

**Testimony of Mark Bring
Director of Public Policy and Government Affairs
Otter Tail Power Company**

**Before the House Energy & Natural Resources Committee
February 9, 2023**

Chairman Porter and members of the Committee, my name is Mark Bring and I serve as Director of Public Policy and Government Affairs for Otter Tail Power Company. I have been licensed as an attorney in North Dakota since 1992 and have been employed continuously in the electric industry since 1997. I respectfully submit this testimony regarding our company's opposition to House Bill 1384.

Otter Tail Power Company is one of the smallest investor-owned utilities in the nation and is a subsidiary of Otter Tail Corporation, which is traded on the NASDAQ as OTTR. Otter Tail Corporation also owns several manufacturing companies engaged in metal fabricating, custom plastic parts manufacturing, and PVC pipe manufacturing. These non-energy businesses include Northern Pipe Products in Fargo.

Otter Tail Power Company is headquartered in Fergus Falls, Minnesota, and provides electricity and energy services to more than 133,000 customers spanning 70,000 square miles in western Minnesota, eastern North Dakota, and northeastern South Dakota. Our service area is predominantly rural and agricultural. By way of example, a median-sized community we serve in North Dakota is Michigan in Nelson County. According to the most recent U.S. Census Bureau statistics, Michigan has a population of 263 people. We serve many towns that are smaller yet, including my hometown of Galesburg in Traill County. The largest North Dakota communities served by our company are Devils Lake, Jamestown, and Wahpeton. Following its incorporation in 1907, our company began serving its very first customer in Wahpeton in 1909.

As an electric provider, our company has eminent domain authority under Chapter 32-15 of the Century Code. We take great pride in working collaboratively with landowners to avoid eminent domain proceedings, relying on right of way agents employed by the company and living in the rural communities we serve. During this process, it is not uncommon for our agents to develop meaningful friendships with the many landowners who recognize electricity is essential to the vibrancy and economic prosperity of the rural communities we serve. However, on very rare occasions it becomes necessary to acquire property interests pursuant to eminent domain proceedings.

Under existing state law, private property may not be taken or damaged for public use without just compensation first having been paid into court for the landowner. A landowner whose property has been taken by condemnation is entitled to fair market value of the property taken. The state Supreme Court has defined “fair market value” as “the highest price property can be sold for in the open market by a willing seller to a willing purchaser, neither acting under compulsion and both exercising reasonable judgment.” Failing a negotiated resolution by the parties, the amount of damages in an eminent domain action is a question of fact for a district court. In addition, the district court has discretion to award attorney fees and costs in an eminent domain action. These factors incent negotiated resolutions.

HB 1384 would turn these traditional policies on their head. It would add a new subsection to section 32-15-22 of the North Dakota Century Code, requiring the district court to increase, by 33%, the fair market value award determined by the trier of fact.

HB 1384 would jeopardize the public interest. First, it would inevitably lead to delay in the timely provision of essential public services. There would be a disincentive for landowners to negotiate a good faith resolution of the fair market value for the condemnation, leading to costly and delay-ridden litigation. In

addition, the 33% premium itself and the additional costs of delay and litigation would ultimately be borne in the electric rates of all electric customers.

The public interest and the greater good are not well-served by such a policy. We urge a DO NOT PASS on HB 1384.