

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1221

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1221

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1221

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 7, 2007

Recorder Job Number: 3023, 3031

Committee Clerk Signature

*Stephanie N Thomas*

Minutes:

**Chair Keiser** opened the hearing on HB 1221.

**Bob Graveline, Utility Shareholders of ND:** Support HB 1221. See written testimony #1.

**Rep. Zaiser:** Under this bill, how does individual, or smaller wind generated just apply to utilities?

**Bob:** This bill applies to rate regulated utilities in ND, which are Ottertail, MDU, and Excel Energy.

**Mary Mitchell, Dakota Resource Council:** Support HB 1221. See written testimony #2.

See proposed amendments 78234.0101 and 78234.0102.

**Rep. Zaiser:** What is meant by environmental Externality?

**Mary:** Environmental Externality is any extraneous cost that's not represented in the cost of the power.

**Rep. Keiser:** I think it's an issue that would contribute to cost that is not currently an official issue, but it could be in front of you in the future.

**Mary:** It is, for example, if there are waste issues associated with generating power, or pollution issues that really have to be addressed either by government, or someone will have to direct that later on. Sometimes people refer to it as hidden costs.

**Rep. Zaiser:** Are there anticipated future environmental costs?

**Mary:** Yes. In this particular group you also have possibilities of additional cost.

**Rep. Ruby:** You mentioned about tying the hands of the PSC, but would this also prevent the utility for figuring these costs in as they project them to be in the rates that they see in building, or buying, or creating a plant that now they would not be able to figure that into the rate in their recommendation to the PSC?

**Mary:** I do not believe so.

**Rep. Ruby:** This is an extra tariff that would be put on, in addition to the rate. On the other hand, there's times where those costs could be figured into the rate, and wouldn't need the extra tariff, and I was just wondering if this prevents that?

**Mary:** I don't believe so.

**Tony Clark, Public Service Commissioner:** Opposed to HB 1221. See written testimony #3  
See proposed amendment A.

**Rep. Keiser:** What's the Minnesota Legislature doing that has you so concerned?

**Tony:** There are a number of mandates and things that have passed Minnesota legislator's, for example, requiring that in the case of Excel that power be purchased from a specific plant built in a specific part of the State of Minnesota. Some legislator wished to have a power plant there, and so there will be a power plant with all these tax incentives, and they can pay Excel before they can find it, and why Excel shall buy X number of megawatts. Sometimes its things that clearly tip the balance of favor for Minnesota owned projects, to the exclusion of projects in ND. In this particular session, there are a number of bills in the Minnesota legislation to except stringent resource portfolios standards. Whether it's recognized in Bismarck, or not, there is clearly a regional battle going on, in addition to what energy production will look like in this region.

**Rep. Zaiser:** Do you think that based on that, they're definitely waiting on renewable fuels projects, is that what you're saying?

**Tony:** Sometimes its renewable fuels projects, sometimes its things like IGCC projects. There are different ways of approaching business.

**Rep. Zaiser:** One way to basically be mitigation in ND, it should be dealt in the long term to get a bigger piece of the pie. We should move it more aggressive in terms of renewables.

**Tony:** I think ND has been appropriately aggressive in renewables. If you look at the amount of wind towers that have come online in the last few years, and will be coming online probably in the next year, however I am committed to insuring that low cost power remains a priority for this state. The concern that I have is that the State of Minnesota is putting inside a lot of economics in favor of a political goal.

**Rep. Kasper:** Based on what you know about what the Minnesota legislature has currently enacted, and maybe on what they might enact, based upon the ramifications of this bill if it were to pass with the other amendments, do you have any idea of what percentage rate increases you might be looking at for ND citizens based on what they currently pay, and what they would have had to pay to absorb these costs that are trying to be passed onto ND citizens?

**Tony:** I don't have the answer to that today. I know that there are discussions going on about trying to get what that number is exactly. ND's retail rates right now are the 6<sup>th</sup> lowest in the country.

**Rep. Gruchalla:** The amendment to take out 49-02.23, is that something that you're in favor of? Do you think that section here ties your hands?

**Tony:** I would need to investigate a little more. An externality, my gut reaction to the problem probably wouldn't be in favor of that.

**Rep. Keiser:** Would you want Minnesota to have that capacity?

**Tony:** No. I think it could repeal, the commission itself could still through a rate making proceeding on our own choose to exclude this cost, if we find it to be unreasonable.

**Rep. Johnson:** To help me understand the externality, would it be like putting on a rate, something like subsidizing, is that what they are talking about?

**Tony:** As I understand it would say for power produced from lignite coal, the State of Minnesota financed that. There's not something reflected in this price. In the bidding of those projects, the utility companies go out to put together projects, then what happens is the coal plant looks before work, and their economical and competitive can be the low cost option. Suddenly, because of the externalities out there comes a higher cost source, and either that is passed on as a rate item, or probably more and likely the power plants.

**Rep. Zaiser:** Aren't there some real externality costs involved in fuel that basically are diminishing the effect on global warming, or releasing carbon into gas?

**Tony:** To the extent, there are environmental problems with certain sources of power, and there are environmental problems in all sources of power, whether it's hydra coal in solar, there are issues in all of them. I think it's better to go down the route of dealing with environmental standards and mandates, as opposed to trying to artificially add externalities on top of specific sources of power, because it's too easy for political games to get played.

**Rep. Zaiser:** So, that is definitely just costs that have been agreed upon, or defined by statute by federal mandates?

**Tony:** I believe that's the way to go.

**Rep. Kasper:** The Minnesota legislature is going along doing there business and they pass all these laws that are above the federal mandates. So, what their laws say is if you want to ship power in Minnesota, you've got to meet these Minnesota standards. We're here in ND

meeting all the federal standards, and the ND standards, but the Minnesota standards are higher, so therefore our plants in ND have to upgrade, or spend money to do what Minnesota legislature legislated, even though we didn't want to do it. Is that part of what the problem is here?

**Tony:** That's one facet of it. It ranges also in the new sources power.

**Rep. Keiser:** Electricity built on the grid; do you know where it came from?

**Tony:** Once electrons go on the grid, they go everywhere. From an accounting standpoint jurisdiction, you can allocate.

**Rep. Kasper:** What you can do, is you can actually know the source of the power. When you are part of a grid, you know what percentage came from where, and how many kilowatts, or megawatts came, so we absolutely can measure the source of it, which is where the problem is.

**Tony:** That's correct.

**Rep. Gruchalla:** In your opinion, how far is it that we're moving away from putting on a carbon tax?

**Tony:** I don't know.

**Rep. Keiser:** The real issue, the concern for you guys is Minnesota is going to require building in Minnesota.

**Tony:** This is a two part problem. One is that it tips the balance in favor of power produced in Minnesota, and often times that power is going to be more expensive, and that is a separate rate payer issue. Second, the commission needs to deal with it, and make sure that ND rate payers are insulated from decisions that cause a higher cost of power.

**Rep. Keiser:** Do you have the authority to do that?

**Tony:** I believe we do.

**Rep. Kasper:** You would be neutral on amendment A, as long as the other amendments are not adopted?

**Tony:** My initial reaction is I can't support amendments 78234.0101 and 78234.0102.

**Susan Wefald, PSC:** Opposed to HB 1221. See written testimony #4, and attached proposed amendment.

**Rep. Ruby:** On line 8 where it talks about the commission may approve, reject, or modify a tariff. Don't you believe that you'd still have the ability to look at the tariff to make sure there aren't some of the rate costs already figured in that to cover this? Do you have the ability to reduce it, or remove it if you saw that cost associated with the tariff were already included into the rates?

**Susan:** There's actually two parts to this. First, in line 8 as you've mentioned where the commission may approve, reject, or modify a tariff, however it doesn't want to pay what it's going to be covering, it's going to recover jurisdictional costs associated expenses, so the tariff with those type of expenses occurred by a public utility to provide with federal environmental mandates. I'm not going to be able to change it. I could probably tweak it. Second, is under section 3 lines 13-22 on page 2, if it complies with the tariff, then I have to allow it true, and I'm concerned that this isn't going to give me as much flexibility as I had.

**Rep. Zaiser:** Would this bill be a deterrent to the utilities for running their missions operation, in terms of environmental response to the cost for maintenance, operating costs? In other words, allow them to run inefficiently?

**Susan:** It could.

**Rep. Kasper:** If you go back to page 1 lines 12-15, the words any state law, does that mean ND only, or could it mean Minnesota state law the way this bill is written?

**Susan:** I believe it could be any state law.

**Rep. Kasper:** So, if Minnesota passes their regulation which says so on and so forth, which is over and above what the federal government requires, and ND law requires, but the utility says well Minnesota law made us do this, therefore we're going to pass the cost onto the ND consumers. Is that sort of what would happen with that brace?

**Susan:** It could be the phrase implementing the federal law, or rule could allow the commission some ability to say this is not implementing a federal law.

**Rep. Keiser:** I think what this is designed to do is if the Federal Clean Air Act says that you have till 2020 to do it, that a state may come in and say we would like you to do it by 2015, and implement the federal law earlier, and we're going to base that on a state regulation implementing the federal law at an earlier date, which would put a requirement of the producers in that state to do it earlier.

**Susan:** I understand that, and I want you to know that I'm opposed to the bill concept generally, but I could live with it if associated operating transmission was taken out.

**Rep. Keiser:** As you indicated, in section 3 you have the authority to require them to document, and prove it to you. In our company when we put a four color press in, our utility bill doubled. So, I can see putting a scrubber in, and you could document that to put that scrubber in there was associated costs to operate it, and that was over, and above what your costs were prior to that. Then the commission has to look at that and say if it's reasonable, and prudent.

**Susan:** An electric bill that goes up is one thing. Let's say they come to the commission and they say in order now for us to be able to operate, we need so many more new employees, or we're working on this different project, and this type are very much different to quantify then increasing an electric bill. I don't know how I'm going to get a handle on some of those operating expenses that they're coming in with, and to be able to make a decision on those.

**Rep. Keiser:** What's the difference then between them coming to you now, verses two years from now when they do a general rate filing, and they're going to come to you with the same information, and you're going to make a decision at that time?

**Susan:** I'm not sure they're going to come to me with the same information, and so that is my concern.

**John Doyer, Labor & Energy Council:** I'm not opposed to the bill, but I am opposed to the amendment that would strike out the externality values of those suggested by the Dakota Resource Council. This was a major battle in the 90's, the bill was enacted in 1995, but there was a major externality hearing that the State of Minnesota, and the State of ND intervened in, and basically rented to Minnesota from losing externalities out of the State of ND. What an externality value is basically is a future risk of regulation; the cost the regulatory body makes up, and decides that's what the cost would be. It really has to do more with resource selection. I don't quite understand the amendment, the two together, but I do understand the last part of what was repealed 29-02.23 which we'd be opposed to.

**Rep. Kasper:** Are you and your constituent members at all concerned with what I heard Commissioner Clark testify on with the Minnesota legislators process, which appears to be moving in the area of forcing plants to be built in Minnesota, which obviously then would mean that there would be less plants, and potential of less power being built in ND, which would not utilize you ND products?

**John:** Yes, we are concerned about that.

**Rep. Zaiser:** Do you think that we're beginning to operate in a new world, in terms of the development of energy, in terms of carbon dioxide, and what's happening? If we don't eventually get a handle on correcting those issues, we might have problems in the future to

deal with that we never anticipated, and maybe even in denial about, and the cost would be much greater.

**John:** Carbon management is a very important issue. Our position is we support global solution. Of the total Co<sub>2</sub>, 96% of the total Co<sub>2</sub>'s was natural, and 4% are manmade globally. The coal industry is responsible for two tenths of 1% of Co<sub>2</sub> emissions. If you take a regional or state approach, you're not going to solve any problem that allegedly you're concerned about.

**Rep. Zaiser:** If that were addressed, say for instance a state were responsible, maybe it takes one at a time to develop a majority of the states to be more responsible, and then eventually when it comes to national policy, if you want to be ahead of the curve maybe in the efficiency of development of energy to lignite coal. Say there's a new technology that came out, say that you'd be able to do it more efficiently, and use more energy, you'd want to do it as quickly as possible, correct?

**John:** We have to go back to the fundamental premises to whether or not you think Co<sub>2</sub> emissions are causing catastrophic global warming, and whether or not they were manmade emissions. Certainly, this makes new sense of a known addressed policy standpoint, now that the Bush administration is advocating.

**Rep. Kasper:** The 4% that are manmade, most of that is not being caused in the United States, it's in the areas of China , India, Russia, in those areas, is it not?

**John:** That's correct.

**Rep. Kasper:** Do you have any written data to support the statistics you just gave?

**John:** I could supply that to you.

**Rep. Mike Brandenburg, District 28:** I can understand cost associated with mandates that they request that they be raised. I look at this bill as a different issue concerning the whole

state. What this bill does is takes away the hammer that we have to encourage Minnesota to put more generation in ND. The #1 reason that came about was because environmental groups came out, and went after the Minnesota PSC that they're against allowing the 10% mandate that's in Minnesota to be used to put this soy project to approving from in ND, but instead it ended in Minnesota. The PUC in Minnesota, because of the pressure that was put on them by the environmental groups did not allow the 10% mandate to be used in ND. If we allow the automatic pass through of these costs to the companies, we lose that hammer, and that's the hammer that we have to say OK Minnesota, if you want to pass your mandates this will also say that we want to share in that generation in ND, or the power that's being generated. We have to be able to deal, and negotiate in all the things that we have then.

**Rep. Ruby:** You mentioned about this hammer that we have between ND and SD. This bill deals mainly with federal regulation, so I don't see why you're so concerned about it.

**Rep. Brandenburg:** If you look at the Federal Clean Water Act, they passed a mandate based on federal mandates, as well as there own mandates, and only some of the Minnesota mandates are higher than what we have in the federal level. The real hammer that we have is that these rates are allowed to raise automatically, so the Minnesota PUC doesn't have to negotiate whatsoever.

**Rep. Keiser:** Minnesota mandates, not the federal mandates in Minnesota that the green credits that they were using as their rational were forcing that plant to be built there, and that's not a federal issue.

**Rep. Brandenburg:** That's correct.

**Rep. Keiser:** So, it was a state law, a state rule, not a federal law.

**Rep. Brandenburg:** That is correct.

**Rep. Keiser:** So, how is this bill going to help that?

**Rep. Brandenburg:** The difference is that we have consumers in ND that are served by these companies in both states, so consumers are being charged increased rates, because of the mandates in Minnesota.

**Rep. Keiser:** I agree 100% with that. The PSC reviews rates in a general case, and they're going to deal with that in a different arena than this. I own a utility in ND, the feds come in and require me to put some kind of scrubbing units in, and I don't know what they're going to cost. Everybody's got to do it, and I'm going to incur costs over a 5 year period, and then at the end I'm going to go to the PSC, and they are going to allow me to increase my rates. The difference is that over that 5 year period I've had not only the cost of making the changes, but I've had the cost of the money to make those changes, and that gets added into the rates for consumers. How is that good for our rate payers in our state?

**Rep. Brandenburg:** It's not good for our rate payers, but compared with Minnesota, they also have the federal mandates for all their state rates.

**Linda Johnson Wurtz, AARP:** Opposed to HB 1221. See written testimony #5.

**Rep. Ruby:** In your testimony you testified the rate adjustment, as suggested in HB 1221, will shift the risk of compliance, and by mandate unexist in generation stations from the utility, and shareholders onto the ratepayer. Could you answer where the utility, and the shareholders get their revenues from?

**Linda:** They get their revenues from the ratepayers. My objection is that they would get it in advance, although of the full review by the PSC.

**Rep. Keiser:** Has the AARP taken a position of opposition for federal mandates?

**Linda:** No, we have not taken a position.

**Rep. Keiser:** Given your argument, why not?

**Linda:** Federal mandates are not all the same, they have different values, and so we can't get a blanket position against all federal mandates.

**Rep. Keiser:** Do federal mandates add cost?

**Linda:** Yes, they do.

**Rep. Keiser:** Your argument is you're concerned about cost to consumers?

**Linda:** I'm concerned about putting cost to rate payers without a full review of the PSC, which is there to protect us, and determine whether they are reasonable and prudent. Ratepayers are fully acceptable of increased rates. They know that energy cost money, but the PSC is a place to protect us, because it's an essential service, and because energy is a monopoly, and so they are there to determine whether we are getting a fair deal, and we'd like to protect that.

**Rep. Keiser:** Do you know how much a rate hearing costs?

**Linda:** I do not.

**Rep. Thorpe:** In your opinion of the people you represent, would you feel that better protection under present laws, the regulations of the PSC?

**Linda:** What we'd like to see happen is whenever rate payers are asked to have a rate increase, we'd like to see a full rate case, and I think this would circumvent that.

**Rep. Nottestad:** On a full rate case, it could take a number of years, so they've spent million of dollars on the project, and in the mean time that rate case accumulates interest, so when they get it then they get the increase plus the interest. Are you more in favor of a greater amount of money being paid by the customers, or the lesser amount that this bill would create?

**Linda:** You're asking me whether I like the better of the two evils, and absolutely I believe that the PSC is in place to protect the ratepayers, and only through a full rate case do I think that the ratepayers can be assured that they are getting a fair deal, and that they are taking the most efficient, and cost effective way of achieving their results.

**Rep. Nottestad:** So, then you're saying your membership would rather pay the larger amount, than the lesser amount?

**Linda:** There are areas of the country which have become deregulated. My friends in Connecticut are paying the highest utility rate in the country, and through deregulations they have had, in the last 18 years, three rate increases. That is because their PSC is not regulating the rates any longer, and so I would have greater trepidation about not having the Public Service Commissioner look at these rates, and the rate increases than what you've said.

**Rep. Ruby:** You said deregulated, but how could they be deregulated with the amounts of environmental regulation that probably those states placed on them? There are certainly regulations there.

**Linda:** I'm not certain about the amount of deregulation in Connecticut, I just used them as an example of what happens when we do not have a full implementation of a utilities commission, and that the ratepayers don't get the consequences of that.

**Rep. Kasper:** I want to get back to the concern I raised earlier in the bill beginning on page 1, line 11, my concern is or any state law or rule implementing a federal law or rule designed to protect the environment. I want to come back to any state law, and I interpret that as the state of Minnesota. To comply with the federal mandate, Minnesota implements their rules, and guidelines by their Public Utilities Commission, and based upon how they see things. There guidelines and rules could be higher, and more stringent than the federal guidelines and rules that are directed to them by the federal mandate. Is that correct?

**Tony:** You are correct. The question is as you interpret that particular section, could you make a claim that Minnesota in enacting more stringent requirements than what the federal government has, is in fact implementing a federal law or rule. In other words they may be

implementing something under the umbrella of federal regulations, but it goes far beyond that federal regulation.

**Rep. Kasper:** With that language in there, we could face the possibility that the utilities would say OK, we're implementing Minnesota law, are costs are higher, so we'll tack them on the ND consumers. Their hands were tied, they had to do what Minnesota says, is not that this is anything they're doing because they want to, it's they were forced to. In turn then, the ND customer would be forced to pay part of those costs that the Minnesota legislature or the Public Utilities Commission went beyond where they should have gone.

**Tony:** On the one interpretation, that is correct.

**Rep. Keiser:** Currently, without this bill, are ND people going to pay more?

**Tony:** Theoretically, they could.

**Rep. Johnson:** What about in that section where they're talking about something to the affect like any state law, or rule implementing to meet, but not exceed federal law or rule.

**Tony:** As I stand up here, I can't see anything wrong with that.

**Rep. Ruby:** Along those lines, I think it's all in interpretation of that, whether it's a state law that is compliant, or if it goes over and above, that amount could be separated out of the expense in reviewing the tariff, right?

**Tony:** That would be the challenge for the commission that I had talked about in my testimony. I think there are going to be some difficulty in identifying whether through the federal or whether through the state.

**Rep. Keiser:** What is the cost of an average rate case?

**Tony:** It depends on how much the utility wants to spend on it. I think \$200,000 might have been for the last rate case. On the commission side it's much less than that; we're limited on what we can fill out as far as consultant costs.

**Rep. Keiser:** Do utilities pay that, or is that in your budget?

**Tony:** Utilities pay it, but it's really the ratepayers that are paying that to the utility companies.

**Rep. Kasper:** So, to look at the cost to consumers, let's just say it's \$300,000, and say there are 300,000 electric utility payers in that state of ND, that's \$1.00 on a monthly bill one time, is that correct?

**Tony:** That's correct.

**Rep. Amerman:** Is it cheaper if this passes through for the consumer, versus a full blown rate case? When they come to you for a rate increase for the commission, do they come saying they want this amount of increase, and you negotiate and say no, we're going to do this amount, or what is it all based on?

**Tony:** When it finally separates, it has to be based in record. There is an evidentiary record that bases pretty much almost like a court case, a litigate type proceeding. Whatever rate we finally come up with has to be based on that record, because a decision can always be appealed in court, and the court just goes to that record and reviews it on an individual basis, and that decision would be overturned.

**Rep. Keiser:** It's going to cost the consumers \$1.00 on a case, but the reality is if we're going to file a rate case, a utility, I would sit back and wait as long as I could, so I had all the cost that I wanted to bring forward, including the cost of filing that, and I would be accruing interest over all of those expenditures, not only those mandated, but those operational expenditures, which are a normal part of business.

**Tony:** It's not a slam dunk either way. On the flip side argument of it is that the beauty of what we call regulatory liability is utility company waiting for full rate cases is that in the interim it encourages them to operate in an efficient manner, because every dollar that they can save,

in whatever part of their operations is money that they get to keep, and the shareholders get to keep.

**Rep. Boe:** Is there any other instance where a rate would be just passed through, where they can come back and justify later?

**Tony:** Yes. In ND we have what's called a fuel cost adjustment of the electric side for just gas adjustment, and on the gas side there's certain things like fuel losses fuel costs that are very volatile, so rather than building an inner rate, they're separated out from your basic rate.

**Rep. Kasper:** Have you had any federal environmental mandate cases in the past that you've looked at?

**Tony:** Yes. In part of our rate cases that we hold always cost to comply with environmental mandates.

**Rep. Kasper:** They've made the case, they won this amount, and you allow this amount, so there was some reduction to the rate payers in ND, because you helped the case?

**Tony:** As part of that full rate case, it was one of the issues where Excel did get less than they originally requested, because it was that, or just a straight recovery, not a rate base.

**Rep. Kasper:** When you have this whole rate case, you're able to look at more information in more depth, than the expedited situation that we're looking at in this bill, which would potentially allow for consumers of our state to be better protected, or more information in your area to make decisions on.

**Tony:** I think the difference that I would make is the way this bill reads you'd still be allowed to have basically a mini rate case on that particular issue, so I think that we could deal with the particular issues with regard to that environmental cost.

**Rep. Zaiser:** When you consider rates, in terms of cost, do you factor in for guarantee profit for investors?

**Tony:** Yes. The US Supreme Court, through a series of paces, which is what all utility commissions have to abide by, made a tradeoff that said states have the ability to regulate monopoly public services, but the return for that is states have to allow the company not only to recover what incurred low interim costs, but they have to hold out a rate of return.

**Rep. Zaiser:** It's sort of unique in terms of stock for their people. They buy stock, they have a guaranteed profit, correct?

**Tony:** It's not a guaranteed profit if they're allowed to earn a certain rate return.

**Rep. Keiser:** You think you can go with a mini rate case, they're going to file 20 of these a month, and absorbed the cost?

**Susan:** I think each company will be filing once. I have the ability to ask for a mini rate case right now in the fuel cost adjustment if I want, on a monthly basis. I do not have the ability to get my staff in time to do that.

**Kevin Kramer, Commissioner:** Neutral on HB 1221. This bill was negotiated pretty thorough with commission staff, and the companies. Regulatory lag does cost, but at the same time, we should never assume that a full blown rate case always leads to an increase. I remain neutral to the bill. Whatever happens, it is clear to me that the PSC needs to be even more diligent in the process.

**Bob Graveline, Utility and Shareholders of ND:** The focus of the bill is federal environmental mandates on existing electricity generating stations. We do not agree with the externality amendment, and we would not agree with Commissioner Wefald's amendment. All we are asking for is that this directly points to federal environmental mandates on existing law for the generating stations.

Hearing closed.

**Chair Keiser** reopened the hearing on HB 1221.

**Rep. Johnson:** This amendment would be on line 12; on the first page would be incorporating Commissioner Clark's amendments with the purpose of the section federal environment mandate are limited to, any recement on the Clean Air Act, the Clean Water Act, or any of the federal law or rule. Then we would just strike or any state law or rule implementing federal law or rule. That would remove any concern about what another state is doing. It would be just towards any federal requirements the Clean Air Act, Clean Water Act.

**Rep. Kasper:** I talked to someone from MDU, and Excel energy after the hearing, and it expressed my concern about that. I asked them if they would support amending it out, and they came back and said they would.

**Rep. Keiser:** Let's just take this first amendment. Line 12 we're striking the word include, and replacing that with are limited to, and then in line 13 we're putting a comma, then striking or, then on line 14 striking any state law or rule implementing a federal law or rule, and we're striking the comma, and then designed to protect environment. So, that is amendment #1. Next, we have the amendment 0101 on striking the section 2 repeal 49-06-24. We also have the amendments offered by Commissioner Wefald, in which her concern was primarily in the associated operating expenses, and she would like those basically taken out of the language.

**Rep. Kasper:** I move to adopt amendment #1.

**Rep. Johnson:** Second.

**Voice vote was taken, amendment adopted.**

**Rep. Gruchalla:** I move to adopt 0101 or 0102, the one that limits them to consider externalities.

**Rep. Amerman:** Second.

**Rep. Gruchalla:** What we're concerned about is that right now the PSC lacks the ability to consider possible environmental laws when it has a duty to rule on whether construction of the

new source of electricity is a public interest. They can't consider the future damages to the environment, and the intent is to get it to where they do consider that when they're approving a new power plant.

**Rep. Kasper:** The problem with that logic is the fear that something might happen in the future doesn't mean that it will happen in the future. We need to consider the event when it occurs, not because it might occur down the road.

**Rep. Vigesaa:** One other thing about those types of costs is they are very hard to quantify. How do you put a value on some of the things they want to be considered under this amendment? I think it would be very difficult to put a number on those costs.

**Rep. Keiser:** I'm going to oppose it. Its one thing for you to say ND should consider externalities, but do I want Minnesota, or California, or Oregon, or somewhere else that we're shipping power to having to consider from their perspective externality. Their concept of externalities might be a whole lot different then ND's, so I think you'd be asking for a real problem.

**Rep. Thorpe:** The other two points on these two amendments is amending out 49-02-23, and 49-06-24, and I certainly can't support that, or any of the amending out of those sections.

**Roll call vote was taken, amendments 0101 and 0102 failed.**

**Rep. Keiser:** The third set of amendments Commissioner Wefald's amendments, in which she would like to strike the associated cost language.

**Rep. Johnson:** I think there are associated costs on putting these mandates into place that are part of the cost of the mandates, and I think this would really handicap everybody down the line.

**Rep. Thorpe:** I move to adopt the amendment.

**Rep. Amerman:** Second.

**Roll call vote was taken, amendment failed.**

**Rep. Johnson:** I move a do pass, as amended.

**Rep. Ruby:** Second.

**Roll call vote was taken. 9 Yeas, 4 Nays, 1 Absent, Carrier: Rep. Ruby**

Hearing closed.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1221

Page 1, line 3, after "stations" insert "; and to repeal sections 49-02-23 and 49-06-24 of the North Dakota Century Code, relating to consideration of environmental externality values by the public service commission and electric rates"

Page 2, after line 22, insert:

**"SECTION 2. REPEAL.** Sections 49-02-23 and 49-06-24 of the North Dakota Century Code are repealed."

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1221

Page 1, line 3, after "stations" insert "; to amend and reenact section 49-06-24 of the North Dakota Century Code, relating to electric rates; and to repeal section 49-02-23 of the North Dakota Century Code, relating to consideration of environmental externality values by the public service commission"

Page 2, after line 22, insert:

**"SECTION 2. AMENDMENT.** Section 49-06-24 of the North Dakota Century Code is amended and reenacted as follows:

**49-06-24. When electric rates not to be increased.** The commission may not increase electric rates as a result of actions taken by other states requiring higher cost resources to be built, purchased, or otherwise acquired as a result of the application of quantified environmental externality values, ~~as defined in section 49-02-23,~~ as part of any resource selection process.

**SECTION 3. REPEAL.** Section 49-02-23 of the North Dakota Century Code is repealed."

Renumber accordingly

Date: 2-7-07  
 Roll Call Vote #: \_\_\_\_\_

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. HB221

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Adopt Amendment olo1 and olo2 (Dealing with externalities)

Motion Made By Rep Gruchalla Seconded By Rep Amerman

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		X	Rep. Amerman	X	
Vice Chairman Johnson		X	Rep. Boe		X
Rep. Clark		X	Rep. Gruchalla	X	
Rep. Dietrich		X	Rep. Thorpe		X
Rep. Dosch		X	Rep. Zaiser		
Rep. Kasper		X			
Rep. Nottestad		X			
Rep. Ruby		X			
Rep. Vigesaa		X			

Total Yes 2 No 11

Absent 1

Floor Assignment Rep Ruby

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

February 7, 2007

**House Amendments to HB 1221 (78234.0103) - Industry, Business and Labor  
Committee 02/07/2007**

Page 1, line 12, replace "include" with "are limited to"

Page 1, line 13, remove the second ", or"

Page 1, line 14, remove "any state law or rule implementing a federal law or rule."

Renumber accordingly

Date: 2-7-07  
 Roll Call Vote #: 3 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. HB 1221

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Adopt Amendment

Motion Made By Rep Thorpe Seconded By Rep Amerman

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		<del>X</del>	Rep. Amerman	<del>X</del>	
Vice Chairman Johnson		<del>X</del>	Rep. Boe		<del>X</del>
Rep. Clark		<del>X</del>	Rep. Gruchalla	<del>X</del>	
Rep. Dietrich		<del>X</del>	Rep. Thorpe	<del>X</del>	
Rep. Dosch		<del>X</del>	Rep. Zaiser		
Rep. Kasper		<del>X</del>			
Rep. Nottestad		<del>X</del>			
Rep. Ruby		<del>X</del>			
Rep. Vigesaa		<del>X</del>			

Total Yes 3 No 10

Absent 1

Floor Assignment Rep. Ruby

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

Date: 2-7-07  
Roll Call Vote #: 13

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1221

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass, AS Amended

Motion Made By Rep. Johnson Seconded By Rep. Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman		X
Vice Chairman Johnson	X		Rep. Boe		X
Rep. Clark	X		Rep. Gruchalla		X
Rep. Dietrich	X		Rep. Thorpe		X
Rep. Dosch	X		Rep. Zaiser		
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 9 No 4

Absent 1

Floor Assignment Rep Ruby

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

**REPORT OF STANDING COMMITTEE**

**HB 1221: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HB 1221 was placed  
on the Sixth order on the calendar.

Page 1, line 12, replace "include" with "are limited to"

Page 1, line 13, remove the second ", or"

Page 1, line 14, remove "any state law or rule implementing a federal law or rule,"

Renumber accordingly

2007 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1221

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1221**

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **March 6, 2007**

Recorder Job Number: **4420**

Committee Clerk Signature



*Public Utility Rate Electric Generating Stations:*

**Bob Graveline - Pres. Utility Shareholders of ND - In Favor**

**TESTIMONY # 1** *Reads testimony, ends 6:04*

**S Klein:** Are already under some sort of direction from the Feds, on Federally mandated upgrades that are being done?

**Bob G:** I don't think there's any.

**S Klein:** What we're doing here is in preparation of whether or not we need to meet some sort of environmental standard or more scrubbers, for examples.

**Bob G:** Example, we hear about mercury, recovering mercury, under the current technology, there is no way to recover mercury. How do you know what it's going to cost you? Federal mandate is clean air and clean water, anything that the Fed government decides they should include it to protect the environment.

**S Klein:** The "Pay me now – Pay me later" analogy would mean, if you don't pass the cost along now, you'll have to pay later. Still need that money somewhere along the line.

**Bob G:** As the project proceeds you have not only the costs of the physical materials, i.e hardware, steel, structure, you also have the cost of money and the carrying charges that go forward. In over a 4-5 year project, all the dollars incurred in a rate case are capitalized and

added into the rate case. A consumer would pay for all the fiscal parts of the plan as well as the carrying charges costs. We're suggesting those costs should be picked up as they are incurred throughout the project. The consumer will not pay those costs twice.

**S Klein:** You're going to do this through the Public service, you're not side stepping any of the process, although you're not adding a full rate case, you are still working with the PSC in explaining in what you're doing and why you're doing it.

**Bob G:** A tariff would be applied for once the tariff is in place, then the company would comply under the constraints of that tariff for recovery. It would be similar to a cost of gas adjustment, it would be passed to the consumer.

**S Potter:** Is the PSC have the authority to deny or modify the tariff?

**Bob G:** Yes

**S Potter:** Isn't this skewing market? You have a plant that's aging, built before the EPA standards for what they are today and you will be able to recover the costs of putting in scrubbers and pollution control devices, but it may be the economics without that, it would tell you to close that plant and build a new one up to modern standards. Isn't there some potential to do that?

**Bob G:** I don't think that would be a concern. Utilities are rated on a quarterly basis of what their stock pays and what the returns are. Silly investments or bad invests reflect badly on investors return and I don't envision that they would do that. If the economics are such that a new plant was called for, that's what they would do. The market will drive that.

**S Hacker:** What was the last rate case and what as the amount of adjustment of the total project.

**Bob G:** I don't know.

**S Hacker:** I can wait for the PSC to come up

**S Andrist:** If you want to file a rate case, you go to the PSC, if you want to file an insurance vista, you go to the PSC. Am I right in assuming this would be a short and less expensive than a full rate case?

**Bob G:** That's correct. A full rate case takes in all applications of everything in the whole company. What we're asking for is a tariff to address those specific costs for that specific project, and it would be all encompassing. Down the road in some point in time, the companies will have to file a rate case and at that time, this will be rolled into the full rate case.

**S Andrist:** Assuming you want to do this project in ½ of the power that is produced by the plant in MN, has MN granted you the same type of thing or do you anticipate it will?

**Bob G:** Each state jurisdiction makes a ruling on the particular cost that will affect the consumers on that jurisdiction by regulating utility companies.

**S Klein:** You're specific in the bill, NDakotans would pay their ND share.

**Bob G:** What this bill talks about is the jurisdictional cost. Line 9 & 10 on page 1 are the costs that are applied to ND. What MN does, goes to them.

**S Potter:** Can you recover the advance costs of building a new plant through the rates, and can you file a tariff through the PSC for a new plant that's going to be built and start recovering those costs?

**Bob G:** There are certain provisions in the law that allow for construction work in progress as long as the plant returns funds.

**S Potter:** This is what I'm talking about "skewing economics." There are two ways to meet EPA standards. One is to clean up the old plants or mothball the old plants and build new plants. We change the economics of this by allowing you to file these tariffs.

**Bob G:** We don't see that at all.

**OPPOSITION**

**Susan Wefald – President of the ND State Public Service Commissioner - In Opposition**

**TESTIMONY #2** *Personal testimony not of the whole PSC*

I'm concerned for several reasons. I know that 3 of the Senators on the bill were on the committee. Several specific areas I'd like you to change on the bill to make sure that there is pass through. HB 1221 reflects the long regulatory policy by allowing automatic pass through of the costs associated with the environmental mandates. This bill removes any incentive that utilities might have to control these costs or to work to develop environmental policies. There are going to be a lot of costs and a lot of projects that are going to come at the commission at rapid fire when this is passed. That concerns me. There are profits in place. As soon as this bill is passed, we're going to see some costs that are going to be coming in. To give you an idea of the costs, we've heard about possible carbon dioxide legislation that can be passed by Congress. Carbon Dioxide is a every expensive problem for the utility industry. I have heard of it being sequestered or used in other ways. 1. used in oil well drilling – Basin Electric is using it in the oil recovery 2. Drill holes into the earth and store in the gas voids or drill into unmineable lignite reserves. All cost a lot of money. It is suggested to remove "associated operating expenses."

**S Klein:** When you have a rate case, who pays for this?

**Susan W:** It will eventually flow through to rate payers.

**S Klein:** Wouldn't it be a good idea not to have that kind of cost spread back to the rate payers? If everything there is an environmental issue and they run a full rate case, isn't that going to run the rate payers a lot more money than it would have if it would have been a smaller case where you still have the ability to "approve, reject, or modify."

**Susan W:** That's the idea of this bill. In the big focus of things, they need to look at, we've always had low electricity bills here in the state of ND. It's one of the things we've built the economy on. We are not one of the big companies in the west coast where we are having rates 3 times the rates here in ND. We need to try to keep costs down for families, but industry as well. You need to be thinking about the cost of electricity and where these costs are going to go in the next few years and how you best want to approach.

**S Hacker:** What's the cost to the commission to look at a rate case VS a tariff?

**Susan W:** We have an evaluation fund. \$125,000 for rate cases and spend the money as needed.

**S Hacker:** How many rate cases did you have in the last biennium?

**Illona Jeffcoat Sacco Responds**

We have 3 cases pending right now that would come out of that fund.

**S Hacker:** So we don't know what the cost to the state is?

**Susan W:** On natural gas case, we put out a bid. \$60,000 to help with consulting.

**S Klein:** Doesn't the utility have to pick up some of these costs?

**Susan W:** That is only the cost for the commission to pursue the case. In ND we do not have a consumer council through the office of the Attorney General's. We have staff that advise the commission and that is so that we don't only have to look at the information that comes from the facilities, but have a choice of information so that we can make a fair decision.

**S Klein:** Who pays for that?

**Susan W:** When the utility brings forth their case and they can spend as many dollars as they need to do that, yes, it is paid for eventually by the rate payers of that company.

**S Klein:** They pay your expert witnesses too.

**S Hacker:** The rate payers also pay for the consultant?

**Susan W:** Yes they do, because the dollars from the evaluation fund eventually are flowed through to the utility and paid for by rate payers.

**S Hacker:** How much would a tariff cause?

**Susan W:** Two parts to this process. 1. Commission files a tariff with the commission and during that time the commission will be looking to see if the tariff complies with state law. 2. Page 2 of the bill, rate adjustments under the tariff must be accompanied, but what they can file that goes along with that tariff [#2, line 6] *Reads from bill*

**S Heitkamp:** You consistently come in here and advocate for consumers. I want to acknowledge that. There's 3 of us on this bill as you acknowledged, so I think it bears the point that line 1, #8 [refer to bill] You say it doesn't give you a lot of latitude? That was the line that helped me put my name on the top of it. The problem I have, they don't know what may come down the pike at them and they have to deal with it and as quickly as they can. This is one that is easier to work better, together to keep some of those costs down.

**Susan W:** I appreciate the fact that the words "modify" are in there, but I would be able to modify the tariff if it came in and did not comply with what was in the state law, that gives me the ability, I don't have to accept it.

**S Heitkamp:** What is it that you're afraid that they might pull? That doesn't comply with this?

**Susan W:** Not that they're going to be pulling anything, but if you were in my shoes and you saw that there was going to be from every month 3 companies a filing under this to incur new costs, and you could potentially have 36 new cases coming at you in a year, how would you be feeling about this particular bill? They could be adding new costs on a regular basis.

**S Heitkamp:** When you said you speak for yourself. Did the commission vote on this, and what was the vote?

**Susan W:** My fellow commissioners are neutral.

**S Heitkamp:** Do they ever take a stand?

**Susan W:** They worked through the House and changes were made to the bill. They made it clear that there were only federal environmental mandates and they aren't mandates from other states.

**S Andrist:** I'm having difficulty figuring out the term: "costs and associated expenses" all sound like the same thing to me. Are costs and expenses defined in the century code or in your administrative code?

**Susan W:** I'm looking at Ilona Jeffcoat Sacco and they're not.

**S Andrist:** So, what's the difference to labor between expenses and costs? In my business, they'd be the same thing.

**Susan W:** I can't comment on that.

**S Andrist:** You say in the second paragraph of your testimony, that 1221 removes any incentive that the utilities might have to control those costs and develop good environmental policies that are good for everyone. If in a rate case hearing you can pass all those costs back to utilities, would it be fair in saying you also have no incentive to reduce regulatory costs?

**Susan W:** Yes. I suppose it would be fair to say that if I were irresponsible with the expenses that I had taken on to represent rate payers, I would be the one responsible.

**S Andrist:** So the utilities would be more inclined to be irresponsible in this regard than the PSC would?

**Susan W:** Over the years I recognized utilities are like people, they have personalities, you can approach them in different ways. Sometimes it's human nature that an agency (certainly not the PSC) may come in and put some things in their budget that they would like, but aren't needed in the eyes of others, it's all in the eyes of the beholder. Is that dishonest? No, but you have different priorities based on your values of what is important. Are they doing something

bad when they are asking for those costs, no, but they're expecting someone else is going to look at those costs and determine and say, "no" if necessary.

**S Potter:** Can you expand on what you meant on "it will remove any incentive the utilities might have to work to develop environmental policies for the good for everyone."

**Susan W:** When we get into the problem of carbon dioxide, there may be many choices that companies can choose. Choice of using CD for oil recovery or enhancement, or opportunity to drill a hole and store in an oil well unless one of the opportunities was more expensive than the others and they would choose one, maybe they wouldn't be careful in making their determination of which one would cost less, but they would know they could pass costs on to the customer.

**S Potter:** What percentage of utility share holders in ND, energy production is used by ND regulators, do you know? What percentage is used by ND rate payers

**Susan W:** Don't know.

**S Hacker:** Question on the rejection, do you see that if you rejected the tariff case than they could follow up with a full rate case?

**Susan W:** Yes I do

**S Hacker:** If these are federally mandated changes that they are forced to implement, they don't really have a choice but to say: A. they would be able to do a tariff or they would have to do a rate case. In order to implement the rate case.

**Susan W:** Yes, that's correct.

**S Hacker:** The tariffs would be a lot more expensive than rate cases. You're saying that we're going to have a pile of tariff cases coming in, 36 of them, wouldn't they have to come in with a pile of full rate cases as well?

**Susan W:** The committee will probably be dealing with 1 per utility.

**S Potter:** Back to S Heitkamp's question. Doesn't this give more flexibility to PSC or are you suggesting that if they meet A,B,C you'd have to grant the tariff.

**Illona Jeffcoat Sacco Public Utilities director and the executive director**

Asked to take the podium

Commissioner Wefald's, she is opposed to the operating expenses. If the tariff comes in with operating expenses, there is no discretion in the commission to cross off operating expenses. Under the statute it is allowable, so there is some digression in those words, "they modify", but not as much as discretion as Commissioner Wefald is looking for. After the tariff is in place, the actual costs is coming through under that tariff, there are operating expense and capital expenses and you ask, "did you really use the scrubber on the smokestack?" "Is this person really employed in the environmental division?" and those kinds of questions, and that's why there is some discretion but this long, costly process to figure it out and then one filing onto the next filing.

**S Heitkamp:** Do you see a floodgate opening up where you, do you see 36 cases put on your desk?

**Illona JS:** I don't know what to expect with the electric industry. If I live long enough, I can look back and look at it.

**S Heitkamp:** A quicker response of what they see coming. They can see it coming, can't you?

**Illona JS:** I understand your point, exactly.

**S Andrist:** How do you determine that an operating expense is not a cost? They're synonyms.

**Illona JS:** I heard your question before and in the bill they talk about capital cost and operating expense, in my mind, if you have to spend money, you have to spend money. The question comes in in determining if it is allowable under the law or not.

**S Wanzek:** in the bill it says, "associated operating costs...need to comply with Federal environmental regulations." Doesn't this meet the Federal requirements?

**Illona JS:** There wouldn't be lawyers if sentences like this were obvious to everyone.

**S Wanzek:** Follow up on S Hacker. You're obligated to comply with the Federal regulations, in an effort to find a more efficient way, the only other way is a full rate case to try to recover those costs.

**Illona JS:** More efficient to do the capital costs.

**S Potter:** Question for Commissioner Wefald. If we were to adopt the amendments, that you've proposed, would you withdraw your opposition to the bill, or not?

**Susan Wefald** *Returned to the Podium*

I would be HAPPIER with the bill if it did not include "operating expenses."

**S Potter:** Just want to make you happy.

**Linda Wurtz – Advocacy for AARP, ND - In Opposition**

**TESTIMONY # 3** *Reads testimony 47:14 to 49:41m*

**S Potter:** The AARP is interested in a lot of things, which is more important, your pocketbooks or your lungs? Don't we want the energy industry to clean up the plants?

**Linda W:** Absolutely. We believe in the Federal environmental mandates, clean water, clean air, I think the rate payers would happily pay for those, but taking away their consumer protection which in ND is the PSC is not the way to do that.

**CLOSE**

**S Andrist:** We have so many REC representatives, don't they feel they have a dog in this fight? I'd appreciate hearing from them.

**Opened briefly to ask REC to comment**

**Harlan Fuglesten** *Asked to take podium*

We are here as observers. Our position is completely neutral.

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1221 B

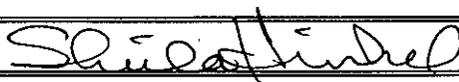
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **March 6, 2007**

Recorder Job Number: **4427**

Committee Clerk Signature



Minutes:

**S Klein:** 1221 seemed to be...

**S Andrist:** I would be happy that it be passed with a do pass.

**S Klein:** Do Pass, is that what I'm hearing?

**S Andrist:** Yes

**Second from S Wanzek**

**S Klein:** I found out that as far as the PSC on the House side, one commissioner was opposed, one commissioner came neutral with an amendment, one commissioner was in support, there is a difference of opinion on that. I certainly believe that if we force the rate case on everyone of these issues, this will cost the rate payer more money. They're going to pass this along to somebody, and if we have to do a rate case, aren't we just telling them they will have more expense involved in the process. S Heitkamp made a good point in reading the bill and the "approve, reject, or modify" I couldn't see that somewhere in there doesn't give them the flexibility that "you're going way beyond your regulation here," and that we would have 36 tariff cases.

**S Heitkamp:** I agree with that. Being on the bill, you have to temper this with what I have to say, but, I believe that when the stretch of 36 rate cases tomorrow, out of all she's brought to

this committee which is a lot of credibility on these issues, I don't mean to diminish that, but 36 rate cases? Comon' that one kind of jumped out at me. We don't know what's coming down the pike on the Federal side. That the control is there to approve, reject, or modify if any of these utilities get a little too wild in all of this, you're going to see this thing completely blow up on all of us, including the names on top of this thing in this room, Linda Wurtz put that best, this is a watch game with what is happening on the Federal level, I just don't see 36 people rushing to the PSC to do it.

**S Potter:** I'm basically in favor of the concept of this bill. I agree that we shouldn't force expensive regulation here when we can get by with less expensive. My question is, I'd feel more comfortable with the bill if it had the amendments Commissioner Wefald presented, because she has a point about operating expenses. It seems to me that operating expenses incurred to meet federal environmental mandates could include the operating expenses of the attorney's fighting against the those federal environmental mandates. No end to it. While it says in line 8 that the Commission may approve, reject or modify, on line 16, "the tariff MUST allow the public utilities to recover these costs." I think the commissioner is correct in that, it does not give the commission flexibility to reject these. I would like to introduce those amendments that the commissioner did. I would support the bill with those amendments, I'm really between a rock and a hard place. I like AARP and I like MDU so I'm in trouble.

**S Hacker:** This comes down to the associated operating costs and I agree with Senator Potter's statement of about the attorney's. Capital costs, in order to comply with federal regulations, I'm guessing that there's lots of man hours, etc. that's invested to do those things, beyond the attorney's fighting it. They brought up the consultant for \$60,000, that's not a capital cost, so I understand the argument, but also think there is value in associated costs

when you have to recover. It is probably substantial when it comes to these tariff filings and how you deal with it on the personnel side.

**S Wanzek:** Seems like the concern is the broadness of the associated operating expenses. It crossed my mind, the accountant in me, what about adding: "direct associated operating expenses"? Typically, there's those that are indirect or direct with debt, would that comfort S Potter more? Could PSC modify and question expenses you're referring to.

**S Klein:** The utility companies will be passing costs on in tariff in rate case. Whether they are associated or directly associated, but they're going to figure out a way....who else is going to pay that? I would say, the rate payer. Whether in tariff legislation or a rate case, those costs are going to move forward.

**S Wanzek:** I feel comfortable with that phrasing.

**S Andrist:** If you look at lines 14 & 15, it tells you whether the associated operating expenses are, they're COSTS incurred by the public utilities to comply with the environmental mandate.

**Motion for DO PASS by S Andrist**

**Second by S Wanzek**

**Roll Call Vote on HB 1221 – 7-0-0 Passed**

**Carrier: S Andrist**



**REPORT OF STANDING COMMITTEE (410)**  
March 6, 2007 2:43 p.m.

**Module No: SR-42-4572**  
**Carrier: Andrist**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1221, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1221 was placed on the Fourteenth order on the calendar.**

2007 TESTIMONY

HB 1221



# Utility Shareholders of North Dakota

#1

## BOARD OF DIRECTORS

- Bob Pile  
*Fargo*
- Harold Bruschwein  
*Wahpeton*
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*Grand Forks*
- [Redacted] Kunkel  
*Wills Lake*
- Charles Axtman  
*Jamestown*
- Bob Graveline, President  
*Bismarck*

### HB-1221

House Industry Business and Labor Committee  
February 7, 2007

Mr. Chairman, members of the Committee, I'm Bob Graveline, President of the Utility Shareholders of North Dakota. The nearly 2,400 members of our association have the common interest of owning shares of stock in one of the state's regulated utility companies, Otter Tail Corporation, MDU Resources Group, or Xcel Energy. I appear before you this morning on their behalf, as well as on the behalf of the three shareholder owned utility companies serving North Dakota.

### I URGE YOUR SUPPORT OF HB-1221.

HB-1221 before you this morning, which would provide for recovery of federal environmental mandates on existing electricity generating stations, is the result of extensive discussions between representatives of the three shareholder owned utility companies that serve North Dakota. Additionally, there have been meetings with staff of the Public Service Commission and the subject has also been on the administrative agenda of PSC meetings at least two times.

Sub-section one of the bill calls for the creation of a tariff as a mechanism to allow regulated utility companies to more efficiently recover costs and expenses associated with complying with federal environmental mandates. Recovery of costs under this bill would take place over time, in a routine manner, upon application by the company and approval by the PSC. Further, the bill clearly states recovery under this tariff terminates as soon as costs are recovered or reflected in the utility's general rate tariffs through a general rate proceeding.

Please note that the bill is specifically restricted to "jurisdictional" costs, which means only those project costs that are allocable to ND consumers will be paid by North Dakotans. Wholesale costs and retail costs allocable to other states will be paid by consumers of those states.

Sub-section two of the bill states what information must be filed under the new tariff should a company elect to apply.

Sub-section three of the bill grants the Public Service Commission authority to conduct a hearing if necessary to help them decide whether or not the costs and expenses are reasonable and prudent, and comply with the tariff. Further, this sub-section calls for the utility to pay costs associated with any such hearing, and that the burden of proof in the matter lies squarely with the applying utility company.

P.O. Box 1856  
Bismarck, ND 58502  
58-8864  
Fax 701-258-8865  
1-800-981-5132  
E-mail [usnd@usnd.org](mailto:usnd@usnd.org)  
[www.usnd.org](http://www.usnd.org)

Please keep in mind, costs included for recovery under this bill are not costs resulting from discretionary company decisions, but are those costs resulting from federal environmental mandates on existing electricity generating stations. Further, should the PSC be concerned about specific project costs, they have full authority to investigate those costs and/or to conduct a hearing.

During our visits with the PSC and their staff, they expressed concern over the words "costs and expenses" in the body of the bill, as well as granting this type of rate recovery outside of a full rate case proceeding.

Please be aware, it is the intent of this bill that any costs or expenses would be accounted for as prescribed by the Federal Energy Regulatory Commission (FERC) Uniform System of Accounts. Further, we believe it is fair to say operating expenses include the cost of labor, materials and expenses incurred in the operation, maintenance, supervision and direction of complying with the federally mandated action.

Passage of this bill will allow utility companies to pass through costs of complying with federal environmental mandates on a regular basis, as operating costs and capital costs are incurred. The ability to do this without having to spend significant dollars for the preparation and hearing of a full general rate case will ultimately save money for consumers.

Passage of this bill will provide for regulatory certainty that will lower the risk of recovery, which should lower borrowing costs and also ultimately save money for consumers.

Passage of this bill will reduce costs of waiting until project completion before seeking rate recovery through an all encompassing rate case, ultimately saving money for consumers as rate cases are very expensive to complete. Furthermore, rate case costs are also passed on to consumers.

There is virtually no disagreement that costs associated with the installation of federally mandated environmental enhancements on existing power plants will eventually be recovered under a rate structure approved by the PSC. To borrow a line from a Fram oil filter commercial of a few years ago, "you can pay me now, or you can pay me later". The point of the commercial is the same as this bill – costs paid up front save the consumer money in the long run.

Mr. Chairman, members of the committee, I urge you to forward a **DO PASS RECOMMENDATION ON HOUSE BILL 1221.**

#1

**Proposed Amendments to HB 1221**  
-Johnson Amendments

Page 1, line 12, replace "include" with "are limited to"

Page 1, line 13, remove the second "or"

Page 1, line 14, remove "any state law or rule implementing a federal law or rule."



**"Watchdogs of the Prairie"**  
*Organizing North Dakotans Since 1978*

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Dakota Resource Council • PO Box 1095 • Dickinson, ND 58602  
Phone: 1-701-483-2851 • Fax: 1-701-483-2854

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**Testimony on HB 1221**  
**House Industry, Business and Labor Committee**  
**February 7, 2007**

Chairman Keiser and Committee Members,

Dakota Resource Council presents this testimony in support of HB 1221 and proposes an amendment to the bill.

Public utilities are natural monopolies. It is in the public interest to regulate their rates in order both to prevent gouging and to ensure a reasonable rate of return on investment. Our Public Service Commission has served North Dakota well in this regard.

It is a growing likelihood that new and more stringent environmental regulations will be placed upon public utilities, especially under the Clean Air Act, before this assembly meets again. This is particularly true should the U.S. Supreme Court find in favor of parties who maintain that the U.S. Environmental Protection Agency has a duty to establish controls on carbon dioxide emissions.

But even if not, a consensus appears to be emerging in Congress that we must act to limit carbon dioxide emission for the protection of our planet from the effects of global warming. This consensus seems to reflect also a growing agreement within large, polluting industries that we are moving toward an era of mandated carbon reductions.

According to a fascinating article in the January 18 *New York Times*, written by Felicity Barringer, ten major companies have formed a coalition to promote a "firm nationwide limit on carbon dioxide emissions that would lead to reductions of 10 to 30 percent over the next 15 years." The coalition

includes General Electric, Alcoa, BP, DuPont, Caterpillar, Lehman Brothers and four of the nation's larger utilities.

This bill will then serve the public interest by making sure that the cost of power plant upgrades to meet new environmental standards—also in the public interest—will not jeopardize the viability of our public utilities.

Unfortunately, however, under current state law the Public Service Commission lacks the ability to consider possible new environmental laws when it has the duty to rule on whether construction of a new source of electricity is in the public interest. Century Code 49-02-23 denies the Commission the authority to "use environmental externality values in the planning, selection, or acquisition of electric resources or the setting of rates for providing electric service." The definition of "environmental externality values" established by this law includes "the alleged costs of complying with future environmental laws or regulations that have not yet been enacted."

None of the proposed new power plants in the Dakotas includes any provision to store produced carbon dioxide or significantly reduce it in any other way—an unwise investment according to the executives of General Electric, Pacific Gas and Electric and other companies in the coalition already mentioned. They told the *New York Times* that they agreed to "strongly discourage further construction of stationary sources that cannot easily capture" carbon dioxide.

The first major test of Public Service Commission in this new era, when carbon regulation looms very large, comes with the pending request by Montana-Dakota Utilities and Otter Tail Power for an advance prudency finding in favor of supplying North Dakota ratepayers with electricity from the proposed Big Stone II power plant near Milbank, South Dakota.

It would be prudent on the Commission's part to weigh the possible results of new carbon legislation in their analysis. But current law forbids them. Why should we deny our elected public officials the opportunity to be prudent when we are charging them with determining the prudency of utility company decisions?

Therefore, for the public good, including the financial interest of utility ratepayers, we urge this committee to amend the bill before it to include repeal of CC-49-02-23.

**49-02-23. Consideration of environmental externality values prohibited.**

The commission may not use, require the use of, or allow electric utilities to use environmental externality values in the planning, selection, or acquisition of electric resources or the setting of rates for providing electric service. Environmental externality values are numerical costs or quantified values that are assigned to represent either:

1. Environmental costs that are not internalized in the cost of production or the market price of electricity from a particular electric resource; or
2. The alleged costs of complying with future environmental laws or regulations that have not yet been enacted.

## North Dakota Power Plants Air Pollution - 2005

Plant	County	Owner/utility	Initial Year
RM Heskett	Morton County	Montana Dakota Utility	1954 <sup>1</sup>
LeLand Olds	Mercer	Basin Electric Power	1965 <sup>1</sup>
Stanton	Mercer	Great River Energy	1966 <sup>1</sup>
Milton R Young	Oliver	Minnkota Power Coop	1970 <sup>1</sup>
Coal Creek	McLean	Great River Energy	1979 <sup>1</sup>
Coyote	Mercer	Ottertail Power Co	1981 <sup>1</sup>
Antelope Valley	Mercer	Basin Electric Power Coop	1983 <sup>1</sup>

### Sulfur Dioxide - Tons of SO<sub>2</sub> - 2005 data<sup>1</sup>

RM Heskett	2189	
LeLand Olds	47399	Emission Rank - 35 <sup>th</sup> of 50 of America's most polluting power plants <sup>2</sup>
Stanton	10022	
Milton R Young	28565	
Coal Creek	24428	
Coyote	14069	
Antelope Valley	13863	

### Nitrogen Oxides - Tons of NO<sub>x</sub> - 2005 data<sup>1</sup>

RM Heskett	918.0	
LeLand Olds	13765.0	Emission Rank - 24 <sup>th</sup> of 50 of America's most polluting power plants <sup>2</sup>
Stanton	3099.0	
Milton R Young	22845.0	Emission Rank - 3rd of 50 of America's most polluting power plants <sup>2</sup> Tons Rank - 23 <sup>th</sup> of 50 of America's most polluting power plants <sup>2</sup>
Coal Creek	10354.0	
Coyote	13173.0	Emission Rank - 6 <sup>th</sup> of 50 of America's most polluting power plants <sup>2</sup>
Antelope Valley	11793.0	

### Carbon Dioxide - Tons of CO<sub>2</sub> - 2005 data<sup>1</sup>

RM Heskett	657287	
LeLand Olds	5969285	Emission Rank - 19 <sup>th</sup> of 50 of America's most polluting power plants <sup>2</sup>
Stanton	1678354	
Milton R Young	3165648	Emission Rank - 42 <sup>th</sup> of 50 of America's most polluting power plants <sup>2</sup>
Coal Creek	10587048	Emission Rank - 15 <sup>th</sup> of 50 of America's most polluting power plants <sup>2</sup>
Coyote	3948732	Emission Rank - 13 <sup>th</sup> of 50 of America's most polluting power plants <sup>2</sup>
Antelope Valley	7931145	Emission Rank - 24 <sup>th</sup> of 50 of America's most polluting power plants <sup>2</sup>

### Mercury Air Emissions - Hg - Pounds of Hg - 2005 data<sup>1</sup>

RM Heskett	22	
LeLand Olds	336	Emission Rank - 37 <sup>th</sup> of 100 of America's most polluting power plants <sup>2</sup>
Stanton	112	
Milton R Young	408	Emission Rank - 16 <sup>th</sup> of 100 of America's most polluting power plants <sup>2</sup>
Coal Creek	660	Emission Rank - 15 <sup>th</sup> of 100 of America's most polluting power plants <sup>2</sup> Tons Rank - 20 <sup>th</sup> of 50 of America's most polluting power plants <sup>2</sup>
Coyote	294	Emission Rank - 31 <sup>st</sup> of 100 of America's most polluting power plants <sup>2</sup>
Antelope Valley	380	Emission Rank - 45 <sup>th</sup> of 100 of America's most polluting power plants <sup>2</sup>

1. Clear the Air, [www.cleartheair.org](http://www.cleartheair.org), 2006

2. Dirty Kilowatts - America's Most Polluting Power Plants, Environmental Integrity Project, July 2006

Testimony  
House Bill 1221

Date: February 6, 2007

House Industry, Business and Labor Committee, Hon. George Keiser, Chairman  
Presented By: Public Service Commissioner Tony Clark

Mr. Chairman and committee members, for your record I am Public Service Commissioner Tony Clark. I am testifying today in opposition to HB 1221 as currently written.

My main practical concern is that, as written, this legislation could very well have the effect of facilitating a very disturbing trend in our region, namely the attempts of the State of Minnesota to impose extraordinary utility costs on ratepayers in other states.

In this session of the Minnesota legislature, there are no fewer than five pieces of legislation that attempt to impose environmental mandates and costs above and beyond what is required by the federal government.

If the potential burden were only borne solely by Minnesota ratepayers, that would be one thing, but there exists the strong potential for utility companies to attempt to pass those costs on to ratepayers in many states. The reason is that utility companies do not build generation to serve just one state, they operate regional grids. Costs have typically been allocated to each jurisdiction on a proportional basis. So long as utility companies were simply securing the low cost power source to serve the region that system worked fine. But Minnesota, which is by far the biggest power user in the region, has recently been upsetting that applecart. Through legislation, the State of Minnesota has been actively requiring utility companies to build generation the way Minnesota politicians best see fit. Minnesota has encouraged utilities to buy from certain power plants and sources, either through preferences or flat-out mandates. And make no mistake, these laws are designed to tip the balance in favor of power built inside

Minnesota. The latest related trend in Minnesota is stringent environmental mandates that go far beyond federal standards, even if that power is generated elsewhere.

My concern is that this piece of legislation facilitates those burdens getting passed on to North Dakota ratepayers. But wait, you may say, the bill only refers to "federal environmental mandates." However I fear there is simply no way for the PSC to ever determine what expenses are incurred to comply with a "federal" environmental mandates, and what incremental costs are added to comply with Minnesota environmental mandates. Decisions about meeting environmental compliance costs are rarely made in a vacuum, and I believe it would be next to impossible to determine which costs are "federally" driven and which are "state" driven. For example, I doubt an additional state mandate would simply mean an extra piece of equipment that could easily be accounted for. More likely, the state mandate would radically alter how the utility even approaches power procurement, so that it would be very difficult to separate the true "federal" compliance cost. They will simply be "environmental costs" booked by the utility, and as such, would be fast-tracked to ratepayer bills. In effect, Minnesota's legislature will be making decisions for North Dakotans, just like the "good-old" colony days gone by.

Mr. Chairman, I believe there is a fairly easy way to help mitigate this problem and have passed out proposed amendments for your consideration. If on line 12 of page 1 the bill were amended so that the definition of federal environmental mandates was "limited to" any requirements under the Clean Air Act, and so forth, it would clearly put the burden on utility companies to prove that the costs were in fact solely federal. The current wording says the mandates "include" certain factors, but that leaves the door far too open for problems to creep in from Minnesota.

I am hopeful this will be non-controversial. If I am wrong about the difficulty in separating federal from state environmental costs, then utility companies will welcome the opportunity to recover what the bill purports to do. After all, if federal costs can be easily accounted for in a vacuum, this should be of no concern whatsoever.

If I am right about those difficulties, then the bill would appropriately set a hurdle when utilities seek to pass on costs that other states are imposing. The burden would be on the utility company to prove this. Again, after all if the true intent of this bill is to mitigate federal costs, this should be welcomed.

Mr. Chairman, make no mistake, this one small amendment will not solve this growing regional problem. One of my top priorities on the PSC over the next few years will be to actively address this issue. We simply cannot turnover our ratepayers' wallets, and our state's critical energy industry to the Minnesota legislature. There can be many ways to help ensure North Dakota's interests are protected. Some are regulatory, and I'll be exploring those, but some could be legislative. It is my hope that the legislature will be partners in that effort, which is why I bring it to your attention.

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PREPARED BY TONY CLARK  
February 7, 2007

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1221

Page 1, line 12, replace "include" with "are limited to"

Renumber accordingly

**H. B. 1221**

**Presented by:** Susan Wefald, President  
Public Service Commission

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

**Date:** February 7, 2007

**TESTIMONY**

Mr. Chairman and members of the Committee, I am Commissioner Susan Wefald, President of the North Dakota Public Service Commission. The testimony that I am presenting is my own testimony, and not that of the whole Public Service Commission. I appear here today to express my opposition to HB 1221. I am concerned about HB 1221 for several reasons.

HB 1221 reflects the wrong regulatory policy and sends the wrong signals to industry. By allowing automatic pass through of the costs associated with environmental mandates, HB 1221 removes any incentive that utilities might have to control those costs or work to develop environmental policies that are good for everyone, including ratepayers.

On line 10 of page one, HB 1221 includes "associated operating expenses" among the costs that can be passed through to ratepayers. This phrase is much too vague and inclusive. There is no way for the Commission to determine just what costs are appropriately included in "associated operating expenses." Utilities could be motivated to include costs in that category that don't really belong there, knowing they can then easily be recovered. I have attached to my testimony a proposed amendment to delete references to "associated operating expenses" from the bill.

Finally, HB 1221 institutes a mechanism to increase costs to ratepayers outside a full rate case, sidestepping the protections inherent in that process. Good regulators try to avoid changing rates based on individual, isolated issues. While some regulatory schemes have moved away from rate of return regulation

and allow governmentally imposed flow throughs for companies that no longer enjoy rate of return protection, rates for traditionally regulated companies should be changed only after a thorough analysis of a company's total utility investment and expenses. A full rate case environment enables this process, examining all investments and expenses, including those that have increased and those that have decreased, to arrive at reasonable rates. HB 1221 unnecessarily disables this process and allows single-issue ratemaking.

Environmental legislation is introduced and debated for months, or even years, before it is finally enacted, and then it is even longer before mandates become effective. These mandates do not blindsides the utilities without warning. The utility will have sufficient time to prepare and process a rate case application when and if an overall rate increase becomes necessary.

This completes my testimony. I will be happy to answer any questions the committee may have.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1221

Page 1, line 10, remove "and associated operating expenses"

Page 1, line 15, remove "Associated operating expenses are costs incurred by the public"

Page 1, line 16, remove "utility to comply with the environmental mandate."

Page 1, line 18, remove "and associated operating expenses"

Page 2, line 3, remove "and expenses"

Page 2, line 7, remove "and expenses"

Page 2, line 16, remove "and expenses"

Page 2, line 21, remove "and expenses"

Renumber accordingly



House Industry Business and Labor Committee  
HB 1221  
February 7, 2007

Chairman Keiser and members of the committee, I am Linda Johnson Wurtz Associate State Director for Advocacy for AARP North Dakota.

I represent 79,600 North Dakota members. AARP North Dakota would like to be on the record in opposition of House Bill 1221.

This does not appear to be good policy for consumers. Processes for rate increases to cover capital costs for utilities are already in place. This looks like a back door method of raising rates without full regulatory review prior to implementation. AARP opposes any rate increase without a full review by the Public Service Commission to determine if it is reasonable and prudent.

A rate adjustment, as suggested in HB 1221, will shift the risk of compliance with environmental mandates on existing generating stations from the utility and its shareholders, onto the ratepayers. The ratepayers will cover the risk every month when they pay their bills. The rate adjustment as proposed allows the utilities to pass through all costs related to compliance with federal environmental standards, thus eliminating the utility's incentive to comply in the most economical and efficient way possible.

Also, it is not clearly defined in the bill where "environmental mandates" begins or ends. What will be included under this rate adjustment, and what will not?

HB 1221 states that the rate adjustment would be "at the level approved in the utility's most recent general rate increase." Why should the utilities earn their current rate of return, which has some risk factors built in, if the ratepayers are assuming more of the risk?

And finally, it is not clear how the proposed tariff would be distributed among various customer classes.

A rate adjustment charge may increase the volatility of customer bills. A consumer may not be able to budget for these unexpected increases, particularly retired citizens on a fixed income.

HB 1221 appears to put an additional burden on North Dakota consumers with no benefit to them. AARP North Dakota urges your do-not-pass recommendation. .

Thank you for you consideration.



# Utility Shareholders of North Dakota

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### HB-1221

Senate Industry Business and Labor Committee  
March 6, 2007

Mr. Chairman, members of the Committee, I'm Bob Graveline, President of the Utility Shareholders of North Dakota. The nearly 2,400 members of our association have the common interest of owning shares of stock in one of the state's regulated utility companies, Otter Tail Corporation, MDU Resources Group, or Xcel Energy. I appear before you this morning on their behalf, as well as on the behalf of the three shareholder owned utility companies serving North Dakota.

### I URGE YOUR SUPPORT OF HB-1221.

HB-1221 before you this morning, which would provide for recovery of federal environmental mandates on existing electricity generating stations, is the result of extensive discussions between representatives of the three shareholder owned utility companies that serve North Dakota. Additionally, there were meetings with staff of the Public Service Commission and the subject has also been on the administrative agenda of PSC meetings at least two times. We also met with senior members of the Governor's staff and they do not have problems with the bill.

Sub-section one of the bill calls for the creation of a tariff as a mechanism to allow regulated utility companies to more efficiently recover costs and expenses associated with complying with federal environmental mandates. Recovery of costs under this bill would take place over time, in a routine manner, upon application by the company and approval by the PSC. Further, the bill clearly states recovery under this tariff terminates as soon as costs are recovered or reflected in the utility's general rate tariffs through a general rate proceeding.

Please note that the bill is specifically restricted to "jurisdictional" costs, which means only those project costs that are allocable to ND consumers will be paid by North Dakotans. Wholesale costs and retail costs allocable to other states will be paid by consumers of those states.

Sub-section two of the bill states what information must be filed under the new tariff should a company elect to apply.

Sub-section three of the bill grants the Public Service Commission authority to conduct a hearing if necessary to help them decide whether or not the costs and expenses are reasonable and prudent, and comply with the tariff. Further, this sub-

P.O. Box 1856  
Bismarck, ND 58502  
701-258-8864  
701-258-8865  
1-800-981-5132  
E-mail usnd@usnd.org  
www.usnd.org

# 1  
1221

section calls for the utility to pay costs associated with any such hearing, and that the burden of proof in the matter lies squarely with the applying utility company.

Please keep in mind, costs included for recovery under this bill are not costs resulting from discretionary company decisions, but are those costs resulting from federal environmental mandates on existing electricity generating stations. Further, should the PSC be concerned about specific project costs, they have full authority to investigate those costs and/or to conduct a hearing.

During our visits with the PSC and their staff, they expressed concern over the words "costs and expenses" in the body of the bill, as well as granting this type of rate recovery outside of a full rate case proceeding.

Please be aware, it is the intent of this bill that any costs or expenses would be accounted for as prescribed by the Federal Energy Regulatory Commission (FERC) Uniform System of Accounts. Further, we believe it is fair to say operating expenses include the cost of labor, materials and expenses incurred in the operation, maintenance, supervision and direction of complying with the federally mandated action.

Passage of this bill will allow utility companies to pass through costs of complying with federal environmental mandates on a regular basis, as operating costs and capital costs are incurred. The ability to do this without having to spend significant dollars for the preparation and hearing of a full general rate case will ultimately save money for consumers.

Passage of this bill will provide for regulatory certainty that will lower the risk of recovery, which should lower borrowing costs and also ultimately save money for consumers.

Passage of this bill will reduce costs of waiting until project completion before seeking rate recovery through an all encompassing rate case, ultimately saving money for consumers as rate cases are very expensive to complete. Furthermore, rate case costs are also passed on to consumers.

There is virtually no disagreement that costs associated with the installation of federally mandated environmental enhancements on existing power plants will eventually be recovered under a rate structure approved by the PSC. To borrow a line from a Fram oil filter commercial of a few years ago, "you can pay me now, or you can pay me later". The point of the commercial is the same as this bill – costs paid up front save the consumer money in the long run.

Mr. Chairman, members of the committee, I urge you to forward a **DO PASS RECOMMENDATION ON HOUSE BILL 1221.**

## H. B. 1221

**Presented by:** Susan Wefald, President  
Public Service Commission

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

**Date:** March 6, 2007

### TESTIMONY

Mr. Chairman and members of the Committee, I am Commissioner Susan Wefald, President of the North Dakota Public Service Commission. The testimony that I am presenting is my own testimony, and not that of the whole Public Service Commission. I appear here today to express my opposition to HB 1221. I am concerned about HB 1221 for several reasons.

HB 1221 reflects the wrong regulatory policy and sends the wrong signals to industry. By allowing automatic pass through of the costs associated with environmental mandates, HB 1221 removes any incentive that utilities might have to control those costs or work to develop environmental policies that are good for everyone, including ratepayers.

On line 10 of page one, HB 1221 includes "associated operating expenses" among the costs that can be passed through to ratepayers. This phrase is much too vague and inclusive. There is no way for the Commission to determine just what costs are appropriately included in "associated operating expenses." Utilities could be motivated to include costs in that category that don't really belong there, knowing they can then easily be recovered. I have attached to my testimony a proposed amendment to delete references to "associated operating expenses" from the bill.

Finally, HB 1221 institutes a mechanism to increase costs to ratepayers outside a full rate case, sidestepping the protections inherent in that process. Good regulators try to avoid changing rates based on individual, isolated issues. While some regulatory schemes have moved away from rate of return regulation

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and allow governmentally imposed flow throughs for companies that no longer enjoy rate of return protection, rates for traditionally regulated companies should be changed only after a thorough analysis of a company's total utility investment and expenses. A full rate case environment enables this process, examining all investments and expenses, including those that have increased and those that have decreased, to arrive at reasonable rates. HB 1221 unnecessarily disables this process and allows single-issue ratemaking.

Environmental legislation is introduced and debated for months, or even years, before it is finally enacted, and then it is even longer before mandates become effective. These mandates do not blindsides the utilities without warning. The utility will have sufficient time to prepare and process a rate case application when and if an overall rate increase becomes necessary.

This completes my testimony. I will be happy to answer any questions the committee may have.

#2  
1221

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1221

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Page 1, line <sup>14</sup>15, remove "Associated operating expenses are costs incurred by the public"

Page 1, line <sup>15</sup>16, remove "utility to comply with the environmental mandate."

Page 1, line 18, remove "and associated operating expenses"

Page 2, line 3, remove "and expenses"

Page 2, line 7, remove "and expenses"

Page 2, line 16, remove "and expenses"

Page 2, line 21, remove "and expenses"

Renumber accordingly

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1221



**Senate Industry Business and Labor Committee  
HB 1221  
March 6, 2007**

Chairman Klein and members of the committee, I am Linda Johnson Wurtz Associate State Director for Advocacy for AARP North Dakota. Today I represent 79,700 North Dakota members.

AARP North Dakota opposes House Bill 1221 for the following reasons:

It allows a utility to bypass the regulatory process and allows a single-issue rate increase without a full rate review by the Public Service Commission. This is not good policy for consumers.

A rate adjustment, as suggested in HB 1221, will shift the risk of compliance with environmental mandates on existing generating stations from the utility and its shareholders onto the ratepayers. The ratepayers will cover the risk every month when they pay their bills. Yet, HB 1221 states that the rate adjustment would be "at the level approved in the utility's most recent general rate increase." The utilities will earn their current rate of return, which has some risk factors built in, while the ratepayers are assuming more of the risk. There is no indication of what the benefit is to the ratepayer for taking on the risk in addition to the up-front cost burden for these capital costs.

The rate adjustment as proposed allows the utilities to pass through all costs related to compliance with federal environmental standards, thus eliminating the utility's incentive to comply in the most economical and efficient way possible.

Also, it is not clearly defined in the bill where "environmental mandates" begin or end. What will be included under this rate adjustment, and what will not?

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It is not clear how the proposed tariff would be distributed among various customer classes.

Without the benefit of a full rate review prior to the proposed rate adjustment, rates for consumers may increase dramatically and unpredictably. This makes it difficult for some consumers to budget for these unexpected increases, particularly retired citizens on a fixed income.

We have a process in place to provide for rate increases to cover capital costs for utilities. The Public Service Commission has responsibility to decide if rate adjustments are reasonable and prudent. Since there appears to be no benefit to North Dakota consumers in circumventing that process, AARP North Dakota hopes this committee will recommend a do-not-pass on HB 1221.

Thank you for your consideration.

#3  
1221