

**1999 SENATE GOVERNMENT AND VETERANS AFFAIRS**

**SB 2389**

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2389

Senate Government and Veterans Affairs Committee

Conference Committee

Hearing Date February 5, 1999

Tape Number	Side A	Side B	Meter #
1	x		3663-6198
1		x	0-6192
2	x		0-6192
2		x	0-3025
Committee Clerk Signature <i>James A. Raik</i>			

Minutes:

SENATOR KREBSBACH opened the hearing on SB2389: A BILL FOR AN ACT TO CREATE AND ENACT A NEW SECTION TO CHAPTER 49-03 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO THE VOLUNTARY SALE OR TRADE OF FACILITIES AND SERVICE AREAS; AND TO AMEND AND REENACT SECTIONS 49-03-01.1, 49-03-01.3, 49-02-01.4, AND 49-03-05 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO SERVICE BY ELECTRIC PUBLIC UTILITIES AND RURAL ELECTRIC COOPERATIVES.

SENATOR ST. AUBYN testified in support of SB2389. (See attached testimony)

DENNIS BOYD, MDU Resources Group testified in support of SB2389, and introduced witnesses.

RON TIPTON, testified in support of SB2389.



JOHN MACFARLANE, Otter Tail Power Co. testified in support of SB2389. (See attached testimony)

KENT LARSON, Northern States Power through overhead regarding new customer growth in areas in ND. We would like to balance the growth opportunity so we can be successful in the future. Utilities have a significant part in economic development. A healthy company with some growth can contribute to community projects. We are asking for the opportunity for some growth and the opportunity to share in the future growth so we can balance it out for the future. (Overhead testimony attached)

SENATOR WARDNER asked when a city extends their boundaries, is there a rule of thumb as to when they expand their boundaries and when they annex new territory into their city.

KENT LARSON replied it depends upon the people in the area whether they want to be annexed or not. There is no particular formula.

SENATOR THANE asked Ron Tipton I do not see an expansion into a city when it was already there.

RON TIPTON replied the normal progression of growth that will occur or should occur in cities, all of the services and products provided as a result of that growth will expand as well, so with the Territorial Integrity Act is a line was drawn and said we are going to stop electrifying through the public utilities at this line. Once it gets here, it is done. I don't believe that was ever the intent because that does not mean that the areas that have now been annexed in are rural areas. To the contrary, they are urban areas receiving urban-type services and services that do not require subsidization of any form be provided. This is not true in the truly rural areas where you have to extend lines 1 or 2 miles to get to a new property, dwelling, or new barn. Subsidization

is not required in here as it is out there. That is what the Rural Electrification Act is all about providing an essential service that otherwise could not be provided.

SENATOR DEMERS asked about leveling the playing field and that it seems you are drawing a line and you are not allowing any opportunity for the REC to function within municipal boundaries.

RON TIPTON replied the natural progression of growth of a city outward dictates that the growth starts before annexation occurs. If those areas are not annexed into the city today, they are served by the REC's as a result. Once annexation occurs, there will be a substantial amount of service already being provided in that newly annexed area by the cooperatives. We are not proposing to take that away, we are proposing that the area that is annexed into the city, and from that point forward, we have the ability to connect the new customers. Today, the investor-owned utilities get none of that growth. It all goes to the coops. All we are asking for is part of it.

SENATOR DEMERS stated it appears you are asking for an exclusive franchise and you are allowing municipalities to sell REC's to you, yet they won't allow them to continue to function. There doesn't seem to be any guarantee in this clause that they are going to be allowed to continue to function the way it is written.

KENT LARSON replied we are finding that provision is being misinterpreted a lot. The intention is is that the coops that serve customers right now continue to get to serve them in the future.

SENATOR ANDRIST testified in opposition to SB2389. (See attached testimony)

REP. HUETHER testified in opposition to SB2389 and recommended a DO NOT PASS. (See attached testimony)

REP. NICHOLAS testified in opposition to SB2389 and recommended a DO NOT PASS. (See attached testimony)

REP. SHIRLEY MEYER testified in opposition to SB2389. If this bill became law, it would have an adverse impact on every REC in the state. This would cause significant rate increases to rural farms, etc. The REC's have spent billions of dollars in rural ND so everyone can have electricity. I recommend a DO NOT PASS.

HARLAN FUGLESTEN testified in opposition to SB2389 and recommended a DO NOT PASS. (See attached testimony)

DENNIS HILL testified in opposition to SB2389 and recommended a DO NOT PASS. (See attached testimony)

SENATOR TALLACKSON testified in opposition of SB2389 and recommended a DO NOT PASS.

DAVID LOER, Minnkota Power Cooperative, Inc. testified in opposition of SB2389. (See attached testimony)

DAVID KENT, Nodak Electric Cooperative Board of Directors testified in opposition of SB2389. (See attached testimony)

JIM NEWMAN, Sawyer, ND testified in opposition to SB2389. (See attached testimony)

DEAN PETERSON, The Coteau Properties Co. testified in opposition to SB2389 and recommended a DO NOT PASS. (See attached testimony)

(SEE ATTACHED WRITTEN TESTIMONY IN OPPOSITION TO SB2389)

KEN BERTSCH, ND Farm Bureau; BRUCE R. CARLSON, Verendrye Electric Coop.; VIVIAN GWIN, Dakota Aero Manufacturers, Devils Lake; SCOTT HANDY, Cass Co. Electric; CRAIG

HEADLAND, ND Ass'n of Telephone Cooperatives; DENNIS HARTMAN, Killdeer, ND; GARY JACOBSON, Basin Electric Power Coop.; BOARD OF DIRECTORS, ND Rural Water Systems Ass'n.; RICHARD SCHLOSSER, ND Farmers Union; CITY COUNCIL, Watford City, ND; GORDY WIESE, Capital Electric Coop, Inc.;

SENATOR WARDNER asked Harlan Fuglesten if cities have the right to choose their power suppliers.

HARLAN FUGLESTEN replied the law in ND gives the right to the governing board of a city to determine which supplier they will franchise. The franchises are granted for a 20-year period of time and are subject to renewal.

SENATOR THANE asked to itemize the taxes REC's pay and when do the patrons pay taxes on their accumulated.

HARLAN FUGLESTEN replied REC's pay different taxes, but pay 4 taxes that together are intended to substitute for or be in lieu of property taxes paid by the investor-owned utility. The 2% gross receipt tax is paid on every dollar of revenue earned by an REC and that money is returned to the county as property taxes. REC's only pay a high voltage transmission line tax of \$225 per mile of line on 230kv or more. Thirdly, REC's pay land taxes on the land that they own, but not on the improvements made on the land. A city is paid a privilege tax as authorized by state law and is a tax in addition to the 2% gross receipt tax and there is an adjustment made to that tax based on the valuation of distribution property in a city, minus the amount from the 2% gross receipt tax, back to that city.

SENATOR WARDNER asked regarding your generation plant what do you have left for growth.

HARLAN FUGLESTEN replied there is excess substantial capacity at this point.

SENATOR WARDNER asked if a customer sells their home and someone else moves into that home, are they considered a new customer and they would have to go to the investor-owned utility.

HARLAN FUGLESTEN replied that is exactly right. Under the bill it refers to customers only. The bill reads if a customer leaves and a new one moves in, that is a new customer. Annexation is never mentioned in this bill but because the bill limits a municipality from granting a franchise to an REC, it does not contain a provision that they can only serve customers they were serving on July 31, 1999. If they annex territory and they are trying to grant a franchise to the REC to continue to serve customers in that area, they have to honor the language of this bill which says they can only serve customers that they were serving on July 31, 1999. In a situation such as 2005, an area becomes annexed to a city and the REC may have served and developed that area, and under this bill they would lose all of those customers. There is no incentive for an REC under this bill to serve in areas that potentially may be subject to annexation.

SENATOR KREBSBACH asked do you see any area of compromise in the situation we are in between you and the IOU's.

HARLAN FUGLESTEN replied from our point of view because the investor-owned utilities are not seeing the growth rate that they desire that it ought to come on the backs of the REC's is just a premise that we do not accept. It is a zero-sum game in ND and ND itself is not growing greatly so if there is a plan in mind that is designed to take away our customers, we would simply say we are not in any position to accept that.

SENATOR WARDNER asked if a community in the expansion where the REC's are, and if they wanted to have their franchise jurisdiction in that area, they have to be served by the REC's and

they have no choice because there are parts of a community that have to be served by the REC.

If the city wanted them to be served by an investor-owned utility, they still can't because of the Territorial Act. Doesn't that interfere with the city's rights to franchise.

HARLAN FUGLESTEN replied the purpose of the law is to avoid wasteful and unnecessary duplication of expensive utility services and the prohibition against unreasonable interference actually predates the 1965 amendment to this law and has been in place for decades in ND. It prohibits the unreasonable interference between the investment made by the utility.

SENATOR WARDNER asked what will happen when we have deregulation of the electric industry.

HARLAN FUGLESTEN replied what may happen to deregulation in ND may be determined by forces outside of the state. The Electric Utilities Committee is watching that issue closely and we would agree with their view which is that we need to know as much about the industry and where it is moving and we want to be with the flow of events and make sure that the state is ready for whatever happens. I don't know if customer choice in a full-fledged form will appear in ND within the next few years.

SENATOR KILZER asked about losing customers.

HARLAN FUGLESTEN replied we can lose customers in 2 ways under this bill. Under the bill, it is clear that a city, in order to continue a franchise with the REC would have to grant a new franchise or an amended franchise, and they are not required to do that under the bill. Under the bill we cannot serve any customers after July 31, 1999 that we weren't serving. In the urban areas we are very mobile society so as customers leave from our system, we would have a dwindling customer base and it wouldn't take very long at all before there wouldn't be very

many customers left. Besides the city would be faced with the difficult problem of having facilities built in by the investor-owned utilities right over and across the facilities that are in place by the REC. We believe that it would result in a substantial loss of customers.

SENATOR DEMERS asked if the IOU's are defining customers as buildings or existing structures, not occupants of buildings, how do I clear that up.

HARLAN FUGLESTED replied the final test is not how investor-owned utilities define the term customer, that would be determined by the court. There is nothing in this bill that suggests that that is the definition that would be applied to the bill.

SENATOR KREBSBACH asked David Loer you indicated your growth would be stopped by this bill if it passes, and you sell to the REA's and the IOU's, do you not.

DAVID LOER replied we have a current contract with our member owners with the 12 distribution cooperatives that own us. The investor-owned utilities that we sell to are sold to either on a fixed contract basis or out of surplus capacity energy basis. We sell wholesale to investor-owned utilities as we have contracts and as we have surplus. Our firm customers are the 12 REC's that own Minnkota.

SENATOR KREBSBACH asked what percentage of your business is to the IOU'S and what percentage can be REA on a kilowatt or revenue basis..

DAVID LOER replied on a revenue basis about 80% comes from our 12 member-owner distribution cooperatives and on a kilowatt hour basis, about 70%. The reason for that is that the price we sell on a wholesale basis to the investor-owned utilities because it is non-farm and is sold at a lower price.

SENATOR WARDNER asked what goes into a development before it comes into the city.

DAVID LOER replied very little development goes on before these areas are annexed because most developers want to put much money into an undeveloped area before they knew with some assurance that it would be annexed into the city. They would know that if they were going to develop this for a residential lot they would need water and sewer and perhaps streets, curbs and gutters and they would want assurances that those would be available before they end up developing it.

SENATOR MUTZENBERGER asked when the REA program came into being the low-interest loans to develop electricity in rural areas were made available through IOU's also, do you agree with that.

RON TIPTON replied there were some instances where investor-owned utilities were afforded some low-interest money to build in the rural areas. That did not happen in ND.

SENATOR WARDNER asked do you agree that building does not start until they have commitment from a city regarding streets, curbs, gutters, etc.

RON TIPTON replied I do not agree with that. There is building going on around the city limits. They may not have the full infrastructure that they eventually have once they are brought into the city, but the development is started. The territorial boundaries that the investor-owned utilities are up against are well within the city limits. For us to make the next move, we have got to jump over a big portion of the territory already served by the REC's.

SENATOR KREBSBACH asked if this bill will have unnecessary duplication of facilities.

RON TIPTON replied that is an issue that exists today. There are instances throughout this state where we share transmission facilities and I cannot see that changing. If there is going to be a duplication of facilities a clear duplication of facilities, this bill will make it clearer as to who is



going to serve the area of a particular customer. I know we will work together so there is not an unnecessary duplication of facilities, just as we do today.

SENATOR MUTZENBERGER asked do you agree that the presence of 20-25-30 REC's are here because of unwillingness of IOU's to develop rural electricity.

RON TIPTON replied no. I do not believe that investor-owned utilities were unwilling to develop rural electricity. We do not have the means to do so. We helped the REC's get started in this state. The reason rural America got electricity is because the government put up the money to do so and guaranteed the loans on the other side for the REC's. Had that not been done, rural America would not have been electrified.

SENATOR WARDNER stated REC's need additional customers to keep their business going.

Are you losing customers in smaller areas.

RON TIPTON replied we added 600 electric customers in 4 states. We have 114,000 total electric customers today. We are losing out in the small towns.

KENT LARSON and BRUCE KOPP from NSP commented, along with MARLOW JOHNSON from Otter Tail Power Co.

COMMISSIONER WEFALD, ND Public Service Commission, stated the commission is neutral on the issue.

SENATOR KREBSBACH closed the hearing on SB2389.

*Committee Work-February 11, 1999, Tape 2, Side B, Meter #'s 0-2360*

*Senator Rod St. Aubyn appeared before the committee and spoke to them about the prior hearings on this bill. He indicated that both IOU's and the REC's have hoped to have the bill amended or changed in some way to make it more palatable to them. Senator St. Aubyn offered*

2-11-99

*an amendment to the committee which would ask that a study be conducted by the Electric Utilities Commission and that this study be done during the interim. The amendment he is submitting which if approved would direct the electric utilities commission to study the issues identified during the bills hearing, present proposed legislation during the next session. Senator Stenehjem asked Senator St. Aubyn if they would be mandated to bring a bill to the legislature the next session. St. Aubyn indicated that was correct. Senator DeMers indicated she didn't understand the need for amendments. Perhaps we may be better off to get rid of the bill and let them proceed as they already are. St. Aubyn indicated he did not agree with that. I think if we send a message that this shall be done I think we will finally get some resolution. Senator Thane: I guess I'm just a little confused as to why we don't have a legislative council study instead of a bill for an act. Maybe you can help me out and tell me why this is being mandated? St. Aubyn, I think the main reason why is because there is a difference between a study in terms of this is a statutory commission, that isn't a legislative interim committee per say, it is a statutory committee that is established differently than the rest of the committees we have had. This has been a very difficult issue and I think it needs to be resolved and that is the proper forum. We don't have the proper time in the legislature to deal with these issues. Yet this commission, they would be given the time to deal with it one way or another. There decision may not necessarily be something that I agree with but that is the proper way of dealing with it. Senator Thane: What do you anticipate the make up of the commission to be? St. Aubyn that commission already exists. Senator Thane: Okay, refresh my memory. St. Aubyn: I'm not even sure who all is on it. I think Representative Hetter, Carlson. I'm just not sure who is all on it but*

2-11-99

*it is a statutorily mandated committee. Discussion continued. The committee decided to evaluate the information provided at this time and would meet again on this bill another day.*

Further Discussion of SB 2389: Tape 1, Side A, 2/12/99, Meter #'s 0-3232

**The committee opened with a discussion of the amendments which had been presented to the committee the previous day. Representative Al Carlson, District 41 appeared before the committee. He indicated he is the chairman of the Electric Utilities Committee which was established the last interim. When he heard about and saw the amendments he thought it would be appropriate if he came down and talked with the committee. This issue is one which came up at almost every meeting of the committee. As the amendments read as he reads them it gives us the responsibility to address this issue, take a look at the issue, and to bring something back to the assembly in the next legislative session. I'm not uncomfortable with that even though he knows it's an extremely contentious issue. I believe it is an issue that should be dealt with as we move toward the change in our taxation and our change in deregulation of electricity. We will do what you direct us to do with this bill and we will address it in the 1999-2000 biennium. Discussion continued with questions and comments being offered by various committee members. Harlan Fugelston appeared before the committee, a copy of his testimony is attached. Dennis Boyd, Bruce Kopp, added information to the committees materials. Following discussion proposed changes to amendments submitted were made by Senator DeMers and Senator Mutzenberger. A vote was taken on amendments proposed by DeMers, 3 YEAS, 4 NAYS, 0 ABSENT OR NOT VOTING. The amendment failed. A motion to adopt Amendments .0202 was made by Senator Stenehjem, seconded by Senator Mutzenberger. Roll Call Vote indicated 7 YEAS,**

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Senate Government and Veterans Affairs Committee

Bill/Resolution Number SB 2389-GVA

Hearing Date February 5, 1999

2-11-99

**0 NAYS, and 0 ABSENT OR NOT VOTING. A motion for DO PASS AS AMENDED was made by SENATOR W. STENEHJEM, seconded by SENATOR THANE. ROLL CALL VOTE indicated 6 YEAS, 1 NAY, and 0 ABSENT OR NOT VOTING.**

FISCAL NOTE

(Return original and 13 copies)

Bill/Resolution No.: SB 2389

Amendment to:

Requested by Legislative Council

Date of Request: 1-27-99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative: *This bill amends the provisions of the Territorial Integrity Act which governs relationships between electric investor owned utilities and rural electric cooperatives. The Public Service Commission does not foresee any impact on the general fund.*

2. State fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds
Revenues:	N/A	N/A	N/A	N/A	N/A	N/A
Expenditures:	N/A	N/A	N/A	N/A	N/A	N/A

3. What, if any, is the effect of this measure on the appropriation for your agency or department:

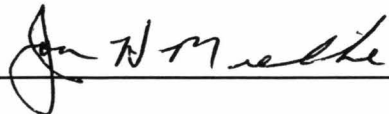
- a. For rest of 1997-99 biennium: N/A
- b. For the 1999-2001 biennium: N/A
- c. For the 2001-03 biennium: N/A

4. County, City, and School District fiscal effect in dollar amounts: *No Effect*

	1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
	Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

If additional space is needed, attach a supplemental sheet.

Date Prepared: *January 29, 1999*

Signed: 

Typed Name: Jon H. Mielke, Executive Secretary

Department: Public Service Commission

Phone Number: 328-2400

Date: 2/12/99  
Roll Call Vote #: SB 2389

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

- Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number DeMee Amendment

Action Taken \_\_\_\_\_

Motion Made By DeMee Seconded By Mutzenberger

Senators	Yes	No	Senators	Yes	No
SENATOR KREBSBACH		✓			
SENATOR WARDNER		✓			
SENATOR KILZER		✓			
SENATOR STENEHJEM		✓			
SENATOR THANE	✓				
SENATOR DEMERS	✓				
SENATOR MUTZENBERGER	✓				

Total (Yes) 3 No 4

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Date: 2/12/99  
Roll Call Vote #: SB 2389

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

- Subcommittee on \_\_\_\_\_
- or
- Conference Committee

Legislative Council Amendment Number Motion to amend - 102-02

Action Taken \_\_\_\_\_

Motion Made By Stenehjem Seconded By Mutzenberger

Senators	Yes	No	Senators	Yes	No
SENATOR KREBSBACH	✓				
SENATOR WARDNER	✓				
SENATOR KILZER	✓				
SENATOR STENEHJEM	✓				
SENATOR THANE	✓				
SENATOR DEMERS	✓				
SENATOR MUTZENBERGER	✓				

Total (Yes) 7 No 0

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Date: 2/12/99  
Roll Call Vote #: 2389

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number Do Pass

Action Taken \_\_\_\_\_

Motion Made By Skudjia Seconded By Thane

Senators	Yes	No	Senators	Yes	No
SENATOR KREBSBACH	✓				
SENATOR WARDNER	✓				
SENATOR KILZER	✓				
SENATOR STENEHJEM	✓				
SENATOR THANE	✓				
SENATOR DEMERS		✓			
SENATOR MUTZENBERGER	✓				

Total (Yes) 6 No 1

Absent \_\_\_\_\_

Floor Assignment Senator Wardner

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



**REPORT OF STANDING COMMITTEE**

**SB 2389: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2389 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 54-35-18.2 and a new section to chapter 54-35 of the North Dakota Century Code, relating to study areas of the electric industry competition committee; and to provide an expiration date.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new subsection to section 54-35-18.2 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

Study chapter 49-03 and other relevant statutes relating to the extension of electric lines and facilities and the provision of electric service by public utilities and rural electric cooperatives within and outside the corporate limits of a municipality. The study must specifically address and include the criteria used by the public service commission under chapter 49-03 in determining whether to grant a public utility a certificate of public convenience and necessity to extend its electric lines and facilities to serve customers outside the corporate limits of a municipality and the circumstances, if any, under chapter 49-03 and other relevant statutes under which a rural electric cooperative may provide electric facilities and service to new customers and existing customers within municipalities being served totally or primarily by a public utility.

**SECTION 2.** A new section to chapter 54-35 of the North Dakota Century Code is created and enacted as follows:

**Electric industry competition committee - Recommendations.** Notwithstanding section 54-35-18.2, the electric industry competition committee shall submit proposed legislation, if necessary, as a result of the study conducted pursuant to section 1 of this Act to the fifty-seventh legislative assembly.

**SECTION 3. EXPIRATION DATE.** This Act is effective through July 31, 2001, and after that date is ineffective."

Renumber accordingly

1999 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2389

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2389

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 3-3-99

Tape Number	Side A	Side B	Meter #
1		x	1913 - 3718
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes: **SB 2389**

Senator St. Aubyn introduced SB 2389 relating to study areas of the electric industry competition committee. (See written testimony)

Rep. Huether testified in favor of SB 2389.

Rep. Johnson: Do you think it would be appropriate to expand that committee, or if there is a way to get others involved?

Rep Huether: I would not have a problem with expanding the committee. We have covered a lot of territory. We have visited with people from all over the country to discuss how they're looking at this project of restructuring electrical industry. If the committee gets too large it may slow down the ability of the committee to formulate progress.

Dennis Boyd testified on behalf of MDU in favor of SB 2389. (See written testimony)

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House Industry, Business and Labor Committee

Bill/Resolution Number Sb 2389

Hearing Date 3-3-99

Scott Handy testified on behalf of Cass County Electric Coop. Inc. in favor of SB 2389. (See written testimony)

Bruce Kopp testified on behalf of Northern States Power Co. in favor of SB 2389. (See written testimony)

Harlan Fugleston of NDAREC testified in favor of SB 2389. (See written testimony)

Rep. Froseth: Do you think that all the parties involved will accept the recommendation of the study committee no matter what the recommendation will be?

Harlan Fugleston: With out knowing what that recommendation is it would be difficult to say.

Chairman Berg closed the hearing.

#### **Action on SB 2389**

Rep. Keiser made a motion for a Do Pass.

Rep. Froseth second the motion.

Roll call vote was 14 yea, 0 nay, 1 absent.

The motion carries.

Rep. Johnson will carry the bill.

Date: 3-3-99  
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2389

House Industry, Business and Labor Committee

Subcommittee on \_\_\_\_\_  
or

Conference Committee

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

Action Taken do pass

Motion Made By Keiser Seconded By Froseth

Representatives	Yes	No	Representatives	Yes	No
Chairman Berg	/		Rep. Thorpe	/	
Vice Chairman Kempenich	/				
Rep. Brekke	/				
Rep. Ekstrom	/				
Rep. Froseth	/				
Rep. Glasheim	/				
Rep. Johnson	/				
Rep. Keiser	/				
Rep. Klein	/				
Rep. Koppang	/				
Rep. Lemieux					
Rep. Martinson	/				
Rep. Severson	/				
Rep. Stefonowicz	/				

Total (Yes) 14 No 0

Absent 1

Floor Assignment Johnson

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

REPORT OF STANDING COMMITTEE (410)  
March 3, 1999 2:17 p.m.

Module No: HR-38-3962  
Carrier: N. Johnson  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

SB 2389, as engrossed: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2389 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

SB 2389

Testimony on SB 2389  
Senate Government and Veterans Affairs Committee  
February 4, 1999

Madam Chair and members of the Government and Veterans Affairs Committee, for the record I am Senator Rod St. Aubyn, representing District 43 in Grand Forks. As you all know, SB2389 deals with modifying the Territorial Integrity Act. When I was asked to introduce SB 2389, never in my wildest dreams did I ever anticipate the current reaction. There has been so much misinformation and a barage of phone calls and emails, that I am sure everyone is happy that this day has finally arrived. In a democratic society, we must have the ability to introduce a bill for our constituents without the fear of intimidation or threats. As part of that process, I only ask that you, as committee members, listen carefully to the testimony of each participant, both from the supporters and those opposed. You have the awesome responsibility to separate the emotion from the facts and make the ultimate decision to determine if the merits of this bill deserve your support. Legislation should not be determined by the number of phone calls we receive, by the number of personal visits we have shared, or by the number of people present at a hearing. Legislation needs to be drafted based on facts. You are going to hear the same old rhetoric that we have been exposed to for the past couple of weeks. I challenge each of you, to look past that rhetoric and get to the facts. I don't know all of the negative points of this bill, nor do I know all of the positive points. The only thing I do know is that I have all of the confidence in the world in your abilities to make good public policy.

Madam Chair and committee members, I ask for your support for SB2389. If during your future deliberations, you determine that amendments are necessary, I am willing to work with you to draft the best legislation possible. Thank you.



**Ronald D. Tipton  
President & CEO  
Montana–Dakota Utilities Co.  
Government and Veteran Affairs Committee  
Territorial Integrity Act  
February 5, 1999**

Madam Chair and members of the Committee:

I appreciate the opportunity to appear before you and the committee today to discuss a situation, which if uncorrected, threatens the very existence of every investor owned electric utility in the State of North Dakota.

The North Dakota Territorial Integrity Act, as it is presently constructed, does not assure our ability to provide service to new customers within towns and cities - to the detriment of our customers, the state and the

general public. This is an unintended result of the Territorial Integrity Act passed in 1965. We cannot disagree with the original purpose of this Act, which was designed to allow the rural electric cooperatives to achieve, without interference from the electric public utilities, their mission of electrifying areas outside the towns and cities; that is, to bring electricity to the farms and ranches in rural North Dakota. This is consistent with the intent and spirit of the federally enacted Rural Electrification Act of 1936; which paved the way for bringing electricity to virtually every farm house in the United States.

Let me emphasize that Montana-Dakota has long supported the electrification of *rural* America. As many of you know, Montana-Dakota has been serving many small farming and ranching communities since the 1920s which are primarily service centers for the surrounding farms and ranches. And, we realize that affordable electricity through rural cooperatives is essential to a healthy farm and ranch economy.

Today, however, the major expansion of service within the cities and urban areas by rural electric cooperatives is in direct violation of Congress' original intent in the Rural Electrification Act. I'll explain. During the debate of the

Rural Electrification Act in April of 1936, Congressman Sam Rayburn of Texas, the author of the Act stated:

*“May I say to the gentlemen that we are not in this bill, intending to go out and compete with anybody. By this bill we hope to bring electrification to people who do not now have it. This bill was not written on the theory that we were going to punish somebody or parallel their lines or enter into competition with them.”*

The present ability of the rural electric cooperatives, with the help of subsidies from the Federal Government, to grow into towns and cities in direct competition with the public utilities is not in the best interest of North

Dakotans, and violates the intent and purpose for which North Dakota RECs were formed. As shown by the Congressional Record and North Dakota State law, this was clearly not the intent of the leaders who drafted the federal and state legislation.

The cooperatives' expansion into North Dakota's towns and cities is even more at odds with rural electrification when you consider most of their urban load growth is in upscale residential neighborhoods, such as Country West here in Bismarck, as well as industrial parks and shopping malls. There is no indication that Congress, by enacting the Rural Electrification Act, envisioned rural electric cooperative service to customers like K-Mart, which is

located inside the city limits of Bismarck, and the West Acres Shopping Mall located within the city limits of Fargo.

**How prevalent is this expansion by the rural cooperatives into urban areas?**

A growing portion of the rural cooperatives' loads served is located within North Dakota's towns and cities. Capital Electric, a rural cooperative headquartered in Bismarck, has over one-third of its customers located in urban Bismarck, and **GROWING!!** (*VISUAL AID*) In fact, about 25% of the area inside Bismarck's city limits is currently served by Capital Electric - Hardly the profile of a 1936

rural electric cooperative electrifying the farms and ranches of rural North Dakota.

Let's take a conceptual look at this, using Bismarck as an example – I hasten to add that the same thing is happening in other areas of the state as well. (*VISUAL AID*)

Referring to the board, the core shown in “white”, is indicative of Montana-Dakota's current service area in and around Bismarck. The area in “red” shows the rural electric cooperatives service area. All new load – the blue area, is being developed around Bismarck on the other side of the current service area of the rural electric cooperative's service area. Thus, we are essentially ringed by Capital Electric around the city of Bismarck,

and cut-off from serving all new urban growth annexed into the city. We estimate for instance, that about 80% of the load growth experienced by Capital Electric in the last two years was **urban**, representing a loss to Montana-Dakota of about 300 customers per year. If the rural electric cooperatives serve virtually all new **urban** loads in the future, the result is rather obvious. We can't **GROW!** And if you can't grow your business, and your services aren't subsidized like rural electric cooperatives are, you have only two choices – higher rates or reduced services. We all know that – so this is what it's really all about – Literally our **FUTURE** in the electric distribution business.



There is no mandate for the rural electric cooperatives to grow. The rural electric cooperatives' original mission has largely been completed; its only role at this point is to maintain adequate and reliable services in rural areas.

From my company's perspective, I can tell you we will continue to diligently look for ways of making our operations more efficient so as to keep rates in line. But at some point, without **growth**, I envision that we will need to raise rates to our customers so as to maintain reliable and adequate service – a bit of irony, when you consider that our customers pay income taxes to the Federal Government, only to be returned in part, to the rural electric cooperative in the form of subsidies for the

serving of urban customers – in any language, that’s a  
GOTCHA!

**Now how did this all come about?**

Let’s look at the Bill you have before you, and the Territorial Integrity Act itself for an answer. In Section 2 of the Bill, the current statute provides that while the public utility does not need to secure Commission approval to extend lines within the corporate limits of a municipality, such extension shall not interfere with existing services provided by a rural electric cooperative or another electric public utility within such municipality; and provided duplication of services is not deemed unreasonable by the Commission.

Now, because the rural electric cooperatives can install rural lines at will, without any regulatory oversight whatsoever, there rarely is an instance where the rural electric cooperative will not have some minimum facilities located in areas that are annexed by the city; **thus the public utility, in most cases, is unable to extend service to new customers in newly annexed areas, because it is viewed as interfering with and/or duplicating the rural electric cooperative's service, in what has now become an urban area.**

The present Territorial Integrity Act provides a “one – way” street only, all flowing to the advantage of the rural

electric cooperatives. Early North Dakota Supreme Court cases correctly drove home the point that cooperatives are to serve rural loads outside North Dakota's towns and cities. It seems clear that the legislature's **original** intent was that the rural electric cooperatives are to provide service to "Rural Areas" - **not "Urban Areas."** But that is not how the law has been administered.

### **Solution**

It is because of these inequities that the state's electric public utilities have introduced the Bill now before you.

In addition to striking the problem language in lines 4-7 in Section 2, I just alluded to, there are other proposed

changes in the Territorial Integrity Act as well. I should note that Section 1 makes no substantive changes, and leaves in place in all respects, the existing public convenience and necessity process before the Public Service Commission, applicable to public utilities serving rural customers. The proposed amendment to the Territorial Integrity Act will not affect nor disrupt the rural electric cooperatives' original mandate to provide electric service to the farms and ranches outside North Dakota's towns and cities.

In Section 2 of the Bill, lines 8-14 provides that after July 31, 1999, all customers within the corporate limits of a municipality shall be served by the electric public utility,

if authorized by franchise; with the important proviso that a rural electric cooperative may continue to provide electric service to existing customers it was serving in a municipality on the effective date of the Act, where a franchise exists. It is not our intent with this Bill, to economically harm the rural electric cooperatives by taking existing customers away from them. We only mean to correct a problem that has worsened over a 34-year period.

Under Section 2, at lines 15-17, consistent with the notion that rural cooperatives should only be serving areas outside the cities and towns, a rural electric cooperative would be ineligible to apply for a new or continued

franchise to serve **new** customers within the corporate limits of the municipality.

Section 2 at lines 18-22, would allow the rural electric cooperative the option of removing its facilities or selling its facilities at an agreed upon price, if a municipality does not allow a rural electric cooperative to continue service to existing customers. There are no other substantive changes in Section 2.

In Section 3, the only change proposed is to include the rural electric cooperatives under the Enforcement provisions of the Act, in similar fashion as for the electric public utilities.

Turning to Section 4 – this is a new section permitting the selling or trading of facilities or customers upon mutual agreement between the rural electric cooperative and the electric public utility; and subject to the approval of the city, if sales or trades are made within the city, or subject to the approval of the Public Service Commission, if outside the corporate limits of the municipality. This is what I call a “common sense” provision to cover those instances that are unusual or unforeseen at this time.

The last changes occur in Section 5, to include the rural electric cooperative under the Complaint Section so as to provide symmetry between the rural electric cooperatives



and the electric public utilities, if there is an alleged violation of the Territorial Integrity Act. Both types of suppliers would be subject to the complaint and hearing provisions of the Act, rather than just the public utilities as is the case at present.

As way of summary, let me reiterate what this proposed amendment does.

- It keeps intact the rural electric cooperatives' mandate to maintain electric service in **rural** areas,
- It keeps intact the public convenience and necessity process, administered by the Public Service Commission, in **rural** areas,

- It recognizes and does not disturb the rural electric cooperatives' existing services in **urban** areas, if allowed by franchises,
- It affords overtime, the opportunity for electric public utilities to grow within the corporate limits of the municipality as the municipality grows,
- It allows tax dollars to flow to the state coffers, that otherwise would be lost with the continuation of the current law,
- It recognizes that rural electric cooperatives do not exist to compete with private enterprise, and
- It recognizes that rural electric cooperatives exist to provide an essential service that would not otherwise be

provided, and that is, electrification of Rural North  
Dakota.

I respectfully request your support of this Bill.

Copies of my presentation are available in the Hearing  
Room.

THANK YOU.

1                                   **TESTIMONY OF JOHN MACFARLANE**  
2                                   **PRESIDENT, OTTER TAIL POWER COMPANY,**  
3                                   **BEFORE THE NORTH DAKOTA LEGISLATURE**  
4                                   **SENATE GOVERNMENT AND VETERANS' AFFAIRS COMMITTEE**  
5                                   **FEBRUARY 5, 1999**

6  
7  
8                                   **Introduction**  
9

10                    Good morning, Ms. Chair and members of the Committee. My name is John  
11                    MacFarlane. I'm the president of Otter Tail Power Company, an investor-owned  
12                    electric utility. Although our headquarters are in Fergus Falls, Minnesota,  
13                    approximately 40 percent of our retail customers –56,600 – live in North Dakota.

14                    It's a pleasure to be back before the Legislature. On behalf of Otter Tail, I  
15                    want to thank you for the opportunity to testify in favor of proposed changes to the  
16                    Territorial Integrity Act. I welcome this occasion to share Otter Tail's perspective  
17                    and experiences with the Act.

18                    Otter Tail Power Company and the rural electric cooperatives share a long  
19                    history of strong working relationships. Our systems are interconnected. We trade  
20                    bulk power regularly, serve mutual areas, share ownership of transmission lines,  
21                    and jointly own and operate Coyote Station. We even work together to serve some  
22                    customers.

23                    Early in the RECs' history we provided the energy they distributed; and  
24                    today a number of their substations are served by our lines.

1 I enjoy relating the story of Andy Freeman, a pioneer of North Dakota's  
2 rural electric cooperatives. He came to Otter Tail Power Company in the late  
3 1930s with his vision of beginning a co-op to provide service to farms in  
4 northeastern North Dakota. He wanted Otter Tail to help with power, money, and  
5 materials. Well, this was just after the Great Depression. Our company didn't  
6 have extra money or materials, but it did have electric power. We agreed to  
7 provide it. What's more, company leaders suggested that Freeman visit the REA in  
8 Washington—even made some calls on his behalf and purchased his roundtrip  
9 ticket. The rest is history.

10 While we may not agree on a few fundamental items, I believe that each of  
11 the utilities here today shares an overriding concern for providing North Dakota  
12 and its citizens with the best electric service possible at the lowest possible rates.

13 That said, Otter Tail strongly supports Senate Bill No. 2389. Contrary to the  
14 message that our friends from the rural electric cooperatives have been  
15 aggressively asserting in ads and elsewhere, Senate Bill No. 2389 does not "kick  
16 the co-ops out." Rather, SB No. 2389 partially restores the historical mission of  
17 rural electric cooperatives: to use federal government subsidies only in situations  
18 where they are necessary to provide electrification to rural America. The bill  
19 before you today does not threaten the RECs' ability to serve areas outside of  
20 incorporated municipalities. RECs will continue to serve the rural customers they

1 were created to serve. And the RECs will continue to be eligible for federal  
2 financing if and when necessary. Far from upsetting the apple cart, the bill before  
3 you today puts the cart back on the road and points it in the right direction.

4 Because Montana Dakota Utilities' President Mr. Tipton has provided a  
5 discussion of the bill's provisions and the reasons for its enactment, and because  
6 Northern States Power Company will build on that testimony and offer further  
7 reasons why the bill is good for North Dakota, I will respond to some of the  
8 arguments put forth by the RECs in opposition to the bill.

9 Because I am one of the few who were present in 1965 at the passage of the  
10 Territorial Integrity Act, I'm not surprised by the RECs' vehement opposition to  
11 the bill. Then—as today—the RECs filled the parking lot with buses and the  
12 hearing room and halls with people. Newspaper ads, letters to the editor, and all  
13 the rhetoric was much the same too. Their message? If the RECs don't get their  
14 way, all kinds of awful things will happen.

15 It's paramount, however, that the Legislature isolate the substance of the  
16 RECs' arguments from the enflamed rhetoric with which these arguments are  
17 brought forth. Once you're able to separate the wheat from the chaff in those  
18 arguments, I think you'll agree that the proposed changes—while not necessarily  
19 good for the managers of the RECs—are indeed good for North Dakota electric  
20 consumers and taxpayers.

1                    **REC Myth No. 1 - IOUs Refused to Serve Rural America**

2                    The biggest argument that the RECs propound in opposition to this bill—  
3                    and other proposed changes in the electric industry—is that investor-owned  
4                    utilities such as Otter Tail, Northern States, or MDU refused to provide service to  
5                    rural America in the 1930s and 1940s. Therefore, the argument goes, the IOUs  
6                    should not be allowed to serve these areas even though they're no longer rural but  
7                    rather are quite urban and, in some cases, industrial.

8                    While that assertion makes for good sound bites, it is simply untrue. The  
9                    RECs in this state originated from passage of the federal Rural Electrification Act  
10                    of 1936. The Act allowed the federal government to make direct loans and  
11                    guarantee below-market interest rates to non-profit cooperatives to finance and  
12                    build their own electric systems. Only 11 percent of rural America had electric  
13                    service at the time. IOUs were unable to provide service to rural customers after  
14                    the Great Depression not because they refused to serve but because private utility  
15                    companies were unable to find available capital in the free-market at affordable  
16                    rates. Private utility companies asked the federal government to make below  
17                    market capital available so that they could afford to extend service to sparsely  
18                    populated rural areas. They'd been turned down. IOUs never refused to serve.

19                    The fact of the matter—and the RECs do not deny this—is that private  
20                    utility companies always have extended their systems into rural areas. And they've

1 found a way to make money in the process without the help of federal subsidies.  
2 Today, 60 percent of rural America (defined as communities with less than 2,500  
3 persons) is served by investor-owned utilities, not by RECs or other quasi-public  
4 power entities. Co-ops serve only 29 percent.

5 It's just plain untrue that private utilities simply turned a blind-eye to rural  
6 America. Otter Tail, for instance, takes great pride in the fact that much of its  
7 service in North Dakota is to undeniably rural areas. Only 5 of the 250 North  
8 Dakota communities served by Otter Tail have populations over 2,500.

9 Last – as we approach the 21<sup>st</sup> Century – we submit that this Legislature  
10 needs to ask whether it continues to make sense for North Dakota to cling to  
11 policies first adopted some 60 years ago. Over 99.9 percent of America is now  
12 electrified. The REA has accomplished its original mission. Times have changed.  
13 Like the 1965 legislature that passed the Territorial Integrity Act was passed, this  
14 Legislature must decide what is in the best interest of the State of North Dakota –  
15 not what's best for REC managers.

16

17 **REC Myth No. 2 - REC Rates Will Increase**

18 A second argument that the RECs put forth against SB 2389 is that it will  
19 cause RECs to increase their customers' rates. Again, this is simply untrue.



1 Over the past 15 years Otter Tail Power Company has seen less than a 1  
2 percent change in the number of North Dakota customers served. Most business  
3 people would call that flat or no growth. Nevertheless, in 1983 our rates were  
4 higher rates than that of most of the RECs. Today, however, our rates are lower  
5 than most of the RECs.

6 Otter Tail Power Company, which has seen virtually no growth, offers  
7 lower rates than RECs—many of which have experienced growth, some of it  
8 significant. Yet the RECs assert that if they don't grow, they'll require rate  
9 increases.

10 The cooperatives will not have to increase their rates if SB 2389 passes.  
11 The bill does not take customers away from the RECs. Their existing customers  
12 will remain their customers, and the RECs will be free to attract additional  
13 customers outside of incorporated municipalities just as they do today.

14

15 **REC Myth No. 3 - The State Will Experience Revenue Loss**

16 A third REC argument is that of reduced tax revenue and a threat to  
17 investment in facilities.

18 The co-ops suggest that they pay more taxes in North Dakota than do the  
19 IOUs and that somehow that source of revenue will be lost if SB 2389 is passed. I  
20 agree that RECs pay more taxes, but I reject the assertion that those taxes and the

1 facilities which produce them will be jeopardized with the passage of the bill. It is  
2 simply not so. Three-fourths of the REC taxes come from generation and  
3 transmission cooperatives—gross receipts, transmission lines, real estate, and coal  
4 conversion—precipitated by owning and operating generation facilities and  
5 transmission lines. Nearly 90 percent of the energy generated by these facilities is  
6 moved over the associated transmission lines to out-of-state customers. None of  
7 this will be affected by SB 2389. The in-state customers would remain REC  
8 customers—again not affecting the facilities, their operation, or the taxes they  
9 produce. I reject this argument and so should the Legislature.

10 A small change in the tax revenue to state and local governments will result  
11 if the load growth is shared with IOUs rather than all going to the RECs. We've  
12 determined—after sorting through tax sources and making the in-state versus out-  
13 state allocation—that the state and local subdivision would enjoy increased  
14 revenue of \$.26 per megawatt-hour if the customer were served by an investor-  
15 owned utility rather than an REC. That's because, on average, an REC customer in  
16 North Dakota generates \$1.76 per megawatt-hour of state and local tax revenue.  
17 An IOU customer generates \$2.02 per megawatt-hour. Attached to my written  
18 testimony is a chart that illustrates this point.

1           So rather than resulting in a revenue loss to local and state governments as  
2 charged by the REC, a small increase in revenue will result to these jurisdictions—  
3 unless you think that the RECs will move their plants and facilities out of the state.

4

5                           **REC Myth No. 4 - RECs Do Not Receive Subsidies**

6           Here's a fourth REC argument: The system doesn't need changing because,  
7 contrary to popular opinion, RECs really don't have competitive advantages over  
8 their IOU counterparts.

9           Again, that's not true. First of all, the competitive advantages to which I  
10 refer are not the type that one producer may have over another as a result of being  
11 able to operate more efficiently. No, the competitive advantages bestowed upon  
12 RECs are solely the result of governmental policy.

13           Let's take a look. RECs enjoy:

- 14           • Exemption from federal income tax.
- 15           • Exemption from State income tax.
- 16           • Direct loans from the federal government at interest rates below  
17           prevailing market rates.
- 18           • Federal guarantees on loans, which result in artificially low costs of  
19           capital.

- 1 • Preferential rights to low cost power produced at dams owned by the  
2 federal government. IOUs have no rights to such power.
- 3 • Exemption from Federal Energy Regulatory Commission oversight.
- 4 • Exemption from North Dakota Public Service Commission oversight.
- 5 • The ability to write-down federal Rural Utility Service loans without  
6 oversight by the Attorney General's Office.

7 Clearly, the RECs receive substantial economic advantages over IOUs—  
8 again, solely the result of government decree based on social and economic  
9 circumstances that no longer exist. If the RECs believe they have no competitive  
10 advantages over IOUs, my question to them is this: Why don't you come over to  
11 our side of the fence and play by the same rules?

12

13 **REC Myth No. 5 – S.B. No. 2389 Promotes Wasteful Duplication**

14 Finally, the RECs argue that this bill will encourage wasteful duplication of  
15 capital-intensive electric facilities. On the contrary, this bill will help the state  
16 avoid the wasteful duplication of electrical facilities, not promote it. The fact of  
17 the matter is that our current system – not Senate Bill No. 2389 – promotes  
18 duplication of systems.

19 In a 1990 case involving Northern States Power, the North Dakota Supreme  
20 Court clearly pointed out that the current regulatory scheme allows the

1 duplication. IOUs are regulated by the Public Service Commission. RECs are not.  
2 According to the Supreme Court, duplication occurs because RECs may extend  
3 their systems throughout the state virtually at will. They are subject to no  
4 regulatory oversight that will ensure consistent, orderly, economically sound  
5 development of electric service.

6 S.B. 2389 avoids duplication by establishing more clear service territories.  
7 And it will help prevent RECs from extending their facilities virtually at will.

8 Let me also address the crossing of facilities. There are today, hundreds—  
9 possibly thousands—of lines in the state that cross each other. They were  
10 constructed in compliance with the National Electric Safety Code. In the 35 plus  
11 years that I have been involved in this industry, I can't recall a single incident of  
12 personal injury or property damage resulting from line crossings. I would  
13 anticipate that unblemished safety record to continue. The important point,  
14 however, is that safety concerns are addressed separately and will be unaffected by  
15 this bill.

16 The issue of wasteful duplication of facilities is an economic issue. This bill  
17 promotes more efficient, not less efficient, service.

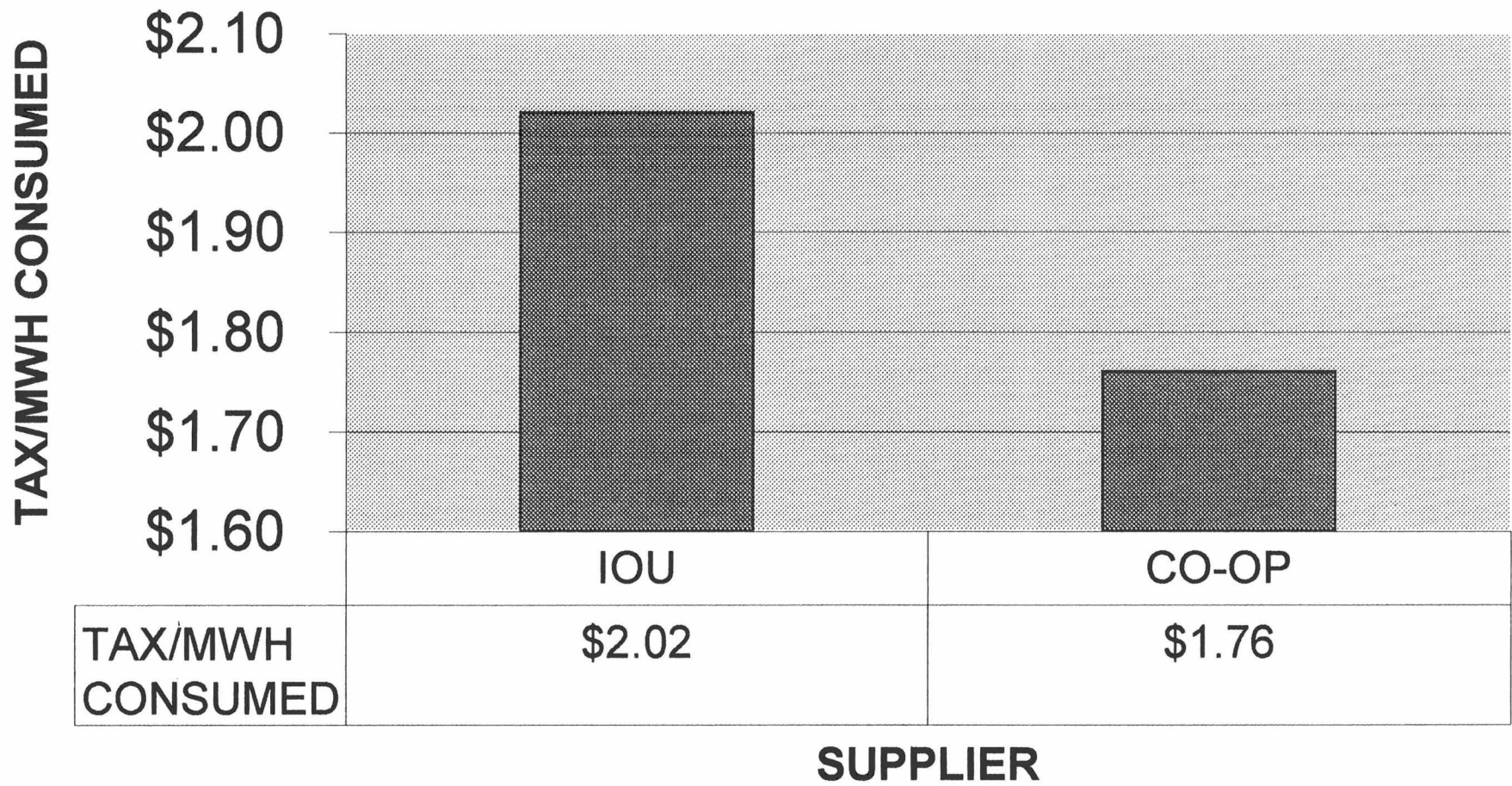
18 **Conclusion**

19 In conclusion, it's important that the Legislature look past rhetoric and  
20 debunk the myths that are being perpetuated by the RECs in such harsh opposition

1 to this bill. As I have shown, there is no merit in the RECs' arguments concerning  
2 IOUs' refusal to serve rural areas, likely REC rate increases, or loss of tax revenue  
3 for North Dakota. There is no truth in the suggestion that RECs are not the  
4 beneficiaries of enormous governmental advantages. The bill will not encourage  
5 wasteful duplication and unsafe conditions. As was the case in 1965, the  
6 Legislature must do what is right for North Dakota.

7 Thank you for your attention and your support of S.B. No. 2389. Far from  
8 "kicking co-ops out," this bill allows co-ops and investor-owned utilities alike to  
9 share in continued customer growth.

# ND ELECTRIC CUSTOMER'S CONTRIBUTION TO STATE AND LOCAL TAXES



**Northern States  
Power Company**

Serving North Dakota  
for over 90 years

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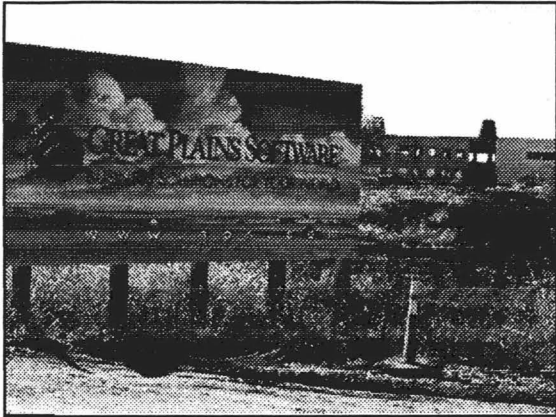
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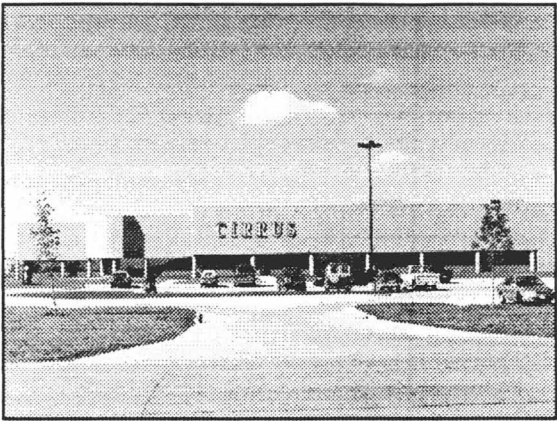
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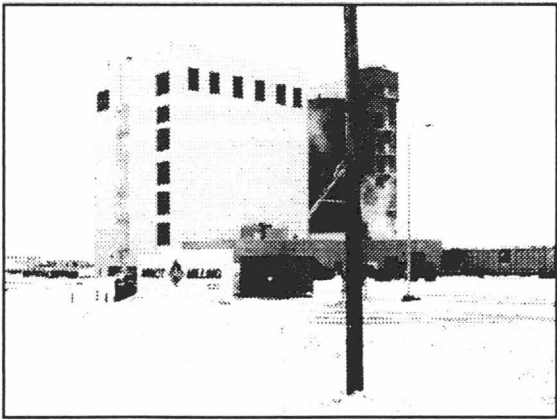
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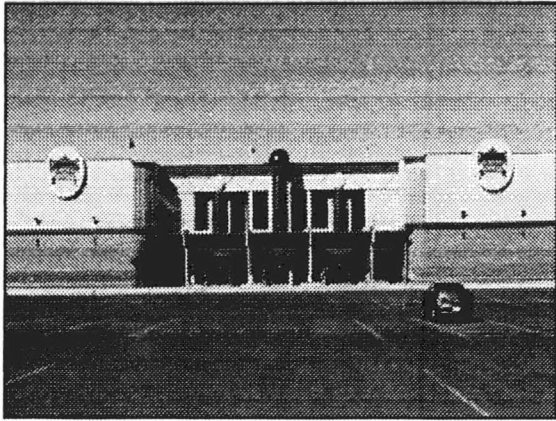
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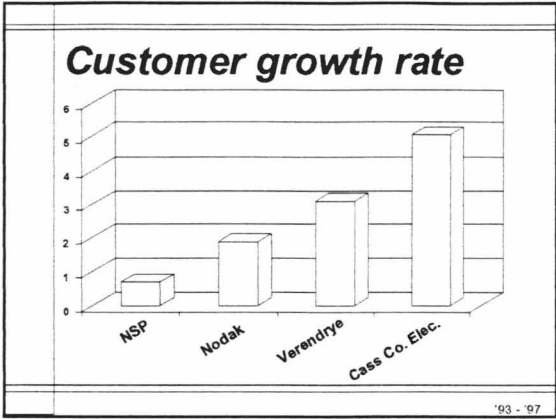
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**CCEC 1995 Annual Report**  
"About 70 percent of all new single-family homes built in Fargo are in CCEC's service area."

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RECs revenues are over \$14 million per year in Fargo, Grand Forks, and Minot.

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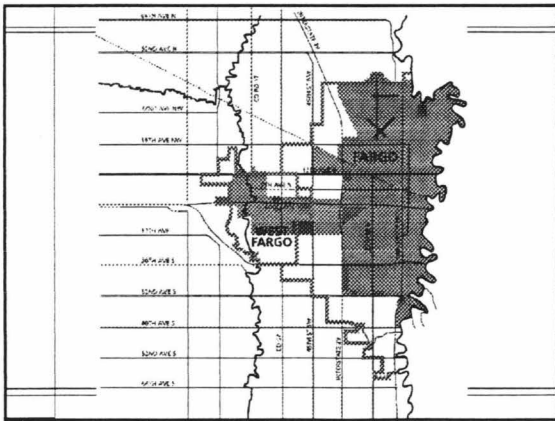
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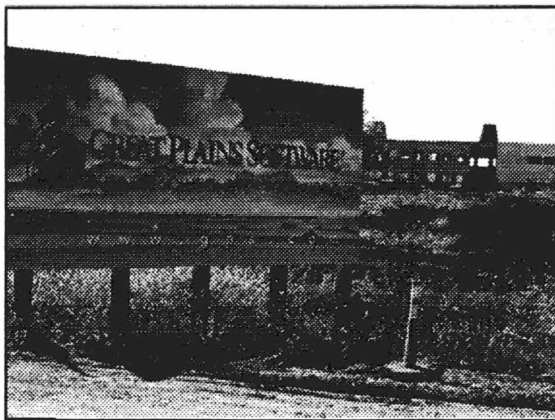
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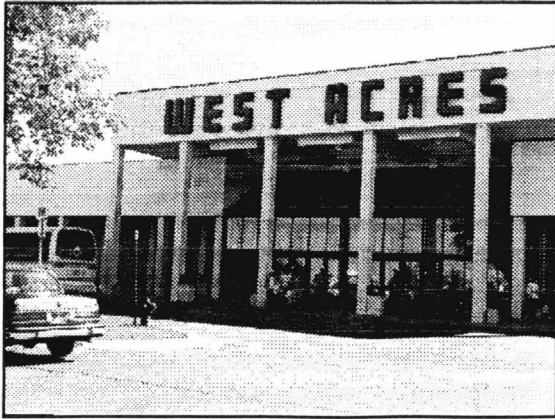
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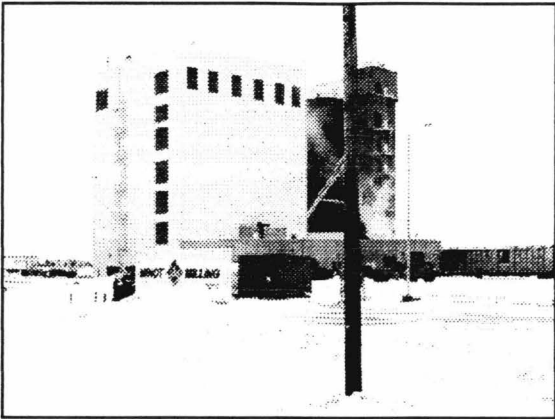
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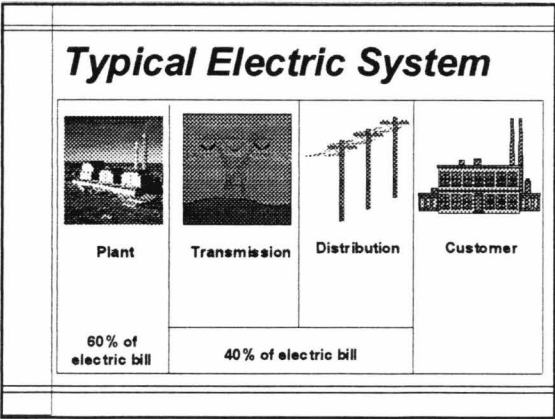
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## Benefits to reforming TIA

- ◆ *Low-cost rates are regulated by PSC*
- ◆ *Economic development and community support*
- ◆ *Good investment for thousands of North Dakotans*

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## Residential Rate Comparison

Cass County Electric - Rural	\$72.50
Verendrye Electric - Rural	\$67.10
Nodak Electric - Rural	\$64.20
Cass County Electric - Urban	\$60.70
Verendrye Electric - Urban	\$52.00
Nodak Electric - Urban	\$51.50
Otter Tail Power Co.	\$51.12
Montana Dakota Utilities	\$49.68
NSP North Dakota	\$44.47

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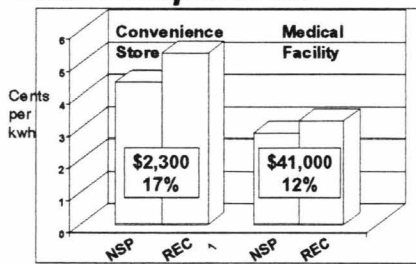
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## Commercial / Industrial Rate Comparison



comparing similar rates

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# **ND Legislative Assembly**

John M. Andrist  
State Senator - District 2  
Post Office Box E  
Crosby, ND 58730

Phone: 701/965-6798  
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**TESTIMONY: SB2389  
FROM: John Andrist, District 2**

**This bill is a well intentioned effort to solve a problem which would be better left to the market system. Both the IOU's and the electric cooperatives have reasonable claim to the annexed areas on the fringes of cities. The IOU's have a legitimate need to grow with the cities they serve; the co-op argument is just as persuasive when they say they shouldn't be pushed out of the area they are serving, just because a city is growing into their territory.**

**If we really want to give competition a chance in the electric utility industry, a better approach would be to open up energy sales to competition in the newly annexed areas of cities. Here's an ideal place to put our money where our mouth is if we want to begin moving into competition and away from regulation. We don't have to be the problem solver for these disputes.**

**Make no mistake, this does not free up contested service areas to competition. It guarantees that there will be no competition.**

**For rural cities the paradigms are changing. Main streets are shrinking. We are unable to replace all the people who are dying and moving away. The investor owned telephone company is long gone from rural North Dakota. In my town the IOU has given early indication that it may be next.**

**It has closed the Main Street office which had been its home for 60 years. Not so long ago a newcomer to the community asked me how to find the MDU office. I was somewhat embarassed to tell him the only MDU office is in a garage behind the home of the company's lone service employee, and you can only find it if you drive down the alley. They don't even have a local telephone listing in my county.**

**They no longer are active in the chamber of commerce, nor support most of our community institutions. They are as close to invisible as a corporate entity could be.**

**I understand. They are a private business, which needs to prioritize spending choices. It's just that the choice they have made for rural communities has been withdrawal instead of assistance. And as they downsize, we are left wondering, "Will the next move be a decision that small towns aren't worth our time anymore, and we want out of here", just as U.S. West has decided.**

**We've seen a change in our electric cooperatives, as well. Twenty years ago they were aloof to the problems of cities in their market area. They saw themselves as farm providers. Let the towns take care of themselves.**

**Today the electric cooperative in our region is a proactive economic development leader. They work with and for the towns, even those they don't serve, because they**

understand that rural communities should no longer be divided between us and them.

If there is any plus to the struggle in rural North Dakota it is that farmers and small town folk are now on the same page. They have come to understand that they have a vested interest in one another. There is every indication that the electric coop will be our most significant single economic development entity in the years ahead.

When U.S. West wanted out, we were thankful we had an RTC that wanted in. If MDU should also decide to cut the cord that they have systematically been thinning, the economic vitality of our REC will become all the more crucial to our hope for survival and reversal of the trends that plague us.

**LET ME EMPHASIZE. RURAL ELECTRIC AND RURAL TELEPHONE COOPERATIVES ARE THE NEW LIFELINE OF HOPE FOR THE SMALL COUNTY SEAT COMMUNITIES OF NORTH DAKOTA, WHICH ESSENTIALLY ARE BEING ABANDONED BY THE IOU'S.**

I understand that this bill primarily affects the co-ops on the fringes of cities where there is growth occurring. But the size of this audience tells you the threat is felt by all of them.

This bill does one more unholy thing, in my opinion. It removes local authority to franchise new electrical providers, other than IOU's. Shouldn't our city councils retain authority to grant new utility franchises which they perceive to be in their interest? This bill removes that right and gives the IOU's exclusive monopoly franchise.

There are other unintended consequences in this proposed legislation. It ignores the wishes of potential customers in these fringe areas. Let's say I've worked with my coop to start a new business on the edge of a city, and I'm ready to go. But I find that city water and/or sewer service is necessary, and for that I have to be annexed. My wishes don't count. Neither do those of my city council. SB2389 would make us an IOU captive. Indeed, if the REC wanted to build an office building of its own and be a good corporate citizen by being annexed into the city, they couldn't provide their own power under 2389.

I resent being forced again to take sides in what should be a private sector matter. The IOU supporters are dear friends I deeply treasure. So are the cooperatives. Almost all of us believed at one time that the Vietnam War was a just war. We may be tempted to think this is also a just war. But like Vietnam, it is a war that doesn't need to be fought in this assembly. Let's let our home towns and market forces work.

These co-ops have grown up with North Dakota. They are a vital economic entity wherever they serve. They don't deserve being pushed "out of town", or out of the areas where they have legitimately staked their claim, and where they have provided service to a scattered clientele for more than half a century.

***Testimony of Representative Gene Nicholas on SB2389 before the Senate  
Government & Veterans Affairs Committee***

***February 5, 1999***

Madame Chair, members of the committee, I am Representative Gene Nicholas, an agri-businessman from Cando, a member of the board of directors of Dakota Growers Pasta Cooperative, the Durum Triangle Development Corporation and a member of Northern Plains Electric Cooperative.

For the past 25 years, I have worked closely with the Rural Electric Cooperative's in ND in the advancement of value-added cooperatives and other economic development projects; in particular with Northern Plains Electric which serves my home in Cando, whose service by an REC is jeopardized by this legislation, and my farm in rural Towner County.

In North Dakota, we have looked to cooperative enterprises to meet the special economic needs we have in rural areas where it is often difficult to attract outside investment. We have found nothing wrong with developing new cooperatives throughout the state to add-value to our agricultural products, provide jobs for our citizens, and a better income stream for our farmers. Rural Electrics have been at the forefront of helping to create and nurture cooperatives like Dakota Growers – now a nationally recognized business. SB2389 threatens our belief that there is nothing wrong with the cooperative form of business – it is an anti-cooperative bill.

Look at the impact of that REC assistance in my area alone:

Dakota Growers, which the co-op helped to create; AgGrow Oils, which Northern Plains continues to nurture through its start-up; Integra Castings which gives full credit for its location in North Dakota to the co-op; Farmers Choice, Noodles by Leonardo, North American Bison Cooperative – in total, over two million dollars in direct investment, creating over 600 jobs and leveraging close to one hundred million dollars in total new investment in rural North Dakota.



This bill will stop most of the REC's development efforts. With very, very few exceptions, any new significant business development is built on property eventually annexed into the city due to the need for all the services a city provides – sewer, water, roads, police and fire protection, and access to financing. Taking the REC's ability to serve out of the equation will greatly diminish their ability to accept the risk of investing in new facilities, to say nothing of the time and expense the REC's commit to creating and organizing those new ventures. What will happen if the REC's aren't able to continue their very active role in the development of rural North Dakota?

This bill is an attempt to limit REC service to only the most undeveloped areas. In the process of doing so, the bill takes away the REC's incentive and the financial means to develop rural North Dakota. If the REC's don't, and the IOUs won't, who will?

I urge a Do Not Pass recommendation from this committee.

Thank you.

Testimony of Representative Robert Huether  
On SB 2389  
February 5, 1999  
Senate Government and Veterans Affairs Committee

Madam Chair and members of the committee. For the record, my name is Bob Huether, representative from District 27, Lisbon. In addition to serving as a board member for Cass County Electric Cooperative and Minnkota Power Cooperative, I have had the privilege of serving for the past interim as a member of the Electric Utilities Committee, the six year study committee established by the last legislative session.

My purpose in speaking today is simply to advise this committee that the Territorial Integrity law was an important part of our study during the last interim. In fact, it was the subject of testimony at nearly every meeting of the committee. At the very first meeting of the committee in July, 1997, representatives of the investor owned utilities urged the committee to give the Territorial Integrity Act special attention.

In October, 1997, committee counsel presented the committee with a memorandum detailing the history and application of the Territorial Integrity Act.

In December, 1997, committee counsel reviewed the history and operation of the Territorial Integrity Act, and Chairman Carlson called on representatives of both the RECs and the IOUs to give preliminary comments on the law.

In February of last year, the committee heard formal presentations on the Territorial Integrity law from the RECs and from each of the IOUs. In April, 1998, the committee again heard from the utilities. Following rebuttal testimony from the RECs which touched again on the territorial integrity issues, the committee chairman, Representative Al Carlson, reflected the views of other committee members when he indicated that our committee did not intend to offer any amendments to the law. And we haven't.

In our meetings, we heard all the arguments raised by the investor-owned utilities to change the law and all the arguments by the RECs to keep the law. We have four years remaining to study this complex and changing electric utility industry. As a member of the Electric Utilities Committee, I would urge this committee to recommend a "DO NOT PASS" on SB 2389. If there are changes to consider in the Territorial Integrity law or further study that is needed, let it come from the committee this legislature has charged with the responsibility to study the whole industry. We have been working hard. Don't be pressured into making a quick fix that we may all end up regretting. Thank you.

**Testimony of Harlan Fuglesten**  
**Senate Bill 2389**  
**February 5, 1999**  
**Senate Government and Veterans Affairs Committee**

Madam chairman and members of the committee. My name is Harlan Fuglesten, Government Relations Director for the North Dakota RECs. In the next few minutes, I want to visit with you about how this bill would affect our co-ops and our communities, how this bill is contrary to other law, and why this bill is simply unnecessary.

Although the investor-owned utilities may wish to amend some provisions of the bill to gain broader support, it is instructive to examine the bill in its original form for at least two reasons. First, because it clearly shows the end result the investor-owned utilities want to achieve, and second, because it demonstrates just how ill-conceived this legislation is.

As written, SB 2389 would adversely impact every electric cooperative in the state by prohibiting them from serving any new customers within the city limits of any municipality after July 31, 1999. Co-ops could still serve their current customers, but only if the municipality grants a franchise for this limited purpose. As old customers leave the co-op system and new customers move into co-op territories, the bill states that only a franchised "electric public utility" (investor-owned utility) can serve the new customer. The obvious result of this would be overbuilding and crisscrossing of existing REC facilities by the IOUs. That is why the bill proposes to strike the language in the current law that prevents unreasonable duplication of electric services. The fact is that this bill would promote and require unreasonable duplication of electric services in municipalities in which RECs currently provide service.

Co-ops provide all or part of the electric service in many communities around the state. The local REC is the only utility that provides service in or near some communities. Mor-Gran-Sou Electric Co-op, for example, serves communities such as Ft. Yates and Flasher that are 15 to 25 miles from the nearest IOU power lines. Under SB 2389, these communities could only grant a limited franchise to the co-op to serve existing customers, but no new customers. Would an IOU build costly duplicate facilities to serve a few new customers every year? It would make no economic sense to do so. What would be most likely to happen, under this bill, is that cities like Flasher would be forced to deny their hometown co-op even a limited franchise just to try to attract an investor-owned utility willing to provide service to all customers in the city.

This bill actually makes it easy for the IOUs to take over the investment the co-ops have made to serve the small towns. When a city is forced by law and circumstances to deny a co-op a franchise, the bill provides that the co-op has one of two choices – either remove its lines, poles, and transformers at its own expense, or sell the facilities to an investor-owned utility at an agreed upon price. Removal is expensive and there is only one potential buyer. The REC would have little choice but to sell its facilities at a closeout price.

In the major cities where both an IOU and an REC provide service, the REC might continue to serve present customers for a time. However, as new properties and customers come into the co-op territory, the bill requires the IOUs to build in new facilities to serve them – even when it interferes with orderly development and results in costly duplication of facilities already built by an REC.

As the co-op faces a future with an ever-dwindling municipal customer base, the co-op would have little incentive to make further investment in its system. Fairly quickly, the co-op would be forced to sell its municipal facilities to an IOU and get out of town.

SB 2389 's impact goes beyond municipal boundaries, however. Under this bill, when a city annexes territory or an unincorporated city incorporates, the REC would lose any customers it was not serving prior to July 31, 1999. Obviously, this would discourage a co-op from investing in serving any areas that could potentially be annexed in the future. By default, these areas, too, would go to the IOUs.

Section 4 of the bill provides for voluntary sales or trade of territory. This section seems designed to hasten the exit of electric co-ops from municipalities, and to smooth the way for the IOUs to dump their unprofitable rural customers, without their consent, on the co-ops. What rural customer would consent to such a trade? As the co-op's municipal customer base shrinks, the remaining customers – largely farmers and ranchers -- would face ever-increasing rates to cover existing investment and overhead costs. You can see the death spiral this bill would create for the RECs – and for rural North Dakota. And let's not forget what that means to our cities and towns.

The last sentence of section 4 is also worth considering for a moment. It reveals that the IOUs don't want any infringement on their right to sell their distribution facilities to whomever they choose. Thus, after forcing the electric co-ops out of town, getting their property at fire-sale prices, and limiting the rights of cities to franchise who they want to serve their communities, the IOUs want the right to sell their potentially lucrative

distribution assets and leave town themselves without interference from the city or the state.

This leads me to my final point about the impact of this bill, which is that it not only limits co-ops from serving their traditional service territories, it also directly attacks the rights of cities to make their own local franchising decisions. This is not only poor public policy, but it raises a substantial state constitutional issue. The North Dakota Constitution, Article VII, section 11 states:

“The power of the governing board of a city to franchise the construction and operation of any public utility or similar service within the city shall not be abridged by the legislative assembly.”

SB 2389 directly abridges a city’s right to grant a franchise to a rural electric cooperative unless it is a limited franchise prohibiting the co-op from serving new customers. Incidentally, Article VII, section 11, is not an ancient constitutional provision adopted before the first electric co-ops were formed. The legislature recommended this section in 1981, and the voters approved it in 1982 -- sending a clear message that future legislatures cannot abridge a city’s right to franchise utility services.

This bill also conflicts with North Dakota law giving the governing body of cities the right to choose any person or entity to supply electric power to the city and its inhabitants. [NDCC 40-05-05(1)].

The bill is also contrary to 60 years of legislative history, beginning with the law allowing formation of electric cooperatives to serve primarily rural areas. It is important to understand that under North Dakota law, “rural area” means any area not included within the boundaries of a municipality of 2,500 people or more at the time the co-op

began furnishing electricity to the area. (NDCC 10-13-04). The law states that no later change in the population of the area, regardless of the reason, changes its status as a rural area for purposes of service by a rural electric cooperative. Under this “once rural – always rural” definition, co-ops have been allowed to invest in the future with confidence that if they helped their service territories to grow, they would continue to grow with the community.

The investor-owned utilities now claim that they cannot grow because the co-ops have surrounded them. Well, the co-ops have surrounded the big cities for sixty years. The only difference now is that some of the co-op areas the IOUs refused to serve are now growing, and so the private utilities want to kick the co-ops out.

In some of our major cities, the investor-owned utility and the neighboring co-op had written understandings detailing the service areas of each. In Bismarck and Minot, for example, these mutual agreements were incorporated in city franchises. These franchises have provided ample growth for both the IOUs and the RECs.

In Fargo, Cass County Electric serves under a franchise that requires it to give notice to the city and NSP when it proposes to serve any newly-annexed territory. In what is known as the “South Pointe case”, the state Supreme Court upheld a finding of “unreasonable duplication” by NSP of the investment, facilities, and service already provided by Cass County Electric to three south Fargo subdivisions. The territorial law does not bar IOUs from serving any future annexed areas. What they can’t do is unreasonably interfere or duplicate the service of another utility. The IOUs serve many areas beyond corporate city limits

Because so much of the discussion about this bill centers around the growth in south Fargo and similar areas, it may be useful to spend the last minute or two of my testimony to discuss why Cass County Electric now serves there. The facts of the case are set forth in Cass County Electric Co-op v. Northern States Power Co., 419 N.W.2d 181 (N.D. 1988); and Northern States Power Co. v. Public Service Commission, 452 N.W.2d 345 (N.D. 1990). The significant facts are as follows:

- Prior to 1975, Cass County Electric served the South Pointe area pursuant to agreement with NSP.
- In 1975, Cass obtained a franchise to serve its territory after annexation by the City, provided that neither the City nor NSP objected.
- In 1978, the City annexed a large area south of 32d Avenue, including South Pointe.
- Cass gave notice to the City and NSP of its intention to serve the annexed area. Neither the City nor NSP objected.
- Cass then included the annexed area in its long-range plans and proceeded to make an investment of over \$2 million to serve the area. This was all done before NSP ever sought to serve a single customer in the annexed area.

Given the above facts, the Supreme Court concluded that there was substantial evidence to support a finding that NSP's extension of service into the annexed area constituted an unreasonable interference and duplication of service.

Like South Fargo, in every major city in North Dakota, RECs are serving areas that began as farms and ranches -- areas the IOUs did not want to serve. There is no



reason they should serve them now. Your locally-owned North Dakota RECs respectfully request that this Committee recommend “DO NOT PASS” on SB 2389.

**Testimony of Dennis Hill**  
**Executive vice president of the**  
**North Dakota Association of Rural Electric Cooperatives**  
**Before the Senate Government and Veteran's Affairs Committee on SB 2389**  
**Friday, Feb. 5, 1999**

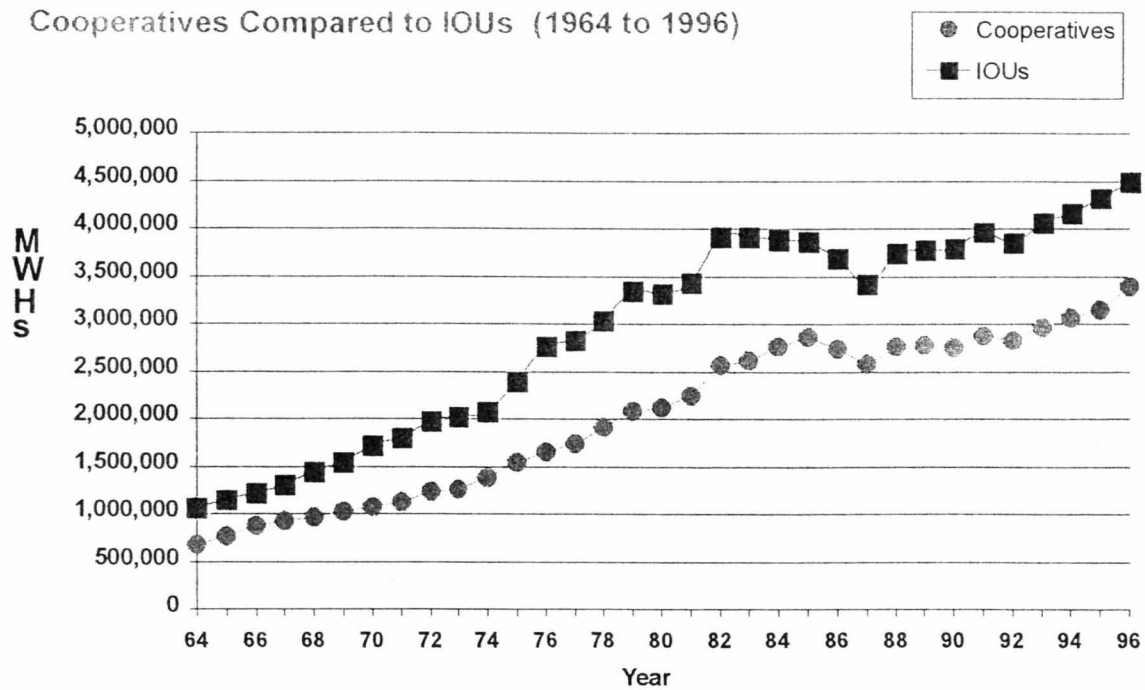
Madam chairman and members of the committee. For the record, my name is Dennis Hill, and I serve as the executive vice president for the North Dakota Association of Rural Electric Cooperatives. On behalf of the 19 distribution and 5 generation and transmission cooperatives who are members of our association, I rise to seek a "Do Not Pass" recommendation from this committee and a No vote on SB 2389 when it reaches the Senate floor.

I have provided you with information in my testimony on how the electric cooperative network operates in North Dakota. If I can define that in three sentences, it would be these: We are a member-owned, consumer-driven electric utility network. Our members own the local co-op, the local co-op owns the generation and transmission co-op (G&T), and the G&T has provided the financing to develop the lignite mines in North Dakota. This network is tied together by contract and ownership, and we like to say the electric co-ops have built, from the ground up, an electric network that extends from the "meter to the mouth of the mine."

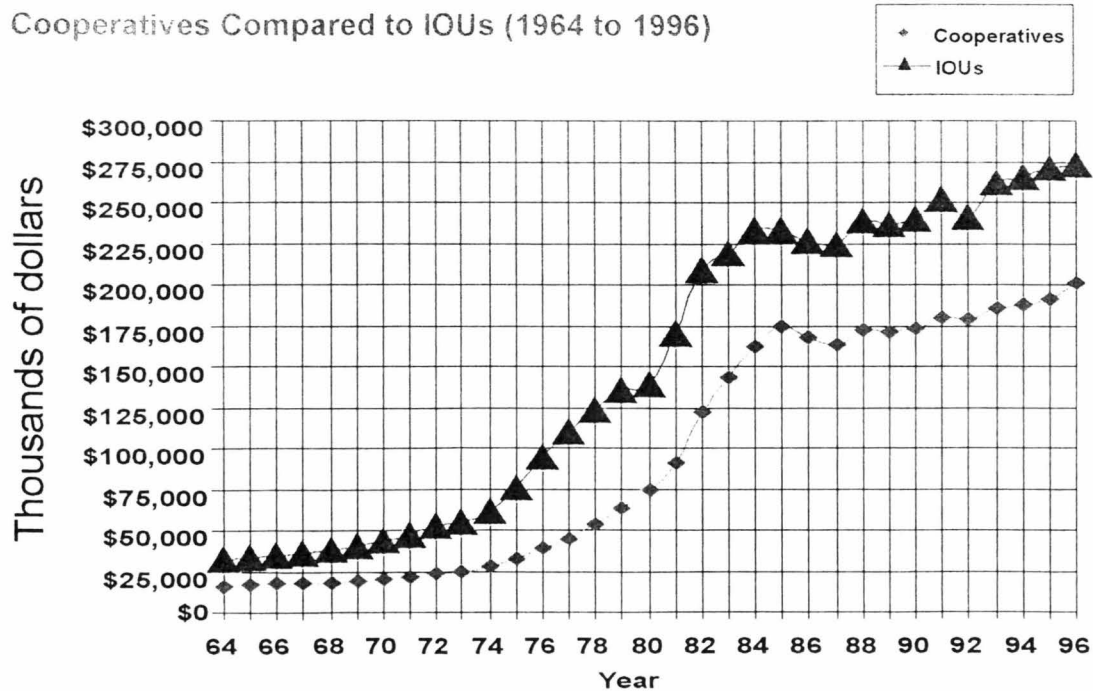
We believe the foundation on which this network rests makes a lot of sense, and with the multi-billion dollar investment we've made in the state, it also makes huge contributions to the state's economy. This description of our network is shown in attached Documents 1, 2 and 3.

I want to spend the few minutes I have today to point out that the foundation on which the investor-owned utilities bring SB 2389 before you is not strong. Their claim is that the Territorial Integrity Act has caused, or is causing them, great economic injury. Yet the numbers show that none of this injury has occurred or is occurring. Let's just look at a few graphs to make the point:

## #1: MWHs of electricity sold--Co-ops versus IOUs



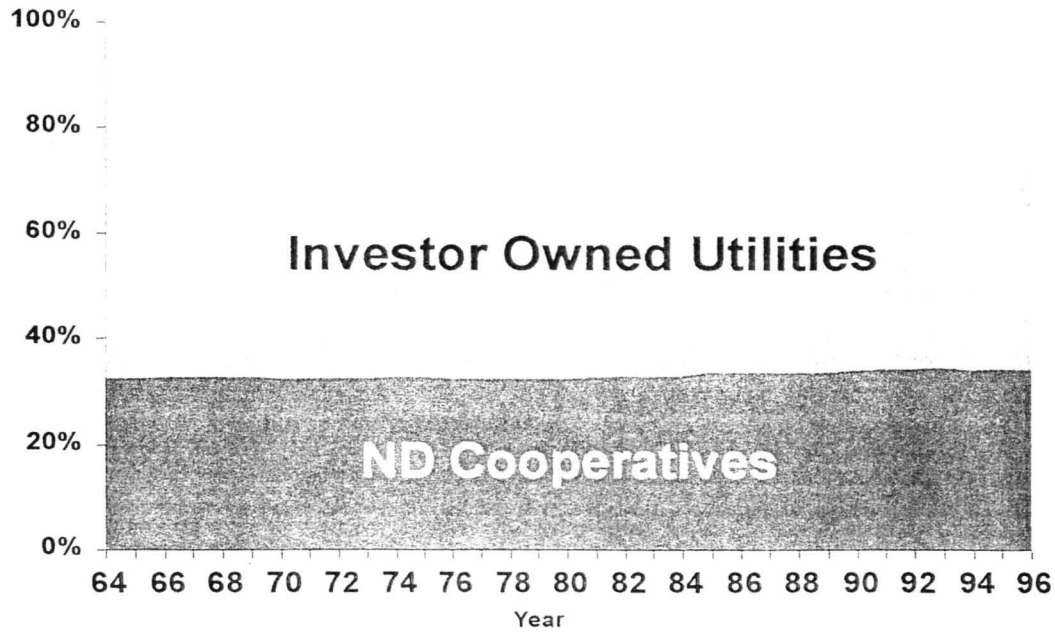
## #2: Electric revenues collected in North Dakota



### #3: Market share of customers served

#### Market Share of ND Customers

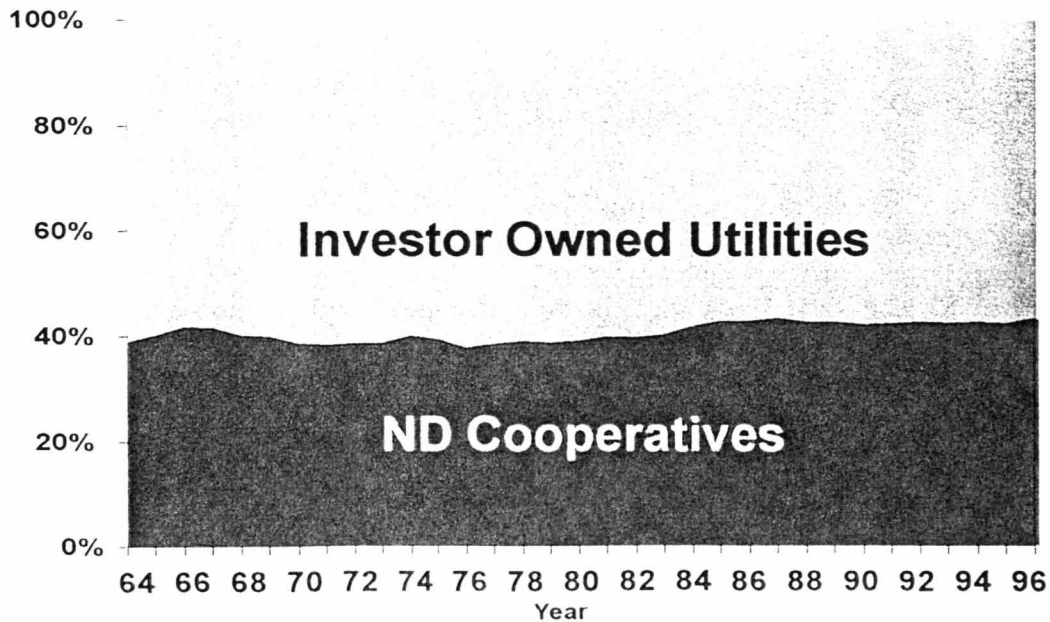
Total Cooperatives to Total IOUs (1964 to 1996)



### #4. Market share of electricity sold

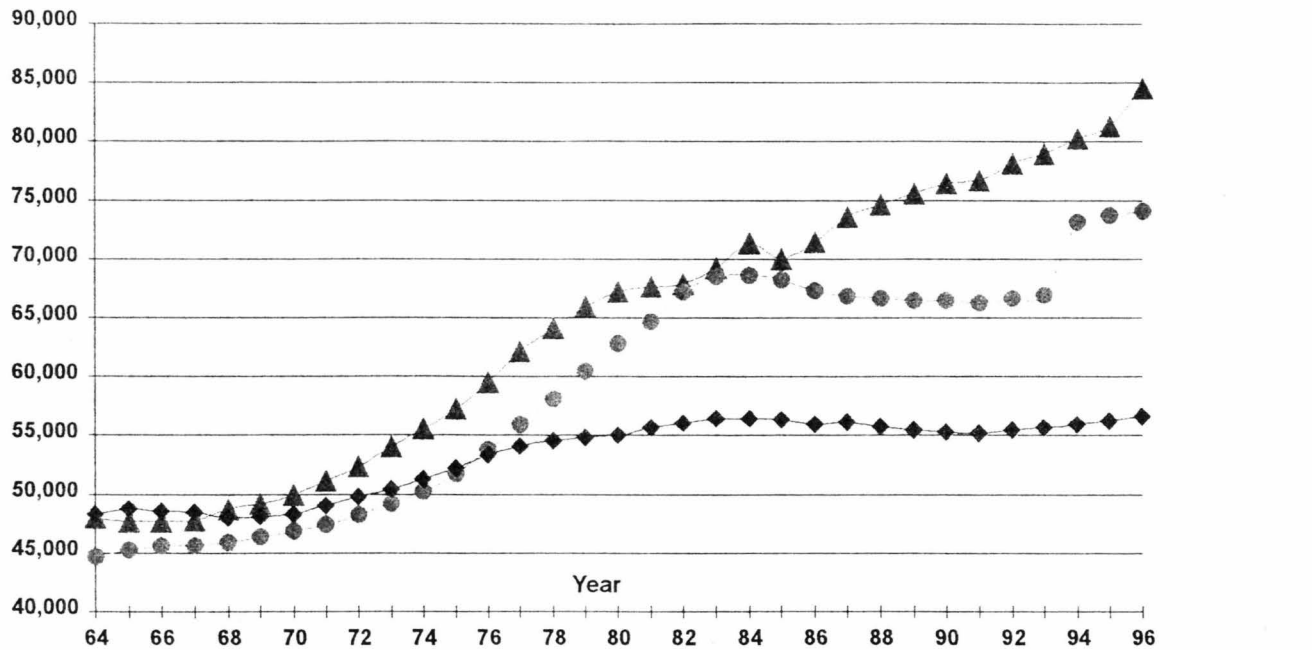
#### Market Share of Electricity Sold

Cooperatives Compared to IOUs (1964 to 1996)



## #5. IOU customer growth in North Dakota

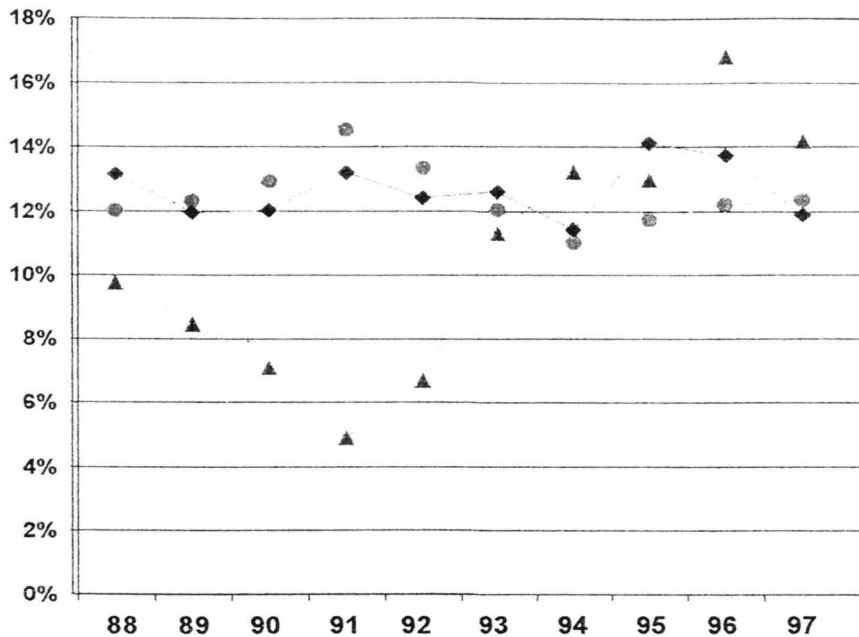
1964 to 1996



In each of these categories, there is no evidence of economic injury. I ask the committee to notice how the growth of both our utility systems tracks with the overall growth of North Dakota--it's been nearly a parallel path.

Another way to look at economic success of an investor-owned utility is the company's return on investment. In reports on file with the Public Service Commission, the IOU numbers show solid, maybe even generous, rates of return on North Dakota investments for the past 10 years.

## #6: Reported Earnings of Equity



### 3-year Average

MDU Electric - 12.09%

NSP Electric - 14.67%

OTP Electric - 13.24%

### 10-year Average

MDU Electric - 12.54%

NSP Electric - 10.55%

OTP Electric - 12.65%

● MDU Elec    ▲ NSP Elec    ◆ OTP Elec

More importantly, if the economic injury caused by the current law is escalating, it doesn't show up in the numbers. Note that the three-year averages for rates of return on North Dakota electric operations are 12.09% for MDU, 14.67% for NSP and 13.24% for Otter Tail Power. No evidence of economic injury there.

Let's get even more current. The media and the IOUs' web pages are beginning to publish 1998 year-end operating data for the three companies.

"An electric year for NSP earnings," proclaims the headline in a recent edition of the Fargo Forum. The lead sentence in the article reads: "Strong electric sales growth and significantly higher earnings from its nonregulated subsidiary, NRG Energy, boosted NSP's earnings per share in 1998." Later, the article quotes the company's CEO as saying, "Our utility business posted solid results, despite violent storms and warm winter weather."

In a press release from MDU on its web page, the company proudly proclaims that “electric operations earnings increased 28 percent, making a major contribution to the company’s success,” and that “at the corporation’s electric operations, year-end earnings increased \$3.8 million, or 28% when compared to last year.” For all of MDU’s divisions, the company noted that 1998 consolidated revenues increased by 48%, approaching the \$900 million level.

The 1998 third quarter results reported by Otter Tail Power seem positive as well, as its web page proclaims: “Earnings per share, net income, operating income, and total revenues were all above those of 1997’s third quarter,” and that “increased operating income results from significant contributions of electric utility operations and from continuing growth of diversified operations.”

But the IOUs say, the problem isn’t now, it’s in the future. As quoted in Bismarck Tribune, MDU suggests that, “With the decline in growth that we’re seeing, if we don’t do something to turn this around, it will get to the point where we’re not growing and our rates will rise.”

Madam chairman and members of the committee, might I say that we’re concerned about the “increase in the rate of decline” that we’re seeing in many parts of North Dakota. That’s especially true for two of the largest industries that we serve: agriculture and energy. From 1992 to 1997, the latest Ag Census--just released--said net farm income fell by 37%. And out in the oil patch, our cooperatives there can’t argue with the oil executive who was quoted recently in the Bismarck Tribune, that their company’s gross income is down 50% in the last two years. Add in the list of hundreds of empty storefronts in towns across this state, caused almost entirely by the crisis in the production economies, and I trust you’ll see why it’s difficult for a lot of North Dakotans to have much empathy for the IOU claim of economic injury.

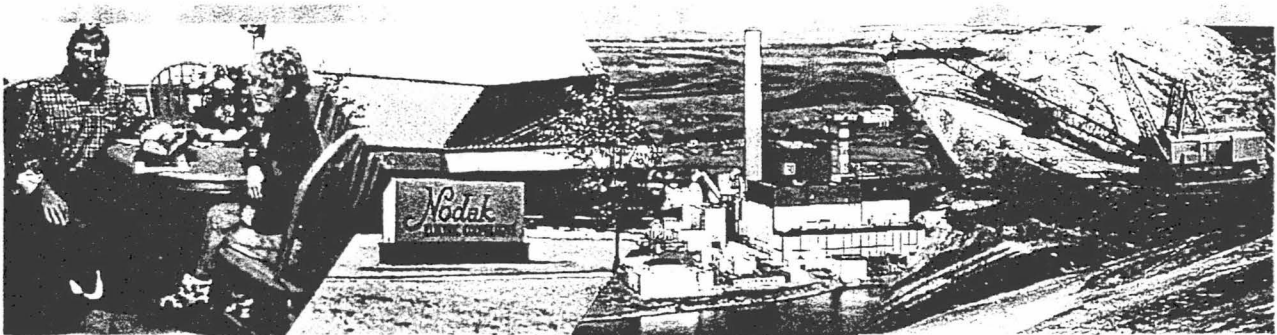
Finally, madam chairman and members of the committee, all of us in the utility business have several options to grow our business. We can try to develop undeveloped territory--like the 8,000 acres of undeveloped land in and around the city of Minot available to NSP. We can diversify, which each of the IOUs in the state have and are doing, and several of our co-ops are doing as well. We can cut costs--get

more efficient--as both IOUs and co-ops have done. And, utilities can raise rates--as several of our co-ops have had to do in the past five years to cover the high fixed costs of their systems as sales, revenues and members decline. Yet, none of the IOUs are approaching the PSC for a rate investigation to see if it's time for them to raise rates to cover costs. Instead, they ask this legislature to tell the cities to set the wheels in motion to turn over the best territories and loads the cities have to offer--territories and loads we have served for decades.

Again, we seek your opposition to SB 2389. I'd be happy to answer any questions you might have.



# The Electric Cooperative Network **FOUNDATIONS:**



Member/  
owners

Distribution  
Cooperative

Generation &  
Transmission  
Cooperative

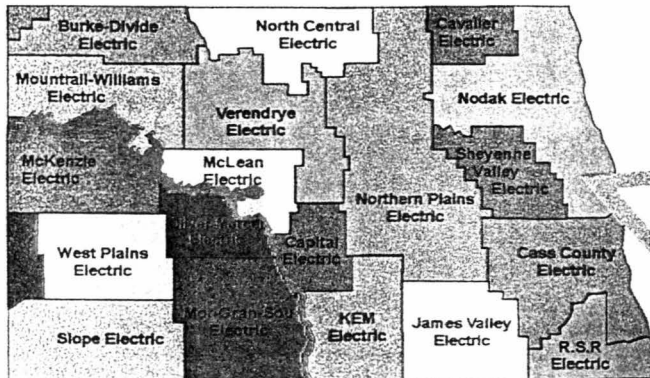
Lignite  
Mine

Presented to the Senate Government &  
Veterans Affairs Committee

 North Dakota Association of  
Rural Electric Cooperatives

A Touchstone Energy™ Partner   
*The power of human connections*

# Members & Distribution Co-ops

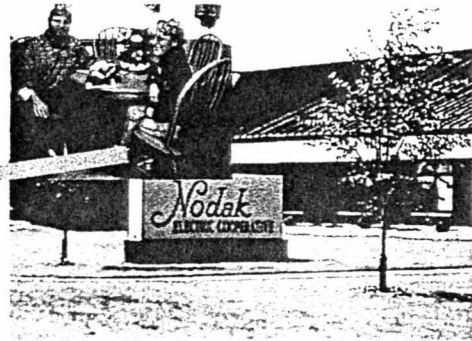
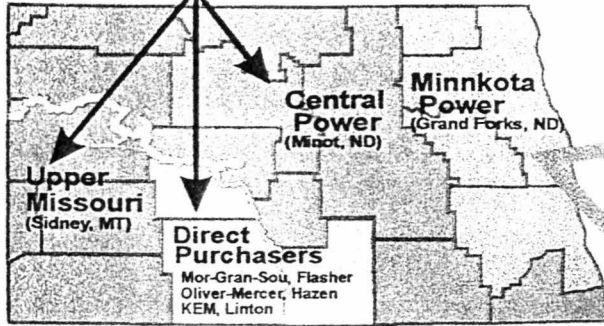


- 19 member-owned distribution cooperatives
- Serve 230,000 North Dakotans through 115,000 meters
- \$210 million annual retail sales--accounts for 42 percent of all electric retail sales in North Dakota
- \$600 million investment in distribution facilities
- 74,000 miles of distribution power lines
- Average line density of 1.5 meters per mile
- Employ nearly 600 people
- All operate as non-profit, member-owned enterprises, governed and regulated by a member board of directors
- Pay \$ 6.6 million in gross receipts and property-related taxes

*Customers regulate the co-op through directors elected to serve on their distribution co-op's board of directors.*

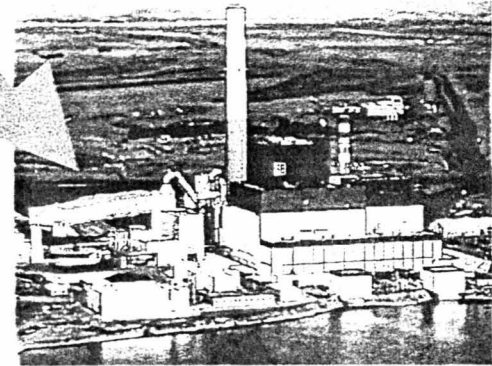
# Members & Generation and Transmission Co-ops

Basin Electric Members  
(Bismarck, ND)



## Other co-op power plants in North Dakota

Great River Energy, Minnesota, owns and operates the Coal Creek Station and the Stanton plant.

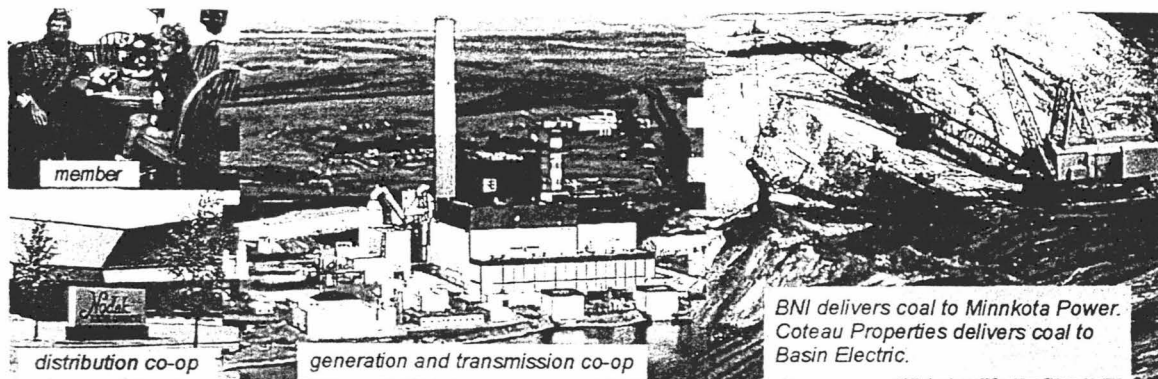


- Five generation and transmission cooperatives
- Invested billions in 3,500 MW of installed generation capacity
- Represents 90 percent of all coal-fired generation
- Own 4,200 miles of transmission line
- Directly employ more than 2,000 people in North Dakota
- All operate as non-profit, member-owned enterprises, governed and regulated by a member board of directors
- Pay \$27 million in coal severance and coal conversion taxes

*Distribution co-op boards formed generation and transmission co-ops to ensure the long-term power supply of present and future customers.*

*Each distribution co-op elects a member of its board to represent their needs on the G&T board of directors.*

# Members & long-term power supply



1. Distribution cooperatives are bound by contract to purchase all the power they need from the G&Ts they own, and the G&Ts have a utility responsibility to provide the power.

Basin Electric contracts with North Dakota members expire in December 2039.  
Minnkota Power contracts with North Dakota members expire December 2020.

2. The decision to build the plants was based on market research that showed a need for the plants, and financing was secured based on assumptions that distribution co-ops would be allowed to develop investments in local territories on an orderly basis.

## Summary of 1996 Electric Utility Taxes

The electric cooperative network pays 75 percent of all taxes paid by electric utilities operating in North Dakota.

1996 State and Local Taxes on Electric Operations in North Dakota

Type of Tax	RECs	IOUs
Gross Receipts	\$6,084,681	0
City Privilege	4,093	0
Transmission Line	410,301	0
Property/Real Estate	430,002	5,861,576
Coal Conversion	10,546,865	868,957
Coal Severance	16,595,575	1,490,691
Sales and Use	2,823,000	1,635,088
State Income	33,865	3,378,971
<b>Total Taxes:</b>	<b>\$36,928,382</b>	<b>\$13,235,283</b>

**TESTIMONY OF DAVID LOER**  
**MINNKOTA POWER COOPERATIVE, INC.**  
**SB 2389**  
**GOVERNMENT AND VETERANS AFFAIRS COMMITTEE**  
**FEBRUARY 5, 1999**

- Minnkota is a G&T cooperative - and also has been cooperative in its operations
  - With other cooperatives
  - With municipals - NMPA
  - With Investor Owned Utilities
    - NSP - Summer capacity sale
    - Summer/winter swap
    - Fixed quantity
    - OTPC - Integrated trans. system
    - Control area
    - MN Power - Partnership - Young #2
    - MDU/OTPC/NWPS - Joint ownership of Coyote
  - We are friends with these organizations
  - On this issue we part
- I am obviously here to express my opposition to SB 2389
  - On behalf of the 100,000 customers who pay our bills

- Minnkota has invested millions of dollars to serve current and new customers in our service territories
  - Approximately \$800 million
    - Generation
    - Transmission
    - Distribution Substations
  - When we put in new facilities we build them bigger than currently necessary
    - Anticipation of growth
  - We have an obligation to serve current and new
    - Adequately
    - Reliably
  - Grand Forks/Fargo \$6.7 million in facilities
    - 55% utilized
- If SB 2389 is approved, a substantial portion of our growth would be stopped
  - Fargo
  - Grand Forks
  - Results in non-utilized (stranded) investment
  - Stranded investment costs
    - Would not be covered by new customers
    - Must be covered by remaining rural and urban customers
    - \$2 million per year

- Planning horizon for G&Ts and other utilities is long term
  - Up to 10 years for generation, 2-3 years for transmission
  - We plan and build these facilities to serve current, growing and new loads in our current service territories
  - We do not believe it's fair to take our service territory away and leave the stranded investment as the responsibility of the remaining rural and urban customers
  
- Closing
  - Thank you for your consideration of Minnkota's views on this important issue
  - Please vote no on SB 2389

**TESTIMONY OF DAVID KENT  
TO THE SENATE GOVERNMENT AND VETERAN AFFAIRS COMMITTEE  
SENATE BILL 2389  
FEBRUARY 5, 1999**

Good morning, my name is David Kent. I live in rural Grand Forks County and serve on the board of directors of Nodak Electric Cooperative in Grand Forks.

The board of directors serves as the regulatory body for the members of the cooperative. There are 171 persons serving on the boards of the 19 co-ops. We are elected by the cooperative members, and have the fiduciary responsibility to approve rates and govern the utility business in the best interest of the consumer members. Every operating policy of the cooperative must be approved by the board of directors, and we are available to accept direct complaints from our consumers. Contrary to the belief of some, we believe our regulation is far more scrutinizing and receives more consumer input than that of the investor-owned utilities.

Nodak Electric Cooperative serves all or parts of seven counties in northeastern North Dakota. Six of these counties, Nelson, Pembina, Ramsey, Steele, Traill and Walsh, have experienced population declines over the past 10 years. Grand Forks County in contrast, has had a small population gain due to the growth of the City of Grand Forks.

The challenges and opportunities of Nodak Electric Cooperative have been a reflection of the population trends in these seven counties. In most of the cooperative's service area, the declining population has resulted in negative growth for our cooperative. This negative growth has been compounded in the last three years with the removal of the Minuteman III missiles at the Grand Forks Air Force Base. The only area of consistent growth in Nodak's service area has been the small part of Grand Forks County that is near the City of Grand Forks.

The negative effect on Nodak Electric Cooperative if SB2389 is passed would be



dramatic. The cooperative would immediately transform from a moderate growth electric utility into a negative growth utility. The cooperative would lose the opportunity to add sales to help cover the millions of dollars of distribution investment in and around the City of Grand Forks. Without question, passage of this bill will result in higher retail rates for our existing customers in the future.

Nodak has served our present service territory for nearly 60 years, and we naturally do not want to give our single growth area to Northern States Power. Senate Bill 2389 is unfair, unnecessary and is extremely harmful to our cooperative. Please vote to oppose SB2389.

**TESTIMONY OF JIM NEWMAN  
TO THE SENATE GOVERNMENT AND VETERANS AFFAIRS  
COMMITTEE  
SENATE BILL 2389**

**FEBRUARY 5, 1999**

Madame Chairman and members of the committee. My name is Jim Newman and I am here to speak in opposition to SB2389. I am a farmer/businessman and live south of Sawyer, ND in Ward County. I hold a strong belief that with only 640,000 people in our state, we need to pull together and help each other.

They say all politics is local. In that regard, I will comment on several ways SB2389 will have a very negative effect on our local situation around Minot and our region.

First, it is unfair to set the wheels in motion to transfer Verendrye's electric customers to NSP in and around Minot. This will benefit a large "out of state" utility and their Minneapolis stockholders at the expense of me and my rural neighbors. For 60 years Verendrye served the rural areas around Minot when NSP refused. Now that the city has grown into the country, NSP wants the legislature to push us out. You also are forcing the loss of VEC service area and customers around Berthold and Velva. That's simply not fair. For years Verendrye has been losing my rural neighbor accounts in the country. Now just when we are gaining consumers around Minot, I don't believe they should be forced off the electric co-op lines.

Second, Verendrye, like other rural electrics, is locally owned and locally controlled. I am a member-owner who, along with 8,000 other VEC members, elect the local directors who guide our cooperative. We should be encouraging homegrown businesses, not making them weaker.

Third, if SB 2389 passes, our rural rates are bound to go up dramatically to make up for Verendrye's lost revenue and meet continued debt payments on ND power plants and infrastructure. Rural electric rates are already higher than those in town. During this time of extreme stress in our ag economy, no farmer/rancher can afford higher operating costs. This legislature should not hurt our rural producers at a time like this, because that ultimately hurts the main streets and shopping mall in the cities.

Fourth, this bill will split farm from city in the Minot trade area after it took years to build a feeling of trust and cooperation. We hope Minot and the other cities realize how important their surrounding trade area is to their economic well being and growth. Yet, this bill suggests that one business I have ownership in, my electric co-op, shouldn't be allowed to do business in town.

Fifth, don't be fooled into believing that this is simply a minor adjustment to the territorial law. The result will be to eventually push every electric cooperative out into the country to serve areas NSP and the IOUs long ago refused to serve. This will soon lead to costly duplication of services, confusion as to who is serving individual sites in certain areas and lead to safety problems.

In conclusion, SB 2389 is unfair, it will divide our people when we should be pulling together, and it will weaken our state. For these and many other reasons, I urge you to vote no on SB 2389. Vote for North Dakota and help keep us whole.

Thank you for your attention.

**TESTIMONY BEFORE THE SENATE GOVERNMENT AND  
VETERANS AFFAIRS COMMITTEE**

**CONCERNING SB 2389**

**FEB. 5, 1999**

**DEAN PETERSON, THE COTEAU PROPERTIES COMPANY**

Madam Chairman and members of the Committee, my name is Dean Peterson. I am here today representing The Coteau Properties Company, North Dakota's largest lignite producer. The Coteau Properties Company is the owner and operator of the Freedom Mine located northwest of Beulah. The Freedom Mine currently produces nearly 16 million tons of lignite annually consumed by the Dakota Gasification Company (6.4 million tons), the Antelope Valley Station (5.2 million tons), Leland Olds Station (3.4 million tons) and the Stanton Station (1.0 million tons). Freedom Mine production started in 1983 and the mine currently has nearly 400 employees.

The Coteau Properties Company **is opposed to SB 2389** for the following reasons:

1. Lignite production in North Dakota continues to strain under the economic pressures of an increasingly competitive energy production and consumption environment. For a more detailed discussion of this point, I would refer you to Dr. David Ramsett's August, 1998 study entitled. **COMPETITION IN NORTH DAKOTA'S ELECTRIC UTILITY INDUSTRY: LIGNITE VS. SUB-BITUMINOUS COAL**. Dr. Ramsett's study was presented to your interim Taxation Committee in early September of last year.

2. Basin Electric has advised Coteau that SB 2389 will jeopardize the billions of dollars of investments they have made in North Dakota to build power plants, and transmission and distribution facilities that serve rural electric territories. The old saying, “**so go your customers, so go we**” would apply to the Freedom Mine. If the generation and transmission of electricity is reduced, then lignite, which fuels the plants, will also be reduced. That can result in a downward production cycle that is driven by increased production costs resulting directly from reductions in amount of tons severed.

Therefore, Coteau respectfully asks this committee to support a **do not pass** position for SB 2389.

**TESTIMONY BEFORE THE SENATE GOVERNMENT AND  
VETERANS AFFAIRS COMMITTEE**

**Concerning SB2389**

**February 5, 1999**

**Dean Peterson, THE COTEAU PROPERTIES COMPANY**

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Madam Chairman and members of the Committee, my name is Dean Peterson. I am here today representing The Coteau Properties Company – North Dakota’s largest lignite producer. The Coteau Properties Company is the owner and operator of the Freedom Mine located northwest of Beulah. The Freedom Mine currently produces nearly 16 million tons of lignite annually consumed by the Dakota Gasification Company (6.4 million tons), the Antelope Valley Station (5.2 million tons), Leland Olds Station (3.4 million tons) and the Stanton Station (1.0 million tons). Freedom Mine production started in 1983 and the mine currently has nearly 400 employees.

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Therefore, Coteau respectfully asks this committee to support a **do not pass** position for SB2389.

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ECONOMICS DEPARTMENT  
P.O. BOX 8369  
GRAND FORKS, NORTH DAKOTA 58202-8369  
(701) 777-2637  
FAX (701) 777-5099

July 30, 1998

Mr. John Walstad  
North Dakota Legislative Council  
State Capitol  
600 East Boulevard  
Bismarck, ND 58505

Dear Mr. Walstad:

Enclosed please find a copy of a study entitled COMPETITION IN NORTH DAKOTA'S ELECTRIC UTILITY INDUSTRY: LIGNITE VS. SUB-BITUMINOUS COAL completed under contract with the North Dakota Legislative Council and the North Dakota Lignite Energy Council. In accordance with our agreement, I have completed the study by August 1. I have reserved the date of September 3, tentatively, to discuss the report with the taxation committee.

Thank you.

Sincerely,



David Ramsett, Professor of Economics and Director  
Division of Economics and Public Affairs

cc. Mr. Clifford Porter

LEGISLATIVE COUNCIL LIBRARY HAS A COPY OF THIS REPORT

**COMPETITION IN NORTH DAKOTA'S COAL-  
ELECTRIC UTILITY INDUSTRY:**

**LIGNITE VS. SUB-BITUMINOUS COAL**

**Prepared for the North Dakota Legislative Council  
and  
The North Dakota Lignite Energy Council**

**By**

**David Ramsett  
Professor of Economics and Director,  
Division of Economics and Public Affairs  
University of North Dakota**

**AUGUST, 1998**





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## North Dakota Farm Bureau

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### TESTIMONY

Senate Bill 2389  
Senate Government and Veterans Affairs Committee  
Senator Karen Krebsbach, Chairman

Presented by  
Ken Bertsch, Director of Government Relations  
North Dakota Farm Bureau

Chairman Krebsbach and members of the Committee, my name is Ken Bertsch and I am representing North Dakota Farm Bureau in opposition to Senate Bill 2389. I would like to briefly outline some areas of concern for our membership in relation to this legislation.

SB 2389 represents very real problems for the future of rural North Dakota. As rural areas of the state lose population, costs for virtually every service, from education to transportation, will increase dramatically. The sparsity of population in these areas spreads diminishing resources further each year. Costs for utility delivery will increase as well, even without the negative consequences embodied in SB 2389.

By prohibiting REC's from serving any new business in areas surrounding (even the four major) cities, they are unable to blend the high costs of serving rural areas. Please remember that these are areas of high cost/diminishing resources. That fact is critical to understanding how drastically this legislation could affect rural North Dakota.

Language allowing REC's to continue serving existing customers is hollow at best. It is obvious that as residences and businesses in current service areas are sold, and become "new", that rural electrics will gradually and completely lose their sole source of blended sales. Make no mistake, farms and rural communities will pay the cost of this revenue loss in the future.

Dozens of other associated problems and concerns with this legislation have been pointed out in testimony before you today. It is our opinion that the concerns are valid, and all point to increasing difficulties involving electric costs and service for the members we represent. At a time when investor owned utilities are advertising low costs and record high profits, is it sensible to secure the opposite scenario for rural North Dakota?

There is nothing positive for rural North Dakota in this legislation. We ask that the Government and Veterans Affairs Committee give a solid Do Not Pass recommendation to SB 2389.

*"Where belonging makes a difference"*

**TESTIMONY OF BRUCE R. CARLSON  
MANAGER OF VERENDRYE ELECTRIC COOPERATIVE  
TO THE SENATE GOVERNMENT & VETERANS AFFAIRS  
COMMITTEE  
SENATE BILL 2389**

**February 5, 1999**

Madam Chairman and members of the committee, my name is Bruce Carlson, General Manager of Verendrye Electric Cooperative, Velva, North Dakota. Verendrye is a "member owned" electric cooperative, which serves 9,700 meters in six counties over 4,100 miles of power line surrounding Minot.

I offer this written testimony in strong opposition to SB 2389. It would destroy the North Dakota Territorial Law, which has worked well since enacted in 1965. Verendrye, NSP, and the city of Minot, have had mutual service area agreements since 1973. A map defines these service areas and is a part of the City of Minot franchise document with Verendrye. This document was last renewed for another 20 years in 1992. I would like to refer you to the attached exhibits.

This ill-conceived bill will refuse Verendrye electric service to all new accounts in the city limits of Minot. This is unacceptable and very unfair. For 60 years Verendrye has served the rural areas around Minot when NSP refused. Now that the city has grown out into our service area, NSP wants the legislature to kick us out and "skim the cream" to benefit the stockholders of a major Minneapolis utility and to the detriment of our remaining members.

This would seriously impact the Verendrye membership. Currently, Verendrye has over 40% of our meters and our "non-air force base" kilowatt-hour sales in or adjacent to Minot. SB 2389 requires all future new customers within the city limits and all future annexations be served by an IOU (NSP). This would result in much confusion, costly duplication of services and a potential

safety hazard. The city and its citizens would soon become weary of this mess and expel Verendrye completely.

The loss of our only growth area, coupled with a declining farm population and the need to continue paying debts on our North Dakota power plants and infrastructure, ultimately could force significant rate increases on our members. The staggering rural economy can ill afford to suffer any increased cost of operations. Also, as areas are transferred, the potential of VEC recovering the full value of our electrical distribution lines during a forced sale to a single buyer is remote.

NSP will claim they are “boxed in” with no room to grow within the existing franchised area in Minot. The facts do not support this. Service area maps show that NSP has over 8,000 acres outside the Minot city limits and within their mutually agreed service area. Note that NSP’s total service area is 24.5 square miles in and around the Minot/Burlington area. Of that amount, 12.9 square miles is outside of the Minot city limits. Let me assure you that there is plenty of available space in Minot and in their existing “surrounding service area” for growth.

Over the last twenty-five years, the Minot city limits have grown by 5.5 square miles. NSP has enjoyed 3.25 square miles, or 59%, of this growth area. Note that VEC only serves 2.3 square miles, or 41%, of the expanded city limits. This is our entire service area in the City of Minot as compared to a present city size totaling 14 square miles. Of this total 14 square mile area in the City of Minot, we only serve 2.3 square miles, or 16%, which took 25 years to realize.

It’s obvious to all of us that the population of North Dakota as a whole is not growing. In fact, the Parade Magazine dated December 13, 1998 listed the ten counties in the nation with the largest decline in population. I’m sorry to report that five of them were from North Dakota and

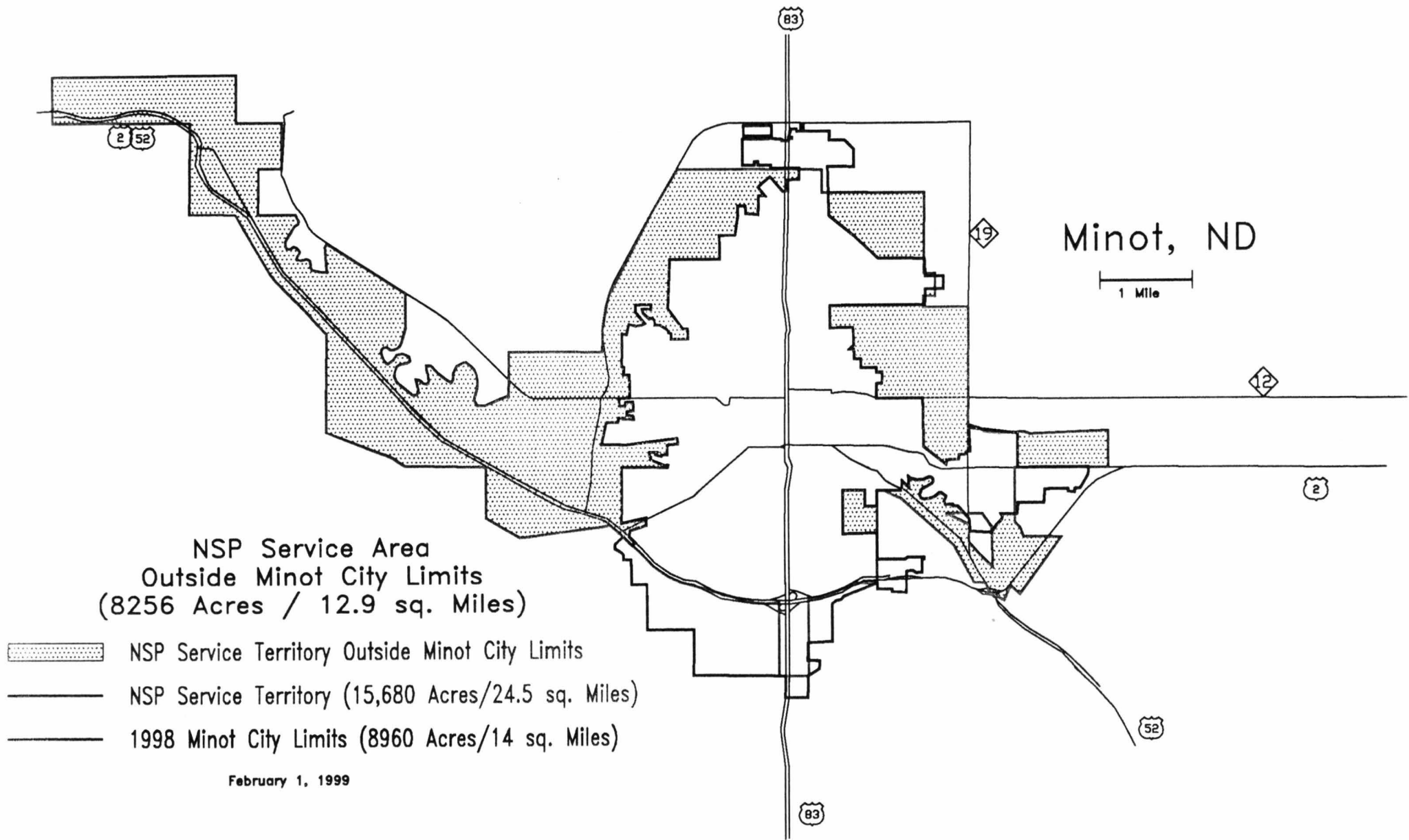
one of them is in our VEC service area. The “growth” around the cities that we are fighting about is, for the most part, a transfer of rural population to the urban areas. We are simply trying to recoup part of our “rural account” losses as the City of Minot expands into our service area. This is our only growth area. How can anyone be opposed to that effort?

Some will claim major rate differentials to be a problem. Again, the facts show otherwise. Many of Verendrye’s rates are equal to or lower than Ottertail and MDU. A number of Verendrye’s commercial and industrial customers enjoy rates that are comparable or less than NSP’s. Verendrye’s urban residential rate is very close to NSP’s underground residential rate. NSP’s promotional ads do not recognize the value of capital credits, off peak load management savings and an electric heat rate that is less than our competitors. We do not deny that our “rural” customers are currently paying higher electrical rates than the IOUs. This is simply a fact of demographics since we only serve slightly over one meter per mile of line in the rural area. The reality is that this proposed legislation will drive up the rates for all our remaining customers.

VEC has already made the investment in infrastructure close to Minot. Any new facilities as installed by NSP will be a duplication and “waste” our existing investment of millions of dollars in distribution facilities. This does not include the billions invested in cooperative transmission and generation. This legislation will force us to vigorously oppose annexations for that very reason, causing friction within city planning.

This bill would be a major setback to rural-urban relations which Minot has worked so hard to improve these past 20 years. The good will created by the MAGIC Fund, as an example, will soon evaporate into animosity.




In conclusion, SB 2389 is a bill designed to benefit a large “out of state” corporation at the expense of a local, member-owned company and its consumers. The bill is self-serving and unfair. We didn’t initiate this conflict, nor did we ask to penetrate the IOU’s service territory. In fact, Verendrye has voluntarily transferred several key accounts to NSP to clean up the territorial line. Verendrye and our members are simply protecting our investment and our future. The same can be said for every other rural electric in North Dakota. Therefore, we strongly urge a “do not pass” vote on SB 2389.



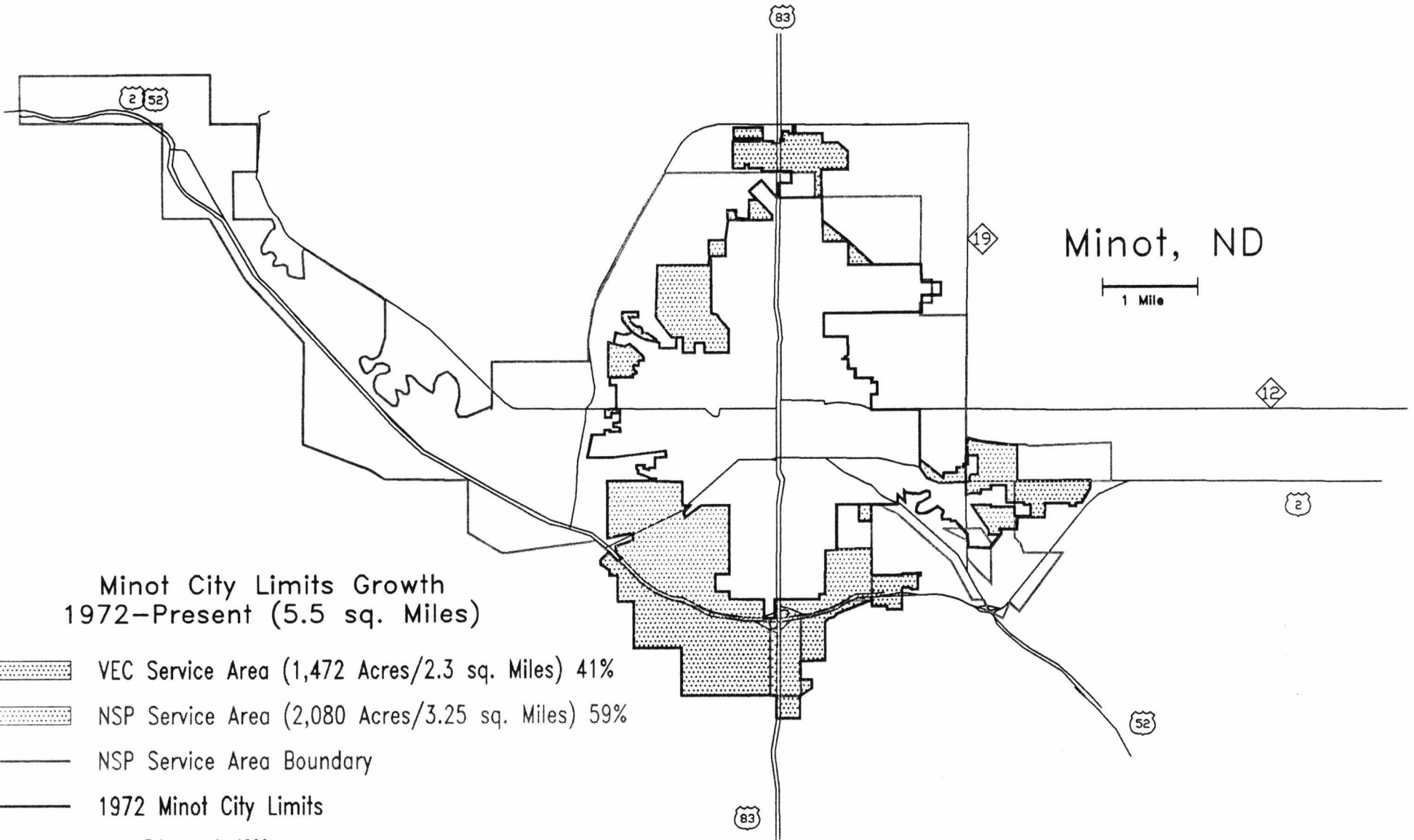
Minot, ND

1 Mile

NSP Service Area  
 Outside Minot City Limits  
 (8256 Acres / 12.9 sq. Miles)




-  NSP Service Territory Outside Minot City Limits
-  NSP Service Territory (15,680 Acres/24.5 sq. Miles)
-  1998 Minot City Limits (8960 Acres/14 sq. Miles)

February 1, 1999

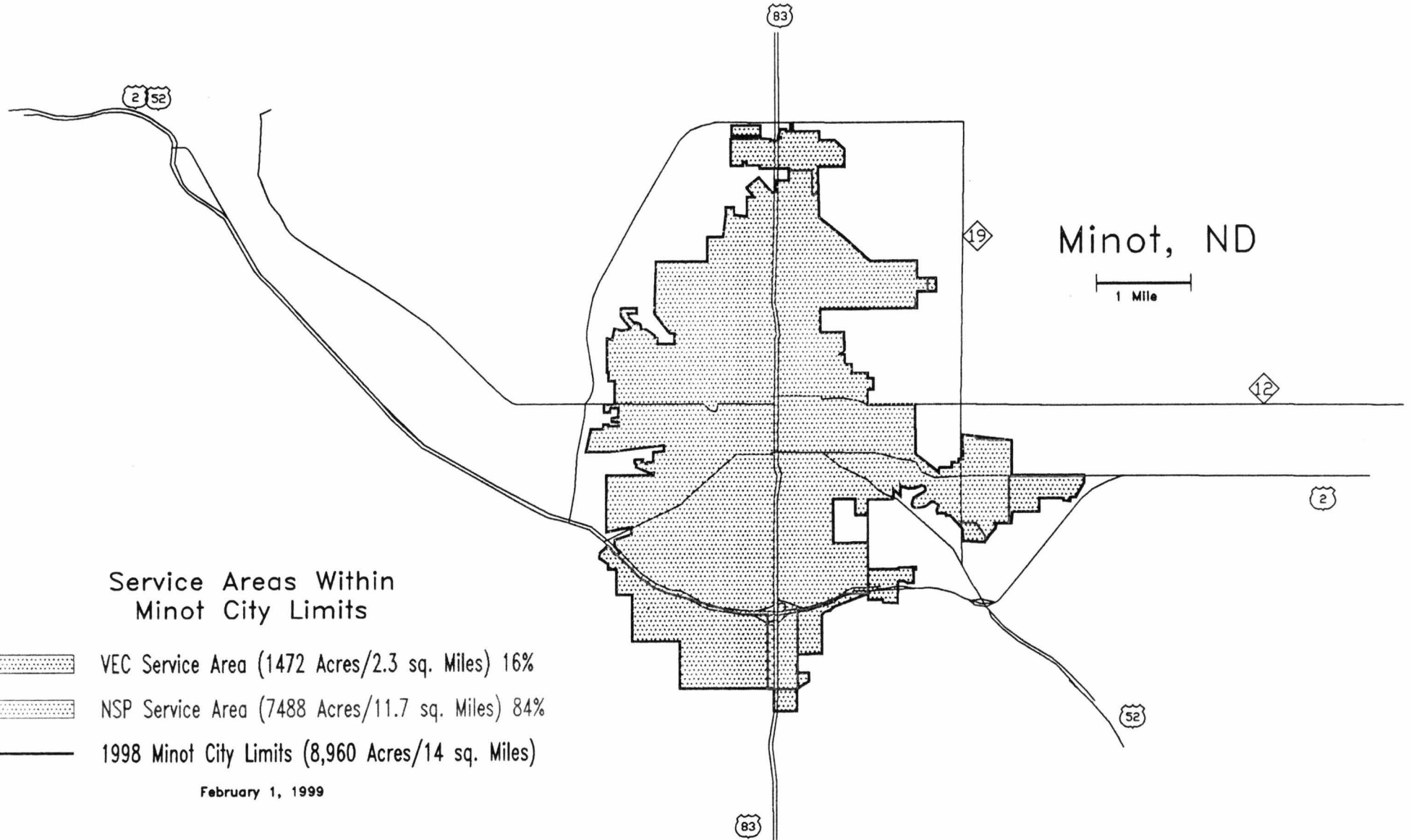


February 1, 1999

### Service Areas Within Minot City Limits

-  VEC Service Area (1472 Acres/2.3 sq. Miles) 16%
-  NSP Service Area (7488 Acres/11.7 sq. Miles) 84%
-  1998 Minot City Limits (8,960 Acres/14 sq. Miles)

February 1, 1999





**TESTIMONY BEFORE  
GOVERNMENT & VETERANS AFFAIRS COMMITTEE  
IN OPPOSITION TO SB 2389  
FEBRUARY 5, 1999**

My name is Vivian Gwin and I am treasurer of Dakota Aero Manufacturers, a company that opened its doors on the Devils Lake airport in July of last year. Our company will modify a line of twin-engine aircraft called Aero Commanders by completely rebuilding them and installing a newly certified engine that will improve their performance while reducing their operating cost.

There appears to be a very strong market for our product, which will allow us to expand to more than 100 highly trained and well paid employees. This would clearly be a significant benefit to Devils Lake and the state.

Although the outlook for this growth is very good, we must do everything we can to keep our costs down. Any new business has to watch their finances. The most common reason for new business failure is running out of money before an adequate cash flow can be reached. Nodak Electric, our power supplier, helped us with equity capital, and we are talking to them about accessing a zero interest loan which is part of the business assistance that is offered by the cooperatives. This kind of assistance is *invaluable* to a new company such as ours. SB 2389 would weaken the cooperatives and threaten the long-term availability of these kinds of programs.

SB 2389 would directly affect our bottom line. Nodak Electric serves mostly rural consumers and, as we all know, they are declining in numbers. If Nodak can't gain any more new commercial or urban residential loads, they will soon have to raise their rates to their existing customers. We have had very good service from Nodak, but if they are forced to raise their rates substantially, it will make it more difficult for us as a new and expanding business to survive in the highly competitive world market of general aviation.

We urge a **do-not-pass** recommendation on SB 2389.

**Testimony of Scott Handy, Cass County Electric  
In Opposition of SB2389  
Before the Senate Government & Veterans Affairs Committee  
North Dakota Legislature  
February 5, 1999**

Madam Chairman, and members of the committee, my name is Scott Handy.

I am employed by Cass County Electric Cooperative in the capacity of Sr. Vice President.

Cass County Electric Cooperative is headquartered in Kindred. We serve approximately 19,500 electric accounts in parts of eight counties in southeastern North Dakota. Of these accounts, about 11,500 are within 22 incorporated cities.

One purpose for appearing before you today is to address the issue of electric rates charged by various electric power suppliers. I believe this issue needs to be explored at this hearing because rates seem to be a key element of the strategy employed by Northern States Power Company in support of Senate Bill 2389.

Basing broad public policy issues on matters that are as temporary as rates is a bad idea. Rates can change from one year to the next and today's situation may not apply tomorrow.

Cooperative rates are set by a democratically-elected board of directors.

Rates are cost-based, and enormous effort goes into making them as competitive as possible. Because of the lower number of customers per mile of line, cooperatives have an added challenge of trying to maximize sales over their investments in order to spread fixed costs over as many units as possible.

NSP in particular has extensively advertised a rate comparison at a level of 700 kilowatt hours per month. They imply in their advertising campaign that since they are the cheapest at 700 kilowatt hours, they are less expensive in every other rate category as well. This is simply not true. Cooperatives compare very well in many rate categories.

Cass County Electric Cooperative, for instance, has a lower average cost per kilowatt hour than does NSP for both residential and commercial customers.

We are not, however, trying to use that fact to make an argument that we should invade territories where they currently provide service.

The second purpose for my appearance today is to discuss the issue of “zero growth opportunity.” The investor-owned utilities have focussed specifically on Fargo, and have attempted to make a case that they are getting no growth and have no prospects for growth.

Cass County Electric Cooperative has been monitoring this issue for many years. In the case of Fargo and West Fargo, looking back over the past six years, NSP has captured significant market share of new construction. The number of building permits for single and multi-family homes in NSP’s service area has increased every year except for the flood year of 1997. In fact, in 1998 NSP had double the new construction building permits as in 1994. This hardly has the appearance of a company that is not growing.

I should point out as well that in the areas where NSP is not getting all the new construction, they have a 100% area coverage with their natural gas system.

In 1988, the City of Fargo Planning Department did a study called the Fringe Area Development study. The results indicated that there were over 3,000 acres of undeveloped land at the edges of Fargo that were clearly within NSP's service area. This study did not include open areas that are farther within the City, nor did it include large open areas in West Fargo that are within NSP's service area. Certainly some of this open land has been developed since that time, but a simple observation will show that much remains.

In any event, the attempt of SB2389 to solve a perceived poor growth opportunity for one part of the industry by imposing a certain zero growth situation on another part makes no sense whatsoever.

Madam Chairman and members of the committee, I hope I have demonstrated that the foundation of Senate Bill 2389 is built on two frail pillars – the issue of rates and the issue of a perceived decrease in growth opportunity. Neither issue holds water.

The taking of areas that have been served, planned for, and developed by electric cooperatives for over 60 years is a proposal that has no merit, and

must be stopped. Your DO NOT PASS recommendation on Senate Bill 2389 will be greatly appreciated.

Madam Chairman, members of the committee, thank you for this opportunity to testify in opposition of Senate Bill 2389.



**NORTH DAKOTA ASSOCIATION  
OF TELEPHONE COOPERATIVES**

Box 1144 - Mandan, ND 58554  
Phone 701-663-1099 - FAX 701-663-0707

SENATE BILL 2389

SENATE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE

FEBRUARY 5, 1999

CRAIG HEADLAND

PRESIDENT

NORTH DAKOTA ASSOCIATION OF  
TELEPHONE COOPERATIVES

My name is Craig Headland and I am president of the North Dakota Association of Telephone Cooperatives. The Association represents all of the cooperative and independent telephone companies in the State. Those companies serve over 150,000 homes and small businesses and 90 percent of the geographic territory of North Dakota.

Members of the Association are strongly opposed to Senate Bill 2389.

The Association believes that failure to defeat this proposal will lead to higher electric costs for rural residents in North Dakota and is an unwarranted attack upon the member-owners, urban and rural alike, of electric cooperatives in this State. We believe that imposing higher rates on rural residents and attacking cooperative business structures would be an inappropriate response by the legislature during these difficult times in rural America, especially in North Dakota.

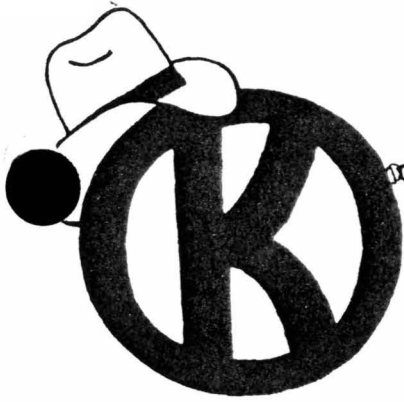
Other witnesses opposing SB 2389 will detail flaws of the legislation on a section-by-section basis, but members of the Association wish to join other rural and consumer groups who recognize the parochial nature of this proposal and its preference for the investor-owned electric utilities. We believe adopting SB 2389 would be unfair, unwise and unjust.

Competition may one day come to the electric industry in North Dakota as it has for airlines, trucking, telecommunications and railroads in the state. The Association believes that any

attempt to deregulate an industry be done comprehensively rather than a piecemeal approach that would lead to the type of inequities that are found in SB 2389.

Members of the North Dakota Association of Telephone Cooperatives urge the defeat of SB 2389 and ask your committee for a Do Not Pass recommendation.





*"Home of the Cowboys"*

## **City of Killdeer**

*P.O. Box 270*

*Killdeer, ND 58640-0270*

*701-764-5295*

February 5, 1999

Madam Chairman and members of the Committee:

Hello, my name is Dennis Hartman. I am a Commissioner from the City of Killdeer. Our City adopted a resolution at our February 1<sup>st</sup> meeting opposing SB 2389.

One of the things that is extremely important to our city is retaining local control and the power to take charge of our own destiny. If SB 2389 is enacted, it would limit Killdeer's franchise jurisdiction and interfere with the City's right to contract. It also jeopardizes our ability to best represent the people of our community. We as elected officials need these tools to respond to our situations and this bill takes that away.

Please consider a do not pass on this bill.

Are there any questions? If not, thank you for your time.

Dennis Hartman, Vice-President  
Killdeer City Commission

CITY OF KILLDEER, NORTH DAKOTA


**RESOLUTION OPPOSING SB 2389**

**BE IT HEREBY RESOLVED**, that the City of Killdeer, by and through a unanimous vote by the Killdeer City Commission, opposes SB 2389 as the Bill, if enacted, would limit Killdeer's franchise jurisdiction and inappropriately interfere with the City's integrity to not only contract, but as importantly, SB 2389 would interfere with the City Commissioners integrity to best represent the constituents of the City of Killdeer.

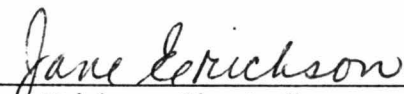
This Resolution is not an advocacy for electrical cooperatives but an advocacy for a City's jurisdiction and the freedom to choose and to contract.

Dated this 1 day of February, 1999.

CITY OF KILLDEER, NORTH DAKOTA

  
\_\_\_\_\_  
Mel Ezler, President

ATTEST:

  
\_\_\_\_\_  
Jane Erickson, City Auditor  
resolution

TESTIMONY BEFORE THE NORTH DAKOTA SENATE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE, SEN. KAREN KREBSBACH, CHAIRMAN, ON SB 2389, RELATING TO "AMENDMENT TO THE TERRITORIAL INTEGRITY ACT," BY GARY JACOBSON, REPRESENTING BASIN ELECTRIC POWER COOPERATIVE, FEBRUARY 5, 1999.

---

Madame Chairman, I am Gary Jacobson and I represent Basin Electric Power Cooperative.

Basin Electric, a consumer-owned regional energy cooperative, founded in 1961, is headquartered in Bismarck and employs nearly 1,700 people. The Cooperative operates 3,357 megawatts of electric generating capacity for its 119 rural electric member systems in the eight states of Colorado, Iowa, Minnesota, Montana, Nebraska, North Dakota, South Dakota and Wyoming.

Basin Electric is a Generation and Transmission Cooperative (G&T) that generates and transmits supplemental electric power to its 16 "Class A" members. Eight of the "Class A" members, in turn, deliver the power to the distribution cooperatives across the region and the remaining Class A members are distribution cooperatives that buy electricity directly from Basin Electric.

Basin Electric provides electric energy for nearly one and one-half million people in the Upper Great Plains.

In the early 1960s when Basin Electric's eight state membership decided to build its first power plant and headquarters in North Dakota, it did so primarily based on two factors: (1) the abundance of coal and water; and (2) the legally and politically friendly climate for rural electric cooperatives in North Dakota. Over the past nearly 40 years, Basin Electric and its subsidiaries have invested over \$4.3 billion in the State of North Dakota. In addition to direct investments in our own property and businesses, we have, at times too numerous to mention, been called upon and have responded to requests for assistance for economic development in North Dakota's rural

and urban areas. We have done so as a full participant in the benefit of the economic life of North Dakota.

SB 2389, sponsored by Senators Bob Stenehjem, Rod St. Aubun and Tom Fischer; and Representatives George Keiser, Mike Timm and Kathy Hawken, would have a distinctly negative effect on Basin Electric's capacity and desire to contribute economic growth to the state.

SB 2389 represents a radical departure from the historically friendly and sympathetic attitude of North Dakota toward rural electric cooperatives. The message of SB 2389 is that rural electric cooperatives are all right in their place, and their place is providing power to consumers the investor-owned utilities have decided are not profitable to serve. Where would North Dakota be today if such an attitude had been pervasive when Basin Electric, Minnkota and UPA/CPA had started developing the lignite fields of North Dakota?

If this bill is allowed even to proceed with this Committee's positive recommendation, you will be sending some very unsettling signals about the State's attitude toward the contributions of generations of rural electric members.

Basin Electric is adamantly opposed to SB 2389.

RESOLUTION BY THE BOARD OF DIRECTORS OF  
NORTH DAKOTA RURAL WATER SYSTEMS ASSOCIATION

WHEREAS, The provision of rural utility service at a reasonable cost to North Dakota is at risk; and

WHEREAS, Rural utility service to North Dakota is necessary to stem the outmigration from our state; and

WHEREAS, The additional loss of current customers of a rural utility will result in increased rates for the remaining consumers; and

WHEREAS, Increasing the rates of rural utility consumers will hasten the outmigration from rural North Dakota; and

WHEREAS, The continued loss of population in rural North Dakota is detrimental to all the citizens of North Dakota;

NOW, THEREFORE, BE IT RESOLVED:

That the North Dakota Rural Water Systems Association strongly opposes the passage of Senate Bill 2389 and urges a Do Not Pass recommendation by the Government and Veterans Affairs Committee of the North Dakota Senate.

Adopted on the 3rd day of February, 1999 at Bismarck, North Dakota, by unanimous vote of the executive board of directors.

## Testimony on SB 2389

### Senate Government and Veterans Affairs

Madame chair and members of the committee, my name is Richard Schlosser, and I am speaking on behalf of the 40,000 members of the North Dakota Farmers Union.

We are opposed to SB 2389 because of its potential economic impact to family farmers. As producers, we are member owners of the rural electric cooperatives that serve our farms and ranches. If our cooperatives lose their high density (more profitable loads), we will see an increase in our rates.

My farm is served by James Valley Rural Electric, headquartered at Edgeley. James Valley serves approximately 3200 members. In addition to serving the farms in its service area, our cooperative serves residences, private businesses, and several cooperatives ( e.g. Cenex and a Harvest States feed plant ). Because of economic development and growth, these facilities have been built near some of our small towns in cooperative service areas. Some of these areas have since been annexed to the city. James Valley, using member owner equity, has invested money in plant and equipment to serve these new loads. SB 2389 would limit James Valley's ability to serve future growth in these areas, and may, because of economics, limit the cooperative's ability to serve the present loads.

James Valley Electric, like other Rural Electric Cooperatives, is committed to providing a reliable and affordable service to its member owners. Our cooperatives are visionary and are attempting to address the

future needs of their members. SB 2389 clouds that vision, because we will lose revenue and may have to sell plant and equipment at a loss. The eventual cost and loss of revenue would be borne by the remaining member owners in the form of higher rates. For example, of the \$4.9 million in revenues generated at James Valley Electric, \$230,000 would be at risk with the passage of SB 2289.

In conclusion I would like to quote a January 2, 1999 Minot Daily News editorial.

“ If the cooperatives lose their profitable customers, the small and remote customer will see an increased power bill. How much is not known, but it most certainly will go up, maybe to the point where the cooperative system can not support itself financially. Should we ask the remote and small user to pay the real cost of providing and maintaining the power? No. North Dakota needs to support the entire state.” It is our opinion that the present Territorial Integrity Act does just that.

That concludes my testimony. Are there any questions?

COPY

**RESOLUTION**

The City Council of Watford City, North Dakota, having considered Senate Bill 2389, believes that such a law, if passed by the North Dakota State Legislature, is not in the best interests of the residents of Watford City. The main reason why Senate Bill 2389 is not in the best interests of the residents of Watford City, is because it unfairly restricts the city's rights to contract or franchise with electric utilities of its choice.

**THEREFORE**, upon motion made and passed by the City Council at its regularly held meeting on February 1, 1999, the City Council of Watford City does hereby resolve to publicly oppose Senate Bill 2389.

Dated this 1st. day of February, 1999.

CITY OF WATFORD CITY

By: William B. Bolte



**TESTIMONY OF GORDY WIESE**  
**OPERATIONS SUPERVISOR OF CAPITAL ELECTRIC COOPERATIVE, INC. TO**  
**THE SENATE GOVERNMENT AND VETERAN AFFAIRS COMMITTEE**  
**SENATE BILL 2389**  
**FEBRUARY 5, 1999**

Madam Chairperson and members of the committee, my name is Gordy Wiese. I am the Operations Supervisor for Capital Electric Cooperative, Inc., headquartered here in Bismarck. My employment with Capital Electric began in 1974 when I started as an apprentice lineman. I have twenty four years of field experience in dealing with the delivery and distribution of electric power. I am here today to testify in opposition to Senate Bill 2389.

In reading the proposed bill, the section of current law that prohibits line extensions that interfere with existing services provided by an electric cooperative or an electric public utility within a municipality is deleted.

This bill would not only allow, but would in fact promote the duplication of services and line extensions which would interfere with another utility, be that an electric cooperative or an electric public utility.

There are obvious economic reasons not to allow duplicate facilities. As a lineman, I would like to try to give you a different perspective--it's simply called safety.

There are many inherent hazards in the job when your profession is a lineman. Mistakes in this industry can and often are deadly. Our industry is constantly talking and practicing safe work

procedures.

There are subdivisions in the City of Bismarck where we have buried underground cable and not all of the lots are developed. After July 31, 1999, this bill states that we are forbidden to extend service to these lots even though we may have our facilities located right in the lot. Under this proposed bill, MDU would go into these subdivisions, run their underground cable to these vacant lots, set transformers, and run service lines. This may not cause much of a problem for a year or two, but, believe me, in a matter of a few years, we would have an intermingled electrical system that would be a lineman's nightmare. This, I believe, is an accident waiting to happen.

I do not believe it is good public policy to duplicate facilities. Not only for economic reasons or for the increased hazards to our lineworkers, but also the increased hazards to the general public and to the many contractors that excavate close to underground power lines.

The laws that prevent duplication of facilities and the extension of line provisions which cause interference with another utility need to remain in place.

I urge you to vote no on Senate Bill 2389. Thank you.

## ATTACHMENT

### COMMENTS RELATIVE TO THE INTENT AND PURPOSE OF RURAL ELECTRIC COOPERATIVES AS GLEANED FROM STATUTES AND SUPREME COURT CASES.

The Rural Electrification Act of 1936 (7 U.S.C. §901 et seq) as originally enacted authorized federal loans “for rural electrification and the furnishing of electric energy to persons in rural areas who are not receiving central station service...” (7 U.S.C. §902).

In response to enactment by Congress of the Rural Electrification Act of 1936, the North Dakota Legislature enacted Chapter 115 of the 1937 North Dakota Session laws which established the framework for organizing and operating rural electric cooperatives. Chapter 115 established the same purpose for North Dakota RECs as set out in the federal law. That original federal language and intent for rural electric cooperatives remains in state law today as codified in chapter 10-13 of the North Dakota Century Code.

That intent is to serve all farms and ranches who do not have central station service available to them from public utilities. RECs in North Dakota are formed under Chapter 10-13, NDCC, for the purpose of engaging in rural electrification and “the furnishing of electric energy to persons in rural areas who are not receiving central station service.” (NDCC §10-13-01(1)). The persons who are eligible for REC membership are “persons who are not receiving central station service and who reside in rural areas proposed to be served by a cooperative....” (NDCC §10-13-04). “Rural area” under the REC organization chapter is defined as “any area not included within the boundaries of an incorporated city having a population in excess of twenty-five hundred inhabitants....” (NDCC §10-13-04).

The North Dakota Supreme Court recognized this distinction between public utilities and rural electric cooperatives in an early decision concerning the Territorial Integrity Act. Montana-Dakota Utilities Co. v. Divide County School District No. 1, 193 N.W.2d 723 (N.D. 1971) made it clear that an REC can't replace public utility central station service already being provided in a rural area. The Court at page 729 stated: "The city of Crosby qualifies as a rural area because it has a population of less than twenty-five hundred inhabitants. However, Section 10-13-01, N.D.C.C. qualifies or limits the rural areas which an electric cooperative may be 'organized and operated' to serve. It may not be 'organized and operated' to serve a rural area in which persons are receiving central station service. Thus an electric cooperative corporation could not be 'organized and operated' to serve the city of Crosby."

The Supreme Court in that decision said "the statutes providing for annexation of territory to cities were in existence long before the Electric Co-operative Corporations Act was enacted. When this Act was enacted, there were many cities and villages which were receiving central station service from public utility companies under a franchise arrangement. There were also many cities and villages which were furnishing their own electrical energy through city-owned electric plants. No claim has been made that electric cooperatives have an exclusive right to serve all rural areas. It is clear that the purpose for which an electric cooperative corporation may be formed is to serve persons in rural areas who are not receiving central station service."

Thus, RECs were never formed with the purpose of replacing or competing with electric service within the cities and towns of North Dakota that were already receiving central station service. Although the North Dakota Supreme Court recognized the distinctions between the electric suppliers in its early Territorial Act decisions, it has strayed from the intent and purpose in later decisions, thus causing the problem which exists today.

# PUBLIC POWER WEEKLY

## Tax breaks for IOUs cost Treasury \$8.8 billion in '96, APPA report finds

Investor-owned utilities benefited from federal tax breaks to the tune of \$8.4 billion in 1996, while those tax breaks cost the federal Treasury an estimated \$8.8 billion, says a new study by MSB Energy Associates for APPA. The retail rates of private power customers would have had to increase by 5.1% had the companies not received the \$8.4 billion in benefits from three major tax breaks, MSB concluded. The cumulative loss to the Treasury from 1954 to 1996 was more than \$267 billion, the study found. The report, *Federal Tax Breaks that Lower Investor-owned Utility Costs and U.S. Treasury Revenues*, is an update—to reflect 1996 data—of previous MSB studies for APPA on the impacts of tax breaks.

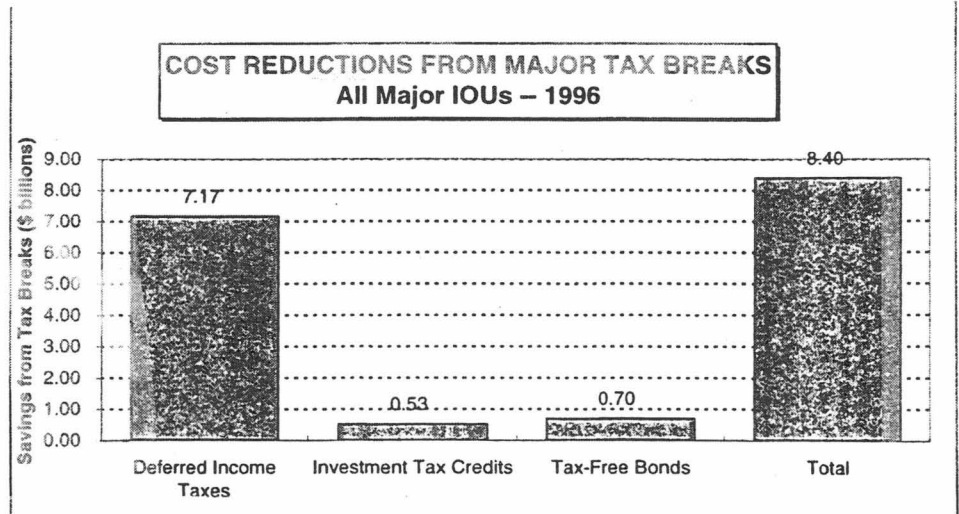
The study examined three major tax breaks enjoyed by private power companies: accumulated deferred income taxes (accelerated depreciation); investment tax credits; and tax-exempt financing. At the end of 1996, IOUs' accumulated deferred taxes totaled \$56.7 billion, their investment tax credit balance related to electric operations was about \$10.7 billion, and they had \$37.7 billion in tax-exempt bonds outstanding, MSB said. The roughly \$38 billion in tax-exempt bonds represented 30% of the investor-owned utilities' total outstanding bonds and 22% of their long-term debt, the study said.

The federal tax code allows investor-owned utilities to use accelerated depreciation of their assets for tax purposes and straight-line depreciation of their assets for ratemaking. This use of different depreciation methods "would allow a utility to tell its ratepayers that its taxes are, for example, \$1 million (and collect \$1 million in rates), when in fact the actual taxes paid might be only \$0.8 million," MSB explained. The extra \$200,000 "represents capital available to the utility at no cost."

In theory, the private utilities eventually will pay the deferred taxes, but that "ignores the fact that new additions to utility plant usually outpace the depreciation associated with older assets, causing the net balance of deferred taxes to grow continually," the study said. In fact, the amount of

**The amount of deferred taxes rose each year from 1954 to 1996.**

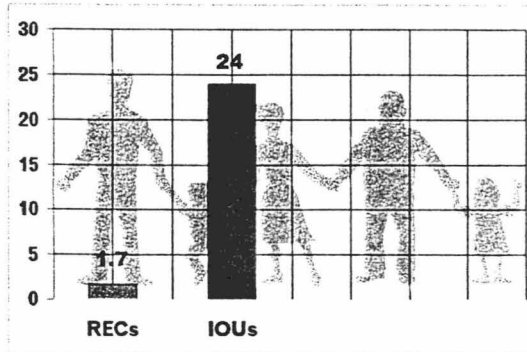
deferred taxes has increased in each of the 42 years from 1954 to 1996. "This has led some accounting professionals to suggest that deferred taxes are permanently deferred and may be more like an equity contribution than a liability," the report said. ■



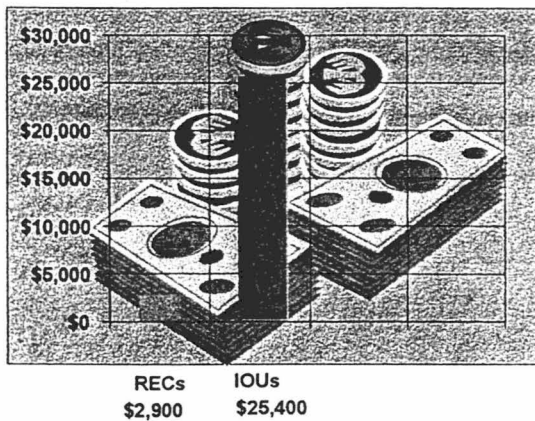
Deferred income taxes are responsible for the lion's share of IOU savings attributable to tax breaks, the MSB report says. Source: MSB Energy Associates

# Electric Utilities & assistance per customer

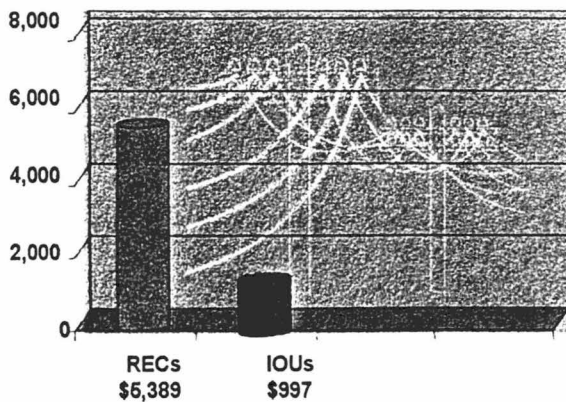
Customers per mile



Revenue per mile

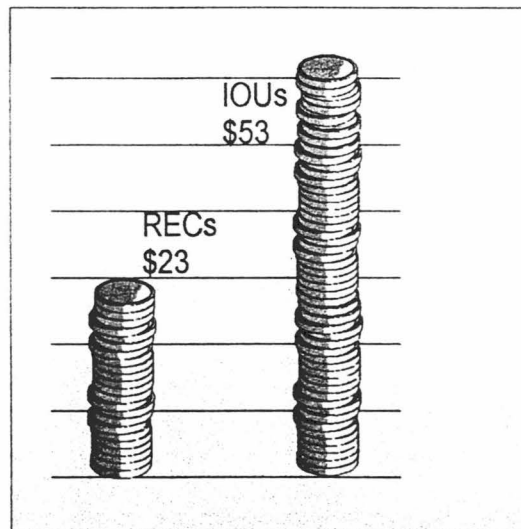


Distribution investment per customer



All electric utilities receive federal subsidies in one form or another. Calculations based on federal government financial reports show that rural electric cooperatives (RECs) receive the least amount of subsidy per customer. RECs receive subsidies in the form of reduced-interest loans. Investor-owned utilities (IOUs) receive subsidies in the form of investment tax credits and accelerated depreciation.

Assistance Per Customer



Source: DOE, U.S. GAO, USDA, NRECA strategic analysis unit, 2/3/99

**RUS Loan Program**  
**(dollars in millions)**

FY	Authorization		Approvals		Subsidy	
	<u>Muni Rate</u>	<u>Hardships</u>	<u>Muni Rate</u>	<u>Hardship</u>	<u>Muni rate</u>	<u>Hardships</u>
1994	\$409	\$109	\$409	\$109	\$46	\$20
1995	\$536	\$74	\$536	\$74	\$46	\$10
1996	\$545	\$91	\$545	\$91	\$54	\$21
1997	\$456	\$69	\$456	\$69	\$28	\$4
1998	\$500	\$125	\$500	\$125	\$21	\$9
1999	\$295	\$72			\$26	\$9
(1) 2000	\$250	\$50			\$9	\$1

(1) Proposed in President's budget

Note: As of Feb. 1, 30-year Treasury rate was 5.31% thus the subsidy to a 5% loan is very little.



PROPOSED AMENDMENTS TO SENATE BILL NO. 2389

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to direct the interim electric utilities committee to review chapter 49-03 of the North Dakota Century Code and other pertinent laws relating to electric service by electric public utilities and rural electric cooperatives inside and outside the limits of a municipality.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. Electric Utilities Commission Study.** The interim electric utilities committee established by the 1997 Legislative Assembly is directed during the 1999-2000 legislative interim to study chapter 49-03 and other pertinent laws relating to the extension of electric lines and facilities and the provision of electric service by public utilities and rural electric cooperatives within and outside the limits of a municipality.

The electric utilities committee study shall specifically address and include:

1. The criteria presently used by the public service commission under chapter 49-03 in determining whether to grant a public utility a certificate of public convenience and necessity to extend its electric lines and facilities to serve customers outside the limits of a municipality, and
2. The circumstances, if any, under chapter 49-03 and other pertinent laws under which a rural electric cooperative may provide electric facilities and service to new customers and existing customers within municipalities being served totally or primarily by a public utility.

The electric utilities committee is directed to present proposed legislation to the 2001 session of the Legislative Assembly which will address the study areas and ~~the~~ the problems that have occurred concerning public utility and rural electric cooperative facilities and service within and outside the limits of a municipality."

Re-number accordingly



Testimony Offered To Senator GVA Committee  
SB 2389  
February 11, 1999

Madam Chair and committee members, I want to first offer my sincere thanks to you for the very fair hearing that you conducted last week. With the number of people present, it had the potential to become a circus and I compliment both those who were supportive of SB 2389 and those who were opposed. I believe that the testimony given was very informative. As you all know, the consequences of passage of SB 2389 will have significant impacts on both the REC's and the IOU's. I have been asked to introduce many different amendments from several of our colleagues. These amendments would assure their support for the bill. However, I honestly do not know if these amendments would be better or create more problems. One of the re-occurring statements I have heard from the REC's is that the concept of this bill should be dealt with in the Electric Utilities Commission. During your hearing last Friday, Rep. Robert Huether speaking in opposition to SB 2389, referred to the electric utility committee saying, and I quote, "If there are changes to consider in the Territorial Integrity law or further study that is needed, let it come from the committee that this body established." He is a member of that commission and stated that "It is our responsibility to look into all aspects of the electric industry."

As I looked into this further, I realized that this is too important to be decided during a short legislative session. I concur with Rep. Huether and other REC directors who have urged that this be dealt with in the Electric Utilities Commission during the interim. As a result, I am offering to you an amendment, which if approved would direct the Electric Utility Commission to study the issues identified during your hearing and to present proposed legislation during the next legislative session. I am asking my colleagues, who offered me possible amendments or concepts, to present those ideas to the Electric Utilities Commission for their consideration. I honestly feel that this would be the best forum to address the issues of taxes, duplication of infrastructure, territories, regulatory oversight, and other related issues.

It is unfortunate that this bill has become so emotional and that the Senators have been exposed to such extreme lobbying pressure. However, it is my belief that the amendment that I offer is a win-win situation for all concerned. It gives all of us a chance to catch our breath and more time to look at this issue from all sides. Madam Chair and committee members, I ask for your support for the amendment and for a Do Pass as Amended on SB2389. Thank you.

Charles W. Murphy  
Chairman



Tom Iron  
Vice Chairman

Elaine McLaughlin  
Secretary

#### DISTRICTS

Robert Cordova  
Cannonball District

Raphael See Walker  
Fort Yates District

Joe Strong Heart  
Wakpala District

Palmer Defender  
Kenel District

Dean Bear Ribs  
Bear Soldier District

Milton Brown Otter  
Rock Creek District

Farren Long Chase  
Little Eagle District

Randal White Sr.  
Porcupine District

#### AT LARGE

Joc Keepsagle

Dave Archambault

Jesse Taken Alive

Reva Gats

Sharon Two Bears

Verna Bailey

February 11, 1999

The Honorable Dwight Cook  
North Dakota State Senate  
State Capitol  
Bismarck, ND 58501

RE: SB2389

Dear Senator Cook:

I am writing this letter to seek your support in opposing Senate Bill 2389, a bill to amend the state's Territorial Integrity Act. The Standing Rock Sioux Tribe is not in favor of this bill. I enclose a copy of Tribal Council Resolution No. 057-99. As you can see, the Standing Rock Sioux Tribe has officially gone on record to oppose passage of this legislation.

Most of our tribal members residing on Standing Rock are also members of the Mor-Gran Sou Electric Cooperative, which serves Fort Yates and the immediate area around the city of Mandan. If this bill passes, Mor-Gran-Sou would be prohibited from serving any new growth in the city after July 31, 1999. If our member owned coop cannot serve the growth in these areas, the increased costs would be pushed back on existing and remaining ratepayers. We do not think this is fair.

We have appreciated the working and business relationships that we've had with the communities of Bismarck and Mandan. Mandan is important to us, and we hope that we are important to Mandan. This bill sends a signal that a utility that we're part owners of is not welcome in Mandan, since Mor-Gran-Sou would not be able to serve any new customers in the city of Mandan after July 31<sup>st</sup>.

As you know, the Standing Rock reservation faces tough, economic pressures. This bill, if approved, could add to those pressures by forcing Mor-Gran-Sou to shift back on existing customers. We'd prefer that we not have to face this added pressure. We would like to see SB 2389 defeated and respectfully ask that you consider our point of view. Thank you.

Sincerely,

Charles W. Murphy, Chairman  
Standing Rock Sioux Tribe

Encl.

**WATFORD CITY - CITY COUNCIL MEETING  
NOVEMBER 2, 1998**

Tom Miller, McKenzie Electric's Presentation to the Watford City – City Council

1. Tom said he did a feasibility study on offering lower electric rates to Watford City. His study shows he could offer 25-35% lower rates.
2. McKenzie Electric was a local business and he felt that they could help in the rural area economic decline.
3. An investor owned utility sticks money back into the stockholders that probably live in New York. The REC puts it back in the community.
4. He would guarantee electric rates of 4.91 cents through year 2007. That would amount to \$2 million in savings in a nine year period - \$200,000 annually.
5. The tax structure of an investor owned utility, bases tax on its property and REC on gross receipts tax. The difference he stated would be \$2500 negative and he did not feel that was even worth discussing.
6. To achieve this the City would have two options:
  - a. Form municipal power
  - b. Become members of McKenzie REC
7. McKenzie Electric would allow for another board member from Watford City and if Killdeer would switch they would allow another member to their board from there. Their board would increase from a 9 to 11 member board.
8. Tom presented a letter that Mr. Tipton had presented to the City of Watford City that the REC was breaking the law by trying to secure them as customers. He went on to say it is not their intent to break any laws but that MDU's Franchise is up September 2001 and he would like a franchise and he would also request a franchise for the existing facilities they have now in Watford City.
9. He wanted to relay to the Board that Reservation and McKenzie Electric are looking at buying US West Property in Watford City and Alexander.
10. Mayor Bill Bolken asked the question "how this would affect street lighting". Tom stated MDU bills \$2800 for energy and \$2000 for rental. Under the new plan the REC charges 4.9 cents for lighting and they would cover the maintenance. Tom also stated that MDU was thinking of selling some of their property and that's where he got the idea of buying this up. > ?
11. Mayor asked how would seasonal meters would be handled such as the meter in the park for summer months. Tom said they would handle it the same as MDU presently does.
12. Mayor asked what kind of rate would they be given. Tom stated a 10-year economic development rate. It was established in 1997 to run through 2007.
13. Mayor asked how is this being subsidized. Tom stated they are not subsidized, they cannot borrow cheap money, they pay between 5 & 7%.
14. A council member asked how the cooperation would be between the City and rural areas with the City having cheaper rates than the rural area. Tom said he felt it would work because it would make the cooperative stronger.
15. McKenzie Electric employed 42 people in 1988 and in 1998 they employ 30 people.
16. Nobody in Watford City would pay more than they do now. There would be no demand charge. Tom has figured what MDU's system is worth and would hope to negotiate a fair sales price with MDU.
17. Tom said he thought MDU violates the Sherman Anti-trust Laws and asked for their consideration on this matter

## RESOLUTION NO. 057-99

WHEREAS, the Standing Rock Sioux Tribe is an unincorporated Tribe of Indians, having accepted the Indian Reorganization Act of June 18, 1934, with the exception of Article 16; and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council; and

WHEREAS, the Standing Rock Sioux Tribal Council, pursuant to the Constitution of the Standing Rock Sioux Tribe, Article IV, Section 1(a) and 1(c), is empowered to promote and protect the health, education and general welfare of the members of the Tribe, and to administer services that may contribute to the social and economic advancement of the Tribe and its members; and

WHEREAS, the North Dakota state legislature is considering legislation, Senate Bill 2389, which would have the effect of forcing small electric cooperatives, such as Mor-Gran-Sou Electric Cooperative out of business, by allowing investor owned electric companies to expand their services to small rural communities; and

WHEREAS, the Standing Rock Sioux Tribe has enjoyed a working relationship with Mor-Gran-Sou for a number of years, when electric services were not available to our communities and people; and

WHEREAS, the passage of Senate Bill 2389 would have new residents who are Tribal members in the cities served by electric cooperatives without electric services, causing economic and financial hardship by limiting growth potential in an already burdened area; and

WHEREAS, passage will result in substantial REC rate increases to Tribal members as fixed costs would be spread over a reduced customer base.

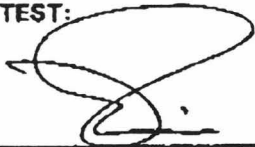
NOW THEREFORE BE IT RESOLVED, that the Standing Rock Sioux Tribe opposes Senate Bill 2389, "Territorial Integrity" and urges the North Dakota Legislature not to pass this legislation.

### CERTIFICATION

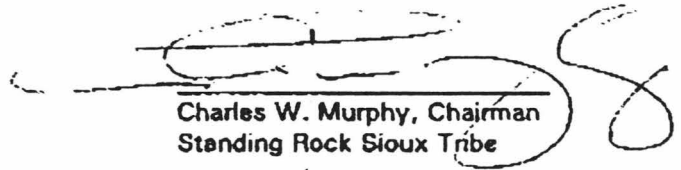
We, the undersigned, Chairman and Secretary of the Tribal Council of the Standing Rock Sioux Tribe, hereby certify that the Tribal Council is composed of [17] members, of whom 16 members, constituting a quorum, were present at a meeting thereof, duly and regularly, called, noticed, convened and held on the 4<sup>th</sup> day of FEBRUARY, 1999, and that the foregoing resolution was duly adopted by the affirmative vote of 13 members, with 0 opposing, and with 3 not voting. THE CHAIRMAN'S VOTE IS NOT REQUIRED, EXCEPT IN CASE OF A TIE.

DATED THIS 4<sup>th</sup> DAY OF FEBRUARY, 1999.

ATTEST:



Elaine McLaughlin, Secretary  
Standing Rock Sioux Tribe



Charles W. Murphy, Chairman  
Standing Rock Sioux Tribe

[Official Tribal Seal]

# MONTANA-DAKOTA UTILITIES CO.

400 North Fourth Street, Bismarck ND 58501

POSITION PAPER • JANUARY 1999

## • INTRODUCTION •

At least one Rural Electric Cooperative (REC) is trying to displace Montana-Dakota Utilities Co. as the electric supplier in smaller North Dakota towns. This Position Paper will provide you with background information and explain the Company's position.

## • BACKGROUND •

Montana-Dakota Utilities Co. had its beginnings over 80 years ago bringing electricity to small communities. The Company still serves these towns. We operate in these towns under legal contracts called franchises. Franchises give us the right to erect and maintain our facilities in the town's streets and alleys. A franchise is good for a set period of time, usually twenty years. After that, it is up for renewal.

Basin Electric Cooperative, a generation and transmission cooperative, offers a "new load" rate to RECs to help them attract new load. The rate is intended as a tool for economic development to attract new businesses to the REC's service area. Basin allows the special rate for only ten years. After that, the REC's regular rate is imposed.

At least one REC has aggressively sought to use the new load rate for a far different purpose. The REC is aggressively using the rate in an attempt to expand its service area by taking over the only service it does not provide - small towns currently being served by Montana-Dakota Utilities Co. To do this, the REC has been asking town councils not to renew the Company's franchises. (It should be noted that as of the preparation of this Position Paper, Basin has not approved the use of the new load rate in this manner.)

Apparently, the REC believes the Company will sell its distribution system if the town does not renew its franchise. The REC suggests that the Company would be willing to sell the distribution system to the REC. Alternatively, the REC suggests that the town buy our distribution system and transform it into a "municipal" system. Presumably, the municipal system would buy its electricity from the REC. Additionally, the REC apparently suggests that it be allowed to duplicate our system with new lines. One community has notified the company that it probably will not renew our franchise.

## • IMPACT ON MONTANA-DAKOTA UTILITIES CO. •

This issue is an important one for Montana-Dakota Utilities Co. as it faces increasing competition in its service areas. While only a few franchises are currently up for renewal, the number will grow over the next few years. Simply stated, our service to smaller towns is at risk of being taken over by the RECs.

## • MONTANA-DAKOTA UTILITIES CO. POSITION •

**First, absolutely no portion of our electric system, whether it be generation, transmission or distribution, is for sale. Second, and of equal importance, we will**

**take whatever legal steps are necessary to protect our service area.**

We believe it is important for the towns to renew the Company's franchises and to keep Montana-Dakota Utilities Co. as their electric supplier.

The Company is regulated by the North Dakota Public Service Commission (PSC). By law, the Company's rates must be approved as "just and reasonable." The RECs, on the other hand, are regulated by a federal government agency in Washington, D.C., called Rural Utility Services ("RUS"). Essentially, RUS is a lending agency. It has no control over the REC's rates. In fact, REC rates are unregulated. RECs are unregulated monopolies.

Generally, REC rates are higher than Company rates. For example, in Bismarck, our rate is 1.55 cents per kWh less than the local REC's rate for the same service just outside the city. This translates into a savings of about \$140 per year for Company customers. For businesses, RECs do not offer an interruptible rate. Recently, a Mandan REC customer complained that being tied to the REC cost him \$135,033 per year over what he would pay if he could get Montana-Dakota Utilities Co. service. It should be pointed out that the Company has not sought an electric rate increase in 12 years and has no plans to seek one in the near future.

The PSC also sets Company standards for safe and reliable delivery of electricity. It sets standards for our equipment, for customer deposits, for power disconnects and for nearly every aspect of our operation. The RECs, on the other hand, are virtually unregulated.

The RECs emphasize tax benefits to the towns. While both the Company and the RECs pay property taxes, the RECs emphasize they would be willing to pay a franchise tax. We ask: "Who really pays the tax?" We believe it would be the customer through an add on to the REC electric bill. We should also point out that Montana-Dakota Utilities Co. pays substantial federal and state income taxes and that this tax revenue benefits the small towns we serve. The RECs do not pay income taxes.

Open Access is on the horizon. The theory of open access is that individuals will be able to choose their electric supplier and that competition between the suppliers will translate into lower consumer prices. Under most states' open access laws, RECs are allowed to "opt out." This means the RECs may choose not to allow other electric suppliers on their systems. In states where open access has been adopted, the RECs have generally chosen to opt out. As such, it is possible that if open access is passed in North Dakota, the RECs will indeed opt out and that any town supplied by an REC would have no alternative supplier. The town and its residents would not obtain the advantages of open access and would be stuck with whatever rate the REC (an unregulated monopoly) decides to charge.

(OVER)

# MONTANA-DAKOTA UTILITIES CO.

400 North Fourth Street, Bismarck ND 58501

POSITION PAPER • JANUARY 1999

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## ▪ MONTANA-DAKOTA UTILITIES CO. ACTION▪

Montana-Dakota Utilities Co. intends to protect its service area and will use any available legal means available to do so.

The legal issues involved in this situation are many and complex. For example, under North Dakota law, RECs can provide electricity only to persons who are "not receiving central station power." Since the towns in question are receiving "central station power," the Company believes the law prohibits the RECs from invading our service area.

Another legal issue arises from the fact that none of the Company's facilities are for sale. If either an REC or a town wants those facilities, it will have to go through what is called a "condemnation procedure." We do not believe a court would allow that to happen, especially where the service presently being provided by the Company is reliable and safe and the Company's rates have been approved as "just and reasonable." Additionally, if the condemnation is allowed to proceed, the courts will require that Montana-Dakota Utilities Co. be paid "just compensation" for its facilities. The cost to the town or the REC would be substantial. The cost would ultimately be borne by the customers.

These are but two of the legal issues involved. Many more exist. If the RECs proceed with their plans in our small towns, the Company is firmly resolved to press all the issues.

Additionally, if a town attempts to "municipalize" it should be recognized that the process is long, complicated and expensive. In such a process, Montana-Dakota Utilities Co. would most assuredly explain its position and the many reasons why municipalization is a bad idea.

## ▪ CONCLUSION

Montana-Dakota Utilities Co. is firmly committed to maintaining its service area and will take advantage of every legal means necessary and available to do so.



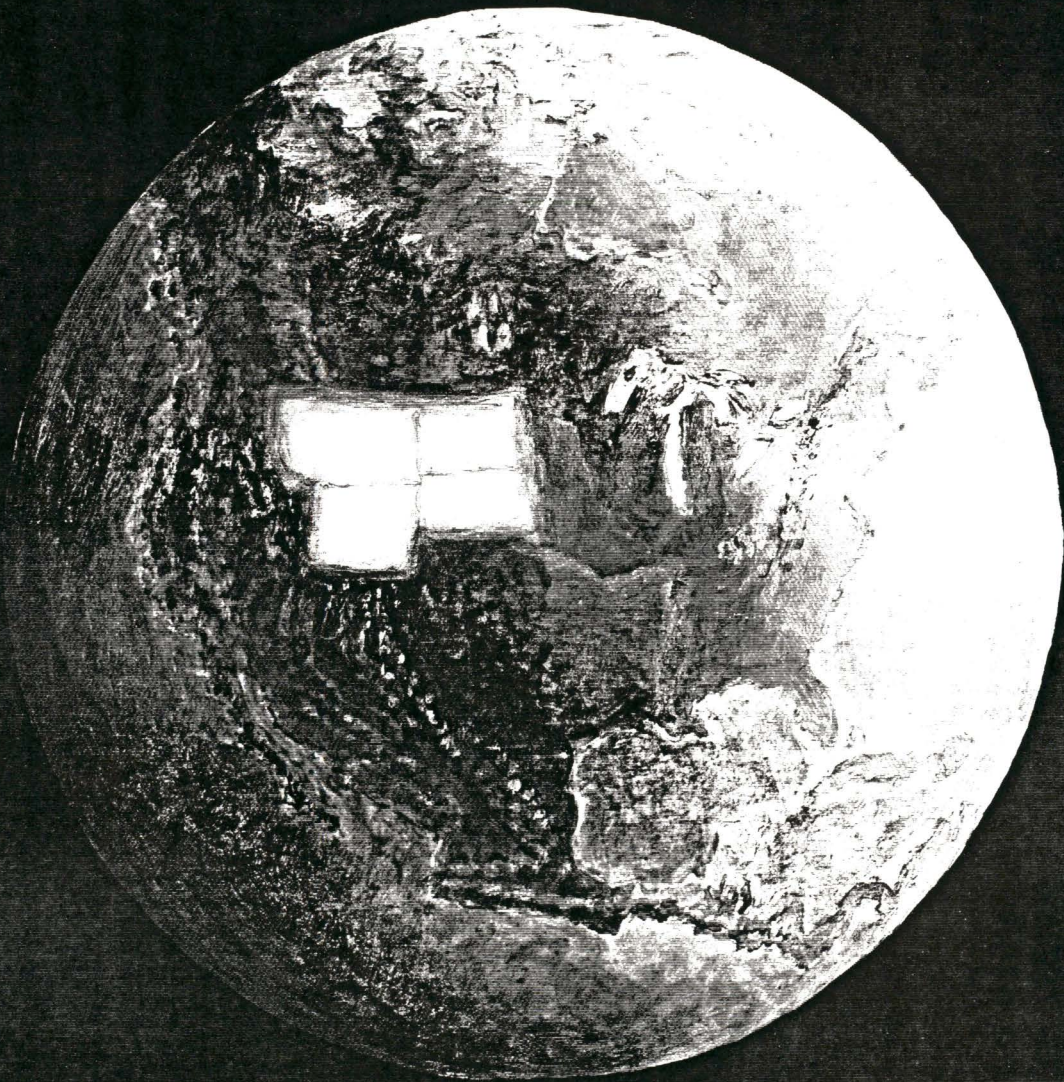
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THE  
**MONDAKONIANS**

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**ENERGIZERS OF THE PRAIRIE**

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**An Illustrated History of MDU Resources Group, Inc.**

**by Bill Beck**



## Serving the REAs

MDU's contract with the Bureau of Reclamation put it into close contact with the rural electric cooperatives that were springing up across the northern plains. Smith approached the Rural Electrification Administration in Washington, D.C., about a joint venture to transmit power from Fort Peck to the cooperatives that were then beginning to build and expand their systems



MDU engineers at G.E. Analyzer Board in Schenectady, New York, in 1946, were likely reviewing construction plans for a 57,000-volt transmission line from Glendive to Dickinson, North Dakota. Seated at the left is A.P. McDonald, then E.L. Bayles; standing from left are E.M. Shields, S.J. Sickel, V.F. Cole and Mark Scarff.

south and west of the Missouri River.

After negotiating with the Rural Electrification Administration through much of 1945 and early 1946, REA agreed to lend MDU money for the construction of a 57,000-volt transmission line from Glendive on the Yellowstone River to Dickinson, North Dakota. The \$612,000 loan was made to Fidelity Gas Company, and the line was completed and put into service in 1947. Fidelity Gas negotiated a second REA loan in 1947 to cover the cost of building beefed-up transmission lines from Williston north into the Crosby and Kenmare area to serve cooperatives in northwestern North Dakota.

"In negotiating these loans for transmission line construction, we had to agree with the REA that at least 50 percent of the capacity of



In 1948, these five men were climbing poles and stringing electric lines in the Glendive Division. The line crew consisted of (l to r): Jules Verhasselt, Kermit Parker, Dick Hampton, Frank Pelzer and Gene Poserene.

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the lines so constructed would be reserved for the cooperatives," Smith wrote in 1973. "Thus, with 2 percent money covering these loans, the amount which was reserved to us, therefore, actually cost the equivalent of 4 percent which was about the prevailing interest rate which we were paying for commercial loans at that time."

Rural electric development in the Dakotas accelerated in the late 1940s, and cooperatives all over the two states wanted electric power from Fort Peck. In addition, government contractors were beginning to plan the construction of the Garrison Dam near Bismarck, one of the main stem dams authorized by the Flood Control Act of 1944. In 1948, the Bureau announced it was going to build a 115,000-volt transmission line from Fort Peck to a MDU substation near Beulah, primarily to bring power into the Garrison area for the dam construction.

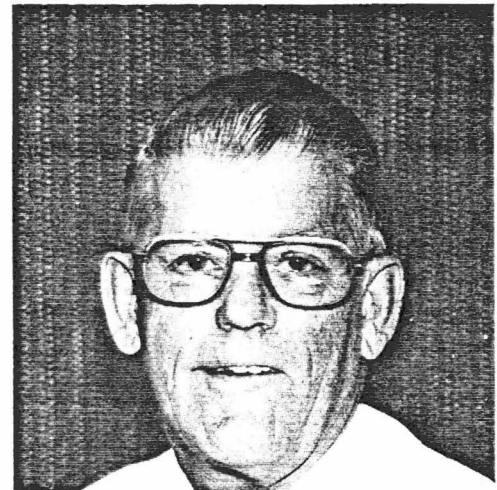
MDU proposed building a 69,000-volt line from Beulah through Bismarck, southeast to Wishek and then east to Ellendale to deliver power to the cooperatives in southwestern North Dakota. When neither MDU nor the Bureau had the power or capacity to deliver electricity wanted by the cooperatives, MDU proposed construction of additional generating units at Beulah and Mobridge.

Because of the size of the \$4 million loan required to make all the additional improvements, the REA was hesitant about lending the money to Fidelity Gas. Instead, REA proposed forming a new generation and transmission cooperative in Bismarck to receive the loan. Generation and transmission cooperatives (G&Ts), which did not distribute power to rural electric customers, usually consisted of a group of cooperatives banded together to build transmission and generation facilities. REA had experience with the concept in the area, since Minnkota Power Cooperative had been formed as a G&T in Grand Forks in 1941.

Accordingly, Dakotas Electric Cooperative was formed in 1949 in Bismarck and included 14 rural cooperatives in its membership. REA made the loan to Dakotas Electric. MDU agreed to operate the Mobridge expansion and the transmission lines as its own property and to provide money to Dakotas Electric under a 35-year contract to pay off the REA loans.

In the 1960s, following the completion of the extensive Dakotas Electric project, the G&T cooperative, which by that time was operating from headquarters in Edgely, North Dakota, noted that "by using the extensive transmission system of the Montana-Dakota Utilities, millions were saved."

Bob Naylor, the genial Montanan with Minnesota roots who was then winding down a long career as MDU's public relations director in Minneapolis, wrote division managers that the Dakotas Electric



Thomas Hammond began his MDU career making meter rounds on his 28-inch bicycle. He retired in 1982 as electrical superintendent at the Sheridan office.



Picnic attendants identified in photograph include:

1. Tom Lawson
3. Oley Fletcher
5. Claude Clark
6. Homer Gebo
7. Jim Carden
8. Earl Byron
9. George Klopp
10. Bert Klopp
11. Tim Hughes
14. George Price
15. Gaylen Kelly
17. Perce Edwards
18. Harry Johnson
19. Raymond Knapp
20. Roy Rudisill
21. Mel Knapp
22. Albert Hermanson
24. Ray Trott
27. Charles Story
28. Pete Kolruss
29. Fred Bechtold
31. Stu Williams
33. Ted Gillenwater
35. Jack Grange
36. Bill Loomis
37. Arthur Grange
38. Mary Rogers
42. Mrs. George Price
45. Margarite Story
47. Adeline Story
49. Mrs. Charles Story
57. Mrs. Mel Knapp
59. Mrs. Stu Williams
60. Rose Fletcher
61. Nina Klopp
62. Mrs. Jim Carden
64. Jean Bechtold
66. Tillie Rudisill
67. Bernice Gillenwater
68. Marie Marron
70. Katie Hughes
71. Mrs. Ray Trott
73. Dr. Grange
81. Elsa S. Byron

tribute to MDU “should also indicate to everyone that MDU cooperated with the Bureau and the RECs [Rural Electric Cooperatives] from the very beginning in bringing power to the farmers of the Dakotas and Montana.”

## Electric Expansion in Wyoming

In the summer of 1947, MDU made a foray into northern Wyoming, acquiring the properties of the Sheridan County Electric Company for \$1.868 million. Although the company had operated gas properties in Wyoming for nearly 20 years, it essentially had no electric customers in the state before 1947. Sheridan County Electric brought MDU about 5,000 customers and made possible a merging of facilities and personnel with the natural gas operations already located in Sheridan.

MDU bought the Wyoming property from Federal Light and Traction, a New York holding company ordered by the Securities and Exchange Commission to sell non-contiguous properties. Tom Hammond, who grew up on a farm outside Sheridan, went to work for Sheridan County Electric as a meter reader on April 1, 1941. The company didn’t have a car then, so Hammond made his meter rounds on a 28-inch bicycle. He retired 41 years later in 1982.

“My uncle was the manager of the light company at that time, so that facilitated my entrance into the utility business,” Hammond recalled a half century later. “It was called Sheridan County Electric Company, and back in those days, they covered very little of the rural areas. But they did cover an area about 10 miles south and about 20 miles north. The town probably had about 5,000-6,000 people in it. Dayton and Ranchester were the two rural areas, and they had 200 or 300 people at the time.”

Initially, the company had a small, coal-fired generating unit at 363 Broadway in Sheridan, but by the time Hammond came to work, Sheridan County Electric had moved to 54 South Main Street and closed the generating station. Instead, the company had built a

**TESTIMONY OF BRUCE J. KOPP  
GOVERNMENT RELATIONS MANAGER  
NORTHERN STATES POWER COMPANY  
BEFORE THE NORTH DAKOTA SENATE  
GOVERNMENT AND VETERANS AFFAIRS COMMITTEE  
FEBRUARY 12, 1999**

Good morning, Madam Chairman and members of the Committee. For the record my name is Bruce Kopp. I am Government Relations Manager – North Dakota for Northern States Power Company.

NSP fully supports the proposed amendment to Senate Bill 2389 offered by Senator St. Aubyn. This amendment calls for the Electric Utilities Committee to further study the controversial territorial laws that determine whether an investor owned utility or a rural electric cooperative can extend service to a new customer. Clearly, the events of the last week highlight the need for the Legislature to address this important issue. Although there was strong support for the bill, some legislators needed more information before they could fully support the changes. The Legislative Electric Utilities Committee we believe, is the correct vehicle to provide for the study and make the appropriate recommendations to the fifty seventh legislative assembly. We are confident this committee can separate the facts from the sensationalism and that the facts will speak for themselves.

We also realized that we need to continue educating the public and our legislators about the benefits of revising this law before it can gain adequate support. We want legislators

to feel comfortable with their vote on important issues like this and we believe devoting more time to fully discuss all the issues surrounding this situation will result in a better understanding. We still believe our solution is a good one, but we are willing to work with the existing Electric Utilities Committee in the interim, and the Rural Electric Cooperatives to come to the next legislative session with a recommendation.

We want to thank those who supported our efforts, and helped us educate others about this important issue. Madam Chairman and members of the Committee, that ends my testimony. I would be happy to answer any questions you have.

Bruce J. Kopp



Testimony of Harlan Fuglesten  
Before the Senate Government and Veterans Affairs Committee  
On the Proposed Amendment to SB 2389  
February 12, 1999

Madam Chairman and Members of the Committee. My name is Harlan Fuglesten, Communications and Government Relations Directors for the North Dakota Association of Rural Electric Cooperatives. On behalf of our membership of 19 distribution cooperatives and five generation and transmission cooperatives, I have some brief comments on the amendment proposed by Senator Rod St. Aubyn to SB 2389.

I would like begin by saying that we appreciate Senator St. Aubyn's thoughtful comments yesterday as well as his willingness to recongize that the issues raised by SB 2389 require additional study. We agree with Senator St. Aubyn that the North Dakota Territorial Integrity Act and related laws should be studied in the overall context of the ongoing study by the statutory Electric Utilities Committee.

We would recommend for consideration by your committee two changes to the proposed amendment that we believe are consistent with the comments made by Senator St. Aubyn to the committee yesterday. First, in section 1, we recommend that everything after the first indented sentence be deleted. The first sentence still contains the broad purpose of directing the Electric Utilities Committee to study the Territorial Integrity Act, chapter 49-03, without giving the committee a narrow roadmap for its inquiry. Senator St. Aubyn noted that many of the issues raised by the original version of SB 2389 should be reviewed by the Electric Utilities Committee. We agree. It is not clear, therefore, why the first specific study item proposed in the amendment was not in any way the subject of the original SB 2389. It is not that we are against having the Electric Utilities Committee look at this item relating to criteria used by the Public Service Commission to grant certificates of need in rural areas, but this is only one of several matters the Electric Utilities Committee may examine. We do not believe it is necessary to single out any particular aspect of the Territorial Integrity Act and relevant statutes for special attention.

Second, in section 2, we recommend that the words "if necessary" be added after the word "legislation", so that section 2 would read: "Notwithstanding section 54-35-18.2, the electric industry competition committee shall submit proposed legislation, if necessary, as a result of the study conducted pursuant to section 1 of this Act to the fifty-seventh legislative assembly."

In his comments to this committee yesterday, Senator St. Aubyn said words to the effect that: "If the Electric Utilities Committee decides nothing can or should be done, then that's what their decision will be."

By adding the words "if necessary" to section 2, the Electric Utilities Committee will be given the opportunity to consider whether the current Territorial Integrity Act is sufficient as it is or whether it needs modification. If the Electric Utilities Committee concludes that the law is fine as it is, then it will report this to the next legislative assembly. If,

however, the committee identifies changes that should be made, then it is the committee's responsibility, under this amendment, to come forward with specific recommendations to improve the law. In short, we believe that the Electric Utilities Committee should be free to act upon its own study findings without this legislative assembly mandating, in advance, that there must be a proposal submitted to change the current law.

Thank you, Madam Chairman and members of the Committee, for the opportunity to comment on the proposed amendment that is now before you.

Testimony Offered To House IBL Committee  
SB 2389  
March 3, 1999

Mister Chairman and committee members, for the record I am Senator Rod St. Aubyn, from District 43 in Grand Forks. SB 2389 has been significantly changed from what it originally was proposed to do. When we heard the original bill in the Senate, it generated a tremendous response from both opponents and proponents. I believe that the testimony given was very informative. As you all know, the consequences of passage of the original SB 2389 would have had significant impacts on both the REC's and the IOU's. I was asked to introduce many different amendments from several of my senate colleagues. These amendments would assure their support for the original bill. However, I honestly did not know if these amendments would be better or create more problems. One of the re-occurring statements I heard from the REC's is that the concept of this bill should be dealt with in the Electric Utilities Commission. During that hearing, Rep. Robert Huether speaking in opposition to the original SB 2389, referred to the electric utility committee saying, and I quote, "If there are changes to consider in the Territorial Integrity law or further study that is needed, let it come from the committee that this body established." He is a member of that commission and stated that "It is our responsibility to look into all aspects of the electric industry."

As I looked into this further, I realized that this is too important to be decided during a short legislative session. I concur with Rep. Huether and other REC directors who have urged that this be dealt with in the Electric Utilities Commission during the interim. As a result, I offered an amendment which would direct the Electric Utility Commission to study the issues identified and to present proposed legislation during the next legislative session. I have asked that my colleagues, who offered me possible amendments or concepts, to present those ideas to the Electric Utilities Commission for their consideration. I honestly feel that this would be the best forum to address the issues of taxes, duplication of infrastructure, territories, regulatory oversight, and other related issues.



It is my belief that the new version of SB 2389 is a win-win situation for all concerned. It gives all of us a chance to catch our breath and more time to look at this issue from all sides. Mister Chairman and committee members, I ask for your support for SB2389. Thank you.

Mr. Chairman and members of the committee -

For the record, my name is Dennis Boyd, appearing this morning on behalf of MDU Resources Group and our utility affiliate, Montana-Dakota Utilities in support of SB 2389. My testimony also reflects the opinions of Ottertail Power Company and Northern States Power Company.

As you can see, SB2389 is in a vastly different form than when it was introduced into the Senate in January. The bill before you remands the issue of the Territorial Integrity Act to the standing interim Electric Utilities Committee, requiring them to study chapter 49-03 and other related sections of the North Dakota Century Code and to present any proposed legislation directly to the Fifty-eighth Legislative Assembly. This is, in our opinion, a satisfactory interim resolution to a very difficult and emotional issue which is critical to the investor-owned electric providers in this state. The Electric Utilities committee is already familiar with this issue, as a portion of the work they undertook last interim was devoted to testimony on this issue. After two interim meetings, the committee chairman, Rep. Al Carlson, announced the committee would not take additional testimony on the issue and would not be advancing committee legislation. However, he did not close the door to individual companies advancing their own legislation. The result was SB2389 in its original form.

Enacted in 1965, the Territorial Integrity Act set service boundaries for the investor-owned electric companies and the rural electric cooperatives. Essentially, investor-owned electric utilities such as MDU, Ottertail Power, and NSP were allowed to serve within the city limits, while the RECs were allowed to serve all of the remaining rural areas. Today, 34 years later, the city boundaries around the state's major cities have changed dramatically. Today, rural electric cooperatives are serving a large - and growing larger - portion of urban areas, and the ability of the investor-owned electric utilities to serve new customers is very significantly curtailed - curtailed to the point our companies' ability to grow and to add customers on this side of our business will soon end.

This is not a deregulation issue, and it is not an issue which will go away as the electric market in North Dakota is eventually deregulated. This issue is about which companies - investor owned electric companies or rural electric cooperatives - will build and maintain the infrastructure over which electricity travels to your homes and businesses. It is a very complicated and complex issue, as well as an extremely emotional issue, which was demonstrated during the days surrounding the February 5 Senate hearing. Remanding this issue to the Electric Utilities Committee, we believe, will allow for a thoughtful, unemotional look at the difficulties with the present law, and hopefully, a resolution of this very significant problem.

We respectfully urge your favorable consideration and support for SB2389. Thank you for your attention. That concludes my testimony.

**Testimony of Scott Handy**  
**Cass County Electric Cooperative, Inc.**  
**In favor of SB2389, as amended**  
*Before the*  
**House Industry Business & Labor Committee**  
**March 3, 1999**

Mr. Chairman, members of the committee, my name is Scott Handy. I am employed by Cass County Electric Cooperative and appear today to speak in favor of Senate Bill 2389, as amended. As you know, the original version of this bill created a great deal of interest and debate on the Senate side. All the North Dakota electric cooperatives, including Cass County Electric, were opposed to the original bill. As the discussion proceeded, it became clear to everyone that this is both a controversial and a very complicated issue.

The amended version of Senate Bill 2389 correctly places this matter before the Electric Industry Competition Committee for hearing and discussion over a longer period of time than what is feasible during a legislative session. This is an important issue for our industry, and we look forward to participating in the discussions before the interim committee.

Your DO PASS recommendation on SB2389, as amended, is encouraged.

**TESTIMONY OF BRUCE J. KOPP  
GOVERNMENT RELATIONS MANAGER  
NORTHERN STATES POWER COMPANY  
BEFORE THE NORTH DAKOTA HOUSE OF REPRESENTATIVES  
INDUSTRY, BUSINESS & LABOR COMMITTEE  
MARCH 3, 1999**

Good morning, Mr. Chairman and members of the Committee. For the record my name is Bruce Kopp. I am Government Relations Manager – North Dakota for Northern States Power Company.

NSP fully supports Senate Bill 2389 in its present form. This bill as amended calls for the Electric Utilities Committee to further study the controversial territorial laws that determine whether an investor owned utility or a rural electric cooperative can extend service to a new customer. Clearly, the events of the last month highlight the need for the Legislature to address this important issue. Although there was strong support for the bill, some legislators needed more information before they could fully support the changes. The Legislative Electric Utilities Committee we believe, is the correct vehicle to provide for the study and make the appropriate recommendations to the fifty seventh legislative assembly. We are confident this committee can separate the facts from the sensationalism and that the facts will speak for themselves.

We also realized that we need to continue educating the public and our legislators about the benefits of revising this law before it can gain adequate support. We want legislators to feel comfortable with their vote on important issues like this and we believe devoting

more time to fully discuss all the issues surrounding this situation will result in a better understanding. We still believe our solution is a good one, but we are willing to work with the existing Electric Utilities Committee in the interim, and the Rural Electric Cooperatives to come to the next legislative session with a recommendation.

We want to thank those who supported our efforts, and helped us educate others about this important issue. Mr. Chairman and members of the Committee, that ends my testimony. I would be happy to answer any questions you have.

Bruce J. Kopp

Testimony of Harlan Fuglesten,  
North Dakota Association of Rural Electric Cooperatives  
SB 2389  
House Industry, Business and Labor Committee  
March 3, 1999

Mr. Chairman and members of the committee, my name is Harlan Fuglesten, Communications and Government Relations Director for the North Dakota Association of RECs. Although our Association vigorously opposed the original version of SB 2389, I am here today to indicate that we take a neutral position on SB 2389, as amended. It is our view that the current version of SB 2389 is not really necessary, but it does no harm. The Electric Utilities Committee currently has the authority to do what this bill mandates – to study the Territorial Integrity Act and related laws and to propose legislative changes, if necessary. In fact, during the last interim, the Electric Utilities Committee reviewed territorial issues at several committee meetings. With the controversy created by the original version of SB 2389, it is our belief that the Electric Utilities Committee will look at territorial issues again during the next two years whether or not the amended SB 2389 passes this house.

We welcome this further study as we believe it will confirm what we have always maintained -- that the present law is fair, that it works well, and that there is no economic justification for changing it. Also, we believe that before legislation is introduced on territorial integrity during the next legislative session, it should be studied first by the Electric Utilities Committee. That did not happen with SB 2389.

We look forward to continuing to work with the Electric Utilities Committee and the Legislature to provide the factual information necessary to make informed decisions about the electric utility industry in our state. Thank you.