And what Texas required and, again, other states have done it differently, but what Texas required is they said, new entrant, we are happy to give you regulated rates of return because at the end of the day, that's really what this ROFR issue is about. We are happy to give you new rates of return, but if you want to have regulated rates of return, you are going to have to be a state public utility. And so that is how Texas handled the situation ,by saying look, regulated rates of return are fine for new entrants but you've got to be a state public utility, and so how that's handled, how it's been handled in other states is typically part of that CPC application that goes before the PUC. Essentially, there is also a request to become a state public utility and LS Power has publicly said that we are willing to apply for state public utility status if we're assigned these MISO type projects.
00:32:17	Chair	Senator Jungbauer.

00:32:17	Michael Jungbauer	Thank you, madam chair, and a good answer. So just to kind of work, to complete a little bit more for me, so I'm starting to get a grasp of this, we were always kind of thinking that the PUC is there to protect the citizens and protect the ratepayers and stuff and so it appears that part of your argument is that the regulated utilities that exist today are not, or are potentially taking advantage of the ratepayers and charging more. So, are we wrong in assuming that the PUC understands that and is not somehow protecting the ratepayers in the cost of the transmission lines themselves?
00:33:00	Sharon Segner	I would say no, I don't think that's what is being implied here. I think the issue is is that competitive pressures bring in different ideas, it brings in different types of technologies into the process, it brings in different types of capital cost structures, it brings in different participants that would be willing to do different things with the cost structure and it also brings in a willingness when you have competitive processes, it brings in a willingness to everyone to roll up their sleeves and say okay, I told that maybe I need a 9 percent rate of return or 11 percent rate of return and maybe we can ratchet this down a little bit. And I think that, you know, for instance, what LS Power has done, and PJM, as we have filed incentive rate cases at FERC, is that we have waived many of those incentive rights, which is different than what some utilities have done as well. We haven't waived all the incentives, we've waived some of them.
00:34:01	Chair	Mr. Fuller.
00:34:03	Mr. Fuller	Madam chair, I think the difficulty is, if you look at the only really operative division of the bill that is line 1.14, an incumbent electric transmission owner has a right to construct, own and maintain an electric transmission line that has been approved for construction of federally registered planning authority transmission plan, so on. And so that's the operative division, what does it mean? And I guess you asked me to ask a couple of questions, one looking backwards and looking forward. Looking backwards, we are familiar with the Cap X 2020 and, if ROFR, did ROFR play a role there if it existed or didn't exist, what would have been different with respect to the new bill to what the rates would have been, what the PUC role would have been, I mean what changes with or without the ROFR, and looking forward it would be the same question. If we had a ROFR, and this lady has addressed it a little bit, what would be the PUC role? Who would decide whether it would get built? What would be the impact on rates? What would be the range? Those questions. I think it's not evident from the language of the bill, because the bill just refers to these rights, but we don't know what the impact of that. I think that's the questions that should be asked. Looking back, what would have been different if we had a ROFR ____ with respect to Cap X, who would have built it, what would have been the competitive prices, what would have been (inaudible)? And looking forward, if we do or do not adopt this, what would be the effect on rates? Who could compete, what would be the role of the PUC, who would decide whether it would be built? I don't think that springs from the language of the bill.

00:35:43	Chair	Who can answer that Mr. Fuller?
00:35:45	Mr. Fuller	Well, we have the witnesses, I guess we should hear from them. Maybe a little more clarity so that people are comfortable, the members are comfortable, as to what this language means on the ground.
00:35:59	Chair	So I'd like to have Mr. Evans come back up please, or Mr. Sullivan, whoever, and maybe we can get to either Mr. Evans or Ms. Segner. That's okay, one of you guys can stay and we'll do – you guys choose, hold the short straw.
00:36:14		Well, I'll take the first crack at it and just I guess, I would only be looking forward with this answer and say that, kind of repeat what I've already brought up —that issues of transmission that would be contemplated under a statute like this are very large in scale and, so, order 1000, which was only brought onto the books last summer is still being fleshed out. And we are members of MISO, as are the Midwest Independent System Operator, as are a number of other utilities in the room, and these are, these are all questions that are being discussed in real time right now. Because, again, you've got to figure out first what suite of projects you might be talking about and the benefit to some of these discussions that's being had, that are being had on a regional benefit, is that the size and the scale of some of these projects that would ultimately be selected would provide regional benefits – they wouldn't provide benefits on a state by state basis, but we are all connected to a regional transmission system. So, again, that's another reason I guess that I would urge caution to passing a bill like this right now, because these are all conversations that are being had that have impacts on the state of Minnesota but also outside the state of Minnesota on the regional level so.
00:37:28	Chair	Mr. Fuller
00:37:30	Mr. Fuller	Madam chair, more specifically, would the PUC with the right of, with the ROFR right or without it, still have the same role as to deciding a site for the route for transmission line?
00:37:43	Chair	Mr. Garvin.
00:37:44	John Garvin	Routing and siting would stay under the purview of the PUC because we can all tell you as transmission providers and transmission companies, the siting transmission is very difficult.
00:37:59	Chair	Mr. Fuller
00:38:00	Mr. Fuller	Madam chair, would the PUC still have authority on the certificate of need whether a line was needed, would that differ under either the two scenarios?
00:38:07	Chair	Mr. Garvin.
00:38:08	John Garvin	What was his question?
00:38:09	Mr. Fuller	The certificate of need, with or without a ROFR, would it be the same, would the PUC have the same role in deciding the need for a line in Minnesota?
00:38:16	Chair	Ms. Segner. Mr. Garvin.

00:38:18	John Garvin	The need analysis. Yeah, the need question would still come back to the PUC, so as we understand it.
00:38:25	Mr. Fuller	Madam chair?
00:38:26	Chair	Mr. Fuller.
00:38:27	Mr. Fuller	Who would be able to compete with the ROFR, and without it if there was a, to build a line in Minnesota?
00:38:35	Chair	Mr. Garvin.
00:38:36	John Garvin	Well again, those are topics that are being discussed in terms of, what suite of projects you are talking about?
00:38:41	Mr. Fuller	Madam chair, under this bill. Madam chair?
00:38:47	Chair	Mr. Fuller.
00:38:48	John Garvin	I'm not understanding the question exactly.
00:38:49	Mr. Fuller	Okay my understanding is you say you are being fenced out.
00:38:53	John Garvin	We're not, we're not being fenced out. We are an incumbent utility in Minnesota, having said that though.
00:38:58	Chair	Okay hold on. Mr. Garvin, please go by the (inaudible).
00:39:03	Mr. Fuller	Let me put it this way. I heard that somebody was going to be fenced out, I thought that was a testament (inaudible) the lady, and so would you explain to us who was fenced out with the bill and who can do it without the bill.
00:39:17	Chair	Ms. Segner.
00:39:19	Sharon Segner	Sure. My understanding, in terms of how this bill essentially would work, is if LS Power would, let's just say we were participating in the MISO process and we would come up with a good regional solution that would be low-cost and technically effective, because that's the only way we would have it assigned to us, is essentially MISO would then pick out of many solutions the best transmission project to move forward. MISO would then make that selection, and then at that point this bill essentially says that the incumbent utility would essentially have a 90 day right of first refusal. Well, that essentially then would mean that LS Power would go through the process at MISO, through the planning process, however it evolves, and it is evolving, but would go through the planning process, and at the 11 th hour after we had come up with this idea and this proposal, that it essentially would be taken from us by the incumbent utility, and then that incumbent utility would then go to the state PUC and apply for a CPC application for that idea. And so it is definitely locking out. Now, some people can say well, it's a 90-day ROFR, and the incumbent utility may decide not to exercise that right. But the realities are, I think, it's probably at least from our standpoint, we view it as pretty unlikely that would happen, because these are regulated rates of return and these are regulated rates of transmission returns for a life of an asset. And so typically most people want those regulated rates of return. And so, basically, what this bill does is it sends a message to folks like LS Power that want to come up with good ideas that are cost effective and says hey, don't even play in the MISO process and don't even play in

		the regional process and come up with good ideas because at the 11 th hour, if they are in Minnesota, we are not going to be able to move forward with them. They'll be taken from us. And, so, we just have a real problem with that concept and we think that, you know, by the time that it hits the Minnesota level for a discussion on these transmission lines, we just think it's too late in the process at that point.
00:41:47	Chair	Mr. Fuller.
00:41:48	Mr. Fuller	Madam chair, I'd like to ask Mr. Evans a question and then he can respond to anything else I asked already. I think Ms. Segner said it all comes down to rates. Could you explain to the committee the difference in rates, if there is a right of first refusal and if there isn't, how that plays out and whether or not there is more competitive pressure on you to have lower rates if this right does or does not exist?
00:42:12	Chair	Mr. Evans.
00:42:12	Rick Evans	Madam chair, members of the committee, if an independent non-regulated utility in Minnesota builds the transmission line, they will be able to charge the incumbent utilities a tariff under a FERC tariff. At least up until now, the FERC tariff has been considerably higher than the tariff - rather I should say the FERC rate of return that's built into their tariff has been higher than the rate of the return to the PUC allows to regulated utilities so, if the independent company builds the transmission line, they will charge the FERC tariff, and the utilities will have no choice but to pay it, and they will pass that cost, dollar for dollar, through to their customers, because we have no other place to get that money. What Mr. Sullivan was explaining in his testimony was we are regulated as to our rates by the Public Utilities Commission. At the time that the Public Utilities Commission sets our rates, they will know how much money we are making from owning the transmission line and what the costs are of maintaining, and so they will be able to set our rate of return at what they want it to be, which has been consistently lower. And so it essentially operates as a rebate back to our customers of the offsetting the money that we've made on the FERC rate of return. So the actual cost passed through our customers would be considerably less, as long as the FERC rate of return is higher than the rate of return authorized by the Public Utilities Commission. Now, there is no guarantee that it's always going to stay that way, but the fact of the matter is that the Public Utilities Commission would regulate our rates – that's not going to change whether there is a ROFR or not a ROFR. The only question is whether the cost of the transmission is going to be paid to the outside company that is not rate regulated or whether the cost of the transmission is going to be brought into the rate case in that entire, in the whole discussion that is involved in a rate case. I just, I do want to just respond to one other question that counsel asked and that is about what this means for the future – what this bill is intended to do is preserve the status quo. It's intended to preserve the system that has existed in the state for the last seven years and more. It's not intended to change the system, which

		is what the alternative would be. And just to reiterate, I listened to the folks from the, the opponents to the bill, and they talk about this competition and they talk about this federal process. They are having a meeting on Friday to start talking about gee, I wonder what the federal process is going to look like. To not pass this bill is to cast us into the uncertainty of whatever FERC decides somewhere down the road. Will they decide it by July when the right of first refusal goes away? There is no way of knowing. So what we are looking for is the kind of certainty and the kind of regulatory scheme that has worked in Minnesota well for the past several years and not trading it off for well, maybe there will be competition somewhere down the road if FERC ever figures out how they are going to do this. I still, I've heard how Texas does it, I've heard how California might want to do it, I've heard that FERC is having a meeting to talk about how they might do it but essentially we are being thrown into a system that has not been decided yet. The opponents continue to talk about competition, but I've yet to see where the competition enters into it. FERC could decide well, we are just going to pick the person who does it. There has been a proposal in FERC that I happen to know of that says, the first person to propose it gets to build it. Well, that's not competition – that's just a race to the courthouse. So we don't even know what kind of competition we are talking about. We are talking about throwing ourselves into a system that's being designed as we speak, as we're told. Now, I don't want to sound too parochial here, this is an inter-related grid, this is a regional grid, this is a national grid – those kind of inter-connections are very important. This FERC process is very important. But to preserve the regulatory scheme that has worked so well in Minnesota, we need to preserve the ROFR, and that's what will allow us to go forward, as we see if the federal, regional, regulatory scheme ever actually happens to work out to be anything.
00:46:34	Chair	Mr. Sullivan, comments?
00:46:37	Mr. Sullivan	Well, thanks. It's hard to follow up on Rick because I completely agree with everything he said. But I did want to say, there is nothing that I heard that disabuses me of, you know, this is fundamentally about who gets the benefit of the FERC rate. There is nothing that I have heard that, you know that, that changes that, and I think that it's better, it's certainly better for our ratepayers that they get the benefit of that as a hedge. And I mean, that's the only thing I'll add to it.
00:47:10	Chair	Ms. Segner, Mr. Garvin – any comments?
00:47:15	Sharon Segner	I would just add that the place for Minnesota to get involved in the state rate issue is when that new entrant applies to become a state public utility and as a part of that proceeding before the commission is when that discussion occurs on how there would be reconciliation between the state rate of authority and the federal rate authority and that's where that issue gets worked out. LS Power, when we have proposed projects in PJM, we essentially waived a lot of our transmission incentives that we filed for FERC so the net result of those transmission incentives and in terms of

		what we would be asking for in terms of our overall regulated rate of those projects is actually lower than the Cap X regulated rate of return that's approved of FERC of the 12.38 percent and so I would say that it's not clear cut, quite frankly, the issue on the difference between the state and the feds and how that piece of it would be reconciled and the place to reconcile that is in the state utility process at the commission when the new entrant applies for state public utility authority.
00:48:32	Chair	Senator Howe.
00:48:34	John Howe	Thank you madam chair. I appreciate Mr. Evans comments. I don't think it's too difficult to preserve the status quo around here but I'm wondering, Senator Brown, if there is an opportunity to have some sort of a sunset on this or that we review it, you know, to put kind of, you know, something out – three years or five years, because we don't know what's going to happen at the federal level and that we'd come back and review it. Otherwise we are going to be caught in the status quo and say well geez, there is a statute in Minnesota, it's just never going to happen. And so I'm wondering if you'd consider, you know, either a three or a five year date on this legislation, so we could review it as things move forward. We can have another discussion; otherwise we won't have the discussion.
00:49:21	David Brown	Madam chair, Senator Howe, that idea makes sense but we can do that anytime as a committee in the future. We can go back and look at it – we don't have to write it in to this legislation so I would not favor of that just for the reason that we can do it in the future. Any time we see that it may make sense for Minnesota at that time but you bring up a good point. FERC process is unknown, it's not – there is nothing concrete here. If we choose not to pass this legislation, we are moving into the world of the unknown versus we have a very known process right now, members. And I think it's best to stick with that process because FERC's process is unknown.
00:50:02	Chair	Senator Howe.
00:50:03	John Howe	Thank you madam chair and Senator Brown. I agree, that's why I'm in favor of your legislation but only for whether it's three years or five years, because I can guarantee you, it will be like pulling teeth to bring this back to discuss it, regardless of what happens at the federal level and if we had a date certain, three years out or five years out, then we're insured that it will come in front of this body for a discussion. You're right – the committee can pull it up any time. I'm just, my comment to Mr. Evans is, it just won't come up and I think, I think it's always good, just like when we do exemptions and things like that to have a sunset. I'd like to have some sort of a review of this legislation in the future down the road, so I know whether I'm here or not, somebody is going to be looking at it so I'm just suggesting that. I'm not going to oppose your bill on that basis but I'm just suggesting that, you know, you could have something in the legislation that would have that.
00:51:02	Chair	Any further questions from the committee? Anybody else would like to

		testify pro or con? Senator McGuire? We are going to take a vote at 4:00 because we would like to get Senator Howe's bill and he's got people from home that have come up so.
00:51:23	Mary Jo McGuire	Thank you madam chair and I hesitate to ask this question because I actually do feel like I'm informed already to vote, but I just wanted to clarify one more time for myself, because I think this issue has already been brought up, but is this an issue that the PUC would weigh in on at this point or do they weigh in after we pass a bill or I'm just curious, you know, how they would see this because I know that when, let's see, when Ms. Segner read the number of utility commissions in other states that are supporting this, I was curious what our state had done or would do but, FERC order right, so just was curious what the PUC would think of this.
00:52:07	Chair	Well, I don't want to speak for them but I don't think they want to weigh in on this.
00:52:11	Mary Jo McGuire	So they don't weigh in yet, okay great.
00:52:13	Chair	I'm getting a no from Mr. Wolf over there, so.
00:52:16	Mary Jo McGuire	Okay so that's not something they would weigh in on then, okay.
00:52:21	Chair	Senator Dibble
00:52:22	D. Scott Dibble	Thank you, just following on, we'll just ask Mr. Wolf to shake his head or not. Does our PUC typically not weigh in on these sort of FERC order? I mean, I know you don't weigh in on state legislation, but a number of PUC's weighed, apparently have weighed in in favor of this FERC order, which was a surprise. I just, in our experience, I don't think our PUC has taken a position on federal matters.
00:52:53	Chair	Mr. Wolf.
00:52:54	Dan Wolf	Madam chair, committee members. Dan Wolf, Assistant Executive Secretary with the Minnesota Public Utilities Commission. Senator Dibble, you are right, we don't normally weigh in on bills from the legislature. It's up to you to make the policy and we carry that out. We certainly don't have any position on this bill because of that general stance and also because we would be the body making the decision down the road between an incumbent, between, you know, a non-incumbent, etc., so we feel it's inappropriate for us to weigh in on this particular piece of legislation. As to the FERC order, we have not taken a position on that. Again, to the extent FERC says this is what you have to do, you know, then that has to be done but we don't have a position on FERC order 1000. We certainly have had informational proceedings for stakeholders at the commission, but not formed what's good/what's bad sort of opinions.
00:53:49	D. Scott Dibble	Thank you.
00:53:51	Chair	And I got a shake from the head no from Director Grant also so, okay. Are we ready to vote? Further questions? Senator Brown, would you like to move the bill?

00:54:03	David Brown	So, madam chair, I move Senate File 1815 as amended.
00:54:08	Chair	We recommend it to pass and sent to the floor.
00:54:10	David Brown	Sent to the floor – yes.
00:54:11	Chair	All those in favor say, Aye?
00:54:12		Aye.
00:54:13	Chair	All those opposed, Nay? Motion prevails. Thank you Senator Brown.
00:54:17	David Brown	Thank you.

Fiscal Note – 2011-12 Session**Bill #:** S1815-0 **Complete Date:** 03/21/12**Chief Author:** BROWN, DAVID. M**Title:** ELECTRIC TRANSMISSION OWNERS RIGHTS

Fiscal Impact	Yes	No
State		X
Local		X
Fee/Departmental Earnings		X
Tax Revenue		X

Agency Name: Public Utilities Commission

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

Dollars (in thousands)	FY11	FY12	FY13	FY14	FY15
Expenditures					
-- No Impact --					
Less Agency Can Absorb					
-- No Impact --					
Net Expenditures					
-- No Impact --					
Revenues					
-- No Impact --					
Net Cost <Savings>					
-- No Impact --					
Total Cost <Savings> to the State					

	FY11	FY12	FY13	FY14	FY15
Full Time Equivalents					
-- No Impact --					
Total FTE					

Bill Description

SF 1815 establishes rights and reporting requirements for existing electric transmission owners

- Ensures that an existing owner or owners of electric transmission facilities have the right to construct, own and maintain any new transmission facilities that connect to their existing transmission facilities.
- Specifies notice requirements of an incumbent electric transmission facility owner ('s) intent to construct, own, and maintain a transmission facility identified in a federally registered planning authority transmission plan (i.e., the Midwest Independent System Operator).
- Provides authority for the Commission to review the appropriateness of decisions made by the facility owner(s) not to construct a transmission line specified in a federal transmission plan.

Assumptions

- The Commission assumes that most incumbent electric transmission owners would choose to construct, own, and operate facilities approved in a federal transmission plan.
- Review of any filings prompted by this legislation would be in the context of the existing Certificate of Need process.
- The bill would not substantially change the number of filings received by the Commission; filings may come from different parties, but the overall determination of need for electric transmission facilities would remain the same.

Expenditure and/or Revenue Formula

This bill has no fiscal impact on the Commission. Processes have already been established to address any potential filings resulting from this proposal.

Long-Term Fiscal Considerations

Local Government Impact

References/Sources

FN Coord Signature: MARSHA BATTLES-JENKS
Date: 03/19/12 Phone: 651-201-2219

EBO Comments

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: RYAN BAUMTROG
Date: 03/21/12 Phone: 651-201-8038

A SUMMARY OF FERC ORDER NO. 1000: TRANSMISSION PLANNING & COST ALLOCATION

A presentation to the Minnesota Public Utilities Commission

By Alliant Energy, Great River Energy, Minnesota Power,
Otter Tail Power Co., and Xcel Energy
MISO Quarterly Update Meeting, September 9, 2011

APPLICABILITY

- Applied to new, regionally *cost-shared* facilities.
 - Effective date 60 days after compliance filing(s) (in MISO this will be about Dec. 10, 2012).
- *All Regions Must Comply*: FERC specified that the reforms apply equally to transmission-owning public utilities in all regions (i.e., whether in or out of an RTO).

FOUR MAJOR COMPONENTS OF ORDER NO. 1000

1. Regional transmission planning requirements
2. Interregional transmission planning requirements
3. Transmission cost allocation principles (regional and interregional)
4. Elimination of the federal right of first refusal (ROFR) for facilities subject to regional cost allocation

REGIONAL TRANSMISSION PLANNING REQUIREMENTS

- Regional planning must adopt ***Order No. 890 Principles*** (designed principally to increase transparency).
 - MISO has already adopted Order No. 890.
- ***Effective Planning Obligation:*** MISO (in consultation with stakeholders) must evaluate alternative transmission solutions and non-transmission solutions.
 - MISO's process already includes a review of alternative solutions.

REGIONAL TRANSMISSION PLANNING

PUBLIC POLICY REQUIREMENTS

- FERC stated that **nothing in the Final Rule is intended to alter the role of states** with respect to adopting or implementing public policy requirements.
- Enacted state and federal statutes and regulations shall be considered in the regional planning requirements.
 - FERC doesn't prescribe or limit the policies to be studied.
 - Which Public Policy Requirements are evaluated and which ones are not must be publicly posted on website.
- The regional plan should take into account the local utility with native load obligations that has addressed its state (or federal) public policy requirements in its resource assumptions.

INTERREGIONAL TRANSMISSION PLANNING REQUIREMENTS

- Each pair of **neighboring transmission planning regions** must:
 - ***Share Information*** annually to consider respective needs and solutions.
 - Formalize procedures to ***Coordinate and Jointly Evaluate*** interregional transmission facilities.
 - ***Revise tariffs*** (or file an interregional coordination agreement) to describe the sharing, coordination, and joint evaluation.
- FERC will allow MISO/PJM to memorialize their current cross-border planning (and cost allocation) arrangements.
- Expect that MISO must develop cross-border planning with its other RTO (e.g., SPP) and non-FERC-jurisdictional neighbors.

TRANSMISSION COST ALLOCATION PRINCIPLES (*REGIONAL AND INTERREGIONAL*)

The Final Rule adopts six principles for regional or interregional projects (the interregional principles are similar with some slight differences):

1. Costs allocated “roughly commensurate” with benefits
2. No involuntary cost allocation to non-beneficiaries
3. If a minimum benefit-cost ratio is used, it can’t exceed 1.25 unless FERC approves a higher ratio
4. Costs must be allocated solely within the region unless those outside voluntarily assume costs
5. Method and data requirements for determining benefits must be transparent
6. Different methods may be chosen for different types of facilities (e.g., reliability, congestion relief, public policy)

TRANSMISSION COST ALLOCATION

PRINCIPLES (*REGIONAL AND INTERREGIONAL*)

Continued . . .

- Requires a common interregional cost allocation for new interregional facilities.
- Participant funding is permitted but not as the regional or interregional cost allocation method.
- Non-incumbent developer has same eligibility as incumbent to use a regional cost allocation method for qualifying projects.
- If region can't decide on a cost allocation method, then FERC would decide based on the record.

ELIMINATION OF THE FEDERAL RIGHT OF FIRST REFUSAL ("ROFR")

- ***State Jurisdiction Retained:*** Nothing limits, preempts, or otherwise affects state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities.
- FERC is requiring the removal of any federal ROFR to allow non-local developers to construct transmission facilities selected in a regional transmission plan for purposes of ***cost allocation***.
 - If the project is cost-shared, ROFR is gone. Moreover, FERC requires that any non-local developer (if selected to construct a regionally cost-shared project) shall allocate its project costs through the regional cost allocation method(s).

ELIMINATION OF THE FEDERAL RIGHT OF FIRST REFUSAL (ROFR)

Continued . . .

- FERC is requiring the regions to develop
 - (1) Project Submission Forms,
 - (2) Reevaluation Procedures, and
 - (3) Qualification Criteria.
- 1. ***Project Submission Forms:*** Clearly identify the information that must be submitted for evaluation of a proposed regional transmission project for regional cost sharing.

ELIMINATION OF THE FEDERAL RIGHT OF FIRST REFUSAL (ROFR)

Continued . . .

2. ***Reevaluation Procedures.*** If a non-local developer is not completing a project *required* by the local utility (*to meet its reliability needs and/or state service obligations*), FERC will recognize a process where the local utility can *then* propose a solution within its retail distribution service territory or footprint that will enable it to meet its reliability needs or service obligations.
3. ***Qualification Criteria:*** Establish a non-discriminatory qualification criteria for who is eligible to build.

ROFR MAY BE RETAINED ON:

- Existing rights-of-way and upgrades to the transmission owner's own transmission facilities (e.g., tower change outs or reconductoring).
- “Local” facilities that are planned by individual transmission owners and whose costs are borne locally (e.g., in the transmission owner’s rate zone), rather than being subject to regional cost allocation.

POTENTIAL NORTH AMERICAN ELECTRIC RELIABILITY CORP. ("NERC") VIOLATIONS

- FERC indicates that if:
 - A non-local developer is granted a **regionally cost-shared reliability project** *and*
 - The local utility is **reliant** upon the project for meeting its
 - state obligations to serve and
 - NERC reliability standards *and*
 - The non-local developer **abandons** the project **before** it is **completed**
 - such that the local utility **can't comply** with its NERC reliability standards,
 - The local utility can submit a **mitigation plan** and FERC **won't penalize** it thru NERC enforcement actions.
- This provides little assurance to the local utility.

Requests for Rehearing or Clarification - Pending

- Approximately 60 parties – including the MISO Transmission Owners – filed requests for rehearing and/or clarification
 - MISO TO Request for Rehearing focuses on the ROFR issue as applied to projects needed for reliability purposes.
- FERC is required to act within 30 days.
 - We expect FERC to issue a “tolling order” to allow itself more time to act on the rehearing requests.
- Not clear when FERC may ultimately rule on the rehearing requests.
 - Order 890 went through several rounds of rehearing/clarification requests.

CONCLUSION

- We look forward to state input.
- There is a lot of work ahead in the MISO stakeholder process!

**Order No. 1000 Summary Talking Points for
Sept. 9 MN PUC MISO Quarterly Update Meeting**

**Provided by Alliant Energy, Great River Energy, Minnesota Power,
Otter Tail Power Company, and Xcel Energy**

FERC's Stated Objectives:

- (1) Ensure that transmission planning processes at the regional level consider and evaluate, on a non-discriminatory basis, possible transmission alternatives and produce a transmission plan that can meet transmission needs more efficiently and cost-effectively; and
- (2) Ensure that the costs of transmission solutions chosen to meet regional transmission needs are allocated fairly to those who receive benefits from them.

Timeline:

- FERC Issues Order No. 1000: July 21, 2011
- Posted in Federal Register: August 11, 2011
- Rehearing Date: August 22, 2011
- Intraregional Compliance Filings Due: October 11, 2012
- Interregional Compliance Filings Due: April 11, 2013
- Order No. 1000 requirements apply to “new transmission facilities,” which are those subject to evaluation or reevaluation within local or regional transmission planning processes after the effective date of compliance filings (assumed 60 days after filing so Dec. 10, 2012 at the earliest).
- **All Regions Must Comply:** FERC specified that the reforms apply equally to transmission-owning public utilities in all regions (i.e., whether in or out of an RTO).

Four Major Components of the Order:

- (1) Regional transmission planning requirements
- (2) Interregional transmission planning requirements
- (3) Transmission cost allocation principles (regional and interregional)
- (4) Elimination of the federal right of first refusal (ROFR) for facilities subject to regional cost allocation

1. Regional Transmission Planning Requirements

- **Order No. 890 Principles** (designed principally to increase transparency) applied to Regional Planning.
- **Effective Planning Obligation:** Requires regional planners (e.g., MISO) to evaluate, in consultation with stakeholders, alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning process.
- **Public Policy Requirements:** Not only are the regional planners (e.g., MISO) required to include enacted state and federal statutes and regulations but they are also required to post on their website “an explanation of which transmission needs driven by Public Policy Requirements will be evaluated in the local or regional transmission planning process, as well as an explanation of why other suggested transmission needs will not be evaluated.”
 - FERC does not prescribe any particular Public Policy Requirements or limit the types of public policy requirements that can be studied.

**Order No. 1000 Summary Talking Points for
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- FERC also recognizes that if a utility has native load obligations that it has addressed in developing its resource assumptions in the transmission planning process, those procedures (used to identify transmission needs driven by Public Policy Requirements) should be taken into account.
- **FERC clarified that nothing in the Final Rule is intended to alter the role of states with respect to adopting or implementing public policy requirements.**

2. Interregional Transmission Planning Requirements

- Each pair of neighboring transmission planning regions must:
 - **Share Information:** Coordinate procedures to annually share planning data and information regarding the respective needs of each region and coordinate potential solutions to those needs. A website or email list must be maintained to communicate information related to coordination procedures.
 - **Coordinate/Jointly Evaluate:** Develop a formal procedure to identify and jointly evaluate interregional transmission facilities that may be more efficient or cost-effective solutions to those regional needs
 - **Revise tariffs** (or file an interregional coordination agreement) to describe interregional transmission coordination procedures for a particular pair of regions.
 - FERC will allow MISO/PJM to memorialize our current cross-border planning (and cost allocation) arrangements.
 - It is not clear whether MISO must develop cross-border evaluation and joint planning with non-FERC-jurisdictional neighbors. Regardless, there is a lot of work ahead in consideration of MISO's many adjoining planning regions.

3. Transmission Cost Allocation Principles (Regional And Interregional)

- The Final Rule adopts six principles for regional or interregional projects (the interregional principles are similar with some slight differences):
 1. Costs allocated “roughly commensurate” with benefits
 2. No involuntary cost allocation to non-beneficiaries
 3. If a benefit-cost ratio is used, it can't exceed 1.25 unless FERC approves a higher ratio
 4. Costs must be allocated solely within the region unless those outside voluntarily assume costs
 5. Method and data requirements for determining benefits must be transparent
 6. Different methods may be chosen for different types of facilities (e.g., reliability, congestion relief, public policy)
- Neighboring planning regions must have a common interregional cost allocation method for new interregional facilities that both regions determined to be more efficient or cost-effective
- Participant funding is permitted but not as the regional or interregional cost allocation method
- Non-incumbent developer has same eligibility as incumbent to use a regional cost allocation method for qualifying projects
- If region can't decide on a cost allocation method, then FERC would decide based on the record

**Order No. 1000 Summary Talking Points for
Sept. 9 MN PUC MISO Quarterly Update Meeting**

**Provided by Alliant Energy, Great River Energy, Minnesota Power,
Otter Tail Power Company, and Xcel Energy**

4. Elimination of the Federal Right of First Refusal (ROFR)

- ***State Jurisdiction:*** FERC made clear that, with respect to its federal elimination of ROFR, “nothing in this Final Rule is intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities.”
- Required to remove from FERC-jurisdictional tariffs and agreements a federal right of first refusal (“ROFR”) to construct transmission facilities selected in a regional transmission plan for purposes of cost allocation.
- Allows any nonincumbent developer of a transmission facility selected in the regional transmission plan to allocate the cost of such transmission facility through a regional cost allocation method(s).
- FERC is requiring (in our case) MISO and its stakeholders to come up with a Project Submission Form, Reevaluation Procedures, and Qualification Criteria.
 - ***Project Submission Forms:*** Required to identify:
 - The information that must be submitted by a prospective transmission developer in support of a transmission project it proposes in the regional transmission planning process; and
 - The date by which such information must be submitted to be considered in a given transmission planning cycle.”
 - ***Reevaluation Procedures.*** Must develop a process if the non-incumbent is not completing a project required by the incumbent to meet its reliability needs or service obligations such that if a delay occurs, the incumbent can propose a solution within its retail distribution service territory or footprint that will enable it to meet its reliability needs or service obligations.
 - ***Qualification Criteria:*** Identify the qualification criteria for determining an entity’s eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation whether the entity is an incumbent or nonincumbent developer.
 - Developer to demonstrate that it has the necessary financial resources and technical expertise to develop, construct, own, operate, and maintain transmission facilities
 - Note: This is one of the areas where states can assist MISO in providing what they will deem a qualified developer within their state.

Limitations on ROFR

ROFR May Be Retained On:

- “Local” facilities that are planned by individual transmission owners and whose costs are borne locally, rather than being subject to regional cost allocation.
 - In other words, projects selected for regional cost allocation can be located entirely within the service territory of a single public utility transmission provider, but the Rule does not allow the incumbent the ROFR for that project (unless state law

**Order No. 1000 Summary Talking Points for
Sept. 9 MN PUC MISO Quarterly Update Meeting**

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would determine otherwise). FERC indicates that the public utility can construct facilities that are located solely within its retail distribution service territory if the project is not submitted through the regional plan (and regional cost allocation)(i.e., it is the regional nature of cost allocation which categorizes the project as not subject to ROFR).

- Use and control of existing rights-of-way and upgrades to the transmission owner's own transmission facilities (e.g., tower change outs or reconductoring).
- **Potential North American Electric Reliability Corporation (NERC) Violations:** If a violation of a NERC reliability standard would result from a nonincumbent transmission developer's decision to abandon a transmission facility meant to address such a violation, the incumbent transmission provider does not have the obligation to construct the nonincumbent's project," but rather "must identify the specific NERC reliability standard(s) that will be violated and submit a NERC mitigation plan to address the violation."
 - FERC goes on to indicate that, "[p]rovided the public utility transmission provider follows the NERC approved mitigation plan; the FERC will not subject that public utility transmission provider to enforcement action for the specific NERC reliability standard violation(s) caused by a nonincumbent transmission developer's decision to abandon a transmission facility."



MEMORANDUM

TO: Minnesota Senate Energy, Utilities and Telecommunications Committee

FROM: John Garvin, American Transmission Co.

DATE: March 20, 2012

SUBJECT: Senate File 1815

Thank you very much for the opportunity to provide testimony regarding Senate File 1815.

ATC owns, operates, builds and maintains the high voltage transmission system serving portions of Wisconsin, Michigan, Minnesota and Illinois. Formed in 2001 as the nation's first multi-state transmission-only utility, ATC has invested \$2.7 billion to improve the adequacy and reliability of its infrastructure. ATC is a \$3.1 billion company with 9,440 miles of transmission lines and 519 substations.

ATC is also a national leader in the cost efficient planning, development and construction of high voltage electric transmission facilities. With nearly \$3 billion invested in the last 10 years, ATC has a proven track record of building needed transmission as cost efficiently as possible for electricity users.

Senate File 1815, unfortunately, would stifle competition in the development and construction of electric transmission facilities leading to higher costs for electricity users in Minnesota. Unquestionably the competitive free market system in America has benefited businesses and consumers for decades. This same competitive spirit will only benefit Minnesota electricity users when applied to the development, construction, ownership and maintenance of electric transmission facilities.

Senate File 1815 is contrary to the nation's energy policy governing transmission. In July, 2011, the Federal Energy Regulatory Commission (FERC) issued Order 1000. One of the central tenets of Order 1000 is to enable incumbent and non-incumbent transmission developers to compete to build transmission facilities that would provide regional benefits, with the costs shared on a regional basis. In its regional transmission planning process, MISO is proposing that these projects would be designated "Market Efficiency Projects" that provide economic savings and "Multi-Value Projects" that provide public policy, reliability and/or economic

Memo to Minnesota Senate Energy, Utilities
and Telecommunications Committee
March 20, 2012
Page 2

benefits. FERC's goal with Order No. 1000 was to encourage the development of the substantial amount of transmission needed to support Renewable Portfolio Standards and reliability among other purposes, and that it be developed in the most efficient and cost effective manner.

Establishing an exclusive right of incumbent transmission owners to construct and own electric transmission lines that connect to facilities of the incumbent provider, as proposed in Senate File 1815, would remove any competition to plan, construct, own, operate and maintain certain transmission facilities that MISO would require to provide within its regional planning process. Yet Minnesota incumbent transmission owners who would be protected from competition inside Minnesota would at the same time be able to compete to develop transmission projects in other states that do not impose ROFRs on the market.

Finally, the legislation would create an "off-ramp" for projects that are included in the MISO regional plan for the state of Minnesota. The projects included in that plan are those determined to be the best solution to address a given transmission need. Senate File 1815 would inappropriately give Minnesota transmission owners the ability to refuse to build a project that is included in a regional plan, and this would conflict with the MISO Transmission Owners' obligation to build.

Today, the transmission grid is a regionally interconnected regional system, not a series of in-state systems. An incumbent transmission owner's ability to veto a project that is included in a regional plan could have cost and reliability impacts both on Minnesota electricity users, as well as users beyond the Minnesota state border.

Exhibit 3

North Dakota Legislative History

2011 N.D. SB 2322

Enacted, March 29, 2011

Reporter

2011 N.D. ALS 346; 2011 N.D. Laws 346; 2011 N.D. Ch. 346; 2011 N.D. SB 2322

**NORTH DAKOTA ADVANCE LEGISLATIVE SERVICE > NORTH DAKOTA 62ND
LEGISLATIVE ASSEMBLY > CHAPTER 346 > SENATE BILL 2322**

Notice

Added: Text highlighted in green

Deleted: Red text with a strikethrough

Synopsis

AN ACT to amend and reenact sections 49-03-01, 49-03-01.4, 49-03-01.5, 49-03-02, 49-03-03, 49-03-04, and 49-03-05 of the North Dakota Century Code, relating to electric transmission providers; and to declare an emergency.

Text

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1.

AMENDMENT. Section 49-03-01 of the North Dakota Century Code is amended and reenacted as follows:

49-03-01.

Certificate of public convenience and necessity - Secured by electric public utility.

No

1. An electric public utility ~~henceforth shall~~ may not begin construction or operation of a public utility plant or system, or of an extension of a plant or system ~~, except as provided below,~~ without first obtaining from the commission a certificate that public convenience and necessity require or will require ~~such~~ the construction and operation. This section does not require an electric public utility to secure a certificate for an extension within any municipality within which ~~it~~ the electric public utility has lawfully commenced operations. If any electric public utility in constructing or extending its line, plant, or system, unreasonably interferes with or is about to interfere unreasonably with the service or system of any other electric public utility, or any electric cooperative corporation, the commission, on complaint of the electric public utility or the electric cooperative

corporation claiming to be injuriously affected, after notice and hearing as provided in this title, may order enforcement of this section with respect to the offending electric public utility and prescribe just and reasonable terms and conditions.

2. An electric transmission provider may not begin construction or operation of an electric transmission line interconnecting with an existing electric transmission line owned or operated by an electric public utility without first obtaining a certificate that public convenience and necessity require or will require the construction or operation.

SECTION 2.

AMENDMENT. Section 49-03-01.4 of the North Dakota Century Code is amended and reenacted as follows:

49-03-01.4.

Enforcement of act.

1. If any electric public utility ~~or electric transmission provider~~ violates or threatens to violate any of the provisions of sections 49-03-01 through 49-03-01.5 or interferes with or threatens to interfere with the service or system of any other electric public utility or rural electric cooperative, the commission, after complaint, notice, and hearing as provided in chapter 28-32, shall make its order restraining and enjoining ~~said~~ the electric public utility ~~or electric transmission provider~~ from constructing or extending its interfering lines, plant, or system. In addition to the restraint imposed, the commission shall prescribe ~~such~~ any terms and conditions as ~~it shall deem~~ the commission deems reasonable and proper.

~~Provided, further, that nothing herein contained shall be construed to~~

2. This section does not prohibit or limit any person, who has been injured in the person's business or property by reason of a violation of sections 49-03-01 through 49-03-01.5 by any electric public utility, ~~electric transmission provider~~, or electric cooperative corporation, from bringing an action for damages in any district court of this state to recover such damages.

SECTION 3.

AMENDMENT. Section 49-03-01.5 of the North Dakota Century Code is amended and reenacted as follows:

49-03-01.5.

Definitions.

As used in sections 49-03-01 through 49-03-01.5:

1. "Electric provider" means either an electric public utility or a rural electric cooperative.
2. "Electric public utility" means a privately owned supplier of electricity offering to supply or supplying electricity to the general public.

3. “Electric transmission line” means facilities for conducting electric energy at a design voltage of one hundred fifteen kilovolts or greater phase to phase and more than one mile long.
4. “Electric transmission provider” means an owner or operator, other than a rural electric cooperative, of a transmission line the costs of which are recovered directly or indirectly through transmission charges to an electric public utility.
5. “Person” includes an individual, an electric public utility, a corporation, a limited liability company, an association, or a rural electric cooperative.
4. 6. “Rural electric cooperative” includes any electric cooperative organized under chapter 10-13. An electric cooperative, composed of members as prescribed by law, shall not be deemed to be an electric public utility.
5. 7. “Service area” means a defined geographic area containing existing or future service locations established by an agreement among electric providers and approved by the commission.
6. 8. “Service area agreement” means an agreement between electric providers establishing service areas and designating service locations to be served by each provider under section 49-03-06.
7. 9. “Service location” means the structures, facilities, or improvements on a parcel of real property to which electric service may be provided.

SECTION 4.

AMENDMENT. Section 49-03-02 of the North Dakota Century Code is amended and reenacted as follows:

49-03-02.

Prerequisites to issuance of certificate of public convenience and necessity.

1. Before any certificate may issue under this chapter, a certified copy of the articles of incorporation or charter of the utility, if the applicant is a corporation, or a certified copy of the articles of organization of the utility, if the applicant is a limited liability company, ~~shall~~ must be filed with the commission. At the hearing ~~of said~~ on the application ~~upon~~ after notice as provided in this title, the utility shall submit evidence showing that ~~such~~ the applicant has received the consent, franchise, permit, ordinance, or other authority of the proper municipality or other public authority, if required, or has or is about to make application ~~therefor~~ for authority. The commission shall have the power, after notice and hearing, to:
 1. a. Issue the certificate prayed for;
 2. b. Refuse to issue ~~such~~ the certificate;
 3. c. Issue ~~it~~ the certificate for the construction or operation of a portion only of the contemplated facility, line, plant, system, or extension ~~thereof~~ of the same ; or
 4. d. Issue ~~it~~ the certificate for the partial exercise of the right or privilege sought, conditioned upon the applicant’s having secured or upon the applicant’s securing the

consent, franchise, permit, ordinance, or other authority of the proper municipality or other public authority, and may attach to the exercise of the rights granted by any certificate such terms and conditions as in ~~its~~ the judgment of the commission the public convenience and necessity may require.

2. Notwithstanding any ~~of the foregoing provisions~~ other provision of this section, the commission may grant a certificate if ~~no~~ an interested party, including any local electric cooperative, has not requested a hearing on ~~said~~ an application after receiving at least twenty days' notice of opportunity to request such hearing. In addition, the commission may not issue a certificate to an electric transmission provider for construction or operation of an electric transmission line that will interconnect with an electric transmission line owned or operated by an electric public utility if the electric public utility is willing and able to construct and operate a similar electric transmission line.
3. The commission may impose an application fee of up to one hundred twenty-five thousand dollars for an application under this chapter. With the approval of the emergency commission, the commission may impose an additional amount. The commission shall pay the expenses of processing an application under this chapter from the application fee paid by the public utility in accordance with section 49-02-02.

SECTION 5.

AMENDMENT. Section 49-03-03 of the North Dakota Century Code is amended and reenacted as follows:

49-03-03.

Franchise not to be exercised without certificate.

~~No~~ A public utility ~~henceforth shall~~ or electric transmission provider may not exercise any right or privilege under any franchise or certificate ~~hereafter granted, or under any franchise or certificate heretofore granted,~~ the exercise of which has been suspended or discontinued for more than one year, without first obtaining from the commission a certificate that public convenience and necessity require the exercise of ~~such~~ the right or privilege.

SECTION 6.

AMENDMENT. Section 49-03-04 of the North Dakota Century Code is amended and reenacted as follows:

49-03-04.

Replacement or renewal of franchise - Certificate of public convenience and necessity not necessary.

~~No~~ A public utility or electric transmission provider does not need to secure a renewal of the certificate of public convenience and necessity under this chapter in order to exercise rights under an ordinance ~~hereafter granted where it~~ if either has not suspended operation of its plant and where ~~such~~ the franchise merely replaces or renews an expiring or expired franchise.

SECTION 7.

AMENDMENT. Section 49-03-05 of the North Dakota Century Code is amended and reenacted as follows:

49-03-05.

Complaint upon violation of chapter.

~~Whenever~~ If a public utility or electric transmission provider engages or is about to engage in construction or operation as described in this chapter without having secured a certificate of public convenience and necessity as required by the provisions of this chapter, or ~~whenever~~ if a public utility or electric transmission provider constructs or extends its line, plant, or system, or supplies, or offers to supply electric service in violation of this chapter, any interested municipality, public authority, utility, electric cooperative corporation, or person, may file a complaint with the commission. The commission ~~thereupon~~ acting on the complaint, or upon its own motion without complaint, with or without notice, may make its order requiring the public utility complained of to cease and desist from ~~such~~ the construction or operation or other prohibited activity until the further order of the commission. Upon hearing had after due notice given, the commission shall make ~~such~~ an order with respect to ~~such~~ the public utility or electric transmission provider and prescribe ~~such~~ terms and conditions as are just and reasonable.

SECTION 8.

EMERGENCY. This Act is declared to be an emergency measure.

History

Approved by the Governor March 29, 2011

NORTH DAKOTA ADVANCE LEGISLATIVE SERVICE
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2011 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2322

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2322
January 31, 2011
Job Number 13683

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to electric transmission providers

Minutes:

Testimonies Attached

Chairman Klein: Opened the hearing.

John Olson: Introduced the bill.

Andrea Stomberg, Vice-President Electric Supply, Montana-Dakota Utilities Co.:
Testimony Attached.

Senator Andrist: When you say this will prohibit the PSC from issuing a certificate, is the PSC now have the opportunity to use its judgment on whether to issue a certificate to build a transmission line. Does this come from real case or is it something you want for the utilities protection in the future?

Andrea: The process to obtain a CPCN, Certificate of Public Convenience and Necessity, for any utility that services retail customers in the state of North Dakota is in place we do that on a routine bases in our business. She isn't aware of any one who has had any problems. It is bringing anyone else that wants to build transmissions in the state and that it impacts their lines.

Chairman Klein: Things were going well until the Federal Energy Regulatory said we are going to change the rules?

Andrea: This came about when the FERC came in and said that the smaller utilities had to join the larger ones that have regional planning organizations because they don't build transmissions that go out of state. They joined the ISO and believed they would have the right, if the new line being built would affect their customers, in terms of cost; they would get the first right to say they want to build the line.

Chairman Klein: Commented about North Dakota having enough transmissions for the State, and asked if this goes beyond our state.

Andrea: If we want to move our energy out we would have to build some additional transmission. There are transmissions being built.

John Olson, Otter Tail Power Company: Testimony Attached.

Senator Murphy: Asked what FERC was trying to do, provide more competition?

John: Doesn't know for sure but would assume that they would like to see more competition.

Kathy Aas, Xcel Energy: In support of the bill.

Sandi Tabor, Lignite Energy Council: In favor of the bill.

Illona A, Jeffcoat-Sacco, General Counsel with the Public Service Commission: Testimony Attached.

Questions asked about the amount of money the Public Service Commission is asking for if the bill is passed.

Todd D. Kranda, Missouri River Energy Service: He is representing Deb Birgen and hands out her testimony and then reads it to the committee.

Harlan Fuglesten, The North Dakota Association of Rural Electric Cooperatives: They contacted Basin Electric and they have no objections to it. They also contacted all of their other generation and transmission cooperatives that are members of their association and they did not have any opposition from them.

Andrea: She was asked if this would help or if it would retard the development. She felt it would help but there would be a lot of companies wanting to build transmission lines. She stated that this was a nationwide issue. In the upper Midwest there are one or two transmission companies that have a business to build only transmissions. She said those who have built transmissions in the state want to continue to build transmissions in the state. In reference to the amendments she has a couple issues with the language she believes Todd had addressed. She is concerned that the language would allow any power supplier to have to be approached to see if they want to build it and receive written affirmation that they don't before they could proceed. She would like to see it narrowed down and would oppose it as it is now stated.

Dan Kuntz, Attorney for MDU Resources Group: Answers questions asked to Andrea that she was unable to answer. He stated that some entities do not need PSC jurisdiction to build outside of city limits. The amendments would cause them to have to offer a piece of the project to the other suppliers. He answered more questions about transmission projects.

Chairman Klein: Closed the hearing.

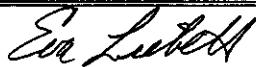
2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2322
February 1, 2011
Job Number 13801

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to electric transmission providers

Minutes:

Discussion and Vote

Chairman Klein: Opened the meeting on Senate Bill 2322.

Senator Andrist: Moved a do pass to adopt the amendments by the Public Service Commission.

Senator Laffen: Seconded the motion.

Roll Call Vote: Yes-7 No-0

Senator Schneider: Moved a do pass to adopt the Schneider's, emergency Claus, amendment.

Senator Andrist: Seconded the motion.

Roll Call Vote: Yes-7 No-0

Senator Andrist: Moved a do pass as amended.

Senator Laffen: Seconded the motion.

Roll Call Vote: Yes-7 No-0

Senator Klein to carry the bill

FISCAL NOTE
Requested by Legislative Council
02/08/2011

Amendment to: SB 2322

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill would require electric transmission providers to obtain a CPCN before interconnecting with an existing transmission line owned or operated by an electric public utility. No fiscal impact (see below).

Bill now authorizes the fee. No fiscal impact, as noted previously.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

We see no fiscal impact because we do not know how many such applications we would have in a biennium, perhaps none. Also, applications that are not controversial will not use significant resources. The amendment to this bill authorizes the commission to impose a fee for cases that might use significant resources, and use the fee to retain outside assistance. The unused balance of any such fee will be refunded.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Any revenue from any imposed fee will be used to pay expenses with the remaining balance refunded.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Any expenses for outside assistance will be paid from the fee with the balance refunded.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

None, see above

Name:	Illona A. Jeffcoat-Sacco	Agency:	PSC
Phone Number:	328-2407	Date Prepared:	02/08/2011

FISCAL NOTE

Requested by Legislative Council
01/26/2011

Bill/Resolution No.: SB 2322

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill would require electric transmission providers to obtain a CPCN from the commission before interconnecting with an existing transmission line owned or operated by an electric public utility (both as defined by the statute). No fiscal impact (see below).

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

We see no fiscal impact because we do not know how many such applications we would have in a biennium, perhaps none. Also, applications that are not controversial will not use significant resources. The commission plans to request an amendment to this bill authorizing the commission to impose a fee for cases that might use significant resources, and use the fee to retain outside assistance.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

none, see above

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

none, see above

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

none, see above

Name:	Ilona A. Jeffcoat-Sacco	Agency:	PSC
Phone Number:	328-2407	Date Prepared:	01/28/2011

PREPARED BY THE PUBLIC SERVICE COMMISSION
February 2, 2011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2322

Page 1, line 3, after "providers" insert "and application fees for certificates of public convenience and necessity"

Page 4, after line 16, insert:

3. The commission may impose an application fee of up to one hundred twenty-five thousand dollars for an application under this chapter. With the approval of the emergency commission, the commission may impose an additional amount. The commission shall pay the expenses of processing an application under this chapter from the application fee paid by the public utility in accordance with section 49-02-02.

Renumber accordingly

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2322

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Senator Andrist Seconded By Senator Laffer

Total (Yes) 7 No 0

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Public Service Commissions Amendments

PROPOSED AMENDMENTS TO SENATE BILL NO. 2322

Page 1, line 3, after "providers" insert "and declaring an emergency"

Page 5, after line 17, insert:

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure.

**2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2322**

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerrefer to Appropriations Reconsider

Motion Made By Senator Schneider Seconded By Senator Andrist

Total (Yes) 7 No 0

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

If the vote is on an amendment, briefly indicate intent:

Senator Schneider's, emergency clause, amendment.

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2322

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Senator Andrist Seconded By Senator Laffen

Total (Yes) 7 No 0

Absent

Floor Assignment Senator Klein

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2322: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2322 was placed on the Sixth order on the calendar.

Page 1, line 3, after "providers" insert "; and to declare an emergency"

Page 4, after line 16, insert:

"3. The commission may impose an application fee of up to one hundred twenty-five thousand dollars for an application under this chapter. With the approval of the emergency commission, the commission may impose an additional amount. The commission shall pay the expenses of processing an application under this chapter from the application fee paid by the public utility in accordance with section 49-02-02."

Page 5, after line 17, insert:

"SECTION 8. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2322

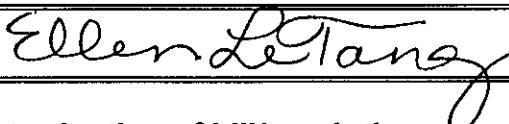
2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2322
March 9, 2011
15141

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to electric transmission providers and provide an emergency

Minutes:

Chairman Keiser: Opens the hearing on SB 2322.

John Olson: Introduces the bill and introduces Andrea Stomberg.

Andrea Stomberg~Vice-President Electric Supply-Montana-Dakota Utilities Company: (See attached testimony 1).

Representative Ruby: Does this only apply to the line if it connects to an existing line?

Andrea Stomberg: That's correct, it only applies where a line interconnects with lines built or owned by a existing company or utility.

Representative Ruby: Could their proposal to put in a line that would connect force you to some involvement in the project?

Andrea Stomberg: We would still have a keen interest how that transmission would impact our system.

Representative Ruby: That would force your involvement whether you are planning it or not?

Andrea Stomberg: To some extent.

Representative Nathe: What is the certificate of public convenience?

Andrea Stomberg: If a certificate that is embedded in the territorial integrity section of the statute right now and it's a very simple form that we use that introduces to the public service commission what the line is and what the need is for the line. The last CPC we turned in was less than 10 pages. It's a simple introduction to the project.

Chairman Keiser: We still have territorial integrity in the state and country. Is that correct?

Andrea Stomberg: Yes, absolutely.

Chairman Keiser: So MDU, Ottertail or the Co-ops, they have areas that they are designated to serve. Those areas are protected, is that correct?

Andrea Stomberg: That's correct

Chairman Keiser: For someone to construct an alternate line, they can't take wind energy and sell within one of those territories within the state, is that correct?

Andrea Stomberg: That's correct?

Chairman Keiser: So, the only value that someone could have in constructing an alternate line would be if it could interface with your existing lines for sales across the country. How is it financially a good thing for somebody to construct a line that doesn't have the territory they serve? Don't they have to connect to an existing line to get into the FERC system?

Andrea Stomberg: In theory they don't, you could build a wind farm and run a line to interconnect in theory to a line outside of MYSO on the east coast. You are not likely to do that ever. Those people who build in this area want to connect with a line that efficiently touches MYSO.

Chairman Keiser: That's the key. You have to get to MYSO.

Andrea Stomberg: You could also sell to the co-op's. That is also not touched by this bill.

Chairman Keiser: If they can't connect to your line, they can't get to MYSO, reasonable?

Andrea Stomberg: That's correct.

Representative M Nelson: How are transmission lines needs identified and are you independent in that you can build something that the Midwest ISO doesn't recognize as a need? How does that work?

Andrea Stomberg: One of the things that FERC wanted to fix by forming these RTO's was to make sure that transmissions, as they grew in this country, was much more regional. So indeed we could use this coal and wind resources from this pocket of energy. As an investor owned utility that is not our business model. Our model is to serve our customers in North Dakota, so we are not likely to look for lines that would feed to wherever. FERC says that is not good for the country. We need to have a broader picture when we do this transmission planning. Hence, that is one of the reasons they formed these RTO's. RTO and MYSO will look at overall, the problems in the transmissions system that inhibit our ability to move power out as we have some constraints. The engineers do the sophisticated modeling to understand how energy flows across this large

regional system. It identifies the constraints and says if we build this line here, that will eliminate or reduce this constraint and MYSO is doing that. Then comes this question, how do you get these lines built and paid for regionally? This is being fought out right now at MYSO and FERC.

Chairman Keiser: If I were to build alternate lines and interface with one of your lines, can you charge me a fee for access to your line?

Andrea Stomberg: The way that works under MYSO is that the entire region pays for these projects that have multi-high value projects which we expect will be sought after other entities. They have multiple purposes and MYSO has said because they are regionally important, all of MYSO footprint, everybody pays a little bit.

Chairman Keiser: If I wanted to build a line, somebody else pays for it.

John Olson~Behalf of Otter Tail Power Company: (See attached testimony 2).

Representative Amerman: Why is FERC repealing this rule?

John Olson: They are repealing the rule to spread across the right beyond public utilities to any transmission builder that would want to build that transmission line. They are doing so with the understanding that if the state decides that its public utilities are in such a situation that they would required that right to be preserved for the benefit of their consumers. I think they recognize that element as well.

Kathy Aas~Exel Energy: We are in support of this bill without any amendments.

Chairman Keiser: How does this benefit our consumers?

Kathy Aas: If we construct the line, we have the ability to earn on that investment.

Chairman Keiser: If you can earn on that investment, it reduces the overall rate charged to consumers.

Kathy Aas: Indirectly, I better not go there.

Chairman Keiser: Andrea, would you like to come back and answer that question?

Andrea Stomberg: What happens when we are allowed to invest in one of these MYSO lines, that recovery investment is guaranteed by FERC from the entire footprint. It makes sense to keep that investment available to us.

Vice Chairman Kasper: If the line is owned by the outside entity, how are the charges set for the electricity to run along their line compared to how the charges be set for the electricity set along your line?

Andrea Stomberg: It's controlled by tariffs.

Vice Chairman Kasper: Are the charges to the consumer in North Dakota higher if you don't own the lines compared to an outside entity who owns the lines?

Andrea Stomberg: That is all set by MYSO.

Representative Clark: Is there a pressing need for transmission lines right now?

Andrea Stomberg: As far as we know, we have enough lines for our customers in North Dakota. If you build more green renewable energy that we could develop in North Dakota to other markets, there are a lot of questions about the economics of that. There is a keen interest on the part of Congress. If we built a lot more green resource, it would be tough to move it.

Bob Graveline~Utilities Shareholders of North Dakota: We support SB 2322 as it is passed in the Senate.

Ilona A Jeffcoat-Sacco~General Counsel-Public Service Commission: (See attached testimony 3).

Chairman Keiser: The real issue isn't the certificate of need, it the right of first refusal and you didn't comment on that.

Ilona A Jeffcoat-Sacco: That I think is true but I also think that it can be wrapped up in the concept of the certificate. In conversations with IGC, many of the concerns like that could be addressed in a certificate proceeding depending on how the issues are raised before the commission. That's where I'm coming from.

Representative Ruby: If an upgrade of a line or a new line is done in another state, do you have the authority to approve the project or is it basically a rate increase that would affect the North Dakota residents?

Ilona A Jeffcoat-Sacco: We do not have a certificate of public convenience in necessity authority over a project in the other state. We have two different ways of looking at that. A company can ask for an advanced determination of prudence or they can ask for a recovery in rates or both. Eventually they are going to ask for a recovery rates and that question of prudence is in that rate issue. We had an advanced determination of prudence case on the whole thing because we had two of our companies that will end up making those investments, Ottertail and NSP. That's the way the commission would look at it if it's being built in another state but eventually charged to us.

Representative Boe: What is a queue?

Ilona A Jeffcoat-Sacco: The transmission building waiting line. You are waiting in that line waiting for them to give you the blessing.

Representative Clark: If somebody decides to build a line, then it's decision time for our local utility serving North Dakota whether or not they want to build that line. Is that right? If they do decide that they will exercise their right then they do it no matter what it costs?

Ilona A Jeffcoat-Sacco: What we expect of a utility that we regulate, where we are worried about what they are doing for investment and whether they serve their customers is that they are going to make the best decision for their obligation to serve their customers. Even if they think that they can sell a bunch of power outside their system to another market, that's good for customers. We expect the best business decision to be made. When that happens, that's when they have to come in and ask us for this public convenience of necessity certificate and that's where they tell us the business decision and the commission decides if we agree or not. An entity that's not regulated is making its business decisions based on their business model. They are not coming to ask us about it. The bill is trying to tie together when ratepayers pay for it. Let's let the commission have some involvement in that decision.

Chairman Keiser: If the bill passes, and another entity says we want to build a transmission line, they have to come and get a certificate. They try to get a certificate but they also have to inform the existing utility that we are considering building this and the existing utility could then say, no we will build it. That utility still needs to come and get a certificate?

Ilona A Jeffcoat: That's correct.

Chairman Keiser: Then both of them would be getting into the queue with MYSO for funding? It's really a two step process. The state could issue a certificate and MYSO could say up or down.

Ilona A Jeffcoat-Sacco: That's the way I understand it. Which would come first? I don't know because I don't know what the different planning horizons are?

Representative M Nelson: Moving the right of refusal from the federal agency down to the state level, what is first refusal?

Ilona A Jeffcoat-Sacco: I don't know the answer to that.

Francie Brown~Director of State Governmental Affairs for ITC Holding Corp: (See attached testimony 4).

Chairman Keiser: What do these amendments do?

Francie Brown: The major amendment is to address a situation should an incumbent utility decide not to build? There is a process or timeline in which they make that decision, so another entity that has the expertise can then build those facilities. They have been identified as needed through a transmission planning process like MISO and the incumbent utility may or may not want to build that line. If they don't want to build that line, they can assign that right to build to someone else. The idea is to notify the commission within a specific period of time so another entity could apply and build. There is a new amendment added in the Senate, which requires a fee of \$125, 000 when you apply for the certificate.

Representative Nathe: How do the out-of-state developers impact our consumers rates?

Francie Brown: The higher, bigger lines we are talking about, FERC, there is a tariff that would spread the costs of building those regional lines across the regions.

Vice Chairman Kasper: How does your company make a profit on what you do compared to how the utilities make additional over-ride on transmission lines. What are the differences?

Francie Brown: We both receive a return on equity and investment, which is our business model. We are regulated by FERC.

Vice Chairman Kasper: Would there be any difference in cost to the consumers in North Dakota if your company built the lines versus the utility building the line?

David Grover~ITC Midwest: Both the IOU's in North Dakota and ITC would use the same Midwest ISO formula rates to calculate the costs of the project. Sometimes there are very minor differences but are essentially the same.

Chairman Keiser: In theory, your company would make a profit by making this investment. In theory the local entities would make a profit by having this line, in their case, their profit is returned to their financial statement. When the PSC looks at rates of increase, they are going to factor that profit in and it could affect the local customers in our state. Will you profitability be incorporated in any filing with the PSC for rate payers in the state of North Dakota?

David Grover: Only to an extent. If we were to build a project, then costs would be charged all customers in the Midwest, customers in ISO, including those in North Dakota.

Chairman Keiser: It may happen.

David Grover: I don't recall frequent North Dakota rate case filings.

Representative Ruby: With the way this law is, the change at the federal level, this is basically put in to be consistent. Why is it a problem to work in this structure?

Francie Brown: If the incumbent utility hasn't made that decision, when does the independent transmission company make that application that is going to cost \$125,000 for the CPCN? We don't know their decision. The right of first refusal is a process we support; we are just trying to figure out at what in point in time does the independent transmission go through the process, time, and effort of putting together a certificate? When do we do that process? Shouldn't there be a timeline to make a decision to build?

Representative Ruby: Was there a time line at this time with the federal?

Francie Brown: Not to my knowledge.

Representative Ruby: Are the timelines in your amendments reasonable for the amount of time to make their decision?

Francie Brown: Maybe the 90 days wasn't the right timeline and maybe it's a different one. Setting some milestone advances the development. These are friendly amendments and are meant to move the ball forward but make sure there is a process in place.

Representative Ruby: You want to date certain guidelines?

Francie Brown: Yes it's helpful for those who are interested in building.

Representative Nathe: In regards to your proposed amendment, the right of first refusal, what are other states are doing?

Francie Brown: It is a different situation in Michigan. We are the transmission provider there. Iowa and Minnesota are the same, we acquired those assets. We are the transmission provider there also. This is the case as we read through the bill. Electric transmission companies have now pull CPCN process. How is it then when we know the decision by the incumbents has been made that they don't want to build?

Representative Nathe: Do they have laws in any of those states that address the right of first refusal?

Francie Brown: Not that I'm aware of.

Chairman Keiser: Walk me through, MYSO approves this is a line that we would approve if they wanted to build it, that's an important step there. In terms of the right of first refusal, that's not the certificate, how does that work? Do you contact the PSC?

Francie Brown: That is the process the way the bill is currently written, it's unclear. There is a process for us to apply to be able to build the line, but because the incumbents have the right of first refusal, how do we know when to make that application?

Chairman Keiser: If they respond to you, no, we are refusing that request, it's not done.

Francie Brown: Their right of first refusal currently is open for however long.

Chairman Keiser: They could not build the project, but not let anyone else build the project.

Francie Brown: Correct.

Chairman Keiser: By placing your amendment on this bill, they would have 90 days to issue a certificate of need?

Francie Brown: They would have 90 days after the planning authority, MYSO, has approved it.

Chairman Keiser: MYSO approves the line, then they have to take action in 90 days.

Francie Brown: In 90 days they would need to notify the commission that in fact that it's their intent to request the certificate and then at some point they would need to apply for the CPCN for that line.

Chairman Keiser: If they don't do that, then the door is open to anyone else after the 90 day period.

Francie Brown: Correct, then at that point in time, if those steps are not taken within those time frames, then another entity would be able to file to CPCN.

Chairman Keiser: They would be in first position.

Francie: Correct.

Representative M Nelson: Under the current system with FERC, what timelines do they have in their rules?

Francie Brown: I don't believe they have any timelines.

Representative M Nelson: So, currently you operate under right of first refusal under FERC, but there is no time line?

Francie Brown: That is what they are working on right now.

Representative Nathe: Back to the right of first refusal, you stated in the other states, they do not have this. Have you tried to get this similar language passed in those states? I'm trying to figure out why you are trying to change it here and the other states where you do this, you do not have this.

Francie Brown: We are the utility in other states.

Chairman Keiser: You are not filing this in those other states where you are already in first position to open it up to other people.

Francie Brown: That would be true.

Chairman Keiser: Is there anyone else here to testify in support with the amendment of SB 2322.

Illona A Jeffcoat-Sacco: I do not have a commission position on this amendment; I did not know it was formal. I would like to get time to try and get a commission position on the amendment. The commission as a group did not consider these issues. I want to clarify some things. With my discussion with ITC still holds true, regardless of the merits and agreement of all of these concerns or issues, the existing commission process, general administrative procedure, general PC could accommodate these concerns in a way that allows full discretion. I can see this playing out like the trucking issue was a while back in this statute without the amendments. Another point, there will not be a hearing in the commission at the state level over the costs of that transmission. If the commission or the

state of North Dakota for ratepayers wants to have any input on transmissions costs, it's going to be at FERC. When those costs come through, they are getting flowed through at the state level. We do appreciate that added fee but the fee is not mandatory.

Representative N Johnson: Where is the \$125,000 coming from? Was it a request from the PSC?

Ilona A Jeffcoat-Sacco: Yes.

Representative M Nelson: Do you think it is necessary to have the technical correction of adding "or electrical transmission provider" or would they be considered a utility?

Ilona A Jeffcoat-Sacco: That should be as opposed to adding more words.

Chairman Keiser: Anyone else here to testify in support, in opposition, in the neutral position. Closes the hearing, what are the wishes of the committee?

We will hold it.

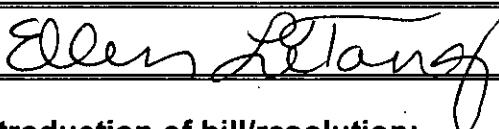
2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2322
March 9, 2011
15200

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Electric transmission providers and declare an emergency

Work Session Minutes:

Chairman Keiser: Opens the work session on SB 2322.

Chairman Keiser: I have mixed emotions on this bill. If you recall that if you overstrike "utility" and insert "applicant", my instinct tells me that I know what utility is and it's one and the same thing. She also suggested that the commission refund the portion of the fee, which exceeds the expenses incurred for processing the case for which the fee was paid. I asked her, can't you just do that? It doesn't need to be in the law because the fee may be charged up to that amount to cover the expenses. She said, yeah, that's true. What are the wishes of the committee? (See attached testimony).

Vice Chairman Kasper: If we change, the word is somewhat meaningless; we go back to the Senate and open the whole thing back up.

Vice Chairman Kasper: Moves a Do Pass SB 2322.

Representative Gruchalla: Second.

Chairman Keiser: Further discussions? When I did ask the question that in those states that you are the principle transmission provider, have you turned in this legislation, the answer was no, we haven't. Which suggest to me they have motivation to do it here, but not in their home state? I support the motion.

Roll call was taken for a Do Pass on SB 2322 with 13 yeas, 0 nays, 1 absent and Representative Nathe is the carrier.

Date: March 9, 2011

Roll Call Vote # /

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2322

House Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Motion Made By Rep Kasper Seconded By Rep Gruchalla

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	/		Representative Amerman	/	
Vice Chairman Kasper	/		Representative Boe	/	
Representative Clark	/		Representative Gruchalla	/	
Representative Frantsvog	/		Representative M Nelson	/	
Representative N Johnson	/				
Representative Kreun	/				
Representative Nathe	/				
Representative Ruby	/				
Representative Sukut	/				
Representative Vigesaa	Ab				

Total Yes 13 No 0

Absent |

Floor Assignment Rep. Nathe

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2322, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2322 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2322

Testimony of Andrea Stomberg

Vice-President Electric Supply

Montana-Dakota Utilities Co.

Before the Senate Industry, Business and Labor Committee

January 31, 2011

Senate Bill 2322

Montana-Dakota, and the other investor owned utilities that serve electric customers in this State, have done so reliably for many years- Montana-Dakota for over 80. With the oversight of the North Dakota Public Service Commission, we have an obligation to serve our customers, and also have the obligation and opportunity to invest in needed infrastructure and to maintain it in the interest of our customers. These proposed changes to the century code clarify the first right to own new lines interconnecting with existing transmission built by regulated utilities within the State, cost of which will be passed on to those same utilities, belongs to the regulated utilities .

Montana-Dakota, Otter Tail Power Company and Xcel Energy have built high voltage transmission lines in North Dakota under the watchful eye of the Public Service Commission who evaluates the need for them, issues permits for them, and determines the recovery of our investments in them through the rates they allow us to charge our customers.

In recent years, all of the investor owned utilities that serve customers in this state have joined the Federal Energy Regulatory Commission, or FERC, recognized regional transmission organizations, or RTO's. These organizations were formed in part to answer the concerns that utility-specific transmission planning was inadequate to address broader regional transmission needs, such as we see in this state for the export of fossil or renewable energy to markets outside the state boundaries.

The regional RTO to which Montana-Dakota, Otter Tail and Xcel energy belong is the Midwest Independent System Operator, or Midwest ISO. The Midwest ISO encompasses 13 states from Montana to Ohio, to Kentucky and Missouri and the Canadian province of Manitoba. By joining the Midwest ISO, Montana-Dakota, Otter Tail and Xcel gave up operational control of their transmission lines, and participate in regional transmission operation and planning. Cost allocations for regional planning and transmission projects built by members of the Midwest ISO are now shared across a broader regional landscape.

As part of the FERC approved contractual agreements between the utilities and the Midwest ISO, the incumbent utilities are guaranteed the first right to construct transmission lines that interconnect with our existing transmission lines. These new lines are approved through the Midwest ISO regional planning process as needed lines.

In a notice of proposed rulemaking issued last June, the FERC proposed to eliminate this contractual language, saying that the opportunity to build transmission should be available through a competitive process to anybody who is able and interested. This new competitive process creates a new right of first refusal to the entity who first proposes a particular transmission line. The outcome of throwing open interconnecting transmission construction to all comers could be a network of transmission lines

interconnected with existing lines serving North Dakota customers, built by entities who may not be under state PSC jurisdiction, but who will be able pass their cost to build and maintain the lines onto the customers of the incumbent utility through the Midwest ISO transmission charges.

This FERC proposal also vacates a fundamental premise under which Montana-Dakota, Otter Tail and Xcel joined the Midwest ISO, and which gave us confidence that we would continue to have some control over transmission interconnecting to our lines the costs of which we would expect to see included in Midwest ISO charges to us.

In its proposed rulemaking, FERC acknowledged that the states have a strong interest in regulating transmission and costs within their borders. Clearly stated in the FERC proposal is language that indicates FERC will recognize state law if that law favors the incumbent utility's first right to build. It is that state law we wish to solidify by proposing the language in Senate Bill 2322.

SB 2322 provides that a transmission provider, which could be another utility as well as an independent transmission builder, could not begin construction of a high voltage transmission line which interconnects with lines owned or operated by an electric public utility such as Montana-Dakota, Otter Tail or Xcel, without obtaining a certificate of public convenience and necessity from the PSC. This is no different than the requirement that applies to the existing utilities. The bill further provides that the PSC may not issue this certificate to a transmission provider if the interconnecting public utility is willing and able to construct and operate a similar transmission line. The language provides that any transmission project that is approved by the Midwest ISO, for instance to convey renewable or other energy to out of state markets, and which an incumbent does not wish to, or is unable to, construct, is available for another entity who would successfully advance a certificate of public convenience and necessity to the Commission.

**Testimony of John Olson
Senate Bill 2322
On behalf of Otter Tail Power Company
Before the Senate Industry, Business & Labor Committee
January 31, 2011**

Mr. Chairman and members of the Committee, for the record, my name is John Olson. On behalf of Otter Tail Power Company, I am testifying in favor of Senate Bill 2322.

SB 2322 would foreclose an "electric transmission provider" from constructing and operating electric transmission lines of 115 kilovolts or greater and exceeding one mile, and which interconnect to an electric public utility's existing transmission system -- without first obtaining a certificate of public convenience and necessity from the Public Service Commission. "Electric transmission provider" is a newly-defined term that means an owner or operator, other than a rural electric cooperative, of a transmission line the costs of which are recovered directly or indirectly through transmission charges to an electric public utility.

Further, SB 2322 would foreclose the Commission from issuing a certificate of public convenience and necessity to an "electric transmission provider" -- if an electric public utility to whose electric transmission line the proposed electric transmission line would interconnect is willing and able to construct and operate a similar electric transmission line.

Recent action by the Federal Energy Regulatory Commission, or FERC, led North Dakota's electric public utilities who are members of the Midwest Independent Transmission System Operator, or MISO, to advance this legislation. These electric public utilities are Otter Tail Power Company, Xcel Energy, and Montana-Dakota Utilities Co.

In June, FERC issued a notice of proposed rulemaking that would strike from any FERC-approved tariff certain provisions that give transmission owners or public utilities the right of first refusal, or first choice, in deciding whether to construct and operate transmission projects approved for construction by regional transmission organizations like MISO. The right of first refusal is a long-standing policy, a necessary trade-off public utilities received in exchange for maintaining the transmission grid's efficiency and reliability. FERC commissioners have made it clear, however, that they cannot and will not preempt state policy on the right of first refusal issue.

A group of public utilities, including Otter Tail Power Company, recently filed comments in opposition to FERC's proposal to rollback the right of first refusal policy. So, too, have the North Dakota Public Service Commission and the South Dakota Public Utilities Commission.

A brief review of federal transmission policy is necessary to understand the inequity of FERC's proposal. In 1992, Congress passed the Energy Policy Act -- which required

that public utilities provide access on their transmission systems to others on the same terms and conditions they provide to themselves. This policy is referred to as open-access transmission.

A series of FERC rulemakings followed passage of the Energy Policy Act, including a landmark order by FERC. Order 888 required public utilities to file open-access transmission tariffs, and created rules ensuring that companies owning both generation and transmission do not have an unfair advantage over independent generators in seeking access to the transmission grid. Over time, FERC encouraged utilities to join regional transmission organizations like MISO to ensure the evolution of a robust wholesale electricity marketplace.

Otter Tail Power Company and several other regional public utilities, including Xcel Energy and Montana-Dakota Utilities Co., joined MISO. MISO controls access to MISO member-owned transmission facilities, and facilitates a thorough transmission planning process that identifies new transmission projects. In joining MISO, the public utilities turned over operational control of their transmission facilities to MISO in 2002. As part of the FERC-approved contractual agreements between the utilities and MISO, the utilities were guaranteed a right of first refusal to construct and operate transmission lines that interconnect with their existing transmission lines.

Public utilities like Otter Tail Power Company have an obligation to serve the public. In light of this obligation, and because of their good faith relinquishment of operational control of their transmission systems, public utilities should have the right of first refusal to construct and operate transmission projects approved for construction by MISO and interconnecting with their transmission systems. FERC's proposal to rescind the right is, in a word, troubling.

Senate Bill 2322 would ensure this right within the State of North Dakota, preserving the right of first refusal as a matter of state law -- regardless of what FERC does in its final rule. Final passage will ensure public utilities providing retail electric service to North Dakota customers will continue to have the first opportunity to construct and operate transmission in the efficient manner our customers have come to expect. If public utilities choose not to exercise this right or are financially unable to do so, the opportunity to construct and operate transmission will reside with others.

Otter Tail Power Company urges a DO PASS on Senate Bill 2322. The public utility representatives in attendance and I stand ready to answer any questions you may have.

Senate Bill 2322

Presented by: Illona A. Jeffcoat-Sacco
General Counsel
Public Service Commission

Before: Senate Industry, Business and Labor Committee
Honorable Jerry Klein, Chairman

Date: January 31, 2011

TESTIMONY

Mister Chairman and committee members, I am Illona Jeffcoat-Sacco, General Counsel with the Public Service Commission. The Commission asked me to appear today to request an amendment to Senate Bill 2322. With the amendment, the Commission can support Senate Bill 2322.

The Commission recognizes the importance of the issue the bill is intended to address. The transmission facilities for which Senate Bill 2322 would require a certificate of public and convenience and necessity have the potential to impose significant rate impacts on North Dakota customers. Consequently, the Commission believes that it is appropriate to require those who build such transmission facilities to show that public convenience and necessity require the building of the projects they propose. This is what state policy requires of investor owned utilities before permitting them to invest in utility plant that will ultimately be paid for by North Dakota ratepayers. It is reasonable and appropriate to require other providers to meet the same standards when North Dakota ratepayers will be paying the bill.

The Commission requests an amendment to the bill to allow the Commission to impose a fee on an application for a certificate of public convenience and necessity under this chapter when the Commission anticipates the costs of processing the application warrant a fee. We request an opportunity to work with the sponsors of this bill to draft an amendment authorizing the Commission to impose a fee up to 125,000 dollars as circumstances warrant. Such application fees are similar to how state law provides the Commission the resources to process other critical utility applications such as advance determination of prudence cases, siting cases and rate increases.

Mister Chairman, this concludes our testimony. I will be happy to answer any questions you may have.

Testimony on SB 2322
Senate Industry Business & Labor Committee
January 31, 2011

Good morning, Chairman Klein, Members of the Senate Industry Business & Labor Committee, my name is Deb Birgen. I serve as the Manager of State Legislative Relations for Missouri River Energy Services (Missouri River). I am speaking to you on behalf of Missouri River which is a municipal power agency that provides wholesale electricity to six member communities in this state, including Cavalier, Hillsboro, Lakota, Northwood, Riverdale and Valley City. Missouri River appears before you today to offer an amendment to SB 2322.

Why do we want this amendment? First, some background information: The Federal Energy Regulatory Commission (FERC) opened a docket for a Notice of Proposed Rulemaking, namely, RM 10-23-000, "Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities." In the docket FERC considered several items, one of which was limiting the right of first refusal. FERC indicated that:

Based on the comments submitted in response to the October 2009 Notice, there appear to be opportunities for undue discrimination and preferential treatment against nonincumbent transmission developers within existing regional transmission planning processes. (131 FERC ¶ 61,25, Federal Energy Regulatory Commission, 18 CFR Part 35; Docket No. RM10-23-000; Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities (Issued June 17, 2010), p. 51)

FERC then opened the docket for comments including limiting the right of first refusal. In response, Missouri River, as a member of the Transmission Access Policy Study Group (TAPS), filed comments September 29, 2010, agreeing that FERC should follow through on limiting the right of first refusal. Specifically, TAPS recommended a middle of the road approach by having right of first refusal dependent upon prerequisite action by the incumbent transmission owner. That action would be that the incumbent owner: (1) foregoes any rate of equity rate incentives for the transmission upgrade; and (2) offers meaningful (e.g. load ratio share) joint ownership, on reasonable commercial terms, to transmission dependent utilities in the area. TAPS specifically cited CAPX 2020 as confirming the value of joint ownership. The

FERC docket is still pending, however, FERC indicated that upon final rulemaking it would not pre-empt state law. Thus, putting a right of first refusal in state law could avoid any changes at the behest of FERC.

So now we ask that the right of first refusal be incumbent upon offering joint ownership to utilities in the state. Why do we want an opportunity for joint ownership? Without the ability to participate in joint ownership, the incumbent owners have a huge advantage. They can shape any and all transmission projects to their own needs and use right of first refusal to discourage others from proposing transmission projects that may be more cost-effective. They could also monopolize the transmission rate benefits. On the other hand, customers would benefit when their transmission dependent utility, like a municipal power agency, is able to invest on their behalf in a new line rather than be dependent on the plans of others. This gives transmission dependent utilities a way to manage financial risk of transmission rate increases that are usually associated with new line construction. By being at the table, they can invest on behalf of their customers. If a transmission dependent utility is serving load in North Dakota and is shut out by incumbent providers invoking the right of first refusal, their customers will continue to be denied opportunities for investment on their behalf.

We also ask for some affirmative deadline to take action on invoking the right. Why do we want some deadline for action? If you invoke the right of first refusal, you should be required to take some action in a reasonable amount of time. If not, we risk an invoking of the right and then no action—a hoarding of the rights if you will. If you claim the benefit, you have to undertake the action in a reasonable amount of time or forfeit the right.

Thank you for taking the time to consider this amendment, a copy of which is attached. I am also providing a copy of SB 2322 with the amendment inserted and shown with the yellow highlighted material. We hope that you will recognize the need to allow transmission dependent utilities to have opportunities to invest on behalf of the customers.

**PROPOSED AMENDMENT TO
SENATE BILL NO. 2322**

Page 2, line 1, after "utility" insert "electric cooperative corporation, municipal power agency, or municipal utility"

Page 3, after line 5, insert:

"6. "Power supplier" means any electric public utility, electric cooperative corporation, or municipal power agency making wholesale sales in the state."

Page 3, line 6, replace "6" with "7"

Page 3, line 9, replace "7" with "8"

Page 3, line 12, replace "8" with "9"

Page 3, line 15, replace "9" with "10"

Page 4, after line 16, insert: "This right is only available where the incumbent transmission owner offers to power suppliers in the state commercially reasonable terms and conditions of joint ownership in the project. The commission shall not approve the project unless the incumbent transmission owner receives a written release from the power suppliers in the state that the power suppliers do not desire to invest in the project. If an electric transmission provider has not given notice of intended construction to interconnect to a line owned or operated by an electric public utility, a person other than the electric public utility may inquire in writing whether the electric transmission provider intends to construct, own and maintain the electric transmission line or lines and shall provide a copy of the inquiry to the commission. Within sixty days of receipt of such an inquiry, the electric public utility or electric transmission provider must provide notice, in writing of its intent regarding the electric transmission line to the person and the commission, including an offer of joint ownership to any power suppliers in the pricing area. Upon declaring such intent, the electric transmission provider or electric public utility must file an application for certificate of public convenience and necessity within 180 days of the date the notice was filed in response to the inquiry."

Renumber accordingly.

A BILL for an Act to amend and reenact section 49-03-01, 49-03-1.4, 49-03-1.5, 49-30-02, 49-03-03, 49-03-04, and 49-03-05 of the North Dakota Century Code, relating to electric transmission providers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-03-01 of the North Dakota Century Code is amended and reenacted as follows:

49-03-01. Certificate of public convenience and necessity—Secured by electric public utility.

1. An electric public utility henceforth shall may not begin construction or operation of a public utility plant or system, or of an extension of a plant or system, except as provided below; without first obtaining from the commission a certificate that public convenience and necessity require or will require such the construction and operation. This section does not require an electric public utility to secure a certificate for an extension within any municipality within which it the electric public utility has lawfully commenced operations. If any electric public utility in construction or extending its line, plant, or system, unreasonably interferes with or is about to interfere unreasonably with the service or system of any other electric public utility, or any electric cooperative corporation, the commission, on complaint of the electric public utility or the electric cooperative corporation claiming to be injuriously affected, after notice and hearing as provided in this title, may order enforcement of this section with respect to the offending electric public utility and prescribe just and reasonable terms and conditions.
2. An electric transmission provider may not begin construction or operation of an electric transmission line interconnecting with an existing electric transmission line owned or operated by an electric public utility, electric cooperative corporation, municipal power agency, or municipal utility without first obtaining a certificate that public convenience and necessity require or will require the construction or operation.

SECTION 2. AMENDMENT. Section 49-03-01.4 of the North Dakota Century Code is amended and reenacted as follows:

49-03-01.4 Enforcement of act.

1. If any electric public utility or electric transmission provider violates or threatens to violate any of the provisions of sections 49-03-01 through 49-03-01.5 or interferes with or threatens to interfere with the service or system of any other electric public utility or rural electric cooperative, the commission, after complaint, notice and hearing as provided in chapter 58-32, shall make its order restraining and enjoining said the electric public utility or electric transmission provider from constructing or extending its interfering lines, plant, or system. In

addition to the restraint imposed, the commission shall prescribe such any terms and conditions as ~~it shall deem~~ the commission deems reasonable and proper.

2. This section does not prohibit or limit any person, who has been injured in the person's business or property by reason of a violation of sections 49-30-01 through 49-03-01.5 by any electric public utility, electric transmission provider, or electric cooperative corporation, from bringing an action for damages in any district court of this state to recover such damages.

SECTION 3. AMENDMENT. Section 49-03-01.5 of the North Dakota Century Code is amended and reenacted as follows:

49-03-01.5 Definitions.

As used in sections 49-03-01 through 49-03-01.5:

1. "Electric provider" means either an electric public utility or a rural electric cooperative.
2. "Electric public utility" means a privately owned supplier of electricity offering to supply or supply electricity to the general public.
3. "Electric transmission line" means facilities for conducting electric energy at a design voltage of one hundred fifteen kilovolts or greater phase to phase and more than one mile long.
4. "Electric transmission provider" means an owner or operator, other than a rural electric cooperative, of a transmission linethe costs of which are recovered directly or indirectly through transmission charges to an electric public utility.
5. "Person" includes an individual, an electric public utility, a corporation, a limited liability company, an association, or a rural electric cooperative.
6. "Power Supplier" means any electric public utility, electric cooperative corporation, or municipal power agency making wholesale sales in the state.
7. "Rural electric cooperative" includes any electric cooperative organized under chapter 10-13. An electric cooperative, composed of members as prescribed by law, shall not be deemed to be an electric public utility.
8. "Service area" means a defined geographic area containing existing or future service locations established by an agreement among electric providers and approved by the commission.
9. "Service area agreement" means an agreement between electric providers establishing service areas and designating service locations to be served by each provider under section 49-03-06.
10. "Service location" means the structures, facilities, or improvements on a parcel of real property to which electric service may be provided.

SECTION 4. AMENDMENT. Section 49-03-02 of the North Dakota Century Code is amended as follows:

49-03-02 Prerequisites to issuance of certificate of public convenience and necessity.

1. Before any certificate may issue under this chapter, a certified copy of the articles of incorporation or charter of the utility, if the applicant is a corporation, or a certified copy of the articles of organization of the utility, if the applicant is a limited liability company, shall must be filed with the commission. At the hearing ~~of said~~ on the application ~~upon~~ after notice as provided in this title, the utility shall submit evidence showing that ~~such~~ the applicant has received the consent, franchise, permit, ordinance, or other authority of the proper municipality or other public authority, if required, or has or is about to make application ~~therefore~~ for authority. The commission shall have the power, after notice and hearing, to
 - a. Issue the certificate prayed for;
 - b. Refuse to issue ~~such~~ the certificate;
 - c. Issue ~~it~~ the certificate for the construction or operation of a portion only of the contemplated facility, line, plant, system, or extension ~~thereof~~ of the same; or
 - d. Issue ~~it~~ the certificate for the partial exercise of the right or privilege sought, conditioned upon the applicant's having secured or upon the applicant's securing the consent, franchise, permit, ordinance, or other authority of the proper municipality or other public authority, and may attach to the exercise of the rights granted by any certificate ~~such~~ terms and conditions as in ~~it's~~ the judgment of the commission the public convenience and necessity may require.
2. Notwithstanding any ~~of the foregoing provisions~~ other provision of this section, the commission may grant a certificate if ~~no~~ an interested party, including any local electric cooperative, has not requested a hearing on ~~said~~ an application after receiving at least twenty days' notice of opportunity to request such hearing. In addition, the commission may not issue a certificate to an electric transmission provider for construction or operation of an electric transmission line that will interconnect with an electric transmission line owned or operated by an electric public utility if the electric public utility is willing and able to construct and operate a similar electric transmission line. This right is only available where the incumbent transmission owner offers to power suppliers in the state commercially reasonable terms and conditions of joint ownership in the project. The commission shall not approve the project unless the incumbent transmission owner receives a written release from the power suppliers in the state that the power suppliers do not desire to invest in the project. If an electric transmission provider has not given notice of intended construction to interconnect to a line

owned or operated by an electric public utility, a person other than the electric public utility may inquire in writing whether the electric transmission provider intends to construct, own and maintain the electric transmission line or lines and shall provide a copy of the inquiry to the commission. Within sixty days of receipt of such an inquiry, the electric public utility or electric transmission provider must provide notice in writing of its intent regarding the electric transmission line to the person and the commission, including an offer of joint ownership to any power suppliers in the pricing area. Upon declaring such intent, the electric transmission provider or electric public utility must file an application for certificate of public convenience and necessity within 180 days of the date the notice was filed in response to the inquiry.

SECTION 5. AMENDMENT. Section 49-03-03 of the North Dakota Century code is amended and reenacted as follows:

49-03-03. Franchise not to be exercised without certificate.

~~No A public utility henceforth shall or electric transmission provider~~ may not exercise any right or privilege under any franchise or certificate hereafter granted, or under any franchise or certificate heretofore granted, the exercise of which has been suspended or discontinued for more than one year, without first obtaining from the commission a certificate that public convenience and necessity require the exercise of such the right or privilege.

SECTION 6. AMENDMENT. Section 49-03-04 of the North Dakota Century cod is amended and reenacted as follows:

49-03-04. Replacement or renewable of franchise. Certificate of public convenience and necessity not necessary.

~~No A public utility or electric transmission provider does not need to~~ secure a renewal of the certificate of public convenience and necessity under this chapter in order to exercise rights under an ordinance hereafter granted where it if either has not suspended operation of its plant and where such the franchise merely replaces or renews an expiring or expired franchise.

SECTION 7. AMENDMENT. Section 49-03-05 of the North Dakota Century cod is amended and reenacted as follows:

49-03-05. Complaint upon violation of chapter.

~~Whenever~~ If a public utility or electric transmission provider engages or is about to engage in construction or operation as described in this chapter without having secured a certificate of public convenience and necessity as required by the provisions of this chapter, or whenever ~~if~~ a public utility or

electric transmission provider constructs or extends its line, plant, or system, or supplies, or offers to supply electric service in violation of this chapter, any interested municipality, public authority, utility, electric cooperative corporation, or person, may file a complaint with the commission. The commission thereupon acting on the complaint, or upon its own motion without complaint, with or without notice, may make its order requiring the public utility complained of to cease and desist from such the construction or operation or other prohibited activity until the further order of the commission. Upon hearing had after due notice given, the commission shall make such an order with respect to such the public utility or electric transmission provider and prescribe such terms and conditions as are just and reasonable.

Testimony of Andrea Stomberg

Vice-President Electric Supply

Montana-Dakota Utilities Co.

Before the House Industry, Business and Labor Committee

March 9, 2011

SB 2322

Montana-Dakota, and the other investor owned utilities that serve electric customers in this State, have done so reliably for many years- Montana-Dakota for over 80. With the oversight of the North Dakota Public Service Commission, we have an obligation to serve our customers, and also the obligation and opportunity to invest in needed infrastructure for our customers. The changes to the Century Code proposed in this bill clarify that the first right to own new lines interconnecting with existing transmission built by regulated utilities within the State, the cost of which will be borne by those utilities, belongs to the regulated utilities.

In recent years, all of the investor owned utilities serving customers in North Dakota have joined a regional transmission organization, or RTO. Recognized by the Federal Energy Regulatory Commission. RTOs were formed in part because of concerns that utility-specific transmission planning was inadequate to address broader regional transmission needs, such as we see in North Dakota, for the export of fossil or renewable energy to markets outside the state boundaries.

The regional RTO to which North Dakota utilities belong is the Midwest Independent System Operator, or Midwest ISO. The Midwest ISO encompasses 13 states from Montana to Ohio, to Kentucky and Missouri and the Canadian province of Manitoba. By joining the Midwest ISO, Montana-Dakota, Otter Tail and Xcel gave up operational control of their transmission lines, and participate in regional transmission operation and planning. Cost for regional planning and transmission projects built by members of the Midwest ISO are now shared across this broader regional landscape.

As part of the FERC approved agreements between the utilities and the Midwest ISO, the incumbent utilities are guaranteed the first right to construct transmission lines that interconnect with their existing transmission lines. These new lines are identified by the Midwest ISO as needed lines.

FERC has proposed to eliminate this guarantee, saying that the opportunity to build transmission should be available through some other as yet undefined process to anybody who is able and interested. The outcome of throwing open interconnecting transmission construction to all comers could be a network of interconnected transmission lines serving North Dakota customers, built by entities who may not be under state PSC jurisdiction, but who will be able pass their costs onto the customers of the native utility through the Midwest ISO transmission charges. Without this first right to build for incumbent utilities, our customers may bear the costs of out of state developers who wish to cherry pick the projects they want to build, but have no obligation to serve.

In its proposed rulemaking, FERC acknowledged that the states have a strong interest in regulating transmission and costs within their borders. Clearly stated in the FERC proposal is language that

indicates FERC will recognize state law if that law favors the incumbent utility's first right to build. It is that state law we wish to solidify by proposing the language in Senate Bill 2322.

SB 2322 provides that a transmission provider, which could be another utility or an independent transmission builder, could not begin construction of a high voltage transmission line which interconnects with lines owned or operated by an electric public utility, without obtaining a certificate of public convenience and necessity from the PSC. This is no different than the requirement that applies to the existing utilities. The bill further provides that the PSC may not issue this certificate to a transmission provider if the interconnecting public utility is willing and able to construct and operate a similar transmission line. The language provides that any transmission project that is approved by the Midwest ISO, for instance to convey renewable or other energy to out of state markets, and which an incumbent does not wish to construct, is available for another entity who would successfully propose a certificate of public convenience and necessity to the Commission.

We are aware that amendments may be offered which effectively sever the right to build from the obligation to serve, and which propose that additional administrative processes be introduced. We believe that these amendments are unnecessary, that the protections sought by these amendments exist within the proposed language, and that new administrative processes will complicate what is a very simple idea to maintain the status quo.

We urge a DO PASS on SB2322, without amendment.

**Testimony of John Olson
Senate Bill 2322
On behalf of Otter Tail Power Company
Before the House Industry, Business & Labor Committee
March 9, 2011**

Mr. Chairman and members of the Committee, for the record, my name is John Olson. On behalf of Otter Tail Power Company, I am testifying in favor of Senate Bill 2322.

Electric utilities that are members of the Midwest Independent Transmission System Operator, or MISO, presently have a first right to construct and operate new electric transmission lines that interconnect with their existing transmission systems. Recent action by the Federal Energy Regulatory Commission, or FERC, threatens to eliminate this right.

The customers and shareholders of Otter Tail Power Company would be adversely affected by FERC's elimination of this first right. FERC's action could require our customers to bear the transmission development costs of out-of-state transmission developers. These developers do not have the obligation, as we do, to serve the public reliably and economically.

SB 2322 would foreclose the Public Service Commission from issuing a certificate of public convenience and necessity for new electric transmission to other than the public utility, if the new electric transmission would interconnect with our existing transmission system, and if we are willing and able to construct and operate the proposed facilities. Because FERC may finalize its proposal to eliminate the first right to construct and operate before August 1, 2011, SB 2322 contains an emergency clause.

Otter Tail Power Company's original decision to join MISO was premised on the first right to construct and operate new transmission interconnecting to our existing transmission, and our customers and shareholders share in the benefits of this right. Passage of SB 2322 will ensure the first right continues to exist in North Dakota.

On February 7, the Senate IBL Committee by a vote of 7-0 recommended a DO PASS on Senate Bill 2322. The Senate unanimously passed the legislation on February 10.

Otter Tail Power Company urges a DO PASS on Senate Bill 2322, without amendment. The public utility representatives in attendance and I stand ready to answer any questions you may have.

Senate Bill 2322

Presented by: **Illona A. Jeffcoat-Sacco**
General Counsel
Public Service Commission

Before: **House Industry, Business and Labor Committee**
Honorable George J. Keiser, Chairman

Date: **March 9, 2011**

TESTIMONY

Mister Chairman and committee members, I am Illona Jeffcoat-Sacco, General Counsel with the Public Service Commission. The Commission asked me to testify today in support of Senate Bill 2322.

The Commission recognizes the importance of the issue the bill is intended to address. The transmission facilities for which Senate Bill 2322 would require a certificate of public and convenience and necessity have the potential to impose significant rate impacts on North Dakota customers. Consequently, the Commission believes that it is appropriate to require those who build such transmission facilities to show that public convenience and necessity require the building of the projects they propose. This is what state policy requires of investor owned utilities before permitting them to invest in utility plant that will ultimately be paid for by North Dakota ratepayers. It is reasonable and appropriate to require other providers to meet the same standards when North Dakota ratepayers will be paying the bill.

Mister Chairman, this concludes my testimony. I will be happy to answer any questions you may have.

North Dakota
House Industry, Business and Labor Committee
Senate Bill 2322
Comments of ITC Holdings Corp.

Good morning Chairman Keiser and members of the House Industry, Business and Labor Committee. Thank you for the opportunity to appear before you today to provide comments on Senate Bill 2322.

My name is Francie Brown and I'm the Director of State Governmental Affairs for ITC Holdings Corp. Joining me this morning is Dave Grover, Manager of Regulatory Strategy for ITC Midwest, a subsidiary of ITC Holdings. ITC is the largest independent transmission company in the U.S. We own, operate, construct and maintain high voltage electric transmission assets in Michigan, Iowa, Minnesota, Illinois, Missouri, Kansas and soon Oklahoma. Between the two of us we hope to address any questions you have concerning our suggested changes to Senate Bill 2322.

ITC believes minor clarifying changes to the bill will enhance the process for building necessary transmission facilities in North Dakota. We have shared our thoughts with MDU, Otter Tail, and Xcel Energy as well as staff at the North Dakota Public Service Commission.

Specifically, the new Section 1 (2) now requires an "electric transmission provider" to obtain a CPCN before construction or operation of an electric transmission line" however the requirements in Section 4 (1) as currently drafted do not require an electric transmission provider to provide certified copies of articles of incorporation or organization prior to the issuance of a CPCN. We believe the amendment extends the same requirements to an electric transmission provider.

The next amendment is to Section 4 (2). The suggested language is intended to add the concept of “assigning” a right and also provides that an electric utility or its assignee surrenders its rights if it does not tell the commission within 90 days of receiving the planning authority’s approval for a transmission line of the intent to build. The language also establishes additional milestones so an electric transmission provider will know if an incumbent utility has declined their right to build identified transmission facilities. ITC is in the business of building transmission facilities, but not by challenging incumbent utilities on their right to build. However, from a process standpoint, establishing a timeline for a utility to indicate whether they will build or assigning that right to another entity, would ensure facilities are constructed. From our standpoint, we don’t understand the downside of putting a process in place that includes a timeframe for making important decisions on building needed transmission facilities. We are certainly open to different milestones than those we’ve suggested, such as modifying the requirements to file a CPCN within 365 days for instance, because we understand one timeline may not fit all projects.

The final amendment to Section 4 would add a new subsection (4) requiring the Commission to promulgate rules for selecting who can apply for the certificate identified in Section 4 (1) should a public utility or its assignee surrender its right to build facilities. After consultation with the PSC this timeline may need to be changed to 365 days instead of the proposed 180 days.

While ITC is not a utility in North Dakota, we do have a good track record and a great deal of experience building and maintaining high voltage transmission facilities in Michigan

Iowa, Minnesota and now Kansas and Oklahoma. Our purpose today is to offer friendly suggestions to enhance Senate Bill 2322 to ensure needed transmission is built when required. We also hope to have the opportunity to do business in North Dakota if there is role for us, either through partnering with the existing utilities or by stepping up to build facilities that might not otherwise get built, as we have done in other states. We would be happy to answer any questions. Thank you for the opportunity to offer comments.

3-9-2011

SECTION 4 AMENDMENT, 49-03-02 "Prerequisites to issuance of certificate of public convenience and necessity," subsection "1." needs to have the term "electric transmission provider" added in 3 different places: (1) after the word "utility" on line 22; (2) after the word "utility" on line 23; and, (3) after the word "utility" on page 25.

Explanation: This clarifies that electric transmission providers can apply for a certificate.

SECTION 4 AMENDMENT, 49-03-02 "Prerequisites to issuance of certificate of public convenience and necessity," subsection "2." should be re-written starting with "in addition" on line 12 and running through line 16. In other words, strike that entire sentence. Replace with the following:

Unless an electric public utility assigns or surrenders its right to request a certificate to construct and operate an electric transmission line that will interconnect with an electric transmission line owned or operated by the electric public utility, the commission may not issue a certificate to an electric transmission provider for construction or operation of an electric transmission line that will interconnect with an electric transmission line owned or operated by the electric public utility. An electric public utility or its assignee surrenders its rights to request a certificate under this subsection if either of the following occur:

- a. The electric public utility or its assignee does not, within 90 days of a federally registered planning authority's approval of the electric transmission line, give written notice to the commission of its intent to request a certificate; or,
- b. The electric public utility or its assignee fails to apply for a certificate within 365 days after providing notice to the commission of its intent to request a certificate.

Explanation: This adds the concept of "assigning" a right, and also provides that an electric utility or its assignee surrenders its rights if it does not tell the commission within 90 days of receiving the planning authority's approval for a line.

SECTION 4 AMENDMENT, 49-03-02 "Prerequisites to issuance of certificate of public convenience and necessity," add a new subsection "4."

4. Within 180 days of the effective date of this Act, after notice and hearing, the Commission shall adopt rules and regulations to prescribe the methods and procedures for determining the selection of an electric public utility or electric transmission provider to apply for a certificate to construct and operate an electric transmission line that will interconnect with an electric transmission line owned or operated by an electric public utility in the event that an electric public utility or its assignee surrenders its right to request a certificate under § 49-03-02.2 of this Act.

Explanation: This directs the Commission to promulgate rules for selecting who can apply for a certificate once a utility surrenders its rights to apply for a certificate.



Public Service Commission

State of North Dakota

COMMISSIONERS

Kevin Cramer

Tony Clark

Brian P. Kalk

Executive Secretary

Darrell Nitschke

Honorable George J. Keiser, Chairman
 Industry, Business and Labor Committee
 North Dakota House of Representatives
 600 East Boulevard Avenue
 Bismarck, ND 58505

9 March 2011

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Re: Requested Amendment to Engrossed Senate Bill 2322

Dear Chairman Keiser:

As requested, enclosed is a draft amendment to incorporate the three "technical" corrections discussed earlier today at the hearing on SB 2322.

Please note that I also included a fourth revision to the bill, adding a sentence to the end of the fee section on page 4 that I should have included in the original amendment we requested in the Senate.

The Commission intended to pattern the fee authority in this bill after those for rate cases and other applications in N.D.C.C. Chapter 49-05, in which any portion not used to pay expenses is refunded to the applicant. This is why line 21 of SB 2322 refers to N.D.C.C. § 49-02-02. However, N.D.C.C. § 49-02-02 refers specifically to the fees in N.D.C.C. Chapter 49-05. Consequently, I recommend the amendment include adding a refund sentence to SB 2322.

Thank you for the opportunity to provide this draft amendment, and for your consideration of my request.

Best regards,

Illona A. Jeffcoat-Sacco
 Illona A. Jeffcoat-Sacco
 General Counsel

c w/encl: Rep. Jim Kasper, Vice Chairman
 Rep. Bill Amerman
 Rep. Tracy Boe
 Rep. Donald L. Clark
 Rep. Robert Frantsvog
 Rep. Edmund Gruchalla
 Rep. Nancy Johnson

Rep. Curtiss Kreun
 Rep. Mike Nathe
 Rep. Marvin E. Nelson
 Rep. Dan Ruby
 Rep. Gary R. Sukut
 Rep. Don Vigesaa

Prepared by Illona A. Jeffcoat-Sacco, General Counsel, PSC
at the request of Chairman Keiser
March 9, 2011

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2322

Page 3, line 22, overstrike "utility" and insert immediately thereafter "applicant"

Page 3, line 23, overstrike "utility" and insert immediately thereafter "applicant"

Page 3, line 25, overstrike "utility" and insert immediately thereafter "applicant"

Page 4, after line 21, insert: "The commission shall refund the portion of the fee which exceeds the expenses incurred for processing the case for which the fee was paid."

Renumber accordingly

11.0748.02001
Title.

Prepared by the Legislative Council staff for
Representative Keiser
March 7, 2011

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2322

Page 3, line 22, after "utility" insert "or electric transmission provider"

Page 3, line 23, after "utility" insert "or electric transmission provider"

Page 3, line 25, after "utility" insert "or electric transmission provider"

Page 4, line 12, remove "In addition, the commission"

Page 4, replace lines 13 through 16 with "Unless an electric public utility assigns or surrenders its right to request a certificate to construct and operate an electric transmission line that will interconnect with an electric transmission line owned or operated by the electric public utility, the commission may not issue a certificate to an electric transmission provider for construction or operation of an electric transmission line that will interconnect with an electric transmission line owned or operated by the electric public utility. An electric public utility or its assignee surrenders its rights to request a certificate under this subsection if either of the following occur:

- a. The electric public utility or its assignee does not give, within ninety days of a federally registered planning authority's approval of the electric transmission line, written notice to the commission of its intent to request a certificate; or
- b. The electric public utility or its assignee fails to apply for a certificate within one year after providing notice to the commission of its intent to request a certificate."

Page 4, after line 21, insert:

"4. Within one year of the effective date of this Act, after notice and a hearing, the commission shall adopt rules to prescribe the methods and procedures for determining the selection of an electric public utility or electric transmission provider to apply for a certificate to construct and operate an electric transmission line that will interconnect with an electric transmission line owned or operated by an electric public utility in the event that an electric public utility or its assignee surrenders its right to request a certificate under section 49-03-02."

Renumber accordingly

Added: Green underlined text

Deleted: ~~Dark red text with a strikethrough~~

Vetoed: ~~Red text~~

2015 ND H 1382

Author: Laning
Version: Enacted
Version Date: 04/09/2015

Sixty-fourth Legislative Assembly of North Dakota

In Regular Session Commencing Tuesday, January 6, 2015

HOUSE BILL NO. 1382

(Representatives Laning, Boe, Kempenich)

(Senators Burckhard, Campbell, O'Connell)

AN ACT to create and enact a new section to chapters 10-13 and 40-33 of the North Dakota Century Code, relating to the construction of electric transmission lines by cooperatives and municipal power agencies; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 10-13 of the North Dakota Century Code is created and enacted as follows:

Right of rural electric cooperative to construct, own, and maintain electric transmission lines.

1. For purposes of this section, the terms electric transmission provider, electric transmission line, electric public utility, and rural electric cooperative have the same meanings as in section 49-03-01.5.
2. Except as provided in subsection 3, an electric transmission provider or designee may not construct an electric transmission line interconnecting with an existing electric transmission line owned, leased, or operated by a rural electric cooperative, unless the electric transmission provider or designee has provided written notice to the rural electric cooperative of its intention to do so. If the rural electric cooperative provides written notification to the electric transmission provider or designee within one hundred eighty days from receipt of the written notice under this subsection, that the rural electric cooperative is willing and able to construct and operate a similar electric transmission line, the rural electric cooperative shall have the right to construct the line.
3. If an electric transmission line would interconnect facilities owned, leased, or operated by a rural electric cooperative and facilities owned, leased, or operated by a municipal utility, a municipal power agency, or an electric public utility doing business in this state the following conditions apply:
 - a. The rural electric cooperative and municipal utility, municipal power agency, or the electric public utility shall attempt to agree on all terms and conditions, including design, construction, ownership, and operation of the electric transmission line.
 - b. If parties are unable to agree, this subsection does not compel a party to participate in the project or be construed as a waiver by any party of its right to establish and enforce any requirements for interconnection of transmission facilities to its transmission system.
4. For purposes of this section, a "municipal utility" means anything a municipality is allowed to possess under section 40-33-01 and a "municipal power agency" has the meaning provided in section 40-33.2-02.

SECTION 2. A new section to chapter 40-33 of the North Dakota Century Code is created and enacted as follows:

Right of municipal electric utilities and municipal power agencies to construct, own, and maintain electric transmission lines.

1. For purposes of this section, the terms electric transmission provider, electric transmission line, and electric public utility, have the same meanings as in section 49-03-01.5. Municipal power agency has the meaning provided in section 40-33.2-02 and also includes a municipal power agency of which any municipality in this state is a member.

2. Except as provided in subsection 3, an electric transmission provider or designee may not construct an electric transmission line interconnecting with an existing electric transmission line owned, leased, or operated by a municipal utility or municipal power agency, unless the electric transmission provider or designee has provided written notice to the municipal utility or municipal power agency of its intention to do so. If the municipal utility or municipal power agency provides written notification to the electric transmission provider or designee within one hundred eighty days from receipt of the written notice under this subsection, that the municipal utility or municipal power agency is willing and able to construct and operate a similar electric transmission line, the municipal utility or municipal power agency shall have the right to construct said line.

3. If an electric transmission line would interconnect facilities owned, leased, or operated by a municipal utility or municipal power agency and facilities owned, leased, or operated by a rural electric cooperative or an electric public utility doing business in this state the following conditions apply:

a. The municipal utility or municipal power agency and the rural electric cooperative or the electric public utility shall attempt to agree on all terms and conditions, including design, construction, ownership, and operation of the electric transmission line.

b. If parties are unable to agree, this subsection does not compel a party to participate in the project or be construed as a waiver by any party of its right to establish and enforce any requirements for interconnection of transmission facilities to its transmission system.

SECTION 3. APPLICATION. This Act applies to any electric transmission line that is scheduled to begin being constructed after December 31, 2015.

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2015 HOUSE INDUSTRY, BUSINESS AND LABOR

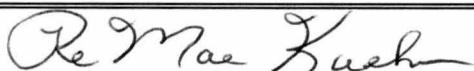
HB 1382

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1382
2/2/2015
Job Number 23040

- Subcommittee
 Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to the construction of electric transmission lines by cooperatives; and to provide for application

Minutes:

Attachments #1-4

Chairman Keiser: Opens the hearing on HB 1382.

Representative Laning~District 8, Bill Sponsor: (Attachment 1)

(3:50)

Chairman Keiser: I understand that the parties are still working to come up with a solution that both sides will like. Is that true?

Representative Laning: That is true and they have not come into agreement.

Dale Niezwaag~Basin Electric Power Cooperative: (Attachment 2).

(6:50)

Chairman Keiser: If anyone can do this, it's North Dakota.

Carlee Mcleod, President of the Utility Shareholders of North Dakota: We want to echo what Dale said in support of this bill.

Brian Kalk, Public Service Commissioner: The world changed a lot in the electricity business. We want to stay in the middle of the disputes and not give the authority to the RTOs (Regional Transmission Organizations). (Attachment #4)

Chairman Keiser: Our regulations sometimes are not quite catching up to the changing marketplace. I encourage you and the commission to be flexible in terms of looking at the regulation from this new structure.

Brian Kalk: I will do. The energy world is going to be more and more federally regulated. We want to keep the states' voice in as long as we can.

Chairman Keiser: Making sure the power grids are fully integrated and supported across the country is one of the most important defense measures the United States is undertaking right now.

Todd Kranda~Attorney at Kelsch Kelsch Ruff & Kranda Law Firm and lobbyist for Missouri River Energy Services: (Attachment 3) On behalf of Deb Birgen, Director of Legislative & Governmental Relations for Missouri River Energy Services.

Opposition:

None

Neutral:

None

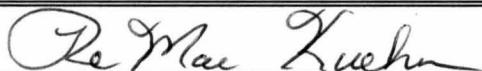
Chairman Keiser: Closed the hearing.

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1382
2/16/2015
Job Number 23925

- Subcommittee
 Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to the construction of electric transmission lines by cooperatives; and to provide for application
(Committee Work)

Minutes:

Attachments #1-2

Chairman Keiser: Opens the hearing on HB 1382.

Representative Laning: (Attachment 1) Handed out amendment #15.0903.01002 and explained them. This has been agreed to by everyone. This gives first right of refusal to the transmission line owner or operator if someone wants to connect into it.

(7:25)

Dale Niezwaag: Page 1, line 23 after #3 the first "and" should be an "or." The same for page 1, line 23, letter a.

Most of the utilities in the state belong to regional transmission organizations. That has taken some of the decision making ability away from the local utilities and placed it in more of a regional facility.

If a line needs to be built it has to go through a regional planning group. One electric company can't decide on its own.

The concern we have is an outside contractor coming in and building a line that interconnects with these lines. They not only build it, they now own it, operate it, and maintain it. We are concerned about the problem where there are several different ownerships of transmission lines in the state. That concerns us with how they will treat landowners with getting easements and how they will take care of the land after the line has been built. Both the rules in MISO and in SBP do allow for state laws to supersede what they are doing. What we put in the bill is to say, if we are interconnecting with other people operating in the state that we agree on what is going to be done.

(11:40)

Representative Kasper: How does this bill protect the power companies in North Dakota and the consumers from some outside company?

Dale Niezwaag: Section 1 and 2 gives the first right of refusal to the rural electric cooperatives and to the municipal agencies. If you are an incumbent utility operating in the state, we have to come to an agreement. If it is an outside utility or contractor then the right of first refusal lies with the incumbent utility.

Representative Kasper: What if an outside entity finds a location where transmission is needed and the instate company hasn't come up with the idea. So an idea that comes from without we can do it in North Dakota. Do you see that happening?

Dale Niezwaag: We don't see that happening now because of the regional transmission organizations. If someone wants to build a line everyone has to go through the same planning process through the regional transmission organizations to build any line.

Representative Ruby: This does put the cooperatives in the state in a better position. Now we get to decide whether we are going to do it first.

Dale Niezwaag: We have the first right to decide to say no. Then whoever has a solution can go in and build a line.

(15:00)

Casey Furey~Attorney for the North Dakota Public Service Commission:
(Attachment 2)

(16:20)

Representative M Nelson: On the very end on Section 2 with the date of December 31, 2015, what would the Public Service Commission understand as the point of where something begins to be constructed?

David Charles~PSC: The permitting process as opposed to putting poles into the ground. There is a lot of work in planning that goes on beforehand. How does it best serve the RTO in the regional plan? The planning process takes a year.

Representative M Nelson: How would the PSC interpret this and draw the line for the verbiage?

Dale Niezwaag: You would have to have the easements and permits assigned before you would be able to begin any construction. We would apply for the permit which would have a construction start date.

Representative M Nelson: Are you saying dirt work would be the beginning of construction?

Dale Niezwaag: I don't believe so. Before the dirt work you would talk to the PSC about a permit.

Representative M Nelson: There could be a misunderstanding about what and when construction actually started. I don't know if there is an industry standard for what is "beginning construction."

Dale Niezwaag: When it is "scheduled" to begin construction.

Chairman Keiser: If MISO decided there is a need for a line, with the passage of this bill they would come to the Public Service Commission saying we have identified a need. At what point do we have the authority to step in and say "no, we want to do it"?

Dale Niezwaag: The PSC does monitor the actions of SBP and MISO. As you go in and determine there is a problem, you go through a long planning process through the regional transmission organization. When they are asking for solutions, there are several steps along the way that people would be aware that there is a potential for a line being built.

Chairman Keiser: This bill does not require the PSC to notify you. You are to be watching also.

Dale Niezwaag: Yes.

Representative Laning: The regional transmission organizations bring everybody in. By the time it goes to the PSC, there has been a lot of communication and work.

Representative Becker: Are there any projects scheduled after December 31, 2015 that this would affect?

Dale Niezwaag: No. We are looking at an application to be filed with the PSC for an additional 30 miles of line. The permitting process will begin this year. We are the only ones interested in building the line. We haven't officially joined SBP. This doesn't come into play for us. We are officially joining SBP in October of this year. So this would not create a problem with that line.

Carlee Mcleod, President of the Utility Shareholders of North Dakota: We support the amendment.

Chairman Keiser: We have the amendment. We need to further amend to add on page 1 line 23, after "3" that insertion needs to be changed on the second line to "agency or by a rural electric cooperative." The same in subsection a.

Representative Ruby: Moved to further amend #15.0903.01002 (Attachment #1)

Representative Beadle: Seconded the motion.

Voice vote taken. Motion passed.

Representative Ruby: Moved the amended amendment.

Representative Kasper: Seconded the motion.

Voice vote taken. Motion passed.

Representative Sukut: Moved Do Pass as amended

Representative Laning: Seconded the motion.

A Roll Call vote was taken: Yes 14, No 0, Absent 1.

Do Pass as amended carries.

Representative Lefor will carry the bill.

Feb 16, 2015

15.0903.01002

Title.

Prepared by the Legislative Council staff for
 Representative Laning
 February 11, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1382

Page 1, line 1, replace "chapter 49-03" with "chapters 10-13 and 40-32"

Page 1, line 2, after "cooperatives" insert "and municipal power agencies"

Page 1, line 5, replace "49-03" with "10-13"

Page 1, line 10, after the underscored comma insert "electric public utility."

Page 1, line 12, replace "An" with "Except as provided in subsection 3, an"

Page 1, line 15, after "notice" insert "to the rural electric cooperative"

Page 1, line 15, remove "at least one"

Page 1, remove line 16

Page 1, line 17, remove "necessity for that line"

Page 1, line 18, remove "and the commission,"

Page 1, line 21, remove "the commission may not issue a certificate of public convenience"

Page 1, line 22, replace "and necessity for the proposed line of the electric transmission provider or designee" with "the rural electric cooperative shall have the right to construct the line"

Page 1, line 23, after "3." insert: "If an electric transmission line would interconnect facilities owned, leased, or operated by a municipal utility or municipal power agency and by a rural electric cooperative or by an electric public utility doing business in this state the following conditions apply:

- a. The municipal utility or municipal power agency and the rural electric cooperative or the electric public utility shall attempt to agree on all terms and conditions, including design, construction, ownership, and operation of the electric transmission line.
- b. If parties are unable to agree, this subsection does not compel a party to participate in the project or be construed as a waiver by any party of its right to establish and enforce any requirements for interconnection of transmission facilities to its transmission system.

4.

Page 1, after line 24, insert:

"SECTION 2. A new section to chapter 40-33 of the North Dakota Century Code is created and enacted as follows:

Right of municipal electric utilities and municipal power agencies to construct, own, and maintain electric transmission lines.

1. For purposes of this section, the terms electric transmission provider, electric transmission line, and electric public utility, have the same

meanings as in section 49-03-01.5. Municipal power agency has the meaning provided in section 40-33.2-02 and also includes a municipal power agency of which any municipality in this state is a member.

2. Except as provided in subsection 3, an electric transmission provider or designee may not construct an electric transmission line interconnecting with an existing electric transmission line owned, leased, or operated by a municipal utility or municipal power agency, unless the electric transmission provider or designee has provided written notice to the municipal utility or municipal power agency of its intention to do so. If the municipal utility or municipal power agency provides written notification to the electric transmission provider or designee within one hundred eighty days from receipt of the written notice under this subsection, that the municipal utility or municipal power agency is willing and able to construct and operate a similar electric transmission line, the municipal utility or municipal power agency shall have the right to construct said line.
3. If an electric transmission line would interconnect facilities owned, leased, or operated by a municipal utility or municipal power agency and by a rural electric cooperative or by an electric public utility doing business in this state the following conditions apply:

Or

 - a. The municipal utility or municipal power agency and the rural electric cooperative or the electric public utility shall attempt to agree on all terms and conditions, including design, construction, ownership, and operation of the electric transmission line.
 - b. If parties are unable to agree, this subsection does not compel a party to participate in the project or be construed as a waiver by any party of its right to establish and enforce any requirements for interconnection of transmission facilities to its transmission system."

Renumber accordingly

February 16, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1382

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4."

Page 1, after line 24, insert:

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2. Except as provided in subsection 3, an electric transmission provider or designee may not construct an electric transmission line interconnecting with an existing electric transmission line owned, leased, or operated by a municipal utility or municipal power agency, unless the electric transmission provider or designee has provided written notice to the municipal utility or municipal power agency of its intention to do so. If the municipal utility or municipal power agency provides written notification to the electric transmission provider or designee within one hundred eighty days from receipt of the written notice under this subsection, that the municipal utility or municipal power agency is willing and able to construct and operate a similar electric transmission line, the municipal utility or municipal power agency shall have the right to construct said line.
3. If an electric transmission line would interconnect facilities owned, leased, or operated by a municipal utility or municipal power agency and by a rural electric cooperative or by an electric public utility doing business in this state the following conditions apply:
 - a. The municipal utility or municipal power agency and the rural electric cooperative or the electric public utility shall attempt to agree on all terms and conditions, including design, construction, ownership, and operation of the electric transmission line.
 - b. If parties are unable to agree, this subsection does not compel a party to participate in the project or be construed as a waiver by any party of its right to establish and enforce any requirements for interconnection of transmission facilities to its transmission system."

Renumber accordingly

Date: February 16, 2015

Roll Call Vote: _____ 1

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1382**

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: 15.0903.01002

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerrefer to Appropriations

Other Actions: Reconsider Further amend

Motion Made By Representative Ruby **Seconded By** Representative Beadle

Total (Yes) No

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Page 1, line 23, the inserted words after "3" and subsection "a"—change and to or.

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1382**

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: 15.0903.01002 amended

Recommendation:	<input checked="" type="checkbox"/> Adopt Amendment	<input type="checkbox"/> Do Pass <input type="checkbox"/> Do Not Pass	<input type="checkbox"/> Without Committee Recommendation
	<input type="checkbox"/> As Amended	<input type="checkbox"/> Rerefer to Appropriations	
Other Actions:	<input type="checkbox"/> Reconsider	<input type="checkbox"/>	

Other Actions: Reconsider

Motion Made By Rep Ruby Seconded By Rep Kasper

Total (Yes) _____ No _____

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

revised amendment

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1382**

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: 15.0903.01002 amended

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerrefer to Appropriations

Other Actions: Reconsider

Other Actions: Reconsider

Motion Made By Rep. Sukut Seconded By Rep. Laning

Total (Yes) 14 No 0

Absent

Floor Assignment _____ Rep. Letor

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1382: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1382 was placed
on the Sixth order on the calendar.

Page 1, line 1, replace "chapter 49-03" with "chapters 10-13 and 40-32"

Page 1, line 2, after "cooperatives" insert "and municipal power agencies"

Page 1, line 5, replace "49-03" with "10-13"

Page 1, line 10, after the underscored comma insert "electric public utility."

Page 1, line 12, replace "An" with "Except as provided in subsection 3, an"

Page 1, line 15, after "notice" insert "to the rural electric cooperative"

Page 1, line 15, remove "at least one"

Page 1, remove line 16

Page 1, line 17, remove "necessity for that line"

Page 1, line 18, remove "and the commission,"

Page 1, line 21, remove "the commission may not issue a certificate of public convenience"

Page 1, line 22, replace "and necessity for the proposed line of the electric transmission provider or designee" with "the rural electric cooperative shall have the right to construct the line"

Page 1, line 23, after "3." insert: "If an electric transmission line would interconnect facilities owned, leased, or operated by a municipal utility or municipal power agency and by a rural electric cooperative or by an electric public utility doing business in this state the following conditions apply:

- a. The municipal utility or municipal power agency and the rural electric cooperative or the electric public utility shall attempt to agree on all terms and conditions, including design, construction, ownership, and operation of the electric transmission line.
- b. If parties are unable to agree, this subsection does not compel a party to participate in the project or be construed as a waiver by any party of its right to establish and enforce any requirements for interconnection of transmission facilities to its transmission system.

4."

Page 1, after line 24, insert:

"SECTION 2. A new section to chapter 40-33 of the North Dakota Century Code is created and enacted as follows:

Right of municipal electric utilities and municipal power agencies to construct, own, and maintain electric transmission lines.

1. For purposes of this section, the terms electric transmission provider, electric transmission line, and electric public utility, have the same meanings as in section 49-03-01.5. Municipal power agency has the meaning provided in section 40-33.2-02 and also includes a municipal power agency of which any municipality in this state is a member.
2. Except as provided in subsection 3, an electric transmission provider or designee may not construct an electric transmission line interconnecting with an existing electric transmission line owned, leased, or operated by a municipal utility or municipal power agency, unless the electric transmission provider or designee has provided written notice to the municipal utility or municipal power agency of its intention to do so. If the municipal utility or municipal power agency provides written notification to the electric transmission provider or designee within one hundred eighty days from receipt of the written notice under this subsection, that the municipal utility or municipal power agency is willing and able to construct and operate a similar electric transmission line, the municipal utility or municipal power agency shall have the right to construct said line.
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 - a. The municipal utility or municipal power agency and the rural electric cooperative or the electric public utility shall attempt to agree on all terms and conditions, including design, construction, ownership, and operation of the electric transmission line.
 - b. If parties are unable to agree, this subsection does not compel a party to participate in the project or be construed as a waiver by any party of its right to establish and enforce any requirements for interconnection of transmission facilities to its transmission system."

Renumber accordingly

2015 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1382

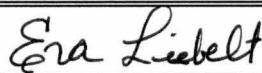
2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1382 Engrossed
3/11/2015
Job Numbers 24634 & 24638

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the construction of electric transmission lines by cooperatives and municipal power agencies

Minutes:

Attachments

Chairman Klein: Opened the hearing.

Representative Laning: Written Testimony Attached (1) & Proposed Amendment (2). Job Number 24634, (4:49 to 8:04)

Chairman Klein: On the amendments were they presented on the other side, we won't be creating contention here?

Representative Laning: No we worked a great deal with both the Investor Owned Utility and the Municipal Power Agencies and all have had a chance to look at these and are in agreement. (8:15-8:57)

Dale Niezwaag, Senior Legislative Representative for Basin Electric Power Cooperative: Written Testimony Attached (3). Job Number 24638, (:09-6:35)

Senator Sinner: Asked for an example of a situation where this would be in place.

Dale Neizwaag: In western North Dakota you have the Western Area Power Administration and Basin Electrics grid as part of the backbone. It serves our member consumers and also MDU has some taps off of that line that serves their substations and their consumers. If a situation where MDU, who is a member of MISO, they get together with their large planning process with all of their groups and they say we have a problem in western North Dakota we need to build a line that would interconnect with a Basin line connecting to a MDU line or MDU substation. They go through the planning process and they say yes this needs to be done and they would come find out what the solution was and would say here is a line that needs to be built to do this. Anyone looking to construct that line would review the North Dakota law and find this provision in there and say that the utility of interconnection has the ability to do that. Then that would defer to Basin Electric or MDU. In that situation

we would do what we have done many times in the past fifty years, representatives from Basin and MDU would get together and say okay this line needs to be built from point a to point b and who mostly benefits from the line. If it is meant to serve MDU consumers than MDU will be the ones that would build and operate the line and gain the revenue. Then we would come to an agreement that they would either interconnect with us, adding this load causes a problem here, you will have to mitigate that, here is our interconnection procedures and policies you make sure you follow those, you come to an agreement and you make sure the line is built. (6:50-8:25)

Senator Sinner: Without this law they may just hire someone to go in and put the line in?

Dale Niezwaag: If this bill is not in place they will do the same planning process and then they would solicit solutions from anybody who wants it. We will have different companies owning different parts of our transmission grid. (8:35-8:50)

Chairman Klein: Are we being proactive here, is this an issue you have been faced with?

Dale Niezwaag: The problem comes in when you join the RTO. When you join the RTO you become part of this multistate process and all of a sudden instead of controlling your part of the world you have half of the United States involved in your world. (9:38-10:15)

Senator Murphy: Basically when you joined the RTO, you are afraid of getting voted off the island right? You are giving up some freedoms and you are trying to insure that you have some parochial rights in North Dakota.

Dale Niezwaag: Yes.

Senator Murphy: Aren't we hooked up to Canada?

Dale Niezwaag: We do have interconnection agreements with Canada. There are lines that go to the border. We do have power sharing agreements.

Kathy Aas, Excel Energy: In support of the bill and the amendments.

Shane Goettle, MDU Resources: In support of the bill.

Rachel Retterath, Great River Energy: In support of the bill.

Chairman Klein: Closed the hearing.

Senator Burckhard: Moved to adopt the amendment.

Senator Poolman: Seconded the motion.

Roll Call Vote: Yes-7 No-0 Absent-0

Senator Burckhard: Moved to pass as amended.

Senator Poolman: Seconded the motion.

Roll Call Vote: Yes-7 No-0 Absent-0

Senator Burckhard will carry the bill.

15.0903.02003
Title.03000

Prepared by the Legislative Council staff for
Representative Laning
March 10, 2015

TD
3/11/15

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1382

Page 1, line 23, remove "municipal utility or municipal power agency and by a rural electric cooperative or".

Page 1, line 24, replace "by an" with "rural electric cooperative and facilities owned, leased, or operated by a municipal utility, a municipal power agency, or an"

Page 2, line 1, after "The" insert "rural electric cooperative and"

Page 2, line 1, replace "or" with an underscored comma

Page 2, line 1, replace "and the rural electric cooperative" with an underscored comma

Page 2, line 9, remove "This section must be construed and applied to the maximum extent possible in a"

Page 2, replace line 10 with "For purposes of this section, a "municipal utility" means anything a municipality is allowed to possess under section 40-33-01 and a "municipal power agency" has the meaning provided in section 40-33.2-02."

Page 3, line 2, after "and" insert "facilities owned, leased, or operated"

Page 3, line 3, remove "by"

Renumber accordingly

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
HB 1382 Engrossed**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: 15.0903.02003

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Senator Burckhard Seconded By Senator Poolman

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Campbell	x		Senator Sinner	x	
Senator Burckhard	x				
Senator Miller	x				
Senator Poolman	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
HB 1382 Engrossed**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: 15.0903.02003

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerrefer to Appropriations
 Place on Consent Calendar
 Revert to Previous Version

Other Actions: **Reconsider**

Motion Made By Senator Burckhard **Seconded By** Senator Poolman

Total (Yes) 7 No 0

Absent 0 _____

Floor Assignment Senator Burckhard

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1382, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1382 was placed on the Sixth order on the calendar.

Page 1, line 23, remove "municipal utility or municipal power agency and by a rural electric cooperative or"

Page 1, line 24, replace "by an" with "rural electric cooperative and facilities owned, leased, or operated by a municipal utility, a municipal power agency, or an"

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Page 3, line 2, after "and" insert "facilities owned, leased, or operated"

Page 3, line 3, remove "by"

Renumber accordingly

2015 TESTIMONY

HB 1382

Introduction for HB 1382
House Industry, Business, and Labor Committee
February 2, 2015

Mr. Chairman and members of the IB&L committee, for the record I'm Vernon Laning, District 8 Representative and I'm here today to introduce House Bill 1382.

The bill before you is commonly referred to as a "Right of First Refusal" and would give rural electric cooperatives the right to construct, own, and maintain a transmission line that would interconnect to a line already owned or operated by the cooperative. This is a very similar bill to what was placed into law in 2011 by the legislature for the investor owned utilities.

In North Dakota many of the utilities have joined either Regional Transmission Organizations (RTO's) or Independent System Operators (ISO's) which are large multi-state organizations that seek to improve the cost and efficiency of producing and transporting electricity in the United States.

These RTO's and ISO's work to gain generation improvements by controlling which generating plants operate to provide the lowest cost power for the demand needed at the time. They also work to control the operation and expansion of electric transmission as one large multi-state grid versus many smaller regional grids.

Since several utilities in North Dakota are members of different RTO's and ISO's but are very interconnected in their operations it significantly changes how they operate together. In the past various utilities that wanted to build interconnecting transmission lines simply got together and developed agreements on construction, operation and cost, those days are now gone, so a more formal process must be used.

In the RTO/ISO world the transmission system is viewed from multistate area much larger than any North Dakota utility covers and decisions are made by large groups of stakeholders, many with no knowledge of or involvement in the state.

This is why this legislation is needed. It provides an opportunity for utilities to retain some local control over who constructs, and owns transmission lines that connect to their system and lays out a process for determining who will have the right to construct and own new transmission lines in the state.

I'll be followed by Dale Niezwaag, Sr Legislative Representative with Basin Electric, who will walk you through the sections of the bill and provide more detailed testimony. I thank you for letting me provide the introduction today and I'll stand for any questions.

North Dakota House Bill 1382
Dale Niezwaag - Basin Electric Power Cooperative
House Industry Business and Labor Committee
February 2, 2015

Mr. Chairman and members of the committee, my name is Dale Niezwaag, representing Basin Electric Power Cooperative.

The first thing I must say is that all the parties interested in this legislation support the concept and need for a state Right of First Refusal when discussing high voltage transmission construction, and ownership. Those parties include the Electric Cooperatives, Investor Owned Utilities and the Public Service Commission.

I want to thank and complement the representatives from MDU, Ottertail Power, Excel, and the Public Service Commission. Everyone involved has been working extremely hard to find a solution that fits everyone's needs.

That being said, the utilities involved have spent the last four weeks trying to accomplish that task, but at this point have not finalized acceptable language. Last week the ND Public Service Commission weighed in with their concerns so we are now including them in our discussions.

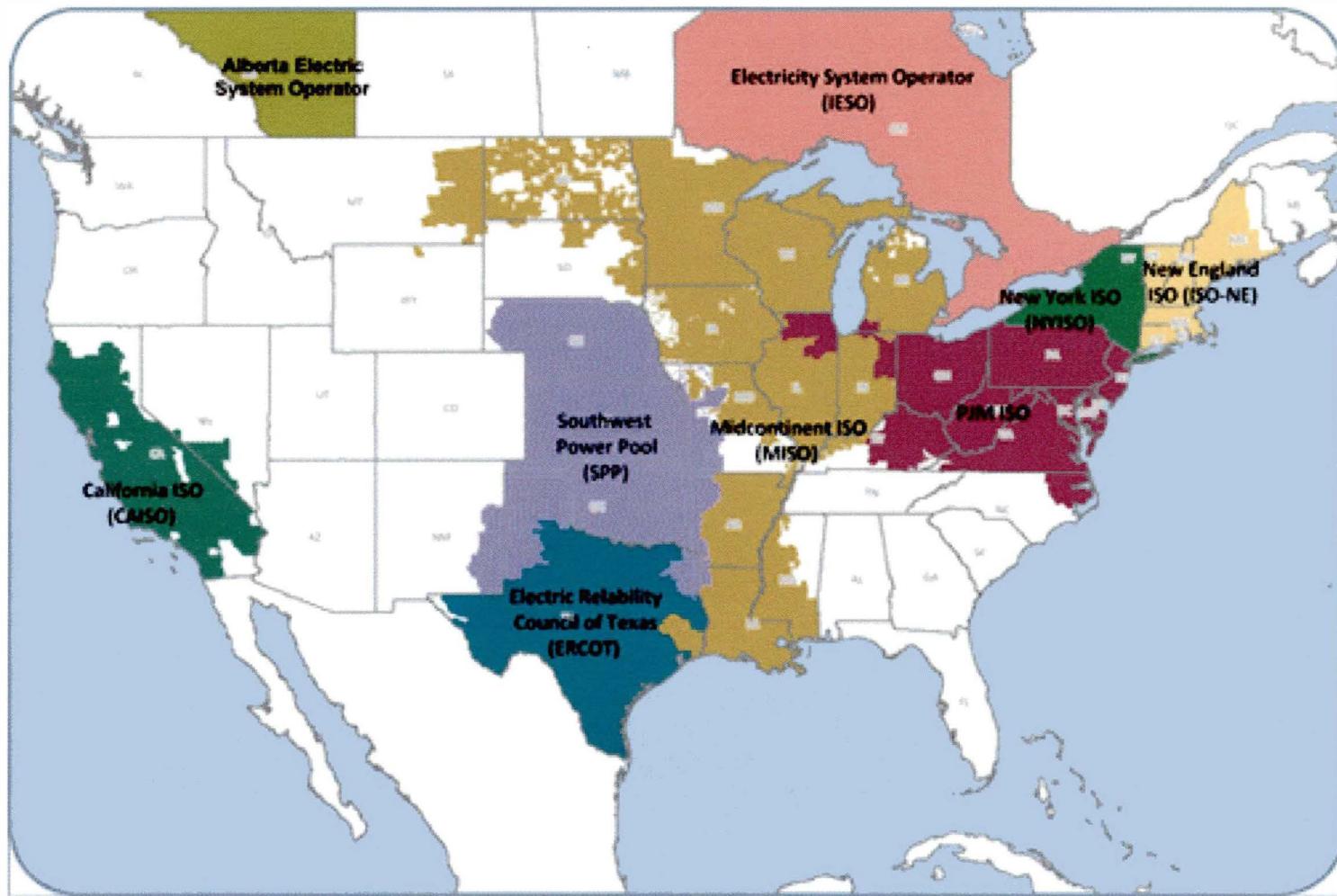
The goal of this legislation is to allow cooperatives who operate in North Dakota and have the obligation to serve members/customers in the state some control over who builds, and owns the transmission facilities that serve those member/customers. As Representative Laning stated similar legislation for the states Investor Owned Utilities (IOU's) was passed by the 2011 Legislature.

In the past, the parties involved in developing the state's electric transmission grid included local utilities, the Western Area Power Administration and the Public Service Commission, which made it complex in its own right. Today you must include Regional Transmission Organizations like the Southwest Power Pool, Independent System Operator's like the Midwest Independent System Operator and the Federal Regulatory Energy Commission. Add to this mix the interconnectedness of all the states utilities into the existing transmission grid and the complexity moves to a whole new level.

The bottom line, as I said in the beginning is that all the parties in the state agree that this legislation is important and needed, and we will continue to work with all the interested parties to find a solution and bring you acceptable amendments to HB 1382, but at this time we do not have those fully developed.

I thank the committee for their time and would be happy to answer any questions from the Committee.

Established RTO's and ISO'



February 2, 2015
Page 89 of 107
by Todd Kranda

3

**Testimony in Support of
House Bill No 1382**
House Industry Business and Labor Committee

Good morning, Chairman Keiser, Members of the House Industry Business & Labor Committee, my name is Deb Birgen. Unfortunately, I am unable to attend today's hearing but I have asked Todd D. Kranda, an attorney at Kelsch Kelsch Ruff & Kranda law firm in Mandan and a lobbyist for Missouri River Energy Services, to appear on my behalf and provide this testimony and the amendment that is attached regarding the right of first refusal (ROFR) in the construction of electric transmission lines in the state. I serve as the Director of Legislative & Governmental Relations for Missouri River Energy Services (Missouri River). I am speaking to you on behalf of Missouri River which is a municipal power agency that provides wholesale electricity to six member communities in this state, including Cavalier, Hillsboro, Lakota, Northwood, Riverdale and Valley City. Missouri River appears before you today to support HB 1382 with the attached amendment.

Why do we want this amendment? First, some background information: The Federal Energy Regulatory Commission (FERC) opened a docket for a Notice of Proposed Rulemaking, namely, RM 10-23-000, "Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities." In the docket FERC considered several items, one of which was limiting the right of first refusal. FERC indicated that:

"Based on the comments submitted in response to the October 2009 Notice, there appear to be opportunities for undue discrimination and preferential treatment against nonincumbent transmission developers within existing regional transmission planning processes. (131 FERC ¶ 61,25, Federal Energy Regulatory Commission, 18 CFR Part 35; Docket No. RM10-23-000; Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities (Issued June 17, 2010), p. 51)"

FERC then opened the docket for comments, including limiting the right of first refusal. In response, Missouri River, as a member of the Transmission Access Policy Study Group (TAPS), filed comments September 29, 2010, agreeing that FERC should follow through on limiting the right of first refusal. Specifically, TAPS recommended a middle of the road approach by having right of first refusal conditioned on the incumbent transmission owner agreeing to: (1) forego any return on equity rate incentives for the transmission upgrade; and (2) offer meaningful (e.g. load ratio share) joint ownership, on reasonable commercial terms, to transmission dependent utilities in the area.

In 2011, ND passed a law on right of first refusal that gave the opportunity to invest in new transmission to incumbent public utilities; now the cooperatives are asking for that same right and opportunity to invest in new transmission. If a new transmission line interconnects with an existing cooperative line, they would like to be offered the opportunity to jointly own the newly constructed line. We support that change in law *provided that* municipal electric utilities and municipal power agencies are given the same right and opportunity for joint ownership of newly constructed transmission lines.

Missouri River, as well as the municipal electric utilities of Valley City and Moorhead, Minnesota own transmission facilities in the state of North Dakota. Without the ability to participate in joint ownership, the incumbent owners have a huge advantage. They can shape any and all transmission projects to their own needs and use right of first refusal to discourage others from proposing transmission projects that may be more cost-effective. They could also monopolize the transmission rate benefits. On the other hand,

customers would benefit when their transmission dependent utility, like a municipal power agency, is able to invest on their behalf in a new line rather than be dependent on the plans of others. This gives transmission dependent utilities a way to manage financial risk of transmission rate increases that are usually associated with new line construction. By being at the table, at the very least—we are given the opportunity to negotiate and coordinate on the construction of the new line. Coordination of the ownership interests of the parties involved, will also minimize infrastructure investments and protect the ratepayer.

Finally, MRES has seen what happens to municipal electric utilities when not given the opportunity to invest in a new transmission line that is being interconnected to their communities. In Southeastern Minnesota, five of our municipal electric utilities are served by one incumbent transmission provider. Transmission rates have increased in the past few years by 300% as that provider expanded existing transmission. If municipal electric utilities, and cooperatives, are given the opportunity to build or invest in a transmission line interconnected to their facilities, they are in a position to hedge against such transmission rate increases.

The proposed amendment does two things. First, it defines an electric transmission provider as any owner or operator of a transmission line. That would clarify that it includes MRES, as a CapX 2020 participant, and our member municipal electric utilities which also own some transmission in the state. Second, the definition of power supplier is added to include all incumbent utilities that supply retail or wholesale power

in the state. Finally, by inserting "power supplier" in the appropriate places in HB 1382, it clarifies that whether the transmission facilities are owned by a municipal, cooperative or public utility, that local utility has a right to an opportunity to invest in any new transmission line interconnected to its system.

Thank you for taking the time to consider these comments and this amendment. Missouri River and its members hope that you will recognize the need to allow transmission dependent utilities to have opportunities to invest on behalf of the customers on equal footing with cooperatives.

**PROPOSED AMENDMENTS TO
HOUSE BILL NO. 1382**

Page 1, line 2, after the semicolon insert "to amend and reenact section 49-03-01.5 of the North Dakota Century Code, relating to definitions;"

Page 1, line 9, after "provider" insert "and power supplier"

Page 1, line 14, after "cooperative" insert "or power supplier"

Page 1, line 17, after "cooperative" insert "or power supplier"

Page 1, line 20, after "cooperative" insert "or power supplier"

Page 1, after line 24, insert:

"SECTION 2. AMENDMENT. Section 49-03-01.5 of the North Dakota Century Code is amended and reenacted as follows:

49-03-01.5. Definitions.

As used in sections 49-03-01 through 49-03-01.5:

1. "Electric provider" means either an electric public utility or a rural electric cooperative.
2. "Electric public utility" means a privately owned supplier of electricity offering to supply or supplying electricity to the general public.
3. "Electric transmission line" means facilities for conducting electric energy at a design voltage of one hundred fifteen kilovolts or greater phase to phase and more than one mile [1.61 kilometers] long.
4. "Electric transmission provider" means an owner or operator, other than a rural electric cooperative, of a transmission line ~~the costs of which are recovered directly or indirectly through transmission charges to an electric public utility.~~
5. "Person" includes an individual, an electric public utility, a corporation, a limited liability company, an association, or a rural electric cooperative.

6. **"Power Supplier"** means any electric public utility, electric cooperative corporation, or municipal power agency making wholesale sales in the state.

67. "Rural electric cooperative" includes any electric cooperative organized under chapter 10-13. An electric cooperative, composed of members as prescribed by law, shall not be deemed to be an electric public utility.

78. "Service area" means a defined geographic area containing existing or future service locations established by an agreement among electric providers and approved by the commission.

89. "Service area agreement" means an agreement between electric providers establishing service areas and designating service locations to be served by each provider under section 49-03-06.

910. "Service location" means the structures, facilities, or improvements on a parcel of real property to which electric service may be provided."

Renumber accordingly

House Bill 1382

Presented by: Brian P. Kalk, Commissioner
Public Service Commission

Before: House Industry, Business and Labor Committee
The Honorable George Keiser, Chairman

Date: February 2, 2015

TESTIMONY

Mister Chairman and committee members, I am Brian Kalk, Public Service Commissioner.

The Public Service Commission supports what we understand is the main purpose of House Bill 1382, to provide North Dakota's electric cooperatives the same statutory right of first refusal that the state's investor owned utilities have today under N.D.C.C. Chapter 49-03. However, the Commission does not support any statutory delegation of dispute resolution to regional transmission organizations or another regional group.

We have not had an opportunity to review the most recent version of any proposed amendments. We reviewed and discussed a version we received last Friday, which provided that any disputes between a cooperative and an investor owned utility that are members of the same regional transmission organization would be resolved using the procedures of that organization. Similarly, the version we reviewed stated that any disputes between an investor owned utility and a cooperative that are members of different regional transmission organizations would be resolved by using the procedures of an interregional transmission planning group.

A delegation of state authority to a regional transmission organization or a regional group is of great concern to the Commission for several reasons. The first reason is that the Commission does not have sufficient information regarding the dispute resolution procedures that will be used to know if such a statutory scheme unreasonably or inappropriately usurps state authority.

Secondly, when such a scheme is written into state law, the state is disadvantaged, *vis a vis* federal authority. A statutory delegation of state authority can be used as precedent supporting an assertion that the sovereign state has given its authority to the federal jurisdiction, even if there is no federal preemption and no rational basis to do so. This approach can have substantial unforeseen adverse consequences, especially today in the precarious federal/state relationship that is the regional transmission organization environment. The proposal that disputes will be resolved regionally inappropriately and unnecessarily blurs the line between federal and state jurisdiction at a time when jurisdictional disputes are likely.

Thirdly, the Commission is concerned with the ratemaking consequences of such a delegation of authority, and the message this language would send to the state's investor owned utilities. The investor owned utilities are the companies that are subject to the Commission's ratemaking jurisdiction. The Commission hopes policymakers do not encourage actions by the utilities that unnecessarily result in higher rates for ratepayers.

Jurisdictional utilities pay transmission costs through the tariffs of the regional transmission organizations, which are approved by the Federal Energy

Regulatory Commission (FERC). Once approved, utilities must pay the FERC approved rates, and then recover those costs from their ratepayers. The Commission has no authority to deny the utilities cost recovery of costs they have incurred by paying FERC approved rates.

The dispute resolution procedures of a regional transmission organization are unlikely to be concerned with the rate impact of that resolution on ratepayers. Nor, necessarily, are the utilities that are involved in the dispute. A utility can participate in a dispute procedure at a regional transmission organization knowing that the utility will not bear any of the resulting transmission costs itself. Once the dispute is resolved, that utility can simply file with the state for recovery of the costs (because they will be costs from the FERC approved regional transmission organization tariff) and the Commission will have to flow those costs through to local ratepayers.

The only jurisdiction concerned with the costs borne by state ratepayers is the state. If the state enacts a law delegating its authority to a regional transmission organization, the state is abrogating its responsibility to ratepayers.

Mister Chairman, this concludes my testimony. I will be happy to answer any questions.

Feb 16, 2015

Page 98 of 107

15.0903.01002

Title.

Prepared by the Legislative Council staff for
Representative Laning

February 11, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1382

Page 1, line 1, replace "chapter 49-03" with "chapters 10-13 and 40-32"

Page 1, line 2, after "cooperatives" insert "and municipal power agencies"

Page 1, line 5, replace "49-03" with "10-13"

Page 1, line 10, after the underscored comma insert "electric public utility."

Page 1, line 12, replace "An" with "Except as provided in subsection 3, an"

Page 1, line 15, after "notice" insert "to the rural electric cooperative"

Page 1, line 15, remove "at least one"

Page 1, remove line 16

Page 1, line 17, remove "necessity for that line"

Page 1, line 18, remove "and the commission."

Page 1, line 21, remove "the commission may not issue a certificate of public convenience"

Page 1, line 22, replace "and necessity for the proposed line of the electric transmission provider or designee" with "the rural electric cooperative shall have the right to construct the line"

Page 1, line 23, after "3." insert: "If an electric transmission line would interconnect facilities owned, leased, or operated by a municipal utility or municipal power agency and by a rural electric cooperative or by an electric public utility doing business in this state the following conditions apply:

- a. The municipal utility or municipal power agency and the rural electric cooperative or the electric public utility shall attempt to agree on all terms and conditions, including design, construction, ownership, and operation of the electric transmission line.
- b. If parties are unable to agree, this subsection does not compel a party to participate in the project or be construed as a waiver by any party of its right to establish and enforce any requirements for interconnection of transmission facilities to its transmission system.

4."

Page 1, after line 24, insert:

"SECTION 2. A new section to chapter 40-33 of the North Dakota Century Code is created and enacted as follows:

Right of municipal electric utilities and municipal power agencies to construct, own, and maintain electric transmission lines.

1. For purposes of this section, the terms electric transmission provider, electric transmission line, and electric public utility, have the same

meanings as in section 49-03-01.5. Municipal power agency has the meaning provided in section 40-33.2-02 and also includes a municipal power agency of which any municipality in this state is a member.

2. Except as provided in subsection 3, an electric transmission provider or designee may not construct an electric transmission line interconnecting with an existing electric transmission line owned, leased, or operated by a municipal utility or municipal power agency, unless the electric transmission provider or designee has provided written notice to the municipal utility or municipal power agency of its intention to do so. If the municipal utility or municipal power agency provides written notification to the electric transmission provider or designee within one hundred eighty days from receipt of the written notice under this subsection, that the municipal utility or municipal power agency is willing and able to construct and operate a similar electric transmission line, the municipal utility or municipal power agency shall have the right to construct said line.
3. If an electric transmission line would interconnect facilities owned, leased, or operated by a municipal utility or municipal power agency and by a rural electric cooperative or by an electric public utility doing business in this state the following conditions apply:

or

 - a. The municipal utility or municipal power agency and the rural electric cooperative or the electric public utility shall attempt to agree on all terms and conditions, including design, construction, ownership, and operation of the electric transmission line.
 - b. If parties are unable to agree, this subsection does not compel a party to participate in the project or be construed as a waiver by any party of its right to establish and enforce any requirements for interconnection of transmission facilities to its transmission system."

Renumber accordingly

Casey Furey Page 100 of 107
#2



Public Service Commission

State of North Dakota

COMMISSIONERS

Brian P. Kalk
Randy Christmann
Julie Fedorchak

Executive Secretary
Darrell Nitschke

February 16, 2015

The Honorable George Keiser, Chairman
Industry, Business and Labor Committee
North Dakota House of Representatives
600 East Boulevard Avenue
Bismarck, ND 58505

RE: House Bill 1382

Dear Chairman Keiser,

The Public Service Commission asked me to provide you with the position of the Commission on the proposed amendments to House Bill 1382.

As you may recall from the Commission's testimony at the hearing, the Commission supports the purpose of House Bill 1382. The Commission recognizes the importance of North Dakota utilities having a Right of First Refusal. This right helps provide safe and reliable services to North Dakota customers while serving the financial interests of ratepayers.

As you also may recall, the Commission's objection to previous amendments of the bill was the statutory delegation of dispute resolution authority to regional transmission organizations, and subsequent impacts on the ratemaking process resulting in unnecessary high rates for ratepayers.

The Commission has had an opportunity to review the proposed changes and believes the revised bill satisfactorily addresses the Commission's previous concerns. The Commission appreciates the proponents making these changes and providing them to the Commission so that we may provide the Committee with our assessment of the bill.

Please feel free to contact me with any questions, or if I can provide any additional information. Thank you.

Sincerely,

Casey A. Furey
Attorney
North Dakota Public Service Commission

CC:

Vice Chairman Sukut
Representative Amerman
Representative Beadle
Representative Becker
Representative ReBoschee
Representative Devlin
Representative Frantsvog

Representative Hanson
Representative Kasper
Representative Laning
Representative Lefor
Representative Louser
Representative Nelson
Representative Ruby

Introduction for HB 1382
Senate Industry, Business, and Labor Committee
March 11, 2015

Mr. Chairman and members of the IB&L committee, for the record I'm Vernon Laning, District 8 Representative and I'm here today to introduce Engrossed House Bill 1382 and to ask you to further amend this bill. The amendments I will be proposing are basically feel good language so I'd like to introduce the bill first and then address the amendments.

The bill before you is commonly referred to as a "Right of First Refusal" and would give rural electric cooperatives the right to construct, own, and maintain a transmission line that would interconnect to a line already owned or operated by the cooperative. This is a very similar bill to what was placed into law in 2011 by the legislature for the investor owned utilities.

In North Dakota many of the utilities have joined either Regional Transmission Organizations (RTO's) or Independent System Operators (ISO's) which are large multi-state organizations that seek to improve the cost and efficiency of producing and transporting electricity in the United States.

These RTO's and ISO's work to gain generation improvements by controlling which generating plants operate to provide the lowest cost power for the demand needed at the time. They also work to control the operation and expansion of electric transmission as one large multi-state grid versus many smaller regional grids.

Since several utilities in North Dakota are members of different RTO's and ISO's but are very interconnected in their operations it significantly changes how they operate together. In the past various utilities that wanted to build interconnecting transmission lines simply got together and developed agreements on construction, operation and cost, those days are now gone, so a more formal process must be used.

In the RTO/ISO world the transmission system is viewed from multistate area much larger than any North Dakota utility covers and decisions are made by large groups of stakeholders, many with no knowledge of or involvement in the state.

The amendments presented simply reorganize the different utility groups in the proper order for the proper section of code and then clarify definitions, process, ownership and operations of the transmission facilities.

This is why this legislation is needed. It provides an opportunity for utilities to retain some local control over who constructs, and owns transmission lines that connect to their system and lays out a process for determining who will have the right to construct and own new transmission lines in the state.

I'll be followed by Dale Niezwaag, Sr Legislative Representative with Basin Electric, who will provide more detailed testimony. I thank you for letting me provide the introduction today and I'll stand for any questions.

15.0903.02003
Title.

Prepared by the Legislative Council staff for
Representative Laning
March 10, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1382

Page 1, line 23, remove "municipal utility or municipal power agency and by a rural electric cooperative or"

Page 1, line 24, replace "by an" with "rural electric cooperative and facilities owned, leased, or operated by a municipal utility, a municipal power agency, or an"

Page 2, line 1, after "The" insert "rural electric cooperative and"

Page 2, line 1, replace "or" with an underscored comma

Page 2, line 1, replace "and the rural electric cooperative" with an underscored comma

Page 2, line 9, remove "This section must be construed and applied to the maximum extent possible in a"

Page 2, replace line 10 with "For purposes of this section, a "municipal utility" means anything a municipality is allowed to possess under section 40-33-01 and a "municipal power agency" has the meaning provided in section 40-33.2-02."

Page 3, line 2, after "and" insert "facilities owned, leased, or operated"

Page 3, line 3, remove "by"

Renumber accordingly

North Dakota House Bill 1382
Dale Niezwaag - Basin Electric Power Cooperative
Senate Industry Business and Labor Committee
March 11, 2015

Mr. Chairman and members of the committee, my name is Dale Niezwaag, representing Basin Electric Power Cooperative. I am here today in support of the amended version of House Bill 1382

This legislation allows cooperatives who operate in North Dakota and have the obligation to serve members/customers in the state some control over who builds, owns, and operates the transmission facilities that serve those member/customers. Similar legislation for the states Investor Owned Utilities (IOU's) was passed by the 2011 Legislature. This legislation is more detailed than the legislation passed in 2011 but with the interconnectedness of the IOU's, cooperatives, and some municipalities in North Dakota a more detail bill is needed.

Many of the utilities in North Dakota have joined, or are joining Regional Transmission Organizations (RTO's) or Independent System Operator's (ISOs). Basin Electric is in the process of joining the Southwest Power Pool (SPP), which is an RTO. Montana Dakota Utilities, Ottertail Power, and Xcel, have joined the Midwest Independent System Operator (MISO). Various municipalities are members of both organizations.

In the past, the local owners and operators of the transmission grid would participate in a planning process then decide what transmission facilities were needed to serve their member/customers and who would build, own, and operate those facilities. That group would then get together, develop an agreement on what was needed, who would build, own, operate, and pay for the new line. That system changed when the Federal Regulatory Energy Commission (FERC) decided that regional organizations need to be developed to increase the efficiency of the national generation and transmission grid system. Along with the regional organizations, they also laid out a planning process that not only includes the transmission owners but any other organization or regulatory agency that may have an interest or stake in the transmission grid or individual line.

In an RTO/ISO the multi-state members of those organizations and additional stakeholders participate in a similar but more formal planning process for constructing and upgrading transmission facilities. The RTO/ISO looks at its entire multi-state transmission system, identifies problem areas and then solicits solutions from transmission line owners and independent companies.

The RTO/ISO then selects the solution and selects the company that will build, own, operate, and recover the cost of the project.

The concern of cooperatives in North Dakota, as it was with the IOU's in 2011, is the organization awarded a particular project by the RTO/ISO, can be a utility or merchant

company that has no ties or load serving obligations in the State and therefore may not serve in the best interests of the consumers, land-owners or the state. Concerns include how easements are obtained, landowner problems are addressed, costs are recovered, and how closely state agency rules and regulations are followed.

However, FERC rules do allow the RTO/ISO to defer to state laws granting the incumbent utilities the right to determine if they want to build the needed additional transmission facilities.

With a Right of First Refusal (ROFR) the incumbent utility with the obligation to serve loads in the state has the right to build transmission facilities that the RTO/ISO determines are needed and interconnect with the utility's existing transmission system.

As stated earlier the North Dakota Investor-owned utilities already have this right in NDCC Section 49-03.

Section 1, subsection 1 of the bill explains that the definitions used in this legislation have the same meaning as those in 49-03-01.5 which is where the IOU ROFR is contained.

Section 1, subsection 2 of the bill states that an electric provider or designee that is not doing business in North Dakota has to provide written notice of their intent to construct a transmission line to a cooperative, the cooperative has 180 days to respond to the notice and decide if they want to build the line themselves subject to the provisions in subsection 3.

Section 1, subsection 3 of the bill states if an electric public utility (IOU) or municipal utility or municipal power agency doing business in the state wants to interconnect several conditions apply.

Subsection 3a says all parties shall attempt to agree to all the terms and conditions involved with building and owning the line.

Subsection 3b says if the parties do not agree, nothing in this law forces them to be part of a project, or can be seen as a waiver of their interconnection requirements in regards to interconnecting transmission lines.

This legislation does not and cannot try to address every possible transmission interconnection issue that may arise from different entities adding transmission line. That is what the RTO's, ISO's, and FERC are for and they either have policies in place or are working on policies to handle various situations.

I thank the committee for their time and consideration and would urge an adoption of the proposed amendments to House Bill 1382 and a Do Pass vote on a final amended bill. I would be happy to answer any questions from the Committee.

2015 N.D. HB 1382

Enacted, April 9, 2015

Reporter

2015 N.D. HB 1382; 2015 N.D. Laws 85; 2015 N.D. Ch. 85; 2015 N.D. ALS 85

NORTH DAKOTA ADVANCE LEGISLATIVE SERVICE > NORTH DAKOTA 64TH LEGISLATIVE ASSEMBLY > > HOUSE BILL 1382

Notice

Added: Text highlighted in green

Synopsis

AN ACT to create and enact a new section to chapters 10-13 and 40-33 of the North Dakota Century Code, relating to the construction of electric transmission lines by cooperatives and municipal power agencies; and to provide for application.

Text

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 10-13 of the North Dakota Century Code is created and enacted as follows:

Right of rural electric cooperative to construct, own, and maintain electric transmission lines.

1. For purposes of this section, the terms electric transmission provider, electric transmission line, electric public utility, and rural electric cooperative have the same meanings as in section 49-03-01.5.
2. Except as provided in subsection 3, an electric transmission provider or designee may not construct an electric transmission line interconnecting with an existing electric transmission line owned, leased, or operated by a rural electric cooperative, unless the electric transmission provider or designee has provided written notice to the rural electric cooperative of its intention to do so. If the rural electric cooperative provides written notification to the electric transmission provider or designee within one hundred eighty days from receipt of the written notice under this subsection, that the rural electric cooperative is willing and able to construct and operate a similar electric transmission line, the rural electric cooperative shall have the right to construct the line.
3. If an electric transmission line would interconnect facilities owned, leased, or operated by a rural electric cooperative and facilities owned, leased, or operated by a municipal utility, a

municipal power agency, or an electric public utility doing business in this state the following conditions apply:

- a. The rural electric cooperative and municipal utility, municipal power agency, or the electric public utility shall attempt to agree on all terms and conditions, including design, construction, ownership, and operation of the electric transmission line.
- b. If parties are unable to agree, this subsection does not compel a party to participate in the project or be construed as a waiver by any party of its right to establish and enforce any requirements for interconnection of transmission facilities to its transmission system.
4. For purposes of this section, a “municipal utility” means anything a municipality is allowed to possess under section 40-33-01 and a “municipal power agency” has the meaning provided in section 40-33.2-02.

SECTION 2. A new section to chapter 40-33 of the North Dakota Century Code is created and enacted as follows:

Right of municipal electric utilities and municipal power agencies to construct, own, and maintain electric transmission lines.

1. For purposes of this section, the terms electric transmission provider, electric transmission line, and electric public utility, have the same meanings as in section 49-03-01.5. Municipal power agency has the meaning provided in section 40-33.2-02 and also includes a municipal power agency of which any municipality in this state is a member.
2. Except as provided in subsection 3, an electric transmission provider or designee may not construct an electric transmission line interconnecting with an existing electric transmission line owned, leased, or operated by a municipal utility or municipal power agency, unless the electric transmission provider or designee has provided written notice to the municipal utility or municipal power agency of its intention to do so. If the municipal utility or municipal power agency provides written notification to the electric transmission provider or designee within one hundred eighty days from receipt of the written notice under this subsection, that the municipal utility or municipal power agency is willing and able to construct and operate a similar electric transmission line, the municipal utility or municipal power agency shall have the right to construct said line.
3. If an electric transmission line would interconnect facilities owned, leased, or operated by a municipal utility or municipal power agency and facilities owned, leased, or operated by a rural electric cooperative or an electric public utility doing business in this state the following conditions apply:
 - a. The municipal utility or municipal power agency and the rural electric cooperative or the electric public utility shall attempt to agree on all terms and conditions, including design, construction, ownership, and operation of the electric transmission line.
 - b. If parties are unable to agree, this subsection does not compel a party to participate in the project or be construed as a waiver by any party of its right to establish and enforce any requirements for interconnection of transmission facilities to its transmission system.

SECTION 3. APPLICATION.

This Act applies to any electric transmission line that is scheduled to begin being constructed after December 31, 2015.

History

Approved by the Governor April 9, 2015

Effective date: August 1, 2015

Sponsor

; (Representatives Laning, Boe, Kempenich); (Senators Burckhard, Campbell, O'Connell)

NORTH DAKOTA ADVANCE LEGISLATIVE SERVICE

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End of Document

Exhibit 4

Indiana Legislative History

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7 TRANSCRIPT OF AUDIO-RECORDED

8 INDIANA HOUSE LEGISLATIVE SESSION

9 ON SENATE BILL 94

10 APRIL 10, 2013

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<p style="text-align: right;">Page 2</p> <p>1 MR. SPEAKER: -- Frizzell. Put your hands down on 2 third reading Senate Bill 94.</p> <p>3 CLERK: The bill for an act to amend the Indiana 4 code concerning utilities.</p> <p>5 MR. SPEAKER: [inaudible] final passing.</p> <p>6 Representative Frizzell for discussion.</p> <p>7 REP. FRIZZELL: Thank you, Mr. Speaker and 8 members of the general assembly. Uh, I bring to you 9 Senate Bill 94, brought to you by Sena- -- Senator 10 Lisen [ph], Broaden [ph], and Cruse [ph], and also it 11 passed the Senate 50 to nothing, it passed our 12 utilities committee 12 to 1. I also want to thank the, 13 uh, co-sponsor of the bill, uh, Chairman Cooke [ph] 14 and, um, Ranking Member Battles [ph].</p> <p>15 And may me- -- my I just say a few words? Um, 16 this has been a tough session for all of us; utilities 17 was no exception. And I want to commend both of those 18 gentlemen for their leadership, the bipartisanship. 19 Um, it made a difference. And I appreciate both of 20 them. I'm -- I'm -- I'm honored to serve under them, 21 so I want to thank them personally for that.</p> <p>22 Um, Senate Bill, uh, 94 has to do, uh, Right of 23 First Refusal for, uh, some of our incumbent 24 utilities. In the state -- and it's called ROFR, by 25 the way, a- -- a- -- abbreviation -- companies can</p>	<p style="text-align: right;">Page 3</p> <p>1 maintain, uh, future systems, um, on their own. 2 And, uh, if a company comes in and wants to 3 connect with them or cross any other property, those 4 type of things, uh, they can refuse and say, "We want 5 -- as an incumbent company, we want to provide those 6 services to do the construction, those type of 7 things."</p> <p>8 Uh, this summer, uh, the federal, uh, Energy 9 Regulatory Commission, FERC, had two orders, order 10 1,000 and 1,000 A. And basically, what it said was, 11 how we have the state's -- the ability to get rid of 12 Right of First Refusal, in other words, to promote 13 competition by encouraging more companies to promote 14 innovation and inefficiency. In other words, some of 15 these new companies that provide, uh, transmission 16 lines and -- and companies as well.</p> <p>17 Now because of that, Indiana wanted to, uh -- to 18 guide their own destiny in this. And this summer we 19 had a lot of stakeholders very much involved and 20 interested in this issue. Um, we had a lot of the 21 incum- -- the invested-owned companies, REMCs and also 22 municipal, uh, utilities to discuss this.</p> <p>23 And they came up with a balance to say that two 24 thirds of the, uh, bigger jobs, will be total 25 competition when you lift, uh, uh, ROFR up and you</p>
<p style="text-align: right;">Page 4</p> <p>1 lift that up, there's going to be competitions. But 2 the smaller ones, the smaller, uh, uh, jobs, which are 3 for a reli- -- reliability and something that the 4 REMCs wanted, say that they would still be under Right 5 of First Refusal.</p> <p>6 Now, you know, th- -- this was, as I said, a 7 delicate balance, something that we wanted to do to 8 act on now because we think it's important that we 9 have our say of what happens.</p> <p>10 What else -- what else it also does as far as the 11 bill is concerned, uh, it would re- -- review any new 12 transmission companies coming outside, of course, of 13 Indiana -- coming to Indiana, uh, to assess their 14 financial viability and to ensure that they obey all 15 rules, regulation, and states statutes.</p> <p>16 Also reviews, uh, um, any new constructions that 17 may be happening in our state for con- -- uh, 18 transmission lines. And they also -- IURC can also be 19 a referee in disputes between incumbent companies 20 that, uh, contract with these outside companies, so 21 they have -- they can referee those.</p> <p>22 Um, this is very important because it will 23 promote for large projects, competitions, for the 24 smaller projects, reliability, uh, for the small 25 projects. It also provides certainly, in the energy</p>	<p style="text-align: right;">Page 5</p> <p>1 com- -- uh, producing community. I'd appreciate your 2 support for the bill.</p> <p>3 CLERK: Further discussion, Representative Mosely 4 [ph]. [Inaudible] yield, yields.</p> <p>5 REP. MOSELY: Thank you, Mr. Speaker, Mr. Leader, 6 members of the house. Thank you representative for 7 [inaudible].</p> <p>8 REP. FRIZZELL: Yes.</p> <p>9 REP. MOSELY: Uh, just a quick question. So two 10 thirds of the larger jobs are going to not fall under, 11 uh, Right of First --</p> <p>12 REP. FRIZZELL: Yes.</p> <p>13 REP. MOSELY: -- Refusal by the incumbent 14 company?</p> <p>15 REP. FRIZZELL: That's correct.</p> <p>16 REP. MOSELY: Is that correct?</p> <p>17 REP. FRIZZELL: That's correct.</p> <p>18 REP. MOSELY: So if we're opening that to 19 competition and another company comes in --</p> <p>20 REP. FRIZZELL: Mm-hmm.</p> <p>21 REP. MOSELY: -- and says, "We can do it just as 22 well or better, or cheaper," whatever the case may be, 23 will those other companies be allowed to bring in out 24 of state contractors to do that work?</p> <p>25 REP. FRIZZELL: That is correct. And this is</p>

<p style="text-align: right;">Page 6</p> <p>1 something that, uh, FERC wanted to -- you know, 2 because they want to increase the reliability and also 3 transmission lines, which is very important now.</p> <p>4 REP. MOSELY: Thank you. Permission to speak.</p> <p>5 CLERK: Recognize to speak.</p> <p>6 REP. MOSELY: Uh, in this -- in this situation 7 where I'm right now in the State of Indiana, in my 8 view and in my opinion, um, with us struggling to be 9 able to drive the unemployment rate down as opposed to 10 drive the unemployment rate up, I don't think this is 11 really quite the time to be having ideas and 12 discussions, and entertaining opportunities for out of 13 state contractors to come in and take the jobs of, uh, 14 electric or power transmission workers that we have 15 and are putting to work right now as we speak.</p> <p>16 It's certainly not going to improve our tax 17 situation in terms of income tax revenue by any 18 stretch of the imagination.</p> <p>19 And I just don't think it's a good idea for us to 20 send the message, uh, to our utility workers who put 21 it on the line all the time out there, that, uh, uh, 22 that if somebody can do it for an nickel cheaper or a 23 dime cheaper, then, uh, we're going to bring them in 24 from Kentucky or Illinois or Ohio. And too bad, maybe 25 you'll be lucky the next time. So I would urge you to</p>	<p style="text-align: right;">Page 7</p> <p>1 defeat this bill.</p> <p>2 MR. SPEAKER: Further discussion. Representative 3 Pierce [ph].</p> <p>4 REP. PIERCE: Thank you, Mr. Speaker, ladies and 5 gentlemen of the house. I rise in opposition to the 6 bill because I think we're in too big of a hurry and 7 we're kind of doing things backwards here.</p> <p>8 Essentially, what the federal, um, the FERC 9 people, the feds were trying to do, is inject some 10 competition into this business of building 11 transmission lines. And so they put some regulations 12 in place that are designed to encourage you to have 13 more of a bidding process.</p> <p>14 It might be someone other than the incumbent 15 utility can actually build and operate those 16 transmission lines more efficiently. What that means 17 is our constituents, the rate payers, pay a lower 18 amount.</p> <p>19 Now, it's an extremely complicated issue, which I 20 can't claim to fully understand, and that's the other 21 part of the problem. What we keep getting told is this 22 is a grand compromise that was brokered by the IURC. 23 The problem is, they didn't invite everyone to the 24 table.</p> <p>25 It was not what they called a docketed proceeding</p>
<p style="text-align: right;">Page 8</p> <p>1 where you're ensure to have notice, where the public 2 or other parties can become involved, where you have a 3 record that you can look at, and you have a decision 4 that perhaps you could appeal.</p> <p>5 Instead, this was an informal kind of brokering 6 of an agreement. And essentially what it looks like to 7 me, is a circling of the wagons to force all 8 competition in the name of reliability.</p> <p>9 Now, maybe at the end of the day, maybe their 10 arguments are correct, maybe it has the best route to 11 go, but we don't have that much information. All we're 12 told is all the interested parties who are the 13 incumbents, pretty much got together and decided, 14 "This is what we want to do."</p> <p>15 And by the way, they were all circling in the 16 beginning of this process, trying to line up some 17 amendments to tweak things in their favor, and they're 18 kind of complaining about things around the edges, and 19 then they kind of just disappeared.</p> <p>20 So I think there's a lot more here that meets the 21 eye. There's no immediate crisis, these transmission 22 lines just don't pop up overnight. It takes a long 23 time to sight them, get the right of way, go through 24 the process.</p> <p>25 We will be much better off to defeat this bill,</p>	<p style="text-align: right;">Page 9</p> <p>1 actually have some testimony or regulatory flexibility 2 committee actually study what's going on, make sure 3 the parties that were excluded from the backroom deal, 4 get an opportunity to come in and say their piece, 5 then we can evaluate it.</p> <p>6 Maybe we'll reach the exact same conclusion of 7 the bill here. But what I'm being told is, let's go 8 ahead and pass this law now and we'll figure out later 9 if it was the right thing. And if it wasn't the right 10 thing, we'll come back and amend it and tweak it.</p> <p>11 Well, I think the track record of us coming back 12 and fixing impaired bills that we pass is not very 13 good. And so for that reason I would urge you to 14 defeat the bill.</p> <p>15 MR. SPEAKER: Further discussion. Representative 16 Battles. Recognize to speak.</p> <p>17 REP. BATTLES: Thank you Mr. Speaker, members of 18 the house. I rise in support of Senate Bill 94. A-- 19 and let me tell you why. First of all, if we do have 20 outside companies that are coming in, they need to be 21 regulated. We can't have a wild west scenario. If you 22 look at section 7 of the bill, section 7 of the bill 23 gives the IURC full authority, full rights to look at 24 review, okay, oversee any new transition -- 25 transmission builders.</p>

<p style="text-align: right;">Page 10</p> <p>1 And I do think there was one disconnect. And -- 2 and Representative Frizzell answered the questions 3 correctly, but maybe there was a disconnect. The Right 4 of First Refusal is actually a protection on Indiana 5 jobs.</p> <p>6 I want to say it again, because th- -- that's an 7 important point, I think, that got lost here. The 8 Right of First Refusal is actually a protection on 9 Indiana jobs. It does not open it up to go cross -- 10 and I know it's a complex issue. But basically, what 11 it says and understand, it still allows for 12 competition.</p> <p>13 If I'm a -- if I am a REMC, for instance, in my 14 area, and I want to make sure that I've got a new 15 transmission line or distribution line I need fix, I'm 16 still going to bid that out.</p> <p>17 Whether we have outside companies coming in or 18 not, I'm still going to bid that out, but because I am 19 responsible for that power getting to my customers, 20 first of all I want to, A, have some surety that the 21 people doing that job is going to do it correctly, do 22 it well, and make sure again that I have folks doing 23 it here in Indiana as well.</p> <p>24 That is where the Right of First Refusal -- 25 understand also, the argument on this Right of First</p>	<p style="text-align: right;">Page 11</p> <p>1 Refusal is not about who does the work or are we 2 bidding the work. The argument is who is going to own 3 that line after the work's done? Are the REMCs going 4 to still going to own that line after it's done? 5 Because they're going to be the ones ultimately 6 reliable of getting that power in. Are we going to let 7 some outside entity own it and let everyone else 8 responsible. I'd ask you to support this.</p> <p>9 MR. SPEAKER: Further discussion. Authorize the 10 right to close.</p> <p>11 REP. FRIZZELL: Thank you, Mr. Speaker, and, uh, 12 thank you, Representative Battles. You're always 13 succinct, and I appreciate that. Um, I guess, 14 Representative Mosely, I can only say that this is an 15 interstate, uh, trade and there's nothing we can do as 16 far as interference in that regards. But we can make 17 sure that the companies that come in, that we can 18 regulate them. And I think that's very important.</p> <p>19 All this has to do is to promote reliability of 20 service and safety for the right peers. And I 21 appreciate your vote for Senate Bill 94.</p> <p>22 MR. SPEAKER: Questions on the final passage of 23 the bill. All those in favor, when those machines open 24 vote I, those oppose, vote no. Show Representative 25 Porter voting no. Have all members voted? Tally the</p>
<p style="text-align: right;">Page 12</p> <p>1 role. Role call shows 76 voting I, 16 voting no. The 2 bill is passed. Shall the title bill remain title act?</p> <p>3 MALE 8: It shall.</p> <p>4 MR. SPEAKER: Clerk will inform Senate 5 [inaudible] of the bill.</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 13</p> <p>1</p> <p>2</p> <p>3 I, Chris Naaden, a transcriber, hereby declare 4 under penalty of perjury that to the best of my 5 ability the above 12 pages contain a full, true and 6 correct transcription of the tape-recording that I 7 received regarding the event listed on the caption on 8 page 1.</p> <p>9</p> <p>10 I further declare that I have no interest in the 11 event of the action.  12 August 17, 2022 13 Chris Naaden</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19 (Indiana Senate Bill 94, April 10, 2013)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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Legislative History - IN SB 0094

Action List: Senate Bill 0094

ARCHIVE (2013) Authors: Broden, Kruse, Leising

Date	Chamber	Action
01/07/2013	S	Authored by Senator Long
01/07/2013	S	First reading: referred to Committee on Rules and Legislative Procedure
02/12/2013	S	Committee report: amended, reassigned to Committee on Utilities
02/12/2013	S	Senator Long removed as first author
02/12/2013	S	Senator Leising added as first author
02/21/2013	S	Committee report: do pass, adopted
02/21/2013	S	Senator Broden added as third author
02/21/2013	S	Senator Kruse added as second author
02/25/2013	S	Second reading: ordered engrossed
02/26/2013	S	Third reading: passed; Roll Call 204: yeas 50 and nays 0
02/26/2013	S	Referred to the House
02/26/2013	S	House sponsor: Rep. Frizzell
02/26/2013	S	Cosponsors: Reps. Koch and Battles
03/04/2013	H	First reading: referred to Committee on Utilities and Energy
04/04/2013	H	Committee report: amend do pass, adopted
04/08/2013	H	Second reading: ordered engrossed
04/08/2013	H	Amendment 1 (Pierce), failed; Roll Call 428: yeas 25, nays 66
04/10/2013	H	Third reading: passed; Roll Call 445: yeas 77, nays 16
04/10/2013	H	Returned to the Senate with amendments
04/11/2013	S	Motion to concur in House amendments filed
04/15/2013	S	Senate concurred in House amendments; Roll Call 469: yeas 49, nays 0

3:17:54 - 3:35

04/25/2013 H Signed by the Speaker

04/29/2013 S Signed by the President of the Senate

05/07/2013 S Signed by the Governor

05/13/2013 H Public Law 174

2012 IURC
Summer Workshops
on Indiana RDR bill

DISCUSSION DOCUMENT RE: RIGHT OF FIRST REFUSAL ISSUES

For meeting on August 13, 2012, at 10:30 a.m.

This document builds off of the document presented by the Indiana Energy Association at the June 6, 2012 meeting on the impact of the removal of a federal right of first refusal regarding transmission projects and possible Indiana legislation to address concerns. While prepared by staff of the Indiana Utility Regulatory Commission (“IURC” or “Commission”), this document is not a position statement of the IURC on these issues.

I. New Transmission Company Public Utility Certification

A. Before an entity can build new transmission facilities within the state, the entity (“Transmission Utility”) needs to be certified as a public utility by the IURC in a docketed proceeding.

Q: Should certification be general (i.e., Transmission Utility has authority to own and operate any transmission facility) or project specific (i.e., Transmission Utility has authority to own and operate only a specific project)?

Q: If certification is project specific:

- What happens after a new Transmission Utility gets a public utility certification for a project?
- If they bid or propose another project, is there any ongoing review that they maintain the high standards set for them to receive the original certificate?
- Does the Transmission Utility need to get a new certificate for each project or do they file something with the Commission each year to demonstrate they are still in good standing?

Q: Persons who are upset over the construction of a transmission facility and the use of eminent domain regarding the person’s property will likely complain to the IURC and/or to the incumbent utility. Should a new Transmission Utility’s authority to use eminent domain be general (i.e., throughout the State of Indiana) or project specific?

B. In such an IURC proceeding, the Transmission Utility must demonstrate:

1. It has the technical, managerial, and financial ability to own and operate transmission facilities within the state; and

2. It has the ability and the intent to comply with all statutes enforced under the jurisdiction of the Commission.

Q: Any other qualifications for certification?

Q: Sunset date for certification if Transmission Utility does not go forward with plans to own and operate transmission facilities?

C. Information Required as part of Petition for Certification:

1. Description of project(s) the Transmission Utility is contemplating.
2. Whether the proposed transmission facility is being considered for adoption in an RTO's planning process.
3. How will costs be recovered – from customers of the transmission line or through RTO cost allocation.
4. Information on the benefits of the proposed projects:
 - a. Studies – what other information needed?
 - b. Benefits to Indiana
 - c. Broader regional and interregional benefits
 - d. Other information?

D. Actual Construction – costs should be prudently incurred

1. Cost containment measures to be used by the Transmission Utility
2. Prevention and justification of cost overruns (e.g., above the amount bid or projected in an RTO process)

E. Ongoing Annual Reporting Requirements

F. IURC rulemaking authority for additional details

II. Right of First Refusal for Certain Transmission Projects

- A. Incumbent utilities in Indiana should have the right of first refusal (“ROFR”) to own certain new transmission facilities that will connect to their existing transmission facilities for certain reliability transmission projects.

Q: Definition of “certain” – IN ROFR should apply to which projects?

Some RTO stakeholders have indicated that federal ROFR should be removed for any project that is cost allocated beyond the local zone or state.

In Minnesota, the state ROFR applies to all projects, regardless of purpose or cost allocation.

MISO Snapshot of Cost Allocation

Allocation Category	Driver(s)	Allocation to Beneficiaries
Participant Funded (“Other”)	Transmission Owner identified project that does not qualify for other cost allocation mechanisms	Paid by requester (local zone)
Transmission Delivery Service Project	Transmission Service Request	Generally paid for by Transmission Customer; Transmission Owner can elect to roll-in into local zone rates
Generation Interconnection Project	Interconnection Request	Primarily paid for by requester; 345 kV and above 10% postage stamp to load.
Baseline Reliability Project	NERC Reliability Criteria	Primarily shared locally through Line Outage Distribution Factor Methodology; 345 kV and above 20% postage stamp to load.
Market Efficiency Project	Reduce market congestion when benefits are 1.2 to 3 times in excess of cost	Distributed to planning sub-regions commensurate with expected benefit; 345 kV and above 20% postage stamp to load.
Multi Value Project	Address energy policy and/or provide widespread benefits across footprint.	100% postage stamp to load.

- B. If such a transmission project connects to two or more Indiana incumbent utilities, then such utilities will negotiate the ownership split among themselves.
 - Q: Does the above statement apply whether or not there is a state ROFR?
 - Q: If there is a state ROFR, how will utilities work out the ownership split? Do we need some rules or certainty?
 - Q: For projects not subject to ROFR, should contract(s) be required (on issues such as indemnification, etc.) with utilities to which the project interconnects?
 - Q: What issues should be required to be a part of contracts (whether ownership sharing and/or interconnection contracts)? And should contract requirements be in statute or by IURC rule/order?

III. Authority to Choose Which Transmission Utility Builds/Owns a Project

- A. Stakeholder discussions at both MISO and PJM have included a regional transmission operator (“RTO”) process that provides for competition in determining what transmission utility builds a particular RTO-approved project (i.e., a bidding process) or that allows for states to choose the transmission utility to build in that state.
 - Q: Which process is preferred?
- B. Is legislation needed so that, if an RTO has a process that allows the state to make the determination, the IURC has the authority to choose which qualified transmission utility will construct the RTO-approved project?
- C. The RTO gathers the relevant information and gives it to the IURC. What information is necessary for the IURC to make this determination?

INDIANA RIGHT OF FIRST REFUSAL ISSUES
Summary of meeting on August 13, 2012, at 10:30 a.m.

This summary builds off of the Discussion Document circulated by IURC staff on August 8, 2012. Comments and discussion notes from the August 13th meeting are in bold italics. This summary refers to the following additional documents: IEA Draft Legislation (“IEA Draft”) and OUCC Memorandum Re: Indiana Order 1000 Right of First Refusal/IURC Issues (“OUCC Memo”).

I. New Transmission Company Public Utility Certification

- A. Before an entity can build new transmission facilities within the state, the entity (“Transmission Utility”) needs to be certified as a public utility by the IURC in a docketed proceeding.

Need to define “entity”- does it mean the parent company and include subsidiaries and affiliates? Often new LLCs are created for each transmission project. Would each new subsidiary or affiliate need to file for a certification?

In the IEA proposal, the intent was that a transco would go through the certification process once. Project specific certification could lead to Commission siting authority.

Under IEA proposal, each company (whether a subsidiary or affiliate or LLC) would need to file for certification.

Who comes in for certification?

A new entity that does not already own, operate or maintain transmission facilities.

- Q: Should certification be general (i.e., Transmission Utility has authority to own and operate any transmission facility) or project specific (i.e., Transmission Utility has authority to own and operate only a specific project)?

IEA proposal answer: General.

- Q: *At what point should a new transmission company (“transco”) file for certification?*

Decision varies, depending on different factors. When to file should be at the discretion of the new transco.

- Q: *What is the intent behind the requirement for demonstrating that projects are in an RTO planning process?*

Whoever proposed the project in the RTO (MISO) process would come to the Commission.

Q: Prior IEA language indicated that the new transco may file if it has a project being “considered for adoption” at an RTO. What does that mean?

The RTOs (MISO and PJM) are similar in that they identify transmission issues and allow for the submission of proposals. In MISO, projects in Appendix A of the Midwest Transmission Expansion Plan (“MTEP”) are approved by the MISO Board, following which there will be an RFP process to choose the transco(s) responsible to construct each approved project.

Q: Is it (or should it be) a condition precedent to certification that the project be proposed in or approved by an RTO?

All transmission projects go through an RTO planning process – at a minimum, to determine that no harm is done.

MISO – projects may be proposed, but transmission owner responsible for construction of project chosen based on cost-effectiveness.

PJM – uses more of a sponsorship model, but has had some cases based on cost-effectiveness.

Difficult and Dangerous – for the IURC to approve certification prior to need being demonstrated. Project should be approved by RTO, with accompanying cost-benefit analysis, prior to IURC approval of certification.

If IURC has questions regarding capability of new transco, IURC should participate in the RTO stakeholder process. The IURC may also open investigation if concerns arise after certification approved.

Q: What about financial capability? If approved for Project A, does it follow that new Transco has capability to build/own/operate Project B?

Response: Continued capability can be tracked through the MISO stakeholder process. If IURC has concerns, it can open an investigation into the transco’s continued capability.

Q: Performance issues re: new Transco. Incumbent utilities have an Indiana presence and stake in the game that new out-of-state transcos may not have. How can we assure that out-of-state entities have accountability? That new transcos have the capabilities relative to the project, including financing.

In MISO, all transmission project go through MTEP and then through RFP process to choose the developer. In addition, Transco must show ability to meet state requirements.

Performance concerns can be handled in IURC Order re: certification; perhaps limits based on size of the project.

Q: But doesn't that turn a general certification into a project-specific certification?

OUCC shares concern that new transcos continue to satisfy requisites of certification. Certification granted at the beginning may change with added projects. Rulemaking could outline requisites for ongoing IURC oversight.

Indiana vs. out-of-state: Indiana utilities are more concerned with complying with IURC authority, because they are serving retail customers. Transmission utilities are FERC jurisdictional, so ability for IURC to review prudence is gone. IURC has authority – but over what?

Need to be concerned re: discrimination against out-of-state entities. New transcos will still provide jobs, etc.

New transcos should be held to the same high standard as incumbent utilities.

Q: What type of jurisdiction should the IURC maintain? Who has the burden of proof to file – at the IURC and at FERC?

All wholesale transmission is handled by FERC.

Transmission formula rate protocols – the IURC has supported protocols that allow state commissions to get the information for prudence review and provide for a dispute resolution process that doesn't involve the additional litigation of filing a complaint at FERC.

In MISO, 15% of the costs go to Indiana, but only 5% of the projects are in Indiana. Need to look at where the analysis should reside. Prudence of costs should be looked at that the RTO level. A majority of the projects are not in Indiana.

Case law is clear that cost determinations are at FERC.

The advantage of a project-specific certification is that it keeps the attention of a new transco.

The MISO stakeholder process is currently discussing a review process.

Q: What role should state commissions play in MISO process?

Q: Over what components would the state like jurisdiction? How to get there?

Q: If certification is project specific:

- What happens after a new Transmission Utility gets a public utility certification for a project?
- If they bid or propose another project, is there any ongoing review that they maintain the high standards set for them to receive the original certificate?
- Does the Transmission Utility need to get a new certificate for each project or do they file something with the Commission each year to demonstrate they are still in good standing?

Q: Persons who are upset over the construction of a transmission facility and the use of eminent domain regarding the person's property will likely complain to the IURC and/or to the incumbent utility. Should a new Transmission Utility's authority to use eminent domain be general (i.e., throughout the State of Indiana) or project specific?

Under the IEA proposal, the grant of authority, including eminent domain authority, would be general and not project specific.

B. In such an IURC proceeding, the Transmission Utility must demonstrate:

1. It has the technical, managerial, and financial ability to own and operate transmission facilities within the state; and

Qualifications should be broader as to who can build in Indiana, such as construction standards for reliability.

"Technical ability" covers that.

2. It has the ability and the intent to comply with all statutes enforced under the jurisdiction of the Commission.

Q: Any other qualifications for certification?

IURC should have rulemaking authority to establish qualifications relevant to Indiana.

IURC has rulemaking authority under Ind. Code § 8-1-1-3.

OUCC would like rulemaking to establish qualifications, standards, and public policy – see OUCC Memo.

Qualifications should be the same as those used previously for generation as has the same statutory language (i.e., technical, managerial, and financial ability).

Q: Sunset date for certification if Transmission Utility does not go forward with plans to own and operate transmission facilities?

Information is already out there and available regarding status of transmission projects. There should not be a hard-wired set date for sunset, as some transmission projects go out ten years. The IURC has the ability to investigate if it has concerns about a project not being completed.

C. Information Required as part of Petition for Certification:

1. Description of project(s) the Transmission Utility is contemplating.
2. Whether the proposed transmission facility is being considered for adoption in an RTO's planning process.
3. How will costs be recovered – from customers of the transmission line or through RTO cost allocation.
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 - a. Studies – what other information needed?
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 - d. Other information?

All of the information under C is part of the RTO planning process and is readily available. If the RTO has looked at the costs and the benefits and deemed the project necessary, then it should not be revisited or litigated at the state.

Considering certification would be a docketed proceeding before the IURC, then this information needs to be submitted as part of the record.

If placed into the record, then the information could be contested. The benefits of a transmission project shouldn't be re-litigated before the IURC.

OUCC sees this differently. The RTO process isn't the end of the analysis. Don't want to question FERC jurisdiction, but analysis is done at a high level.

The RTO stakeholder process allows for push back.

It was suggested that if the IURC isn't satisfied, it can always file a 206 complaint with FERC.

Support for IURC review of specific projects vs. a general certification. The RTO stakeholder process is not an end all be all. Indiana interests should still be addressed, including whether the entity can build this project within the cost estimates.

Costs change and get updated over the years it takes a project to go from a proposal through development and construction.

Review of costs and benefits at MISO is a timing issue. MISO has to re-evaluate its cost-benefit analysis over the course of the project. This is currently being discussed in the stakeholder process, but may not make it into MISO's compliance filing re: Order 1000 in October 2012.

The IURC does not want to over reach or get into FERC jurisdiction, but is looking for an avenue to be involved in what affects Indiana.

IURC understands Commerce Clause and jurisdictional issues.

Order 1000 allows for states to have state ROFR.

Benefits to Indiana – this information is not currently available from MISO.

MISO performs cost/benefit analysis by resource zone – the resource zone for Indiana includes all of Indiana in MISO plus part of Kentucky – and by portfolio.

Because of portfolio approach, you can't look at Indiana projects in a vacuum.

Must also consider the practical effect – can the IURC really deny a certification based on the cost of the project?

D. Actual Construction – costs should be prudently incurred

1. Cost containment measures to be used by the Transmission Utility

2. Prevention and justification of cost overruns (e.g., above the amount bid or projected in an RTO process)
- E. Ongoing Annual Reporting Requirements
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- A. Incumbent utilities in Indiana should have the right of first refusal (“ROFR”) to own certain new transmission facilities that will connect to their existing transmission facilities for certain reliability transmission projects.

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Some RTO stakeholders have indicated that federal ROFR should be removed for any project that is cost allocated beyond the local zone or state.

In Minnesota, the state ROFR applies to all projects, regardless of purpose or cost allocation.

Section 4 of the IEA Draft is the Right of First Refusal portion of the draft. It keeps the reliability and security responsibility with the incumbent utility and promotes a contractual relationship with new transcos. The IEA utilities are not opposed to competition.

Definition of local reliability project – MISO and PJM have different processes and therefore somewhat different definitions.

Is an Indiana ROFR needed if the RTOs exclude local reliability projects from the elimination of the federal ROFR?

RTO's will be trying to exclude local reliability projects; no guarantee FERC will approve. FERC required elimination of federal ROFR for projects that are cost-shared. There could be issues/litigation with the RTOs' proposals.

In PJM, with their proposal in years 4 and 5, PJM could allow competition on local reliability projects.

IEA Draft seeks to address the risk of NERC penalties, as these reliability issues have a more immediate impact on customers.

FERC Order 1000 and 1000-A: what FERC took away (i.e., the federal ROFR), states can put back.

IEA Draft narrowly carves out state ROFR for NERC reliability projects.

Under discussion in the RTOs stakeholder processes is when should evaluation of project and develop occur and at what point is there input or approval required by the states.

MISO Snapshot of Cost Allocation

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Multi Value Project	Address energy policy and/or provide widespread benefits across footprint.	100% postage stamp to load.

Participant Funded, Transmission Delivery Service Project, and Generation Interconnection Project – not included in IEA Draft, as these projects have lower dollar amounts and low risk of a new transco wanting to do them.

Under IEA Draft, Indiana ROFR would apply to Baseline Reliability Projects, but not to Market Efficiency Projects or Multi Value Projects.

- B. If such a transmission project connects to two or more Indiana incumbent utilities, then such utilities will negotiate the ownership split among themselves.
- Q: Does the above statement apply whether or not there is a state ROFR?
- Q: If there is a state ROFR, how will utilities work out the ownership split? Do we need some rules or certainty?
- Q: For projects not subject to ROFR, should contract(s) be required (on issues such as indemnification, etc.) with utilities to which the project interconnects?
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- Q: Which process is preferred?
- B. Is legislation needed so that, if an RTO has a process that allows the state to make the determination, the IURC has the authority to choose which qualified transmission utility will construct the RTO-approved project?
 - C. The RTO gathers the relevant information and gives it to the IURC. What information is necessary for the IURC to make this determination?

Who selects?

Utilities have not reached consensus on IURC making selection of developer or if should defer to RTO to make selection.

Depends on RTO, NERC qualities.

Need to make sure transco is qualified to do business.

Does it require legislation to do selection?

Utilities do not yet have an answer.

RE: IEA DRAFT:

Does certification process need to be part of the draft? Or leave it open to IURC?

Need to have the clarity re: IURC authority that the proposed certification process provides.

Section 6(a) – new transco proposing

Section 6(b) – must be “may”, pursuant to Avon Utilities exclusion that the jurisdiction for contract disputes is with the trial court.

Is Section 6(a) necessary? Can’t the utilities contract now with new entities?

IEA Draft doesn’t address non-jurisdictional utilities or joint agency. Intent of IEA Draft was to cover everyone – definition may need to be changed

NEXT STEPS:

Written comments on documents and discussion due by COB on Monday, August 27, 2012.

Will schedule next meeting as soon as possible after September 10, 2012 – [NOTE: this meeting has now been scheduled for Thursday, September 13, 2012, at 10 a.m. to 12 p.m. in Conference Room E-306 of the Indiana Government Center South building, 302 W. Washington Street, Indianapolis, IN 46204.

The meeting after that will be open to all stakeholders.

**WABASH VALLEY POWER ASSOCIATION, INC. ("WVPA") COMMENTS
ON IEA PROPOSED LEGISLATION AND STATE ROFR FOR INDIANA**

WVPA COMMENTS AND PROPOSED CHANGES TO IEA DRAFT LEGISLATION:

CHAPTER 1. IC 8-1-__ IS ADDED TO THE INDIANA CODE A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UP ON PASSAGE]

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Chapter __ - Public Utility Transmission

Sec. 1. (a) As used in this chapter, "commission" refers to the Indiana Utility Regulatory Commision.

(b) As used in this chapter, "new electric transmission owner" means a corporation, company, partnership, limited liability company, or organization that:

- (1) does not own, operate and maintain an electric transmission facility that is partially or wholly located in Indiana, and
- (2) is organized for the purpose of constructing, owning, operating, and maintaining an electric transmission facility that is partially or wholly located in Indiana.

(c) As used in this chapter, "electric transmission facility" means a high-voltage transmission line with a rating of 100 kilovolts or above, including related transmission facilities and controls. [WVPA: Our concern is that 100kV demarcation point does not necessarily cover what is included as transmission under the FERC 7 Factor Test which may include 69kV. Thus, the State ROFR would not extend to the 69kV transmission]

(d) As used in this chapter, "local reliability electric transmission facility" means an electric transmission facility located within Indiana that is required by a regional transmission organization to satisfy the reliability requirements of the regional transmission organization or the reliability standards of the North American Electric Reliability Corporation, a Regional Reliability Organization, or their successors.

~~The term is limited to an electric transmission facility between 100 kilovolts and 300 kilovolts if the facility is to be planned, constructed and operated in the PJM Interconnection regional transmission organization, or its successor.~~

The term does not include an electric transmission facility that is required by the regional transmission organization primarily to address non-reliability drivers for purpose other than reliability, such as economic and public policy drivers for purposes, either individually or in combination.

[WVPA Comment: Proposed language is not clear. Further, we are unsure of the reason for the PJM limitation.]

(e) As used in this chapter, “incumbent electric transmission owner” means a public utility that owns, operates and maintains an electric transmission facility within the State of Indiana.

(f) As used in this chapter, “regional transmission organization” refers to a regional transmission organization approved by the Federal Energy Regulatory Commission.

(g) All other definitions shall be accorded the same meaning as set forth in IC 8-1-2-1.

Sec. 2. (a) If the commission determines that a new electric transmission owner seeking authority to operate in Indiana as a public utility has:

(1) the financial, managerial, and technical capability to construct, own, operate and maintain an electric transmission facility;

(2) the ability and intent to comply with all statutes enforced under the jurisdiction of the commission;

(3) the intent to construct, own, operate, and maintain an electric transmission facility that is being considered for selection in a regional transmission plan [WVPA Comment: This term may need defined. I assume it is in reference to Order 1000 requirement for transmission projects to be included in a regional transmission plan]; and

(4) provided written notice of its request for authority under this section to any incumbent electric transmission owner whose facilities may connect to the new electric transmission owner’s electric transmission facility; the commission shall grant the new electric transmission owner the authority to operate as a public utility.

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(b) In making the determination under subsection (a)(1), the commission may consider the creditworthiness of the new electric transmission owner, including its:

- (1)(A) investment grade rating;
- (B) guarantees from a parent company with an investment grade rating;
- (C) bank reference letter or bonding commitment; or
- (D) direct rate setting or taxing authority; and

(2) capability to meet its financial obligations in the event it abandons the electric transmission facility after it is constructed.

See. 3. A new electric transmission owner shall timely notify the commission of the dates on which the construction of the electric transmission facility was commenced and completed. [WVPA: We believe this is an unnecessary expansion of IURC jurisdiction]

Sec. 4. An incumbent electric transmission owner has the right to construct, own and maintain:

(1) a new local reliability electric transmission facility that connects to electric transmission facilities owned by the incumbent; and

(2) upgrades to the incumbent's existing electric transmission facilities.

~~Sec. 5 The right to construct, own, operate and maintain a local reliability electric transmission facility that connects to electric transmission facilities owned by two or more incumbent electric transmission owners belongs individually and equally to each incumbent electric transmission owner, unless the incumbent electric transmission owners otherwise agree in writing.~~

~~See. 6-(a) An incumbent electric transmission owner may contract with a new electric transmission owner proposing to connect an electric transmission facility to the incumbent electric transmission owner's transmission facilities regarding the responsibility for:~~

- ~~(1) maintenance and upgrades; and~~
- ~~(2) reliability compliance.~~

~~(b) A dispute arising under the contract may be submitted to the jurisdiction of the commission.~~

~~[WVPA Comment: We believe this is an unnecessary expansion of IURC jurisdiction.]~~

~~See. 7. Nothing in this chapter is intended to affect an incumbent electric transmission owner's use and control of its existing property rights. The retention, modification, or transfer of existing property rights remain subject to the relevant state law or regulation that granted the property right.~~

~~[WVPA Comment: We do not think this is necessary.]~~

WVPA GENERAL COMMENTS REGARDING A STATE ROFR:

1. Reliability - WVPA is supportive of the state ROFR for reliability projects.
2. Economic/market efficiency projects – WVPA does not plan on objecting to legislation that excludes economic/market efficiency projects from a State ROFR, but believes consideration should be given to a ROFR for these projects for which 80% of the costs will be local.
3. Multi-Value Projects (“MVP”) – WVPA does not oppose or object with respect to the exclusion of MVP projects from the ROFR. But WVPA also would not oppose or object the inclusion of MVP projects in ROFR (although could run into some federal jurisdictional issues).
4. WVPA is not inclined to support broader and more expansive IURC jurisdiction – particularly with respect to incumbent contracts for maintenance or reliability compliance, etc.

If you have any questions or would like to discuss contact Jeremy Fetty (Parr Richey Obremskey Frandsen & Patterson, LLP) at jfetty@parrlaw.com or 317-269-2509 or Lee Wilmes (WVPA Vice President of Power Supply) at leew@wvpa.com or 317-481-2800.

Hoosier Energy Comments on Indiana Right of First Refusal (ROFR)

Background

The current MISO Tariff includes a Right of First Refusal (ROFR) that allows MISO transmission owners the right to build any new transmission project developed through the MISO transmission planning process that interconnects with the MISO transmission owner system. FERC recently upheld and enforced this right in finding that several disputed transmission projects were properly awarded, at least in part, to existing transmission owners.¹ However, FERC emphasized that these decisions were required by the language of the relevant agreements currently on file. FERC echoed prior findings that certain federal ROFRs are unjust and unreasonable and should be removed on a prospective basis in upcoming Order No. 1000 compliance filings.

Therefore, MISO's FERC Order 1000 and Order 1000-A compliance filing will eliminate the federal ROFR for any RTO transmission project with regionally-shared costs. This elimination of a federal ROFR could be triggered by sharing the cost of a transmission project between as few as two pricing zones in MISO. However, Order 1000 and Order 1000-A also provided that, if a state had provisions for a right of first refusal, the state ROFR would control. An expanded IURC role in transmission project approval is the only avenue available to restore the ROFR rights of Indiana utilities.

The state of Minnesota has passed legislation that provides the Minnesota Public Service Commission with authority over transmission projects in Minnesota. The Minnesota legislation establishes a state ROFR that applies to all transmission projects regardless of purpose or cost allocation.

Parties in Indiana are considering whether legislation establishing a state ROFR would benefit customers in Indiana and for which projects (reliability, economic, multi-value projects) a state ROFR would be established.

MISO is in the process of developing a compliance filing for Order 1000 and Order 1000-A. For projects for which the federal ROFR is eliminated, there will be a competitive process at the end of the MISO planning process to select the developer who will construct the project. At the beginning of this competitive process, states will have the option of initiating a process to select the developer or pass

¹ Pioneer Transmission, LLC v. NipSCO and MISO, Inc. and Xcel Energy Services Inc. v. ATC, LLC FERC found that MISO's current Transmission Owners Agreement ("TOA") includes a ROFR pursuant to which ownership and the responsibilities to construct new facilities that are connected between two or more owners' facilities belong equally to each owner. In the Pioneer case, FERC relied on this language to hold that the right to build a proposed transmission line connecting the systems of NipSCO and Duke Energy Indiana belonged to each of those owners equally, even though Pioneer (a joint venture of Duke Energy and American Electric Power) claimed to have submitted a similar project to the MISO planning process. FERC reached a similar conclusion in the Xcel case, finding that the same "share equally" provision of the MISO TOA required ATC to give Xcel Energy a 50 percent interest in a transmission line connecting the two companies' systems, notwithstanding ATC's attempt to develop the entire line.

the responsibility for selecting a developer to MISO. The IURC currently has limited, if any, statutory authority over transmission siting. Therefore, the IURC is not in a position to select the developer.

Hoosier Energy Comments

- 1) Legislation should establish an Indiana ROFR for all projects – reliability, economic and multi-value.
 - a) The legislation should be similar to the Minnesota legislation.
 - b) Most parties agree that a state ROFR should be established for reliability projects. However, because of the scale and dollar magnitude of most economic and multi-value projects, it is particularly important for the IURC to have the capability to protect customer interests with respect to economic and multi-value projects.
 - c) Draft Legislation
 - i) Incumbent electric transmission owners have the right to construct, own, and maintain new electric transmission facilities that connect to their electric transmission systems. If the new electric transmission facility connects to facilities owned by two or more incumbent electric transmission owners, then this right will be shared proportionally, unless otherwise agreed in writing.
 - ii) When a new electric transmission facility has been approved for construction by the RTO, the incumbent electric transmission owner may give notice to the commission of its intent to construct, own, and maintain the new electric transmission facility. If no notice is provided, the incumbent electric transmission owner surrenders its right of first refusal.
- 2) The legislation should provide the IURC the authority to certify the developer of each transmission project that is built in Indiana.
 - a) The RTO will select the developer in a competitive bidding process.
 - b) The developer will then file a petition with the IURC for certification.
 - c) The IURC will determine whether the potential developer has the capability to construct, operate and maintain the Indiana portion of the project.
- 3) Certification should be on a project by project basis.
 - a) This is not overly burdensome as it is common for developers to form a separate LLC for each project and the new entity would need to receive certification.
 - b) IURC will consider the following criteria:
 - i) Size / Estimated Cost –The cost of the project relative to the developer's financial capabilities is a critical factor for determining the appropriate developer. For example, a developer may be perfectly able to handle a \$100 million project but may not be able to handle additional projects and/or a \$2 billion project.
 - ii) Voltage Level – Developer's capabilities to build the proposed voltage level of the new transmission facilities.

- iii) Geography – Developer capabilities may be stronger in one geographic area than another, which could affect the ability of the developer to provide operations and maintenance for the project.
 - iv) Benefits – The IURC should consider the benefits to Indiana electric customers when certifying the developer as part the ROFR process.
 - v) Impacts – The IURC should ensure that the developer take environmental factors into consideration in a manner which will minimize impacts to natural resources, sensitive ecosystems, cultural resources and populated areas.
 - vi) Eminent Domain – The IURC should require quantification of impacts on land-based livelihood and ensure fair compensation to landowners.
 - vii) Performance – The IURC should consider the entity's ability to cost-effectively and timely build prior transmission projects.
 - viii) Reliability – The IURC should consider the entity's ability to operate and maintain prior transmission projects.
- 4) The IURC should ensure that certified entities are performing adequately on projects for which they have been selected. To accomplish this, the IURC should initiate a rulemaking to establish reporting and review procedures for developers that have been selected.
- 5) Some have suggested that if a state ROFR were established for all projects it could cost Indiana economic development and jobs as the projects will be built in other states rather than be subjected to the State ROFR process. The reality is that companies are competing to build transmission projects to capture the 12.38% ROE for MISO TOs, or in the case of TRANSCOs 13.88% ROE. No jobs or economic development opportunities will be lost if Indiana establishes a state ROFR.



**Indiana ENERGY
Association**

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Ed Simcox, Interim President

Boonville Natural Gas Corp.

Citizens Energy Group

Community Natural Gas Co., Inc.

Duke Energy

Fountaintown Gas Co., Inc.

Indiana Michigan Power

Indiana Natural Gas Corp.

Indianapolis Power & Light Company

Midwest Natural Gas Corp.

Northern Indiana Public Service Co.

Ohio Valley Gas Corp.

South Eastern Indiana Natural Gas Co., Inc.

Sycamore Gas Co.

Vectren Energy Delivery of Indiana, Inc.

THE VOICE FOR INDIANA ENERGY

August 30, 2012

Beth Krogel Roads

Assistant General Counsel - Legal Counsel, RTO/FERC Issues

Indiana Utility Regulatory Commission

101 W. Washington Street, Suite 1500 E

Indianapolis, IN 46204

Comments on Indiana Transmission Certification
Legislation

Dear Beth:

The Indiana Energy Association (“IEA”) appreciates the Indiana Utility Regulatory Commission’s (“Commission”) interest in the impact of the Federal Energy Regulatory Commission’s (“FERC”) July 21, 2011 Order 1000. FERC’s order transforms transmission planning and cost allocation. One of the reforms seeks to expand the universe of transmission developers offering potential solutions for consideration in the regional transmission planning process by ordering the removal from FERC-approved tariffs and agreements of a federal right of first refusal for incumbent transmission providers. *Order 1000*, ¶ 284. FERC was clear, however, that nothing in its final rule was “intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities.” *Order 1000*, ¶ 337, fn. 231.

The IEA worked with its members to develop legislation that would address the potential impacts of Order 1000 at the State level. First, the proposed legislation identifies the criteria required for a non-incumbent transmission provider to obtain Commission authority to operate in Indiana. Order 1000 is designed to encourage a broader pool of potential transmission providers, which will result in non-traditional transmission providers constructing facilities in Indiana to transmit power. This language would provide certainty and clarity about the Commission’s jurisdiction over transmission providers constructing equipment in Indiana for the transmission of power and an avenue for assuring ongoing responsibility of incumbent utilities to maintain system reliability for retail customers.

Beth Roads
August 30, 2012
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Second, the proposed legislation provides a right of first refusal ("ROFR") to incumbent transmission providers to construct new local reliability electric transmission facilities which are (a) connected to the incumbent's transmission facilities or (b) upgrades to its own transmission system. All IEA members agree that providing a ROFR over these types of projects will serve to protect Indiana customers.

Other comments provided to the Commission suggested that any legislation should go further. The Indiana Office of Utility Consumer Counselor ("OUCC") urges the Commission to review the costs and benefits of a project and assume responsibility to assure that cost-benefit ratios are accurate and beneficial to Indiana. Legislation of this nature, however, would raise a significant risk of federal preemption. Jurisdiction to review the costs of transmission recoverable through wholesale rates resides with FERC. 16 U.S.C. § 824(a); *New York v. Federal Energy Regulatory Comm'n*, 535 U.S. 1 (2002); *National Assoc. of Regulatory Util. Commissioners v. Federal Energy Regulatory Comm'n*, 475 F.3d 1277 (D.C. Cir. 2007). The OUCC's proposal would represent a state attempt to second guess the FERC-approved tariffs that gave rise to the costs at issue. Indiana does have an opportunity to challenge these costs, but that authority must be exercised by filing a complaint at FERC. 16 U.S.C. § 824e(a).

The additional oversight sought by the OUCC may also be addressed by efforts underway to more thoroughly evaluate the costs and benefits of transmission projects. The Midwest Independent Transmission System Operator, Inc. ("MISO"), for example, is evaluating a proposal by the Organization of MISO States ("OMS") to conduct cost/benefit studies at the pricing zone or state level. The proposal would also call for project reporting obligations that would promote additional analysis in the event of significant cost increases with a potential for a project to be reassigned or cancelled if costs grow too much.

Comments also suggested that the Commission should evaluate the design and construction standards employed by proposed transmission providers. However, such review is the province of the regional transmission organizations ("RTO") such as MISO and PJM Interconnection, LLC ("PJM"). Cost and construction oversight needs to be done at a regional, not a state level, to assure consistency throughout the RTO's footprint.

Neither should the legislation afford the Commission authority to review proposed transmission projects at the "actual route level" prior to final approval. Such an approach raises a number of potential issues. First, Commission review of the actual route will strain its resources and increase litigation costs for a transmission building entity. Local and individual property owner concerns can be addressed via other forums. Second, and closely related, onerous siting

Beth Roads
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Page 3

requirements in Indiana may cause transmission building entities to forego construction in Indiana and locate in a state with less stringent siting processes, which deprives the State of construction jobs and investment dollars. Third, Commission approval at this level of detail is unnecessary and duplicative of actions that occur at the local level. For example, to the extent a property owner has a complaint about a planned transmission route as it affects his/her property, the property owner can initiate an action in state court. Frequently, local issues related to route selection can be negotiated and slight route changes may occur to accommodate specific issues that arise—the developer needs to have flexibility to address such issues and time consuming processes can slow down projects.

Finally, the IEA disagrees with the recommendation that RTO's long-term planning needs should be incorporated and be responsive to each state's integrated resource planning ("IRP") process. As will be indicated in IEA's comments to the Commission's proposed IRP rule, it is IEA's position that Indiana's IRP process should incorporate the RTO's transmission planning process. Order 1000 makes clear that transmission planning should be conducted on a regional level. All of Indiana is either in the MISO or PJM footprint, and therefore, the Commission and OUCC would be best served by participating in MISO's and PJM's transmission planning process rather than duplicating it at the state level. FERC's Standard Market Design regulations contained in a Subpart G to 18 CFR Part 35 recognizes that states have an important role in creating and sustaining an efficient competitive wholesale market for energy and creates a formal process for state representatives to participate on an ongoing basis in the decision-making process of RTOs. Each RTO has a Regional State Advisory Committee (RSAC) afforded direct contact with the RTO's governing board in recognition of its public interest responsibilities designed to elicit a consensus view from states in the area. The specifics of how each RSAC was to operate were decided on a regional basis. FERC has opined that RSACs provide "coordinated oversight" that ensures "fulfillment of federal public interest responsibilities in a manner that includes the views of the states throughout the region." FERC has stated that RSACs "may work with the [RTO] to seek regional solutions to issues that may fall under federal, state, or shared jurisdiction," including resource adequacy standards, transmission planning and expansion, rate design and revenue requirements, market power and market monitoring, demand response and load management, distributed generation and load management, energy efficiency and environmental issues and RTO management and budget review."

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Page 4

In conclusion, the IEA companies continue to believe that the consensus proposed legislation that we have offered is a reasonable and preferred approach to provide the Commission certainty of its authority in this area.

Sincerely,



Edwin J. Simcox
Interim President

IEA DRAFT

A BILL FOR AN ACT to amend the Indiana Code concerning public utilities.

Be it enacted by the General Assembly of the State of Indiana

CHAPTER 1. IC 8-1-__ IS ADDED TO THE INDIANA CODE A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UP ON PASSAGE]

Chapter __ - Public Utility Transmission

Sec. 1. (a) As used in this chapter, “commission” refers to the Indiana Utility Regulatory Commission.

(b) As used in this chapter, “new electric transmission owner” means a corporation, company, partnership, limited liability company, or organization that:

- (1) does not own, operate and maintain an electric transmission facility that is partially or wholly located in Indiana, and
- (2) is organized for the purpose of constructing, owning, operating, and maintaining an electric transmission facility that is partially or wholly located in Indiana.

(c) As used in this chapter, “electric transmission facility” means a high-voltage transmission line with a rating of 100 kilovolts or above, including related transmission facilities and controls.

(d) As used in this chapter, “local reliability electric transmission facility” means an electric transmission facility located within Indiana that is required by a regional transmission organization to satisfy the reliability standards of the North American Electric Reliability Corporation, a Regional Reliability Organization, or their successors.

The term is limited to an electric transmission facility between 100 kilovolts and 300 kilovolts if the facility is to be planned, constructed and operated in the PJM Interconnection regional transmission organization, or its successor.

The term does not include an electric transmission facility that is required by the regional transmission organization primarily to address non-reliability drivers, such as economic and public policy drivers, either individually or in combination.

(e) As used in this chapter, “incumbent electric transmission owner” means a public utility that owns, operates and maintains an electric transmission facility within the State of Indiana.

(f) As used in this chapter, “regional transmission organization” refers to a regional transmission organization approved by the Federal Energy Regulatory Commission.

(g) All other definitions shall be accorded the same meaning as set forth in IC 8-1-2-1.

Sec. 2. (a) If the commission determines that a new electric transmission owner seeking authority to operate in Indiana as a public utility has:

- (1) the financial, managerial, and technical capability to construct, own, operate, and maintain an electric transmission facility;
- (2) the ability and intent to comply with all statutes enforced under the jurisdiction of the commission;
- (3) the intent to construct, own, operate, and maintain an electric transmission facility that is being considered for selection in a regional transmission plan; and
- (4) provided written notice of its request for authority under this section to any incumbent electric transmission owner whose facilities may connect to the new electric transmission owner's electric transmission facility;

the commission shall grant the new electric transmission owner the authority to operate as a public utility.

(b) In making the determination under subsection (a)(1), the commission may consider the creditworthiness of the new electric transmission owner, including its:

- (1)(A) investment grade rating;
- (B) guarantees from a parent company with an investment grade rating;
- (C) bank reference letter or bonding commitment; or
- (D) direct rate setting or taxing authority; and
- (2) capability to meet its financial obligations in the event it abandons the electric transmission facility after it is constructed.

Sec. 3. A new electric transmission owner shall timely notify the commission of the dates on which the construction of the electric transmission facility was commenced and completed.

Sec. 4. An incumbent electric transmission owner has the right to construct, own and maintain:

- (1) a new local reliability electric transmission facility that connects to electric transmission facilities owned by the incumbent; and
- (2) upgrades to the incumbent's existing electric transmission facilities.

Sec. 5. The right to construct, own, operate and maintain a local reliability electric transmission facility that connects to electric transmission facilities owned by two or more incumbent electric transmission owners belongs individually and equally to each incumbent electric transmission owner, unless the incumbent electric transmission owners otherwise agree in writing.

Sec. 6. (a) An incumbent electric transmission owner may contract with a new electric transmission owner proposing to connect an electric transmission facility to the incumbent electric transmission owner's transmission facilities regarding the responsibility for:

- (1) maintenance and upgrades; and
- (2) reliability compliance.

(b) A dispute arising under the contract may be submitted to the jurisdiction of the commission.

IEA DRAFT

Sec. 7. Nothing in this chapter is intended to affect an incumbent electric transmission owner's use and control of its existing property rights. The retention, modification, or transfer of existing property rights remain subject to the relevant state law or regulation that granted the property right.

**INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR
COMMENTS REGARDING
AUGUST 13, 2012 INDIANA RIGHT OF FIRST REFUSAL MEETING**

The Indiana Office of Utility Consumer Counselor welcomes the removal of most federal rights of first refusal (ROFR) under FERC's Order 1000 in order to bring the benefits of competition to the construction of new electric transmission infrastructure in Indiana. The OUCC also believes the construction of major new electric transmission infrastructure will affect a wide range of Indiana interests. It is therefore appropriate for stakeholders to work together to ensure the Indiana Utility Regulatory Commission can assert appropriate oversight over the construction of new electric transmission projects in the absence of a federal ROFR. The recent meeting facilitated by the IURC and attended by Indiana's major utilities helped foster that objective. While the OUCC reiterates that it plans to keep an open mind on addressing ROFR issues, the OUCC appreciated the opportunity at the recent meeting to share an OUCC Memorandum (dated August 13, 2012), expressing the need for adequate oversight by the IURC over transmission projects and new transmission entities in Indiana. The OUCC also appreciated the Discussion Document provided by IURC staff to guide further discussion on ROFR issues, and the sharing by the Indiana Energy Association of its draft legislation.

Consistent with its Memorandum, the OUCC submits that it is essential that IURC oversight be broad enough to cover the full range of Indiana's public policy interests, and that the full range of interested parties should have the opportunity to participate at future discussions to enable Indiana ROFR issues to be more comprehensively explored. The OUCC has the following reactions to views and materials which were shared at the August 13, 2012 meeting.

- A two-stage IURC process is most appropriate. The OUCC Memorandum proposed certification of each new transmission entity as an Indiana-jurisdictional public utility, followed by such entities seeking approval for the construction of each new project by the IURC as it is approved by the respective RTO(s). The OUCC believes discussion at the recent meeting demonstrated a range of potential problems with simply relying on the RTOs' planning and evaluation processes after initial certification (including burden-of-proof issues, if the IURC's only recourse against performance problems were to open an investigation). Simply relying on the RTOs' independence and stakeholder input is a poor substitute for ensuring that the IURC has a full opportunity to review new transmission entrants and their proposed projects.
- An IURC rulemaking would best ensure the full range of Indiana public policy interests are addressed. A wide range of stakeholders will likely have interests in Indiana transmission issues. An IURC rulemaking is the most comprehensive and transparent way to ensure that all parties are able to raise all their concerns on such a complex and technical topic. While the OUCC believes the IURC already has adequate authority under existing Indiana statutes to conduct such a rulemaking, any new statute should provide further support for such a rulemaking to determine how best to approve each individual project. Such an approach would also be consistent with how the legislature last addressed such an issue in HEA 1279, which provided for the certification of new communications service providers and explicit

statutory authority accorded to the IURC to implement such a certification process. (See, IC 8-1-32.5-15).

- Whatever process is used, the IURC must have broad authority to consider the full range of Indiana's public policy interests. The OUCC does not wish to put the IURC in the position of second-guessing FERC-approved RTO processes, but the states have long-recognized broad jurisdiction over service at the retail level. Indiana cannot simply assume its jurisdictional interests will be adequately addressed by the RTOs and their stakeholder processes. In addition to those matters provided for in Section 2 of the IEA draft legislation regarding certification, IURC review of specific projects by these certificated new entities should include at a minimum a consideration of the range of public policy interests identified in the OUCC Memorandum.
- Any ROFR created under Indiana law should be limited. The OUCC does not necessarily oppose some threshold below which new transmission projects could be covered by a state ROFR, but limiting the extent of ROFRs should allow for greater competition to help bring the best service at the lowest cost to Indiana ratepayers and encourage technological innovation. To the extent Indiana incumbents already provide high quality service at reasonable costs, such entities should be able to be competitive and have nothing to fear from competition. Because most RTO transmission projects are currently approved for reliability reasons, the OUCC is concerned that the IEA draft legislation appears to provide that many new transmission projects would continue to be subject to a ROFR. Such an approach would create a barrier to competition for the most cost effective method of providing electricity to Indiana consumers.
- Eminent domain should be project specific. Overly broad eminent domain powers are particularly problematic with respect to a utility which provides a limited part of the traditional vertically integrated package of services (and does not directly serve Indiana retail customers). Such a utility should not possess unfettered discretion in applying such powers. Establishing project-specific eminent domain powers only for new transmission entities would likely require some legislative action.

OUCC MEMORANDUM

To: Indiana ROFR Meeting Participants
From: Indiana OUCC
Date: August 13, 2012
Re: Indiana Order 1000 Right of First Refusal/IURC Issues

This memorandum outlines issues the Office of Utility Consumer Counselor believes need to be addressed in Indiana as the result of Order 1000's elimination of a federal right of first refusal (ROFR).

Background

FERC's Order 1000 requires the removal of provisions from MISO and PJM FERC-jurisdictional tariffs and agreements that grant a federal ROFR to construct transmission facilities selected in a regional transmission plan that are cost-shared. In October of this year, MISO and PJM will file amendments to their foundational documents in order to comply with this requirement. Considerable work needs to be done through the stakeholder processes at both RTOs before each one's proposals are ready to file, however it appears both RTOs are likely to eliminate most ROFRs for transmission lines that are built for purposes other than local reliability.

As Order 1000 makes clear, the removal of federal ROFRs pursuant to the order does not limit state authority with respect to siting, permitting, and construction of transmission, nor does it affect such traditional state functions as integrated resource planning and related authority relating to transmission. While the Indiana Utility Regulatory Commission has broad general authority under state statute to regulate public utilities involved in the "...transmission, delivery, or furnishing of heat, light, water, or power..." (IC 8-1-2-1(a)(2)), Indiana statutes do not address in detail how the IURC should regulate such transmission activities.

June 6, 2012 Meeting

At a meeting among the IURC, Indiana's various transmission owning entities and the OUCC, the Indiana Energy Association circulated a draft strawman proposal as to what sort of additional Indiana regulatory framework might be appropriate. Such a framework might implicate some state legislative action. The IEA strawman proposed that any new transmission company should:

- Be required to be "certified as a public utility" in a docketed IURC proceeding;
- Be required to demonstrate: (1) "technical, managerial, and financial ability to own and operate transmission facilities within the state;" (2) "the ability and intent to comply with all statutes enforced under the jurisdiction of the commission;" and (3) that the

transmission line “is being considered for adoption in a regional transmission operator’s planning process;” and

- Have “reporting requirements” to the IURC, “including notification of beginning of construction of any new transmission project and notification of commercial operation of such project.”

The strawman further indicated that incumbent Indiana utilities should retain a ROFR with respect to “certain new transmission facilities that will connect to their existing transmission facilities for certain reliability projects,” and that with respect to any project connecting Indiana incumbents, such utilities “will negotiate the ownership split among themselves.”

At the meeting, the OUCC indicated that it has been participating in the various stakeholder meetings at MISO and PJM, and that it has been studying the various issues being discussed. While the OUCC affirmed it was keeping an open mind, the OUCC indicated that it was interested in the potential for cost savings to Indiana ratepayers as a result of introducing competition for the development of new transmission infrastructure. However, the OUCC affirmed that it was also important that the IURC have appropriate oversight over any such new competitive entities that might wish to build, own, and operate new transmission infrastructure in Indiana. Although the OUCC had not been given any advance opportunity to review the IEA proposal, the OUCC indicated its initial reaction that the proposal would likely require more extensive qualifications than those proposed by the IEA for any utility wishing to qualify to build and own new transmission facilities in Indiana.

Public Policy Interests

Competition should bring lower electricity prices to consumers. Therefore, the OUCC supports Order 1000’s elimination of federal ROFRs. Removing federal ROFRs, while retaining appropriate IURC oversight over transmission activity in the state, should facilitate competition related to the construction of new transmission facilities, which, in turn, should help lower the ultimate costs to Indiana ratepayers for such facilities. However, the OUCC believes a range of factors needs to be addressed in order to ensure that the promises of such a construct are realized:

- The RTOs’ long-term planning needs to incorporate and be responsive to each state’s integrated resource planning process. Each state’s jurisdictional utilities should be able to demonstrate that they have worked both in their respective states’ IRP processes and in the RTOs’ stakeholder processes to ensure the public interests of their states are accommodated.
- How firm are estimates of costs and benefits? It appears that RTO transmission planning (and cost-benefit analysis) takes place at a “40,000 foot” level of detail, and does not attempt to quantify costs (and resulting benefits) at an “actual route” level of detail. While high level cost estimates are an appropriate step in the development of

transmission plans at the RTO planning level, ultimately there needs to be accountability as more detailed route planning is developed, to ensure before final state permitting and construction occur that reasonable and economically meaningful cost-benefit ratios will be realized based upon well-founded economic assumptions and realistically accurate cost estimates.

- Approval of competitively bid transmission projects needs to take into account not just the “up front” cost, but the entire long-run cost of operation and maintenance as well as construction.
- Adequate design and construction standards must be included in cost estimation, awarding of transmission projects, and construction by the transmission developer/owner. Addressing this issue is made more difficult by the absence of any uniform set of national or regional standards, and the obvious inherent inefficiencies that would come from imposing such standards on a state-by-state basis.
- Compliance with existing NERC and RRO standards.
- Indemnity and long-term financial and compliance accountability of the transmission developer/owner. This factor would include a showing by the transmission entity that it continues to satisfy the requisites that supported the grant by the IURC of its original certification.
- Responsiveness to ratepayers and the community. Transmission development and operation has significant land use and other impacts on a wide range of Indiana interests. As public utilities, transmission developers/owners will need to be responsive to more than just the RTOs, wholesale transmission customers and the transmission developer/owners’ own investors.
- Long-term ownership issues – O&M and especially emergency responsiveness.
- Homeland/system security issues – site/critical infrastructure access, critical assets, and cyber security, etc.
- Interoperability of systems and coordination among assets owned by different entities.
- Eminent domain – access to, and responsibility as to its appropriate and sensitive use.

Recommendations

As stated above, the OUCC continues to keep an open mind as to how best to approach ROFR issues which would not hinder healthy competitions in Indiana. However, based on the OUCC’s review of issues to date, it would propose the following framework as a model for how such issues should be addressed. *While the OUCC is prepared to consider statutory changes as described below to ensure that the IURC has adequate oversight over new transmission entities, it is essential*

that such oversight be broad enough to cover the full range of public policy interests (including but not limited to those identified above), and that the full range of interested Indiana parties have an opportunity to contribute to the development of such legislation.

- The IURC should have additional, clearly stated authority with respect to certifying new transmission entities in the state. A new statutory framework establishing the certification requirements for such transmission entities would be desirable to ensure they are qualified to function as a public utility, and to ensure that the IURC can exercise appropriate and necessary jurisdiction with respect to any issues that may arise in regard to such certification.
- Along with establishing additional new statutory certification requirements for a new transmission entity to become a public utility in Indiana, such new statutory provisions should also provide for ongoing IURC rulemaking authority to establish a series of guidelines based on the “Public Policy Interest” factors set forth above in regard to specific, proposed transmission projects. Each time a qualified transmission entity proposes to build a new RTO-approved project in Indiana, those guidelines would then be applied by the IURC to determine whether it would be in the public interest for that transmission entity to receive approval to undertake such a project.
- The OUCC appreciates that the RTOs and FERC have created stakeholder-reviewed planning processes at the RTOs, which provide an opportunity for all interested stakeholders to participate in the development of new transmission planning. However, the IURC should have clear authority to review the resulting transmission projects at an “actual route” level of detail before final approval is granted for each particular project’s construction, to assure that promised cost-benefit ratios will be realized.
- Once a particular project is approved for construction, the IURC should maintain its authority for ongoing review of that project to assure that it is built in a timely and cost-effective manner, and to assure that it is appropriately maintained and operated over the long run.
- Indiana’s integrated resource planning must be recognized as a key input to the RTO planning processes. Both the IURC and the OUCC should expect Indiana’s jurisdictional utilities to recognize their obligation to work to ensure that RTO transmission planning addresses Indiana’s specific needs as outlined in Indiana’s IRP processes.

Exhibit 5

Montana Legislative History

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7 TRANSCRIPT OF AUDIO-RECORDED

8 HEARING IN THE

9 MONTANA HOUSE ENERGY, TECHNOLOGY, AND FEDERAL

10 RELATIONS COMMITTEE

11 WEDNESDAY, JANUARY 25, 2017

12

13 CALL TO ORDER/ROLL CALL AND HB 297

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21 Job No.: 902254

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HEARING - MONTANA HOUSE ENERGY - 01/25/2017

Page 2	Page 3
1 REP. ZOLNIKOV: The Energy, Technology, and 2 Federal Relations Committee will come to order. Will 3 the secretary please call the roll?	1 SECRETARY: Representative Perry. 2 REP. PERRY: Here.
4 SECRETARY: Vice Chair Skees?	3 SECRETARY: Representative Casey Knudsen. 4 REP. KNUDSEN: Here.
5 REP. SKEES: Here.	5 SECRETARY: Representative Custer. 6 REP. CUSTER: Here.
6 SECRETARY: Vice Chair Haymun.	7 SECRETARY: Representative Austin Knudsen. 8 UNIDENTIFIED VOICE: Excused.
7 VICE CHAIR HAYMUN: Here.	9 SECRETARY: Chair Zolnikov.
8 SECRETARY: Representative Bishop.	10 REP. ZOLNIKOV: Here.
9 REP. BISHOP: Here.	11 Before we start with the bills, um, we're going 12 to be taking executive action on six pieces of 13 legislation Friday. And I sent that to the vice-chairs 14 and committee members as well.
10 SECRETARY: Representative Hertz.	15 I would love to announce it. I can't remember 16 them all. House Bill 61, House Bill 22, House Bill 23. 17 No? I was close. Oh. House Bill 21 and House Bill 22. 18 House Bill one.
11 REP. HERTZ: Here.	19 SECRETARY: Please start all over again, please?
12 SECRETARY: Representative Stewart-Perego.	20 REP. ZOLNIKOV: Okay. I'll even do it in order. I 21 sent you an email too, just to let you know. Um, House 22 Bill 21, and that could have amendments. House Bill 23 22, and that could have amendments. House Bill 52, I 24 don't believe with amendments.
13 REP. STEWART-PEREGO: Here.	25 House Bill 61 with amendments. House Bill 93
14 SECRETARY: Representative O'Hara.	
15 REP. O'HARA: Here.	
16 SECRETARY: Representative Rosendale.	
17 REP. ROSENDALE: Here.	
18 SECRETARY: Representative McConnell.	
19 SPEAKER: Excused.	
20 SECRETARY: Representative Olsen.	
21 REP. OLSEN: Here.	
22 SECRETARY: Representative Redfield.	
23 REP. REDFIELD: Here.	
24 SECRETARY: Representative Marigeau.	
25 SPEAKER: Excused.	
Page 4	Page 5
1 without amendments. House Bill 219 with likely 2 amendments.	1 electrical utilities in a construction of high voltage 2 power lines in the far eastern part of the state, 3 specifically in the Midwest Reliability Organization, 4 which is depicted as MRO on the map that you have. So 5 it's a very very small portion of eastern Montana. In 6 eastern Montana, specifically east of Fort Peck and 7 Miles City, uh, these electric facilities in MRO are 8 operated in organized markets.
3 SECRETARY: Thank you.	9 This legislation applies only to those areas.
4 REP. ZOLNIKOV: Thank you. All right. Some other 5 announcements. Please silence your cell phones. And 6 remember if you wish to give your testimony, please 7 sign in at the door. And provide your name and 8 affiliation. And please spell it, even if it's your 9 fourth time in front of this committee. It's always 10 nice to have that spelled out.	10 Many states in these organized markets have adopted 11 similar legislation, including North and South Dakota. 12 The organized markets in this case include the Midwest 13 independent systems operator and the Southwest Power 14 Pool.
11 Um, with that, we have House Bill 297, House Bill 12 269 being heard today. We are going to start with 13 House Bill 297, presented by Representative Hertz. 14 Representative Hertz, please open on your bill.	15 An organized market is designed to allow one 16 transmission tariff across large areas, eliminating 17 the need for multiple transmission rates across each 18 utility, in order to get power delivered through large 19 areas. Additionally, the organized market designs 20 power flows in a manner that maximizes the use of 21 transmission.
15 REP. HERTZ: Thank you, Mr. Chairman. With your 16 permission, I'd like to send, um, these handouts 17 around.	22 Specific to right of first refusal, the reason a 23 high voltage line may be submitted to an organized 24 market prior to construction is to obtain cost 25 recovery on the line from a multi-state area, rather
18 REP. ZOLNIKOV: Yes, please.	
19 REP. HERTZ: Thank you, Mr. Chairman. Members of 20 committee, my name is Adam Hertz. H-e-r-t-z. I 21 represent House District 96, which is generally 22 Northwest Missoula and a portion of the French Town 23 area.	
24 Today I bring you House Bill 297, which 25 establishes a right of first refusal for incumbent	

<p style="text-align: right;">Page 6</p> <p>1 than just consumers in that one area. The cost of 2 certain bulk -- of certain new bulk electric 3 transmission lines may be shared across large areas 4 and in some cases across the entire market footprint. 5 This legislation would affect MDU and electric 6 cooperative facilities in eastern Montana, which have 7 operated in those markets for a number of years. Right 8 of first refusal does one thing only. It gives an 9 incumbent utility in Montana the right of first 10 refusal to build and own transmission lines -- uh, new 11 transmission lines in their area.</p> <p>12 Without first refusal, new lines needed for load 13 growth could be bid out to entities, uh, to own and 14 operate and receive a rate of return. These entities 15 may not have the same long term ownership interests as 16 an incumbent utility.</p> <p>17 Right of first refusal has nothing to do with 18 market access. It only ensures that an incumbent 19 utility with an established present -- presence in the 20 area will have a right to build and own new 21 transmission lines approved by an organized market for 22 cost sharing across those areas.</p> <p>23 The incumbent utility is the one whose customers, 24 or member consumers in the case of a cooperative, are 25 affected by the long term reliability of those</p>	<p style="text-align: right;">Page 7</p> <p>1 electric lines in those areas and whose ownership is 2 unlikely to be sold or traded off to out of state 3 interests, whose focus may be on a maximum rate of 4 return, rather than reliability or stability.</p> <p>5 The federal energy regulatory commission, also 6 known as FERC, has recognized states rights as it 7 relates to right of first refusal legislation. 8 Organized markets recognize these rights as well, 9 honoring rights of first refusal in states that have 10 adopted these laws. Uh, there's a couple of important 11 provisions I would like to point out in the bill.</p> <p>12 The first one is on page one, lines 14 and 15, 13 contain a specific provision ensuring wind developers 14 retain their rights to build transmission to the grid. 15 So this wouldn't affect their ability to do that. Page 16 two, if you look at lines nine through 11, ensure that 17 this bill doesn't reduce any of the public service 18 commission's regulatory authority over utilities the 19 commission regulates.</p> <p>20 And finally on page two, six and eight, the bill 21 addresses a potential situation in which a new 22 transmission line is connected between two incumbent 23 utilities and under this provision, ownership must be 24 shared equally, unless utilities agree to different 25 terms and conditions. So with that, I want to thank</p>
<p style="text-align: right;">Page 8</p> <p>1 you for your consideration of House Bill 297 and I 2 look forward to public comment and questions from the 3 committee. Thank you.</p> <p>4 REP. ZOLNIKOV: Thank you, Representative Hertz. 5 First off, proponents. Any proponents.</p> <p>6 MR. WIENS: Thank you, Mr. Chairman, members of 7 the committee, uh, for the opportunity to testify in 8 purport of House Bill 297. I want to thank the sponsor 9 for bringing this bill. He did an excellent job of 10 explaining it. Uh, Montana electric -- oh. By the way, 11 I'm Gary Wiens, with the Montana Electric Cooperatives 12 Association.</p> <p>13 Last name spelled W-i-e-n-s. And representing 14 Montana Electric Cooperatives Association. Uh, our 15 association, uh, requested this bill on behalf of 16 several of our member electric coops. Uh, these coops 17 are operating in an organized market, known as the 18 Southwest Power Pool.</p> <p>19 And as was stated by the sponsor, the singular 20 purpose of right of first refusal in this case is to 21 just help ensure that there is local grid reliability. 22 That's the singular purpose of the bill. Through -- 23 and insure that that local grid reliability occurs 24 through a strong local presence.</p> <p>25 I just want to walk through the bill just to -- I</p>	<p style="text-align: right;">Page 9</p> <p>1 won't repeat the things that, um, the sponsor talked 2 about. But, um, new section one in your bill adds -- 3 that you have before you -- adds new definitions to 4 title 69, because they are the terms that are of 5 course referenced in new section two.</p> <p>6 Uh, under new section one, sub-section 1A, this 7 specifies the transmission line that is subject to the 8 right of first refusal. Uh, in this bill, it is 115 9 volts or higher. Uh, 115 KV or higher. Um, sub-section 10 1B, uh -- sponsor already explained that. Sub-section 11 two, uh, defines organized markets in which utilities 12 affected by this bill are participating. These are -- 13 this is the federally registered planning authority.</p> <p>14 It's the organized market, also known as regional 15 transmission organizations. Sub-section three 16 specifies what is an incumbent electric utility. And, 17 as seen, you can see there, it's one that is regulated 18 by the public service commission or electric coops.</p> <p>19 Uh, sub-section four defines transmission facilities, 20 because that term is used in the new section two. Now, 21 going on to new section two, which is the heart of the 22 bill, this does not describe the conditions for an 23 incumbent electric utility to be eligible for right of 24 first refusal.</p> <p>25 And it put some sideboards on that right. So in</p>

<p style="text-align: right;">Page 10</p> <p>1 this new section two, subsection 1A lists those 2 specific conditions in (i), (ii), and (iii), that -- 3 and -- and it does provide the exception for 4 transmission lines, uh, that, you know, as the sponsor 5 talked about, that go from the generation to 6 interconnect to the grid.</p> <p>7 Um, so in these, uh, (i), (ii), (iii) -- these 8 portions specify the new power line that is subject to 9 the right of first refusal has to be one, located in 10 the Midwest Reliability Organization. That's, for 11 Montana, that's the area -- the high voltage lines 12 east of Fort Peck, east of Miles City. And, uh, 13 Midwest Reliability Organization is a -- is a 14 subdivision, so to speak, of NERC, the North American 15 Electric Reliability Corporation.</p> <p>16 Um, and then the, uh, as it states there, that 17 this Midwest Reliability Organization has to be a line 18 approved by an organized market. No -- no one here, 19 listed here, is the federally registered planning 20 authority. And finally has to be a line that 21 interconnects with incumbent electric utilities 22 transmission facilities.</p> <p>23 Um, subsection 1B provides the ability of the 24 incumbent utility to waive the right. You don't have 25 to, uh, build this line and own it, et cetera, if they</p>	<p style="text-align: right;">Page 11</p> <p>1 -- if they choose not to. Uh, subsection 2 specifies 2 the incumbent utility has 120 days after a new line 3 has been approved by the organized market for 4 construction. So it gives them a deadline for giving 5 notification that they are going to exercise that 6 right.</p> <p>7 And then subsection three and four were already 8 highlighted by the sponsor. So just a few, uh, things 9 to kind of wrap up, uh, our testimony. Um, I want to 10 emphasize again, uh, this right does not mean that 11 we're -- utilities, call us whatever -- are going to 12 build the line. Typically, it does cost us less to 13 build these lines, because we are there. Um, but that 14 doesn't preclude us from saying we don't want to build 15 it.</p> <p>16 Um, and that's that ability to waive that right I 17 mentioned. Um, also I want to address a concern about, 18 um, how this bill would impact competition. Um, just 19 want to emphasize that our focus here is on the end 20 consumer and on the operational aspects related to 21 that. That's our whole focus.</p> <p>22 Um, and you think about competition, you think 23 about the, uh, decisions that were made about 24 exercising choice on the commodity of electricity and 25 you've got to think about how all that worked out in</p>
<p style="text-align: right;">Page 12</p> <p>1 Montana. Not too well. So you've got to wonder, uh, 2 when it comes to transmission choice, what's -- what 3 is that a cure for.</p> <p>4 So, um, I guess in, just in closing, um, you 5 know, as was stated by the sponsor, federal energy 6 regulatory commission has made it very clear that it 7 will defer to state policy on this right; that they 8 will not preempt a state law that allows this right.</p> <p>9 We -- to verify that, we did consult with FERC 10 attorney, and they said that's absolutely correct. Um, 11 so, just final statement, um, as I said, very simply 12 the singular purpose of this bill is to insure local 13 grid reliability through a strong local presence.</p> <p>14 Um, basically because, uh, when the lights go 15 out, it is still the incumbent utility that has the 16 obligation to serve. Thank you.</p> <p>17 REP. ZOLNIKOV: Thank you. Further proponents.</p> <p>18 MR. FORRESTER: Mr. Chairman. Members of the 19 committee. I'm Gary Forrester. F-o-r-r-e-s-t-e-r. 20 Representing Montana Dakota utilities. Uh, Montana 21 electric cooperative association, uh, contacted you 22 well in advance to this bill being introduced. Uh, we 23 were given a chance for input. Uh, we offered our 24 input.</p> <p>25 Uh, they accepted our input. I know that the, uh,</p>	<p style="text-align: right;">Page 13</p> <p>1 the coops also contacted the public service commission 2 and they offered input as well. We support the bill. 3 We are members of a regional transmission organization 4 also. Uh, we see no problems with this bill at all and 5 we are committed to give it a due pass. Thank you, Mr. 6 Chairman and committee members.</p> <p>7 REP. ZOLNIKOV: Thank you. Further proponents. 8 Further proponents. Opponents.</p> <p>9 MR. JAMES: Good afternoon, Mr. Chair, members of 10 the committee. For the record, my name is Darryl 11 James. Darryl was D-a-r-r-y-l. James is common 12 spelling. This afternoon, I come to you, uh, 13 representing Enbridge Energy and LS Power.</p> <p>14 Uh, Enbridge Energy, uh, in the first quarter 15 this year is merging with Spectra Energy and we'll be 16 the largest energy transport company in North America. 17 Uh, a number of assets here in Montana, gathering 18 pipelines in the northeast corner.</p> <p>19 Uh, significant pipeline through the central part 20 of Montana. And, uh, as some of you are aware, 21 purchased the MATL transmission line back in 2012. 22 Enbridge looks at this bill and is concerned about the 23 precedent that it sets for somebody that is building 24 merchant transmission lines and -- and whether they 25 would be precluded, uh, from participating in markets</p>

<p>1 in Montana.</p> <p>2 Uh, it's not an immediate concern, but it's, uh,</p> <p>3 it's a foreboding sign that the state of Montana would</p> <p>4 close markets. Uh, so they are concerned for that</p> <p>5 reason.</p> <p>6 LS Power, however, has built, uh, has built their</p> <p>7 business model based on competition in these kinds of</p> <p>8 markets and are very concerned that this bill would</p> <p>9 indeed close markets, where competitive bidding</p> <p>10 process would, uh, would allow their participation and</p> <p>11 allow a downward pressure on rates.</p> <p>12 Uh, the bill is anticompetitive. And, uh, there -</p> <p>13 - there are some that are concerned that it does</p> <p>14 violate the commerce clause and certainly the dormant</p> <p>15 commerce clause in the U.S. Constitution.</p> <p>16 The practical effect is that it does permanently,</p> <p>17 uh, halt competition for new transmission,</p> <p>18 particularly in the east part of Montana. Since 2011,</p> <p>19 national policies have been moving towards more</p> <p>20 competition in transmission.</p> <p>21 These pro competition policies have been upheld</p> <p>22 in all federal courts, whereas some of these right of</p> <p>23 first refusal bills have been deemed, uh,</p> <p>24 unconstitutional or unlawful as anticompetitive, um,</p> <p>25 at the federal level. But they have deferred and said</p>	<p>Page 14</p> <p>1 that it's acceptable at the state level. I would like</p> <p>2 to clarify something from FERC though.</p> <p>3 And I'll hand this to the clerk. I just, uh,</p> <p>4 received this. Uh, FERC did say that they, uh, they</p> <p>5 will not interfere in state, uh, decisions on right of</p> <p>6 first refusals. However, uh, there's a dissenting</p> <p>7 opinion here from, uh, commissioner Bay.</p> <p>8 He says I write separately to note that the</p> <p>9 constitution limits the ability of states to erect</p> <p>10 barriers to interstate commerce. State laws that</p> <p>11 discriminate against interstate commerce that protect</p> <p>12 or favor enterprise at the expense of out of state</p> <p>13 competition may run afoul the dormant commerce clause.</p> <p>14 Um, so, I would -- I'll leave this with the</p> <p>15 clerk. But there are certainly concerns, legal</p> <p>16 concerns, about whether this is anti-competitive and</p> <p>17 whether it is in violation of the commerce clause.</p> <p>18 The, uh, the proponent, uh, proponents mentioned, uh,</p> <p>19 that these right of first refusal bills have been</p> <p>20 proposed in other states.</p> <p>21 They have been passed, uh, in North and South</p> <p>22 Dakota and in Minnesota. They've recently failed in</p> <p>23 Kansas and New Mexico. But I'd point out that the</p> <p>24 majority of states, 40 plus, do not have right of</p> <p>25 first refusal, uh, statutes on the books. So we're in</p>
<p>Page 16</p> <p>1 an evolving area of public policy and, uh, we're just</p> <p>2 weary of where this might be headed.</p> <p>3 While this does target a very limited range in</p> <p>4 Montana, uh, I would point out that LS power has been,</p> <p>5 uh, a participant in a number of bidding processes and</p> <p>6 won 10 out of 11, uh, projects around the country. And</p> <p>7 -- and has been able to provide a much more</p> <p>8 competitive bid and rate than the incumbent utilities.</p> <p>9 With regard to -- to grid reliability, uh, each</p> <p>10 transmission line owner who is awarded a project must</p> <p>11 pass a prequalification criteria to even bid. And once</p> <p>12 the bid is turned in, it must withstand the scrutiny</p> <p>13 of operational and maintenance review by an</p> <p>14 independent entity that the SVP or the MISO will use</p> <p>15 to select and award projects.</p> <p>16 So like the incumbent utilities, the transmission</p> <p>17 owner that's awarded the project must turn over</p> <p>18 operational control to those entities. So grid</p> <p>19 reliability from our perspective is not really an</p> <p>20 issue.</p> <p>21 It's still held by the -- by the -- by MISO. So</p> <p>22 we think those are unfounded. Uh, we are very</p> <p>23 concerned about, uh, about the, uh, anti-competition</p> <p>24 part of this that forces uprates. Uh, and whether it</p> <p>25 restricts, uh, business competition in Montana. Mr.</p>	<p>Page 15</p> <p>1 Chair, members of committee, thank you very much.</p> <p>2 REP. ZOLNIKOV: Thank you. Further opponents.</p> <p>3 Further opponents. Informational witnesses.</p> <p>4 Informational witnesses. Questions from the committee.</p> <p>5 Representative McConnell.</p> <p>6 REP. MCCONNELL: Thank you, Mr. Chairman. Uh, I</p> <p>7 guess I have -- I'll start with the sponsor, please,</p> <p>8 Mr. Chair.</p> <p>9 REP. ZOLNIKOV: Representative McConnell.</p> <p>10 REP. MCCONNELL: Mr. Chairman. Representative</p> <p>11 Hertz. Um, can you tell me what the purpose of this</p> <p>12 bill is? Is there some construction out there that's</p> <p>13 going on that we need to know about? Is there, um, is</p> <p>14 somebody looking to buy something? Tell me what's</p> <p>15 going on.</p> <p>16 REP. HERTZ: No. There's nothing, um, Mr. Chair,</p> <p>17 Representative McConnell. Nothing to that degree. I</p> <p>18 mean, this area does include the Bakken, and the</p> <p>19 Bakken does, you know, have its booms and busts and</p> <p>20 right now things are a little slow. Um, largely this</p> <p>21 bill would probably affect new growth in the Bakken.</p> <p>22 And it probably would be a, you know, fairly</p> <p>23 small amount of growth. So, um, nothing nefarious or</p> <p>24 no big project hiding in the -- in the wings that</p> <p>25 needs this bill to happen.</p>

	Page 18		Page 19
1	REP. MCCONNELL: Follow-up.	1	-- I spoke to that as part of a position from Enbridge
2	REP. ZOLNIKOV: Follow-up.	2	Energy. And as a merchant line within the language of
3	REP. MCCONNELL: So what was your impetus in	3	the bill, it's not clear to us whether a merchant line
4	bringing this bill?	4	would be considered incumbent utility. Or whether they
5	REP. HERTZ: Uh, Mr. Chair, Representative	5	have standing in the state.
6	McConnell. Uh, this is a bill that is supported by the	6	And whether that applies to an existing
7	coops because it is about reliability and stability	7	transmission line or if they're precluded from
8	for their electric consumers. So, um, I mean, coops	8	operation somewhere else in the state. So again, does
9	don't have a profit motive. They are about doing	9	it close markets to someone who's here but not an
10	what's in the best interest of their member consumers.	10	incumbent utility operating as a merchant line. So
11	And this bill, uh, in the coop's belief and in my	11	again, it's a question of -- of how closed is the
12	belief adds that long term reliability and stability	12	market to anybody that wants to come in and provide
13	for their member consumers, rather than being	13	lower rates, uh, to Montana consumers.
14	motivated by profit motive.	14	REP. MCCONNELL: And quick follow-up. And so,
15	REP. MCCONNELL: Thank you, Mr. Chair. I have a,	15	your concern was a violation of the dormant commerce
16	uh, questions for, uh, Mr. James as well.	16	clause?
17	REP. ZOLNIKOV: Follow-up.	17	MR. JAMES: Mr. Chair. Representative. That is
18	MR. JAMES: Mr. Chair. Representative.	18	correct.
19	REP. MCCONNELL: Mr. Chairman. Uh, I almost	19	REP. ZOLNIKOV: Representative Knudsen.
20	demoted you to representative. Uh, Mr. James, um, you	20	REP. KNUDSEN: Uh, Mr. Chair. Question for the
21	mentioned that you were leery of where this was	21	sponsor, too, please.
22	headed. And so, I would like to know, in -- in your	22	REP. HERTZ: Mr. Chair. Representative Knudsen.
23	view, what's the end game. Uh, what's the boogie man	23	REP. KNUDSEN: Uh, Mr. Chair. Representative
24	that we're chasing here.	24	Hertz. Um, just -- your reasoning for bringing this
25	MR. JAMES: Mr. Chairman. Representative. Part of	25	bill -- correct me if I'm wrong. I'm just trying to
	Page 20		Page 21
1	clarify my own head.	1	real estate, it's a common use.
2	Um, it's basically just insuring that in a boom	2	And essentially what it says is -- is that if a
3	and bust place like the Bakken you don't get a, um,	3	project is going to happen, in this case if a
4	you know, out of state or, you know, out of country or	4	transmission line is to be built, uh, then it gives
5	whatever company coming in and building some big	5	someone, in this case the incumbent utility, the right
6	transmission line to feed everybody there and then	6	to build that.
7	once it kind of busts out they just are gone again and	7	Um, it essentially gives them the first right to
8	the consumers aren't actually taken care of after	8	build that. And they can waive that right and anyone
9	that.	9	else can bid on it. Um, assuming that they go through
10	REP. HERTZ: Mr. Chair. Representative Knudsen.	10	the other approval processes.
11	That's certainly own concern that, uh, is the impetus	11	VICE CHAIR HAYMUN: Follow-up, Mr. Chair.
12	for this bill. Um, yeah. It's about long term	12	REP. ZOLNIKOV: Follow-up.
13	reliability and stability. Um, and not having a	13	VICE CHAIR HAYMUN: So, um, if I am a, uh, let's
14	patchwork of owners.	14	say I'm MDU. And I'm, uh, demanding right of first
15	REP. ZOLNIKOV: Vice Chair Haymун.	15	refusal. Um, how --who makes that decision in making
16	VICE CHAIR HAYMUN: Thank you, Mr. Chair. I have	16	sure that I am competitive in the open market? And
17	a question for the bill's sponsor.	17	just because I am, uh, you know, in an area, um, how
18	REP. HERTZ: Mr. Chair. Representative Haymун.	18	would the rate payers be assured that, um, the
19	VICE CHAIR HAYMUN: Um, Mr. Chair, um, I am not	19	decisions were made in their best interest?
20	familiar with right of first refusal. What does that	20	REP. HERTZ: Uh, well, two things. And -- and I
21	mean exactly?	21	certainly would be happy to let MDU answer this
22	REP. HERTZ: So I right of first -- uh, Mr.	22	question as well. Mr. Chairman. Representative Haymун.
23	Chair. Representative Haymун. A right of first	23	Um, uh, first of all, these are organized markets
24	refusal, um, is, uh, common in a lot of different	24	that they're operating in. So whether it's MISO or the
25	industries. Um, my industry that I operate in, uh,	25	SVB, um, they would first have approval of that

<p style="text-align: right;">Page 22</p> <p>1 project. Um, and then second, this does not eliminate 2 any sort of oversight from the PSC.</p> <p>3 VICE CHAIR HAYMUN: Okay. Uh, follow-up with the 4 PSC, Mr. Chair.</p> <p>5 REP. ZOLNIKOV: There was no PSC testimony.</p> <p>6 VICE CHAIR HAYMUN: Oh. Well. He's there.</p> <p>7 REP. ZOLNIKOV: Yeah. Just -- just for 8 clarification. I earlier said not to call people --</p> <p>9 VICE CHAIR HAYMUN: Yeah. Yeah. Yeah.</p> <p>10 REP. ZOLNIKOV: In case they're not well 11 prepared. I mean, look at the poor guy.</p> <p>12 VICE CHAIR HAYMUN: Thank you, Mr. Chair.</p> <p>13 REP. ZOLNIKOV: Any further questions, Mr. 14 McConnell?</p> <p>15 REP. MCCONNELL: For the sponsor, please.</p> <p>16 REP. HERTZ: Mr. Chair. Representative McConnell.</p> <p>17 REP. MCCONNELL: Mr. Chair. Uh, Representative 18 Hertz. Representative A. Hertz. Um, can you address 19 concerns that were raised by the opponent of the bill, 20 uh, with respect to its, uh -- the possibility that it 21 might be anticompetitive?</p> <p>22 REP. HERTZ: Sure. I mean, it is anticompetitive, 23 Mr. Chair. Representative McConnell. Um, these markets 24 for the most part are anticompetitive. And this -- 25 this process that exists, uh, in an organized market,</p>	<p style="text-align: right;">Page 23</p> <p>1 um, is really about reliability and stability. Um, you 2 know, if this were a market that was dominated by 3 private ownership, I probably wouldn't be carrying 4 this bill.</p> <p>5 This is a market that is, uh, largely dominated 6 by, um, our electric coops. Um, and our electric 7 coops, um, answer to their consumers. And they have, 8 uh, every intention and every incentive to be 9 competitive and have the lowest rates and the best 10 reliability and long term stability for their 11 consumers.</p> <p>12 Uh, with respect to, um, a violation, uh, of the 13 commerce clause, um, the seventh circuit court of 14 appeals has held that this is a state's rights issue. 15 So, um, they have given this, uh, back to the states 16 to decide whether or not this is, um, good policy 17 within those states.</p> <p>18 REP. MCCONNELL: Quick follow-up.</p> <p>19 REP. ZOLNIKOV: Follow-up.</p> <p>20 REP. MCCONNELL: What's the Ninth Circuit say?</p> <p>21 REP. HERTZ: Chairman. Representative McConnell.</p> <p>22 Uh, nothing the Ninth Circuit says is typically 23 anything you want to listen to.</p> <p>24 REP. MCCONNELL: Except that that's where we 25 live. So again I ask the question. Mr. Chairman,</p>
<p style="text-align: right;">Page 24</p> <p>1 again, I ask the question. Since we live within the 2 Ninth Circuit, what did they say.</p> <p>3 REP. HERTZ: Mr. Chair. Representative McConnell. 4 I'm not aware of a decision that's come out of the 5 Ninth Circuit.</p> <p>6 REP. ZOLNIKOV: Lively. Any other questions? Uh, 7 representative Olsen.</p> <p>8 REP. OLSEN: I just have kind of a drafting 9 question. So I'm not sure who to ask. Uh, but maybe 10 I'll ask you. So my concern is that the definition of 11 electric transmission might honor after January 1, 12 2017, is up in the definition rather than right of 13 refusal, being where the date is put.</p> <p>14 I'm kind of just curious about the use of -- I 15 mean, because we're talking about anything that's 16 going forward, right. And so I'm just wondering about 17 the definition.</p> <p>18 MALE: Mr. Chairman. Representative Olsen. It was 19 just more of a matter of, um, where to put it. You 20 could add an applicability date and make it applicable 21 on or at -- to lines on or after -- it really was just 22 a matter of -- of where it was easier to fit.</p> <p>23 REP. OLSEN: Thank you, Mr. Chair. Thank you, uh 24 --</p> <p>25 REP. ZOLNIKOV: Any further questions? Mr. Wiens.</p>	<p style="text-align: right;">Page 25</p> <p>1 Uh, I was hoping that you would be able to kind of go 2 over this legislation at a lower level. Are you -- I 3 don't want to say dumb it down. But, could you 4 possibly, uh, dumb it down for us a little bit? And 5 just from starting point. Just the summary. Maybe a 6 little bit more background. Because we got technical 7 really fast.</p> <p>8 MR. WIENS: Oh. Okay. Well, let me just, uh maybe 9 -- Mr. Chairman, if it's all right, just kind of walk 10 you through how this would work in the real world. So, 11 um, let's say we're in the Bakken. Because a lot of 12 electric coops are in the Bakken.</p> <p>13 And, um, in fact we answered just briefly a 14 response to Representative McConnell's question. Um, 15 there is nothing going on right now. But we have 16 shared electric just built a big 115 KV line to serve 17 the Bakken. Uh, or Yellowstone. I can't remember what 18 size theirs was. But it was -- it was quite large. And 19 so there's more of this happening. And to, uh, so now 20 to get to how the process works.</p> <p>21 So, um, if -- if a new high voltage line is 22 needed in the Bakken, for example, to serve oil wells, 23 um, then the -- you -- contact needs to be made with 24 the organized market. Because they need to decide 25 whether something gets built or not, whether it's</p>

<p style="text-align: right;">Page 26</p> <p>1 really needed. They do the studies, analysis, and so 2 forth. And then, so, um, information -- and this takes 3 about a two or three year, something like that, study. 4 So you -- uh. And then advantage is kind of -- 5 has been pointed out, of being an organized market. If 6 you have a -- if you're a transmission owner, like an 7 incumbent utility, is that you can spread the cost of 8 -- if you're an organized market, if you need a new 9 line built, you can spread the cost of that line over, 10 uh, at least a portion of the RTO. So that's -- so 11 that's why -- so you submit that request that you need 12 this new line.</p> <p>13 They analyze, determine whether that's actually 14 needed. Then the RTO sets specifications and so forth. 15 And then typically they go send it out and take the 16 lowest bid. Typically whoever bids the lowest gets 17 the, uh, gets to build that.</p> <p>18 Now, the reason they do a lowest bidder process 19 is mostly because FERC has said that these RTOs have 20 to operate independently of these -- of the marketers, 21 of the power providers that are in the organized 22 market of the transmission providers.</p> <p>23 And so that's why they go out for bid, to just 24 make it fair, keep themselves removed from showing any 25 favoritism. So then, that's where this right of first</p>	<p style="text-align: right;">Page 27</p> <p>1 refusal would come in. The -- the RTO announces that 2 this line is going to be built, sends the specs, and 3 before any decision is made the utility comes in and 4 says we have this right of first refusal. 5 And then the Southwest Power Pool, in our case, 6 would honor that right. Does that kind of explain kind 7 of how it works? And then the incumbent utility would 8 get to build on and maintain that line. So it's all 9 about a focus on the consumer, making sure it's level. 10 Because it can happen that you have an out of 11 state company that just, you know, all focused on -- 12 and nothing wrong with profits -- but they're all 13 focused just on profits and don't -- don't really have 14 a, you know -- because they don't have that strong 15 level of presence. 16 They don't have an accountability to the members 17 of the coop. So they -- they just build it and don't 18 really, you know. They could transfer ownership at 19 some point to someone else and they don't have that 20 accountability. So that's, you know -- if you have 21 this focus on the strong local presence of taking care 22 of reliability issues that could arise. 23 And they can arise if you have the wrong kind of 24 company doing this. And so that's what this bill does, 25 is make sure that the utility has the right to at</p>
<p style="text-align: right;">Page 28</p> <p>1 least look at whether they want to go ahead and build 2 that so they can address the reliability. 3 REP. ZOLNIKOV: I believe that was extremely 4 helpful. So thank you very much. Any other follow -- 5 any other questions? Uh, Vice Chair Haymun. 6 VICE CHAIR HAYMUN: Thank you, Mr. Chair. I have 7 a question for Mr. Wiens. 8 MR. WIENS: Mr. Chairman. Representative Haymun. 9 Vice Chair. Pardon. 10 VICE CHAIR HAYMUN: That's all right. Um, Mr. 11 Chair. Mr. Wiens. Um, incumbent. What does that mean? 12 MR. WIENS: So it's the utility and it actually 13 is defined in here, right. Well, anyway. An incumbent 14 utility -- there is definition, but that -- I don't 15 think it does it -- it isn't adequate. Uh, incumbent 16 utility would be the one that's there. It has that -- 17 has a service area that it's providing -- it has an 18 obligation to serve the people in that area to deliver 19 electricity to its customers. 20 VICE CHAIR HAYMUN: Follow-up, Mr. Chair. 21 REP. ZOLNIKOV: Follow-up. 22 VICE CHAIR HAYMUN: Uh, could there be more than 23 one person serving an area? 24 MR. WIENS: Mr. Chairman. Vice Chair Haymun. Uh, 25 Montana has a territorial integrity law. And the</p>	<p style="text-align: right;">Page 29</p> <p>1 primary purpose of that law is to prevent duplication 2 of poles and wires. 3 So we don't have -- which they used to have in 4 the old days, lines criss-crossing each other. That 5 gives -- it doesn't establish a geographic area that 6 we serve, but it kind of gives a general area as who 7 has the right to serve in those areas. 8 VICE CHAIR HAYMUN: Okay. Follow-up, Mr. Chair. 9 REP. ZOLNIKOV: Follow-up. 10 VICE CHAIR HAYMUN: Um, so, uh, if I'm 11 understanding all of this correctly, what we have is a 12 situation where we have an incumbent utility who is 13 forced, uh, when there is a new line that is being 14 proposed, is forced into a competitive bidding 15 situation. 16 Uh, where lowest bidder, um, most likely will 17 take the bid. Uh, and what this bill is proposing is 18 saying that will go away and the incumbent utility has 19 a step up and they have right of first refusal. And 20 so, uh, a sure -- why would I put the rate payers in a 21 situation where it's no longer competitive? 22 MR. WIENS: Mr. Chairman. Vice Chair Haymun. Uh, 23 the reason why you would do that is because you're 24 focused on reliability concerns. And as I stated, 25 typically the, uh, incumbent utility is going to be</p>

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<p style="text-align: right;">Page 30</p> <p>1 able to build this at less cost. And then they also 2 have the right to waive the right of first refusal. 3 So you would be focused on reliability concerns, 4 which can be enormous, especially when you have a lot 5 of, you know -- in the Bakken area and so forth. So 6 that's why you -- you just have to decide, you know, 7 is reliability a big deal.</p> <p>8 Um, kind of like, you know, you go out to buy 9 something and you just want the cheapest thing; lowest 10 cost thing. And you get the cheapest thing, but it 11 doesn't -- it isn't a good product.</p> <p>12 And so, in this case, that's what we're really 13 talking about here, is just being focused on, not just 14 getting the cheapest deal, but one that's going to 15 long term benefit the consumers, the people.</p> <p>16 Long term you're going to have stable service, 17 reliable company that has a strong local presence. 18 That's going to take care of those people.</p> <p>19 VICE CHAIR HAYMUN: Thank you, Mr. Chair.</p> <p>20 REP. ZOLNIKOV: Thank you. Any further questions. 21 Representative Custer.</p> <p>22 REP. CUSTER: Thank you, um, Mr. Chair. Mine's 23 for, uh, Mr. Wiens also.</p> <p>24 MR. WIENS: Mr. Chairman. Representative Custer.</p> <p>25 REP. CUSTER: Mr. Wiens. Or, Mr. Chair. Mr.</p>	<p style="text-align: right;">Page 31</p> <p>1 Wiens. Um, cooperatives are not regulated by the PSC. 2 Is that correct?</p> <p>3 MR. WIENS: That's correct -- Mr. Chairman.</p> <p>4 Representative Custer. That's correct.</p> <p>5 REP. ZOLNIKOV: Further questions. Would the 6 sponsor like to close.</p> <p>7 REP. HERTZ: Mr. Chair. Members of the committee.</p> <p>8 Um, simply put, House Bill 297 is about long term 9 reliability and stability for electric consumers in 10 eastern Montana. The area affected by this legislation 11 is largely served by electric coops who are committed 12 to doing what's in the best interest of their member 13 consumers.</p> <p>14 Uh, without this legislation, electric consumers 15 in these growing markets could face a patchwork of 16 transmission lines owned by out of state interests, 17 without the same long term proven track record shown 18 by the organizations currently serving in this market.</p> <p>19 House Bill 297 is good for consumers. It's good 20 for Montana. House Bill 297 ensures that when you go 21 home at night and turn the lights on it may not 22 necessarily be the very lowest rate, although it will 23 be -- it will likely be.</p> <p>24 But it ensures that those likes actually turn on 25 when you flip that switch. For those reasons I urge a</p>
<p style="text-align: right;">Page 32</p> <p>1 due pass for House Bill 297. Thanks.</p> <p>2 REP. ZOLNIKOV: Thank you. And I appreciate the 3 good hearing. All right, Vice Chair Skees. You ready 4 to be chair?</p> <p>5 REP. SKEES: I am, sir.</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 33</p> <p>1</p> <p>2</p> <p>3 I, Chris Naaden, a transcriber, hereby declare 4 under penalty of perjury that to the best of my 5 ability the above 32 pages contain a full, true and 6 correct transcription of the tape-recording that I 7 received regarding the event listed on the caption on 8 page 1.</p> <p>9</p> <p>10 I further declare that I have no interest in the 11 event of the action.</p> <p>12 </p> <p>13 August 1, 2022</p> <p>14 Chris Naaden</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 (Montana House Energy, Technology, And Federal 21 Relations Committee, Call to Order/Roll Call and HB 22 297, 1-25-17)</p> <p>23</p> <p>24</p> <p>25</p>

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Exhibit 6

Iowa Legislative History

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SENATE LEGISLATIVE SESSION

HOUSE FILE 2643

AMENDMENT 5163

MONDAY, JUNE 15, 2020

COPY

1 [1:31:36 A.M.]

2 SENATE PRESIDENT: The Chair
3 recognizes the senator from Polk, Senator
4 Whitver.

5 SENATOR WHITVER: Thank you,
6 Mr. President. At this time I ask unanimous
7 consent to call up House File 2643.

8 SENATE PRESIDENT: The senator
9 from Polk, Senator Whitver, asks for unanimous
10 consent to call up House File 2643.

11 Hearing no objections, so ordered.

12 The Chair recognizes the senator
13 from Clayton, Senator Breitbach, for opening
14 remarks on House File 2643.

15 SENATOR BREITBACH: Thank you,
16 Mr. President.

17 This is our proposed budget bill.
18 Our proposed budget is \$7,778,500,000,
19 approximately. If we achieve our expected
20 revenues, this would provide us with an ending
21 balance at the end of next fiscal year of \$311
22 million. Our taxpayer trust fund would have a
23 balance of \$100.4 million, an increase of \$30
24 million, and our reserves would be at \$800
25 million.

1 With this proposal, if our
2 revenues do not meet expectations, we would
3 still have 300 million -- \$311 million cushion
4 before we'd have to use the cash reserves or the
5 taxpayer trust fund.

6 There are three policies issues
7 addressed -- policy issues addressed in this
8 bill. One is the voter ID law that was passed
9 in 2017. Part of that law was struck down; and
10 when it was struck down, the judge gave
11 instructions on what the corrective language
12 should be.

13 This does contain that language.
14 We have already passed this on Wednesday. It
15 also includes a right of first refusal for
16 utilities extensions. I can go into that for
17 anybody that wants to know more about that.

18 The regents, this allows the
19 regents to hire an outside counsel, like other
20 departments in the state, especially and
21 specifically when specialized lawsuits are
22 involved.

23 So a synopsis of what this bill
24 does, we basically have a status quo budget
25 from last year. We have these -- with these

1 exceptions: This is an increase of \$26.6
2 million compared to fiscal year '20 before
3 factoring in the supplemental appropriation,
4 \$2.4 million in this bill for overtime for our
5 state troopers, and before factoring in the
6 \$70 million supplemental to address the shortfall
7 in RIFF.

8 This budget, we keep our commitment
9 to fund K-12 education, with an increase of \$99
10 million. We provide a \$16.5 million increase for
11 Hawki. We fund Medicaid at the needed -- or the
12 need identified by the Medicaid Forecasting
13 Group.

14 We provide an increase for utilities
15 on the Capitol complex. We reduce the Department
16 of Revenue by \$1.1 million to fund their technology
17 upgrade out of RIFF. We reduce the Secretary of
18 State's office by \$250,000. We provide an increase
19 of \$350,000 for the Grain Indemnity Fund.

20 We provide an increase to the
21 College Student Aid Commission for admission --
22 administration of Last-Dollar Scholar Program.
23 We provide for an increase in Rural Veterinary
24 Loan Repayment Program.

25 We reduce the appropriations to

1 the regents by \$8 million. We provide increases
2 for the Iowa School for the Deaf and the Iowa
3 School for the Blind commensurate with what we
4 passed for supplemental state aid.

5 We reduce the appropriations for
6 gambling treatment by \$1.5 million, but appropriate
7 1.5 million for the Sports Wagering Fund to hold
8 them harmless. We provide an increase of \$2.1
9 million for Eldora. We provide a reduction of
10 500,000 for the judicial branch. We provide an
11 increase of 411,000 for administration of the
12 hemp bill. We provide a reduction of \$1 million
13 for the legislative budget.

14 We reduce \$21 million due to
15 the flooding supplemental from fiscal year '20,
16 which we do not have to fund again this year,
17 as that was a one-time expenditure. We've got
18 a few million dollars in the budget due to other
19 one-time appropriations that don't need to be
20 spent again for fiscal year '21. We also
21 appropriate \$5 million for the Girl Iowa Values
22 Front to the Department of Human Services to
23 help address the gap in funding for county
24 mental health.

25 And that is our amendment.

1 SENATE PRESIDENT: There is an
 2 amendment. The Chair calls up Amendment 5163
 3 with Senator Breitbach. The Chair recognizes
 4 the senator from Clayton, Senator Breitbach, for
 5 opening remarks on Amendment 5163 to House File
 6 2643, which he has just given. Is there further
 7 discussion on Amendment 5163?

8 The Chair recognizes the senator
 9 from Polk, Senator Petersen.

10 SENATOR PETERSEN: Thank you.
 11 Democrats will go to caucus.

12 SENATE PRESIDENT: The Senate
 13 will be at ease.

14 [1:36:56 A.M.]

15 At Ease - Democrats Caucusing
 16 [2:28:29 A.M.]

17 SENATE PRESIDENT: The Senate
 18 will be in order.

19 When we left off, Senator
 20 Breitbach had just finished opening remarks on
 21 Amendment 5163 to House File 2463. Is there
 22 further discussion?

23 The Chair recognizes the senator
 24 from Johnson, Senator Bolckom.

25 SENATOR BOLKOM: Thank you,

1 Mr. President.

2 Mr. President, Ladies and
 3 Gentlemen of the Senate, I rise in opposition to
 4 this bill and this amendment. Here we are ten --
 5 I think we're at our tenth day. The main thing
 6 we had to do when we came back during this
 7 global pandemic is to do the bill in front of
 8 us, the budget, and the process has -- really
 9 sucks, to be blunt, at 2:30 in the morning.
 10 Good morning, everybody.

11 It would have been nice to have
 12 had this amendment during the -- during the
 13 daytime and had more opportunity to actually
 14 understand what we're voting on, but we're not
 15 going to get that opportunity here in the middle
 16 of the night on the tenth day we've all been
 17 together during this global pandemic.

18 There are a number of things to
 19 point out. And while I'm recognizing that this
 20 is largely a status quo budget, there are a
 21 couple of areas where we need investment.

22 And probably the most glaring
 23 deficit of this bill is the fact that Iowa's
 24 hospitals are under extraordinary stress in
 25 every part of our state, especially critical

1 access hospitals, who have seen their business
 2 fall through the floor in the midst of this
 3 pandemic.

4 And I don't know if I was on
 5 three conference calls, maybe, over the last six
 6 weeks with hospital administrators around the
 7 state and leaders of our hospitals that were
 8 sounding the alarm about their -- the need they
 9 had, and I know you must have heard it.

10 I know I got a double alert
 11 yesterday from the family leader; but I know
 12 the hospital sent out some alerts, too, and I
 13 see nothing here in this bill to support our
 14 hospitals, who are hemorrhaging resources at a
 15 time when they're battling this pandemic on
 16 behalf of our -- the people of Iowa.

17 We've also put a lot of stress on
 18 other healthcare providers, and it's been way
 19 too long since we've seen any kind of provider
 20 increases for mental health providers, childcare
 21 providers, residential providers, people with
 22 disabilities, and they're -- they're struggling,
 23 also, so that's a -- that's an enormous
 24 disappointment, especially at a time when you're
 25 growing the ending balance.

1 We're growing the ending balance.
 2 We have resources. I recognize we're in a -- a
 3 time of uncertainty. Reserves are strong. We
 4 have this ending balance. We have some
 5 resources to invest in our healthcare system to
 6 fight this pandemic, and you -- your budget
 7 essentially stockpiles money at a time when we
 8 need to invest, so we think that's -- that's a
 9 really bad decision.

10 And then I think others will talk
 11 about other things, but the voter suppression
 12 language that is in this bill, you know, we did
 13 another bill I think earlier on -- on elections.
 14 I mean, you just can't get -- you guys just can't
 15 get it out of your heads. Right? I mean, just
 16 got to keep making it harder, and the voter
 17 suppression language, especially as it relates to
 18 Iowans that submit absentee ballot requests that
 19 might not dot an -- dot an "i" or cross a "t,"
 20 making it extraordinarily difficult for that
 21 voter to get a ballot.

22 So, Mr. President, this is --
 23 this is -- this work needs more work. I wish it
 24 weren't 2:30 in the morning when we're working
 25 on the state budget. Again, it was the only

1 thing we really had to accomplish when we came
 2 back here, and the process is lousy, and the
 3 product is as well.

4 I urge your vote, your -- I urge
 5 you to vote no.

6 SENATE PRESIDENT: The Chair
 7 recognizes the senator from Cerro Gordo, Senator
 8 Ragan.

9 SENATOR RAGAN: Thank you,
 10 Mr. President.

11 Wow, this is not what I would
 12 call transparency, 2:30 in the morning, and I
 13 know Senator Kapucian just asked me if I was
 14 used to doing all-nighters. Well, I'm not, and
 15 I don't think most of Iowans are. Maybe they
 16 can watch it later.

17 But this came up very fast, and I
 18 think we do our best work when we work together,
 19 and I don't see dumping this bill, with very
 20 little time to actually even look at it, is the
 21 way to do things.

22 We've had budgets before evenly
 23 divided out, and we went through them, and while
 24 this is a status quo budget, this isn't a status
 25 quo year. We've had lots of providers that have

1 thought maybe -- Senator Costello had come to
 2 me earlier and talked about a study, and I -- I
 3 don't see that in here.

4 There's opportunities for helping
 5 seniors; and, boy, if anybody is concerned during
 6 this time, our -- our senior citizens that have --
 7 have a new concern about their healthcare, worried
 8 about what's -- what's ahead of them.

9 So I would say we -- we -- we've
 10 done a lot of things for, you know, different
 11 things with the tax cuts and addressing other
 12 departments, but we really have -- should have
 13 looked at our health departments that are the
 14 infrastructure of what is -- you know, where we
 15 are -- go to when we go back to our hometowns.

16 The health departments have
 17 really been stressed out on this as well.
 18 They've been on the job, trying to relate the
 19 information back to all of us, and I -- I'm --
 20 I'm sure that you still hear a few comments from
 21 your managed care corporations not being the most
 22 timely in payments.

23 I talked to one of my providers
 24 and said what is it that you would really, really
 25 like; and they said simply pay us on time. We

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 1 been impacted by the pandemic. Frontline
 2 workers that we've talked about, there's nothing
 3 in here for their extra -- extra work with
 4 hazard pay.

5 And, you know, all the great
 6 movement we've made on children's mental health,
 7 I'm not part of that, that group, but they've
 8 been meeting on a regular basis and had ideas to
 9 move forward, and I don't see it in here.
 10 Admittedly, this was a very short time, and
 11 maybe it's hidden in here somewhere that I just
 12 haven't glanced at.

13 And then talk about the hospitals,
 14 and this is -- they're the economic engine of
 15 our -- our small towns, of our communities.
 16 It's the largest employer in my hometown. And
 17 this is disappointing. I, you know, was on
 18 those Zoom calls, as I'm sure all of you were,
 19 and listening to their -- their concerns.

20 And we're talking about building
 21 the economy. Hospitals are -- are concerned
 22 about their -- their status. We had some bills
 23 that we could have helped with the -- you know,
 24 the -- there was no action on the days waiting
 25 placement reimbursements for hospitals. I

1 talk about business all the time. If you ran a
 2 business, how would you feel if you didn't get
 3 paid on time? I mean, it just isn't acceptable.
 4 And this has been long enough that it's time for
 5 us to say it's not acceptable to not pay your
 6 people on time.

7 So with this, I -- I -- I cannot
 8 in good conscience vote for a bill that has left
 9 so many Iowans out in this piece of legislation,
 10 so I urge a no vote.

11 SENATE PRESIDENT: The Chair
 12 recognizes the senator from Linn, Senator
 13 Taylor.

14 SENATOR TAYLOR: Thank you,
 15 Mr. President. I'll be brief. It's late, or
 16 it's early, however you want to look at it.

17 Mr. President, Ladies and
 18 Gentlemen of the Senate, this is, by far, the
 19 worst example of the legislative budget process
 20 that we could possibly do. It's one bill
 21 instead of nearly a dozen.

22 All of the committee chairs that
 23 we usually have doing all the work and then
 24 coming to this floor and doing the back and
 25 forth and defending and explaining and educating

1 through the amendment process is gone. Right?
 2 And to educate the public and educate us, we've
 3 done the best we could with the last couple
 4 hours of this. And we know that the public is
 5 listening, so they need to be educated, but
 6 this -- this is going to be as quick as you can,
 7 and it's an \$8 billion bill right now.

8 So you are seeding billions of
 9 dollars, and you're seeding billions of dollars
 10 of power, legislative oversight, watchdog power
 11 to the governor and to the department of
 12 management.

13 It's a status quo budget, and
 14 they're going to figure out all the details, but
 15 that should be something that we do in this
 16 body. And that's what I learned in high school
 17 government class, and that's what we used to do.

18 This is a status quo budget, and --
 19 but we're still going to have layoffs, and we're
 20 still making cuts to areas such as the justice
 21 system and flood recovery and regents, and that
 22 could lead to tuition increases soon and hospitals,
 23 rural hospitals.

24 Ladies and Gentlemen, this is a
 25 no vote all day long and twice on Sunday.

1 class sizes, give every Iowa family access to
 2 quality preschool, and empower and respect our
 3 educators.

4 The legislature can accomplish
 5 these -- those goals by providing small
 6 increases to schools each year that fails to
 7 cover the cost of inflation. We can afford to
 8 do more. You should have made K-12 public
 9 schools a higher priority.

10 Second, the legislature failed to
 11 provide enough resources to the University of
 12 Northern Iowa. As you know, UNI is a rare gem
 13 in our state. It produces graduates that not
 14 only become some of the best educators and
 15 entrepreneurs in the world; but, more important,
 16 they stay in Iowa after graduation. A recent
 17 survey found that 85 percent of UNI graduates
 18 stay in Iowa to live, work, and raise a family.

19 But we can't expect UNI to
 20 continue that excellent record if they don't
 21 have the resources necessary to attract and
 22 retain the best faculty, students, and staff.
 23 We can afford to do more. You could have made
 24 UNI a higher priority.

25 Finally, I'm worried that the

1 SENATE PRESIDENT: The Chair
 2 recognizes the senator from Black Hawk, Senator
 3 Giddens.

4 SENATOR GIDDENS: Thank you,
 5 Mr. Chair.

6 I appreciate the opportunity to
 7 talk tonight about this budget before us and the
 8 priorities of the people of my district. This
 9 is the second session -- my second session as
 10 senator from District 30.

11 In that short time, I've learned
 12 that the people of Cedar Falls, Hudson, and
 13 Waterloo are passionate about many issues,
 14 including public education, jobs, and healthcare,
 15 and they love the University of Northern Iowa
 16 Panthers.

17 Tonight I want to talk about
 18 three budget priorities of my constituents that
 19 didn't get the attention they deserve this
 20 session.

21 First, I believe the legislator --
 22 legislature should have made a stronger investment
 23 in K-12 public education. If our goal is to make
 24 Iowa public schools number one again, we need to
 25 invest in -- invest more in schools to reduce

1 response from the governor and the legislature
 2 to the ongoing COVID-19 pandemic has fallen
 3 short. Families and businesses in Black Hawk
 4 County have been rocked by this pandemic, and
 5 it's far from over.

6 Unfortunately, when the Tyson
 7 meat-packing plant in Waterloo and now several
 8 long-term care facilities have had COVID-19
 9 outbreaks, the response by the state officials
 10 was slow and inadequate.

11 We are fortunate that the response
 12 by our local public health and emergency
 13 management officials saved many lives. Through
 14 the budget-making process and through various
 15 budget bills, the legislature should have worked
 16 together to better protect the health and safety
 17 of Iowans, stabilize basic economic security needs
 18 of Iowa families, and create an Iowa-focused
 19 economic recovery plan. You should have done
 20 more to address this crisis and to prepare for
 21 the second wave. We could have afforded to do
 22 more. We could have made it a higher priority.

23 For all these reasons and more,
 24 I'll be opposing this budget this evening. I
 25 urge my colleagues to vote no as well.

1 Thank you, Mr. President.
 2 SENATE PRESIDENT: The Chair
 3 recognizes the senator from Polk, Senator
 4 Boulton.

5 SENATOR BOULTON: Thank you,
 6 Mr. President.
 7 As I review this, I just -- I
 8 have some questions that I would appreciate it
 9 if Senator Breitbach would yield.

10 SENATE PRESIDENT: Senator
 11 Breitbach, will you yield for a question?

12 SENATOR BREITBACH: Yes, I will.
 13 SENATE PRESIDENT: You're in
 14 order, Senator Boulton.

15 SENATOR BOULTON: Thank you,
 16 Senator. It's just like old times, where we get
 17 to ask a little question and answer.

18 I want to take a look at -- at
 19 one section that -- that I don't think many of
 20 at least my colleagues on this side of the aisle
 21 saw coming, Division 33. You mentioned this
 22 briefly in your remarks, but it's the electric
 23 transmission lines.

24 What is the purpose behind this?
 25 SENATOR BREITBACH: Okay. You

1 know, there are several different ways you can --
 2 you can do extension of utilities. One of the
 3 ways that has been used is if you own the line
 4 running to Area X and now you're going to go to
 5 Y, you're the company that gets to do it, period.
 6 Nobody else gets to bid on it. You have -- You
 7 have priority. Another way to do it is to just
 8 put it out for open bids, take the low bid,
 9 that's it.

10 A couple problems with both of
 11 those ways. The first way, sometimes you don't
 12 get the best price. The second way, sometimes
 13 you have an out-of-area company come in and
 14 build it. They get paid, but they're not the
 15 ones that's going to be there to maintain it and
 16 make sure that it's solid and continuing. So
 17 there's a trade-off there.

18 With this situation, it's a first
 19 right of refusal. So if I own the line going to
 20 Point X and they're bidding out to Y, it's open
 21 for bids. If I happen to be the low bid, I get
 22 it. If somebody else happens to be the low bid
 23 and I have a first right of refusal, then I can
 24 say I will do it for that price and I'll extend
 25 it out. And that's what the first right of

1 refusal does. I just didn't want to get in the
 2 weeds for somebody that didn't care, so thank
 3 you for the question.
 4 SENATOR BOULTON: Well, thank
 5 you, Senator, and I just want to follow up with
 6 that a little bit.
 7 So how frequently does -- does
 8 that happen, that -- that you would have a -- a
 9 right of first refusal under this legislation
 10 pop up?
 11 SENATOR BREITBACH: Well, last
 12 year or a couple years ago we had a situation
 13 out in western Iowa where the utility wanted to
 14 go to two different towns, and they wanted to
 15 share the cost of that extension, and so that
 16 was a -- that would be a type of situation that
 17 it happens.

18 You know, we've got one power
 19 company that used to own all of their transmission
 20 lines, and now they don't, so another company
 21 builds and maintains the transmission lines, so
 22 it -- it can happen.

23 We have a lot of RECs in the state
 24 of Iowa, I think 400 RECs, separate electric
 25 companies, so this can happen quite often.

1 SENATOR BOULTON: Was there a --
 2 And maybe I missed this. Was there a bill with
 3 a subcommittee process? Because it feels like
 4 we're -- we're -- we're kind of technical in our
 5 discussion here, and I -- I want to make sure
 6 that members of the public and -- and -- and
 7 interested players in this system were able to
 8 get a question and answer like this and have a
 9 discussion so we all understood the risks and
 10 advantages of doing something like this as a
 11 public policy change.

12 SENATOR BREITBACH: Was there a --
 13 SENATOR BOULTON: Was there a
 14 bill that had a -- a subcommittee process or --
 15 or any vetting of this outside of our discussion
 16 here?

17 SENATOR BREITBACH: Yes. We
 18 already passed it already earlier this year --
 19 or last year. We passed it last year.

20 SENATOR BOULTON: Okay.
 21 SENATOR BREITBACH: And it went
 22 over to the House.

23 SENATOR BOULTON: And were there
 24 any opposition or concerns raised in that process
 25 that we should be aware of?

1 SENATOR BREITBACH: We discussed
 2 them all, I mean, at that time. I don't remember
 3 what the final vote was, but --

4 SENATOR BOULTON: Okay.

5 SENATOR BREITBACH: -- I can look
 6 that up. Well, I don't know if right now, but --

7 SENATOR BOULTON: Sure. And --
 8 And -- And, you know, I'm just trying to get
 9 caught up to speed as we go through a lot of
 10 different policy areas here.

11 I also -- I think I need to ask
 12 you some questions about the -- the voting
 13 aspect of -- of this legislation. It doesn't
 14 appear to have any appropriation attached to it.
 15 Is that correct?

16 SENATOR BREITBACH: That's correct.

17 SENATOR BOULTON: So, really,
 18 this is -- this is a pure policy aspect of this
 19 appropriations legislation?

20 SENATOR BREITBACH: It would be
 21 similar to what you might find in the standings
 22 bill.

23 SENATOR BOULTON: Okay.

24 SENATOR BREITBACH: And we're --
 25 we're not running a standings bill this year.

1 and in committee, and do you have a bill history
 2 on the bill that this would have addressed?
 3 Because you claimed that it was
 4 in front of the Iowa Senate last year and we
 5 sent it to the House this year, and the only
 6 thing I've heard about it is that it lost in
 7 subcommittee in the House, and I don't know if
 8 that's true, but I think you probably know.

9 What bill -- Because, you know,
 10 utilities, per se, are pretty aggressive. You
 11 know, if this bill, something like this, was out
 12 there, I think MidAmerican and Alliant and the
 13 RECs and everybody else, you'd at least had a
 14 discussion about the bill.

15 I don't ever recall a discussion
 16 ever about MidAmerican coming to me. And that
 17 would have been under the time of John Davis,
 18 and I know John is a very good lawyer, very
 19 knowledgeable lobbyist, would have brought this
 20 forward, and I don't remember it. So a bill
 21 history would at least say, hey, you're slipping
 22 a little. This one got by.

23 Do you have a bill history?

24 SENATOR BREITBACH: I do not have
 25 the bill number, but you'll remember it was the

1 [4:12:32 A.M.]

2 SENATE PRESIDENT: The senator
 3 from Polk, Senator Bisignano, you're in order.

4 SENATOR BISIGNANO: Thank you,
 5 Mr. President.

6 Senator Breitbach, would you
 7 yield? And I said last night I'd never ask you
 8 to, but I'm breaking that and asking you to.

9 SENATOR BREITBACH: I will.

10 SENATE PRESIDENT: Senator
 11 Breitbach, would you yield?

12 SENATOR BISIGNANO: I would --
 13 I'm working on something else, actually. I'm
 14 preparing for the future here, and I heard the
 15 discussion way back with Senator Boulton.

16 And I have always prided myself
 17 in this place because even though there's
 18 hundreds of bills, that I've heard of every one
 19 of them, that if you say it, I don't know the
 20 true content, but I -- I can say, yeah, that
 21 bill deals with this or that or this group.

22 And I'm going to Section 33, and
 23 that's the one on the electrical transmission
 24 lines, and I've never heard of anything like
 25 this in any moving legislation that was drafted

1 omnibus utility bill. We passed it in the -- in
 2 the Senate. We sent it over to the House. They
 3 took that portion of -- There were 26 sections
 4 of that utility bill, and they took that part
 5 out of it, and -- and we're putting it in this
 6 bill.

7 SENATOR BISIGNANO: Let me get
 8 this right, Senator. We passed this out of the
 9 Senate with this in the utility bill.

10 SENATOR BREITBACH: Correct.

11 SENATOR BISIGNANO: And then the
 12 House this year --

13 SENATOR BREITBACH: No. No, not
 14 this year.

15 SENATOR BISIGNANO: Last year.

16 SENATOR BREITBACH: Two years
 17 ago.

18 SENATOR BISIGNANO: Two years
 19 ago.

20 SENATOR BREITBACH: Yes.

21 SENATOR BISIGNANO: We did it two
 22 years ago or the House did it two years ago?

23 SENATOR BREITBACH: Both.

24 SENATOR BISIGNANO: Where did it
 25 go in two years?

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1 SENATOR BREITBACH: Both. A
 2 different session.
 3 SENATOR BISIGNANO: I was here,
 4 obviously, two years ago.
 5 SENATOR BREITBACH: Okay.
 6 SENATOR BISIGNANO: And --
 7 SENATOR BREITBACH: So was I.
 8 SENATOR BISIGNANO: And it was a
 9 utility bill.
 10 SENATOR BREITBACH: Do you remember
 11 me running it?
 12 SENATOR BISIGNANO: I remember
 13 running the utility bill that dealt with
 14 weatherization and deductions and charges on
 15 people's utility bill from the investor-owned
 16 utility. Is that the same bill?
 17 SENATOR BREITBACH: Same bill.
 18 SENATOR BISIGNANO: Okay.
 19 SENATOR BREITBACH: Also --
 20 SENATOR BISIGNANO: See, I know a
 21 little bit about --
 22 SENATOR BREITBACH: -- included --
 23 SENATOR BISIGNANO: -- everything
 24 and not much about --
 25 SENATOR BREITBACH: Had solar.

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1 SENATOR BISIGNANO: -- a lot
 2 about anything.
 3 SENATOR BREITBACH: It had lots
 4 of stuff.
 5 SENATOR BISIGNANO: Okay. So two
 6 years ago we ran it, and we sent it to the House
 7 two years ago, and then they had a subcommittee
 8 on it two years ago or last year?
 9 SENATOR BREITBACH: Two years ago.
 10 SENATOR BISIGNANO: On the utility
 11 bill.
 12 SENATOR BREITBACH: Yes.
 13 SENATOR BISIGNANO: And that's when
 14 they splintered off this electric transmission line
 15 piece.
 16 SENATOR BREITBACH: That's correct.
 17 SENATOR BISIGNANO: Okay. So for --
 18 That was two years ago. And then this year did
 19 it come out of the Senate or the House?
 20 SENATOR BREITBACH: We've got it
 21 in front of us right now.
 22 SENATOR BISIGNANO: It was never
 23 a bill. It was in the original two-year-ago
 24 bill; but when it got splintered out, it was
 25 basically dead. I mean, when you take something

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1 out, it's discarded. So it would have had to
 2 get its way back into this building by some
 3 interest. Who's the interest?
 4 SENATOR BREITBACH: I'm not sure,
 5 because the utility bill that was running this
 6 year, I basically told the House, I said, I'm
 7 not going to pass a bill out of here and have
 8 you sit on it. If you want to get something
 9 done, you get it passed out of the House. They
 10 worked on it over in the House, passed it out.
 11 SENATOR BISIGNANO: It failed in
 12 the subcommittee?
 13 SENATOR BREITBACH: What's that?
 14 It went through the full committee process,
 15 passed out of the House, came over to the
 16 Senate. We did not move it.
 17 SENATOR BISIGNANO: Okay. So
 18 this electric transmission line, there was a
 19 bill this year --
 20 SENATOR BREITBACH: Yes.
 21 SENATOR BISIGNANO: -- in the
 22 Senate that had passed the --
 23 SENATOR BREITBACH: No. It was
 24 not in the Senate this year. It started in the
 25 House.

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1 SENATOR BISIGNANO: This year.
 2 SENATOR BREITBACH: Yes. We could
 3 ask Representative Carlson, who floor-managed it,
 4 exactly where it -- where it ended up at, but
 5 we've had a shortened session. We didn't get to
 6 finish the second funnel. It never made it here.
 7 SENATOR BISIGNANO: So it didn't
 8 make the funnel, and no one lobbied for this.
 9 MidAmerican is not a supporter. They're a large
 10 energy company. There's been no mention all year,
 11 until I read this tonight and was contacted and
 12 said, Where did this come from?
 13 And we don't know where it came
 14 from. All we know is that two years ago it was
 15 in a utility bill. It got taken out. This year
 16 you're claiming the House, and I assume you're
 17 right, ran it through the process.
 18 Was it vote -- or did they run
 19 out of time this year? Was it voted on the
 20 floor?
 21 SENATOR BREITBACH: They ran out
 22 of time. I'm not sure if it was voted on the
 23 floor, but it went through the committee process.
 24 I had had several conversations with Representative
 25 Carlson. I believe it made it all the way through

1 the floor because he was talking to me about it,
 2 trying to get it through legislation this year,
 3 but with the shortened session, this -- everything
 4 kind of blew up, you know.

5 If we could have stayed here for
 6 three weeks, you know, if we could have had a
 7 regular funnel where we had Monday, Tuesday,
 8 Wednesday, Thursday to work on these bills and
 9 get them out, we could have did it the regular
 10 way. We're not able -- We weren't able to do
 11 that.

12 Now, if you want to stay, if you
 13 want your caucus to stay for three months yet,
 14 we could do that, but we're kind of --

15 SENATOR BISIGNANO: No. No,
 16 Senator.

17 SENATOR BREITBACH: We're kind of --

18 SENATOR BISIGNANO: I'd like to
 19 wake up Representative Kaufman and ask him what
 20 the history of this was going through the House
 21 process because I think that's relevant. I mean,
 22 this is setting statute in business in the middle
 23 of the night that was never lobbied by any utility
 24 to have a chance to support or oppose it.

25 It's brand-new. The first time I

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 1 saw it is an hour ago, maybe an hour and a half
 2 now, but I'm just uncomfortable with policy
 3 legislation coming through a budget bill in the
 4 middle of the night that no one's heard of, that
 5 I know of, and my utility is saying, what is
 6 this?

7 So I just wanted to know if there
 8 was a bill history that I could say I missed it
 9 and it was my bad, I didn't catch it, or my
 10 utility didn't, but I don't think it was out
 11 there, and I don't think it was public until it
 12 was stuck in this appropriation bill.

13 Isn't that the way it went down?
 14 SENATOR BREITBACH: Are you calling
 15 me a liar?

16 SENATOR BISIGNANO: No, sir.

17 SENATOR BREITBACH: You -- You just
 18 insinuated that.

19 SENATOR BISIGNANO: Well, because
 20 you don't have a bill history to show me that this
 21 went through the committee process. I don't have
 22 a committee vote. I don't have any votes to show,
 23 and I'm told that it lost in subcommittee, which
 24 tells me it's pretty hard to get in committee
 25 after you lose in subcommittee.

1 SENATOR BREITBACH: Senator, why
 2 don't you give me 15 minutes and I'll look it up.
 3 Okay? Sit down.

4 SENATOR BISIGNANO: I'll ask you
 5 to defer on the bill.

6 SENATE PRESIDENT: The Senate will
 7 be at ease.

8 [Senate at ease.]

9 [5:42:03 A.M.]

10 SENATE PRESIDENT: The senator
 11 from Polk, Senator Whitver, calls up House File
 12 2643.

13 When we left off, we were under
 14 consideration of Amendment 5163 to House File
 15 2643. Is there any further discussion?

16 Seeing none, the Chair recognizes
 17 the senator from Clayton, Senator Breitbach, for
 18 final remarks on Amendment 5163 to House File
 19 2643.

20 SENATOR BREITBACH: Thank you,
 21 Mr. President.

22 I want to thank everybody for
 23 their patience on this bill. You know, none
 24 of us wanted this session to go this way. We
 25 wanted to debate our budget, talk about our

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 1 budget. We would have had a much higher budget
 2 if we wouldn't have been in the situation that
 3 we're in.

4 There's a lot of uncertainty out
 5 there. You know, if everything goes fine and --
 6 and, you know, the money starts rolling in and
 7 we've got a -- you know, everything is looking
 8 rosy, there's nothing that says that we can't
 9 come back in in January, amend the budget, put
 10 some money back in where you think you need it.
 11 Unfortunately, I don't know that that's the way
 12 it's going to go, and so we've had to make some
 13 tough choices.

14 We are keeping our promise on
 15 K-12 education. We are increasing funding for
 16 K-12 by \$99 million, what we set earlier in this
 17 year.

18 So everybody's ready to go home.
 19 And, unfortunately, Senator Bolkcom, I wanted to
 20 meet with you and let you have your say at our
 21 last meeting and all that stuff. Yeah, violin
 22 playing. I know you'll miss me; and, you know,
 23 I'll miss you; and we'll think about it all the
 24 time. Anyway, sorry for that.

25 I want to thank our committee. I

1 want to thank Russ and Sue for their fine work
 2 on -- on everything they do on appropriations.
 3 And, again, status quo budget, so we didn't need
 4 all the other meetings; but, you know, this is
 5 what we were faced with with the process, and I
 6 simply move the bill.

7 SENATE PRESIDENT: The senator
 8 from Clayton moves the adoption of Amendment
 9 5163 to House File 2643. Those in favor say
 10 yea.

11 [Votes.]

12 SENATE PRESIDENT: Those opposed
 13 say no.

14 [Votes.]

15 SENATE PRESIDENT: The ayes
 16 appear to have it. The ayes do have it. The
 17 amendment is adopted. That disposes of all the
 18 amendments. We are now back on House File 2643
 19 as amended. Is there any further discussion?

20 Seeing none, the Chair recognizes
 21 the senator from Clayton, Senator Breitbach, for
 22 final remarks on House File 2643 as amended.

23 SENATOR BREITBACH: I simply move
 24 the bill.

25 SENATE PRESIDENT: The senator

1 say no.

2 [Votes.]

3 SENATE PRESIDENT: The motion
 4 prevails. Is the title agreed to?

5 [Votes.]

6 SENATE PRESIDENT: The title is
 7 agreed to. The question now is -- A division
 8 has been called. Please, if -- those in favor
 9 of the title will vote yea. Those opposed to
 10 the title will vote no. The Secretary will
 11 receive your vote.

12 [Votes.]

13 SENATE PRESIDENT: The Chair is
 14 no longer in doubt. The title is agreed to.
 15 The question now is, shall the bill pass?

16 Those in favor of the passage of
 17 House File 2643 as amended will vote yea. Those
 18 opposed will vote no. The Secretary will receive
 19 your vote.

20 [Voting Not Transcribed.]

21 SENATE PRESIDENT: Has every
 22 senator voted? Every senator has voted. The
 23 secretary will close the voting system. The
 24 secretary will lock the voting system and record
 25 your votes.

1 from Clayton moves that -- that House File 2643
 2 as amended be read for the last time and placed
 3 on its passage. Those in favor of the motion
 4 say yea.

5 [Votes.]

6 SENATE PRESIDENT: Those opposed
 7 say no.

8 [Votes.]

9 SENATE PRESIDENT: The motion
 10 prevails. The Secretary will read.

11 THE SECRETARY: House File 2643,
 12 a bill for an act relating to state and local
 13 finances by making appropriations, providing for
 14 legal and regulatory responsibilities, providing
 15 for other properly related matters, and including
 16 effective date and retroactive applicability
 17 provisions. Be it enacted by the General Assembly
 18 of the State of Iowa.

19 SENATE PRESIDENT: The senator
 20 from Clayton moves that the reading thus far be
 21 considered the last reading of the bill.

22 Those in favor of the motion say
 23 yea.

24 [Votes.]

25 SENATE PRESIDENT: Those opposed

1 The Senate will pay attention to
 2 the results of the roll call. Those voting yea,
 3 30. Those voting no, 17. The bill, having
 4 received a constitutional majority, is declared
 5 to have passed the Senate, and the title was
 6 agreed to.

7 The Chair recognizes the senator
 8 from Polk, Senator Whitver.

9 SENATOR WHITVER: Thank you,
 10 Mr. President. I ask unanimous consent to
 11 immediately message House File 2643.

12 SENATE PRESIDENT: The senator
 13 from Polk, Senator Whitver, asks for unanimous
 14 consent to immediately message House File 2643.

15 Hearing no objections, so ordered.
 16 The Senate will be at ease.

17 [Senate at ease.]

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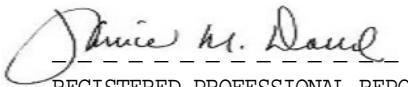
25

1 C E R T I F I C A T E
2

3 I, Janice M. Doud, a Registered
4 Professional Shorthand Reporter and Notary
5 Public, do hereby certify that I transcribed,
6 to the best of my ability, the foregoing
7 proceedings and that the foregoing is a true
8 record of all proceedings had at the above time
9 and place that is audible on the recording.

10 I further certify that I am
11 neither attorney nor counsel for, or related to
12 or employed by any of the parties in the
13 foregoing matter, and further that I am not a
14 relative or employee of any attorney or counsel
15 employed by the parties hereto, or financially
16 interested in the action.

17 IN WITNESS WHEREOF, I have
18 hereunto set my hand and seal this 5th day of
19 November, 2020.

20 
21 _____
22 REGISTERED PROFESSIONAL REPORTER
and NOTARY PUBLIC

23
24
25

<p>\$</p> <p>\$1 5:12</p> <p>\$1.1 4:16</p> <p>\$1.5 5:6</p> <p>\$100.4 2:23</p> <p>\$16.5 4:10</p> <p>\$2.1 5:8</p> <p>\$2.4 4:4</p> <p>\$21 5:14</p> <p>\$250,000 4:18</p> <p>\$26.6 4:1</p> <p>\$30 2:23</p> <p>\$311 2:21 3:3</p> <p>\$350,000 4:19</p> <p>\$5 5:21</p> <p>\$7,778,500,000 2:18</p> <p>\$70 4:6</p> <p>\$8 5:1 14:7</p> <p>\$800 2:24</p> <p>\$99 4:9 33:16</p> <hr/> <p>1</p> <p>1.5 5:7</p> <p>15 32:2</p> <p>17 37:3</p> <p>1:31:36 2:1</p> <p>1:36:56 6:14</p> <hr/> <p>2</p> <p>20 4:2 5:15</p> <p>2017 3:9</p> <p>2020 38:19</p> <p>21 5:20</p> <p>2463 6:21</p> <p>26 25:3</p> <p>2643 2:7,10,14 6:6 32:12,15,19 34:9,18, 22 35:1,11 36:17 37:11,14</p> <p>2:28:29 6:16</p>	<p>2:30 7:9 9:24 10:12</p> <hr/> <p>3</p> <p>30 15:10 37:3</p> <p>300 3:3</p> <p>33 18:21 23:22</p> <hr/> <p>4</p> <p>400 20:24</p> <p>411,000 5:11</p> <p>4:12:32 23:1</p> <hr/> <p>5</p> <p>500,000 5:10</p> <p>5163 6:2,5,7,21 32:14, 18 34:9</p> <p>5:42:03 32:9</p> <p>5th 38:18</p> <hr/> <p>8</p> <p>85 16:17</p> <hr/> <p>A</p> <p>A.M. 2:1 6:14,16 23:1 32:9</p> <p>ability 38:6</p> <p>absentee 9:18</p> <p>acceptable 13:3,5</p> <p>access 8:1 16:1</p> <p>accomplish 10:1 16:4</p> <p>achieve 2:19</p> <p>act 35:12</p> <p>action 11:24 38:16</p> <p>address 4:6 5:23 17:20</p> <p>addressed 3:7 24:2</p> <p>addressing 12:11</p> <p>administration 4:22 5:11</p> <p>administrators 8:6</p>	<p>admission 4:21</p> <p>Admittedly 11:10</p> <p>adopted 34:17</p> <p>adoption 34:8</p> <p>advantages 21:10</p> <p>afford 16:7,23</p> <p>afforded 17:21</p> <p>aggressive 24:10</p> <p>agreed 36:4,7,14 37:6</p> <p>ahead 12:8</p> <p>aid 4:21 5:4</p> <p>aisle 18:20</p> <p>alarm 8:8</p> <p>alert 8:10</p> <p>alerts 8:12</p> <p>all-nighters 10:14</p> <p>Alliant 24:12</p> <p>amend 33:9</p> <p>amended 34:19,22 35:2 36:17</p> <p>amendment 5:25 6:2, 5,7,21 7:4,12 14:1 32:14,18 34:8,17</p> <p>amendments 34:18</p> <p>applicability 35:16</p> <p>appropriation 4:3 22:14 31:12</p> <p>appropriations 4:25 5:5,19 22:19 34:2 35:13</p> <p>approximately 2:19</p> <p>Area 19:4</p> <p>areas 7:21 14:20 22:10</p> <p>asks 2:9 37:13</p> <p>aspect 22:13,18</p> <p>Assembly 35:17</p> <p>assume 29:16</p> <p>attached 22:14</p> <p>attention 15:19 37:1</p> <p>attorney 38:11,14</p> <p>attract 16:21</p>	<p>audible 38:9</p> <p>aware 21:25</p> <p>ayes 34:15,16</p> <hr/> <p>B</p> <p>back 7:6 10:2 12:15, 19 13:24 23:15 28:2 33:9,10 34:18</p> <p>bad 9:9 31:9</p> <p>balance 2:21,23 8:25 9:1,4</p> <p>ballot 9:18,21</p> <p>basic 17:17</p> <p>basically 3:24 27:25 28:6</p> <p>basis 11:8</p> <p>battling 8:15</p> <p>behalf 8:16</p> <p>bid 19:6,8,21,22</p> <p>bidding 19:20</p> <p>bids 19:8,21</p> <p>bill 2:17 3:8,23 4:4 5:12 7:4,7,23 8:13 9:12,13 10:19 13:8,20 14:7 21:2,14 22:22,25 23:21 24:1,2,9,11,14, 20,23,25 25:1,4,6,9 26:9,13,15,16,17 27:11,23,24 28:5,7,19 29:15 31:3,8,12,20 32:5,23 34:6,24 35:12, 21 36:15 37:3</p> <p>billion 14:7</p> <p>billions 14:8,9</p> <p>bills 11:22 17:15 23:18 30:8</p> <p>Bisignano 23:3,4,12 25:7,11,15,18,21,24 26:3,6,8,12,18,20,23 27:1,5,10,13,17,22 28:11,17,21 29:1,7 30:15,18 31:16,19 32:4</p> <p>bit 20:6 26:21</p> <p>Black 15:2 17:3</p> <p>blew 30:4</p> <p>Blind 5:3</p>	<p>blunt 7:9</p> <p>body 14:16</p> <p>Bolkcom 6:24,25 33:19</p> <p>Boulton 18:4,5,14,15 20:4 21:1,13,20,23 22:4,7,17,23 23:15</p> <p>boy 12:5</p> <p>branch 5:10</p> <p>brand-new 30:25</p> <p>breaking 23:8</p> <p>Breitbach 2:13,15 6:3,4,20 18:9,11,12,25 20:11 21:12,17,21 22:1,5,16,20,24 23:6, 9,11 24:24 25:10,13, 16,20,23 26:1,5,7,10, 17,19,22,25 27:3,9,12, 16,20 28:4,13,20,23 29:2,21 30:17 31:14, 17 32:1,17,20 34:21, 23</p> <p>briefly 18:22</p> <p>brought 24:19</p> <p>budget 2:17,18 3:24 4:8 5:13,18 7:8,20 9:6, 25 10:24 13:19 14:13, 18 15:7,18 17:15,24 31:3 32:25 33:1,9 34:3</p> <p>budget-making 17:14</p> <p>budgets 10:22</p> <p>build 19:14</p> <p>building 11:20 28:2</p> <p>builds 20:21</p> <p>business 8:1 13:1,2 30:22</p> <p>businesses 17:3</p> <hr/> <p>C</p> <p>call 2:7,10 10:12 37:2</p> <p>called 36:8</p> <p>calling 31:14</p> <p>calls 6:2 8:5 11:18 32:11</p> <p>Capitol 4:15</p> <p>care 12:21 17:8 20:2</p>
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House Action (2020-06-14)

HF 2643

Sunday, June 14, 2020

THE SPEAKER: At this time the Chair will now recognize Rep. Mohr for opening comments on HF 2643.

REP. MOHR: Thank you, Mr. Speaker.

THE SPEAKER: Rep. Mohr, you are on the Senate amendment. I apologize. 8317.

REP. MOHR [11:27:20 AM]: Yes, Mr. Speaker. Thank you. The amendment from the Senate is before us and it includes an agreement on the spending levels for fiscal year 2021 budget. The budget will spend \$7,778,000,000 next fiscal year. Now, this figure is \$19 million lower than what we passed on Friday night as part of the Senate agreement. The amendment lowers the amount of the legislature's budget by \$1 million. I'll just walk through the differences within the Senate amendment.

Funding for the Secretary of State is reduced by \$250,000. The Medicaid funding level is set at the exact level projected by the Medicaid forecasting group, which is \$6.7 million lower than what was in the original bill. A decision was made to use all of the sports wagering tax

revenue collected by the state - \$1.75 million – for gamblers' treatment programs. Funding for the judicial branch is reduced by \$500,000. The Board of Regents will reduce the funding provided to the three state universities by \$8 million with the Board determining where those reductions will come from. The amendment also removes the nearly \$1.1 million from the general fund to the Department of Revenue technology upgrade project. In FY21 all the funding for this project will come through the technology reinvestment fund addressed in HF 2642. The senate amendment also transfers \$5 million from the Grow Iowa Values fund to the Department of Human Services to be granted to Polk County for mental health services. The amendment also includes language to provide a way for county auditors to verify the identity of those voters who have requested an absentee ballot and did not fill out the identifying information on the absentee request form. At the request of the Board of Regents, the amendment allows the Board to hire outside counsel for complex cases. The Attorney General will still control any litigation involving the Board. And the amendment provides language that gives the utility companies and electric cooperatives currently serving Iowans

with the first right of refusal to put up electric transmission lines. [11:30:14]

AM]

That is the senate amendment to HF 2643, Mr. Speaker.

THE SPEAKER: There is an amendment. Will the clerk call up the amendment?

THE CLERK: H-8320 by Hunter of Polk.

THE SPEAKER: The Chair recognizes the gentleman from Polk. Rep. Hunter for Amendment H-8320.

REP. HUNTER [11:30:34 AM]: Thank you, Mr. Speaker. Would Rep. Mohr yield for a quick question?

THE SPEAKER: Will the gentleman yield?

You're in order, Rep. Hunter.

REP. HUNTER: Thank you, Rep. Mohr. You had mentioned that the Secretary of State's budget had been cut by \$250,000; correct?

REP. MOHR. Yes. Yes.

REP. HUNTER: And that would then bring them down under a status quo budget; correct?

REP. MOHR: Yes.

REP. HUNTER: Okay.

REP. MOHR: By \$250,000, yes.

REP. HUNTER: Okay. Thank you. And I understand that the \$250,000 is coming out of their elections division; is that correct?

REP. MOHR: I'm not – Is it -- yes, that's correct.

REP. HUNTER: Okay. Thank you, Rep. Mohr. Thank you. No further questions.

[11:31:20 AM] So my amendment restores the \$250,000 back into the Secretary of State's budget in their elections division. We are in the middle of a pandemic where people are risking their lives to vote. During the primary we came up with a way to successfully let people vote. This \$250,000 that we're cutting out of the elections division of the Secretary of State's office is going to be used as a match to draw down \$4 million from the federal government for the COVID assistance programs to make it easier to vote. But the Senate, in their wise wisdom, and the House if they do not accept this amendment, have decided that it's not important for people to vote or get assistance to vote or draw down \$4 million to vote. This amendment would restore that \$250,000 to the Secretary of State's office and allow us to draw down those \$4 million so people can

vote. That would end my opening comments. I would be glad to answer any questions.

THE SPEAKER: Is there a discussion? The Chair recognizes the gentleman from Scott, Rep. Mohr.

REP. MOHR [11:32:51 AM]: Thank you, Mr. Speaker. Just a couple of comments on Rep. Hunter's comments. The Secretary of State's office did receive four million additional dollars, federal dollars because of COVID 19 for the election process. As Rep. Hunter knows at this stage of the session when we get into debate and discussion and negotiations with the Senate, the Senate actually wanted to cut \$500,000 out of this line item budget, and we compromised, or they compromised with us, at the \$250,000 level simply because we felt that was a compromise to what their request was of \$500,000 cut and the fact that the Secretary of State had received the \$4 million, we thought that was an amicable compromise to get the bill passed. I would encourage the caucus to not support Rep. Hunter's amendment.

THE SPEAKER: The Chair recognizes Rep. Hunter for closing remarks on amendment H-8320.

REP. HUNTER [11:34:41 AM]: Thank you, Mr. Speaker. Rep Mohr mentioned that they have already gotten \$4 million worth of federal funds. Well, there's another \$4 million to be gotten if this \$250,000 would be there. And even over and above that, we are cutting \$250,000 out of the election department of the overseer of our elections during a pandemic during the time when people are going to be required to risk their lives possibly to vote for the President of the United States and at a time where the Secretary of State could make it so much easier for people to participate in this democracy. The fact that the Senate wanted to cut out \$500,000 out of the elections department just shows their contempt for the voters of this state. And it's further evidence of the Senate's and the majority party in this place voter suppression efforts. Mr. Speaker, I move this amendment and ask for a record and a division.

THE SPEAKER: Gentleman from Polk moves amendment H-8320 and has requested a division and record, seconded by the gentleman from Polk, Rep. Abdul-Samad. This is now a division vote. The clerk will open the machinery to receive your vote. It is a division and a record. And a record rollcall vote as well.

(vote not transcribed)

THE SPEAKER [11:37:53 AM]: The amendment has failed. There have been two amendments filed, 8321 and 8322, and they have been requested to be withdrawn. Any objections? The Chair hears none. So ordered.

Now back on the amendment 8317. Is there further discussion? The Chair recognizes the gentleman from Woodbury, Rep. Hall.

REP. HALL [11:38:23 AM]: Thank you, Mr. Speaker. Good morning, Ladies and Gentlemen of the Senate. Here we are on what appears to be the final day of session, debating a budget that comes back to us during a tough time for all Iowans and, sadly for them, it also has only gotten worse overnight. Our colleagues in the Senate debated this bill, trying to find some form of compromise with the House Republicans here, and they debated until 6 in the morning only to come back with amendments that suppress the right to vote in this state. Let me walk you along an analogy in the way that it seems to me.

Here we are. We've got the House Republican majority and the Senate Republican majority. And the Senate Republicans just borrowed their parents' car and the House Republicans got picked up along the way. And at each corner, the Senate Republicans keep on making bad

decisions, and the House is supposed to be the responsible friend. The House is supposed to speak up and say no, don't turn down there. That looks like it's not paved well. They go down this road. They make bad decision after bad decision and instead of speaking up, the House Republicans choose not to. They choose to actually cave and just follow the bad decisions that their friends are making. Now you've got cigarette burns in the car, you got dinged up, they hit a couple of signs along the way, the fender's all dinged up.

Here we are, the state of Iowa, suffering for the bad decisions made across the rotunda and rather than have an adult in the room and somebody who is responsible enough to speak up for it, y'all compromised to go home. And the compromise that you struck is one that suppresses the right of the people who elected you: To vote.

You know, what are we doing here? We have a pandemic, an economic recession and a public health event, and the response by this state government is to not make any decisions on funding but to punt them over to the Department of Management. And on top of it, at a time where people might want to vote from home in order to preserve their

health and protect their families, this legislature is just going to make it harder for them to do so. [11:40:35 AM]

The priorities of this chamber are wrong. It was wrong for us to come back into this session for a short period of time when Iowans are looking for help and confidence and support, and instead you're kicking them in the gut. I'm going to be a no vote on this amendment, I'm going to be a no vote on the bill, and I hope that when this legislature convenes next year, some wisdom and judgment prevail because they are not prevailing today.

THE SPEAKER: The Chair recognizes the gentleman from Polk, Rep. Hunter.

REP. HUNTER [11:41:07 AM]: Thank you, Mr. Speaker. Would Rep. Kaufman yield for a question?

THE SPEAKER: Will the gentleman yield? You're in order, Rep. Hunter.

REP. HUNTER: Bet you don't have any clue what I'm going to ask you about.

REP. KAUFMAN: Counting on it.

REP. HUNTER: Okay. One of the items that the Senate sent over to us on this budget bill is the part about missing information on absentee ballot requests. I still don't understand. What is the intent of this? I just don't understand.

REP. KAUFMAN [11:41:44 AM]: The intent of this is to ensure that the person that actually wants a ballot is the person that gets a ballot. This is not really big draconian policies. This is not voter suppression, no matter how many times you say it.

REP. HUNTER: But we had cut a deal – we had made a deal with Rep. Jacobson and you and I into a – spent hours, and this was one part of the discussions we had about using best available means to get that information. Why is this better than that?

REP. KAUFMAN: As you know, Rep. Hunter, best available means was struck down by the courts. This is our prescriber (sic) to comply with what they said needed to be done to pass constitutional muster.

REP. HUNTER: And how does this pass constitutional muster?

REP. KAUFMAN: It proscribes what best available means are. If you fill out an absentee ballot request form incorrectly, it lays out the

guidelines and procedures for the auditor to identify with the individual requesting that they are indeed them.

REP. HUNTER: And why isn't looking into the voter registration data a best available means?

REP. KAUFMAN: Well, if you've ever door-knocked and you've ever relied on lists and I've heard you, yourself, Rep. Hunter, rail on the Secretary of State's felon voting list, it is far more accurate and the integrity of an election and the integrity of a ballot is far more accurate when you talk to the individual actually doing the requesting.

REP. HUNTER: Okay. So how do we know if we're not relying on the voter registration form, and as you said because that information is so bad, how are we going to get the phone calls made, the letters sent out, email addresses and everything – if that information that we got to send that stuff out is so bad, how are we going to do that?

REP. KAUFMAN [11:43:52 AM]: First of all, if that individual isn't providing the accurate information, then how are you going to get them the absentee ballot request form in the first place? It is not unreasonable to say that if the information you're trying to find out from that individual is supposed to go to a particular mailbox with their ballot – or their

absentee ballot request form, the verification of said information should also be easily got at that exact same place.

REP. HUNTER: Okay. Thank you, Rep. Kaufman.

REP. KAUFMAN: It's just common sense.

REP. HUNTER: Thank you, Rep. Kaufman. The trouble with that answer is that some of the main things that are wrong and could be verified and a lot of the auditors know is that when you're 80 years old, when you're my dear departed mother's age, sometimes you screw up numbers. You can say I live at 542 Wilmers instead of 452 Wilmers. You're asking – this piece of information, this amendment that the Senate put on is telling you to write a person? Well, that could be part of the problem. They don't have the correct address on the absentee ballot request. Call the person? There's no place that requires on this absentee ballot request that you put a phone number on there. Email the person? There is absolutely no place on the form that requires you to put an email address. And then you go through all that rigamarole and you can't get ahold of the persona and well, too bad, you can't vote. Now if the person actually calls in, by some miracle, you've got six pieces of information here that they have to verify two of them, the only place you can verify

it on is the registration rolls. That same piece of information that Rep. Kaufman said was so bad. [11:46:05 AM]

Ladies and gentlemen of the House, this article from the Senate and the piece that is going to adopted by this House is flat-out voter suppression. That's all it is. If you remember earlier this week, I believe -- I don't even know what day it is -- I guess it was last week or Sunday now, Georgia had a primary. It was the most screwed-up thing you had ever seen because the Secretary of State and the State of Georgia did nothing to make sure that people could vote during the coronavirus. Iowa's went through seamlessly. In fact, we had a record number of people voting. Secretary of State said that pretty went off as a hitch and thanked the people of Iowa for voting. Said everything was secure and reliable.

So whatever reason is given for not allowing people to use not allowing auditors to use whatever means is available to them to verify addresses, phone numbers, driver's license number is flat-out voter suppression and it flat-out goes against any kind of agreement that we had in this body to deal with election laws this year. We were told if we did these six items that it would go to the Senate and we would not be

dealing with this anymore. Well, Sen. Smith has decided that he wants to do one more piece of voter suppression and it's a long list of items. First in a great list of ideas that came from this body and Rep. Smith was the voter ID law, supposedly to deal with voter fraud that did not exist. He tried and failed to make sure that we couldn't have satellite voting places in publicly owned buildings. Keep the voting sections out of colleges and universities. Then he passed a bill requiring felons to pay a poll tax before they could vote. Almost immediately after that happened, we got Sen. Smith's garbage about voter suppression and that's what we're dealing with now, is voter suppression. [11:49:27 AM]

It is the rights -- it is the duty -- of every single person in the state of Iowa who is eligible to vote to be able to vote without jumping through every single hoop that the Republican party has thrown in front of them. If an absentee ballot comes in and has a missing piece of information, it is incumbent on the auditors to use the best means possible to get that information, rectify that information and verify that information. Sen. Smith doesn't like the fact that we're making it easier for people to vote and it is making it okay that if some 80-year-old grandmother sends in a ballot with a missing piece of information or transposed number that

we're able to rectify that in the easiest, simplest, cleanest manner possible so that person can vote.

This – whatever this thing is that the Senate put on, on an appropriations bill at 6 o'clock in the morning --

MR. SPEAKER: Rep. Hunter, your time has expired. Chair recognizes the gentleman from Polk, Rep. Meyer.

REP. MEYER [11:51:23 AM]: Thank you, Mr. Speaker. Would Rep. Hinson yield to a question?

THE SPEAKER: Is the lady in the chamber? I don't see her in the chamber, Rep. Meyer.

REP. MEYER: Oh. I know she's voting. Maybe she's in the back. I don't know if maybe one of the Republicans wants to see if she wants to come out and answer some questions.

MR. SPEAKER: Do you have anyone else you would like to recognize, Rep. Meyer?

REP. MEYER: Yes. Thank you, Mr. Speaker. Would Rep. Shipley yield to a few questions?

MR. SPEAKER: Rep. Shipley, would you yield?

REP. SHIPLEY [11:52:00 AM]: Uh, no.

REP. MEYER: That's amazing. Do you even know what you're voting on? Would Rep. Kaufman yield to a few questions?

MR. SPEAKER: You're in order, Rep. Meyer.

REP. MEYER: Thank you. Rep. Kaufman, is there a military exemption?

REP. KAUFMAN: There are several provisions that protect – are you talking about the voter ID component, Rep. Meyer?

REP. MEYER: The one we're doing today. Yes.

REP. KAUFMAN[11:52:25 AM]: Yes. There is a 53.38, the UOCAVA exception. It spells out the guidelines that are required upon military voting overseas. I can continue reading if you'd like.

REP. MEYER: Yes, please.

REP. KAUFMAN: So, number one, there is a federal postcard application, a standard form of which all fifty states can use and allow someone in the military to be able to request and fill out email wise. They also are not required to have a PIN.

REP. MEYER: Are they required to follow the new rules that you're implementing?

REP. KAUFMAN: This bill does not change anything for overseas voting. Most of those are federal and we couldn't change them anyway.

REP. MEYER: Okay. Thank you, Rep. Kaufman. Let's see. I have a few more questions. Rep. Kaufman – or let's see, Rep. Mohr. It's your amendment.

THE SPEAKER: Will the gentleman yield? You're in order, Representative.

REP. MEYER: Thank you, Mr. Speaker. Rep. Mohr, a few questions for you. You would agree – and I'm not trying to put words in your mouth; I know people think I'm doing that -- but you agree voting is a fundamental right; correct?

REP. MOHR: Yes.

REP. MEYER: As American as apple pie.

REP. MOHR: Yes.

REP. MEYER: And can you give me an example – First off, what is the problem we are trying to solve here? I'm totally confused.

REP. MOHR [11:53:56 AM]: Throughout my life, many times I am required to provide information before I get a driver's license or fly on an airplane. To require information that's correct. The purpose of this bill

has nothing to do with voter suppression. It has everything to do with voter security. And so it –

REP. MEYER: You would agree that - - I'm sorry.

REP. MOHR: Excuse me. Let me complete my comments. It has everything to do with if a person applies – and I vote absentee ballot periodically – and if I fill out an application and send it in that I provide all the information that's requested and I provide all the information that's requested correctly.

If we want to maintain a voting system that's accurate, we should expect nothing less. It does not stop anyone from applying for an absentee ballot. It does not require them to jump through additional hoops to get an absentee ballot. It simply says we welcome your application for an absentee ballot. Please fill out the information, fill it all out, don't leave any lines blank and fill it out correctly.

REP. MEYER [11:55:13 AM]: You would agree that flying in an airplane and a driver's license are not fundamental rights. You would agree with that?

REP. MOHR: That's true. But there's many times in my life where I'm asked to complete information and it says please complete all the information requested.

REP. MEYER [11:55:30 AM]: And fundamental rights are analyzed by courts using strict scrutiny, right? It was raised earlier this year that gun rights were fundamental rights. We talked a lot about strict scrutiny I think last year or this year, so you understand what strict scrutiny is?

REP. MOHR: I'm not an attorney, so no. I --

REP. MEYER: It's that you have to have a compelling government interest, and that compelling government interest has to be narrowly tailored to what you're trying to do or the – language of the statute has to be narrowly tailored to what you are trying to accomplish. What is the compelling government issue here?

REP. MOHR [11:56:10 AM]: Voter security.

REP. MEYER: Okay. And give me an example of -- I assume there is an example out there of where this happened. Do you have any numbers, anything to back this up?

REP. MOHR: I don't have the list of that, where that's happened. I know it's happened, but I think part of what this is attempting to do is to prevent it from happening in the future.

REP. MEYER: So again, I ask, what is the problem we are trying to solve?

REP. MOHR: Once, again, Representative, we are trying to ensure every ballot is cast by an appropriate, eligible voter, and that they provide information to simply prove who they are.

REP. MEYER: Okay. Is Rep. Hinson back yet? Is she available to yield?

THE SPEAKER: Is the lady in the chamber? Not at this point, Rep. Meyer.

REP. MEYER: Thank you. Would Rep. Jacobsen yield to a question?

THE SPEAKER: Will the gentleman yield? You're in order.

REP. JACOBSEN [11:57:20 AM]: Yes, I will, Mr. Speaker.

REP. MEYER; You are an attorney.

REP. JACOBSEN: Yes, I am, Representative. I am.

REP. MEYER: You agree that this is a fundamental right, voting is a fundamental right.

REP. JACOBSEN: It is.

REP. MEYER: Okay. What is the problem we are trying to solve here? I'm trying to figure this out. I can't figure it out. I have not been given an answer.

REP. JACOBSEN: I would say the macro issue here is how to provide the greatest expanse of voting possibilities for all folks that is verifiable. One thing that I think the goal is here is to address some important issues such as you've alluded to the Georgia primary.

REP. MEYER: I did not allude to the Georgia primary.

REP. JACOBSEN [11:58:05 AM]: Your colleagues. But just in the context of it. One of the issues of the Georgia primary and also the Wisconsin primary is that because there was constriction on the number of live polling sites, that did expand the lines and the concentrations at the fewer polling sites. Now in my district in the last primary -- I have a portion that's in the eastern part of the municipality of Council Bluffs. But I have 12 cities, townships, in the greater county. And only two of those 12 townships were allowed to vote on election day. So part of what

we're doing here is ensuring that sites are open on election day so that the lines aren't as bulky as the other location, so I think this is very much an enfranchisement attempt that we're trying to do here for our rural voters.

REP. MEYER [11:59:02 AM]: So based on your comment there, you would support the Secretary of State mailing absentee ballot requests out to all voters so they don't have to go to the polls.

REP. JACOBSEN: I don't have an issue with that. I don't have --

REP. MEYER: You would support that, then, if we brought that up as an amendment.

REP. JACOBSEN: I think that the important thing here is to make certain that if people want to vote absentee that they can vote absentee.

REP. MEYER: Thank you. And you would agree -- one final question -- that if the courts were to look at this, they'd have to look at it under strict scrutiny.

REP. JACOBSEN: Yes. And the trigger for that, the burden there is that the requests would not be unduly burdensome and that they would not have an overly broad or narrowly constricted view there. And my view is that with the six questions that can be verifiable by just

answering two of the questions such as middle name, mailing address, date of birth, last four of the social security number. I'm a banker -- akin to banking. We have people -- the rights in engaging in commercial actions is also held by the courts to be a fundamental right -- that those are easily verifiable enough that they actually supplement the previous best methodology, the best standards use, because in this situation now, if people forget the PIN -- remember, all of the folks that have state-issued driver's license or state-issued IDs like my friend Chad, this does not apply to them. This would only apply to folks that have neither a state-issued ID or a driver's license so the subset that we're working with now is simply those that have a four-digit PIN assigned to them. I forgot PINS --

REP. MEYER: So it doesn't apply to everybody, then, just the four-digit PINs?

REP. JACOBSEN [12:00:54 PM]: Right. The four-digit PINs are for people who do not have a driver's license or state ID, they have a PIN that once that PIN is issued to them, that allows them to vote and it doesn't have anything to do with coming on election day. It's just for them to get their absentee ballot, so all they have to do if they've forgotten

the PIN is to answer two of those six questions, whereas under the current law, there's no way for them to perfect that if the auditor can't grab that information so in many ways, I think that this is superior and enfranchising.

REP. MEYER: You agree there's --

THE SPEAKER: Rep. Meyer, your time has expired.

REP. MEYER: Thank you.

THE SPEAKER: The Chair recognizes the gentleman from Floyd, Rep. Pritchard.

REP. PRITCHARD [12:01:40 PM]: Thank you, Mr. Speaker. Good noon, ladies and gentlemen of the Iowa House. First I'm going to spell out what this bill does, or this amendment. This bill has the net effect -- and I'll just start with this -- this is going to make it harder and more onerous to count votes. It's going to disenfranchise voters because now typos and administrative errors from voters are going to be harder to fix to get the ballots out to the voters. You can look at this and you can spin it any other way you want to, but that's what's going to happen. That is absolutely what is going to happen.

So what this means is when an auditor's office gets an absentee ballot request -- an ABR -- and if there's incorrect information that doesn't match, the auditor's office, the clerks in the auditor's office can't access the voter registration database -- I think it's called iVote or whatever it is -- if I get that right -- they can't use that database to complete the ABR and assist that request on its way and send out a ballot using verified information that the auditor has access to.

So what is this analogous to? I married into a family of librarians. Ever go to a library? You remember the card catalogue? Used to be all the drawers? It was kind of fun. It had all the notecards in it. Now it's all digital, kinda like the voter rolls. It's kind of like going to a library, giving the librarian maybe a request for a book, maybe a request for a copy of the U.S. Constitution, but having something slightly wrong. Now the librarian, with this change that the majority party wants to put on the auditor's office in law, with this change, it would be like telling the librarian you can't use your card catalogue to look up the book. It makes zero sense. They can't use the tools that they've been given. Spin it any way you want. Believe what you want. But you are going to make it harder; you're going to ignore verified information; you're going to deny

that use by the auditor; and you're going to disenfranchise Americans.

[12:04:11 PM]

I'm two brands of Democrat. I'm a big D Democrat and I'm a little D democrat, more importantly. I hope you're all democrats, little D. I'd like it if you were big D Democrats. I'd like it if you stood up for democracy because you know what? I've done that in foreign countries and I've said this before to this body. I can't believe that I've had to do more in this House in defense of voter rights. That's why we send young men and women across the seas and the oceans, to defend democracy. What's more fundamental to democracy than elections? We have people protesting across the country, in our cities and towns across the country. They want to be heard. This chamber, all of us, should be proud of that. We spoke together because we listened. We open up the ballot box so people can be heard. It's called buy-in. People have a voice. They have a fundamental right to that voice, to say here's my vote. Here's where I want to see my country, my community. This is where I want it to go. This is one little chip, yet one more little chip that you, my friends across the aisle, are putting -- or taking away the cornerstone of our democracy. Not used to hearing me get this animated. This is personal. I've got

friends on -- have their picture on the main floor of this rotunda because they fought a lot harder and they made a bigger sacrifice, and you are dishonoring that sacrifice. [12:06:36 PM]

Tell yourself it's not a big deal. Spin it any way you want. I know what it is and I'm calling what it is. It's voter suppression.

We just finished a primary June 2nd. Massive turnout across this state. Record Republicans in some areas. Record Democrats in some areas of this state. I challenge one of you -- I challenge each and every one of you who plan to vote for this bill. Something that went wrong. I met with the county auditors. They told me it was smooth, seamless, one of the best primary elections they ever had. In the middle of a pandemic.

Rep. Mohr, will you yield?

THE SPEAKER: Will the gentleman yield? You're in order, Rep. Pritchard.

REP. PRITCHARD: Thank you. Thank you for yielding. You mentioned that the purpose of this legislation is voter security. What is voter security?

REP. MOHR [12:07:56 PM]: Making sure that the person who applies for an absentee ballot is in fact the person who casts that absentee ballot.

REP. PRITCHARD: Did we have a voter security problem in the last June primary that happened on the 2nd?

REP. MOHR: I don't know, Representative. All I'm saying, as I mentioned earlier in my comments --

REP. PRITCHARD: You don't know if --

REP. MOHR: -- this purpose of -- Excuse me. Let me complete my sentence. The purpose of this legislation is, going forward, to help ensure that the person who applies for the absentee ballot is the one who casts the absentee ballot.

REP. PRITCHARD: But yet you're not aware of any issues that we had on June 2nd.

REP. MOHR: No. That's not --

REP. PRITCHARD: You said you don't know.

REP. MOHR: That's right, because it's not my -- in my purview to go around the state, looking and investigating voter fraud.

REP. PRITCHARD: The auditor of Scott County is a woman by the name of Roxanna Moritz, right?

REP. MOHR: Yes.

REP. PRITCHARD: President of the Iowa Auditors' Association?

REP. MOHR: Yes.

REP. PRITCHARD: Someone you know?

REP. MOHR: I know her very well.

REP. PRITCHARD: Talk to her in the last few days?

REP. MOHR: Yup.

REP. PRITCHARD: She tell you she had problems?

REP. MOHR: I didn't ask her if she had problems.

REP. PRITCHARD: She didn't mention it, either, did she?

REP. MOHR: No. And I didn't ask.

REP. PRITCHARD [12:09:15 PM]: How is this going to make it easier for Americans with disabilities to vote?

REP. MOHR: The process by which people apply for an absentee ballot doesn't change. It's still a fundamental -- as I mentioned earlier, it is a fundamental right for everyone. All we want to make sure of with this amendment is that the person who requests the absentee ballot is the person who casts the ballot.

REP. PRITCHARD: So it's going to make it easier to verify the information or is it going to make it harder? Because they can't access or reference their database.

REP. MOHR: The purpose of the bill is to make sure that the information is accurate. If I -- If I --

REP. PRITCHARD: Okay. You've answered the question. I'm going to move on with my time. I really do appreciate you yielding. You'll have time to respond on final.

You want to make it easier to vote? You let the auditors use the tools they have. We don't have a voting issue in this state. Our elections have been secure and they are secure. To say anything differently is an insult to the men and women, the volunteers, the staff, and the people who participate in these elections. You want to do something for your country? You want to serve the people of Iowa? Vote no.

THE SPEAKER: The Chair recognizes the lady from Johnson, Rep. Mascher.

REP. MASCHER [12:10:57 PM]: Thank you, Mr. Speaker. Ladies and gentlemen of the House. For many years I have listened to the military members of our body talk about what an honor it had been to serve this country, and I want to thank them for that service. I want them to know that we appreciate your willingness to make that sacrifice for our

country. Rep. Pritchard, Rep. Holt, I know there are a number of others in the chamber who have done that. Thank you.

Many of you have shared that you were willing to serve and fight and even die to protect our freedoms and liberties. The right to vote has been one of those freedoms. You have identified it as even being sacred. Today we are seeing that freedom, that liberty, eroded and damaged by the majority party. The Senate amendment will clearly, clearly make it more difficult for Iowans to request and cast an absentee ballot to vote. The COVID crisis has increased the interest by Iowans to vote by mail. It is much safer for the general public to do so, and during a pandemic we need to encourage the public to do so to protect not only our poll workers but to protect Iowans. We as a state should be making it more convenient to cast an absentee ballot, not more difficult.

So let's talk about the bill itself and why it is so difficult. The statement in it is if insufficient information has been provided, including the absence of a voter verification number, either on the proscribed form or an application created by the applicant, meaning there's not a PIN or their driver's license number is missing or they might have transposed numbers or letters. Within 24 hours after the receipt of that absentee

ballot request, the auditors are required to contact that applicant by phone, email or by mail. So what if they don't have a phone? What if they don't have a phone number listed? What if they don't have an email account? What if they don't - they can't be contacted that way? What if they don't have internet in their home? You know who doesn't have internet in our home? It's Iowans who can't afford it. So it's people in poverty. [12:13:52 PM]

If the commissioner is unable to contact by phone, email, then they have to send a mailed letter to them. Well, that's fine except what if it's in the last days of the election? Good luck getting that letter to them and the correction made before the election. That's the problem. That is where the rights are being denied.

And there's no checks and balances. Representative -- I'm sorry. Rep. Olson had asked, where's the checks and balances in this bill? How do you verify that somebody did call, did email, did mail the letter? There's nothing - nothing in this bill that verifies that. Nothing. It's one of the reasons why our auditors are opposed as well. They do not support this legislation.

On Friday, June 12th, we passed a racial equity bill and the Governor signed it, and we were all proud of that accomplishment. Today we should be ashamed of this voter suppression attempt. You can't give with one hand and slap somebody's face with the other. We know this bill will disproportionately affect our black and brown voters. It will make it more difficult for the elderly and people with disabilities to vote. Rep. Kaufman, it may be your opinion that this is not a voter suppression bill. Many in this state will disagree. I disagree with you. So ask the minority voters in this state. Ask the elderly. Ask our people with disabilities. Ask the League of Women Voters. Ask our county auditors, Democrat and Republican alike, who oppose this provision. They respectfully disagree with you, and I respectfully disagree with you.

[12:16:09 PM]

Rep. Kaufman, we took you on your word when you said we were done. We were done with this bill and we would not see it again in our chamber.

Representatives Jacobsen and Hunter, thank you. You spent literally hundreds -- and I will say that -- hundreds of hours trying to protect and perfect a system and you did a good job, and we appreciate

that. That's the bill we should be debating and talking about today, not this legislation.

Rep. Kaufman, you've broken a trust. We won't make that mistake again. Our word is our bond in this building, and we need to be able to trust each other. When you break a trust, it makes it more difficult to trust in the future. This is clearly, clearly a voter suppression bill and you know it, I know it, Iowans know it and they will hold you accountable for this.

Vote no on Senate Amendment H-8317.

Thank you, Mr. Speaker.

THE SPEAKER: The Chair recognizes the lady from Scott, Rep. Winckler.

REP. WINCKLER [12:17:25 PM]: Thank you, Mr. Speaker.

Ladies and gentlemen, I rise in opposition of the Senate amendment H-8317. I want to talk about the fact -- you know, I think that as we're talking about all of this, it's kind of an issue of trust but verify. But what you're missing in regard to all of this is that the verification has already been made in order for an individual to be in the iVoter system. When you register to vote, the auditor checks to make

sure that your address that you give is a valid mailing address. They check to make sure that the social security, the last four digits, is verified. They check to make sure that you are in the driver's license database or the nonoperator license database, if you give that information. They check the felons list. And if all of those turn out positive, they mail you a letter saying that you are a registered voter. They would know if that -- if you did not live at that address because that would come back to them. Then you gain right to the iVoter system.

We had record turnout in the last election and in our county, over 85 percent of the votes cast in the last primary election were absentee. They were absentee because people felt safe voting at home. They could look at the material, they could make intelligent decisions, they could sit at their kitchen table and they could vote for the candidates on the ballot.

[12:19:45 PM]

So asking an individual who has already been verified that they are who they say they are, and they live where they say they live, to be denied an opportunity for an absentee ballot if the system that we are now creating fails, it is so very unfortunate. Trust but verify has already been done and if they make an unintended mistake, we are not allowing our

auditors to go to that very iVoter system that has the verified voter list available. We -- the very first direction on this amendment says that you must either call or email. That is not required information. And because voter files are public, many people don't fill that out. And if that record happened to be a mistake in the address that request form and they mailed it to the person, they'd never get it. Never get it. Wrong address. Not an intentional mistake.

We already know that those individuals that are on that iVoter list live where they say they live and are who they say they are and to put roadblocks in the way of those individuals to receive an absentee ballot when they made a mistake on filling out a form and the correction is so simple puts barriers. I think about what we are doing to the democracy of our state and our nation.

I was listening to a presentation the other day. They were talking about people who were concerned about what was going on in the state of our nation, the unrest. What was going on in our national government and the concerns about potential abuse of power, and they were asked what the next step was. In other countries when this has happened, what the next steps are, and the answer was they steal an election.

We have a constitutional right to vote and when we have been verified, you should not be putting up roadblocks and take it away. [12:23:28
PM]

THE SPEAKER: The Chair recognizes the gentleman from Jasper, Rep. Breckenridge.

REP. BRECKENRIDGE: Thank you, Mr. Speaker. Mr. Speaker, ladies and gentlemen in the House.

One of the things I look at. I look at myself as somebody who is very fair and balanced, who treats people right, looks for solutions that impacts all Iowans and generally just wants to help individuals do a better job and help them any way I can.

I've looked at this legislation and have to say I'm disappointed. The question I ask myself is what problem are we trying to solve with this piece of legislation. I guess we can come back to that question, but I'd like to start out by mentioning when something like this comes forward, I reach out to the experts to find out what they know about these things and what their recommendations are on this. And I have the utmost respect for you, Rep. Mohr, but if you talked to the auditor, that might have been a good opportunity, did we see any fraud or stuff that we can

do to improve that system while you were visiting with that person so I'd ask that we do that instead of arbitrarily passing legislation without asking those tough questions to learn what we're dealing with.

I did reach out to the auditor in Jasper County and asked them to review the legislation and give me insight on what his thoughts are with this. He indicated the legislation takes away the use of the voter registration database for absentee requests by the auditors. It does not help the process. It is truly sad to see legislators who make it harder for us to use the tools that we have in our voting system. I appreciate your efforts.

So in reaching out to him, I think a way to put it in an analogy, let's say Bob Smith has listed his name, address and date of birth but forgot his driver's license number and his voter registration card. Now let's say I'm auditor Wes Breckenridge. Well, I know Bob Smith. But he didn't put his email or his phone number on there because it's public record and he really doesn't want that out there. Well, I know Bob Smith and I know that's where Bob Smith lives. I know I can go to the database instead of having to call, email and send a letter in that process. And I guess that's a concern I'd have. Or maybe it's somebody that inverted their address.

Let's say they live on County Road F-36 but they put County Road F-63 and the auditor knows, no, Bill Smith lives on F-63. I know that. He can glance -- he or she can glance at the database and say yeah, I was correct. I know that's where Bill -- I've seen him before, and get that taken care of. [12:26:08 PM]

So, Rep. Kaufman, would you yield to a question?

Thank you, sir. Thank you, Representative.

THE SPEAKER: The gentleman will yield. You're in order, Rep. Breckenridge.

REP. BRECKENRIDGE: Rep. Kaufman, would this legislation prohibit the auditor, under the two examples I've given, from doing that to get that information, especially if they know that individual? Do we allow them if they vote and somebody can identify them at the voting place, if they know that person and know where they live and there's a piece of data but they don't have a phone number or email, it seems cumbersome, time-consuming and could potentially delay that vote. Is this something the auditor can still do with this legislation?

REP. KAUFMAN [12:26:54 PM]: First of all, thank you for not being a coward and asking me to yield.

THE SPEAKER: State your point.

REP. BRECKENRIDGE: I apologize. I didn't understand what your comment was. If I said it wrong --

THE SPEAKER: Rep. Breckenridge, Rep. Kaufman, I don't know who it was, Rep. Smith, state your point. Will the gentleman from Cedar approach as well?

(conference with Speaker)

THE SPEAKER: Rep. Smith, your point is well taken. Rep. Breckenridge, you're in order and you have asked Rep. Kaufman to yield.

REP. BRECKENRIDGE [12:29:45 PM]: Rep. Kaufman, I guess I'd like to make a statement for the House with regard to this encounter. I pride myself on treating people with respect. I don't attack people on the floor. I don't get boisterous, and so I guess I ask for that respect back. And I understand your frustration. I think the timing of when you address those issues, especially with somebody who is treating you with respect, I'd ask that you utilize that at a later time or in private because I think that's offensive and I -- just out of respect.

REP. KAUFMAN: Okay. Would you get to your question, please.

REP. BRECKENRIDGE: Absolutely. So this is a yes or no question. I gave you two scenarios. Would an auditor be able to access that under the two scenarios that I related where the auditor knew the person and inverted an address or something like that to use the database to complete it and mail it out instead of going through the cumbersome work when they already know?

REP. KAUFMAN [12:30:39 PM]: It's not a yes or no answer, Representative.

REP. BRECKENRIDGE: So they can't look at that database or they can? That's the question.

REP. KAUFMAN: You instructed me to answer with yes or no. I can answer but it's not with a yes or a no.

REP. BRECKENRIDGE: Okay. Please answer. I'm just curious. I guess I just don't understand. Either they can or they can't.

REP. KAUFMAN: The bill clearly spells out how someone has to contact a voter who did not fill out a request form properly. I could read you what that is.

REP. BRECKENRIDGE: Well, I've read that and it indicates that they have to go through a phone call, email and letter.

REP. KAUFMAN: Correct.

REP. BRECKENRIDGE: So that would tell me the answer is no, they cannot, even though they know them. So thank you, Rep. Kaufman.

And I think that's the concern we have, is how cumbersome this is going to be for the auditors, and the challenge is we've already knocked him down from 40 days to 29 days for that process and the massive number of ballots, especially during a pandemic, that they're going to have to shuffle through. And a lot of those ballot are not going to get sent out because they will not be able to maintain and keep up tracking the phone calls, emails, and the letters that are going out. I recognize and support making sure we have fair and safe elections, but I also trust our auditors. Our auditors have been doing this for a long time and they know what they're doing. And to tell them that they cannot utilize a piece of equipment that is in front of them, even if they know that person that they still must go through the cumbersome process - to me - that is inappropriate and it should have been put in there.

Secondly, when the deadline for the absentee ballot comes and somebody sends that in and it's two days away, for us not to put an extension if there is an inversion of numbers or a misstep on that

application, to not give an extension for the auditors to still get to mail the ballot, in my opinion, is inappropriate. They should have that amount of time to do that.

The thing I would ask is that we look at the data and the facts as we look at how do we make fair and safe elections. And I think that's where you start to look and see what is the appropriate way to make sure that we are having fair and safe elections and not negatively impacting people for a typo or a misprint. And so it's very frustrating that the auditors are going to be overwhelmed and cumbered with possible typos or misprints on there even if they know the individuals. And I know we have had discussions - members of our party has had discussions with members of yours about some of these issues and they have not been addressed, and it's disappointing. I think you could have done something like this to have fair and safe elections but also trust your auditors to do what's the most fair and efficient way for that process. [12:33:28 PM]

Hence, I get back to my initial question: What problem are we trying to fix? What is the problem? We need to think long and hard about what problem is trying to be fixed here.

Thank you, Mr. Speaker.

THE SPEAKER: The Chair recognizes the lady from Wapello, Rep. Gaskill.

REP. GASKILL [12:33:55 PM]: Thank you, Mr. Speaker. And in an effort to save some time for others, I will make this short. As being a previous county auditor, this is a voter suppression amendment. Iowa voters deserve better from this general assembly. Vote no on this amendment.

THE SPEAKER: The Chair recognizes the lady from Clinton, Rep. Wolfe.

REP. WOLFE [12:34:30 PM]: Thank you, Mr. Speaker. Ladies and gentlemen, there is no evidence of substantive voter fraud either in person or by absentee voting in Iowa. Rep. Mohr, you said you were not aware of any substantive problems with our most recent election as far as absentee ballots, voting by mail was concerned. And you all better find some evidence because when this law is challenged, which it will be, you're going to need to prove that there is a legitimate government concern problem that justifies restricting a fundamental right, which is the right to vote. And make no mistake, this law is going to end up effectively preventing some Iowans who are eligible to vote from voting.

Ask your auditors. They will tell you that, that because this puts additional hurdles in the way of auditors to get ballots back to their constituents who want to vote. It is effectively voter suppression.

Now, if there was a problem, it's possible that our court system may say well, sure. Some eligible voters aren't going to be able to vote but we've got a problem, folks. There's evidence, there's documentation, we've heard testimony that here in Iowa, people are fraudulently voting by mail and so the fact that some, maybe quite a few Iowans aren't going to end up being able to vote because of this law, that's okay because the ends justify the means. We've got to protect the integrity of the ballot box. But there is no such evidence. [12:36:35 PM]

And so the means that you are instituting here are not justified by the ends because there is no problem that needs to be fixed. There are no reports saying there is a problem here in Iowa. I've heard no testimony that there's a documented problem. I've heard lots of conjecture. I've heard lots of anecdotal stores about somebody's neighbor, but there's no reports. And without that, you aren't going to be able to win a court challenge. And so we're going to tie up our courts, our district courts, our supreme courts, in another challenge which you -- which the

state will lose. And what is the cause of your championing here? We are championing the ability to suppress the vote.

Rep. Kaufman, you mentioned a court case and I didn't understand exactly what you were talking about, and you may or may not have a chance to tell us all about it a little later. Here's what I know. That there was a court case not too long ago, the League of Latin American Citizens of Iowa v. the Iowa Secretary of State, in which the district court judge did strike down a few provisions of the voter ID law that y'all passed but did in fact sustain the concept of the requirement of a voter ID, but the judge pointed out that auditors were allowed to use the best means possible under Iowa Code in order to fill in a missing ID number on an absentee ballot request. The ruling goes on to point out that despite the requirement the county auditors use the best means available, the Secretary of State adopted a rule providing the auditors may not use the voter registration system to obtain the information.

So for a while there, there was an administrative rule that kept auditors from doing what you're trying to keep them from doing with this law, but the district court actually entered a permanent injunction on the enactment of the administrative rule on the enforcement of that rule,

finding it to be unreasonable, arbitrary, capricious and an abuse of discretion. [12:39:22 PM]

So that's why we're here because our Secretary of State got his unreasonable and arbitrary rule that was based on absolutely no documentation or evidence that it made sense or was necessary, he got that enjoined by a district court judge, so now we're going to see what happens if we put it into Code and the same thing is going to happen.

Without documentation of a substantive problem that the government needs to address, we have no right to be doing things to be passing laws that will effectively suppress voters from voting, and that's what this bill does. And that's fine. We can handle it in litigation, but it would be nice if y'all had talked to your auditors. I talked to my auditor. My auditor is Clinton County Auditor, Eric Van Lancker, and I am willing to swear on whatever you want me to swear on that nobody in this chamber cares more about the integrity of the ballot box than Clinton County Auditor Eric Van Lancker. He waxes eloquent on it. He cares about it -- I don't think more than his children, but probably almost as much.

And I've discussed this proposal with him, this amendment. He is, in my opinion, disgusted with it. He is appalled and he has told me that he knows that there is absolutely no substantive problem with voter security in Clinton County that will be addressed by this amendment. It's not necessary. He has told me that it will slow down their ability to get ballots to voters, to eligible voters. He has told me that that inevitably means it is certainly possible, in my opinion, almost certain, that some eligible voters will not vote. In order and all because you're trying to fix a problem that you don't have any evidence exists here in Iowa. **[12:41:37 PM]**

There's a few other problems with this bill -- or this amendment, some technical ones. Rep. Olson, will you yield for a question?

THE SPEAKER: Will the gentleman yield?

REP. OLSON: Yes.

THE SPEAKER: You're in order, Rep. Wolfe.

REP. WOLFE: Thank you, Mr. Speaker.

Rep. Olson, in Division 31 on the proposed amendment on the division that mucks around with our Code involving voting rights, on page 52, the top of the page, it gives an auditor 24 hours after the receipt

of the absentee ballot request to contact the application by telephone or electronic mail -- or by email. So he has 24 hours after they get the ballot -- or after they get the ABR to make that contact. In your opinion, what would happen if that ballot comes in on, say, Friday afternoon. They know that it's missing some information but it's 5:30, 6 o'clock and they have to go home, so the next time they look at it is on Monday. What would happen if they don't get that contact out within 24 hours?

REP. OLSON [12:43:06 PM]: Thank you, Rep. Wolfe. Words matter. Drafting matters. There is a directive that the auditor has to, within 24 hours, contact the individual, the applicant for the absentee ballot. He or she has a 24-hour window upon, I think the language and Rep. Kaufman was going to read it to Rep. Breckenridge, but I have read it. And it looks like it indicates that you have 24 hours after the receipt of an absentee ballot. It doesn't say after you've opened the absentee ballot. It's receipt. So when that ballot comes in on a Friday, the auditor has received it. They have 24 hours to respond and if they don't, within 24 hours, the way I read this, because words do matter, they are then barred or banned from contacting that applicant that has information that may not be accurate.

So not only is this a direct voter suppression amendment, it also is an indirect voter suppression amendment.

REP. WOLFE: And would you agree that issue probably could have been addressed fairly simply by changes --

THE SPEAKER: Rep. Wolfe? Rep. Wolfe, your time has expired.

REP. WOLFE: Thank you. Thank you, Rep. Olson.

THE SPEAKER: The Chair recognizes the gentlemen from Lynn, Rep. Staed.

REP. STAED [12:44:41 PM]: Thank you, Mr. Speaker. Here we are with a fictitious concern. We have no factual evidence, no report, no reason to make it more difficult for voters to vote. Imaginary fear when we have real fears for COVID-19 which members here don't think kill anyone. We have budget issues for the economy in the next year. We passed that on to others in the Department of Management and to the Governor. We have serious climate issues, carbon dioxide. None of those things from the beginning of this session dealt with effectively.

So what are the -- what is the reality? I want to tell you about the reality. It's a suppression. My mother-in-law, Lucille, which many of you know, has been here to the legislature over the past few years. She's 95.

And with the COVID virus, she was too exposed where she was living, so she moved with us to protect her from exposure to COVID. Then along come the primary, time to vote. She wanted to fill out an absentee ballot. 95 years old. I got to tell you, the elderly sometimes make mistakes. She doesn't drive, hasn't driven for several years because she's 95 and had issues with driving, so she was given an ID number a year ago -- almost a year. She couldn't find the ID number. She didn't know the ID number. She wouldn't know where her card was. The reality is that thousands of Iowans will be in that similar situation because of previous obstacles.

Mr. Speaker, would Rep. Hinson yield to a question?

THE SPEAKER: Is the lady in the chamber? I do not see the lady from Lynn, Rep. Staed.

REP. STAED [12:47:39 PM]: Thank you. I wish to ask her what her response would be to her constituent, my mother-in-law, Lucille, about the more difficulty that she might have. She was extremely distressed. And if it hadn't been for my wife and I, our assistance to help her find that information, get hold of the auditor's office, get the ID number on the card, or she would not have voted.

During the early parts of the COVID -19 in March and April, I spoke to hundreds, hundreds of the elderly -- of my constituents who were elderly. They were concerned about voting as well. They were delighted that they had an option to vote by mail. I would ask why, if she made a simple mistake, would all of this jeopardize her ability to vote, make it more difficult for her to vote, when she has voted for 30, 40, 50, 60, 70 years. There's no question in the voter registration data who she is. And if an auditor can look at that database and that information and provide the information needed without putting more undue burden on her or the other tens of thousands of elderly in this state, why are we imposing this when there's no facts, no data, nothing to support this at all except an imaginary fear that there's something about security of our voting, something that is blatantly false.

And I believe -- this is not my opinion, I believe this is the opinion of the 30,000 voters in my district, and my voice today represents them, and I object to this on their behalf. We have an opportunity to stop this amendment now and get back to reality. Thank you, ladies and gentlemen of the House.

THE SPEAKER: The Chair recognizes the gentlemen from Marshall, Rep. Smith.

REP. SMITH [12:50:33 PM]: Thank you, Mr. Speaker. Good afternoon, Mr. Speaker, ladies and gentlemen of the House.

First of all, this seems ironic to me that we are suppressing the debate on the bill that suppresses Iowans' right to vote. I wonder if Rep. Wolfe would yield for some questions.

THE SPEAKER: Will the lady yield? You're in order, Rep. Smith.

REP. SMITH: Thank you, Rep. Wolfe. I just wanted to follow up that you were having an exchange with Rep. Olson, and I felt that you probably had the answers to the questions and were trying to make a point and you ran out of time. So I wanted to check and see what that point was that you were making.

REP. WOLFE: Well, I appreciate that, Rep. Smith, but to be honest, how about if you ask Rep. Olson to yield because I think he will do a better job of making the point than I will. But thank you for the opportunity. But ask -- ask Rick.

REP. SMITH: Thank you, Rep. Wolfe. Mr. Speaker, I wonder if Mr. Olson would yield for some questions.

THE SPEAKER: Will the gentleman from Polk yield?

REP. OLSON: Thank you, Mr. Speaker.

THE SPEAKER: You are in order, Rep. Smith.

REP. SMITH: Rep. Olson, did you understand the question that Rep. Wolfe was asking you about the information that was needed on those forms and you were saying that you had read that section and the concerns that you had.

REP. OLSON: Yes, I did indicate that I had concerns because there is a -- we call it in the legal realm, there's a condition precedent that has to occur before the auditor can act upon a ballot request that somehow has an error on it, and that condition precedent is that auditor has to act within 24 hours of receipt of the application for that ballot. There are going to be all types of instances where a ballot is received and the auditor can't get to it within 24 hours. If the auditor doesn't follow up within that 24 hours, doesn't send something out, the applicant is not going to know that their ballot request was in some way compromised.

REP. SMITH [12:52:49 PM]: So, Rep. Olson, I'm trying to -- I think that -- I want to relate this to the bill, that for most professions, there is a division of responsibility in terms of one division is best practices, second

division is acceptable practices, and then the third division is -- well, actually, there are four divisions -- the third division is questionable practice, and then finally we get into unethical practice. So what would be best practice when the auditor receives that ballot on a Friday at 4:29 p.m., that they stay and they make sure that they have satisfied those concerns within the 24-hour period; is that correct?

REP. OLSON: In theory, that would be correct. In practice, I don't think that's the way it's going to work.

REP. SMITH: Okay. And so what are the penalties for the auditor? Do you see any penalties for the auditor if they don't meet that obligation within the 24-hour period?

REP. OLSON: There are no penalties for the auditor. The only way that the auditor could accurately address this statute and not suppress a vote is to bring in employees, pay them overtime to go through ballots that may have -- ballot requests that may have showed up late on a Friday afternoon or on a Saturday after mail delivery.

REP. SMITH: Which then that overtime to accomplish that objective falls on the property taxpayers of that county who are funding those elections; is that correct?

REP. OLSON: Most certainly.

REP. SMITH: All right. Thank you, Rep. Olson. I thought that that was an important point for us to have clarified as we understand what a problem that is -- that causes for the 99 elected officials across this state who have a responsibility to make sure that our elections are handled in a fair and just manner.

I would conclude my remarks with something that galvanized the nation movement before on these issues, and I will say it to all people in Iowa who want fair elections: We shall overcome this bill. Thank you, Mr. Speaker.

THE SPEAKER: The Chair recognizes the lady from Story, Rep. Wessel-Kroeschell.

REP. WESSEL-KROESCHELL [12:55:10 PM]: Thank you, Mr. Speaker. Thank you, ladies and gentlemen of the House.

This is such a sad day. Our right to vote is so precious. I remember it was just a few years ago that the county -- or the Secretary of State -- I don't even remember which one it was -- but he spent \$86,000 researching voter fraud. And guess what he found? Nothing. There is no -- we do not have voter fraud in this state. We do have a problem

getting people to the polls. We do have a problem with people not voting. We have no, no identified cases of people requesting an absentee ballot and somebody else voting for it.

I've told this story before but I'm going to tell it again. It's from a friend of mine and a constituent. It says I grew up in Argentina in the 70s and 80s. Most of those years the country was under a military dictatorship and I had no voice. When I came to the U.S., I learned to appreciate the awesome and humbling democratic exercise of casting our vote. The vote gives equal voice to everyone, not just the powerful or the rich. He ends it with a quote from Congressman and Freedom Rider John Lewis. The right to vote is precious and almost sacred and one of the most important blessings of our democracy. Today we must be vigilant in protecting that blessing, end of quote.

We need to be vigilant in protecting that right. My friend ends this with, if you are afraid to protect that right, you don't deserve to be in public office. Thank you.

THE SPEAKER: The Chair recognizes the gentlemen from Johnson, Rep. Jacoby.

REP. JACOBY [12:57:47 PM]: Thank you, Mr. Speaker. Mr. Speaker, ladies and gentlemen of the House. First of all, with the time ticking down, I want to say Dad, I'm sorry. You see, my dad was not a partisan person. In fact, he is more than nonpartisan. He hated Democrats and Republicans equally. I'm pretty sure he voted for Pat Paulsen twice. But as a Korean war veteran, he would tell me that voting -- voting -- voting is the key to our democracy.

Now in the midst of a pandemic and economic crisis, in a time when the President has called the virus a hoax, while one thousand -- 120,000-plus Americans have died, we've dealt with the crisis here in Iowa and there's some things that we've learned. One thing we've learned is that Telehealth is pretty darn important and that we should fund it, reimburse it at 100 percent. We've learned that there's opportunities for school innovation but also how important it is that classes are held in person. We've looked at incarceration rates and found out hey, wait a minute -- we're locking up far too many people. We've described what essential workers are the health professionals, the grocery clerk who checks you out every day. We've dealt with some cumbersome regulations. We've identified protections. We need better pay for nurses,

for clerks, for all medical professionals and again, those grocery clerks. And it's a priority for public safety. We found out there's a need for broadband in both rural and urban areas, a common denominator. We also found out that the Secretary of State stepped up in a magnanimous way and sent out requests out to every eligible voter -- every eligible voter, someone who had registered to vote, at their home address, verified, proven, and opted to give us a way to vote with a paper trail. Not a voting machine purchased in China by the President's daughter --

THE SPEAKER: Rep. Jacoby, we've reached 1 o'clock. The Chair will now recognize - we will now recognize Rep. Mohr for closing comments on Amendment H-8317.

REP. MOHR [1:00:26 PM]: Thank you, Mr. Speaker. I'll be very brief, but there's just a couple of comments I want to make regarding what I've heard in our discussion today.

Rep. Staed, you confused me. You said because of your mother -- because of COVID-19, your mother lives with you but votes in Rep. Ashley Hinson's district. Hmm.

Secondly, I want to remind the body that this whole discussion is not about absentee voting because of the thousands and thousands of

absentee ballots that are cast and the applications are filled out, this amendment doesn't apply. It only applies to those absentee ballot requests that are incomplete and don't provide all the information required on the application.

And third and finally, I've been asked many times today what problem is it we're trying to fix, and I've listened to every one of you. But I want to make an analogy for you of what I've heard today. Jane and I - my wife and I have been married for 46 years. We've been blessed to never have a home burglary. But what I've heard today, from particularly my friends on the other side of the aisle, to say Gary, you don't need to go buy an alarm system or a home security system because you have 46 years of history of never needing it.

Ladies and gentlemen of the House, we don't just pass legislation based on what's happened historically. But I might go buy a home security system not because of the history of 46 years of never needing it, but I might want to protect my family and my wife and myself for the future.

In my response to Rep. Meyer early on in this debate, I said this is not an absentee ballot suppression issue; it's an absentee ballot - it's a

voting security issue, just like that home security system. I may never have had a need for it for 46 years, but I might wake up today at 68 and say, you know what? For the future of our security, I might need to buy one now. That's what this amendment does very simply.

Mr. Speaker, I move the amendment.

THE SPEAKER [1:03:20 PM]: The gentleman moves the Amendment H-8317. Division of record has been requested. The gentleman from Woodbury, Rep. Hall; seconded by the lady from Cerro Gordo, Rep. Steckman. This is now a record rollcall vote. The clerk will open the machine and receive your vote.

(Vote not transcribed)

THE SPEAKER: Have you all now voted? The clerk may close the machine. The House will pay attention to the results. Those voting aye 51, no 41, absent or not voting 8. The amendment is adopted.

We are now moving -- final pass -- The question now is shall the bill pass? Those in favor of passing shall vote aye, those opposed shall vote no. The clerk --

Please state your objection, Rep. Hunter.

REP. HUNTER [1:05:32 PM]: I move that the title of the bill be changed to an act relating to state and local finances by making appropriations, providing for legal and regulatory responsibilities, providing for another voter suppression activity, and including effective dates and retroactive applicability provisions. And I would move for a record on -- division and a record.

THE SPEAKER [1:05:57 PM]: Rep. Hunter moves his motion to change the title. He's asked for a division and record, and it's been seconded by the lady from Polk, Rep. Konfrst. This is now a record roll call vote. The clerk will please open the machine and record your vote.

(Vote not transcribed)

THE SPEAKER: Have you all now voted? Those voting aye 40, those voting no 52, absent or not voting 8. The motion has failed.

We are now on final passage of the bill -- final passage of HF 2643. Will the clerk please -- All those who vote in favor vote aye -- but the clerk will read first.

THE CLERK [1:07:22 PM]: HF 2643, a bill for an act relating to state and local finances by making appropriations, providing for legal and regulatory responsibilities, providing for other properly related matters,

and including effective date and retroactive applicability provisions to be enacted by the general assembly of the State of Iowa.

THE SPEAKER: The question now is shall the bill pass? All those in favor shall vote aye, those opposed shall vote no. The clerk will open the machine and receive your vote.

(Vote not transcribed)

THE SPEAKER [1:08:10 PM]: Have you all now voted? The clerk will close the machine. The house will pay attention to the results of the vote. Those voting aye 51, no 41, absent or not voting 8. The bill, having received a constitutional majority, is declared to pass the House. Any objections to the title? The Chair hears none. The title is agreed to.

(End of transcription)

DECLARATION OF LOUIS J. ZUMBACH

I, Representative Louis J. Zumbach, declare the following is true and accurate under penalty of perjury:

1. I am the Iowa State Representative for the 95th District. I have represented the 95th District in the House since 2017. During the 88th General Assembly, I served as Chair of the Administration and Rules Committee, and Vice Chair of the Administration and Regulation Appropriation Subcommittee. I also served on the Agriculture, Economic Growth, Natural Resources and Ways and Means Committees.
2. I have introduced, debated and voted on numerous bills, including appropriations bills, in the Iowa House over the course of my tenure and am familiar with the normal procedures for changing Iowa law.
3. Ordinarily, a bill originating in the Senate becomes law using the following procedures. A bill also may originate in the House, and then the procedure is reversed.
 - a. The bill is introduced and read into the Senate by a Senate member;
 - b. The bill is assigned to a committee, whose chair will assign it to a subcommittee;
 - c. The subcommittee will hold a hearing for members of the public—the only opportunity for voters in Iowa to comment on the legislation under consideration;
 - d. Thereafter, if the bill is approved by a majority of the three members of the subcommittee, it will go to the full committee for debate, who will then recommend passage, passage with amendment or some other action;
 - e. If a majority of the committee approves the bill, it will then be ready for debate on the Senate floor;
 - f. If the bill is passed by a record vote in the Senate and 26 Senators approve the bill, it will be sent to the House to follow the same process;

g. If the bill is amended by the House, it will return to the Senate, to ensure the full bill does not become law until it has been voted on in full by both chambers in the same identical form in each chamber; and

h. After the bill passes in both chambers, it goes to the Governor for the Governor's signature.

4. My understanding is that Division XXXIII containing a right of first refusal for incumbent transmission owners to construct, own and maintain electric transmission lines came through a Senate amendment to H.F. 2643, the appropriations bill for the fiscal year 2021.

5. Division XXXIII did not go through the ordinary process outlined above.

6. The method by which Division XXXIII of H.F. 2643 was passed does not conform to usual procedures for the passage of laws in the State of Iowa. Division XXXIII's right of first refusal language during this session never went through a subcommittee hearing for public comment, was not subjected to a subcommittee vote, was never presented to the full committee for debate and did not receive a committee recommendation.

7. The first time I heard of Division XXXIII was about seven to ten days prior by a lobbyist. He asked me for a few minutes of my time, and asked me if I had ever heard about Division XXXIII and told me to look at it with an open mind. I was polite, and told him I would sit down and talk with him, but I later told him that I was not his guy. At the time, I understood that the lobbyists were still trying to have Division XXXIII passed as its own bill. I do not believe they had the votes to do so.

8. Then, I was shocked to see Division XXXIII in the appropriations bill. My first notice that Division XXXIII was attached to the appropriations bill was at 8 a.m. the morning of June 14, 2020, when I came to caucus.

9. Division XXXIII took me and other legislators by surprise, as the only measures similar to Division XXXIII had not passed on their own merit out of the House.

10. Additionally, Division XXXIII took me by surprise because the title of H.F. 2643 was not amended after Division XXXIII's addition to the bill. The title gave no fair notice to me that a right of first refusal for incumbent electric transmission owners was contained within the bill.

11. Division XXXIII was not vetted through the House committee process and did not pass this session. The language of Division XXXIII was never voted on in committee this legislative session. During the 88th General Assembly, H.S.B. 540, which contained a right of first refusal, was assigned to subcommittee, but a subcommittee meeting was never held. H.S.B. 540 was not vetted through any committee process and never even made it to the House floor.

12. When H.S.B. 540 was not voted on in committee, other legislators and I considered the measure dead. I even confirmed this with the Commerce Chair that it was gone, before leaving for COVID. So when interested constituents asked me about it, I was able to tell them it was not going anywhere.

13. During the 87th General Assembly in 2018, S.F. 2311, an omnibus energy bill, came to the House and right of first refusal language was removed prior to passage.

14. It is my understanding right of first refusal language was removed from S.F. 2311 because it lacked sufficient votes to secure its passage.

15. Neither H.S.B. 540 nor S.F. 2311 was identical to the language of Division XXXIII. Division XXXIII contained newly drafted language never before seen by legislators, interested parties or the public.

16. Because of the manner in which Division XXXIII was introduced, the public, other members of the legislature and I were deprived of the opportunity to be fully informed of Division XXXIII's ramifications. Division XXXIII's introduction through the appropriations bill in the

House just a few hours prior to passage on a weekend did not allow sufficient time to consider its scope or effect.

17. For example, constituents and legislators like myself were deprived of the opportunity to hear from experts regarding fiscal or other significant impacts a right of first refusal may have on Iowa citizen ratepayers and other utilities.

18. As a result of the way in which Division XXXIII was introduced and passed, neither chamber was able to meaningfully debate the substance of the bill and the public was deprived of opportunity to provide comment or engage with representatives on Division XXXIII's substance.

19. Prior right of first refusal bills in different forms than Division XXXIII were heavily lobbied by electric transmission owners and other interested parties. They were reported by the news media, and Iowa citizens had the opportunity to contact and communicate with their legislators about the proposed legislation. For example, I received several letters in opposition to H.S.B. 540, and I was able to tell them it was not going to be passed.

20. The soonest even the most engaged Iowa constituent or interested party could have learned that Division XXXII had been stuck in the appropriations bill was after midnight on the last day of the legislative session, when the bill was introduced publicly on the Senate floor.

21. There is no doubt in my mind that the right of first refusal was never going anywhere before it was stuck into Division XXXIII of the appropriations bill. I am confident that had Division XXXIII gone through the normal legislative process as a stand-alone bill, it would not have passed.

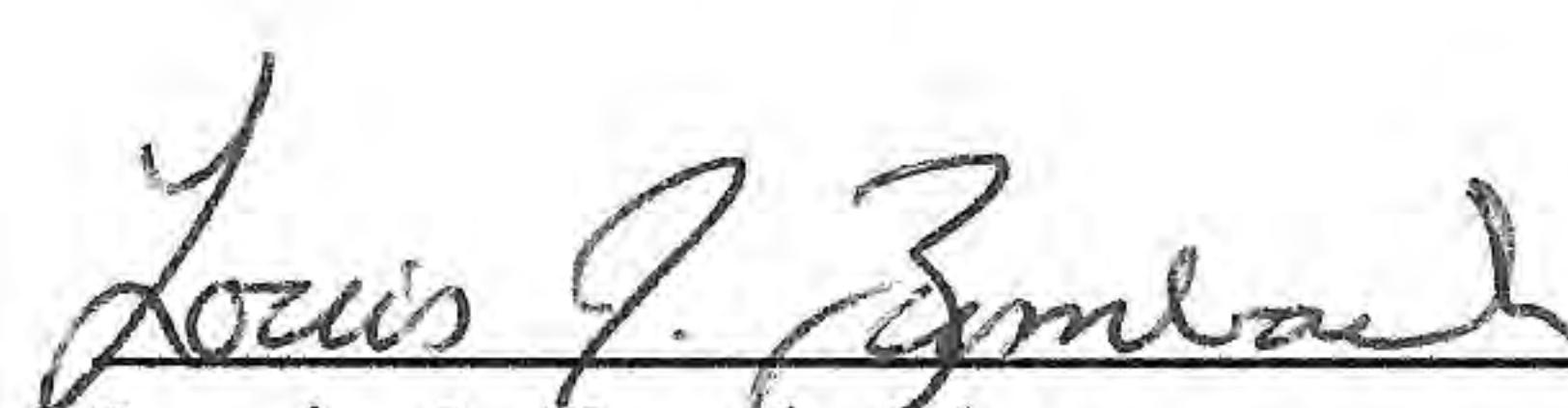
22. When Division XXXIII was proposed and passed, it was not only the final day of the legislative session, but it was a Sunday, June 14, 2020. This was a highly unusual process. When legislators returned for the final 10-day resumed session in the midst of the COVID-19

pandemic, the 2021 appropriations budget was the major task that needed to be completed, and there was significant pressure on legislators for its passage. I believe the threat of delaying the budget bill contributed to pressure to pass Division XXXIII a substantive rider.

23. When I was present at caucus beginning at 8 a.m. on June 14, 2020, I was told by the powers that be that we had to pass Division XXXIII because the Senate had to have it. All Republican representatives present were told that if Division XXXIII was not passed, we would need to return in August. I knew that one of my fellow representatives had a surgery scheduled, and so we could not stay another 4-5 days to get it straightened out in June. At that point, I left caucus. I ultimately voted against the bill.

24. The subject of a right of first refusal in electric transmission lines has no reasonable relationship to the appropriations or other topics contained in H.F. 2643. I believe Division XXXIII was attached as an undesirable rider on the final date of the legislative session to secure its passage.

Further Declarant sayeth naught.



Louis J. Zumbach

Nov 10 2020
Date

DECLARATION OF NATE BOULTON

I, Senator Nate Boulton, declare the following is true and accurate under penalty of perjury:

1. I am the Iowa State Senator for the 16th District. I have represented the 16th District in the Senate since 2017. During the 88th General Assembly, I served on the Local Government and Natural Resources and Environment Committees, and the Transportation Infrastructure and Capital Improvement Budget Subcommittee.

2. I have introduced, debated and voted on numerous bills, including budget appropriations bills, in the Iowa Senate over the course of my tenure and am familiar with the normal procedures for changing Iowa law.

3. Ordinarily, a bill originating in the Senate becomes law using the following procedures:

- a. The bill is introduced and read into the Senate by a Senate member;
- b. The bill is assigned to a committee, whose chair will assign it to a subcommittee;
- c. The subcommittee will hold a hearing for members of the public—usually the only formal opportunity for voters in Iowa to comment on the legislation under consideration;
- d. Thereafter, if the bill is approved by a majority of the three members of the subcommittee, it will go to the full committee for debate, who will then recommend passage, passage with amendment, or some other action;
- e. If a majority of the committee approves the bill, it will then be ready for debate on the Senate floor;
- f. If the bill is passed by a record vote in the Senate and 26 Senators approve the bill, it will be sent to the House to follow the same process;
- g. If the bill is amended by the House, it will return to the Senate, to ensure the full bill does not become law until it has been voted on in full by both chambers in the same identical form; and
- h. After the bill passes in both chambers, it goes to the Governor for the Governor's signature.

4. Division XXXIII, containing a right of first refusal for incumbent transmission owners to construct, own and maintain electric transmission lines, was introduced through omnibus Senate amendment S-5163 to H.F. 2643, the appropriations bill for the fiscal year 2021.

5. Division XXXIII did not go through the ordinary process outlined above. During this legislative session, it never went through a subcommittee hearing with public comment, was not subjected to a subcommittee vote, was never presented to the full committee for debate and did not receive a committee recommendation.

6. I was present on the Senate floor on June 14, 2020 at 1:31 a.m., when S-5163 was taken up for the first time. I have read my statements from the early morning hours of June 14 regarding amendment S-5163. I affirm my statements were true and correct to the best of my knowledge when they were made.

7. I indicated on the Senate floor that many of my colleagues and I did not see Division XXXIII coming. This is correct. The first time I heard about Division XXXIII was when the amendment was officially published around midnight ahead of the floor debate on H.F. 2643.

8. Division XXXIII took me and other senators by surprise. I had no indication a right of first refusal for incumbent electric transmission lines would be introduced, taken up, or voted on this session. I had not previously seen, nor had the opportunity to review and debate any of the language in Division XXXIII during the current legislative session prior to its introduction in the early morning hours of June 14, 2020.

9. During debate, there were several statements made by Senator Breitbach, the amendment's sponsor, that I feel were inaccurate that misled me, other legislators, and the public listening in. While I do not believe Senator Breitbach intentionally misled anyone, as the floor

manager of the bill he seemed to have very limited information, some of which was inaccurate, about the language presented in Division XXXIII.

10. For example, I asked Senator Breitbach what the purpose was of Division XXXIII with the intent any constituent watching live at 2:44 a.m. would know the effect of the proposed law. Senator Breitbach represented Division XXXIII allowed an open bidding process, and an incumbent utility had the option to match the price of the lowest bidder. Upon review, that is not the process provided by Division XXXIII.

11. I was also present when Senator Breitbach explained on the floor that a bill similar to Division XXXIII was passed in the House this session. In fact, I later discovered H.S.B. 540, the bill to which Senator Breitbach was likely referring, never made it out of subcommittee. Rather, I have since learned that measures similar to Division XXXIII had never passed in the House on their own merit.

12. Additionally, I asked Senator Breitbach how frequently the right-of-first refusal would be at issue. Senator Breitbach provided two vague examples and told me it could happen “quite often,” but did not provide any detailed statistical data, expert testimony, or concrete narrative. Having no other information available and due to the short timeframe, I and my Senate colleagues had no choice but to rely on Senator Breitbach’s statements.

13. Based on the manner Division XXXIII was introduced, legislators were deprived of the ability to accurately discuss, debate, or fully understand the bill prior to voting, including the bill’s ramifications and potential effects. For example, constituents and legislators like myself were deprived of the opportunity to hear from experts regarding fiscal or other significant impacts a right of first refusal may have on Iowa citizen ratepayers and other utilities.

14. Additionally, the public was deprived of opportunity to provide comment or engage with representatives on Division XXXIII's substance.

15. Prior right of first refusal bills in different forms were heavily lobbied by electric transmission owners and other interested parties. They were reported by the news media, and Iowa citizens had the opportunity to contact and communicate with their legislators about the proposed legislation. Because no subcommittee was held on Division XXXIII this session, constituents, including interested incumbent and non-incumbent electric transmission owners, had no opportunity to provide comment in person or in writing.

16. Constituents similarly had insufficient time to contact legislators due to the short window between introduction and passage; many members of the public did not hear of Division XXXIII it was too late.

17. The soonest even the most engaged Iowa constituent or interested party could have learned of Division XXXII was in the early morning hours on the last day of the legislative session, when the bill was introduced publicly on the Senate floor. The approximately four-hour window between Division XXXIII's introduction and its passage in the Senate, from approximately 1:30 a.m. until 5:45 a.m. on a Sunday morning, was insufficient for legislators to receive or understand any constituents' comments.

18. I feel confident that had Division XXXIII been introduced by ordinary legislative processes, a substantial number of Iowans and interested parties would have contacted their legislators or otherwise submitted comment on the bill in opposition to Division XXXIII.

19. Both the public and legislators lacked adequate notice of the contents of the legislation.

20. It is my belief that the subject of a right of first refusal in electric transmission lines has no reasonable connection to the appropriations or other topics contained in H.F. 2643. Division XXXIII was a substantive policy provision attached to H.F. 2643, an appropriations bill.

21. When legislators returned for the final 10-day session in the midst of the COVID-19 pandemic, the 2021 appropriations budget was the major task that needed to be completed, and there was significant pressure on legislators for its passage. I believe the threat of delaying the budget bill contributed to pressure to pass Division XXXIII a substantive rider.

22. I believe Division XXXIII was attached as an undesirable rider on the final date of the legislative session to secure its passage.

23. I believe it is possible that had Division XXXIII been proposed as a stand-alone bill and gone through the appropriate legislative process, it would not have passed.

Further Declarant sayeth naught.



Nate Boulton

12 November 2020

Date

DECLARATION OF TONY BISIGNANO

I, Senator Tony Bisignano, declare the following is true and accurate under penalty of perjury:

1. I am the Iowa State Senator for the 17th District. I have represented the 17th District in the Senate since 2014. During the 88th General Assembly, I served on the Commerce and Judiciary Committees, and was a ranking member on the Government Oversight Committee and State Government Committees. I also serve on the permanent statutory committees for the Public Retirement Systems and State Government Efficiency Review.

2. I have introduced, debated and voted on numerous bills, including budget appropriations bills, in the Iowa Senate over the course of my tenure and am familiar with the normal procedures for changing Iowa law.

3. Ordinarily, a bill originating in the Senate becomes law using the following procedures:

- a. The bill is introduced and read into the Senate by a Senate member;
- b. The bill is assigned to a committee, whose chair will assign it to a subcommittee;
- c. The subcommittee will hold a hearing for members of the public—usually the only formal opportunity for voters in Iowa to comment on the legislation under consideration;
- d. Thereafter, if the bill is approved by a majority of the three members of the subcommittee, it will go to the full committee for debate, who will then recommend passage, passage with amendment, or some other action;
- e. If a majority of the committee approves the bill, it will then be ready for debate on the Senate floor;
- f. If the bill is passed by a record vote in the Senate and 26 Senators approve the bill, it will be sent to the House to follow the same process;

g. If the bill is amended by the House, it will return to the Senate, to ensure the full bill does not become law until it has been voted on in full by both chambers in the same identical form; and

h. After the bill passes in both chambers, it goes to the Governor for the Governor's signature.

4. Division XXXIII, containing a right of first refusal for incumbent transmission owners to construct, own and maintain electric transmission lines, was introduced through omnibus Senate amendment S-5163 to H.F. 2643, the appropriations bill for the fiscal year 2021.

5. Division XXXIII did not go through the ordinary process outlined above. During this legislative session, it never went through a subcommittee hearing with public comment, was not subjected to a subcommittee vote, was never presented to the full committee for debate and did not receive a committee recommendation.

6. I was present on the Senate floor on June 14, 2020 at 1:31 a.m., when S-5163 was taken up for the first time. I have read my statements from the early morning hours of June 14 regarding amendment S-5163. I affirm my statements were true and correct to the best of my knowledge when they were made.

7. Division XXXIII took me and other senators by surprise. I had no indication a right of first refusal for incumbent electric transmission lines would be introduced, taken up, or voted on this session. I had not previously seen, nor had the opportunity to review and debate any of the language in Division XXXIII during the current legislative session prior to its introduction in the early morning hours of June 14, 2020.

8. During debate, there were several statements made by Senator Breitbach, the floor manager of the bill and the amendment's sponsor, that I feel were inaccurate and misled me, other legislators, and the public. Although Senator Breitbach's intent may not have been to misrepresent

Division XXXIII's nature, by his statements myself and my Senate colleagues were deceived about the history, the process, and the effect Division XXXIII would have on Iowa constituents.

9. For example, I asked Senator Breitbach during floor debate for a bill history on Division XXXIII. Senator Breitbach represented to me and other members on the floor, and to any public listening in, that Division XXXIII this year had gone through the full committee process and passed out of the House. When I pressed Senator Breitbach on this point, he informed me he would get back to me in fifteen minutes with information about what occurred on the bill in the House. The Senate stood at ease and deferred on the bill. Senator Breitbach never provided the requested information. In fact, I now know H.S.B. 540, the bill to which Senator Breitbach likely referred, was never even considered in subcommittee, contrary to Senator Breitbach's statements. I have since learned that measures similar to Division XXXIII had never passed in the House on their own merit.

10. I also asked Senator Breitbach who the interest was that drafted Division XXXIII for inclusion in H.F. 2643, because the last I knew of any right-of-first-refusal, it had died in a prior legislative session. Senator Breitbach was also the floor manager of the prior bill in 2018 and had knowledge of this issue. Senator Breitbach could not tell me who the interest was that drafted Division XXXIII. I still, to this day, have no idea who was seeking Division XXXIII or where the language came from.

11. I was present when Senator Breitbach told another Senator that Division XXXIII allowed an open bidding process, and an incumbent utility had the option to match the price of the lowest bidder. Upon review, that is not the process provided by Division XXXIII.

12. Additionally, when Senator Breitbach was asked how frequently the right-of-first refusal would be at issue, he could not provide any detailed statistical data, expert testimony, or concrete narrative.

13. Having no other information available and due to the short timeframe, I and my Senate colleagues had no choice but to rely on Senator Breitbach's statements.

14. Based on the manner Division XXXIII was introduced, legislators were deprived of the ability to accurately discuss, debate, or fully understand the bill prior to voting, including the bill's ramifications and potential effects. For example, constituents and legislators like myself were deprived of the opportunity to hear from experts regarding fiscal or other significant impacts a right of first refusal may have on Iowa citizen ratepayers and other utilities.

15. Additionally, the public was deprived of opportunity to provide comment or engage with representatives on Division XXXIII's substance.

16. Prior right of first refusal bills in different forms were heavily lobbied by electric transmission owners and other interested parties in previous sessions. Previous bills were reported by the news media, and Iowa citizens had the opportunity to contact and communicate with their legislators about the proposed legislation. Because no subcommittee was ever held on Division XXXIII this session, constituents, including interested incumbent and non-incumbent electric transmission owners, had no opportunity to provide comment in person or in writing.

17. The soonest even the most engaged Iowa constituent or interested party could have learned of Division XXXII was in the early morning hours on the last day of the legislative session, when the bill was introduced publicly on the Senate floor. The approximately four-hour window between Division XXXIII's introduction and its passage in the Senate, from approximately 1:30

a.m. until 5:45 a.m. on a Sunday morning, was insufficient for legislators to receive or understand any constituents' comments.

18. I feel confident that had Division XXXIII been introduced by ordinary legislative processes, a substantial number of Iowans and interested parties would have contacted their legislators or otherwise submitted comment on the bill in opposition to Division XXXIII.

19. Both the public and legislators lacked adequate notice of the contents of the legislation.

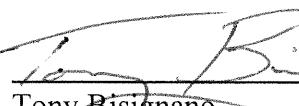
20. It is my belief that the subject of a right of first refusal in electric transmission lines has no reasonable connection to the appropriations or other topics contained in H.F. 2643. Division XXXIII was a substantive policy provision attached to H.F. 2643, an appropriations bill.

21. When legislators returned for the final 10-day session in the midst of the COVID-19 pandemic, the 2021 appropriations budget was the major task that needed to be completed, and there was significant pressure on legislators for its passage. I believe the threat of delaying the budget bill contributed to pressure to pass Division XXXIII a substantive rider.

22. I believe Division XXXIII was attached as an undesirable rider on the final date of the legislative session to secure its passage.

23. I believe that had Division XXXIII been proposed as a stand-alone bill and gone through the normal and appropriate legislative process, it would not have passed. Division XXXIII and similar provisions were never approved by the House Commerce Committee at any time, and in this session, the House Commerce Committee Chair Representative Gary Carlson never reported the study bill out of the subcommittee to which it was assigned. Representative Carlson was the subcommittee chair and never held a subcommittee meeting. The bill was simply never going to pass the House as a stand-alone measure.

Further Declarant sayeth naught.



Tony Bisignano

12-10-20

Date

3660779



June 16, 2020

The Honorable Kim Reynolds
Office of the Governor
State Capitol
1007 East Grand Avenue
Des Moines, Iowa 50319

Dear Governor Reynolds:

I write in support of HF 2643, Division XXXIII, regarding electric transmission lines and establishing the right of first refusal for incumbent transmission owners in Iowa. I firmly believe this is good policy for Iowa and for Iowa consumers because it ensures Iowans have the lead role in deciding where lines are built and how landowner preferences are considered. In the debate of which utility company has the right to build new transmission lines, it's important the voice of landowners is heard. Your approval of this policy will ensure that voice is heard.

ITC Midwest is an Iowa-based company with 118 employees, 234 contract utility line workers, and regional offices in Cedar Rapids, Des Moines, Dubuque, Iowa City, and Perry. Our long-term success is directly tied to our relationships with Iowa landowners. We have a history of effectively balancing project costs with landowner impacts, obtaining over 98% of land access through voluntary easements.

As an Iowa landowner, I am particularly sensitive to private property rights. When we site a new transmission line, every parcel of land must be reviewed by each member of the project team to identify any possible alternatives to condemnation. If no workable solution can be found, the parcel then lands on my desk for review and final approval prior to seeking eminent domain authority. We negotiate in good faith with landowners and exhaust all avenues, using eminent domain only as a last resort.

Allowing the Midcontinent Independent System Operator (MISO), an out-of-state entity, to competitively bid overlay transmission projects and simply accept the lowest bid shifts the decision-making authority away from the Iowa Utilities Board. It also prioritizes project cost over landowner impacts, not to mention design quality and system resiliency. Additionally, we already bid out the construction of each of these projects to make sure costs to build are competitive.

I invite you to ask the Iowa Utilities Board about ITC Midwest's approach to working with Iowa landowners. While we cannot make everyone happy, we have a track record of treating each landowner and their property with respect, and we do our best to find mutually agreeable solutions that allow us to provide reliable bulk electric service. Thank you for your consideration.

Sincerely,

Dusky Terry
President, ITC Midwest