MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

DESCRIPTION

1454

LaCosta Rickford
Operator's Signature

10/6/03
Date

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1454

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1454

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date February 5, 2003

Tape Number	Side A	Side B	Meter #
1	X	X	Both sides
2	X		0-5000
Committee Clerk Signature Elizabeth R. Lien			

Minutes: **Chair Keiser:** Opened hearing on HB 1454.

FOR:

Rep. Carlson: Served on interim committee for "Electric Utilities" and has looked at the territory integrity resolution. The committee has no recommendation and the bill did not come out of committee. Feels the bill is good because it shows we have growth in our cities. Without growth, this would not be a problem. This bill deserves action because the cities want it to be resolved by the Legislature.

Rep. RaeAnn Kelsch: Believes current law is unfair to Investor Owned Utilities (IOUs).

Rep. Hawken: Supports the bill. Regulations are unfair. Loans and interest rates are not the same and believes this is bordering on antitrust.

Rep. Brusegaard: This bill is a reasonable approach to growth. There is nothing evil about corporate structure. Need cooperation because this is a well reasoned approach to utility extension.

Sen. Tollefson: Would like to see cooperation between the IOUs and Rural Electric Cooperatives (RECs). The average person could care less where it comes from as long as it's reliable. We need to work together for the betterment of the state.

Dennis Boyd (MDU): Refer to first page of written testimony.

Bob Graveline (Utility Shareholders): Supports with written testimony and offered amendment.

Rep. Ekstrom: Concerning subsection 2, line 10, have you started talking about negotiating process with the RECs? Graveline said that they have not to his knowledge. There is no emergency clause and is sure they would get it done before the law took effect.

Rep. Severson: How many IOUs are in ND? Xcel and MDU for sure. Ottertail power supports some ND residents.

Rep. Froseth: RECs are not regulated by PSC. How will negotiations work if they are not under the PSC? Graveline said that the power plants and the transmission is regulated. They would bring the negotiations under the eye of a third party.

Rep. Thorpe: Asked if Xcel is in MN. Graveline said that the headquarters is in Minneapolis. Rep. Thorpe then asked if MN has a law for equal growth. Graveline deferred to Kent Larson.

Kent Larson (VP of Xcel Energy in ND, SD, and MN): Supports with written testimony.

Rep. Ekstrom: What investments could we expect to see from Xcel? Larson said they are looking at a 400 megawatt wind generator in the next few years and are also hoping to work with Ottertail for more transmissions.

Rep. Thorpe: Does MN allow for equal growth in their cities. Larson said that ND is different from MN and SD. In 1965, ND drew lines around the cities. MN and SD serve rural customers because the RECs and IOUs share lines.

Rep. Nottestad: Page 2 of the testimony says the growth in Fargo has only been 1%. How does this compare to Bismarck and Grand Forks? Larson said that the 1% is just in Fargo. Not sure about the other cities, but he could get the information.

Rep. Boe: If the IOUs all want to get As, should the RECs get Fs? Larson said that this is a sharing proposal so both can be successful.

Chuck McFarland (Ottertail Power): Ottertail does not have a direct stake in this because they don't serve large cities; they serve the rural areas. They are not growing. In fact, they have fewer customers than in 1997. Eventually REC will get all new customers within the cities. MDU and Xcel are frustrated for not being able to grow. City boundaries are barriers to growth. A change in law would let providers focus on excellent service to customers. Ottertail has not raised rates since 1987. The Legislature should instill a sense of competition to keep the companies focused on customer service.

Martin White (CEO MDU Resources): Supports with written testimony.

Rep. Thorpe: Didn't MDU sign with Capital Electric? White said they had some time ago and built around city limits. Rep. Thorpe then asked if there are any benefits for Basin Electric in the bill. White said that Basin will to speak to that end, but the bill does allow for growth to both.

Bob Graveline: Supports with more written testimony.

Rod Backman (Covenant Consulting Group): Neutral with testimony.

AGAINST:

Rep. Wrangham: Opposes with written testimony.

Rep. Kasper: They are asking for fairness. 100% of the land was given to the RECs. What was fair about that? Wrangham said he was not sure he understands.

Rep. Ruby: The agreements were renewed. What happens if they are not renewed? Wrangham said the renewal is up in 2013.

Sen. Robinson: Served on interim committee. Sees few problems with TIA. IOUs have concerns with no growth, but feels that is not a problem unique to them. Passing this legislation would be irresponsible. Risk is involved with the change. The real problem is that there is no growth in ND and everyone is struggling to get a piece of what growth we do have.

Harlan Fugelston (GC and Gov't Relations Dir. of ND Assoc. of RECs): Opposes with written testimony. In addition, said that they pay 2% gross receipts tax, which is actually more in property tax than the IOUs. Taxes should not be the reason to pass the bill.

Rep. Klein: Page four of the testimony mentions turning facilities over. Thought you would just continue to use what you have. RECs would be grandfathered in and not lose existing customers. Fugleston said that is correct, but when planning, you do not want to do it "piecemeal." This leads to a situation of under utilization.

Rep. Kasper: Can you explain the unconstitutional comment? Fugelston said that the Constitution was approved by the people in 1981 or 1982 and reviewed by the Supreme Court. Issues of unconstitutionality have been raised, but no actions have been taken.

Scott Handy(Pres./CEO of Cass Co. Electric Coop, Kindred): Opposes with written testimony.

Rep. Ekstrom: What have you done for economic development in Fargo? Handy said that they give about $37,500/yr to the Econ Development in Fargo. They also give manpower to the organization.

Rep. Severson: Has your growth of 5% come from the extraterritorial area? Handy said that the bulk of their growth has.

Rep. Keiser: If it is passed and you negotiate, do you anticipate staying in the area or would you sell the infrastructure you have? Handy said this is a decision they would have to contemplate. It would be expensive to continue creating infrastructure that they would not use.

Lars Nygren (Gen. Mgr. of Capital Electric, Bismarck): Opposed with written testimony.

Rep. Klein: What is the difference in rates you charge in Bismarck and Sheridan? Nygren said there is an 8% differential.

Pam Geiger (Dir. of Mor-Gran-Sou Electric): Opposes with written testimony.

Rep. Klein: Asked for clarification on the map. The light pink is the area for growth through the agreement.

George Berg (Pres/CEO of NoDak Electric Coop, Grand Forks): Opposes with written testimony.

Rep. Keiser: Do you have data on NoDak growth in comparison? Berg said there was no data, but most likely comparable. Not sure.

David Loer (Minnkota Power): Opposes with written testimony.

REBUTTAL:

Dennis Boyd: Summary with written testimony.

Rep. Severson: After the TIA Act, when did growth stop? Boyd said that he can not say it has stopped. It has slowed like everyone else. The 1970s service agreements came from constitutional issues.

Rep. Severson: RECs also struggle with out-migration and decline in business. If RECs lose local area, would the IOUs serve the rural areas? Boyd reminded the committee that the IOUs were first in the state in the 1930s.

Rep. Keiser: Are you not currently managed through local service agreements? Boyd said they were forced into the agreements in the 1970s and have worked reasonably well. They want to be allowed to enter into agreements further out.

Dennis Hill (Exec. VP of ND Assoc. of RECs): Opposes and summarizes with written testimony.

Rep. Ruby: Can you respond to the differences in rates that Mr. Boyd has presented? Hill said that the rates are subject to debate. Higher costs come with serving the rural area. They use a methodology to get the rates by using many factors.

Rep. Zaiser: What is your reaction to the IOUs when they say they were forced into the service agreements. Hill said he wouldn't use the word "forced." They were willing parties and signed the agreements. Agreements let the IOUs push boundary out. It is a win-win.

Rep. Klein: Can you explain the dip in consumption in 1986-87? Drought years.

Rep. Keiser: Is it possible to generate charts with just the areas addressed by the bill? Hill is not sure if the IOUs break out by territory in order for those charts to be done.

Rep. Severson: Were the agreements an answer to the local residents? What is their reaction or the perspective of the cities? Hill said he can not speak for the cities, but no one has said there is a problem.

Kent Tweaton (Nodak REC user): TIA has worked. This bill would be a win-lose situation in favor of IOUs. Concerned his rates would go up. Xcel is huge. It would not hurt them if they have to sacrifice growth.

Mark Sitz (Farmers Union): Opposes with written testimony for Richard Schlosser. Advances in agriculture have come through as a result of RECs work. Important to keep TIA because it minimizes disputes and limits wasteful duplication of facilities. This is not in the consumers' interest. Coop facilities would be underutilized. Bill is only for IOUs.

Brian Kramer (ND Farm Bureau): Opposes with written testimony

Chair Keiser: Closed hearing on HB 1454

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1454

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date February 10, 2003

Tape Number	Side A	Side B	Meter #
1		X	1100-2885
Committee Clerk Signature Elizabeth R. Fiser			

Minutes: **Chair Kaiser** called on Rep. Klieg to give an overview of the TIA bill and summarized some of the issues. Rep. Klieg has been on the interim committee looking at this issue.

Rep. Klieg: There is no common tax system between IOUs and RECs. The IOUs are on a central tax system where they pay on the buildings and transmitters. RECs are charged a 2% gross revenue tax. You can't compare the gross revenue tax with the central tax. Some taxes are collected. Bismarck and Grand Forks do not assess gross revenue tax. Fargo does add another 1% to the 2% RECs pay. The tax on transmission lines is $225/mi on 230KV or higher.

Rep. Kasper: Why hasn't the Legislature scrapped both systems and come up with a common tax system? Rep. Klieg said that they came close in 1999.

Rep. Ruby: wanted to know who found out they would lose. Rep. Klieg said it would shift the RECs. Locals would have gained and there would have been a shift to Basin Electric.

Rep. Klieg: Noted that 80% of the power we create in ND goes out of state. The only tax we get from it is on the coal.

Rep. Kasper: Asked why we can not tax power out of state. Reps. Klieg and Kasper said that is a different battle for a different bill.

Rep. Kaiser: Wanted to know which cities would win. The cities win because they get more tax. The cities want the Legislature to take care of this issue.

Rep. Nottestad: Could other countries charge the 1% that Fargo does. Yes, they chose not to.

Rep. Froseth: Struggles with what kind of resolve or litigation will come about by PSC settling negotiations.

Rep. Klieg: Reminded the committee of the Supreme Court's action in the TIA bill. They added to the original bill

Rep. Zaiser: If Bismarck and Grand Forks levied a tax, what impact would it have on the balance between IOUs and RECs. Rep. Klieg said that you can not compare because they are apples and oranges.

Dennis Boyd: Noted that the 1% is paid by both RECs and Xcel in Fargo.

Chair Kaiser: Closed discussion on 1454

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1454

House Industry, Business and Labor Committee

❑ Conference Committee

Hearing Date 2/12/03

Tape Number	Side A	Side B	Meter #
2	x		0.0-30.0
Committee Clerk Signature Judith Hammer			

Minutes: **Chairman Keiser** called for committee work on HB 1454.

Rep. Severson moved to adopt the minor technical amendments proposed by the Public Service Commission at the initial hearing on 2/5/03. **Rep. Klein** seconded the motion. A voice vote carried the motion to adopt the amendments.

Rep. Klein moved a Do Pass As Amended. **Rep. Johnson** seconded the motion.

Rep. Severson stated that this bill has merit but there are inherent problems with it. There is no opportunity for REC's to recoup the costs they expended developing the network that provides power to the areas that the IOU's are now asking to usurp. He resists the motion for a do pass as amended.

Rep. Thorpe opened the discussion by describing a scenario akin to this situation. He asked if that is the type of situation that should be brought before the legislature. He will resist the motion.

Rep. Klein served on the interim committee. He thinks that the main problem is the difference in how taxes are assessed and how electricity is distributed. IOU's are taxed on a property tax, REC's on a gross revenue basis. The tax does not follow where the people live, it follows where the facilities are located. A common tax base is a goal. The distribution of taxes will continue to be a growing problem. 75-80% of power generated in North Dakota is exported. North Dakota gets a coal severance tax, not a gross revenue tax. The tax base will decline. **Rep. Klein** stated that HB 1454 won't directly solve the problem but it will get the parties back to the table. Way back when, the IOU's shared their transmission lines to get the REC's up and running.

Chairman Keiser stated that HB 1454 provides equal opportunity to develop properties in territorial zones. At least half that property would become taxable to the municipalities. The bill does address this issue.

Rep. Ekstrom: Fargo is on the front lines, the growth is creating difficulties. All over the state changes are taking place. Schools are considering consolidation, annexation is happening. I've not heard from my city government on this bill. Fargo has experienced 19% growth in the last ten years. I don't think HB 1454 is addressing the basic problem of helping our state develop economically.

Rep. Ruby: This issue's come up for the last two sessions. I've looked for a consumer bill, something that allows healthy competition that brings the best price and service. Certain protected areas are still bumping each other out. I'm going to resist the motion.

Rep. Dosch: I've struggled with this bill. What happens if it fails? REC's will grow and MDU won't? Someone's going to lose. We need to pass legislation that will benefit both the REC's and the IOU's. We need a win/win for both.

Rep. Kasper: This bill has been the most difficult in my short legislative career. I've listened to the eloquent arguments from both sides. I'm caught in the middle. I have to vote, I can't abstain. I go back to my District 46 that elected me to represent it. I can't support this bill.

Rep. Tieman: I've heard from so many of my constituents on this, both customers of the IOU's and the REC's. I have to be sensitive to their concerns and opinions. I will vote no.

Rep. Boe: I represent a rural district that has one electrical consumer per four square miles. And that might be a good saturation compared to a lot of REC lines out there. HB 1454 will have everybody in competition for the areas with high saturation. There's nothing to address the rest of the state in this bill. Nobody wants the areas of light saturation. I will oppose the motion.

Rep. Nottestad: I've received no reaction from city government in Grand Forks. My district is probably 30-40% served my REC's. Both the IOU's and REC's worked hard for us during the floods. I think they have to resolve this between themselves, I don't think the legislature can do it. I see the taxation as a major issue. I will resist the motion for a do pass as amended.

Rep. Zaiser: I echo the comments my colleagues have put forth. My constituents seem to be split between the two positions. I've had no reaction from the Mayor or City Commission of Farrago, I assume they don't have an official position on this bill. My feeling is that "if it ain't broke, don't fix it". It ought to be a win/win for both. I am going to resist the motion.

Rep. Kaiser referred to the scenario that Rep. Thorpe had used in his remarks. He stated that he perceives this situation exactly contrary to Rep. Thorpe's opinion. This is exactly what we have before us. That because of a state law, one group cannot move because of a law created in 1965 and implemented ever since then. The state has to remedy this. The state is the court of appeal for the electrical utility companies. The resulting taxes would mean a lot to urban centers. There is no redemption on the consumer issues. I've received services from both an IOU and an REC within the last six years. When an REC operates around an urban area, and it operates differently than an IOU, there is no growth. This bill is an attempt to reach a reasonable compromise so that both entities can realize growth. This is a compromise bill, it isn't perfectly crafted, but it was designed to be equal opportunity for both. The problem won't go away, it is a significant business issue before the state.

Rep. Thorpe: I tried to listen so carefully to both sides of the presentation at the hearing. I don't think the IOU's made their case. The REC's have made such big investments and are willing to make more for developing power resources in this state. Therefore, I will resist the motion.

Rep. Kasper: The bigger issue here for me is the failure of the Interim Committee to do its job, after two years of hearing from both sides. There should have been an option that we could have debated. All this information in such a short period of time and having to make a decision that we really don't want to make in the first place. If I am back in two years, and if this is not resolved between the two sides of this issue, I'd lead the charge to support a bill like this, maybe one even more onerous. Now it is back to the drawing boards.

Rep. Boe: Thinking about your comments about stock credits that are unavailable to you and how that displeases you, Mr. Chairman, the electrical power that was provided you was an investment in your home, a kind of equity, you couldn't have sold it without electricity. You'll get yours back, right?

As there was no further discussion, **Chairman Keiser** asked for a roll call vote on HB 1454. Results of the roll call vote on the **Do Pass As Amended** were **5-9-0.** The motion failed.

Rep. Boe moved a **Do Not Pass.**

Rep. Ekstrom seconded the motion.

Results of a roll call vote on the **Do Not Pass** were **9-5-0.**

Rep. Severson will carry this bill on the floor.

FISCAL NOTE

Requested by Legislative Council
01/21/2003

Bill/Resolution No.: HB 1454

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

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$0	$0	$0
Expenditures	$0	$0	$0	$0	$0	$0
Appropriations	$0	$0	$0	$0	$0	$0

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

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
$0	$0	$0	$0	$0	$0	$0	$0	$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

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, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Illona A. Jeffcoat-Sacco	**Agency:**	PSC
Phone Number:	328-2407	**Date Prepared:**	01/28/2003

YR

38307.0201
Title.0300

Adopted by the Industry, Business and Labor Committee
February 12, 2003

YR 2/12/03

HOUSE AMENDMENTS TO HOUSE BILL NO. 1454 IBL 2-13-03

Page 2, line 29, replace "billed" with "directly paid"

Page 2, line 30, replace "to" with "by" and replace the second "in" with "after approval by the commission"

Page 2, line 31, remove "accordance with subsection 6 of section 49-02-02"

Renumber accordingly

12

Date: 2/ /03

Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1454

House INDUSTRY BUSINESS & LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Do Pass As Amended

Action Taken

Motion Made By Klein Seconded By Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Boe		✓
Vice-Chair Severson		✓	Ekstrom		✓
Dosch	✓		Thorpe		✓
Froseth	✓		Zaiser		✓
Johnson	✓				
Kasper		✓			
Klein	✓				
Nottestad		✓			
Ruby		✓			
Tieman		✓			

Total (Yes) 5 No 9

Absent Ø

Floor Assignment

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

Date: 2/ 12 /03
Roll Call Vote #: 2

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1454

House INDUSTRY BUSINESS & LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number ~~DNP As Amended.~~

Action Taken DNP As Amended

Motion Made By Boe Seconded By Ekstrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		✓	Boe	✓	
Vice-Chair Severson	✓		Ekstrom	✓	
Dosch		✓	Thorpe	✓	
Froseth		✓	Zaiser	✓	
Johnson		✓			
Kasper	✓				
Klein		✓			
Nottestad	✓				
Ruby	✓				
Tieman	✓				

Total (Yes) ~~8~~ 9 No 5

Absent 0

Floor Assignment Severson

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

REPORT OF STANDING COMMITTEE (410)
February 13, 2003 8:58 a.m.

Module No: HR-28-2532
Carrier: Severson
Insert LC: 38307.0201 Title: .0300

REPORT OF STANDING COMMITTEE

HB 1454: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1454 was placed on the Sixth order on the calendar.

Page 2, line 29, replace "billed" with "directly paid"

Page 2, line 30, replace "to" with "by" and replace the second "in" with "after approval by the commission"

Page 2, line 31, remove "accordance with subsection 6 of section 49-02-02"

Renumber accordingly

2003 TESTIMONY

HB 1454

HB 1454 - TIA Isssues

ISSUES:

1. History (1965-Present)
   - Prior to 1965 - IOS's could extend services to contiguous areas
   - 1965 - Established a line around cities (urban plus some rural)

     wherein development could occur
   - Legislative intent
2. Constitutional provision (1981or 1982)
3. Public Interest
   - Service choice (provider and integrated billing)
   - Service quality
   - Price
   - Tax revenue
4. Business Issues
   - Current winner ?
   - Investors

     REC's

     IOU's
   - State's image (anti-business?)

5. Fairness
   - Process (similar to annexation)
   - Regulated vs. unregulated
   - Taxes
   - Pricing
6. Local control to PSC oversight
7. Orderly development of zones

Dennis Boyd's Testimony
HB 1454
Wednesday, February 5, 2003

Good morning, Mr. Chairman and members of the Committee. For the record, my name is Dennis Boyd, appearing this morning on behalf of MDU Resources Group Inc. and our utility division, Montana-Dakota Utilities Co., in support of HB 1454. As everyone in the Legislature very well knows, the issue of electric service territories has been a highly contentious public policy issue since the 1999 Legislative session. It is an issue only the legislature can now resolve. I and others who have worked on this issue keep hoping for an outbreak of common sense. We believe HB 1454 is a common sense approach to this issue, which will allow both the investor-owned electric utilities and the Rural Electric Cooperatives an equal opportunity to grow. As we begin our presentation to you, I ask you to forget everything you might remember about the bills we promoted in the last two legislative sessions. As you will hear in a few minutes, our approach this session is a non-discriminatory approach which applies to only five cities and sets up a process which will resolve this issue permanently. I want to say upfront that it has never been our intention to destroy or harm the Rural Electric Cooperatives. While we have growth issues with them, they are our friends and our neighbors, and they play an important role in the continued electrification and economic development of our state. THIS BILL ALSO DOES SOMETHING NO PREVIOUS BILL HAS DONE - IT RECOGNIZES THE REC'S ARE ALREADY SERVING INSIDE FIVE CITIES ACROSS THE STATE. IT ALSO ALLOWS BOTH OF US AN EQUAL OPPORTUNITY TO CONTINUE TO GROW IN THE EXTRATERRITORIAL ZONE SURROUNDING THOSE CITIES. That zone varies from one to four miles.

This morning we have a number of individuals who will make presentations, and as always, we invite your questions. However, may I suggest you hold your questions until the end of our presentation; both in the interest of time and the possibility a subsequent speaker may have the answer to your question in his prepared comments.

Bob Graveline, Utility Shareholders of North Dakota
Kent Larson, Xcel Energy
Chuck McFarlane, Ottertail Power Company
Martin White, MDU Resources Group, Inc.
Rod Backman, Consultant
Dennis Boyd, MDU Resources Group, Inc.

Mr. Chairman and members of the committee, once again for the record my name is Dennis Boyd. I hope that we have made a compelling case for passage of HB 1454. You have heard from some of the top corporate officers of our respective companies. We hope we have convinced you that the current law sends an extremely poor economic development message. I am unaware of ANY other business in this state that is so severely restricted and prevented from growing. The current law is not only a poor signal, but it is actually a counterproductive signal at a time when everyone is focused on economic development. Passage of HB 1454 would be a great economic development tool, as both the RECs and the investor-owned utilities would have strong incentives to work together to attract new businesses because BOTH would have an opportunity to serve a new load.

I hope Mr. Backman's presentation on property taxes on electric distribution property inside the city of Bismarck will be another powerful motivation for you to pass HB 1454. While Mr. Backman's study applies only to REC electric distribution property within the city of Bismarck, we believe the same ratios will exist with similar studies in Fargo and Grand Forks. At a time when our cities and their political subdivisions are hard pressed and asking you for more money, we believe failure to pass HB 1454 is simply "leaving tax money on the table" which is sorely needed by our political subdivisions.

In addition to taxes and economic development and just plain old common sense, there is another powerful reason for passage of HB 1454 - electric rates. I'd like to refer you to the attachment which shows the electric rates charged by MDU and Xcel Energy in the cities affected by HB 1454 compared to the respective REC rates in those same cities. Incidentally both MDU and Xcel Energy have a single residential electric rate for all of our customers in North Dakota, regardless of where they live - big city, small town, or farm. In all instances, these comparisons are based on a January, non-heating, residential usage of 865 kWh.

(REFER TO CHART) In the interests of time, I am not going to review the entire page. I would, however, like to call your attention to Fargo/ West Fargo where Xcel's electric rate is significantly lower than Cass REC's rate. You will notice in all instances, the electric rates of MDU and Xcel are lower than the comparable rate for a rural electric cooperative. We believe Capital REC has between 3500-3800 customers inside the city limits of Bismarck and Cass REC has around 14,000 customers within the city limits of Fargo. In many instances those REC customers live right next door or across the street from an MDU or Xcel customer, and without exception, the REC rates are higher.

As you have heard from Mr. Graveline, this bill is very simple in concept. It applies to only five cities in the state. It applies only to the extraterritorial area around those cities. The first part of the bill allows the investor-owned electric utility and the Rural Electric Cooperative to fairly negotiate growth around those cities. The agreement is then approved by the Public Service Commission and exclusive certificates of public convenience and necessity are given to each electric provider. In the event an agreement cannot be reached, the issue is then placed before the Public

Service Commission, which initiates a process enabling them to settle the issue. All costs incurred by the PSC are billed, per the amendment offered by Mr. Graveline, to the electric providers who are party to the agreement. It is really a rather simple concept, not unlike legislation passed in 1997 which set up a process for cities to resolve annexation issues. Incidentally, that process was recently utilized by the cities of Fargo and West Fargo.

Whether we like it or not, we are on the cusp of a CRITICAL public policy decision. Will our state's investor-owned electric utilities be "shut out" of future growth in our state's major cities, or can we find a way to allow both the investor-owned electric utilities and the Rural Electric Cooperatives to share equally in that future growth? We think HB 1454 is a solution which allows BOTH investor-owned companies and the Rural Electric Cooperatives an equal opportunity to grow together.

Last Thursday while waiting for a hearing on another bill, I was immensely pleased to watch former House Majority Leader Earl Strinden address the House Government and Veteran's Affairs Committee. And as I watched him and listened to him addressing the committee, I got goose bumps as he reminded the Committee that the LEGISLATURE IS THE POLICY MAKING BRANCH OF GOVERNMENT, a message I have heard him deliver many, many times. And as I listened to him, I was transported back in time to the earlier years of my career and reminded of the great public policy issues which have come before this body – corporate farming, branch banking, interstate banking, Sunday opening, and many more. In all instances, the Legislature wrestled mightily with those issues and eventually resolved them to the betterment of our state, despite opponents' claims "it was the end of the world".

Mr. Chairman and members of the committee, today we ask you, as members of the Policy Making Branch of Government, to rise above the heat and the passions of the moment, to look to the future, and to resolve this important public policy issue. It is just simply too important to ignore, and it will not go away until the legislature has resolved it. Today, we ask you to reach out across the political aisle in support of HB 1454. We ask you to join with us and to give HB 1454 a strong "Do Pass" recommendation. In doing so, we can put this issue behind us and all of us – the investor owned companies, the Rural Electric Cooperatives, and the Legislature – can move forward together.

Thank you. That concludes my testimony, and our presentation in support of HB 1454.

1.

TIA is no friend of rural North Dakota

(No wonder electric cooperatives have dropped "Rural" from their names)

By allowing electric cooperatives to serve inside certain larger North Dakota cities, the Territorial Integrity Act (TIA) actually encourages co-ops to discriminate against farmers, ranchers and other truly rural residents – the consumers they are chartered to serve!

Co-ops know they have to keep prices to their urban customers close to those of the local investor-owned utility (IOU). Otherwise, urban co-op customers would demand service from the IOU. So, the cooperatives shown below have adopted "rural" and "urban" rates.

Here's how those prices compare to Xcel Energy and Montana-Dakota Utilities Co. based on January, non-heating usage of 865kwh:

Bismarck
MDU --- $58.86
Capital Electric Cooperative "urban" --- $62.66
Capital Electric Cooperative "rural" --- $73.83 (18 percent higher than "urban")

Fargo
Xcel Energy --- $50.37
Cass Electric Cooperative "urban" --- $69.45
Cass Electric Cooperative "rural" --- $84.77 (22 percent higher than "urban")

Grand Forks
Xcel Energy --- $50.37
NoDak Electric Cooperative "urban" --- $57.63.
NoDak Electric Cooperative "rural" --- $78.01 (35 percent higher than "urban")

Mandan
MDU -- $58.86
Mor-Gran-Sou Electric Cooperative "urban" --- $69.17
Mor-Gran-Sou Electric Cooperative "rural" --- $78.67 (12 percent higher than "urban")

Both Montana-Dakota Utilities Co. and Xcel Energy have a single residential electricity price for all customers regardless of where they live – big city, small town or farm.

Cut line: Guess who pays more for co-op electricity.

US
ND

Utility Shareholders of North Dakota

TESTIMONY ON HB-1454
BEFORE THE HOUSE INDUSTRY BUSINESS AND LABOR COMMITTEE
FEBRUARY 5, 2003

Mr. Chairman, members of the committee, I'm Bob Graveline, President of the Utility Shareholders of North Dakota. Our association represents nearly 1,750 shareholders, and is still on the grow.

I stand before you this morning **IN SUPPORT OF HB-1454** which will create an equitable process to decide which electric utility organizations will serve new territory in our state's largest cities.

HB-1454 is offered merely to **amend**, not to repeal, the very restrictive Territorial Integrity Act which passed during the 1965 session and has not been amended despite the changing times and economies of our great state.

HB-1454, the Territorial Equity Amendment will provide growth opportunities for North Dakota's long-serving shareholder owned utility companies that are now being denied under the Territorial Integrity Act.

Sub-section one of Section one of HB-1454, limits these amendments so they apply **ONLY** to cities of 10,000 or more population located within a Metropolitan Statistical Area (MSA). The US Office of Management and Budget defines an MSA based upon the decennial census, and is an area that must include at least:

- One city of 50,000 or more inhabitants, or
- A Census Bureau defined urbanized area (50,000 population city) and a total metropolitan population of at least 100,000.

North Dakota contains three MSAs – Grand Forks, Cass, and Burleigh/Morton Counties. Therefore, the proposed equity amendments contained in HB-1454 will only impact Grand Forks, Fargo, West Fargo, Bismarck and Mandan. As other cities grow to these levels they too will be governed by these equity amendments. Attached to this testimony is a copy of a map showing North Dakota's MSAs.

Further, sub-section one points out that these amendments apply to **ONLY** undeveloped area located within extraterritorial zones that surround these cities. Extraterritorial zones, which are set by the North Dakota Century Code, contain property over which cities have zoning authority even though that property is not yet annexed to the city.

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Sub-section one also directs each electric utility to meet, and within 45 days, to prepare maps, following standard survey land descriptions, that will provide, and I quote, "each electric supplier a reasonably equal opportunity to grow as the city expands outward from its corporate limits", end quote.

Sub-section two of Section one brings the ND Public Service Commission into the process to conduct public hearings if the utility organizations cannot agree on future service territories. In both sub-sections one and two of section one of the bill, the ND PSC will, upon review, issue its order and a certificate of public convenience and necessity to the electric providers granting them the right to serve the new territories.

Sub-section three of section one also sets forth that any and all costs incurred by the ND PSC will be paid by the utility organizations involved in the service area negotiations. At this time I offer a clarification amendment, suggested to us by PSC staff, to more clearly state the process by which the utility organizations will pay these costs.

(Page 2, line 29, replace "billed" with "directly paid"; page 2, line 30, replace "to" with "by" and replace the second word "in" with "after approval by the commission"; page 2, line 31, remove "accordance with subsection 6 of section 49-02-02"; and, renumber the lines accordingly.)

Sub-section one of Section 2, beginning at the top of page 3 of the bill, establishes that each of the new territories designated by the ND PSC will be exclusive territories.

Sub-section two of Section 2, states that existing customers will remain with the utility serving them at the time these equity amendments become law. No utility organization will be forced to give up a single customer with the passage of this bill.

Sub-section three of Section 2, states that as cities extend their extra-territorial boundaries, the exclusive service areas served by the particular utility organization will expand as well.

Sub-section four of Section 2, grants the ND PSC continuing jurisdiction over any disputes regarding the newly established exclusive territory boundaries. This provision will not interfere with any cities' franchise authority granted by the ND Constitution.

Section 3 of HB-1454 allows utility companies to waive, exchange, or assign parts of their exclusive service areas to each other as situations develop. Transactions involving 10 acres or more must be approved by the ND PSC.

Sections 4, 5, and 6 amend the current territorial law to set in place the conditions set forth in this bill without affecting how the Territorial Integrity Act functions in areas not specifically covered in this bill.

Section 7 adds definitions for "electric service location", for "electric service provider", for "existing electric service location" and for "metropolitan statistical area" to the NDCC.

Mr. Chairman, this concludes my description of the bill.

HB-1454 is truly a compromise. Clearly, the implementation of this bill is an attempt to fairly share growth between shareholder owned utility companies and rural electric cooperatives.

We recognize the importance of cooperatives, the role they played in our state's history and the continuing need for their service. As you review this bill, please keep in mind that these amendments will only affect four of the state's seventeen rural electric cooperatives, leaving all the truly rural cooperatives and communities unaffected.

North Dakota investors, including some or all of you on this committee, invest their hard earned money in companies that they expect will grow and return its profits to them as shareholders. I'm sure your investment goals are same as mine and other utility investors – to grow our investments so we can better enjoy retirement, or so we can enjoy some special vacation, or so we can enjoy some special purchase.

As investors, we hope that the companies we have chosen to invest in are able to function in an open market environment that will allow them to grow and prosper into the future.

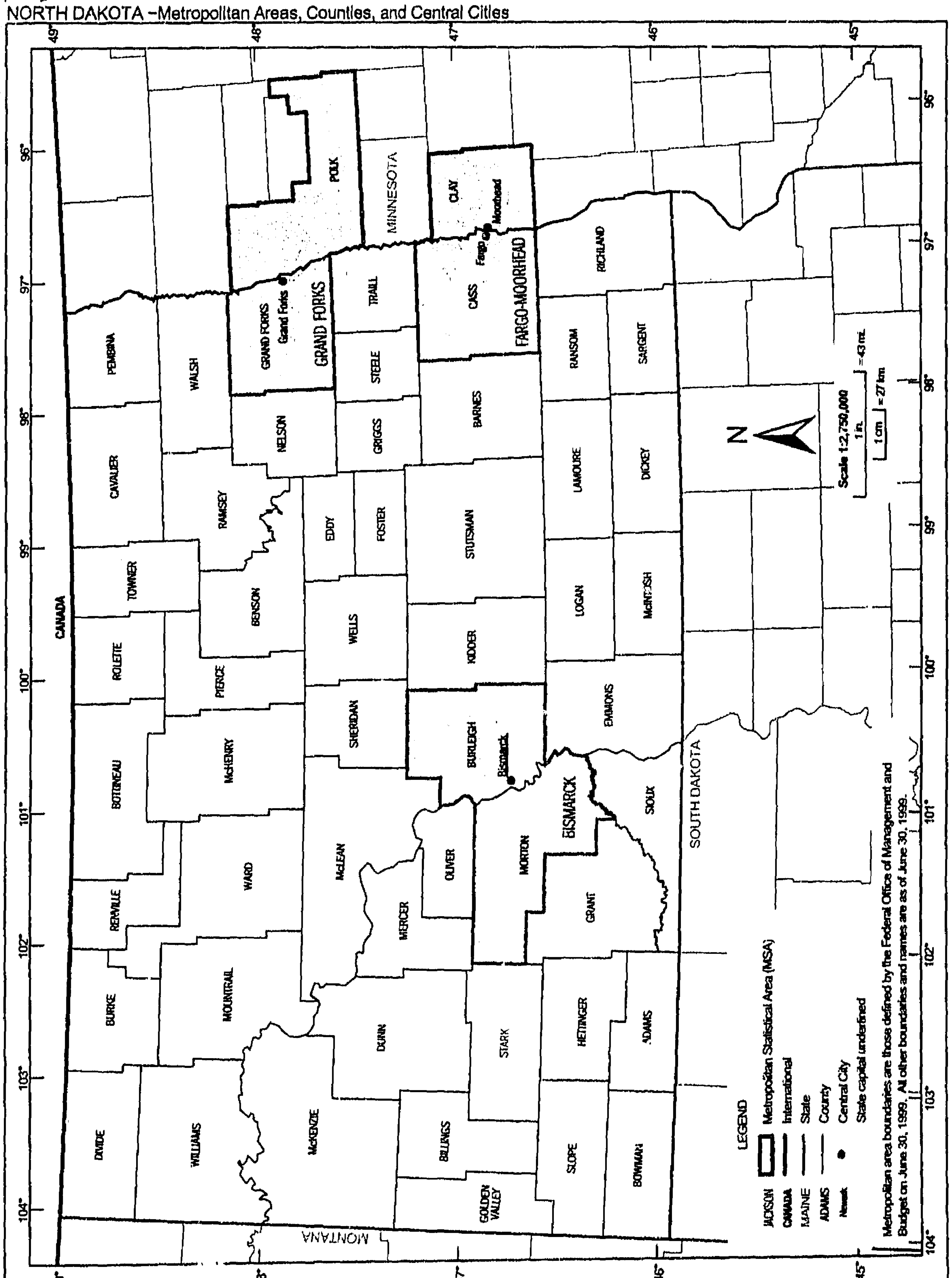
The passage HB-1454 is necessary to provide open market growth opportunities for companies that have been built, not with government handouts and subsidies, but with private citizens investments. Xcel Energy, Otter Tail Corporation and MDU Resources are shareholder owned companies that provide hundreds upon hundreds of jobs all across our state. These three companies pay millions of dollars to North Dakota in state income and property taxes as well as paying millions more in federal income taxes.

These are the kinds of companies North Dakota economic development efforts are targeting to convince to move to our state to bring their jobs and their taxes here instead of remaining where they are. Those efforts are laudable and must be continued.

But it does seem ironic that while those very efforts are ongoing and growing, North Dakota has a law on the books that is preventing very good, shareholder owned, companies from growing as the cities they serve grow and expand. Speaking as a shareholder, that seems like absolutely the wrong message for North Dakota to be sending to prospective investors and companies.

Mr. Chairman, members of the Committee, the Utility Shareholders of North Dakota urges a **DO PASS** recommendation on HB-1454.

NORTH DAKOTA –Metropolitan Areas, Counties, and Central Cities



U.S. DEPARTMENT OF COMMERCE Economics and Statistics Administration Bureau of the Census

IR

PROPOSED AMENDMENTS TO HOUSE BILL NUMBER 1454

Page 2, line 29, replace "billed" with "directly paid"

Page 2, line 30, replace "to" with "by" and replace the second word "in" with "after approval by the commission"

Page 2, line 31, remove "accordance with subsection 6 of section 49-02-02"

Renumber the lines accordingly

1P

US ND

Utility Shareholders of North Dakota

Mr. Chairman, members of the Committee, I am Bob Graveline of the Utility Shareholders of North Dakota.

One of the major focuses of the USND is to watch for rules, regulations, or legislation that would create unfair competitive situations for shareholder owned utility companies. We suspected that an unfair competitive situation exists in the taxation of utility property owned by private utility companies and rural electric cooperatives located within a city's corporate limits and serving customers across the street from each other.

While the USND suspected this differences, it is not our intent at this time to support legislation changing property tax laws. Rather, we will now present testimony to this committee that will clearly show it is in the best interests of North Dakota cities and their taxing districts, to have shareholder owned utility companies serving their citizens.

Even though shareholder owned utility companies charge lower rates for electricity than the rural electric cooperatives serving within the cities, the shareholder owned utility companies pay substantially more in property taxes to those cities.

Mr. Chairman, Members of the Committee, I now introduce Rod Backman, the consultant who performed a taxation comparison study for the USND.

Mr. Backman --

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Testimony
House Industry, Business & Labor
February 5, 2003

Chairman Keiser and members of the Committee I am Rod Backman with Covenant Consulting Group. I am signing your register this morning as "neutral". I am not here to support or to oppose HB1454. Rather my purpose here today is to explain the findings of work I did in analyzing property taxes as they relate to utilities and local governments.

My company was retained by Utility Shareholders of North Dakota to provide an independent review of the effects of property taxes as paid by utility companies on local taxing districts. Our role was to identify the differences in property taxation between a Rural Electric Co-op (REC) and an Investor Owned Utility (IOU), and the resulting impact those tax differences have on city taxing districts in which the utilities operate. We did a specific comparison of electric utility providers within a single city.

Our work focused on property taxes of local electric distribution entities and the allocation of those taxes to the local taxing districts. It did not address the broader taxation of generation or high voltage transmission property. As a matter of note, the REC in this case did not possess those types of property within the city limits.

Our purpose was to provide an unbiased third party analysis of these issues. Our engagement letter emphasized that we do not have a preconceived notion as to what the results might be, nor do we make any guarantee of a position that may or may not be of value to our client.

The taxation issues involved here are very complex, require certain estimates and assumptions, and we expect will be supported and opposed by persons and groups with emotional and financial vested interests. We prepared our findings regardless of those factors.

In the process of performing our work we have reviewed the applicable sections of the North Dakota Century Code, consulted with the staff of the North Dakota State Tax Department, the Burleigh County Auditor's Office and others. We also reviewed various public reports filed by the IOU and the REC who provide electric service to the Bismarck area. In the case of all data, wherever possible we attempted to confirm the validity of the data by, cross referencing to other reports, computing to tie to other data, judging to reasonableness, etc. Our focus was on accurate computations and analytical soundness.

In our analysis we identified the property owned by the REC that was within the city limits. We then, with the assistance of other professionals, identified the approximate age and estimated original cost of such property. The attached Schedule A details the computation of the tax on the value of such property by computing the centrally assessed property tax of the IOU both with and without the property of the REC that lies within the city limits. The purpose of this schedule is to show how many dollars would be paid to the city, if it were served by the IOU and the tax structure that IOU's operate under in accordance with the North Dakota Century Code.

The analysis reveals that the city of Bismarck would have collected for 2002 an additional $33,318 from the IOU. That compares with the current collection from the REC of $3,718 as the city's share of the gross receipts tax paid by the REC to Burleigh County (Source -- Schedule BB as filed by the REC). The IOU tax to the city would be almost nine times greater than the tax currently paid by the REC.

This computation does not include the real estate taxes paid by the REC on the land where its office building is located. The assumption is that such property would continue to be taxed the same under current state statutes whether or not the IOU were servicing the areas in question within the city limits.

The analysis of the same question, relating to the tax effect on the Bismarck School district is not as dramatic because we did not perform exactly the same analysis, which would have required a much more extensive inventory to identify all the REC property within the school district (a much larger geographic area than the city).

Based on our analysis, we have arrived at the conclusion that the city of Bismarck(and the Bismarck School District), which is surrounded by a REC, would in fact receive more property tax dollars if the city's area now served by the REC were served by an IOU.

Mr. Chairman that concludes my prepared remarks, I would be happy to attempt to answer any questions the Committee may have.

Respectfully submitted,

Rod Backman
Covenant Consulting Group
Bismarck, ND

IR

Schedule A

MDU	W/O REC property	W/ REC property
Cost of Assessable ND property	$292,965,616	$305,533,285
Cost less depreciation	137,237,261	
2002 True & Full Value	108,469,000	113,122,114
Assessed Value	54,234,000	56,561,000
Taxable Value	5,423,400	5,656,100

BURLEIGH COUNTY ALLOCATION

	North Dakota	Burleigh Co.
Total Book Cost	$274,494,000	$95,396,000
REC property	12,568,000	12,568,000
New Total Book Cost	$287,062,000	$107,964,000
% to Burleigh Co.		37.61%
Taxable Value(TV)		$5,656,100
New TV to Burleigh Co.		$2,127,259
Old TV to Burleigh Co.		1,884,764
Increase in TV		242,495
Allocation to City of Bismarck(95.78%)		232,262
Tax to-City, Park & Library @ 143.45mills		33,318
-School District 274.09mills		63,661
-All Taxing Districts 482.54mills		112,076

Xcel Energy Testimony
HB 1454
House Industry, Business and Labor Committee
February 5, 2003

Chairman Keiser, members of the Committee, my name is Kent Larson, and I serve as state vice president for Xcel Energy in North Dakota, South Dakota and Minnesota. Xcel Energy is an investor-owned utility, serving 3.2 million electricity customers and 1.7 million natural gas customers. We have regulated operations in 12 Western and Midwestern states.

I am here today to explain the importance to Xcel Energy of resolving this electric territorial issue in North Dakota. At one point or another during my career I've lived and worked in each of the three states in my current jurisdiction. I will tell you from a first-hand perspective how the laws in this state compare with others in the Midwest. And, I will briefly discuss why I believe HB 1454 is a reasonable solution to what has become a very critical issue for Xcel Energy's electric operations in North Dakota.

Some of you in the room today may be skeptical about how important an issue like this is to a large company like Xcel Energy. After all, more than three million of our customers are located in states other than North Dakota.

The truth is: every state in our service territory is important to Xcel Energy. We monitor our investments, performance and earnings individually in each state. It's our duty to our shareholders to ensure a fair return on their investment in North Dakota.

Let me give you a couple of comparisons. Some of you may have a diversified portfolio of investments, which you are likely depending on for your retirement income. If you looked at your investment portfolio and one sector was under-performing, you wouldn't ignore it. You wouldn't think, 'Well, on average I'm doing okay.' You'd make a change.

Or, let me illustrate this point in another way. If my three children came home with their report cards and two of them had straight As, and one of them had Ds, I would not average their grades and say, 'My family is achieving B grades. We're doing pretty well.' Absolutely not! I would want to understand why one child is nearly failing and do everything I could to remedy the situation.

Our goal is to ensure that our investment in North Dakota performs as well as it does in every other state. We do not expect the operations in one state to make up for the lack of growth we are experiencing in another state. It's critical for Xcel Energy to see some potential for growth in North Dakota.

Other businesses manage their investments in similar ways. Best Buy or Kmart would not continue to operate a low profit store just because on average they were doing okay.

It is **important** for our company to begin to see some potential for growth in North Dakota.

As I mentioned, I've lived and worked in North Dakota, South Dakota and Minnesota and I'm familiar with the electric service territory laws in each of those states. Based on my experience, I can tell you that North Dakota has the most restrictive laws in the Upper Midwest—and perhaps in the nation!

In South Dakota, each electric utility has an exclusive right to serve an assigned territory that was established in the 1970s. At that time, territory lines were drawn in the middle of the open areas between cooperative and investor-owned utility serving areas. This resulted in both types of utilities serving some urban and some rural customers and provided a way for each to have some future growth. A similar procedure occurred in Minnesota. These service areas remain in effect today, providing an incentive to utilities like Xcel Energy to work with local governments, economic development groups and developers to bring new businesses and residential developments to the communities they serve.

In North Dakota, however, the laws have restricted us to serving, in essence, areas within the city limits as they existed in 1965 when the Territorial Integrity Act was implemented. In some of the North Dakota communities we serve—such as Grand Forks and especially Fargo—there are few if any incentives for investor-owned utilities to invest in area economic development. Over the past 10 years we have experienced growth of around one percent, while Cass County Electric has been growing at a rate of five percent. If new business and the resulting residential growth is all occurring in urban territories being served by the cooperative, why would anyone expect us to make significant investments in local economic development efforts?

In 1999, while I was living in North Dakota, the legislature implemented the Renaissance Zone bill, a wonderful concept to revive the state's deteriorating inner city areas. Some now say these zones represent our opportunity for growth. They say this is where the future should lie for investor-owned utilities.

Ladies and Gentlemen, the Renaissance Zones merely provide tax incentives for investors to *revitalize* our downtown areas. Even the most successful zones will likely only replace the kilowatt hour sales that Xcel Energy once had in these areas. While we wholeheartedly support the development of these zones and work very hard with those leading the efforts to revive the traditional economic centers of our cities, these zones **cannot** be considered a substitute for correcting the territorial issues we face in this state!

There are a number of reasons that I believe this amendment provides a reasonable solution to a very difficult problem and deserves your support.

This bill is truly a compromise. Past proposals to change the territorial laws were more far-reaching, suggesting that investor-owned utilities should serve all urban growth. Today we are merely asking to share in the growth potential. We have limited the scope of this amendment to the extraterritorial zones of cities larger than 10,000 in Metropolitan Statistical Areas within the state. We are making a diligent effort to be fair and equitable. We recognize the importance of cooperatives, the role they've played in North Dakota's history and the continuing need for their service in the rural areas of our state.

We also believe this bill provides for orderly future utility development and limits duplication of service. As an electrical engineer with experience working with the planning and design of Xcel Energy's electrical system, I realize the need to look forward and plan for future customer utility needs. This amendment provides an orderly way for both investor-owned utilities and electric cooperatives to plan their future distribution systems. With designated areas in which to serve and the opportunity to expand as the communities expand, we can plan our systems efficiently and avoid some of the duplication that may have occurred under previous attempts to change this law.

I would be remiss today if I did not point out to you the benefits this amendment would bring to the citizens of North Dakota. Xcel Energy has operated very efficiently in the state and has been able to provide very reliable service and lower rates than nearly any other provider in the state! At times, we've been criticized for some of the business decisions we've made, and although it has been tough to make some changes to our traditional practices, we've set our sights on operating in the most efficient manner possible while maintaining a high level of service to our customers.

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We provide 24-hour service, seven days a week. We've invested in automated meter reading. We haven't had a general electric rate increase for nine years. Xcel Energy implemented performance-based rates, which means our service and prices are subject to certain performance standards, which are publicly monitored, and there is the potential for our customers and communities to share in our earnings. Last year, the Xcel Energy Foundation and our employees contributed more than $300,000 for non-profit programs in the state. Our most recent market research shows that 89 percent of our customers are pleased with our commitment to the communities we serve. Our community leaders have also given us a 94 percent rating in this category.

I believe that our efforts in the community—along with the work our employees have put forth these past years to improve the existing territorial laws—all demonstrate our strong commitment to doing business in the state of North Dakota.

Adopting this amendment will enhance competition among electric service providers in the state. In the metropolitan areas where this bill applies, consumers will have more of an opportunity to choose their utility company based on where they decide to locate their home or business. This type of competition between utilities will help keep prices low and service levels high, benefiting businesses and consumers. Currently, nearly all new customers must be served by the cooperatives, because much of the undeveloped land is located in their service territory.

You might be frustrated today—as we are—in once again addressing this situation. Like you, we're tired of talking about this issue session after session. But, it's VERY important to us, and it's time to take action! We need to resolve this issue and move forward together. Chairman Keiser, members of the Committee, Xcel Energy urges a **DO PASS** recommendation on HB-1454.

Electric territory laws in North Dakota

History

The North Dakota Legislature passed the Territorial Integrity Act (TIA) in 1965 to protect rural electric cooperatives (RECs) from investor owned utilities (IOUs) moving into their rural areas. While the law successfully protected RECs, the interpretation of the law has prevented IOUs from growing to serve new customers in what was once rural farmland, but is now urban in nature, and has restricted IOUs to the city limits of that time period.

The law states that:

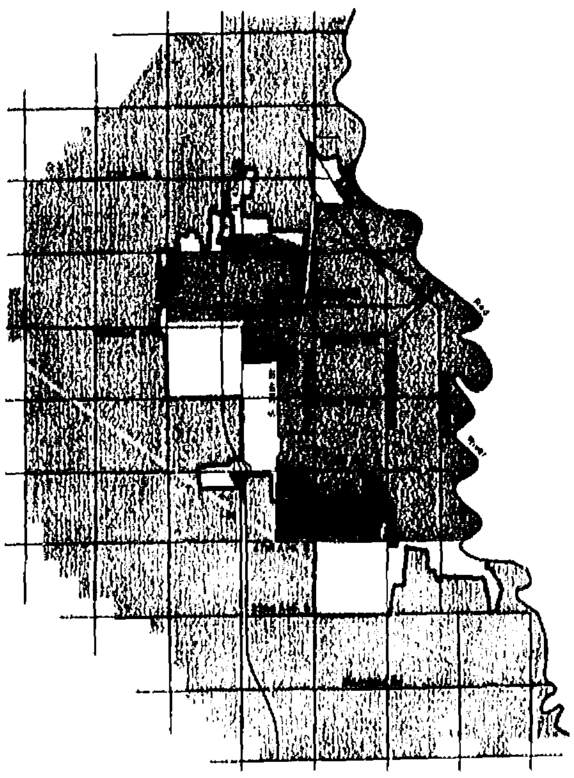
- IOUs cannot extend service to a new customer outside city limits without a Certificate of Public Convenience and Necessity.
- IOUs cannot extend service to an area within city limits if doing so interferes with the service of an REC or duplicate their facilities.

Additionally, RECs have no third party regulatory oversight. They can extend their facilities almost anywhere regardless of cost or return on investment.

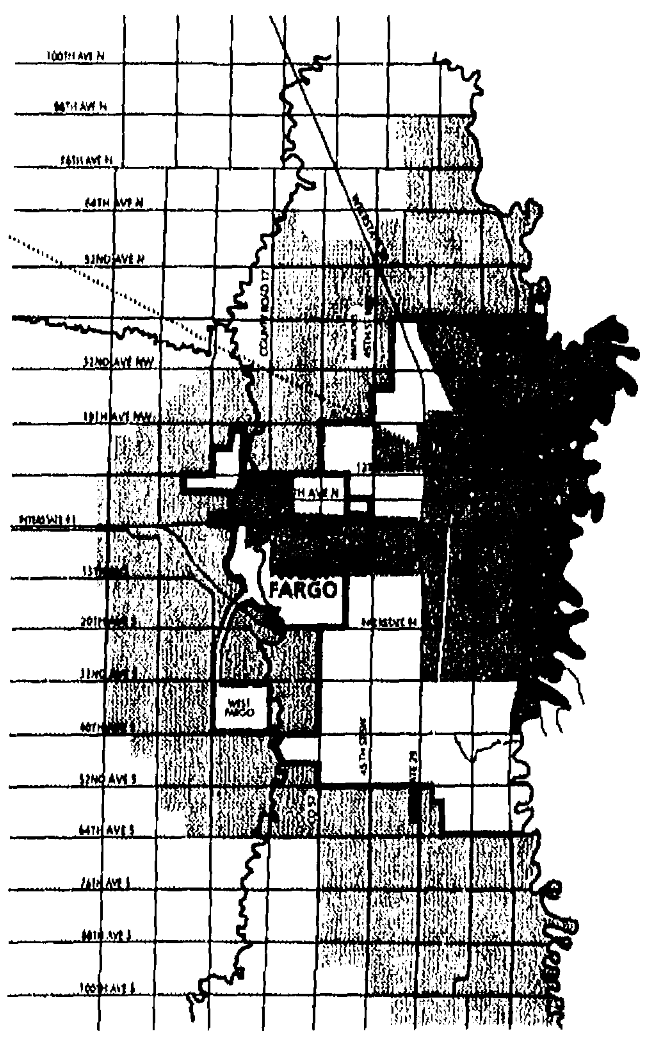
Impact

Over the past five years, Xcel Energy has experienced electric growth of about one percent in North Dakota. Soon, even this one percent growth will disappear, while co-op growth in Fargo is currently about five percent and trending upwards in step with the city's growth.

The situation in Grand Forks is similar, with co-op growth continuing steadily in recent years.



- G.F. City Limits
- Areas Served by Xcel Energy
- Undeveloped Areas Left for Xcel Energy to Serve
- Areas Served by Electric Cooperative
- Cities Extraterritorial Zones



- City Limits
- Areas Served by Xcel Energy
- Undeveloped Areas Left for Xcel Energy to Serve
- Areas Served by Electric Cooperative
- Cities Extraterritorial Zones

New Territorial Equity Amendment – HB 1454

Montana-Dakota Utilities Co. (MDU), Otter Tail Power Company and Xcel Energy have jointly worked on a new solution to the electric service area problem.

The proposed amendment does not repeal the Territorial Integrity Act; it simply amends the law to apply a new negotiating process in a few geographical areas of the state.

Qualifying areas to which the amendment applies include cities of 10,000 or more within Metropolitan Statistical Areas (MSAs) in North Dakota. This includes Fargo, West Fargo, and Grand Forks, which are served by Xcel Energy, and Bismarck and Mandan, served by MDU.

HB 1454 directs the utilities presently serving these cities to negotiate service areas in each city's extraterritorial zone. If the utilities were unable to reach agreement on the new service boundaries, the proposed law requires the ND Public Service Commission to define the new service areas.

This new solution provides for orderly future electric utility development and eliminates duplication of service by working within cities' extraterritorial zones. These designated zones encircle city limits and are used by city leaders to plan for future development.

This plan offers a long-term solution since, as the cities' extraterritorial zones move outward, the utilities' service areas will expand along with the zones.

Under this bill, no change of energy provider will occur for any present utility customers.

All in all, the Territorial Equity Amendment will provide opportunities for both urban area electric cooperatives and investor owned utilities to grow in the metropolitan areas within the state.

Sponsors of HB 1454 include Rep. George Keiser (R), Rep. Thomas Brusegaard (R), Senator Richard Dever (R), Rep. Kathy Hawken (R), Rep. RaeAnn Kelsch (R), and Senator Ben Tollefson (R).

What the amendment does NOT do

This amendment does not "kick the co-ops out" of any existing cities. Instead, it allows urban area electric cooperatives to continue to serve metropolitan areas that have expanded into their traditional service areas (and for which they have built facilities), and it provides investor owned utilities serving the cities with limited opportunity to serve new territories as the cities expand. .

The new proposal affects only five communities in North Dakota and only four of the17 electric cooperatives in the state. Rural electric cooperatives provide a very necessary service in the state, and this amendment only affects electric service areas in metropolitan areas, leaving the truly rural communities and cooperatives unaffected by any change.

Conclusion

No other business in North Dakota—perhaps in the country—operates under such a restrictive climate. The prohibitive laws under which investor owned utilities operate do little to spur business growth. No grocery store, car dealership or other business operates under such restrictions. By allowing more than one utility to serve in a community, it keeps prices and service competitive, benefiting businesses and consumers.

Questions?

Please contact one of the following Xcel Energy representatives:

Kathy Aas	701-240-3161 (cellular)
Mark Nisbet	701-241-8607
Judi Paukert	701-795-5213

February 4, 2003
3:00 p.m.

Martin White's HB 1454 Testimony

Mr. Chairman and committee members, my name is Martin A. White. I am chairman of the board, president and chief executive officer of MDU Resources Group, Inc., a corporation headquartered here in Bismarck and the parent organization of Montana-Dakota Utilities Co.

Over the next few minutes, I would like to give you my thoughts on HB 1454 and why I

feel it is in the best interest of North Dakota.

But first I would like to tell you a little bit about MDU Resources Group, Inc.

2003 marks our 35th year of being headquartered here in North Dakota. We actually started as a utility company in Minnesota. Our company had been based in Minneapolis since the 1920s.

In 1968, we moved our headquarters closer to the area we served with electricity and natural gas. Several cities in our region, including Billings and Rapid City, courted us; but Bismarck felt right to us. We viewed Bismarck as the best option. As an aside, I can also tell you that as a successful, growing corporation, we continue to be courted by other cities in other states. Yet, we have remained in Bismarck and intend to remain in Bismarck. Bismarck is our home.

Our 1968 move brought 86 employees and their families to Bismarck from Minnesota. I believe we are the only New York Stock

Exchange listed company left in North Dakota.

The move to North Dakota gave us roots from which to grow and to build a first-class corporation. MDU Resources Group, Inc., has created five major business units – Montana-Dakota Utilities Co., Knife River Corporation, WBI Holdings, Inc., Utility Services, Inc. and Centennial Energy Resources. From their Bismarck headquarters, those companies direct operations in 42 states and South America, employing some 10,000 people who, during 2002, generated a little over $2 billion in operating revenues with assets in excess of $2.9 billion.

With our success from our Bismarck base, we have also given back to North Dakota, both financially and in community service. On any given day, you'll find many of our 871 North Dakota employees serving their communities – everything from elected

officials to Scout leaders. Nearly 500 North Dakota employees work in non-operating, administrative functions. Those employees earn good salaries and contribute to the state's tax rolls. I suppose they could be located anywhere in the United States. Yet, we are committed to North Dakota, a state that ranks fourth on our rolls in terms of employee count. North Dakota is full of good people. Hard working people. It is a great place to live and work.

In 1983, we created the MDU Resources Foundation, which provides direct financial grants to community-based groups working to improve social services, education, elderly care, youth opportunities and more. To date, the Foundation has granted almost $6 million to qualified non-profit organizations. Incidentally, those corporate grants are below-the-line, that is, they are taken from corporate profits and represent money otherwise available to stockholders. We

believe in giving back to the communities where we live and work.

Mr. Chairman and committee members, there is no other North Dakota-based corporation like MDU Resources. Based on 2001 revenues, *Fortune Magazine* ranked us as the 637th largest corporation in the United States and I believe we will advance again this year. For the past two years, *Forbes Magazine* named us to its Platinum List as one of the 400 best-managed big companies in the U.S., an outstanding honor. In the midst of corporate turmoil and stock market vacillation, MDU Resources has stuck to its core values, held its financial value and remained a solid investment for more than 18,000 shareholders, many of which are North Dakotans.

As I travel across the United States to our operations and while working the major financial centers, I am proud of what our corporation has been able to do from its

North Dakota base. I am frequently asked how we were able to do that and am proud to point to the strengths we have, such as the great work force, the high level of education and the great living environment . However, I am continually challenged by trying to explain why we can't grow our utility in the communities in which we have served for the history of our company.

With that in mind, I'd like to address the difficult subject of electric service areas. As

the CEO of MDU Resources and as a person who has spent all of his adult life in business and economic development, I view the present territorial situation as one-sided. As new territory is annexed into a city such as Bismarck, the current law gives us no assurance we can continue to grow with our cities. It shuts the door on future growth of our electric distribution business, which is our core business in North Dakota. While I believe a territorial law is required if we are

to have orderly development of electric distribution infrastructure, the current law is not only unfair to investor-owned utilities, but it also gives North Dakota the image of being anti-business. If you remember but one thing I say today, remember this: an anti-business image, such as that fostered by the current territorial law, creates a poor storefront to the rest of the country and to the financial community. This anti-business image should be the concern of every

legislator – from Cavalier to Bowman, Hankinson to Crosby and all points in between. Closing the door to our investor-owned electric utilities is a very poor signal to send to any company looking to locate here.

Throughout my career, I have been involved in economic development. I serve on a number of local and state boards and am very active in the North Dakota Economic Development Foundation. I am committed.

From my vantage point, it seems we must find a way to build on our assets – one of which is inexpensive electricity. It also seems to me that we must find a way to allow our current suppliers to grow and to be engaged, working together to attract new businesses to our state.

During this session, you will consider dozens of bills designed to boost economic development in North Dakota. Keep in mind, that the best, most cost-effective economic

development course a state can chart is one involving successful, existing businesses. The current territorial law flies in the face of that concept.

As a corporation, we follow the business model that has proven successful throughout our country's history. Along with Otter Tail Power Company and Xcel Energy, we brought electrical service to the northern plains. In the 1940's we built the generation and transmission facilities to assist the rural electric co-ops in building their distribution network. The innovative founders of our companies attracted investors, then they used investors' dollars to build reliable electrical delivery systems. With additional investment, our systems grew and the price of electricity came down making it more affordable and available to more people.

Our business success enabled us to reward our investors for the risk they had taken in our company. Our corporate profits and investors' dividends generated income tax dollars to build roads and bridges, to enhance law enforcement and to help support an array of social and educational services for North Dakota's residents. This is the model that economic development measures must pursue and it's the model the current law is preventing.

If MDU Resources is to continue to grow our core North Dakota business unit, the current law must be amended. The North

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Dakota Legislature must find a way to allow us to share in the growth around the cities we began electrifying in 1924. HB 1454 allows us that opportunity.

I urge you to support HB 1454.

Testimony of Rep. Dwight Wrangham, District 8
RE: HB 1454--8 a.m. Wednesday, Feb. 5, Brynhild Haugland Room
Before the House Industry Business and Labor Committee

Mr. Chairman and members of the committee, my name is Rep. Dwight Wrangham, from District 8, which comprises parts of Burleigh and McLean counties. I'm here to today to register my opposition to HB 1454. I also serve on the board of Capital Electric Cooperative, based here in Bismarck, which provides electric service to residents in Burleigh and parts of Sheridan County. I have been a director on that board since 1995.

HB 1454, in my view, is not fair and it does not represent any sort of compromise. It's not fair because this bill attempts to take territory from Capital Electric Cooperative and gives it to MDU; it attempts to take territory from Mor-Gran-Sou and gives it to MDU; and it attempts to take territory from Cass County Electric and Nodak Electric and gives it to Xcel. This bill asks this legislature to take from one and give to another. There is nothing fair about that.

And that's why this bill is not a compromise. In my view, I think of compromises as "win/win" scenarios. This bill says MDU and Xcel Energy get to keep 100% of the market share in their territories, and be handed over 50% of the territory outside the state's three largest metropolitan areas that have always been served by electric cooperatives. Keep in mind as well, that MDU doesn't seek 50% of Sheridan County, but 50% of the best territory that Capital Electric serves around the city of Bismarck. The IOU definition of compromise is obviously "we want to keep all of ours and take 50% of yours."

I am also opposed to this bill because it nullifies an agreement that Capital Electric and MDU negotiated in 1973, which received the approval of the city of Bismarck. As you'll hear in later testimony from Capital Electric's manager, this agreement clearly lays out where electric facilities can be built by MDU and Capital Electric in and around the city of Bismarck. So one of my first reactions to this bill, from the perspective of Capital Electric, is that "we've been there done that." Why should this legislature mandate that we do it over? I'm a strong proponent of local control, and this bill goes completely in the opposite direction by establishing a state mandate to divide territories in certain areas. It's clear to me that this bill takes power away from local control and creates a mandate from state government.

Mr. Chairman, members of the committee, this bill should be rejected. I urge a Do Not Pass.

Harlan Fuglesten
Testimony on HB 1454
Before the House Industry, Business & Labor Committee
February 5, 2003

Mr. Chairman and committee members. My name is Harlan Fuglesten, General Counsel and Government Relations Director for the North Dakota RECs. I rise in opposition to HB 1454. There are many reasons why we oppose this bill. The most important reason is that this bill is about self-interest, not the public interest. Very simply, it is designed to benefit investor-owned utilities (IOUs) at the expense of North Dakota consumers.

To understand the problems with this bill, it's important to explain why the legislature passed the Territorial Integrity Act in the first place. Before 1965, there were frequent territorial battles between the IOUs and the co-ops. These battles usually took place in rural areas outside of cities served by the IOUs. Then as now, co-ops could extend lines in rural areas without PSC approval. In fact, as borrowers from the REA, they also had an obligation to provide "area coverage" to all consumers, large or small, profitable or not. IOUs refused to serve in rural areas generally, but did want to occasionally serve loads that were profitable or convenient. The pre-1965 law allowed IOUs to extend service within their franchised cities, and also gave them the right to serve areas "contiguous" to areas they already occupied so long as the areas were not receiving similar service from another utility. This created "cherry picking" opportunities for IOUs, and caused many disputes over whether areas were "contiguous" or were already being served by another utility with similar service.

The legislature passed the Territorial Integrity Act in 1965 to end these disputes and to promote orderly development. Under this law, co-ops could continue to extend facilities without PSC approval in rural areas where they had the obligation to serve. Likewise, IOUs could extend facilities without PSC approval in cities where they were franchised. Outside the franchised territories, however, IOUs were required to obtain PSC approval before extending service. By the same token, co-ops could not serve within the corporate limits of a city without city approval, even as the city expanded its borders to include areas being served by the co-op.

Since passage of the Territorial Integrity Act, IOUs have sought PSC approval to serve rural accounts about 3,000 times. In about 95 percent of the cases, their requests have been approved without objection from the local co-op. If there is a dispute, the PSC considers a number of factors to decide which utility is best positioned to serve new rural customers. These factors include customer preference, proximity of existing lines, reliability and cost of service, probability of city annexation, and avoidance of wasteful duplication. When the PSC grants approval for IOU service in rural areas, it issues a Certificate of Public Convenience and Necessity. As the name implies, decisions on utility service are based on the public interest, not what is best for any particular utility.

As cities grew out into rural areas after 1965, co-ops sought to continue serving areas where they had facilities. To do so, they needed approval from city governing boards. Some cities such as Fargo, West Fargo, Grand Forks, Bismarck and Mandan granted franchises that either designated service areas or included procedures for deciding which utility served where. In many other communities, however, co-ops did not obtain franchises. In these cities, the IOUs get all the growth. For example, because

MDU has the only franchise to serve the city of Williston, the local electric co-op sells its lines to MDU as the city expands into areas where the co-op has facilities. Last summer, an Otter Tail Power Company spokesman testified before the Electric Industry Competition Committee that Otter Tail gets "more than 90% of the new customers who build in and around the city limits" of Jamestown, Devils Lake, and Wahpeton. What this all means is that current North Dakota law does not favor one type of utility over another. Instead, it provides for orderly development of expensive electric facilities while maintaining local control of electric service decisions. HB 1454 would undermine both of these concepts, and would return us to the old days of constant utility battles.

Some legislators have told me they hope passage of this bill would end territorial fighting between utilities. It will do no such thing. In my view, it will guarantee continuing battles before the legislature, the PSC and the courts.

I would like to now go through some parts of HB 1454 to show you why this bill is harmful to the public interest.

Section 1 sets forth the scope of the bill. It applies to the extraterritorial zoning limits of cities of 10,000 or more within Metropolitan Statistical Areas (MSAs) as those areas may be expanded from time to time. The expansive nature of this bill has been described by one of its proponents as being "evergreen", apparently because, like an evergreen, it will continue to grow out at the tips. How this would work is unclear.

The bill can be interpreted in two different ways. The first interpretation would be that the initial agreement on service areas should address what happens to areas that are beyond a city's current extraterritorial zoning but will likely be included in the future. This interpretation could lead to utilities and the PSC planning for future service area allocations many miles from the city. How could such allocations be made on any fair or reasonable basis? And, if such allocations were made, when would the IOUs agree to begin serving new customers in these outer-ring areas? Would the co-ops be required to continue investing in these areas knowing they will eventually be turned over to an IOU? Why would the co-ops want to create future duplication and expense? On the other hand, why would the IOUs want to build lines to serve a few customers miles from where they currently have facilities? Such uncertainties could lead to cases where customers are left without service unless they are willing to pay up front the full cost of such line extensions.

The second interpretation would be that the initial agreement relates only to a city's current extraterritorial zoning boundaries and does not address this outer-ring of future extraterritorial zoning. Under this interpretation, new agreements would be required to divide up additional territory after each zoning extension. As each new area was divided up, a confusing checkerboard of utility service areas would arise. Meanwhile, the co-ops would still have to deal with how to serve these outer-ring areas, half of which they will lose in the future. This uncertainty about which utility will serve where would be very detrimental to utility planning, customer service, and reliability.

No matter how one interprets this bill, it seems to me it leads to the same old story – The IOUs want the co-ops around to serve what they don't want to serve until it is profitable for the IOUs to take it away.

A couple other concerns I would like to note about Section 1. There is absolutely no guidance given to the PSC in approving or establishing service areas. Reasonably equal growth potential for utilities is the standard, but the bill also says the PSC must act in the public interest. What happens when the public interest conflicts with the requirement of equal growth opportunities? Duplication of existing facilities, for example, is not in the public interest, but will be inevitable under this bill.

Another question. How do you determine reasonably equal growth opportunities? Must the PSC consider the timing of likely development so that each utility gets reasonably equal growth over similar time periods? After all, growth tomorrow is much more valuable than the same growth ten years from now. Where will the PSC get its crystal ball for making such projections?

Section 2 of the bill raises more problems. Section 2 establishes exclusive service territories for utilities, "even if a portion or all of the electric service area is incorporated into the corporate limits of a city." Section 2, (subsection 1). This is contrary to other provisions of North Dakota law granting cities the right to grant revocable, non-exclusive franchises. See NDCC 40-05-01(57); 40-05-05. More importantly, this bill appears to directly violate Article 7, section 11 of the North Dakota Constitution which 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."

That is exactly what HB 1454 does. In the process, it replaces local control with state mandates.

Section 3 raises one of the most troubling aspects of the bill. This section authorizes assignments and exchanges between utilities. But it does more. It gives the affected utilities the option to "temporarily or permanently waive the right to serve an electric service location. . ." Electric co-ops understand that the right to serve carries with it an obligation to serve. But do the IOUs? This bill seems to be another example of the IOUs wanting to have their cake and eat it too. Instead of customer choice, the IOUs want utility choice – the right to determine who, where, and when they will serve customers based on their corporate bottom line, not on the public interest.

Sections 4, 5 and 6 of the bill include the proverbial exception that swallows the rule. These sections claim to keep the law's prohibition against interference and unreasonable duplication of existing electric facilities, but create an exception in the very areas that most need this protection. If this bill becomes law, it will be okay to unreasonably interfere or duplicate the facilities of another utility in the growing areas around our major cities, but it will be unlawful to interfere in remote rural areas where such interference is most unlikely.

HB 1454 changes the focus of state law from concerns about rational utility planning, consumer protection, safety and cost, to a concern about guaranteeing private utility growth. It is very bad public policy. It will cost North Dakota consumers millions of dollars in duplicate utility investment. It is not fair to the electric cooperatives, but more importantly, it's not fair to North Dakota consumers. I urge a DO NOT PASS on HB 1454.

Thank you.

TIA bill HB 1454

TAXES PAID IN MINOT

Verendrye building located on HiWay 2 East -- Land Value --$40,500 – taxes paid in 2002 -- $606.06

Central Power facilities -- land value - $391,400, taxes paid in 2002 -- $8,275.37

Xcel Office facilities – Total taxes paid -- $27,000, but total taxes paid to Ward County for facilities located in and around Minot -- $287,701.90 during 2003.

* Verendrye – Total gross receipts taxes paid to Ward County -- $144,918.03, of which, $3,204.43 is paid to city taxing districts.

* Central Power paid $64,959.63 in gross receipts taxes to Ward County and none of that money was paid to Minot city taxing districts.

TAXES PAID IN GRAND FORKS

Nodak Rural Electric land under their office building in South Grand Forks is valued at $645,800 and a tax of $16,692.64 is paid to Grand Forks taxing districts.

* Nodak also paid $139,646.01 to Grand Forks County in gross receipts taxes. Of this total, no dollars were allocated to taxing districts within the city of Grand Forks.

Xcel Energy paid $41,000 in real estate taxes for their office building property. Total taxes paid to Grand Forks County for property in and near Grand Forks was $1,055,839.47 during 2003.

TAXES PAID IN FARGO

Cass County REC land under their office building in South Fargo is valued at $331,000 and a total tax of $8,109.83 is paid to taxing districts within the city of Fargo.

* Cass County REC paid $296,208.45 to Cass County in gross receipts taxes. Of this total, $18,268.83 was paid to taxing districts within the city of Fargo.

Xcel Energy paid $60,000 in real estate taxes for their office building property. Total taxes paid to Cass County for property in and near Fargo was $1,586,980.46 during 2003.

TAXES PAID IN BISMARCK

Capital Electric REC land under their office building in North Bismarck is valued at $98,900 and a total tax of $2,392.00 is paid to taxing districts within the city of Bismarck.

* Capital Electric REC paid $212,694.68 in gross receipts taxes to Burleigh County. Of this amount, $12,508.48 was paid to taxing districts with in the city of Bismarck.

Because MDU Resources headquarters are located within the city of Bismarck and some of their office buildings support services in other cities and states, building taxes for MDU properties are not included in this document. Rather, in order to have apples to apples comparison, the USND hired Rod Backman as an independent consultant to prepare a report to explain the different taxes paid by RECs and investor owned utility companies.

Mr. Backman included the REC property, currently located within the city of Bismarck and exempt from taxation under current law, with the centrally assessed distribution property of Montana Dakota Utilities. Upon completion of the computation, Mr. Backman found that the REC property located with in the city of Bismarck would bring about nine times more in tax dollars to the city of Bismarck if that property was owned by MDU rather than by Capital Electric REC. Although Mr. Backman's work only covered Bismarck property, he testified that the same ratio would most likely be true for other city taxing districts as well.

* (Information from Schedule BB filed by Co-ops with the County Auditor showing distribution and total of gross receipts taxes paid to the County. Please also be aware that school districts receive gross receipts taxes for property located outside of a city, but still located within a particular school district.)

MONTANA-DAKOTA
UTILITIES CO.
A Division of MDU Resources Group, Inc.

400 North Fourth Street
Bismarck, ND 58501
(701) 222-7900

February 7, 2003

Rep. George Keiser
Chairman
Industry, Business and Labor Committee
ND House of Representatives

Dear George:

Thank you for agreeing to be the prime sponsor for HB 1454 and most especially for the expeditious and orderly manner in which you handled the committee hearing on Wednesday. In past sessions those hearings have been disruptive and tumultuous. I understand you have received some criticism from REC supporters, but you made the right decision.

During the hearing Dennis Boyd was asked "when did MDU stop growing?" As he indicated and as the attached Exhibit A clearly shows, Montana-Dakota Utilities Co. has not stopped growing – almost, but not quite. By 1984, the number of residential, small commercial (SC) and industrial customers on our integrated electric system peaked at slightly over 100,000 customers. During the intervening 20 years, the growth in the number of customers has been relatively flat. In fact we have slightly fewer customers today than we had in 1984. Worse yet our projected sales (Exhibit B) are projected flat through 2022. Exhibit C illustrates the very modest growth in the number of customers we have added since 1996. Over those years, MDU has added 1393 electric customers on our integrated system. This represents a 1.4% growth rate over those years, or a 0.2% compounded annual growth rate. I'd also like to call your attention to Exhibit D, which illustrates annual growth comparisons in Bismarck and Mandan, two locations where we are having some minimal growth. From 1996 through 2000, MDU 's average growth in Bismarck has been 2.266%, while Capital Rural Electric Cooperative's average growth rate is more than twice as great at 5.143%. The REC numbers are taken from RUS Form 7, which is filed by every REC. Numbers for 2001 and 2002 are not yet available. I hope that addresses the question asked by Rep. Severson.

Rep. George Keiser
February 7, 2003
Page Two

I would also like to add my comments to those of Dennis and Martin White, regarding economic development. Montana-Dakota Utilities has spent several million dollars and thousands of manhours trying to develop two projects – a wind farm in southcentral North Dakota and a lignite fired generating plant in southwestern North Dakota. Unless we can share in some of the growth in North Dakota, what is our incentive to do this? In addition to spending millions of dollars ourselves, we have the ability to attract other investors and investment capital, something the cooperatives will never be able to do because their primary funding source is the federal government and the U.S. taxpayer! On the other hand, why would any other investor want to invest in North Dakota when current law treats existing investor-owned companies so harshly?

Thank you again for your understanding of the critical importance of HB 1454 – not only so MDU and Xcel can share in the growth around our major cities, but also so the state of North Dakota can send a powerful message to anybody paying attention that says "Investors Welcome".

Sincerely,

Ronald D. Tipton
Chief Executive Officer

cc: Member,
House Industry, Business &
Labor Committee

EXHIBIT A

Montana-Dakota Utilities Co.
Integrated System
Historical Residential & SC&I Customers

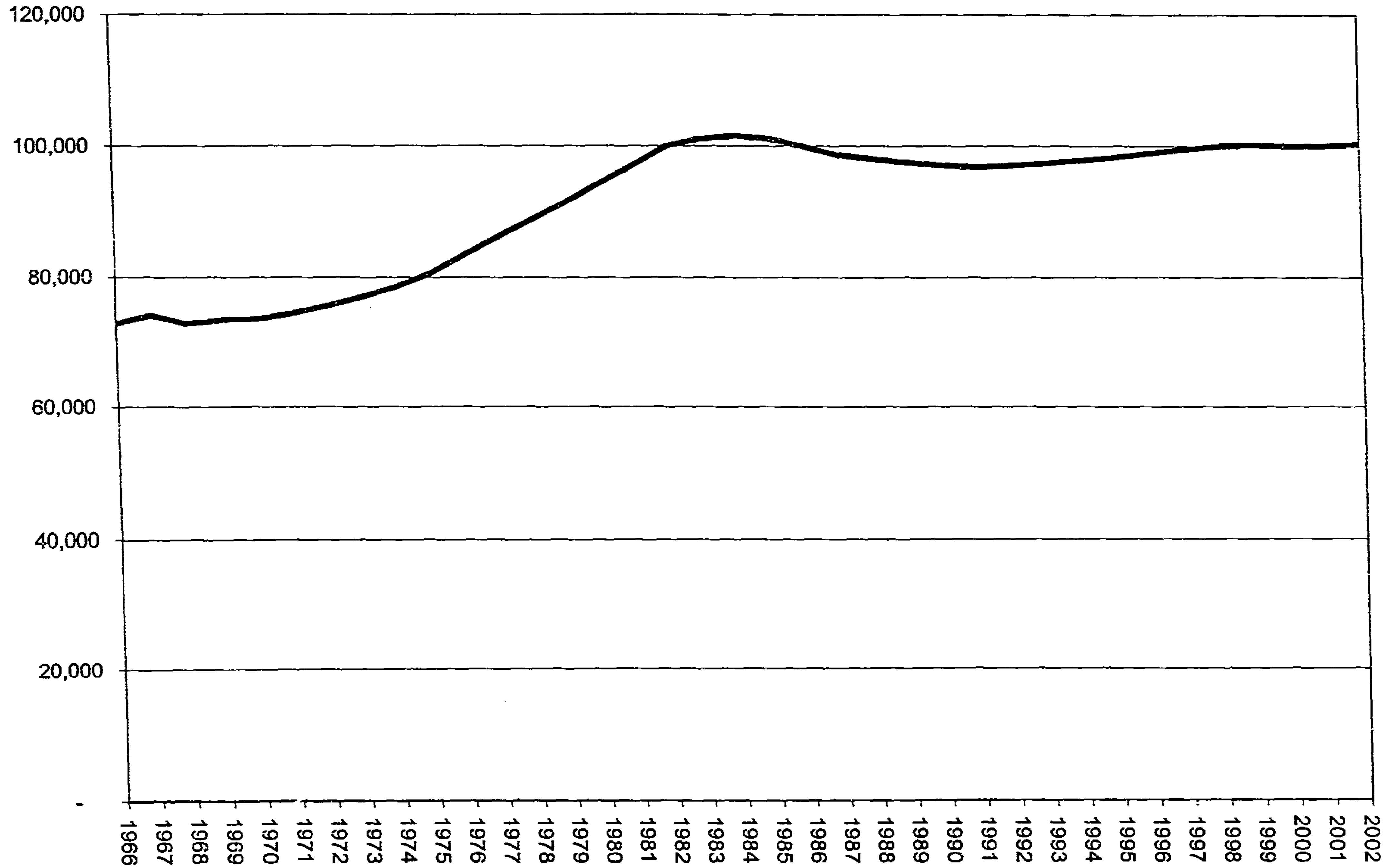

EXHIBIT B

Integrated System Historical and Forecasted Sales by Class

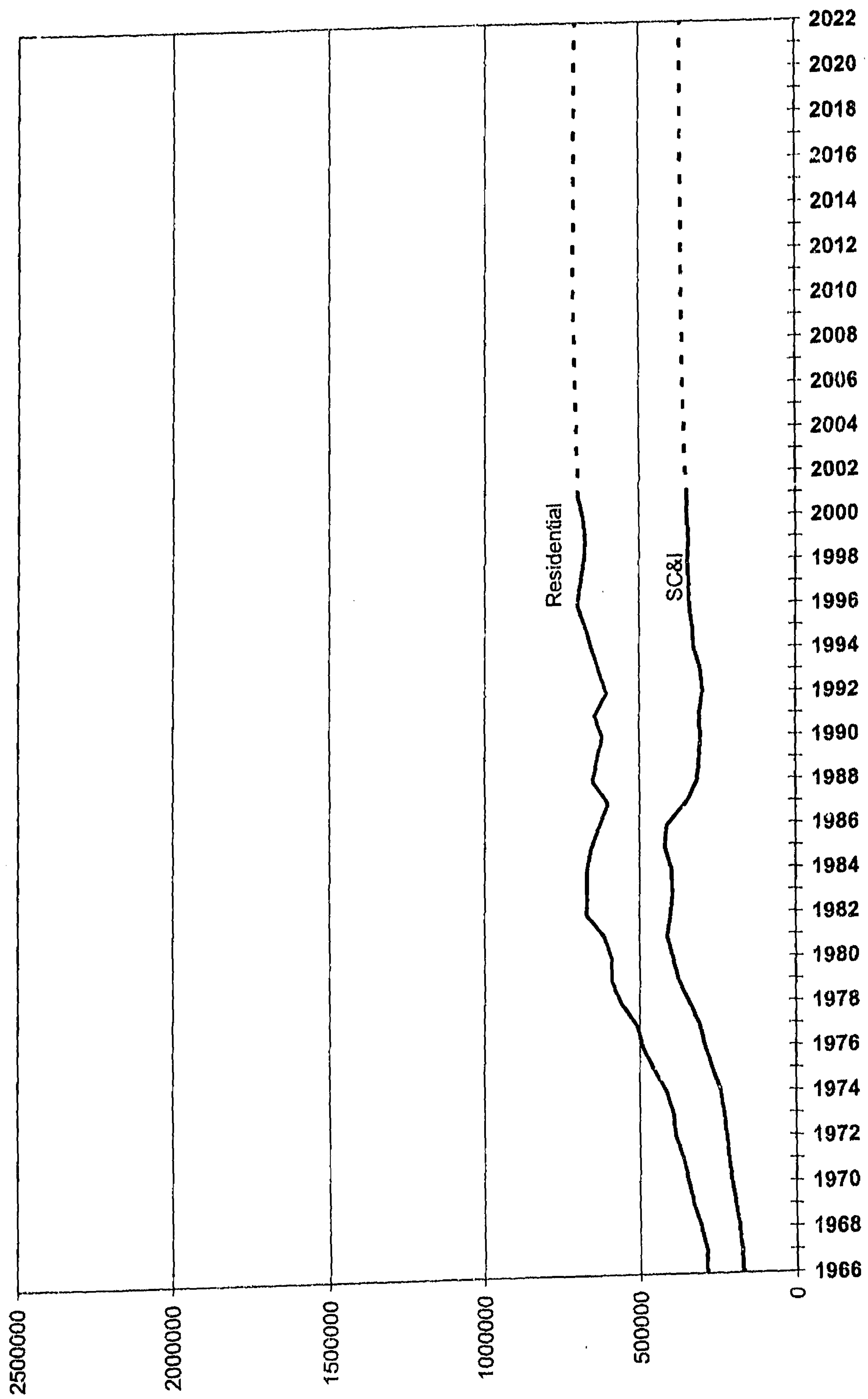

EXHIBIT C

Six Year Growth
Integrated System
Residential & SC&I Customers

1996	2002	Increase	% Increase	Compounded Annual Growth Rate
98,873	100,266	1,393	1.4%	0.2%

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EXHIBIT D

MONTANA-DAKOTA UTILITIES CO.
MWH SALES GROWTH
1996 - 2000

	Montana-Dakota Total ND	Montana-Dakota Bismarck	Montana-Dakota Mandan	Capital Electric	Mor-Gran-Sou
1996	3.272%	2.769%	2.744%	7.597%	9.070%
1997	0.083%	2.438%	5.720%	3.741%	-2.828%
1998	-0.299%	2.121%	0.587%	1.889%	-7.293%
1999	1.410%	1.250%	3.412%	4.055%	11.644%
2000	1.774%	2.964%	-2.576%	8.432%	3.737%
Average	1.248%	2.308%	1.977%	5.143%	2.866%

2/7/2003

COMMENTS ON HB 1454, A BILL TO CHANGE NORTH DAKOTA'S TERRITORIAL INTEGRITY ACT (TIA): SUBMITTED BY MIKE EGGL, BASIN ELECTRIC POWER COOPERATIVE VICE PRESIDENT OF GOVERNMENT RELATIONS, TO THE HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE, ON FEBRUARY 5, 2003.

Basin Electric Power Cooperative is opposed to the passage of HB 1454 by the North Dakota Legislature. This legislation will negatively impact our electric cooperative consumers who have invested, and continue to invest, financial and human resources into the state of North Dakota.

Basin Electric is owned by cooperatives in North Dakota and eight adjoining states. We provide electric generation and transmission services to these cooperatives.

Basin Electric is opposed to HB 1454 for the following reasons:

* <u>Basin Electric's members will be impacted</u> – As written, the bill will affect two of Basin Electric's members immediately: Capital Electric and Mor-Gran-Sou Electric cooperatives.

Basin Electric exists because distribution cooperatives like Capital Electric and Mor-Gran-Sou Electric pooled their finances and electricity requirements and developed an integrated system of electricity generation, transmission and distribution to meet the needs of their systems. This integrated system represents decades of planning and investment by the cooperatives; from the wires and poles at a member's home or business, to the design and construction of substations, transmission facilities, power plants and coal mines. Decisions and investments have been made over the course of the last 20 to 30 years to serve the members of today. Changes to the projected growth of our member cooperatives impact Basin Electric's existing system and future planning and development.

Cooperatives including Basin Electric are an integral part of local communities and the state. For example, Capital Electric has spent significant resources developing a system to serve its existing service territory. Basin Electric works closely with Capital Electric to ensure seamless electric service. When things go well, cooperatives return that benefit to our members and their consumers.

- Since 1982 Basin Electric has returned $112 million in the form of capital credits to our members.
- In the years 2000, 2001 and 2002 Basin has returned $30.5 million in capital credits and $122.3 million in bill credits to our members ($31 million of this was directly to Basin's ND members).
- Basin Electric gives back to the community in many ways. Basin Electric recently made $5 million available to its members in the form of economic development loans.

We are sure that you will hear from others the details of the impact to our members.

* <u>This is not a forthright effort to address the issue</u> – The Territorial Integrity Act is a complex issue. This bill was presented to the cooperative community and the general public a little over two weeks ago. It is disingenuous to believe that positions would change or that any meaningful dialogue would take place during that time. For the past few sessions, the IOU's have thrown the legislature into the middle of this dispute instead of taking the time to talk one on one with the cooperatives involved and attempt to develop a solution. This bill simply means that the IOU's were willing to once more throw this issue into the legislature's hands and hope for a better outcome than they have received the previous three times this issue was introduced.

HB1454 was never presented to the electric competition study committee and the committee recommended no changes be made to the Territorial Integrity Act. If the IOU representatives were interested in an open dialogue and discussion on the issue, they would have presented a bill earlier.

Passage of this legislation will not solve problems but will create new disputes over service territory that the original territorial bill was set up to solve.

Because of these reasons Basin Electric strongly opposes HB 1454, and urges you to give it a "Do Not Pass." Send the message that if the IOU's truly want to develop a solution to their problem, then they need to buckle down and work on the problem with the cooperatives, not expect the legislature to hand them territory already served by the cooperatives.

Legislative Matters

With another TIA battle on the horizon, IOUs are taxing the truth

By Scott Handy
President/CEO

Maybe it's the particular combination of letters, but the acronym 'TIA' seems to cause a fierce reaction in some people. Here's a little quiz for you:

'TIA' stands for:

A. Total Information Awareness

B. Territorial Integrity Act

C. This Issue Again?!

Actually, any of the answers is correct. If you've read this column in the past, you no doubt know that 'B' is the obvious answer. If you've followed the debate on terrorism and the creation of a Homeland Security Department in the national news, you probably recognize answer 'A' as well. And, depending on your point of view, you might think that 'B' is well-described by answer 'C'.

We're right in the middle of a North Dakota legislative session, and as you probably know by now, the investor-owned utilities have introduced House Bill 1454 to amend the original TIA. In fairness to the member-owned electric cooperatives across the state, I'd like to offer a slightly different twist on answer 'A' and pass along some information in the spirit of 'total information awareness.'

given all the service territory they desire. Montana Dakota Utilities has even gone so far as to state in their newsletter that electric cooperatives pay "next to nothing in property taxes." When looking carefully at the facts, however, one realizes that their property tax argument is based on a gross misrepresentation of the truth.

Let's take a look at the reality of utility property taxation in North Dakota. IOUs pay a centrally-assessed property tax based on the value of their utility system. This method is similar to the system used to tax your individual home. Electric cooperatives, on the other hand, primarily pay a percent of revenue in place of a value-based property tax. These different methods of property taxation create a situation where electric utility properties generate different tax levels.

Who pays more under the current system? In many situations, electric cooperatives pay more. Cass County Electric's tax bill compared to Xcel Energy's bill is a good example of this. Using statistics provided by Xcel Energy and CCEC for the years 1998-2000, the numbers clearly show that for every kWh sold, CCEC paid about 15 percent more in property tax than did Xcel Energy. With this in mind, the next time you hear or read statements from investor-owned utilities claiming that cooperatives pay "next to nothing in property taxes," we ask that you inform your friends, co-workers and representatives that this is absolutely false.

Scott Handy, CCEC's President/CEO, has studied the property tax issue carefully and welcomes your questions and comments.

Another piece of information you should be aware of is that North Dakota's electric cooperatives proposed a property tax reform bill in 2002 that would have both IOUs and cooperatives pay property tax calculated under the same formula. When presenting the bill to the Electric Industry Competition Committee for consideration, the investor-owned utilities opposed the plan and it was not adopted. This begs the question: If the tax system is so unfair towards the IOUs, why would they be opposed to a new plan that treats both co-ops and IOUs equally? The answer is simple: The current system favors the IOUs and also provides them with a means to misrepresent the tax situation in order to further their legislative agenda. Don't be fooled.

> "According to the IOUs, they pay a great deal more in property taxes and therefore should be given all the service territory they desire. Using statistics provided by Xcel Energy and CCEC for the years 1998 - 2000, the numbers clearly show that for every kWh sold, CCEC paid about 15 percent more in property tax than did Xcel Energy."

In preparing to attack the highly effective TIA, the IOUs have put together a laundry list of issues for why they should have a 50 percent market share of new electric customers in rural areas near the present boundaries of the affected cities. On the top of their list seems to be the issue of property taxes. According to the IOUs, they pay a great deal more in property taxes and therefore should be

HB1454

Testimony before the House Industry Business and Labor Committee
Scott Handy, President/CEO
Cass County Electric Cooperative, Inc.

February 5, 2003

Mr. Chairman and members of the committee, my name is Scott Handy, and I represent Cass County Electric Cooperative, headquartered in Kindred, North Dakota. I am speaking today in opposition to House Bill 1454 and respectfully urge your **DO NOT PASS** recommendation on it.

You are all familiar with the general arguments on this bill. I would like to provide some specific information regarding the electric utility situation in and around West Fargo and Fargo, as well as contrast the utility organizations serving there.

Attached to my written testimony is a map. The dark yellow area on the right side of the map is the current footprint of Fargo. To the left side you'll notice the City of West Fargo, indicated in gray. The light green areas above and below Fargo's city limits indicate Fargo's current extraterritorial area. The lighter yellow area at the lower left area of the map shows where Fargo's extraterritorial area could extend if its most recently-announced annexation proceeds. The light blue area to the left of West Fargo indicates that City's current extraterritorial area.

HB1454 would require that Cass County Electric Cooperative and Xcel Energy divide up the areas on the map shown in light green, light yellow and light blue. Xcel Energy would have you believe that these areas are bare empty ground, within which electric facilities can be built with no duplication. I call to your attention the red lines shown on the map, especially those within the extraterritorial areas. These red lines indicate existing lines built, owned and operated by Cass County Electric Cooperative. These lines total 150.24 miles within the extraterritorial areas and were constructed at an estimated cost of nearly $7 million. This investment currently serves 953 single phase and 39 three phase electric accounts for our members. You can see that dividing this area up in such a way that Xcel Energy and Cass County Electric Cooperative will have an equal opportunity at future electric load growth will be an exercise in futility. These areas are already served by our Cooperative and they have been for over 60 years.

I'd also like to call to your attention an item that is extremely ironic. You'll notice a square at the left edge of the light yellow area on the map marked "Warren Sub." That's the Warren substation, located about eight miles north of Kindred, North Dakota. This substation was our very first, built in 1937. I don't know if you've been out to the Warren substation lately, but I have. You'll have to take my word for the fact that there's not much going on out there. How ironic it is that this bill would likely place the Warren substation within Xcel Energy's electric service area when the Warren substation was placed there 66 years ago because no one else would serve.

The incursion of Xcel Energy into the extraterritorial areas will require a massive duplication of facilities not just within these areas, but also in the extensions Xcel will have to make just to get to them. This duplication will increase costs for Xcel's customers and it will increase costs for our members. This is because the major investments already made by our Cooperative in these areas will be stranded, that is, no further capital recovery will be possible due to Xcel's incursion. When the investments by Minnkota Power Cooperative are considered, the situation only gets compounded.

The second issue I'd like to address this morning is a comparison and contrast between Cass County Electric Cooperative and Xcel Energy. I think you are all familiar with the fact that Cass County Electric Cooperative is a North Dakota corporation, doing 100% of its business in North Dakota, and serving its members with electricity generated by North Dakota lignite coal. We are 100% dependent on the business we do in North Dakota, and we will survive or struggle based on the local economy. We serve our members from local facilities, employ local people, and pay property taxes in local jurisdictions. When the phone rings, it's a local phone number answered by local people. When our members want to talk to us face to face, they come to a local facility that has its doors open to the public. We think North Dakota's citizens like that sort of local presence and local service, and they tell us that regularly.

Xcel Energy launched a major advertising campaign shortly after it was formed through the merger of Northern States Power Company and New Century Energies. The theme of the campaign was "You're going to be seeing a lot more of Xcel Energy." It was not long after this ad campaign that news of the layoff of a large number of North Dakota Xcel employees was announced, many from the Fargo office alone. Beginning in early 2002 a lot more news stories about Xcel Energy started to run and they weren't very flattering. I don't think that's the sort of exposure Xcel Energy had in mind when it chose this ad campaign slogan.

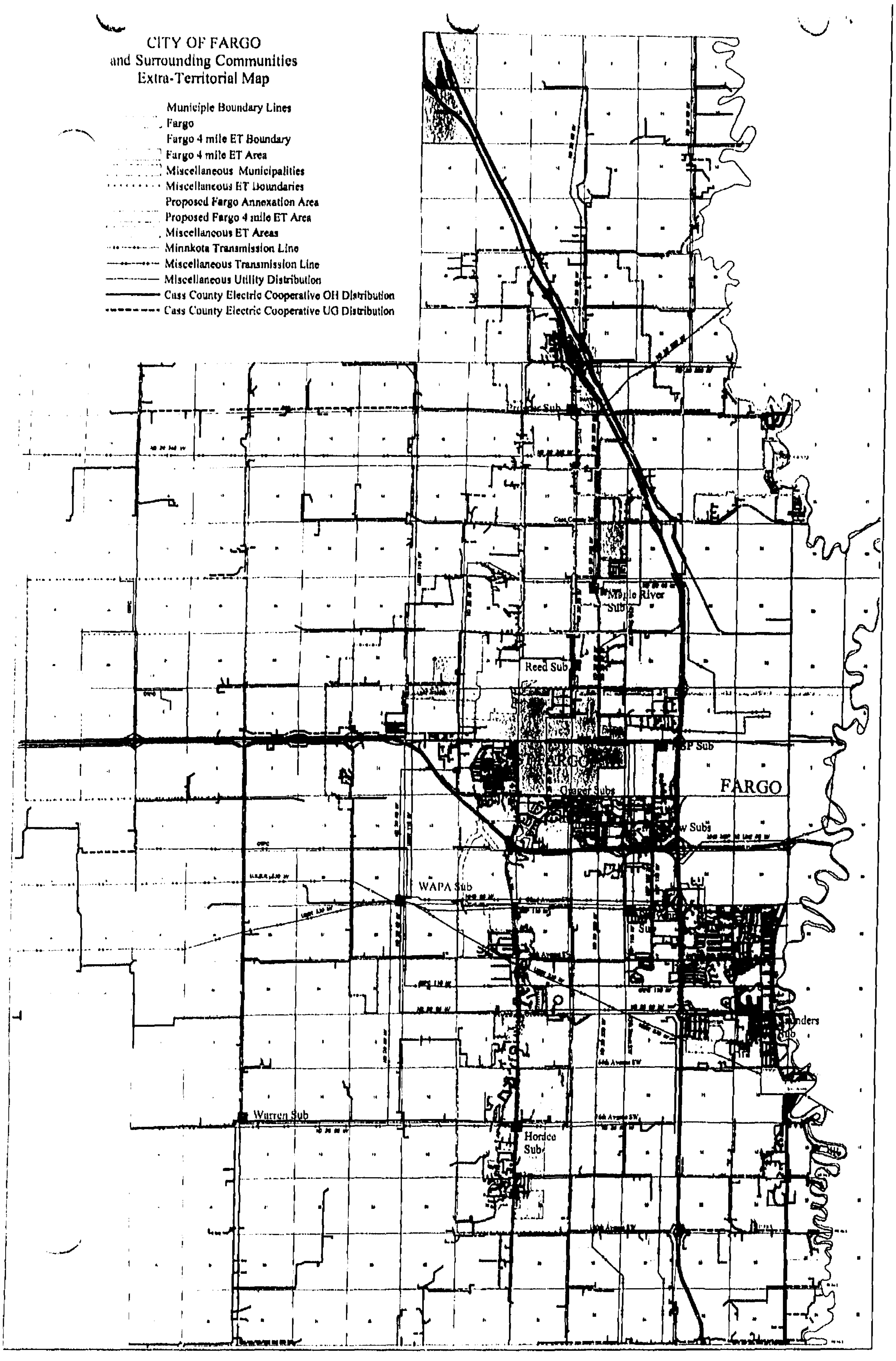
The results of Xcel's exodus from North Dakota are becoming obvious. Xcel customers can't enter its Fargo office any more - the doors are locked and there's a sign in the window advising them to call an 800 number. There is no local phone number or local street address in the phone book any more. When customers do call one of the 800 numbers they talk to someone in another state, some of whom don't even know what state Fargo is in - I know, it happened to me. Xcel customers used to be able to drop off electric and gas payments at drop boxes conveniently located around town. These have all been removed, to the great frustration of many Xcel customers. We know, because they routinely stop by our local office and attempt to pay their Xcel bills there. For those Xcel customers who are intent on dropping off bills, they can stop at a few gas stations around town and pay a fee for the privilege.

I do have a reason for pointing out these matters. There has been a lot of talk in every recent Legislative session about "growing North Dakota", and especially in this session. Everyone is concerned about out-migration of our young people and of good jobs. Everyone is concerned about new jobs and new opportunities in North Dakota. Mr. Chairman and members of the committee, HB1454 will penalize companies that are doing everything our State is asking - keeping jobs here, investing in the growth and development of local economies and providing world class <u>local</u> service. HB1454 will then reward an organization that is doing the opposite of what our State is asking. Passing HB1454 will not bring all those Xcel jobs back to North Dakota. Those jobs were ended even while Xcel Energy's electric and gas business is growing.

I should add that the people who do remain employed locally by Xcel Energy are very nice, very competent people. They are not the ones responsible for the corporate decisions discussed earlier, they are the ones left to deal with the results.

HB1454 is not about territorial equity. It's about Xcel Energy keeping all the growth it has now and giving Xcel half of all the growth that will occur in areas Cass County Electric Cooperative has served for 66 years.

Mr. Chairman and members of the committee, I urge your DO NOT PASS recommendation on HB1454.


CITY OF FARGO
and Surrounding Communities
Extra-Territorial Map
Municiple Boundary Lines
Fargo
Fargo 4 mile ET Boundary
Fargo 4 mile ET Area
Miscellaneous Municipalities
Miscellaneous ET Boundaries
Proposed Fargo Annexation Area
Proposed Fargo 4 mile ET Area
Miscellaneous ET Areas
Minnkota Transmission Line
Miscellaneous Transmission Line
Miscellaneous Utility Distribution
Cass County Electric Cooperative OH Distribution
Cass County Electric Cooperative UG Distribution
Reed Sub
FARGO
WAPA Sub
Warren Sub
Hordco Sub

TESTIMONY OF LARS NYGREN
GENERAL MANAGER OF CAPITAL ELECTRIC COOPERATIVE, INC.
BEFORE THE HOUSE INDUSTRY, BUSINESS & LABOR COMMITTEE
IN OPPOSITION TO HB 1454

Mr. Chairman, members of the Committee. My name is Lars Nygren. I am the General Manager of Capital Electric Cooperative, headquartered in Bismarck. I oppose House Bill 1454.

Capital Electric is a distribution cooperative whose service area comprises the ten most southern townships in Sheridan County, primarily the area south of Highway 200, and all of Burleigh County, including outer lying areas in the City of Bismarck. We are not a multi state corporation or a diversified business like Xcel Energy or MDU. We are a local, consumer-owned company operated to provide reliable electricity at fair rates. To do this, we have had to plan carefully for both a declining customer base in our most rural areas, and for some growth in the suburban Bismarck area.

HB 1454 would have very serious consequences for Capital Electric and its consumers. To understand this, I want to briefly describe how Capital Electric and MDU have come to serve in our respective areas in and around the city of Bismarck. In 1973, MDU and Capital Electric signed an area service agreement that reads, in part, as follows:

> "The parties hereto recognize their obligations to avoid any duplication of facilities in order to provide electric service as efficiently and economically as possible to the public and to the Cooperative's members."

"It is agreed that the interests of the consumer can best be met by providing that the Company serve those consumers within the area bounded by the heavy black line on the attached map."

"The principal service area of the Cooperative will be that area which lies outside the heavy black line."

The agreement basically states this: Capital Electric – you serve the area outside the black line; and MDU, you serve the area inside the black line. Both parties could still continue to serve their existing customers located in the other party's service area.

In 1973, the City of Bismarck incorporated this agreement into Capital's limited city franchise. In 1993, when our franchise came up for renewal, MDU was concerned that cancellation of the area service agreement would result in Capital Electric getting a general franchise instead of a limited franchise to serve just the areas outside the mutually agreed boundary line. Therefore, at MDU's insistence, the agreement was amended to indicate that in the event either party cancelled the agreement "all privileges, rights, obligations" of the agreement would continue so long as either party maintained a franchise with the City of Bismarck. Capital Electric agreed to the amendment, which, in effect, made the 1973 agreement irrevocable. This new amendment also became part of our city franchise.

For 30 years, MDU has and continues to enjoy unimpeded growth in its service areas in and around Bismarck. Capital Electric has waited a long time for some of Bismarck's growth to reach Capital's service area. When this finally happened, MDU has worked tirelessly to have the state legislature nullify the agreement MDU made with Capital Electric, which was ratified by action of the Bismarck City Council. We think a deal is a deal, and the legislature should not interfere to change the deal just because MDU no longer wants to honor its commitments.

HB 1454 promotes wasteful duplication of facilities. There are over 50 sections of land within the two-mile extraterritorial area around Bismarck. It appears Capital Electric has facilities in all 50 sections. If MDU extends service in half these sections, it will be duplicating our existing facilities. Our investment in serving these areas will be largely wasted, and our customers will pay the costs.

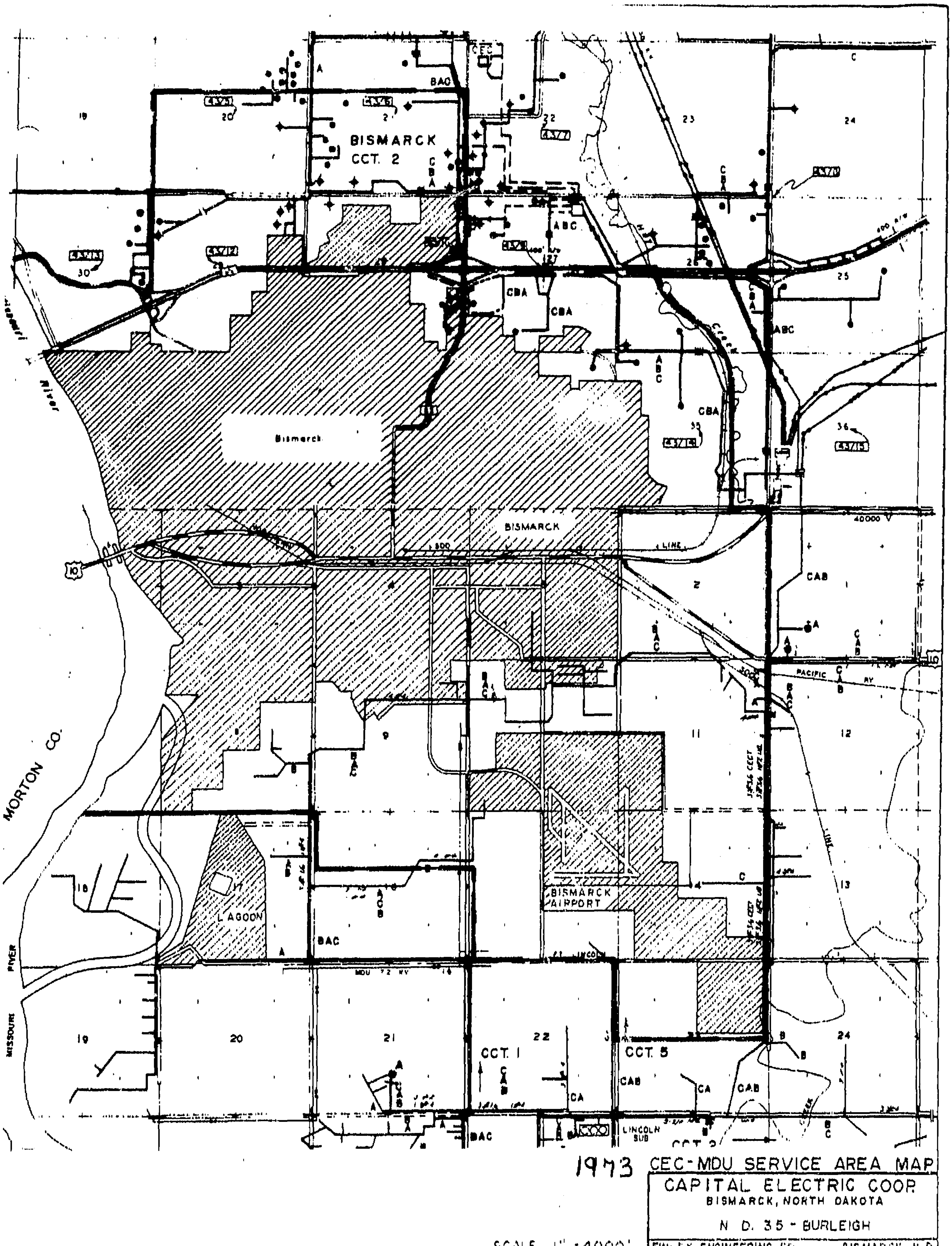
Not only would there be stranded facilities, but MDU would have to criss cross our existing system, in some areas, to provide service. The intermingling of utility systems creates safety concerns for employees of both organizations, as well as for the general public.

We did a cursory check of the number of unoccupied platted lots scattered throughout 48 subdivisions in the current two-mile extraterritorial area surrounding Bismarck. We counted 618 lots that are platted but unoccupied at this time. We have facilities adjoining 458 of those 618 lots. This is not because we are overbuilding. Some of these developments have been "cabled up", along with cable tv, telephone, and gas lines in the same trench. What happens if someone buys a lot on the extreme end of the development? In order to serve this lot, you end up installing the cable in all the other lots in the development, just to serve this one lot. How many of these lots would Capital Electric be able to serve under this bill? One half?

The problem, at least locally, is not that MDU doesn't have growth potential in the Bismarck-Mandan area – they do. They have over a thousand acres of undeveloped land in their service areas. The problem is they are not satisfied with this area any more. The area service agreement is a business deal with MDU and the City of Bismarck. It was done by mutual agreement to provide for orderly development and avoid wasteful duplication. I think we could all agree that, in business, you need to create win-win transactions if you are going to get the other side to consider a proposal. All we have seen from MDU are win-lose proposals – they take, we lose.

I urge a Do Not Pass on HB 1454.

Thank you.


BISMARCK
CCT. 2
Bismarck
BISMARCK
MORTON CO.
MISSOURI
RIVER
LAGOON
BISMARCK AIRPORT
CCT. 1
CCT. 5
LINCOLN SUB
PACIFIC
40000 V
MDU 72 KV
1973
CEC-MDU SERVICE AREA MAP
CAPITAL ELECTRIC COOP
BISMARCK, NORTH DAKOTA
N. D. 35 - BURLEIGH
SCALE 1" = 4000'
FINLEY ENGINEERING CO. BISMARCK, N.D.

AREA SERVICE AGREEMENT

The Montana-Dakota Utilities Co., (hereinafter referred to as the Company) and Capital Electric Cooperative, Inc., (hereinafter referred to as the Cooperative), in an earnest and sincere effort to avoid misunderstanding and disagreement over areas to be served by each party and to further avoid unnecessary and costly duplication of facilities, agree to the following general conditions:

1. Since the Company is and has been the principal supplier of electricity to the area encompassing the city of Bismarck, both parties agree that the Company should continue to serve this area and new areas contiguous to the city as further stipulated and identified in this agreement.

2. The Cooperative organized under the laws of the state of North Dakota to supply electricity to consumers in rural areas who are not receiving central station service as identified by law, thereby, both parties agree the Cooperative should continue such service in rural areas and other areas that are stipulated and identified in this agreement.

3. The parties hereto, recognize their obligation to avoid any duplication of facilities in order to provide electric service as efficiently and economically as possible to the public and to the Cooperative's members.

4. It is agreed that the interests of the consumer can best be met by providing that the Company serve those consumers within the area bounded by the heavy dashed black line on the attached map, which shall be made a part of this agreement, as well as any new consumers who come into that area and that the Cooperative will continue to serve its present consumers within the heavy dashed black line and will serve new consumers within the heavy dashed black line only under conditions further stipulated in this agreement. The principal service area of the Cooperative will be that area which lies outside the heavy dashed black line. The agreement shall apply only to area described by the map.

5. In the event there is need for either party to this agreement to serve a prospective consumer located in the area served by the other party, such service shall be supplied only with the written consent of the other party, provided that such individual exception shall not in any way alter the basic intentions of the parties, that each shall serve or offer service to the new consumers within their respective service areas.

6. In the event it becomes necessary or desirable to trade or sell electric facilities owned by either party, the selling price for such facilities shall be an amount equal to three times the gross annual revenue received from the property during the highest revenue year of the past 5 years. Only the existing facilities of value in serving customer by purchasing party shall be sold. Balance of facilities shall be disposed of as enumerated in Section 7.

7. It is mutually agreed that in the event that either party will terminate service to a consumer or consumers which it has served and it is necessary that one party remove its facilities from such an area, the other party will share the removal costs of direct labor, plus 25% and only in an amount equal to one-half the total labor costs for removing such facilities.

EXHIBIT A

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8. It is mutually agreed by both parties that each will continue to serve customers it now has within the boundaries of the other party as stipulated and identified in the agreement. Such customer identification shall be from the books and records of each of the parties as of date of signing of this agreement. If an exchange of customers can be agreed upon by both parties and to the satisfaction of the consumer or consumers, such an exchange can be made.

9. This agreement will in no way affect the Company's or Cooperative's needs or plans to construct transmission line facilities for the purpose of providing adequate electric power for the consumers in the area it serves.

10. This agreement is subject to approval, order, and other actions of the Public Service Commission of North Dakota or any other governmental agencies or bodies having jurisdiction over transactions and service herein covered.

11. It is realized that the foregoing instrument will not cover all conditions which may arise, but if followed in good faith by both parties, will serve as a guide to future developments and growth for both organizations, thus it is mutually agreed that this agreement will be reviewed at least once every five years for the purpose of evaluating its operation and to discuss possible modifications which may be desirable to more efficiently carry out the intent of both parties.

12. This agreement shall remain in force from the date hereof until cancelled by either party by giving twelve month's written notice to the other party of such cancellation.

MONTANA-DAKOTA UTILITIES CO.

President

ATTEST:

Secretary

July 5, 1973
Date

(SEAL)

CAPITAL ELECTRIC COOPERATIVE, INC.

President

ATTEST:

Secretary

June 22 - 1973
Date

(SEAL)

IP

LETTER AGREEMENT
AMENDING SERVICE AREA AGREEMENT
BETWEEN
CAPITAL ELECTRIC COOPERATIVE, INC.
AND
MONTANA-DAKOTA UTILITIES CO.

It is intended by the parties hereto to amend the July 5, 1973, Area Service Agreement, as amended, between Capital Electric Cooperative, Inc. and Montana-Dakota Utilities Co., which agreement sets forth and describes the service areas in the City of Bismarck, North Dakota, to be served by Capital Electric Cooperative, Inc., and describes the service areas in the City of Bismarck, North Dakota, to be served by Montana-Dakota Utilities Co.

It is agreed and understood that in the event that the said Service Agreement of July 5, 1973, as amended, is canceled by either Capital Electric Cooperative, Inc. or Montana-Dakota Utilities Co. during the term of either party's existing franchise with the City of Bismarck, North Dakota, that all of the privileges, rights, obligations, and restrictions as contained in such July 5, 1973, Service Agreement, as amended, shall, notwithstanding such cancellation, continue during the term of either party's respective franchise with the City of Bismarck to apply equally to both Capital Electric Cooperative, Inc. and Montana-Dakota Utilities Co.

AGREED TO and made a part of the 1973 Area Service Agreement this

3rd day of June, 1993.

CAPITAL ELECTRIC COOPERATIVE, INC.

Duane Lasher

MONTANA-DAKOTA UTILITIES CO., a division of MDU RESOURCES GROUP, INC.

Omar Unger

RESOLUTION

A Resolution granting to Capital Electric Cooperative, Inc., a corporation, its successors and assigns, the franchise and right to construct, maintain and operate, within and upon, in and under the streets, alleys and public grounds of the City of Bismarck, North Dakota, an electric distribution system for transmitting and distributing electric energy for public and private use.

WHEREAS, pursuant to law the City has the power to grant a non-exclusive franchise for a term of no more than twenty years; and

WHEREAS, pursuant to city ordinance the City may grant a franchise, by resolution, following public hearing; and

WHEREAS, on the 25th day of May, 1993, a public hearing was held by the Board of City Commissioners; and

WHEREAS, it is in the public interest that a franchise be granted to Capital Electric Cooperative, Inc., for an electric distribution system.

NOW, THEREFORE, BE IT RESOLVED by the Board of City Commissioners of the City of Bismarck, North Dakota:

Article I. Definitions. As used herein, the following words and terms are defined as follows:

1. "City" means the City of Bismarck, North Dakota.

2. "Franchise" means all of the rights and obligations extended by City to Grantee herein.

3. "Grantee" means Capital Electric Cooperative, Inc.

Article II. Grant of Authority. There is hereby granted by the City to the Grantee, subject to the conditions contained herein, the right and privilege to occupy and use the streets, alleys and public grounds of the City as now, or hereafter constituted, for the purpose of constructing, maintaining and operating, within, upon, in and under the same, an electric distribution system for transmitting and distributing electric energy for public and private use.

1. In order to avoid a duplication of facilities between the Grantee and other electrical franchises, the authority granted Capital Electric under this franchise is limited geographically to the areas within the city described in the Area Service Agreement dated July 5, 1973 executed by Capital Electric Cooperative, Inc., and Montana-Dakota Utilities Co., as modified by Amendment dated October 25, 1990, and any future amendments to the Area Service Agreement agreed to by Grantee and Montana-Dakota Utilities. The Grantee shall enjoy all of the privileges and rights described in the Area Service Agreement. If the Area Service Agreement and Amendments thereto are canceled by either electric supplier during the term of this franchise, all privileges, rights, obligations and restrictions as therein stated shall continue to apply to both Capital Electric Cooperative, Inc., and Montana-Dakota Utilities Co. A copy of the Area Service Agreement and Amendment are attached as Exhibits A and B to this resolution.

Article III. Grantee's Obligations. Grantee shall maintain an efficient distribution system for furnishing electric energy for public and private use at such reasonable rates as may be approved by and under such orders, rules or regulations as may be issued by any federal or state agency having or obtaining jurisdiction thereof.

Article IV. Non-Exclusive Grant. This franchise shall not be exclusive and shall not be construed to prevent the City from granting to any other party the right to use the streets, alleys and public grounds of the City for like purposes.

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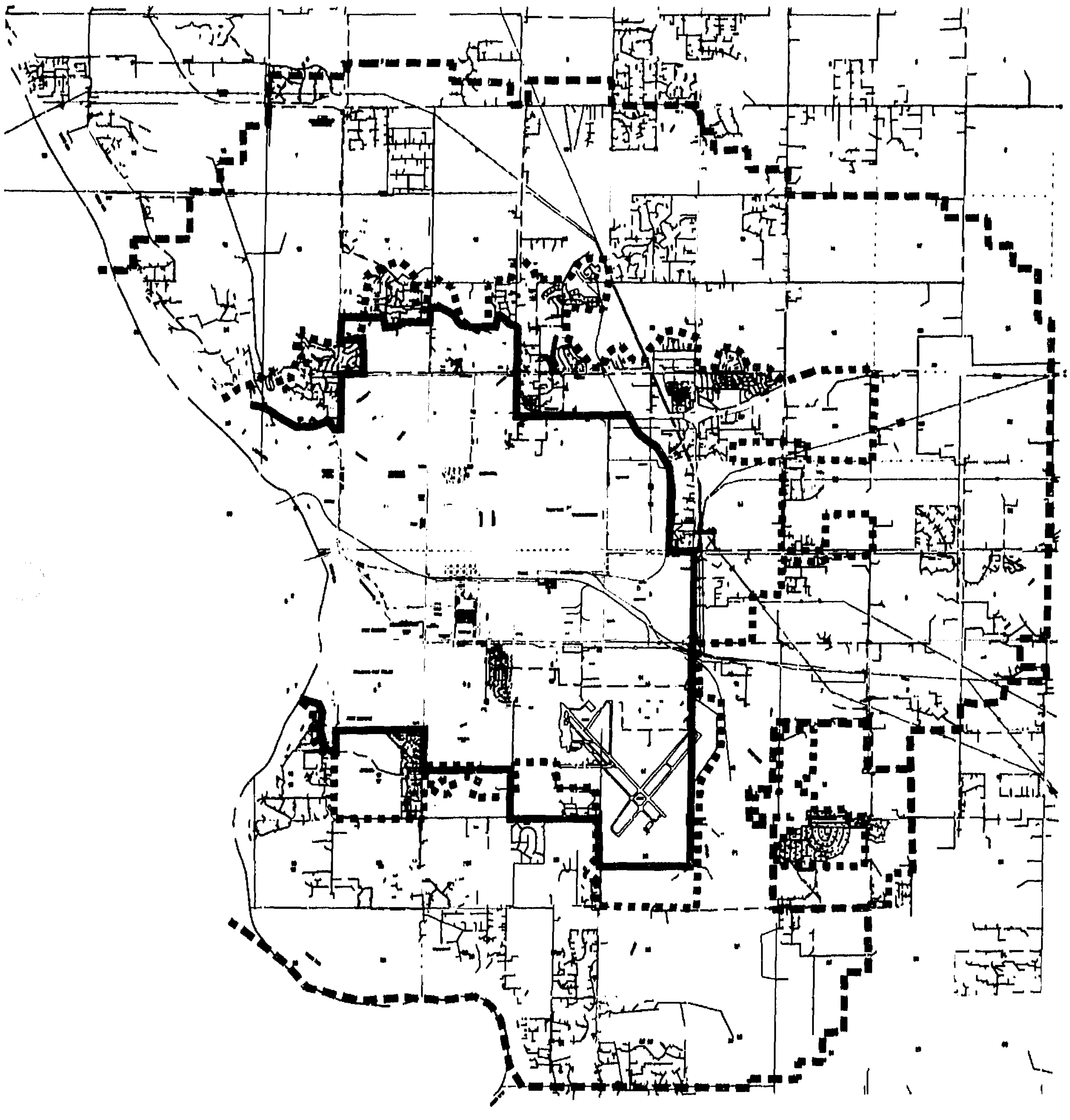


CAPITAL
ELECTRIC
COOPERATIVE, INC.

CITY LIMITS
2 MILE BOUNDARY
MDU/CEC SERVICE AREA BOUNDARY

Testimony of Pam Geiger, Director
Mor-Gran-Sou Electric Cooperative
RE: HB 1454--8 a.m. Wednesday, Feb. 5, 2003
Before the House Industry Business and Labor Committee

Mr. Chairman and members of the committee,

My name is Pam Geiger. I am a rural resident of Morton County, living near Mandan. I'm also a director of Mor-Gran-Sou Electric Cooperative, based in Flasher. I have served on this board since 1998.

I'm here today to register Mor-Gran-Sou Electric Cooperative's opposition to HB 1454, which is noted in the board resolution that I have attached to my testimony.

I also want to point out that Mor-Gran-Sou, like Capital Electric, entered into a service area agreement with MDU, which was approved by the city of Mandan and forwarded on to the Public Service Commission, in 1976. This agreement was again approved by the city of Mandan in 1996. A map outlining this territory agreement is also attached. As you can see, there remain large tracts of land in which MDU can extend utility services in and around the city of Mandan for many years to come--without interruption by Mor-Gran-Sou.

Mr. Chairman, members of the committee, I just wanted the record to show, that Mor-Gran-Sou, too, has operated in good faith with the city of Mandan and MDU in extending utility services that serve the public interest in and around the city of Mandan. We oppose this bill because it would negate this agreement and mandate that we do all this over again.

I'd be happy to answer any questions you might have.

Mor-Gran-Sou Electric Cooperative
Your Touchstone Energy® Partner

P.O. Box 297
202 6th Avenue West
Flasher, ND 58535-0297
Telephone: (701) 597-3301
Fax: (701) 597-3915

Toll-free (800) 750-8212

P.O. Box 1175
2816 37th Street NW
Mandan, ND 58554
Telephone: (701) 663-0297
Fax: (701) 663-2279

I, Robert Katus, Secretary-Treasurer of the Board of Directors of Mor-Gran-Sou Electric Cooperative, Inc., do hereby certify that; the following resolution was duly approved and adopted at a regular meeting of the Board of Directors legally and duly called for **January 29, 2003** and that said meeting was held pursuant thereto at Flasher, North Dakota.

Further, that the following resolution is a true and correct copy as approved and adopted and that it is a copy of a part of the original minutes entered in the minute book of the Board of Directors at its regular meeting on **January 29, 2003**.

RESOLUTION

Whereas, Mor-Gran-Sou Electric Cooperative, Inc. believes in protecting the members of the Cooperative and the general public from needless duplication of facilities and has worked for orderly development within the extraterritorial areas surrounding the city of Mandan to limit this duplication. To support this goal, Mor-Gran-Sou and Montana-Dakota Utilities entered into an agreement on February 12, 1976 to avoid duplication of facilities both within and adjacent to the city.

Whereas, to strengthen this agreement, Montana-Dakota Utilities proposed and Mor-Gran-Sou did not object, that the 1976 Agreement become part of Mor-Gran-Sou's franchise with the city of Mandan. This Agreement outlines designated services areas within the city to encourage orderly development. Based on the franchised areas and reasonable expectations for development, the Cooperative has made long-term investment in the form of major capital improvements to provide for orderly development within and adjacent to the city of Mandan.

Whereas, the investment made by the members of the Cooperative was done assuming the Cooperative would not face unreasonable interference from other electric service providers. This safeguard is provided to all electric public utilities and electric cooperative corporations because of the capital-intensive nature of providing safe and reliable electric service.

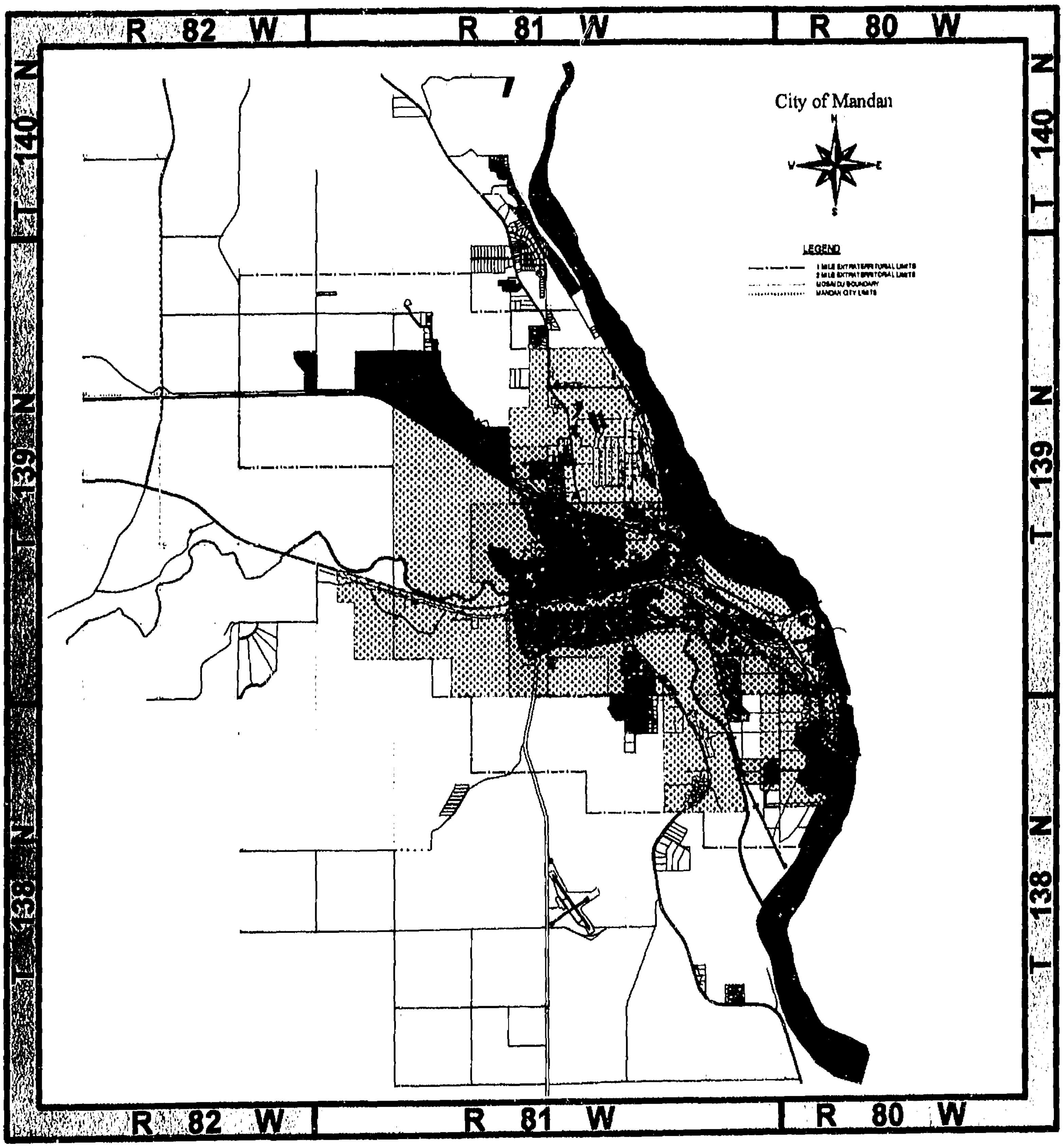
Whereas, this bill would interfere with the authority of the cities of North Dakota to issue franchises to utilities serving their communities.

Whereas, House Bill 1454 (HB-1454) disregards the long-term efforts made to limit duplication of facilities through planning and orderly development. HB-1454 would strand good faith investments of the Cooperative, by limiting its ability to grow within areas it has traditionally served and reasonably planned to serve. This stranded investment would cause an undue hardship on the members of the Cooperative and result in higher electric rates.

NOW THEREFORE, BE IT RESOLVED, that Mor-Gran-Sou Electric Cooperative, Inc. opposes HB-1454 in its entirety and requests the legislative body to vote DO NOT PASS on HB-1454.

ROBERT KATUS, SECRETARY-TREASURER

MOR-GRAN-SOU ELECTRIC COOPERATIVE, INC.



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AGREEMENT

MONTANA-DAKOTA UTILITIES CO., hereinafter referred to as "Company," and MOR-GRAN-SOU RURAL ELECTRIC COOPERATIVE, INC., hereinafter referred to as "Cooperative," recognizing their obligation to avoid duplication of facilities in order to provide electric service efficiently and economically to Company's customers and Cooperative's members; and in an earnest and sincere effort to avoid misunderstandings and disagreements over areas to be served by each party, and to avoid unnecessary and costly duplication of facilities, do AGREE as follows:

1. Company is an incorporated, private utility and is, and has been, the principal supplier of electric services to an area encompassing the City of Mandan and other areas contiguous thereto, and the parties agree Company should continue to serve this area and other areas contiguous to the City, as identified and stipulated in this Agreement.

2. Cooperative is organized under the laws of North Dakota as an electric cooperative to provide electric services to consumers in rural areas surrounding the City of Mandan; and the parties agree Cooperative should continue such service in rural areas which are identified and stipulated in this Agreement and the attachments hereto.

3. It is agreed the electric-power needs of the public can be most efficiently provided by Company serving those consumers within the area bounded by the cross-hatched lines on the attached map, as well as any new consumers coming into that area, and that Cooperative will most effectively serve its present members outside the area bounded by said cross-hatched lines, as well as any new consumers coming into that area.

4. It is agreed by the parties that each may, and will, continue to serve the customers it now has at their present locations within the boundaries of the areas reserved to each party by this Agreement. However, it is agreed that, if an exchange of customers can be agreed upon by the parties

and to the satisfaction of a customer or customers, such an exchange can be made.

5. In the event there is a request or need for either party to serve a prospective customer within the area reserved to the other party, such service shall be supplied only with the written consent of such other party; provided, that such exception and consent shall in no manner alter the basic intentions of the parties that each shall serve or offer service to the new consumers within its respective service area.

6. In the event it becomes necessary or desirable for either party to trade or sell electric facilities to the other, the price to be paid for such facilities shall be an amount equal to three (3) times the gross annual revenue received from the property during the highest revenue year of the immediate past five (5) years. In the event the trade or sale involves underground facilities, there shall be added to the price one-half (1/2) of the undepreciated value of the facility. Only existing facilities of value in serving customer(s) by the purchasing party shall be purchased.

7. It is agreed that should either party terminate service to a customer or customers which it has served, and it is necessary that such party remove its facilities serving the customer or customers, the other party will share equally in the removal costs of direct labor, plus a factor of twenty-five percent (25%) applied to the direct labor cost for overhead.

8. It is agreed by the parties that the rights, necessities or plans of either Company or Cooperative to construct transmission line facilities for the purpose of providing additional electric power to consumers within the area of its service is in no manner affected by this Agreement.

9. It is the understanding of the parties that this Agreement may be subject to approval, orders and other actions of the Public Service Commission of the State of North Dakota and any other governmental agency or body having jurisdiction over transactions and services covered by the terms of

this Agreement.

10. The parties agree to review this Agreement at least once every five (5) years hereafter, at the request of either party to the other, for the purpose of evaluating its operations and to discuss and make modifications which may be desirable and agreed upon to more effectively carry out the intent of the parties hereto.

11. This Agreement shall remain in force and effect from the date hereof or until cancelled by either party upon giving of twelve (12) months' written notice to the other party of such cancellation.

IN WITNESS WHEREOF, the parties hereto have made and entered into this Agreement as of the 12 day of FEBRUARY, 1976.

MONTANA-DAKOTA UTILITIES CO.

Attest: ______________ Secretary BY: ______________ President

MOR-GRAN-SOU RURAL ELECTRIC COOPERATIVE, INC.

Attest: ______________ Secretary BY: ______________ President

IR

MONTANA-DAKOTA UTILITIES CO.
400 NORTH FOURTH STREET
BISMARCK, NORTH DAKOTA 58501

February 20, 1976

COPY

The Honorable Richard A. Elkin, President
North Dakota Public Service Commission
State Capitol Building
Bismarck, North Dakota 58501

Dear Commissioner Elkin:

Please accept the attached filing of an Area Service Agreement between Mor-Gran-Sou Electric Cooperative, Inc. and Montana-Dakota Utilities Co. covering Mandan and its environs.

Sincerely yours,

Warren Dotseth

Warren Dotseth
Vice President
Public Affairs

WAD:ss
Attachment

cc: Mr. R. L. Jacobsen - MDU, Bismarck, ND (w/o Attach.)
Mr. John W. Allen - Mor-Gran-Sou Electric Cooperative, Flasher, ND (w/o Attach.)

OFFICE ROUTING

RT		Date	Init
1	Manager	JWA	
	Mgr Asst		
	Off Mgr		
	Line Sup		
	Engr		
	Stores		
2	File		

MOR-GRAN-SOU ELECTRIC COOPERATIVE, INC. Flasher, North Dakota 58535

ORDINANCE NO. 843

AN ORDINANCE GRANTING TO MOR-GRAN-SOU ELECTRIC COOPERATIVE OF FLASHER, NORTH DAKOTA, ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE WITHIN AND UPON, IN AND UNDER THE STREETS, ALLEYS AND PUBLIC GROUNDS OF THE CITY OF MANDAN, MORTON COUNTY, NORTH DAKOTA, AN ELECTRIC DISTRIBUTION SYSTEM FOR TRANSMITTING AND DISTRIBUTING ELECTRIC ENERGY FOR PUBLIC AND PRIVATE USE, AND DEFINING THE EXTENT, LIMITATIONS AND CONDITIONS OF SUCH RIGHT AND PRIVILEGE.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF MANDAN, MORTON COUNTY, NORTH DAKOTA:

SECTION 1. For convenience herein, said municipal corporation is designated and referred to as "Municipality," and Mor-Gran-Sou Electric Cooperative is designated and referred to as "Grantee." Any reference to either includes their respective successors and assigns.

SECTION 2. There is hereby granted to Mor-Gran-Sou Electric Cooperative, Inc., a cooperative, Grantee, its successors and assigns, subject to the limitations herein stated, the right and franchise to occupy and use the streets, alleys and public grounds of the municipality as now, or hereafter constituted, for the purpose of constructing, maintaining, and operating, within, upon, in and under the same, an electric distribution system for transmitting and distributing electric energy for all public and private uses.

a. In order to avoid a duplication of facilities between the Grantee and other electrical franchises, the authority granted Mor-Gran-Sou Electric Cooperative, Inc. under this franchise is limited geographically to the areas within the city described in the Agreement dated February 12, 1976, executed by Mor-Gran-Sou Electric Cooperative, Inc. and Montana-Dakota Utilities Co. and any future amendments to the Agreement agreed to by Grantee and Montana-Dakota Utilities Co. The Grantee shall enjoy all the privileges and rights described in the Agreement. If the Agreement and any Amendments thereto are canceled by either electric supplier during the term of this franchise, all privileges, rights, obligations and restrictions as therein stated shall continue to apply to both Mor-Gran-Sou Electric Cooperative, Inc., and Montana-Dakota Utilities Co. A copy of the Agreement is attached as Exhibit A to this ordinance.

SECTION 3. Grantee shall maintain an efficient distribution system for furnishing electric energy for public and private use during twenty-four (24) hours of each day at such reasonable rates as may be promulgated and approved by the membership of Grantee under the laws and regulations of the State of North Dakota and the Rural Electrification Administration.

SECTION 4. Municipality reserves any right it may have under its police power, or otherwise, to control and regulate the use of its streets, alleys and public grounds by Grantee, and any construction, reconstruction or relocation occasioned by changes in streets, alleys or public ways shall be at Grantee's own expense for its property.

SECTION 5. Grantee shall indemnify and save and hold Municipality harmless from all loss or damage due to suits, judgments, claims or demands whatsoever caused by Grantee's negligence in the construction, installation and maintenance of its distribution system in the streets, alleys and public grounds of the Municipality.

SECTION 6. Grantee shall have the right, with approval of Municipality, to assign this franchise to any person, association or corporation, but all obligations of the Grantee shall be binding upon its successors and assigns.

SECTION 7. Within thirty (30) days after passage and adoption of this Ordinance, the Grantee shall file with the Clerk-Auditor of the Municipality its written acceptance of this franchise.

SECTION 8. This franchise shall continue and remain in full force and effect for a period of twenty (20) years from the date upon which this Ordinance shall become effective, as provided by law. This franchise shall not be exclusive and shall not be construed to prevent Municipality from granting to any other person, association or corporation, the right to use the streets, alleys and public grounds of Municipality for like purpose. Provided further, that Municipality may terminate this franchise upon one (1) year's written notice to Grantee.

Robert [signature]
President, Board of City Commissioners

Attest:

[signature]
City Auditor

First Reading:	02-20-96
Amended:	03-19-96
Second Reading:	03-19-96
Final Passage:	03-19-96

Testimony of George Berg
Before the House Industry, Business & Labor Committee
HB 1454
February 5, 2003

Good morning. My name is George Berg. I am President and CEO of Nodak Electric Cooperative, headquartered in Grand Forks. I urge a DO NOT PASS on House Bill 1454.

The investor-owned utilities (IOUs) are suggesting the North Dakota Legislature resolve their concerns about future growth opportunities by taking away territories the electric cooperatives have served for decades – areas the IOUs previously would not serve. The bill would result in a transfer of growth area from Nodak Electric to Xcel Energy. The purpose of my testimony this morning is to illustrate to you that a) as the saying goes, we've been there, done that, and b) we can ill afford to solve Xcel Energy's growth concerns at our expense.

With regard to the first point, before the adoption of the Territorial Integrity Act in 1965, Nodak and NSP had an Area Service Agreement. The map attached to my testimony shows the city limits of Grand Forks in 1966, and the agreed upon boundary lines between NSP and Nodak. The shaded area shows the 3,700 acres of undeveloped land outside the City of Grand Forks that was reserved for growth for NSP. Even after the Territorial Integrity Act was passed, Nodak honored the Area Service Agreement and declined to serve any new accounts requesting service in the above-described area.

In the years following the Territorial Integrity Act, we watched with envy the growth enjoyed by NSP as the city grew. During these years, the medical park was developed, the Columbia Mall was built, and thousands of residential services were connected in NSP's new territory. Ironically, many of these residential services were thanks to a migration of people from our service area into Grand Forks. It should be noted that NSP did not suggest at any time the two utilities share the growth of Grand Forks fifty-fifty. Instead, NSP enjoyed virtually all of the growth of Grand Forks, and we could only hope that some day the City would grow through these thousands of acres of undeveloped land, and we would finally enjoy some urban spillover into territory we had already been serving for three decades.

In later years, we began to benefit from the expansion of Grand Forks, as parts of the City grew into our service area. We have invested heavily in underground distribution facilities, including switches and two-way redundant feeds. Since the Territorial Integrity Act was passed, our power supplier, Minnkota Power Cooperative, has invested millions of dollars adding three substation delivery points around Grand Forks to guarantee the best service possible for our existing and new customers in this growth part of our service area. So, when I say we have been there, done that, I mean that we have long ago given up part of our potential service area to allow growth potential for NSP/Xcel Energy. They have and continue to experience growth in electric sales because of our past agreement. In addition, they have and continue to enjoy 100% of the natural gas growth in and around Grand Forks.

The second point of my testimony is that Nodak can ill-afford to resolve Xcel's growth concerns at our expense. I believe you will understand our position as you compare our business to that of Xcel Energy. Nodak is fairly large geographically, but like all electric cooperatives, we are tiny in the electric utility industry. Our biggest challenge is that we serve a predominantly rural area, which is declining in population. We own nearly 8,000 miles of distribution system, which poses enormous maintenance and service reliability challenges. Over that system, we deliver power to less than 13,000 customers.

A typical strategic planning session for Nodak entails more planning for decline than for growth. The harsh reality is that 90% of our distribution system serves areas that have fewer people each year. Compounding the impact of decades of migration from rural North Dakota to urban communities, Nodak was adversely affected by the removal of the Minuteman Missiles from Grand Forks Air Force Base. In our entire service area, which covers all or part of ten counties, we have only one area that shows consistent growth over the last ten years. This is the area around Grand Forks.

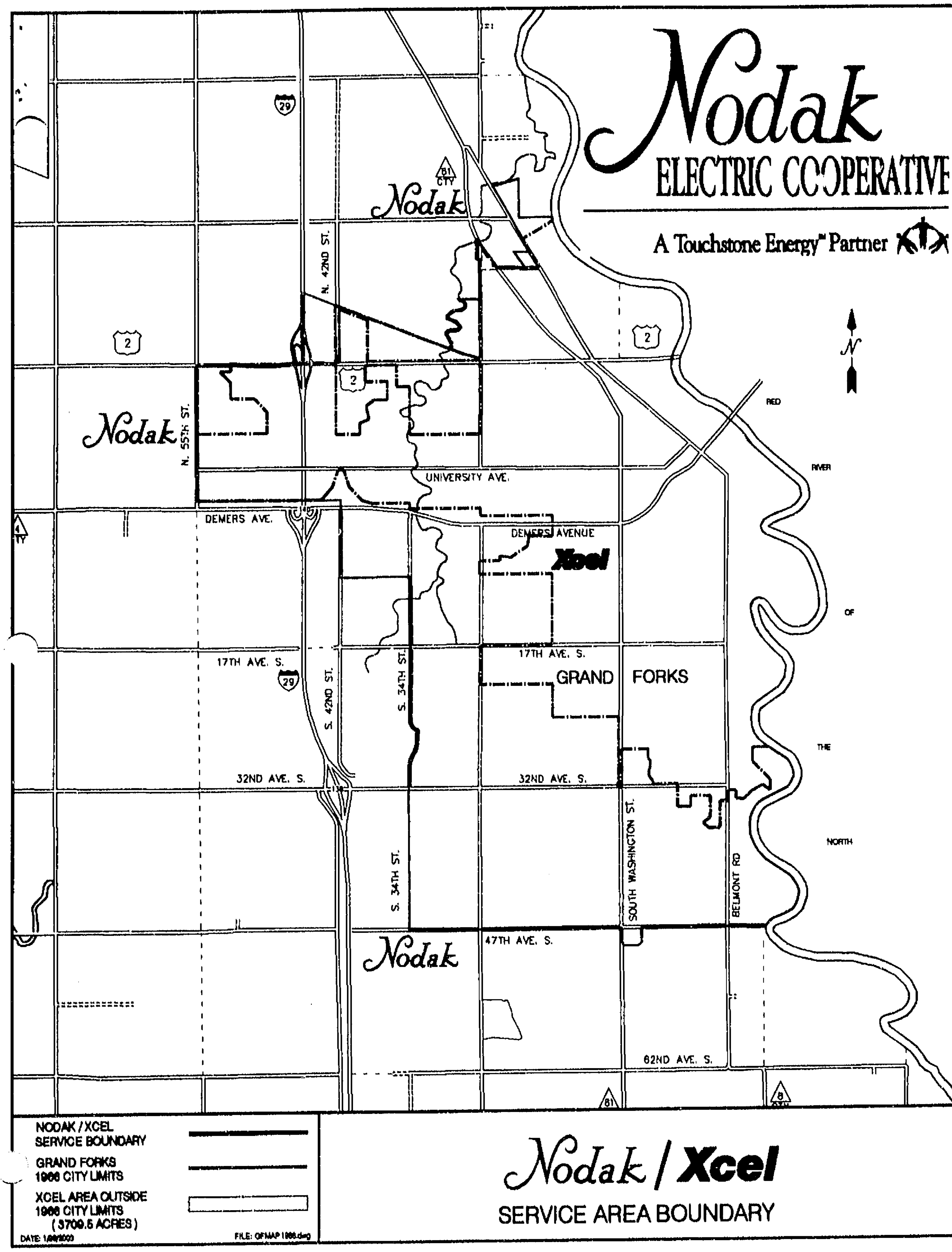
In contrast, Xcel Energy is a huge corporation that sells electricity and natural gas in 12 states. They presently have 3.2 million electric customers and 1.7 million gas customers. Annual revenue for the sale of electricity and gas is reported to be $11.6 billion. I would expect Xcel Energy is the opposite of Nodak Electric in that it enjoys growth in most of its service areas in their sale of electricity or gas, or both.

Xcel has come to the legislature asking you to help them resolve their growth concern. They describe the solution as one of fairness and compromise. If the proponents of HB 1454 are successful, Xcel will increase their total $11.6 billion sales by a tiny and insignificant fraction. It's unlikely you will notice the change in their annual report. If the proponents of HB 1454 are successful, Nodak Electric may not grow at all in the future. Losing half of our growth area around Grand Forks may leave us with less than what is needed to offset decline in the rest of our service area. For sure you will notice the change in our annual report as it will be the most important issue we will be reporting to our members -- an issue that will directly affect our retail rates.

Clearly, this bill is not about fairness and compromise. It is not fair when the results are that a small utility like Nodak is significantly harmed so a huge utility like Xcel Energy will receive minimal gain. It is not compromise when only one side gains and only the other side loses.

Please vote DO NOT PASS on HB 1454. Thank you.

Attachment


Nodak
ELECTRIC COOPERATIVE
A Touchstone Energy™ Partner
Nodak
Nodak
Nodak
Xcel
N. 42ND ST.
N. 55TH ST.
UNIVERSITY AVE.
DEMERS AVE.
DEMERS AVENUE
17TH AVE. S.
17TH AVE. S.
GRAND FORKS
S. 42ND ST.
S. 34TH ST.
32ND AVE. S.
32ND AVE. S.
SOUTH WASHINGTON ST.
BELMONT RD
47TH AVE. S.
62ND AVE. S.
RED RIVER OF THE NORTH
N
NODAK / XCEL SERVICE BOUNDARY
GRAND FORKS 1966 CITY LIMITS
XCEL AREA OUTSIDE 1966 CITY LIMITS (3709.5 ACRES)
Nodak / Xcel
SERVICE AREA BOUNDARY

TESTIMONY OF DAVID LOER
INDUSTRY, BUSINESS AND LABOR COMMITTEE
HB1454
FEBRUARY 5, 2003

- Good morning, Chairman Keiser and members of the committee
- I am David Loer, President & CEO of Minnkota Power Cooperative, Inc. headquartered in Grand Forks
- I represent Minnkota and speak in opposition to HB1454
- I have also been authorized to speak on behalf of Basin Electric Cooperative, with headquarters here in Bismarck
- Both Basin and Minnkota are G&T cooperatives, furnishing "G" (generation) and "T" (transmission) services to distribution electric cooperatives
- To fulfill our obligation to serve today's and future customers, we have built generation and transmission facilities throughout our service area, including areas around Grand Forks, Fargo/West Fargo and Bismarck/Mandan
- Basin and Minnkota are very large investors in North Dakota electric facilities - over $3 billion in generation and transmission
- My primary concern with HB1454 regards our investments in transmission facilities
- Because transmission facilities are built to serve customer growth, utility facilities are not fully utilized when put in service

- With expected customer and load growth, utilization improves over the life of the facilities

- Minnkota has invested about $10 million in transmission facilities near Fargo/West Fargo and Grand Forks

- Today these "near cities" facilities are about 65% utilized, demonstrating our anticipation of growth in those areas

- If HB1454 were approved, a large portion of our anticipated growth and facility usage would not occur

- This reduced growth scenario would result in long term stranded facility investment costs shifted to our other customers in eastern North Dakota

- The agriculture community we serve with electricity cannot and should not shoulder the additional burden of facilities stranded because of HB1454

- As a friend of mine often states, "Once Again"

- Today is the third time I have testified before a legislative committee opposing an attempt by the investor-owned utilities to steal cooperatives' service territory

- 4 years ago it was SB2389

- 2 years ago it was SB2418

- Neither, thankfully, was approved

- Here we are, "once again," but this time with a new twist

- While HB1454 is cleverly written to appear as a compromise, it is not
- Only cooperatives would be giving up service territory under HB1454
- Only investor owned utilities would be gaining service territory under HB1454
- HB1454 is **not** a compromise
- Once again, please oppose HB1454
- Thank you

Electric territory laws in North Dakota

History

The North Dakota Legislative Assembly passed the Territorial Integrity Act (TIA) in 1965 to protect rural electric cooperatives (RECs) from investor owned utilities (IOUs) moving into their rural areas. While the law successfully protected RECs, the interpretation of the law has prevented IOUs from growing to serve new customers in what was once rural farmland, but is now urban in nature, and has restricted IOUs to the city limits of that time period.

The law states that:

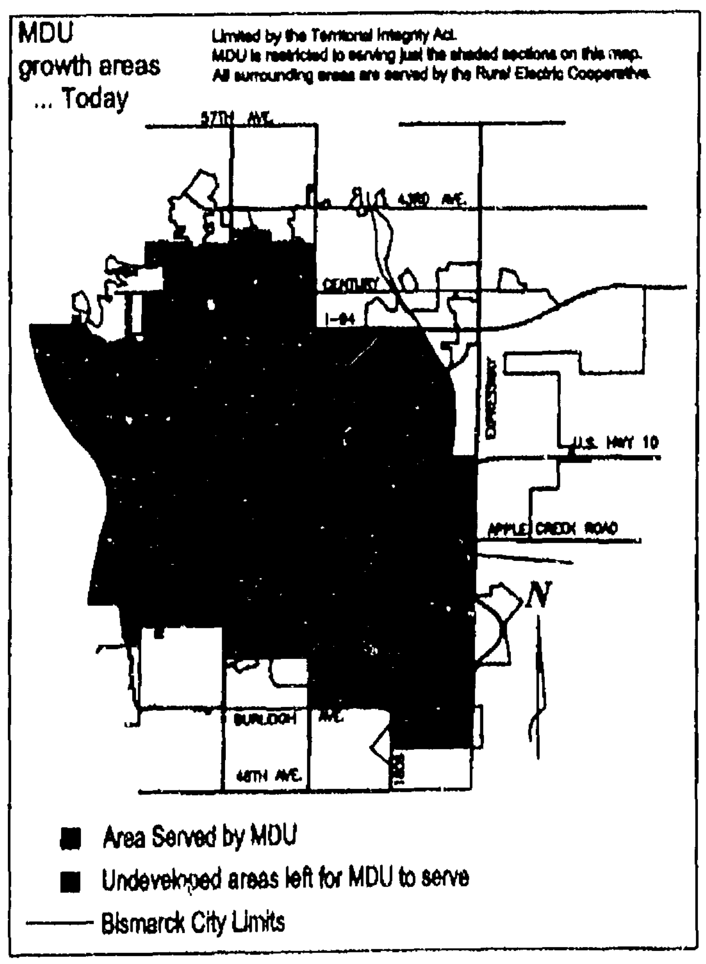
- IOUs cannot extend service to a new customer outside city limits without a Certificate of Public Convenience and Necessity.
- IOUs cannot extend service to an area within city limits if doing so interferes with the service of an REC or duplicates their facilities.

Additionally, RECs have no third party regulatory oversight. They can extend their facilities almost anywhere regardless of cost or return on investment.

Impact

The impact of the TIA on Montana-Dakota Utilities Co.'s service area is most apparent in the city of Bismarck. Capital Electric Cooperative, which serves rural Bismarck, now provides electrical energy to an estimated 3,800 customers inside the city limits. Areas available to Montana-Dakota for expansion of its electric distribution system are limited to scattered vacant lots in developed neighborhoods and business districts.

The map at right shows Bismarck's current city limits including areas served by Montana-Dakota and Capital. The proposed amendment to the current TIA would require Montana-Dakota and Capital Electric to negotiate the service of growth areas around the city. The amendment would set a similar process in place for electrical service for growth areas surrounding Mandan.



New Territorial Equity Amendment

The Territorial Equity Amendment will provide opportunities for both urban area electric cooperatives and investor owned utilities to grow in the metropolitan areas within the state.

- Montana-Dakota Utilities Co. (MDU), Otter Tail Power Company and Xcel Energy have worked together on a new solution to the electric service area problem.
- The proposed amendment does not repeal the Territorial Integrity Act; it simply amends the law to apply a new negotiating process in a few geographical areas of the state.
- Qualifying areas to which the amendment applies include cities of 10,000 or more within Metropolitan Statistical Areas (MSAs) in North Dakota. This includes Fargo, West Fargo, and Grand Forks, which are served by Xcel Energy, and Bismarck and Mandan, which are served by MDU.
- The amendment directs the utilities presently serving these cities to negotiate service areas in each city's extraterritorial zone. If the utilities are unable to reach agreement on the new service boundaries, the proposed law requires the ND Public Service Commission to define the new service areas.
- This new solution provides for orderly future electric utility development and eliminates duplication of service by working within cities' extraterritorial zones. These designated zones encircle city limits and are used by city leaders to plan for future development.
- This plan offers a long-term solution because, as the cities' extraterritorial zones move outward, the utilities' service areas will expand along with the zones.
- Under this proposal, no present utility customers will have to change their energy provider.

What the amendment does NOT do

This amendment does not "kick the co-ops out" of any existing cities. Instead, it allows urban area electric cooperatives to continue to serve metropolitan areas that have expanded into their traditional service areas (and for which they have built facilities), and it provides investor owned utilities serving the cities with limited opportunity to serve new territories as the cities expand.

The new proposal affects only five communities in North Dakota and only four of the 17 electric cooperatives in the state. Rural electric cooperatives provide a very necessary service in the state, and this amendment only affects electric service areas in metropolitan areas, leaving the truly rural communities and cooperatives unaffected by any change.

Why does this amendment provide a fair solution to the current TIA problem?

No other business in North Dakota – perhaps in the country – operates under such a restrictive climate. The prohibitive laws under which investor owned utilities operate do little to spur business growth. No grocery store, car dealership or other business operates under such restrictions. By allowing more than one utility to serve in a community, it keeps prices and service competitive, benefiting businesses and consumers.

Testimony of Dennis Hill
Executive vice president--North Dakota Association of Rural Electric Cooperatives
RE: HB 1454--8 a.m. Wednesday, Feb. 5, Brynhild Haugland Room
Before the House Industry Business and Labor Committee

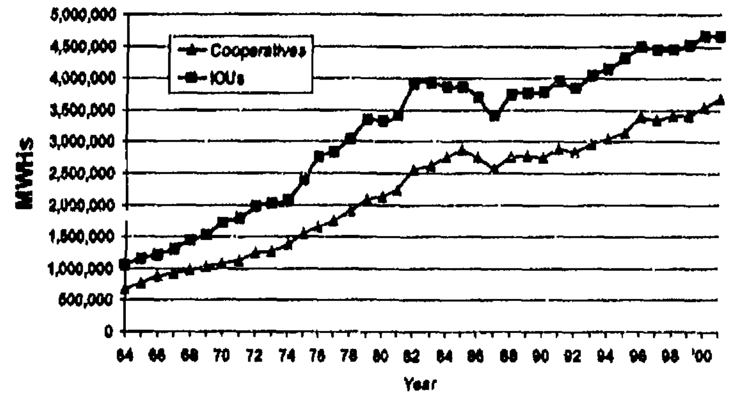
Mr. Chairman, and members of the committee: For the record, my name is Dennis Hill, and I serve as executive vice president of the North Dakota Association of Rural Electric Cooperatives. NDAREC has 17 locally-owned distribution cooperatives and five member-owned generation and transmission cooperatives as its members. In North Dakota, this represents about 40% of the electricity sold at retail. Our generation and transmission cooperative members own and control about 90% of the state's lignite-based generation plants.

I rise today to seek DO NOT PASS on HB 1454. In my view, there is not a factual or philosophical foundation on which to pass this bill.

Much of the IOU's argument for this bill is based on a premise that they fear the day is coming when they won't be able to grow their business in North Dakota, and thus want this legislature to hand over to them some of the more lucrative territories surrounding the state's largest metropolitan areas.

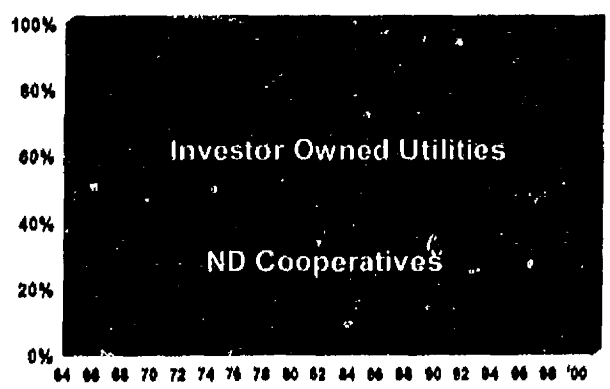
I want to call attention to two graphs. The first shows the growth in retail sales (in megawatt hours) for investor-owned utilities and rural electric cooperatives in the state. You'll see from this graph that the IOUs and the RECs have enjoyed nearly parallel growth in the state since 1965.

MWHs of electricity sold
1964 to 2001



The second graph represents market share. Here, too, you'll see that the IOUs and the RECs in the state have enjoyed nearly the same level of market share from 1965 on: about 60% of the retail sales are made by IOUs, while some 40% of the market share is held by RECs. Again, no evidence here that the IOUs can't or haven't grown.

Market Share of Electricity Sold
Cooperatives Compared to IOUs
1964 to 2001



On the other hand, I would like to point out to this committee that I represent members of utility cooperatives that have suffered actual decline in retail sales over the past decade. Here are the numbers:

Name of Co-op	1991 MWH Sales	2001 MWH Sales	Decline
West Plains Electric Co-op, Dickinson	203,715	192,669	-5.5%
Cavalier Electric Co-op, Langdon	37,301	33,101	-11.2%
Oliver Mercer Electric Co-op, Hazen	174,558	161,308	-7.5%
McKenzie Electric Co-op, Watford City	290,418	245,980	-15%

If West Plains Electric, for example, had applied the same approach as the IOUs use in HB 1454, it would have come to this legislature nearly a decade ago and said, "Please change state law to force MDU to carve up its territory in the city of Dickinson and provide us a reasonably equal opportunity to grow our business, because otherwise, we won't be able to grow our business."

I dare say MDU would have resisted this approach on at least two grounds: The first is fairness. MDU would logically argue that they were already serving their territory in the city and should be allowed to do so to maximize the return on their existing investment. Second, MDU would likely argue that allowing West Plains Electric to build facilities in their areas of the city would create duplication of facilities.

In our view, HB 1454 creates nearly this situation in the reverse. It would mandate that IOUs be guaranteed growth in territories in which RECs are already serving; and it would create duplication of facilities along the way. The only difference is that MDU has not experienced a decline in sales, nor will they in the forseeable future.

The IOUs have grown, can grow, and will grow their retail electric business in North Dakota without a change to the Territorial Integrity Act. This growth can and will occur by following any number of strategies that are available to them (and the state's electric cooperatives and municipal electric utilities as well): by marketing electricity in new and innovative ways; by supporting economic development and business expansion programs that retain and expand existing customers or create and recruit new ones; through urban renewal projects--like the Renaissance Zones this legislature created last session; and by serving new developments that may occur in the thousands of acres of yet-to-be developed land that still exists in IOU territory all across North Dakota.

Philosophically, I ask for a Do Not Pass recommendation on HB 1454 on the grounds that it sets a state mandate, it strips away local control, and it certainly sends the wrong signal to one of the state's strongest corporate citizens and partners.

By my count, there are 18 references to "must" and "shall" in the first four sections of HB 1454. These are mandates. Ironically, the investor-owned utilities have joined a coalition this session of the legislature to argue that government mandates hurt private sector initiatives and thus should be opposed. They argue that the market should determine outcomes. This opposition to mandates was expressed in recent hearings dealing with the development, growth and use of bio-diesel and ethanol in the state.

HB 1454 strips away local control by transferring the authority to divide up territories to the Public Service Commission. This would negate locally crafted and agreed upon franchises, maps and processes that utilities and cities have already put in place and use in Bismarck, Mandan, Fargo, West Fargo and Grand Forks to ensure the orderly development of utility infrastructure.

Finally, this legislative body often talks about "sending signals" to existing or emerging businesses. HB 1454 would send a terrible signal to one of your state's best corporate citizens.

North Dakota's rural electric cooperatives started providing electric service in North Dakota in 1937. Since that time, we have systematically, methodically--and at great expense--been extending electric service to customers in areas of the state that other electric providers initially refused to serve. In this span, we have also taken it upon ourselves to guarantee that our customers would have access to a dependable, affordable supply of electric power. We thus became the lead investors and financers of the state's lignite industry. Again, 90% of the coal-based generation you see in Oliver, Mercer and McLean Counties--that nearly $5 billion investment in energy conversion facilities and the more than 2,000 jobs that accompany it--is there because of the leadership, the vision, and the risk taken by rural electric cooperatives.

If HB 1454 would become the state's new policy approach, it would mandate that some 50% of the territory surrounding the state's three fastest growing metroplitan areas be handed over to Xcel Energy. As you know, this out-of-state utility corporation has not made an investment in North Dakota based generation to supply its existing customers. Because of this, HB 1454 would send a terrible signal to a network of electric cooperatives that has done everything the state has asked of it; has not encroached on territories in which other electric providers are already serving; and has been a progressive, leading force in trying to revitalize the state's economy. It's very hard to find the reward in our good corporate citizenship when this bill essentially allows the IOUs to keep all the growth in their best service territories, and in addition, takes half the growth in ours.

Mr. Chairman and members of the committee, we've come too far. We cannot turn back the clock. The state's IOUs made conscious, corporate decisions many years ago (and as recently as the early 1990s when franchise agreements were renewed) as to where they wanted to serve. In that decision-making, they left a major void in the marketplace--one that has been filled by a $700 million investment in retail distribution facilities by the state's electric cooperatives. To change policy now in the manner described by HB 1454 cannot be done without creating duplication of electric facilities.

In my view, the make-up of today's retail electric industry in North Dakota is a product of many decisions of the past. They system today is a sophisticated, interconnected and mature network that serves citizens well. But these features also make it impractical for the state to redesign and prescribe the industry's future. Thus, HB 1454 should be rejected and investor-owned utilities should be encouraged to take decisions about the future growth of their retail electric utility divisions back to the board rooms where they belong. The investor-owned utilities in support of HB 1454 have each employed aggressive strategies of acquisition of any number of utility and utility related properties all over the country and this globe to grow their businesses. Yet, they attempt to employ a legislative strategy when it comes to the acquisition of distribution property. That's why it's clear to us that this bill protects the private interest, but does nothing to protect the public interest.

Thus, without a factual or philosophical foundation for this bill, I again urge this committee to give it a DO NOT PASS recommendation. I stand ready to answer any questions you might have about our opposition to HB 1454.

North Dakota Farmers Union

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800-366-NDFU (6338)
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E-MAIL: ndfu@ndfu.org
WEBSITE: www.ndfu.org

MISSION STATEMENT: North Dakota Farmers Union, guided by the principles of cooperation, legislation and education, is an organization committed to the prosperity of family farms and rural communities.

North Dakota Farmers Union Testimony in Opposition to HB 1454

February 5, 2003

My name is Richard Schlosser. I am vice president of North Dakota Farmers Union. I also farm near Edgeley, raising wheat and soybeans. I am testifying in opposition to HB 1454 on behalf of the members of North Dakota Farmers Union, the state's largest farm organization.

North Dakota Farmers Union's 2002 annual meeting theme was *Ag the Cornerstone.* As a follow up, we will concentrate our efforts on delivering the message of the importance of agriculture and its contribution to North Dakota's economy. Many of the advances in agriculture are directly attributable to the success story of our rural electric cooperatives. Rural electrification not only brought to rural America some of the tools that helped American farmers and ranchers feed the world, but also a quality of life that rivals that of their urban cousins. Recently, a major farm publication conducted a poll asking farmers what they thought was the most important change in agriculture over the last 100 years. Overwhelmingly, farmers and ranchers identified rural electrification as the most significant technological advancement in rural America during the twentieth century.

Additionally, rural electric cooperatives have been a catalyst in the arena of rural economic development. Dakota Valley Electric Cooperative, the cooperative that serves my farm, has worked with new businesses in our area to secure approximately $2.5 million in assorted low interest loans. Recognizing that they have a stake in rural North Dakota, rural electrics have made a significant commitment to ensure the prosperity of rural North Dakota through their efforts in economic development. .

Realizing the importance of our rural electric cooperatives, we the members of North Dakota Farmers Union, in support of our cooperatives, support the Territorial Integrity Act of 1965, which minimizes conflicts among suppliers of electricity, allows orderly development of the state's electric utility infrastructure by minimizing disputes over extension of distribution lines and avoids wasteful duplication of capital investment in utility facilities.

HB 1454 is about the utilities' interest, not the public interest. It changes the purpose and intent of the Territorial Integrity Act from promoting orderly development that serves consumer interests to serving the interests of the investor owned utilities. The bill gives territories to investor owned utilities which would lead to the duplication of facilities in these designated areas that are already served by the cooperatives. This would also mean that facilities built by the cooperatives to meet the anticipated growth in these areas would be under utilized.

Section three of the bill provides for the utility to 'waive the right to serve an electric service location'. I can not imagine a utility deciding not to serve a load because of size or lack of profitability. My cooperative, like all the cooperatives in North Dakota, has always realized that it has an obligation to serve the members of its service territory with reliable and affordable electricity. Whether serving a pasture well in LaMoure county or an ag processing facility in southeastern North Dakota, our member owned rural electric cooperatives have always understood the need to serve all members, big or small, profitable or not. As we see it, HB 1454 is a proposal that seeks to serve the interests of the IOUs at the expense of the rural electric cooperatives and their members.

In conclusion, we the members of North Dakota Farmers Union strongly oppose any legislative or regulatory action to abolish or weaken the Territorial Integrity Act. Thank you, and I would be pleased to answer any questions you may have.

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P.O. Box 2064
Fargo, ND 58107
701-298-2200 • 1-800-367-9668
Fax: 701-298-2210

State Headquarters:
4023 State St
P.O. Box 2793
Bismarck, ND 58502
701-224-0330 • 1-800-932-8869
Fax: 701-224-9485

North Dakota Farm Bureau

www.ndfb.org

NORTH DAKOTA FARM BUREAU TESTIMONY ON THE TERRITORIAL INTEGRITY ACT HB 1454

Good morning Chairman Keiser and members of the House Industry, Business and Labor Committee. My name is Brian Kramer. I am here representing the 26,000 member families of North Dakota Farm Bureau in opposition to HB 1454.

The Territorial Integrity Act has provided opportunities for all electric service providers to expand growth. Through the T.I.A. the rural electric cooperatives have been able to garner a portion of the electric business in regions adjacent to metropolitan areas. This has provided RECs the opportunity to subsidize rural customers so that every North Dakotan has reasonably affordable electric service.

In many instances, the RECs were the only electric service providers that were willing to service these areas. Had the investor owned utilities been willing to provide electric service and establish themselves at the onset, they could be reaping the benefits today. However, they chose not to develop that market.

One future. One voice.

Now when it is more profitable to provide service to those areas because of population expansion, they want to establish themselves in those areas.

RECs have invested heavily in power lines, equipment, and technology to provide electric service in the service areas in question. Why should they be penalized for taking the initiative to develop that business?

The bill states that an electric service area agreement must be established to the outer boundaries of a city's extraterritorial zoning limits. The outer boundaries can be miles from the city limits and miles from any urban or suburban population. Will investor-owned utilities adequately and cost effectively provide electric service to the rural customers that are currently being served by the RECs? We believe there is a high risk that those customers will bear the financial burden through higher electric rates.

We encourage the committee to recommend a Do Not Pass on House Bill 1454.

Thank you. I would try to answer any questions you may have.

Testimony of Don Franklund, General Manager/CEO
Mor-Gran-Sou Electric Cooperative, Inc.
RE: HB 1454--8 a.m. Wednesday, Feb. 5, 2003
Before the House Industry Business and Labor Committee

Mr. Chairman and members of the committee,

My name is Don Franklund. I'm General Manager/CEO of Mor-Gran-Sou Electric Cooperative, based in Flasher. I have served in this position since 1994. I am a graduate from the Bismarck State College Line Worker Program as well as hold a Bachelors of Science degree from North Dakota State University in Electrical Engineering. In addition, I am a registered Professional Engineer in the States of North Dakota and Colorado.

I'm here today to register Mor-Gran-Sou Electric Cooperative's opposition to HB 1454 because of safety concerns for line workers, emergency response personnel as well as the general public.

I have worked with the utility industry for more than twenty years. During my experience in this industry one thing has always come to the forefront, Safety. This is true for Cooperative employees as well as Investor Owned employees.

The legislation outlined in HB 1454 will cause different utilities to crisscross each other in numerous locations. This intermixing of utility systems will expose the line workers of both Cooperatives and Investor Owned Utilities to additional safety issues. This may not seem like a complex issue. But imagine trying to sort things out on a dark, cold winter's night, in the middle of a blizzard. These are the working conditions utility line workers are exposed to. This is a time when confusion can get people hurt.

I am also concerned for local emergency response personnel. It is not uncommon to have local fire departments request that the power be disconnected from a burning building. It is also not uncommon to respond to vehicle accidents involving electrical equipment. The intermixing of utility systems could result in confusion and delays at a time when minutes are precious.

Finally, the mixing of utility systems will also expose the general public to possible hazards. Existing right-of-ways are becoming more and more crowded with water pipes, gas pipes, cable television, telephone and electrical equipment. The duplicating electrical equipment exposes local residents to a greater chance of coming into contact with energized conductors. We stand in opposition to this bill because of the increased safety concerns that will result to the line workers, emergency workers and the general public.

I will be happy to answer any questions you might have.

TESTIMONY

HB1454

Presented by Charles McCay representing Farm Credit Services

The ability of the rural electric cooperatives to generate and deliver energy to rural North Dakota is a critical element in the economic well being of farmers and ranchers and other rural citizens.

Low population density has always made it more costly to deliver energy to rural areas. The continuing decline in rural population, except in areas surrounding urban areas, adds pressure to the cost structure for rural utilities.

Efforts to transfer the rural utilities growth areas to investor owned companies can be considered reasonable only if the growth in cost of energy delivery to the more rural areas is stopped in the same process.

The current utility service areas should be maintained until the problem of supplying affordable energy to the rural ares of North Dakota is addressed.

National Information Solutions Cooperative

February 5, 2003

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

Dear Chairman Keiser and Honorable Committee Members:

National Information Solutions Cooperative (NISC) would like to register with your committee our opposition to House Bill 1454. The Bill would take away areas that electric cooperatives have served and invested in for years. NISC's very existence is testament to Electric Cooperative's investment for their future customers.

NISC, located in Mandan, North Dakota, is a **great example** of what the Cooperatives have termed the "power of human connections" and the **electric cooperative's investment** in the people of this state. As the electric cooperatives in North Dakota have grown, so has NISC. In 1966, shortly after the passage of the Territorial Integrity Laws, NISC (formerly known as NCDC) got its start as an electronic data processing center serving the back office support needs of three cooperatives in North Dakota with a handful of employees. Since then **NISC has continuously evolved to become one of the nation's leading information technology companies developing and supporting hardware and software solutions for** customer billing, accounting, engineering and operations serving all of the North Dakota electric cooperatives.

From our humble beginnings in North Dakota, NISC has extended our software products and services into **47 other states serving the needs of over 450 utility and telecom cooperatives and companies.** Last year alone in our billing operations, we produced over 84 million bills resulting in a $5 billion revenue return for our utility customers. Our service centers handled over 92,000 support calls in 2002.

Two years ago, we completed a merger that created the new NISC with offices in Mandan and St. Peters, Missouri, combining a workforce of over 525 employees. Approximately half of these employees are assigned to our Mandan office. We are **committed to growing our employee base in North Dakota** where we derive very tangible benefits from the work ethic and educational background of North Dakotans. **One hundred of the 260 jobs we have in Mandan were added in the last seven years. The employees of our Mandan office have on average an annual salary of $45,000 along with an excellent benefits package that includes full medical insurance coverage, life insurance, 401(k) and other retirement plan options.**

NISC is very proud of our state-of-the-art technology being one of the first companies to deliver utility customer bills over the Internet along with electronic bill payment. We are also in the **final phase of a $10 million software development project** that will deliver our next generation of integrated software to our members. We believe this will lead to market expansion and create more jobs here in North Dakota. This past year a 24,000 square feet building was added to our existing campus in Mandan. **In May of 2002 COMPUTERWORLD Magazine listed NISC as one of the top 10 Best Places to Work in Information Technology in the nation.** We thank our cooperative members for this great honor as well as our continuous and steady growth.

In addition to working for cooperative members, NISC also receives its electrical service from Mor-Gran-Sou Electric Cooperative. Mor-Gran-Sou and Basin Electric Power Cooperative assisted us in the planning and installation of ground source heat pumps used for the state-of-the-art heating and cooling system in our buildings, as well as providing outstanding electrical reliability that is essential for an information technology center. Many of our **employees are members of our local electric cooperatives, Capital Electric and Mor-Gran-Sou, and have benefited by their reliable services, generous rebates, and bill credits** that they received over the past few years resulting in part from the **generous margins of Basin Electric Power Cooperative.** Residing in Bismarck, my family receives outstanding electrical service from Capital Electric.

The success and economic impact of NISC is additional proof that electric cooperatives are good for North Dakota. The **very existence of NISC is a tribute to the innovation of local cooperatives** that have worked together to develop creative solutions to the technology needs of present and future cooperative consumers. **NISC has a real stake in the success and growth of North Dakota Cooperatives.** As much as any other investment in infrastructure, we believe that our electrical cooperatives investment in NISC has been future oriented in effort to meet the expanding needs of their consumers in the territories they have traditionally served. We do not believe that the legislature should be pressured into somehow legislating these growth potentials away and diminishing the forward thinking investments that have been made by the cooperatives to serve these areas. ***We at NISC would urge this committee to make a "do not pass" recommendation on House Bill 1454.***

Thank you for this consideration.

Regards,

Vern A. Dosch

Vern A. Dosch, President and CEO
e-mail: vern.dosch@nisc.cc

TESTIMONY OF BRUCE R. CARLSON
MANAGER OF VERENDRYE ELECTRIC COOPERATIVE
TO THE HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE
HOUSE BILL 1454
February 5, 2003

Mr. 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 10,000 meters in six counties over 4,100 miles of power line surrounding Minot.

I offer this written testimony in strong opposition to HB 1454. It would destroy the North Dakota Territorial Law, which has worked well since enacted in 1965. While only the areas around the three largest cities are affected by the bill in it's present form, we are convinced that if the bill is passed, other cities in North Dakota will quickly be included. Like the situation in Fargo, Grand Forks, and Bismarck, Verendrye, Xcel Energy, 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 map exhibit.

This ill-conceived bill will split up service areas in an "extraterritorial zone" on a 50/50 basis around the major cities that has been faithfully served by rural electric cooperatives. This is unacceptable and very unfair. For over 60 years electric cooperatives have served the rural areas around North Dakota cities when NSP, now Xcel Energy, refused. Now that the cities have grown out into rural electric service areas, Xcel wants the legislature to force a split of the service area and "skim the cream" to benefit the stockholders of a major Minneapolis/Denver utility and to the detriment of our remaining members.

Xcel will claim they are "boxed in" around North Dakota cities with no room to grow. The facts do not support this with plenty of room to grow in Minot. Perhaps that is the reason our service area is not presently included. Their philosophy is to wait until their "donut hole is full and then ask for half of our donut" which is exactly what is happening in the affected communities. Service area maps show that

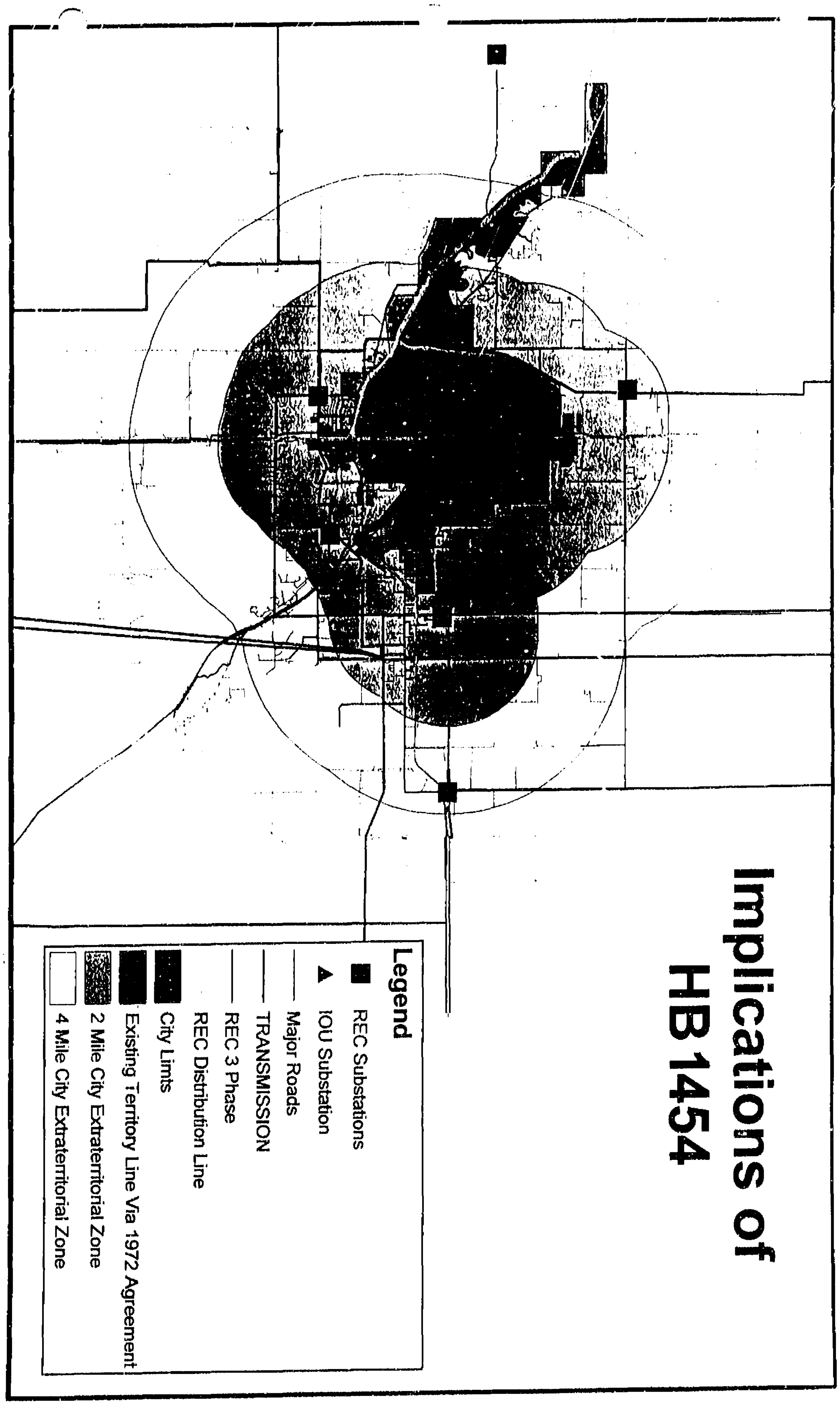
Xcel has close to 8,000 acres in which to expand outside the Minot city limits and within their mutually agreed service area. Note that Xcel's total service area is 24.5 square miles in and around the Minot/Burlington area. Of that amount, 12.3 square miles is outside of the Minot city limits. Let me assure you that there is plenty of available space in Minot and in their existing "surrounding service area" for Xcel growth.

It's obvious to all of us that the population of North Dakota as a whole is not growing. 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 North Dakota cities expand into REC service areas. These are our only growth areas. How can anyone be opposed to that effort?

Just like the other RECs serving around large cities, VEC has already made the investment in infrastructure close to Minot. When the bill is amended to include Minot, any new facilities as installed by Xcel will be a duplication and "waste" of our Verendrye Electric and Central Power Cooperative $22 million existing investment in distribution & transmission facilities. This does not include the billions invested in generation and bulk delivery transmission by Basin Electric Cooperative. This legislation may force RECs to oppose annexations giving expanded extraterritorial zones exclusively to the IOU, causing friction within city planning.

This bill would be a major setback to rural-urban relations, which electric cooperatives have worked so hard to improve. The good will created by joint economic development projects, as an example, will soon deteriorate into animosity and lawsuits.

In conclusion, HB 1454 is a bill designed to benefit large "out of state" corporations at the expense of local, member-owned companies and their consumers. The bill is self-serving and unfair. RECs did not initiate this conflict, nor did we ask to penetrate the IOU's service territory. Rural electric cooperatives and our members are simply protecting our investment and our future. Therefore, we strongly urge a "do not pass" vote on HB 1454.



Implications of HB 1454
Legend
REC Substations
IOU Substation
Major Roads
TRANSMISSION
REC 3 Phase
REC Distribution Line
City Limts
Existing Territory Line Via 1972 Agreement
2 Mile City Extraterritorial Zone
4 Mile City Extraterritorial Zone