17.0291.03000

FISCAL NOTE
Requested by Legislative Council
01/16/2017

Bill/Resolution No.: HB 1372

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

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			$37,500,000			
Expenditures						
Appropriations						

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

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties		$15,200,000	
Cities			
School Districts			
Townships			

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

HB 1372 creates new taxes on wind generation.

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

Section 2 of HB 1372 creates a tax of $1.50 per megawatt-hour of electricity generated. Based on the most recent information we have available, this tax can be expected to generate approximately $25.3 million in the 2017-19 biennium.

Section 2 also creates a tax equal to ten percent of the federal production tax credit. Based on the best information we have available regarding the federal tax credit, this tax can be expected to generate approximately $27.4 million in the 2017-19 biennium.

HB 1372, if enacted, will increase state general fund revenues an estimated $37.5 million in the 2017-19 biennium. Additionally, the bill will increase revenues in the electric generation, transmission, and distribution tax fund by $15.2 million. This revenue will be distributed to the counties in which the wind farm is located.

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

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

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

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

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 701.328.3402

Date Prepared: 02/01/2017

2017 HOUSE FINANCE AND TAXATION

HB 1372

2017 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1372
2/1/2017
27710

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill related to a supplemental wind generation tax.

Minutes: Attachments #1-8

Chairman Headland: Opened hearing on HB 1372.

Representative Streyle: Introduced bill. Distributed testimony and proposed amendment 17.0291.03002. See attachment #1. Ended testimony at 8:45.

Chairman Headland: Are there any questions?

Representative Olson: The tax you're proposing would only apply to wind power generated within the state of North Dakota, correct?

Representative Streyle: Correct.

Representative Olson: What would prevent the production of wind on MISO grid to come in and continue to compete in the same manner you're describing?

Representative Streyle: If they were to build it in South Dakota and transmit it in probably nothing would prevent the production. I don't think we should build anymore in the state of North Dakota.

Vice Chairman Dockter: Do our surrounding states have similar tax to what you're proposing?

Representative Streyle: No, not that I'm aware of. There's no production tax on wind. There's production tax on everything else with coal and gas. I think it's fair to put a production tax on this type of industry.

Representative B. Koppelman: If this bill was to go forward would you also want to make sure there is parity in all other taxes between wind, coal, and natural gas?

Representative Streyle: If the committee wants to look at the rest of the incentives or the taxes it's hard to pin point that. Coal has an average tax of $1.30, natural gas is estimated at $1.75, and wind is anywhere from $.84 to $1.30 when you factor in property taxes and everything else. Some may say wind is reducing the price of energy and is a good thing for the consumer but the energy price from 2014 to 2016 jumped 25% in North Dakota so it didn't work.

Representative Olson: What would you attribute the jump in price to?

Representative Streyle: I would say federal regulations are a large part of that and the coal industry.

Chairman Headland: This committee understands the assault by the federal government on coal. We understand the importance of coal as well as other types of energy but how is taxing wind going to help further the cause of coal and other types of production like natural gas and everything?

Representative Streyle: It's not a silver bullet. We're attempting to have them pay their fair share and level the playing field.

Chairman Headland: Any further questions? Is there support for HB 1372? Is there any opposition?

Carlee McLeod, President of Utility Shareholders of North Dakota: Distributed testimony in opposition. See attachment #2. Ended testimony at 18:44.

Chairman Headland: Questions?

Representative Steiner: You mentioned the word punitive. My understanding is that this bill is just on new wind farms so I'm not sure it's punitive on those. Aren't they grandfathered in the ones that already had the incentive and got their launch?

Carlee McLeod, President of Utility Shareholders of North Dakota: My understanding is that this bill isn't just perspective, it goes back to all of the wind farms in the state.

Chairman Headland: Further opposition?

Cory Fong, MDU Resources: Distributed testimony. See attachment #3. Ended testimony at 27:57.

Chairman Headland: Questions?

Representative Olson: If you had this tax you would have to increase the rates at which you are selling electricity out of the two wind farms in North Dakota?

Cory Fong: Correct. Our rates are approved by the Public Service Commission; both our capital investment and our operating costs. Taxes are a part of those operating costs. We would have to go to the Public Service Commission if our taxes increased by this amount

and request additional revenue to cover raising the rates and therefore raising electric rates for customers.

Representative Olson: Does the PSC set caps to the amount you can charge and if so, do they also set floors to the price you can charge on the bottom end?

Cory Fong: Yes, we do have caps. There is so much revenue we can earn and they regulate that. I will have to defer to Mark Nisbet regarding the bottom end.

Representative Ertelt: Where does MDU operate?

Cory Fong: North Dakota, South Dakota (electric), Minnesota (gas), Montana (electric and gas), Wyoming (electric and gas), Idaho (gas), Washington (gas), and Oregon (gas). In terms of this bill this would clearly be affecting people in our electric system in the region.

Representative Ertelt: The grid, whereby North Dakota receives power, or where the wind that is generated in the state goes to, which states contribute to that?

Cory Fong: Montana, North Dakota, and South Dakota.

Representative Ertelt: Could you provide the rates for the different energy sources in all those states to us?

Cory Fong: I would have to get back to you on that but I can.

Chairman Headland: Further opposition?

Mark Nisbet, North Dakota Principal Manager for Xcel Energy: Distributed testimony in opposition. See attachment #4. Ended testimony at 36:58.

Representative Steiner: Does Minnesota law require a percent to come from wind because they have some coal on the lines?

Mark Nisbet: Minnesota has a mandate that is fairly significant. It is not affecting the wind resource because of the reasonable price of that wind. The wind industry is moving to make its product cost effective.

Representative Steiner: As Minnesota moves forward are they promoting wind with similar incentives that we have done in the state? Do they have as much wind in Minnesota as we do in North Dakota? Or is it a requirement it comes from the state where the coal is generated?

Mark Nisbet: No, they don't make that requirement. In general, there has been a large growth of wind on the Buffalo Ridge in Minnesota. Our company has five times more wind megawatts produced in Minnesota than in North Dakota currently.

Representative Olson: What is the price on the caps on floors?

Mark Nisbet: The commission authorizes a rate of return and if we start exceeding they can ask us to come in for a new rate case.

Representative Olson: With the phase out of the property tax credit projects starting this year are only going to receive 80% of the previous $23 tax credit?

Mark Nisbet: Yes, that is correct.

Representative Olson: That would be $18.40 per megawatt hour?

Mark Nisbet: Yes.

Representative Olson: We're already taking $4.60 out of the production tax credit which really exceeds the $1.50 here? What the bill sponsor is looking for is beginning already on the federal level.

Mark Nisbet: It is taking place on the federal level. Our concern on this bill is that it does go back to the wind farms that are existing in the state and would continue on in perpetuity.

Chairman Headland: Further opposition?

John Olson, Ottertail Power Company and NextEra Energy Resources: There are people in the legislature that is not a friend of wind. The purpose of all of us today opposing this bill is to give you the facts. Ottertail Power Company along with MDU and Xcel Energy is a regulated utility. They are in three states; Minnesota, North Dakota, and South Dakota. They serve 224 North Dakota communities, 55,000-60,000 customers. Michigan in Nelson County has a population of 429 that is a typical town served by Ottertail Power. The approximate income is $50,000, 85% of its homes are valued at less than $100,000, and greater than a third of those homes were built before 1940. Passage of HB 1372 would result in an increase of 253% over the current tax methodology. We have three wind farms operating in North Dakota and about 19% of those sales for electricity are related to wind. They are considering expanding their wind production because they found it cost efficient as well. Distributed testimony from Julie Voeck. See attachment #5. Started her testimony at 43:43 and ended at 46:25. It is more than just wind farms; we have manufacturing going on. We have opportunities to increase our ability to support the wind industry; manufacturing, construction of the wind farms, and people who go to work building these farms. There are all kinds of impact.

Representative Trottier: If wind was wiped off the face of the earth what would happen to the cost of energy in North Dakota to the consumer?

John Olson: I can't answer that question. It's an important question. I don't think you'd like to hear the net effect of that. These wind farms are going to go someplace. The net effect is only negative to North Dakota. If that attitude prevails that we don't want any more wind that will happen. I don't think coal would survive any positive impact from that decision that these wind companies will make.

Chairman Headland: Further questions?

Representative Ertelt: We've heard from multiple people that the rates will increase if these additional taxes are going to be implemented. As the federal tax credit gets rolled back I assume we are going to see higher rates and because of the requirement of Minnesota to continue to produce wind. Is that correct?

John Olson: I rely on what Mr. Nisbet said; they are beyond accommodating any mandate at this point. It is what it is when it comes to tax whether it's in North Dakota or not.

Chairman Headland: Further opposition?

Zac Smith, Director of Communications and Government Relations with North Dakota Association of Rural Electric Cooperatives: Distributed testimony. See attachment #6. Ended testimony at 51:59.

Representative Olson: How much of your association's power generation goes outside the state?

Zac Smith: That's a difficult question to answer. Our association doesn't produce any power but the generation transmission cooperatives do which are Basin Electric, Great River Energy, Minnkota. I don't have a number for you.

Chairman Headland: Further opposition?

Brent Bogar, Greater North Dakota Chamber: Distributed testimony. See attachment #7. Ended testimony at 54:53.

Chairman Headland: Further opposition?

Bernie Dardis, past chairman of the board of the Fargo-Moorhead West Fargo Chamber of Commerce and chairman of the board elect for the Greater North Dakota Chamber: This legislature had created the best business environment in America. There are many jobs that are created from creating these wind farms. HB 1372 is a major step backwards as far as the business community is involved. We represent 3,400 businesses in our state. Please don't put any additional obstacles in the path to economic stability for our state. I believe this bill would do exactly that. It will substantially handicap the industry that has brought so much benefit to North Dakota and our communities. This bill is not good for any of us. I respectfully request you do not pass this bill.

Chairman Headland: Further opposition?

Robert Harms, Tradewind Energy: Distributed testimony regarding Nebraska's study. See attachment #8. Tradewind is a wind developer in North Dakota. We oppose HB 1372 and ask for a do not pass. There was a suggestion the Basin Electric or GRE wouldn't be effected by the PTC. Tradewind develops a facility and enters into a long term power purchase agreement with a company like Basin. They get the benefit of the PTC through a power purchase agreement through the company that sells the project such as Tradewind. The PTC is a federal policy. This bill doesn't have any effect on that federal policy. This is not a

good bill for our state and its future. If you were to pass this bill a couple of things would likely take place; a company like Tradewind would look at the surrounding states and see if they could produce wind in a different state that doesn't have this tax while still have part of the MISO or SPP footprint which they can sell their power into that market. The effect on North Dakota would be to discourage the investment that wind developers would make in our region to discourage it from being made in North Dakota. Coal would still be affected by wind that would be built in the neighboring states because it would be dispatched either in MISO or the SPP. The other likelihood is the consumer and business power rates would ultimately go up. For those reasons we would request a do not pass on HB 1372.

Representative Olson: With the production tax credit going down 80% this year and 60% soon is wind still cost effective to invest in and produce? Are there plans to produce in North Dakota at 80 percent?

Robert Harms: Yes. The PPA has those reduced rates built into the long term so those rates are going to be fixed. Wind and the wind development community recognizes what is happening federally as far as tax policy. The numbers I've seen still shows wind as being highly competitive in terms of overall production costs. You'll see resource planning from the IOUs and power companies include wind long term as part of our energy mix.

Chairman Headland: Further opposition? Are there any questions on the fiscal note?

Closed hearing.

Committee discussion.

Chairman Headland: Let's have some discussion.

Representative Olson: I understand what the bill sponsor wanted to do. The federal production tax credit has created a lot of competition for industries that have been mainstays for North Dakota. I think the time to have tried a strategy like this if you wanted to protect one of our industries would have been 15 years ago. I'm surprised the other energy source companies didn't think of this ahead of time. I don't know that it's a wise decision for us to drop a bomb like this with the wind production in North Dakota and simultaneously penalize all the existing facilities that have already been created. It doesn't help the coal industry by us doing this. It will be produced in other states. We've already addressed some of the issues of parity and I think this goes beyond that so I will be in favor of a do not pass.

Representative Ertelt: I would appreciate the time to get the information of tax liability in all other states that contribute to the grid.

Representative Trottier: I used to hate wind or any renewable. I've since gained acceptance and of wind. Everybody is complaining of their costs going up. Maybe it's time they pay their way for getting all their subsidies they've gotten.

Chairman Headland: Representative Ertelt, we set our tax policy in North Dakota. We don't base our tax policy on what other states are doing. The information may be helpful to you in making your decision but I think we're going to move on this bill now.

Representative Hatlestad: MADE A MOTION FOR A DO NOT PASS

Representative Mitskog: SECONDED

Chairman Headland: Discussion.

Representative Steiner: I'm going to resist the do not pass. I would have liked to put a few things into this bill, not necessarily the tax increase but we're getting some push back in Stark County and there are some things the wind industry needs to do to take care of some people. I thought there were some things that could help those people coming in and complaining about these projects. The public doesn't seem to understand where this farm is going to be located until it is already under construction. There are possibly some things as legislators that we should maybe attach to this bill. I know my county has been in turmoil over placement of wind farms. I would have liked to have seen some of the concerns from landowners addressed first.

Chairman Headland: I understand your point. There are going to be other vehicles regarding wind. If it is our intention not to move forward with this particular change in policy, I don't think it's fair to the sponsor not to give him his time to argue his point. I don't want to move forward with additions to a bill that we're going to send to the floor with a do not pass. With those reasons I hope you will reconsider.

Representative B. Koppelman: We've had a lot of discussions with people that have wind interests at heart and some that have the coal interests at heart. There is probably a really good argument for trying from the top to the bottom to have tax parity and have things be a level playing field. I'm glad to see the feds stop picking winners and losers and let the market have its way. I'm not in favor of having something that's punitive just because my preference for one industry is more than another. I'm going to support the do not pass.

Representative Ertelt: I'm not necessarily in favor of the retroactive nature of the bill as presented but I think there is work that could be done to the bill to improve it. For that reason, I will oppose it.

Chairman Headland: The sponsor had a specific purpose with this bill. If it's going to be the policy of this committee that we're going to move forward an anti-business new punitive policy, then I think it's proper to work on the bill. As chairman of the committee I'm the one who makes the decision on what we're going to allow for action. I don't see any reason to try to fix up a bill that we're going to dispose of.

Representative Hogan: I think this is really a bill about consumers. If we pass this bill I think we have to think about our consumers.

Representative Howe: As a committee it is not our intent to damage the wind industry or not be welcoming to all forms of energy. I feel this bill would send that message out so I will be voting in favor of a do not pass.

Representative Trottier: It is a very punitive bill and I will support a do not pass.

Chairman Headland: Anything else?

ROLL CALL VOTE: 14 YES 0 NO 0 ABSENT

MOTION CARRIED

Representative Mitskog will carry this bill.

Date: 2-1-17
Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1372

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description:

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

Other Actions: ☐ Reconsider ☐

Motion Made By Rep. Hatlestad Seconded By Rep. Mitskog

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland	✓		Representative Hogan	✓	
Vice Chairman Dockter	✓		Representative Mitskog	✓	
Representative Ertelt	✓				
Representative Grueneich	✓				
Representative Hatlestad	✓				
Representative Howe	✓				
Representative Koppelman	✓				
Representative Olson	✓				
Representative Schobinger	✓				
Representative Steiner	✓				
Representative Toman	✓				
Representative Trottier	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Mitskog

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

REPORT OF STANDING COMMITTEE

HB 1372: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1372 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

HB 1372

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Testimony House Bill 1372
Finance and Tax Committee
Chairman Craig Headland
February 1, 2017

Rep. Roscoe Streyle - District 3 - Minot

The average generation cost for North Dakota Lignite is $22.58/Mwh and around $24-32/Mwh for Natural Gas generation. The Federal Production Tax Credit (PTC) for Wind is $23/Mwh. As you can see wind has a huge advantage right off the bat with a credit equal to the entire generation cost of coal and natural gas.

So let's assume the market is selling at $23/Mwh (real-time hub prices at www.misoenergy.org). DOE estimates the national price of Wind Power Purchase Agreement (PPAs) of around $20/Mwh.

- Wind generation get priority on the grid as must-run.
- Wind generation get a $3 margin based on market price (Market price minus $20 PPA), plus the PTC for net price of $26/Mwh.
- Coal and Natural Gas break even.

Wind is must-run resource, there are times when the market price goes negative, but with the PTC of $23/Mwh they still make money. Think about the environment coal and natural gas find themselves in, competing against the wind industry that at times pays companies to take the power they generate. This puts two of North Dakota's key industries in a terrible position and this 10% assessment on the PTC is simply trying to level the playing field.

The amendment is to address some of the concerns expressed by major energy transmission companies in North Dakota. Removing the $1.50 production tax (c, page 1) and only focusing on the egregious PTC tax credit spares companies like Basin Electric and Great River Energy since neither have federal PTC credits. The original intent of this bill was to target the companies who are benefiting from the federal PTC, not the companies transmitting the power.

The second part of the amendment directs the 50% of the 10% assessment to the Coal Research Fund and Oil and Gas Research Fund, 50%/50%. These funds would get $6.8 million apiece based on fiscal note. If the federal government is going to force wind energy on North Dakota we as a state should benefit from this mandate and plowing money into research will have long-term benefits to the State of North Dakota.

The 10% assessment amounts to $2.30 of the $23/Mwh credit. We should support our coal and natural gas industries and not let the federal government tell North Dakota what type of energy it should produce.

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HB 1372

Section 1, simply says the assessment (Section 2 - d) will apply to grandfathered wind developments. Section 2, implements 10% assessment on the PTC, Section 4, says 50% of funds go to Oil and Gas Research and Coal Research Fund, Section 5, says 50% of assessment must go to counties where wind farm are located.

Wind has all the "Trump" cards; Federal PTC, state incentives, federal policies encourages wind, federal policy bans construction of new coal-fired power and Clean Power Plan effecting existing coal plants. These towers also get bonus depreciation and can depreciate investment completely in 5 years vs. coal 20 years and nat gas 15 years.

Installed Capacity:
Coal - 3900 MW
Wind - 2000 MW, not including 300 MW announced so far this year.

The coal industry in North Dakota has estimated $3.4 billion economic impact with 4,000 direct and 11,500 indirect jobs. The mine and plant jobs are good paying jobs with average of $87,000/year. The coal industry total tax revenue is around $100 million, coal severance and coal conversion taxes. The oil and gas industry is the second biggest industry in ND, employing tens of thousands of people and paying billions of dollars in taxes.

Thank you for your consideration.

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HB1372

17.0291.03002
Title.

Prepared by the Legislative Council staff for
Representative Streyle
February 1, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1372

Page 1, line 10, replace "subdivisions" with "subdivision"

Page 1, line 10, remove "and d"

Page 2, line 21, remove "A tax of one dollar and fifty cents per megawatt-hour of electricity, or portion"

Page 2, remove lines 22 and 23

Page 2, line 24, remove "d."

Page 3, line 7, replace "forty" with "fifty"

Page 3, line 8, remove "and all revenue collected under subdivision d of"

Page 3, line 9, remove "subsection 1 of section 57-33.2-04"

Page 3, line 9, replace "general" with "oil and gas research"

Page 3, line 9, after "fund" insert "and the remainder of the revenue in the coal development fund"

Page 3, line 12, replace "general" with "oil and gas research fund and the coal development"

Page 5, line 1, remove "generation"

Renumber accordingly

USND
Utility Shareholders
of North Dakota

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2-1-17
HB 1372

PO Box 1856
Bismarck, ND 58502
701-258-8864
1-800-981-5132
www.usnd.org

House Bill 1372—Testimony in Opposition

House Finance and Tax, Chairman Hedland

February 1, 2017

Chairman Headland, members of the committee, I am Carlee McLeod, President of the Utility Shareholders of North Dakota (USND), and I come before you to testify in opposition to house bill 1372.

I'm here today to remind you of two things: 1) how the wind industry came to the state; and 2) how this legislation departs from the business friendly climate North Dakota leaders have created and defended. I'm also here to ask you to consider what passage of this bill would mean to North Dakotans who deserve certainty in their financial affairs.

In the early 2000s, we were in a pattern of outmigration and had very little in the way of job growth. The EmPower Commission was a new concept, as was the now codified 25x25 goal for renewable energy. At the time, that goal seemed farfetched, but this legislative body had faith, and you passed it, along with incentives to make it happen. Looking back at legislative history for pro-energy bills from that time, there's a story many here have forgotten. Regulators encouraged utilities to invest in wind. Manufacturers and construction companies jumped on board, and a new industry took root. The companies you see before you asking for reasonable tax treatment today were those same companies here years ago willing to take a leap of faith, based on your encouragement, to diversify a state in decline.

Since that time, North Dakota's economy has expanded. Good paying jobs have attracted a strong workforce, and kids don't grow up hearing they'll have to move out of state to make a good life. That economy didn't grow on its own. It took solid legislation from a pro-business legislature to offer certainty in the way of regulation and tax rates. The concepts of regulatory and tax certainty have been tested over and over as opposing forces challenged that pro-business climate. You stood firm when the feds and other states passed anti-business laws and rules. North Dakota stayed open for business. You welcomed out of state companies to North Dakota with open arms, and we benefitted from investment in oil development, pipelines, innovation companies, healthcare groups, retail expansion and other new business. People found new jobs and new lives here, all because of your foresight and determination.

It's easy to see that this bill doesn't fit our pro-business legislative tradition. It is not North Dakotan to recruit companies to the state, encourage them to invest in massive capital

expenditures, and to change the rules once they are here. That is not the kind of philosophy that rebuilt a future for our economy. This body, regardless of its feelings on one business or another, shouldn't backtrack on those philosophies and jeopardize the pro-business climate that gave new generations a good life right here at home.

Further, the idea that North Dakota's tax policy should be adapted to offset a federal policy frightens me. Here, the policy is only against one industry, but there are a lot of federal programs benefitting people in this state. The precedent set with this bill threatens North Dakotans in various ways. Years ago, I was a recipient of a first-time home buyer loan. Should I be frightened that I might have to pay North Dakota for that benefit if an apartment developer decides new single family homes slow apartment growth? If I have children, should I fear that this body will impose a new tax on parents to offset any federal tax treatment? If members of my industry receive federal grants to research technologies that would bolster fossil fuel development, should they worry that if the wind changes, future legislative bodies would impose massive tax increases on existing infrastructure of those industries to offset the grants? At what point am I or my business safe to make financial decisions based on current tax policy without fearing future retribution?

Chairman Headland, I urge you to reject this bill. It is not consistent with the pro-business climate the legislature has maintained, and it is not good for North Dakotans.

Thank you.

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MDU RESOURCES
GROUP, INC.

1200 W. Century Ave.
Bismarck, ND 58503
Mailing address:
P.O. Box 5650
Bismarck, ND 58506-5650
(701) 530-1000
www.MDU.com

House Finance & Tax Committee
February 1, 2017
Chairman Craig Headland
In opposition to HB 1372
Cory Fong, MDU Resources, Group, Inc.

Hello Chairman Headland and members of the House Finance and Taxation Committee.

My name is Cory Fong. I am the Director of Communications and Public Affairs for MDU Resources Group, Inc., headquartered here in Bismarck. I appear before you today on behalf of one of our family of MDU Resources Group companies, Montana-Dakota Utilities, also headquartered here in Bismarck.

Thank you for the opportunity to appear before you today in opposition to HB 1372, which introduces two new taxes on wind generation in North Dakota; 1) a tax of an additional $1.50 per megawatt hour of electricity generated by the wind generator; and 2) a tax of ten percent applied against the value of the production tax credits earned at the federal level.

HB 1372 is s punitive and regressive tax increase passed onto customers

Together, the two new taxes in HB 1372 represent an increase of 496% and 333% on our two existing wind farms in North Dakota, Cedar Hills located in Bowman County and Thunder Spirit Wind located in Adams County. Please see the attached worksheets that compare our current taxes for both wind farms.

Wind Farm	Projected Taxes for 2017	Additional New Taxes	Total Increase in $	Total Increase in %
Cedar Hills (Bowman County)	Property Tax $48,000	$1.50 Production Tax $99,930 10% PTC Tax $138,000	$237,930	496%
Thunder Spirit Wind (Adams County)	$2.50 Capacity Tax $268,750 ½ Mill Production Tax $213,000	$1.50 Production Tax $639,000 10% PTC Tax $967,600	$1,606,600	333%

These are unprecedented tax increases and punitive.

It's also important to note, these increased taxes would flow through to our MDU customers in the form of increased rates. The Public Service Commission looks at our total capital investment and operating costs to set rates and determine the amount of revenue that our company is authorized to collect. Taxes are included in the total operating costs of a project. An increase in taxes means total costs are higher, leaving us no other choice but to ask the PSC to authorize an increase in our revenue to cover those higher costs, in turn resulting in higher retail electric rates for our customers. And, it will have a regressive effect, meaning it will be hardest felt by those having the hardest time paying, those on fixed incomes and seniors.

Since our customers include manufacturing and retail operations, higher electric rates for those customers translate into higher costs that are passed on to the consumers of the goods and services they provide. Higher electric rates means our North Dakota manufacturing sector would be less competitive, which may impact their ability to grow and create jobs.

State and local governments are also among MDU customers, which means higher electric rates for those customers translate into cost increases to them as well.

Existing wind projects in North Dakota will continue to generate electricity at the same level prior to the proposed new taxes in House Bill 1372, only making the energy from existing wind projects more expensive for consumers.

So, we are here in opposition to HB 1372 on behalf of our customers.

HB 1372 is the opposite of leveling the playing field and picks winners and losers

This bill is allegedly aimed at "leveling the playing field" between wind and other fuel sources, most notably coal. We believe it does the opposite and here's why.

The 2015 legislative session closed with a new rated capacity/generation tax on wind. This resulted in a larger tax on wind generation. Tax Commissioner Ryan Rauschenberger has developed and distributed a chart that allows us to compare the current taxation systems of three generation sources, natural gas, wind, and coal, on a per megawatt hour basis utilizing real world examples. That chart is attached.

Summarizing the property tax and severance/extraction tax on fuel associated with each generation source, we can see the following:

Source	Tax	Total per MWh
Natural Gas	Property Tax Equivalent: $1.15 per MWh Gross Production Tax: $.60 per MWh	$1.75 per MWh
Coal	Property Tax Equivalent: $0.895 per MWh Coal Severance: $0.40 per MWH	$1.295 per MWH
New Wind *	Property Tax Equivalent: $1.37 per MWh	$1.37 per MWh

* all new wind projects and phase in for existing wind projects

As you will note, all new wind, and all wind projects that reach a 20 year project life, are and will be taxed at $1.37 per MWh compared to $1.295 per MWh for coal. Thus, we believe coal is already taxed favorably compared to wind and that it is unnecessary to subject wind to higher taxes in order to "level the playing field." The taxation field is already tilted slightly in favor of coal as compared to both wind and natural gas.

This brings us to whether any of these sources should be subject to additional taxation. Doing so would constitute picking a winner at the expense of other fuel sources. The goal of our local and state taxation system with respect to each of these fuel sources should be to tax them comparable and let the market – utilities purchasing power – determine the best mix for its own customer base.

HB 1372 is a "bait-and-switch" approach to tax policy that kills future development

House Bill 1372 also represents a "bait-and-switch" for companies, like ours, that have invested hundreds of millions of dollars in developing wind in North Dakota over the past decade just to see the rules change mid-stream. And, new taxes on wind make similar projects in other states more competitive with North Dakota projects, and could significantly reduce, if not kill, the amount of new wind investment and future development in North Dakota.

The bottom line is that House Bill 1372 represents the single largest tax increase in North Dakota's recent history and is punitive. Increasing taxes on wind generation would be bad for North Dakota consumers, including MDU's 92,000 electric customers - residential, commercial, industrial, and government. It is a regressive tax, meaning that it would be hardest felt by those having the hardest time paying, those on fixed incomes and seniors. And, it is a "bate-and-switch", anti-business, approach to tax policy that picks winners and losers that will adversely impact future wind development in North Dakota.

Thank you again for allowing me to appear before you, Chairman Headland and members of the Committee, and I respectfully encourage you to reject this punitive and regressive tax increase that picks winners and losers and give HB 1372 a "Do Not Pass" recommendation.

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Montana-Dakota Utilities Company
ND Tax on Cedar Hills Wind Farm
Tax Under 57-06-14.1 and 57-33.2-04

Property Tax - 57-06-14.1

2017 Property Tax (Projected)		48,000

Subsection 1 - 57-33.2-04

subdivision c:			
	Production MWH	66,620	
	Rate	1.50	
			99,930
subdivision d:			
	Production Tax Credit - Expires 8/2017	1,380,000	
	Rate	0.10	
			138,000
	Total tax Cedar Hills		**$285,930**
	Current Tax		**$48,000**
	Incremental		**$237,930**
	% Tax increase		496%

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Montana-Dakota Utilities Company
ND Tax on Thunder Spirit Wind Farm
Tax Under 57-33.2-04

Property Tax - 57-06-14.1

None		0

Subsection 1 - 57-33.2-04

Subdivision a:	Capacity KW	107,500	
	Rate	$2.50	
	Capacity Tax		268,750
Subdivision b:	Production KW	426,000,000	
	Rate	0.00050	
			213,000
subdivision c:			
	Production MWH	426,000	
	Rate	1.50	
			639,000
subdivision d:			
	Production Tax Credit - Expires 1/2026	9,676,000	
	Rate	0.10	
			967,600
	Total tax Thunder Spirit		**$2,088,350**
	Current Tax		**$481,750**
	Incremental		**$1,606,600**
	% Tax Increase		333%

APPENDIX C

ELECTRICITY TAXATION IN NORTH DAKOTA + FEDERAL TAXATION

State Taxation	Natural Gas	Wind	Coal
Property Tax	Electricity generated from sources other than wind or coal is subject to an in lieu of property tax of - $0.50 per kW (X) rated capacity of generator, and; -One mill per kWh of electricity generated: **Example**: A 135 MW natural gas peaker plant would pay $67,500 per year (135,000 KW x $0.50) and also $464,727 if it operated at 39% of rated capacity. Property tax per-kWh basis is $0.001145 ($1.15 per MWh)	A wind farm which has completed construction **after Dec 31, 2014** is subject to a tax of - $2.50 per kW (X) the rated capacity -1/2 of one mill per kWh of electricity generated -Wind farms completed **before Jan 1, 2015** are subject to a tax rate of 1.5% of taxable value **Example (1)**: A 209 MW wind farm constructed after Dec 31, 2015 would pay $521,250 (208500 kW x $2.50) and also $294,122 at roughly a 32% of rated capacity. Property tax per-kWh is $0.00138 ($1.37 per MWh) **Example (2):** A 150 MW wind farm build in 2009 is paying $355,000 under the market value system. Property tax per-kWh is $0.000844 ($0.844 per MWh)	.65 mills (X) 60% of Installed Capacity (X) hours .25 mills per kWh of electricity produced for sale -NOTE: A **new** coal-burning electrical generating unit is exempt from the state portion of the conversion tax for 5-years -A carbon capture credit of up to 50% of the state portion of tax is available **Example:** An existing 256 MW coal-burning electrical generation unit would pay $875,282 per year on capacity (256,200 x 60% x .00065 x hours in a year) and roughly $392,116 on production operating at 63% of capacity Property tax per-kWh is $0.000895 ($0.895 per MWh)
Severance/Extraction Tax on Fuel	$0.0601 per MCF **Example:** Gross Production Tax embedded in the price of natural gas for the year is 4,698,389 MCF x $0.0601 = $282,373 Property tax per-kWh is $0.0006 ($0.60 per MWh)	None	$0.395 per ton ($0.02 goes to Lignite Research Fund) **Example:** Coal Severance Tax embedded in the price of coal for the plant is 1,500,000 tons x $0.395 = $585,000 Property tax per-kWh is $0.000413 ($0.40 per MWh)
Sales Tax	Equpment Exempt from Sales Tax Sale of Electricity Exempt from Sales Tax	Equpment Exempt from Sales Tax if constructed by Dec. 31 2016 Sale of Electricity Exempt from Sales Tax	Equpment Exempt from Sales Tax Sale of Electricity Exempt from Sales Tax
State Income Tax	Cooperative vs. IOU vs. Independent Power Producer	Cooperative vs. IOU vs. Independent Power Producer -Wind farms commenced before Jan 1, 2015 and installed before Jan 1, 2017 received an income tax credit equal to 15% percent of the project cost. Much of the credits earned have not been able to be utilized.	Cooperative vs. IOU vs. Independent Power Producer

Federal Taxation			
Depreciation	15-year Depreciation	5-year Depreciation	20-year depreciation
Income Tax Credit	N/A	For the first ten years of opeation a $0.023/kWh ($23.00 per MWh) credit is offered for wind facilities commencing construction before Jan 1, 2017 -For wind facilities commencing construction in 2017, the PTC amount is reduced by 20% -For wind facilities commencing construction in 2018, the PTC amount is reduced by 40% -For wind facilities commencing construction in 2019, the PTC amount is reduced by 60%	N/A

ND Tax
NORTH DAKOTA

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Xcel Energy Testimony
House Finance & Taxation Committee
February 1, 2017

Mr. Chairman and members of the Committee, my name is Mark Nisbet, ND Principal Manager for Xcel Energy. On behalf of Xcel Energy we urge a No vote on HB 1372 a supplemental wind generation tax.

Xcel Energy is a major U.S. electricity and natural gas company with regulated operations in eight Midwestern states. Xcel Energy provides a comprehensive portfolio of energy-related products and services to 3.5 million electricity customers and 2 million natural gas customers through its regulated operating companies. In North Dakota, Xcel Energy serves approximately 95,000 electric customers and 55,000 natural gas customers. Xcel Energy has been providing service to customers in North Dakota for over 100 years. We invested in North Dakota long before we could offer consumers the security of a diverse fuel portfolio, we invested in North Dakota as the energy industry matured, and we will continue to invest in North Dakota into the future.

This bill adds $1.50 per MWH of electricity generated by the wind and measured before the point of interconnection during the taxable period. It also adds a tax equal to 10% of the production tax credit. In 2015, Xcel Energy paid $3.2 million in property tax in North Dakota. In 2016, we expect to pay a total of $4,650,000 in property tax in North Dakota. If this bill passes, our property tax will jump to $9.1 million in 2017.

For the two projects that Xcel Energy owns in ND, the following are the implications of the proposed legislation:

- The Border Winds Farm (Rolette County) in 2017 would pay an additional $2,026,588 on top of the projected $605,000 annual local tax revenue. This would be a 335% tax increase.
- The Courtenay Wind Farm in 2017 would pay an additional $2,423,554 on top of the projected $900,000 annual local tax revenue. This would be a 269% tax increase.

During the past decade, as the wind industry has matured in North Dakota the state has phased out both the income tax credit for installing wind devices and the reduced property

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(ad valorem) tax rates in exchange for a production-based tax, which is based on capacity and energy that is comparable to the tax on other generation sources, including coal and natural gas. Right now, for every MWH generated, coal pays $1.295 to the state, and wind pays $1.37 to the state.

Opponents of wind power generation often note that no matter how equitable North Dakota's tax framework is, wind is subsidized by the federal production tax credit (PTC). While it is true the PTC has supported wind development, 2016 was the last year to qualify for the full PTC. For projects that start in 2017, the credit is at 80 percent of the PTC; in 2018, 60 percent PTC; and in 2019, 40 percent PTC.

Our ratepayers have benefited from the PTC and from the lower overall cost of generation in North Dakota. This bill proposes a tax that is regressive. In an effort to tax a generation source higher in ND than other generation sources to balance out a federal incentive, this bill's proponents have forgotten the ratepayers. Taxes and cost of regulation are rolled into rate-base, and all customers across the state pay for these costs. Higher utility costs hit people on a fixed income hardest. This group of citizens is also the least likely to have more efficient appliances and well-insulated dwellings. These tax increases, along with the cost of extra regulations in various anti-wind bills proposed this session, will hit the aging and low-income North Dakotans the hardest.

Further, this bill is anti-business. It taxes a product differently based on who produces it. Considering these producers were encouraged to develop in the state and made a commitment to provide that product, if this bill were to pass, it would have a chilling effect on any future business to invest in North Dakota.

Xcel Energy has appreciated North Dakota's focus on providing a great business climate, and we urge you to continue to support a pro-business climate that will allow North Dakota's economy to grow through energy production.

Mr. Chairman and members of the Committee, on behalf of Xcel Energy, I ask you for a Do Not Pass recommendation on HB 1372 supplemental wind generation tax. This concludes my testimony and I am happy to answer questions.

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February 1, 2017

House Finance and Taxation Committee

HB 1372 – Hearing

Chairman Headland and Members of the Committee:

Testimony from NextEra Energy Resources, LLC ("NextEra"), Julie Voeck, Director Legislative and Regulatory Affairs

HB 1372 proposes a significant and severe divergence from the legislature's long standing commitment to fair and reasonable tax policy.

North Dakota is well-known for reasonable, fair and predictable tax treatment for business and investors. NextEra would like to commend the legislature for its long-term policy of evenhanded tax treatment for business and industry.

HB 1372 represents a complete departure from the legislature's continued commitment to pro-business tax policy. HB 1372 is anti-business and anti-investment and would represent a complete reversal of North Dakota policy. HB 1372 creates significant tax uncertainty not only for wind energy, but creates risk for all types of businesses that expect and plan for stable tax policies to continue to invest in North Dakota.

HB 1372 proposes to place two new taxes on wind generation. The first proposed new tax is $1.50/MWh. The second proposed new tax is 10% of the value of the federal production tax credit (PTC). The combination of these proposed taxes represents a combined new tax of approximately $4/MWh.

It is important to put the proposed tax increases in HB 1372 in perspective. In 2017, NextEra's wind farms expect to pay approximately $3 million in North Dakota taxes on our wind generation assets. With the taxes proposed in HB 1372, NextEra's wind farms would pay approximately ***$16 million in additional new taxes in 2017***, resulting in a ***single year tax increase of over 530%***. HB 1378 would increase taxes on NextEra's North Dakota wind farms by more than $50 million over the next four years. Attached Exhibit 1 shows the annual impact of the new taxes in HB 1372 for NextEra's existing wind farms.

The proposed new taxes in HB 1372 would be financially devastating for NextEra's North Dakota wind farms and would have such a large financial impact that certain of NextEra's wind farms in North Dakota may no longer be financially viable.

Further, HB 1372 would negatively impact NextEra's plans for future investment in North Dakota. The proposed tax increase may cause a number of planned future investments to become uneconomical and/or result in an increase to consumer electric rates.

NextEra's wind farms sell power to energy providers under fixed price long-term purchase power agreements. The industry simply cannot absorb such an extreme tax increase and continue to be financially viable.

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NextEra encourages the legislature to continue to support fair and reasonable tax policy for wind generation. HB 1372 would create unreasonable new taxes that do not meet these standards.

For these reasons, NextEra urges the committee to vote Do Not Pass on HB 1372.

NextEra Energy Resources is a leading diversified energy company that includes natural gas, wind, solar, and nuclear power plants in operation in 26 states and Canada. NextEra also owns and operates electric transmission and gas pipeline companies. NextEra is the leading producer of wind power in North America.

NextEra has been doing in business in North Dakota for over a decade. We value our partnership with North Dakota, which continues to be very important to the success of our company. We strive to be a good partner with local communities and landowners.

Our portfolio in North Dakota, includes investments of approximately $400 million in natural gas gathering and transportation pipelines. The Flickertail pipeline in Divide and Williams counties, aids in eliminating flaring from oil drilling projects. Our Wheatland oil pipeline in McKenzie County reduces trucking and road congestion.

NextEra currently owns and operates 14 wind farms in North Dakota, totaling approximately 1250 MW and representing a capital investment of over $2.4 billion. NextEra employees over 75 full-time employees in North Dakota. We spend approximately $8.5 million in annual payroll, $3.0 million annually in property taxes and $6.5 million annually in lease payments to local landowners.

Exhibit 1

HB 1372 Proposed Tax Increase Analysis

($ millions)	2017	2018	2019	2020
Current Property Taxes	$3.0	$3.7	$3.5	$3.4
(1) $1.50 MWh Tax	$7.1	$7.2	$7.2	$7.2
(2) 10% Value of PTC Tax	$8.8	$7.2	$5.5	$4.5
HB 1372 New Taxes Impact	**$15.9**	**$14.4**	**$12.7**	**$11.7**

NDARECs
North Dakota Association of Rural Electric Cooperatives
3201 Nygren Drive NW • P.O. Box 727 • Mandan, ND 58554-0727

ND Living
Phone: 701.663.6501 or 800.234.0518
Fax: 701.663.3745 www.ndarec.com

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Feb. 1, 2017

To: House Finance and Taxation Committee
Representative Craig Headland, chairman

From: Zac Smith, director of communications and government relations, NDAREC

RE: Opposition to HB 1372

Chairman Headland and members of the House Finance and Taxation Committee, for the record my name is Zac Smith, director of communications and government relations for the North Dakota Association of Rural Electric Cooperatives (NDAREC). Our organization represents 16 distribution cooperatives and five generation and transmission cooperatives operating in North Dakota. Our 16 distribution cooperatives provide electric power to some 250,000 North Dakotans. Collectively, our member cooperatives provide more than half of all the retail electric power sold in the state.

On behalf of NDAREC, I stand in opposition to HB 1372 as introduced. Increasing the megawatt hour tax on wind generation as proposed in HB 1372, is not in the best interest of electric ratepayers in North Dakota. Depending on how one interprets existing power purchase agreements, HB 1372 has the potential to add increased tax liability to cooperatives serving North Dakota member owners. HB 1372 as written could create an increased cost to our members of over $3 million per year in new taxes. If that tax increase ultimately falls upon North Dakota cooperatives, said increase would ultimately further drive up costs on North Dakota citizens and as member owned cooperatives, our costs are only recovered through the electric rates paid by our members.

If the goal of HB 1372 is to disincentivize wind production, this bill does not achieve that end for existing wind sources. Based on the long-term "take or pay" power purchase agreements that many utilities have already entered into, there is no other option than for the turbines continue to spin and incur what amounts to a financial penalty, which might only serve to make it more expensive for electric ratepayers in North Dakota.

I thank the Committee for its time and consideration and would urge a Do Not Pass recommendation on House Bill 1372. I would be happy to answer any questions you may have.

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GNDC
Greater North Dakota Chamber

February 1, 2017
The Honorable Representative Craig Headland
Finance and Taxation Committee
Re: Opposition for House Bill 1372

Chairman Headland and members of the committee:

My name is Brent Bogar and I am representing the Greater North Dakota Chamber. The GNDC works on behalf of all our members to support building a strong, vibrant business climate in North Dakota. Knowing that it is important that we have a business climate that is stable and fair for businesses GNDC stands today in opposition of HB 1372.

GNDC is dedicated to building the strongest business environment. Over the years with the support of the legislators we have seen North Dakota create an environment for businesses to expand and locate in the state. This has been accomplished by creating a competitive tax environment that is fair and consistent. Businesses have made investments and capital improvements to their operation in North Dakota based on this environment and structure.

HB 1372 reverses this policy by implementing a new tax on an industry that has over the past decade made significant investment in North Dakota. They have created jobs, generated tax revenue for local and state government, and generated additional economic activity through lease payments, construction, and diversification of energy development.

The revenue outlook for the state is not the same as it was 5 years ago, or even 2 years ago. This leads to some hard choices as you, the legislative body, must balance the budget while maintaining programs and commitments. But GNDC does not believe that the addition of a tax on a specific segment of an industry after it has made significant investments in North Dakota is either fair or good policy. This amounts to "moving the goalposts" on companies after they have made the capital investments based on the business environment that North Dakota has developed.

Chairman, members of the committee GNDC urges a Do Not Pass on HB 1372 and I would stand for any questions you may have.

Champions for Business

PO Box 2639
Bismarck, ND 58502
P: 701-222-0929
F: 701-222-1611

www.ndchamber.com

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Nebraska Public Power's Competitiveness in the Regional Energy Market

Produced for Wind is Water Foundation

December 12, 2016

Goss & Associates Economic Solutions
www.gossandassociates.com
The Goss Institute
Ernest Goss, Principal Investigator
600 17th Street, Suite 2800 South
Denver, Colorado 80202-5428
303.226.5882

Ernest Goss, Ph.D.
ernieg@creighton.edu
Jeffrey Milewski, M.S.
jmilewski@gossandassociates.com

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Preface

Nebraska Public Power's Competitiveness In the Regional Energy Market

The subsequent analysis was prepared for Wind is Water by Ernest Goss, Ph.D., Principal Investigator, and Jeff Milewski of Goss & Associates Economic Solutions. Findings remain the sole property of Wind is Water Foundation and may not be used without prior approval of this organization. Any errors or misstatements contained in this study are solely the responsibility of the authors.[1] The authors' biographies are provided in Appendix G. Please address all correspondence to:

Goss & Associates, Economic Solutions, LLC

Goss & Associates

Principal Investigator: Ernie Goss, Ph.D.
ernieg@creighton.edu
www.gossandassociates.com
Creighton University
Department of Economics
http://business.creighton.edu/economicoutlook
The Goss Institute for Economic Research

600 17th Street, Suite 2800 South
Denver, Colorado 80202-5428
402.280.4757 - 303.226.5882

Goss & Associates thanks Wind is Water Foundation for their assistance in providing data for this study. However, any errors, omissions, or misstatements are solely the responsibility of Goss & Associates and the principal investigator.

Goals of the study

The goal of this study was to examine how Nebraska's power industry operates within the Southwest Power Pool, particularly the integrated marketplace, and to determine whether Nebraska's Public Power Model is adequately serving the ratepayer.

Specific goals of the study are to:

- Determine whether increased competition and choice in Nebraska's power industry leads to cheaper sources of electricity and better rates for consumers.
  - If so, explore how increasing competition and choice affect Nebraska's generating utilities, consumer-utilities, and ratepayers.
- Examine how federal tax credits for renewables and environmental regulations, particularly the new Clean Power Plan, would affect Nebraska's public power utilities.
- Investigate how Nebraska's public power structure restricts choice. What disincentivizes private capital from investing in Nebraska's electricity sector?
- Determine whether legislative changes would help increase transparency and promote greater choice in the electric industry in Nebraska.

[1] This study was completed independent of Creighton University. As such, Creighton University bears no responsibility for findings or statements by Ernie Goss, or Goss & Associates, Economic Solutions.

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Executive Summary

Nebraska Public Power's Competitiveness In the Regional Energy Market

- Since the implementation of the SPP Integrated Market (IM) in March 2014, electricity prices have trended downward due to the addition of wind generation and low natural gas prices. Because of the high cost of production at some plants in Nebraska, ratepayers have not fully benefited from the more than $1 billion saved by lower electricity prices from the SPP IM. Until Nebraska's generation costs are reduced, ratepayers will not benefit from the lower prices in the SPP IM.
- The cost effectiveness of Nebraska's public power generation is currently at risk in the SPP IM. There are two main reasons for this: (1) low natural gas prices; and (2) additional wind generation in the SPP footprint.
- The financial risk to ratepayers in owning generation is increasing, as seen with the decommissioning of the Fort Calhoun nuclear plant. Divesting from generating assets and embracing retail choice could reduce ratepayers' risk by eliminating the potential future costs of stranded assets.
- A more competitive energy landscape would allow consumers to choose among public and private power providers in the state. This arrangement is commonly referred to as "retail choice." In a competitive, retail choice environment, Nebraska public power could pursue a strategy to divest from owning generating assets, and instead, focus solely on the management and operation of transmission and distribution systems. This would incentivize competition to produce from the cheapest sources of generation and substantially reduce the ratepayer risk and uncertainly of owning generation in a changing energy market.