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ROLL NUMBER

DESCRIPTION

1169

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1169

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1169**

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date **26 January 2005**

Tape Number	Side A	Side B	Meter #
1	X		0 - end
		X	0 - 28.5

Committee Clerk Signature



Minutes: **Chairman Keiser opened the hearing on HB 1169.**

Karlene Fine, executive director and secretary for the Industrial Commission appeared in support of HB 1169. (Testimony attached.)

Rep. Ekstrom: Who will oversee the transmission authority.

Fine: The Industrial Commission.

Ron Rauschenberger, deputy chief of staff for Governor Hoeven, testified in favor of the bill.

(Testimony attached.)

Chairman Keiser: In the governor's deliberations has there been discussion about positioning this program in a way that there would a sale/lease back or some concept like that?

Rauschenberger: I believe there's been discussion involving that. It depends on the bonding mechanism and the length of time, etc. I believe that will be addressed later.

Rep. Ekstrom: Going on from the chairman's question. We put together a lease/lease back situation last session. That is another thing I'd like researched.

Rauschenberger: We certainly can do that.

Chuck Flemming, marketing coordinator for the ND Dept. Of Agriculture testified in favor of the bill. As you know this bill was introduced at the request of the Industrial Commission of which my boss, Roger Johnson the Agriculture Commissioner is a member. I'm just here to indicate to you that Commissioner Johnson support this bill and it's passage. We have an abundant supply of lignite and wind energy in this state and we need to market it. The biggest problem in marketing is transportation and trying to get our resources out to the consumer.

Robert Harms, special assistant to the Attorney General of the North Dakota Industrial Commission, testified on behalf of the bill. **(Testimony attached.)**

Susan Wefald, Public Service Commissioner, testified on behalf of the bill. She did have some areas of concern that she shared with the Committee **(Testimony attached.)**

Rep. Kasper: Have you and your fellow PFC commissioners discussed your testimony? Are they in consensus or not?

Wefald: Yes, the only consensus was to testify today. Administrated by the Authority--we have questions about what administrated means. I'd be happy to discuss that in more detail later.

Glen Skarbakka, consultant to the Industrial Commission, testified in favor of the bill.
(Testimony Attached.) (21.3)

Rep. Ekstrom: Are there any constraints to building intrastate transmission. We don't want to pump it all out of the state if we had some internal needs and internal transmission lines that need to built. Has that been addressed.

Skarbakka: There is nothing in the bill that restricts its activity to lines for export.

Rep. Ruby: Can you give us a further definition to "public interest?"

Skarbakka: I had included, but I'm not going to draw it off the head, some elements of what the public interest findings would have to address. It was not an exhaustive list. I can provide copies to you.

Rep. Johnson: When the authority is required by regional organizations--what are some of those regional organization?

Skarbakka: Groups of transmission planners that meet regularly to coordinate projects, talk about plans and have dialog. Each must have some idea of what others are talking about. There is a formal and informal stakeholder development process. This is the type of involvement we were envisioning.

Chairman Keiser: This is the one area that gives me a little bit of heartburn. I've been in the legislature long enough to know that when we delegate authority to the people, those people change over time. What may be considered public interest by one group would be defined differently by subsequent groups that might be sitting in positions of authority. That comes back to Rep. Ruby's concern about refining that definition.

Skarbakka: I'm hearing that you'd like to see more definition of the scope of the elements of public interest.

Rep. Kasper: Would Wefald's amendment destroy the whole concept of what you are trying to do?

Skarbakka: As the bill is written, it not make dead the instruments issued by the authority.

They are not backed by the full faith and credit of the State of ND. So they are not a call on the state treasury. The security that a bondholder would have is that pledge of revenue.

Rep. Kasper: You set the rates to generate the revenues to pay the indebtedness. There is some certainty that those rates will be such to repay the indebtedness. The crux of my question is Commissioner's Wefald's amendment would take out the lines 24, 25, 26, 27, 28 on page 3 which would then put the authority in another section of the amendment, under the Public Service Commission. That would destroy the whole concept of what you are trying to do here because the certainty the authority needs to have to repay the debt. You are the one that is supposed to have the oversight to make sure that occurs correctly.

Skarbakka: I haven't seen the amendment yet so am not prepared to discuss that fully. It is a crucial issue that there be as much certainty about the revenue stream going forward as can possibly be done. The reason why is that bonds are going to be rated by rating agencies based on how secure those repayments are. Those ratings translate directly into the interest rate. The more security that can be provided, the lower financing rates.

Chairman Keiser: You mentioned at the beginning of your testimony that you are trying to achieve is flexibility. On the side of financing you're trying to establish as much flexibility as we can. We have had discussions about if the authority issues the bonds and the authority is a state entity that somehow the state's not be behind it. On the other hand, there may be times when we want the state behind it because it will give us a more advantageous rate. If we provide the flexibility that leaves open options like a sale/lease back, revenue bonds, or a whole gamut of

opportunities for financing. What you are asking for as much flexibility for the future to provide the optimal financing package.

Rep. Ekstrom: Looking into the future do you see this as a public/private partnership.

Skarbakka: I believe that is true. It could also be joint process with another transmission development where the strengths of that other entity can be brought to the table. I do see the partnership part being a major part of this.

Rep. Ekstrom: The concern I have is that one day coal generated power -- do you have any idea where that may go?

Skarbakka: This bill is neutral is respect to types of generation.

Chairman Keiser: We've identified that the transmission authority will increase capacity in theory in the long term. What percentage of transmission capacity intrastate is currently being utilized?

Skarbakka: In terms of being able to get long term transmission capacity reservations for the type that you need and to develop a resource for export, there essentially is no transmission capability for export out of the state.

Chairman Keiser: Interstate?

Skarbakka: Typically what is planned and facilities are added to deliver power to that load. I'm not aware as my focus has been on export. I don't have a statistic.

Chairman Keiser: On page 2 of your presentation you have a graphic showing constraints. Build a dream. If you build it, they will come. If we build it, can we get through those constraints? Can we get them to change their policies to get through those constraints?

Skarbakka: I don't think you would build transmission ahead of a project. When I think of constraints I think of physical constraints between ND and the markets to the east. It's not a regulatory wall there. There are some regulatory constraints as well. If you find the financing then you have the problem of building a transmission line in MN. The best I can say is that would be a challenge. It's not a certainty that will happen.

Rep. Klein: Isn't the requirement such in the cities that some of these constraints may be negated. **Skarbakka:** Absolutely. There's a recognition of that for a long-term energy strategy for the state of MN. You will see a greater interest in developing resources.

John Dwyer, president of the Lignite Energy Council, testified in support of HB 1169.

(Testimony attached.) He presented a letter to be entered into testimony from **David Loer,**

CEO of Minnkota Power. (Attached.)

Mark Nisbet, ND principal manger for Xcel Energy, testified in favor of the bill.

(Testimony attached.)

Rep. Kasper: Xcel is head quartered in Minneapolis? You heard the concerns about getting transmission through MN. Is the climate changing there?

Nisbet: I believe so. Concept of Mr. Skarbakka is correct. It would not be an easy process but I think as the economy of the state depends on abundant and reasonably priced energy in MN as well as the rest of the country, I think there is the possibility of moving forward.

Chairman Klein: Your expected load growth area in the Twin Cities--Do you have some kind of figure.

Nisbet: We're thinking about the 4-5% growth per year. We're thinking in 15 years it would be about 1500 megawatts to handle that load.

Steve Schultz, Otter Tail Power Company, testified in favor of the bill. Our CEO and Xcel's CEO worked together on their comments and we do "ditto" what they said.

Richard Vows, vice president for Power Development, Great Northern Power Development,, LP, testified in favor of the bill. (Testimony attached.)

Rep. Klein: The transmission authority rate which would not be subject to FERC rules would be a key element in this whole process?

Voss: We believe it is.

Dale Niezwaag, representing Basin Electric Power Cooperative, testified in support of the bill. (Testimony attached.)

Rep. Klein: A new line would be built by an investor owned utility or by a power transmitting agency like your company. The rates would still be subject to FERC because of the interconnection and could not be as high as the state authority could set them. Am I correct?

Nieswaag: Yes, the ability to interconnect with FERC jurisdiction utilities, require us to meet the same rules and obligations.

Rep. Klein: So basically a company like you isn't going to build transmission because you are not assured of getting a fair return on that investment.

Nieswaag: That's correct.

Dean Peterson, representing the North American Coal Corporation, testified in support of the bill. (Testimony attached.)

Gary Jacobson, legislative consultant for Great River Energy, testified in support of HB 1169. (Testimony attached.)

Dennis Boyd, representing the MDU Resources Group, testified in favor of the bill.

(Testimony attached.)

Bob Markee, of Energy Unlimited/REF North America consortium, testified in favor of the bill. We have been working in ND wind development for a number of years. We are convinced that this transmission is necessary for wind development to survive and expand in ND. We don't see much more growth in ND without transmission capacity dramatically increasing. We think we have a very competitive product but we can't get to the marketplace. We don't see a tremendous demand increase in ND so it has to go to the demand centers.

Renee Fenning, representing ND Electrical Workers' Council and the ND Building and Construction Trades Council, testified in favor of the bill. We represent the workers in the mines, plants and that do the construction side of it and we are in full support of HB 1169.

Kevin Kramer, Public Service Commissioner, appeared in support of HB1169. Whatever concerns there might be, I am less concerned about the some of the issues raised by Commissioner Wefald than she is. They are nonetheless real issues. Some of your questions have been very insightful. I don't doubt that we can work through any potential problems. The alternative is to do nothing and that's never been the ND way so let me urge you to do something and work through this.

There was no opposition to HB 1169

Chairman Keiser closed the hearing and appointed a subcommittee to further work on the bill. That subcommittee will be chaired by Rep. Johnson and members will be Rep.

Kasper, Rep. Ekstrom, Rep. Boe, Speaker Klein, and Rep. Keiser.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1169

House Industry, Business and Labor Committee

☐ Subcommittee

Hearing Date 1-27-05

Tape Number

1

Side A

x

Side B

Meter #

0-43.8

Committee Clerk Signature

Jody Reinken by Jan Kreidler

Minutes:

Chairman N. Johnson: Opened the subcommittee on HB 1169. Members present were Representative Keiser, Representative Kasper, House Speaker Klein, Representative Boe, Representative Ekstrom.

Chairman N. Johnson: First thing we need to talk about is what are some of the major concerns we are having and need to be addressed.

Representative Klein: Page 1 of the bill, some of the language where we refer to "owning" needs some definition as to be leased, owned and then maintaining and operating needs some further definition. Page 3 line 19, where you talk about construct, develop, acquire, owning full or part rent, maintain, and operate, that needs to be clarified further. The evidence of indebtedness I think they need to be clarified as to whether the state is ultimately responsible. There is some language there on page 5, line 9 item 2. only from the revenues, is the state going to be eventually involved? We want to do everything we can in our lower financing but there is

some language in there having to about operating I really have some questions whether we have the capability and know how to do that or get somebody to act for the state instead of the state being the entity does that. Because when you start getting into the day to day operation, you need a full time operation.

Representative Keiser: Glen raised in his presentation some of the general objectives, and one is flexibility, what we need to create is a program that has the flexibility to manage events for opportunities that are going to occur the day we don't even know how to define, that's a real challenge, how do we create an instrument with that flexibility. The real issue as I listen to the parties involved is financing, as we go about developing financing there are a lot of options out there from all the bonding, I know that the bill was designed with the revenue bond approach and a somewhat limited revenue bond approach. I think we want to at least have a discussion whether or not we may not want to have the opportunity somehow, for the state to be involved in the financing, the good name and faith of the state because you're going to get a lot lower interest rate, if we can set that up in a reasonable manner. The problems I have and that is my own personal thing, is the state does not need to get into the energy business, having served on the electrical interim committee, but having been involved in the T I A hearings for several sessions, we already have 2 distinct tiers, but my perspective, creating a third one is going to make it extremely difficult and problematic. If the state owns and operates anything that is very time constrained, it would only be for that period of time until the financing was paid for. We have to have the flexibility to go intra and inter combination and then we have to look at interstate on its own in case we ever get to that area. I think we want to be careful to not dilute the PSC's authority and the intra state, if that is possible, and my other major issue is tax, we have problems

enough on taxes, and it seems that since this is transmission, whether it is owned by the state or the state is involved with financing, that we should determine in advance a transmission tax, that regardless of who owns or operates those you might want to look at a taxation system that would be the same as the coops now use, when we tax based on line, instead of creating a third tier, as we get into another tier I get very anxious about this.

Representative Ekstrom: One of the things that I have been looking at is this is a public/private partnership, and certainly when they had built the Alaska pipeline, they had the industry had an interest and the state had an interest because a lot of the land was state owned land, what sort of bonding or how do they go ahead and financed that, that state obviously is getting tax revenues from that, and whether that couldn't be a model we could look at to see what they did, but I know that it was public/private, I would be willing to do research in that.

Representative Kasper: If there is a sale down the road, when the bonds are paid off and get it back from the credit ownership, at that point of time there has to be some regulatory authority, and I would think that is the time that the PSC would be involved, right now the PSC does not regulate the REC's or the coops, lets say 35 years down the road this is going to be purchased by a co-op, if they want to purchase it do we have to have regulatory authority on that entity we need to talk about PSC oversight in the bill, and will that be acceptable with co-ops on something that may or may not occur, that is something that has to be addressed in the bill. Let's get down the road again to transfer ownership, will it go to the players who were willing to come on board up front, or will it go to the highest bidder at a public sale, what would be the best interest in public policy now, that could be an issue and if we don't address it now, it probably will be a big issue.

Representative Keiser: That really could be either one, and the financing and the leasing would determine that. I think we should keep ourselves opened to those possibilities, don't short yourself because your not sure until the deal rolls around how to structure the financing you could have it where the state could own it for 20 years lease it to parties, and then at the end of 20 years make it available for public sale. Personally I don't like that because they may not buy it and then the state stays in the ownership position, I much rather prefer a position that you lease it and at the end of the 10-15-20 year period you pay \$1.00 and you own it and transfer the title, if the state gets in the ownership of the offset.

Representative Johnson: One of the suggestions that was made is that have a way that the state to provide some financing some revenue money and not worry about the transmission and let the private sector come out and then we wouldn't have the state in any authority.

Representative Klein: If we tie this into the system, and its now part of the integrated system, would that even though it was state owned would we be liable FERC control.

Glen Skarbakka: If the facility is owned by the state, it wouldn't necessarily have to be subject to FERC control but there is a flip side to that, which is that will only work if the customer of the transmission facility is willing to pay the entire cost of usage of that line, in other words you could put the line in and not have to be subject to FERC jurisdictions, but your not going to have the ability at least with anything we have envisioned here to then go out and charge people who would otherwise be free riders of that line, your have no authority to go out and collect money from anybody else except customers on the line.

Representative Keiser: Technically we need to get this bill out of committee next Wednesday to meet the fiscal note requirements, we will ask leadership to extend fiscal note requirement until crossover if necessary.

Representative Klein: Let's look at amendments to this bill that have been presented if anyone has them here.

Glen Skarbakaka: On the concept of ownership of the facility, the intent is that all along that the state would not own the transmission facility any longer then necessary, An amendment that would somehow give your some comfort that is the extent of ownership, type of arrangements.

Representative Keiser: If you develop that concept on the tax side if there is a temporary ownership or a partial ownership, we should then be looking at in lieu of taxes we run into a problem if its state owned because they don't pay taxes, so can we have in lieu of taxes for a state entity?

PSC: We do have in lieu of taxes on university and school grounds property, on ND National Guard property, and Game and Fish Property.

Glen Skarbakaka: Part of that at least gets driven by the issue of federal income tax exemption bonds, one other criteria would be ownership, make it clearer then we have that operation and maintenance be contracted out, that requires a high expertise and that was never contemplated here, and there is no need for it, there is plenty of people to do that work. On the bonding certainly you can make changes, it is certainly possible to strike that if that is the wishes.

Representative Keiser: I truly honestly think that doing the Lease / Lease back that provides that the political subdivision or the state do the financing, can own it, lease it and sell it and we sit back.

John Olson: A lease in a long term basis so the Feds would recognize that and transfer title then there would be a leaseback that system has to be built and put in place.

Glen Skarbakaka: Another area of contemplating or taking to heart is adding some more criteria for the public interest. On page 4. A couple we came up with is to add economic benefits to the state of ND, past performance and ability to perform, any entity.

Representative Kasper: On page 3, line 23 and page 4, lines 2 and 3, it is already present in the bill. To me its important that the players that come up front have the opportunity to be owners at the back end at least the right of first refusal.

Representative Ekstrom: We are in essence creating two entities, the entity that is the state and the entity that will own this, if there could be a right of first refusal, if its consortium, of groups that will be gathering together to take over ownership or a partnership that sort of thing, again I want to leave flexibility because we don't know what is going to happen. In other words we have this ghost entity out there of whoever decides to buy this thing and take over and operate it and its just to give the state more assurance.

Representative Johnson: We need to figure out a way to make sure the state has an exist strategy, In lieu of taxes, that could be made in the deal and not necessarily in legislation, language of options in the bonding, public interest, invite public interest groups, PSC oversight for intrastate, giving more flexibility.

Representative Keiser: Currently this authority would reside in the Industrial Commission, They deal with significant financial issues, I could also argue its very political, and then I get nervous who's on the Industrial Commission at anyone time, that's a concern for me, I look at

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what we have done in other arenas, what we are creating is a partnership between public and private sector. If I was an investor, I would like a seat on the board that would manage my affairs.

Representative Johnson: Subcommittee on HB 1169 adjourned.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SUBCOMMITTEE FOR HB1169

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 2-2-05

Tape Number	Side A	Side B	Meter #
1	x		0 - end
		x	10 - 16.8

Committee Clerk Signature



Minutes:

Chairman Johnson: called the meeting to order. **Rep S. Kelsh is replacing Rep Ekstrom,** since her husband passed away this morning & she probably won't be back for a short term. He hasn't heard previous testimony so he'll have a little to catching up to do. The following handouts were passed out: Legislation from SD and the most current suggestions for HB1169 ...

Chair Johnson requested that Glen Skarbakka walk through the changes that have been made.

Glen Skarbakka, P.E., Esq., Skarbakka PLLC, Transmission Consultant: Please refer to **HB 1169, also the overview of the Issues & Actions. (See attached)**

Chairman Johnson: Re: p.3, line 15 ... that was so we'd have an exit strategy?

Skarbakka: Part of it, there's more on exit strategy later in bill, but this is to expressly say that the lease-sale arrangement was permitted.

Chairman Johnson: Re: p. 7, line 20, what was the concern on this?

Skarbakka: I believe the concern was that under some circumstances, you may want to gather more input & you would have purely what the consultation was with the PSC.

Rep Klein: The rates, in order for either an IOU or Rural Electric to get them authorized into the rate base, have to be approved within state by the Public Service Commission, am I correct in that statement?

Skarbakka: That would be generally true, of investor owned.

Rep Klein: Does this wording satisfy that requirement?

Skarbakka: No, in fact we have a provision on line 20-22 that is not an amendment, but was in the bill from the start, that says that once the consultation has occurred & an optional hearing, that the rates charged by the authorities would not be subject to a subsequent crew. It's saying an investor owned utility would have the ability to put payment that it makes for the transmissions authority into it's rate base.

Rep Klein: So they could use this in their rate base?

Skarbakka: Correct

Rep Klein: That's one of the criteria that IOU would use that line that the PSC would honor that cost for using that line as part of their rate base.

Skarbakka: That's what it's meant to accomplish.

Rep Klein: Any assistance from that party, do they follow?

?: It's my understanding that the authorities from the Public Service Commission

PSC: It would become part of the rate base ... on record.

Rep Klein: It could be used as part of the rate base?

PSC: Yes

Illona Jeffcoat-Sacco: The language that was mandated in the distribution rate, is that just & reasonable? Just as rates are set today by FERC and then MDU pays them, when they come to us we can't say what you should be paying that were set by FERC. We have seen a hypothetical situation that isn't covered by just and reasonable language. In theory, if there were two choices of transmissions, which of course is probably never going to happen, the rates may be considered just and reasonable but the commission could technically say to MDU you should bought your transmission from the other guy. If there were two choices, just and reasonable doesn't cover that particular type of standard. I don't want anyone to think we've misled you. 99.9% of the time, probably 100% of the time in ND, there will not be two choices of transmission. The rates set by the authority would be just and reasonable when you come to us.

Rep Klein: Does the bill ability change from day to day & hour to hour of what capacity is available on what line?

Jeffcoat-Sacco: They do and they don't. The distribution system at MDU or Otter Tail or anyone is using today is not changing the way you're thinking of. The capacity is changing depending on the load, but I don't know of an instance today where any distribution facility has a choice of transmission to say I'm not Otter Tail line, I'm using the authority line. There just aren't those alternatives paths. They use alternative paths because of physics--where the load needs to go not because of competition in transmission lines. That's the situation I'm bringing out here.

Rep. Klein: I think I understand. You refer to distribution and that's it.

Jeffcoat-Sacco: It's in the distribution rate that the transmission costs go up.

Rep. Klein: Just a point of clarification for me. When we talk about rates whether the authority sets them or the PSC sets them, we are talking about intrastate?

Jeffcoat-Sacco: Not necessarily. Those could be intrastate or interstate transmission rates from the authority depending on how the line is built. When we are talking about rates I said distribution, but I am talking about what the end user pays--the electric distribution company which includes all the costs of distribution, all the costs of the energy, and the cost of transmitting the energy into the town. It's those transmission rates that are either going to be set by the authority or going to be set by FERC or be regulated by . . .

Rep. Keiser: So if we built a transmission line to Minneapolis and we owned the line all the way, but the minute it crosses the border, we can set the rates?

Jeffcoat-Sacco: There could be an argument made that there is no federal jurisdiction. There might be others that would argue that you are not exempt from federal jurisdiction. I don't know how that would play out. I think that is what we are trying to accomplish in this bill.

Skarbakka: We may want to be able to utilize the fact that this is being done as an instrumentality of the state as a sovereign and that gives us some flexibility that we may not otherwise be able to have with respect to dealing with those federal regulations. It's difficult to predict how that is going to evolve in the future. We're trying to carve out as much flexibility as we can.

Rep. Keiser: If we wanted to establish the rates as a sovereign, why do I want the authority doing it versus the PSC doing it?

Skarbakka: I'll pick a scenario here as an example. One possibility is that if you had a generator, a wind plant, with customers in MN and none of the customers from the wind plant

were going to be in ND and the transmission line itself was gonna be strictly dedicated to delivering that power out of state. It would never hit the rate base in ND. The only people aimed for that transmission line are either be the customers in MN directly or indirectly in price of the power. That would be the wind plant that was paying for the transmission line. There is one situation that it would be more appropriate that the rate be set by the authority.

Rep. Keiser: And MN would not want to set that rate in that scenario?

Skarbakka: They would not have the ability to set the transmission rate for jurisdictional reasons but they would have the issue of prudence review when those charges get through to the retail customers. It's the utility that's making the purchase that's regulated by the public utilities commission in MN. Nothing in here is effecting their power to question that rate.

The next change we are suggesting at page 7, line 23 we included here a provision requiring the authority to see counsel from transmission providers, etc. This was our attempt to make clear that transmission authority wouldn't be doing this in isolation because they would have to seek input from other interested entities.

Rep. Keiser: Who are the members of the Lignite Research Council?

Skarbakka: It's a statutorily created council, consists of 25 members, there's two legislators on it, etc. It's a mixture of state agencies, environmental researchers, etc., and they make recommendations to the Industrial Commission. Unfortunately there's no wind council or coalition that's recognized by statute that's why we didn't put in the name of the organization. (at this point the tape is not clear for several minutes)

We've got a chance to get a lot of things done. We've solved some very serious environmental issues. We've gone to the lignite industry with the several projects. We are the ones that have

identified the transmission restraints. I think we've got a lot done. I think it's one of the best private/public partnerships that exists. It's a big group. It's basically a focus group of transmission experts.

Rep. Keiser: I suppose you have some subgroups under there too. Like the Legislature?

Skarbakka: Page 8, Section 12, we added in this section: Disposal of Facilities. This is the exit strategy. We have two scenarios here. The first is for facilities that are leased by the transmission authority from another entity. When the lease gets written this provision this provision would require the lease to specify up front the format of the lease. There will never be in the lease an ambiguity about what happens at the end of the lease. The second scenario is that if there are transmission facilities that owned by the authority that they would only own the facilities for as long as necessary to meet the purposes of this act.

Rep. Keiser: I have a problem with the way this is worded. I've been in the Legislature too long. Terms like "endeavor to sell, necessary to accomplish the purposes" those are so vague and certainly not defined in code. This would give them so much flexibility they can own it indefinitely. It needs to be a general statement that "for any other financing option that may be developed that option must include an exit strategy within in a period of time." Something to that effect. The language in 2 gives them the authority to own indefinitely. I have a problem with that.

Rep. Kasper: What if there is no one who wishes to buy?

Rep. Keiser: If no one wants it, why are we doing this. The states may end up owning something they don't want to buy. I don't think our goal is to put the state into the energy business. We have to be very clear about that up front.

Rep. Kasper: On top of the page, under 1, where you talk about the industrial commission with respect to the activity. Are you just adding as another one of the things under the industrial commission?

Skarbakka: This is the provision that exempts the transmission authority from the

(I am unable to hear for several minutes on the tape.)

Chair Johnson: We're back to the property tax exemptions.

Skarbakka: I added a section 13, exemption from property taxes. As we've written it here its a limited exemption basically stating that facilities built pursuant to the transmission authority would be exempt from property taxes for the first five years of their operations. After that, the property tax exemption would continue but there would be a per mile tax instead.

Rep. Keiser: What if we changed that and said "up to five years." From a flexibility standpoint.

Skarbakka: I'm not sure the transmission authority is the place to have that discussion.

Chair Johnson: That would be that the transmission authority could have up to five years to put the deal together.

Skarbakka: Its not all or nothing, it's all.

Rep. Boe: How would this tax thing work once we crossed the state line. That would fall under MN and however they wanted to tax that. How about in the case of home rule charter towns. Would they have the authority to tax this?

Marci Dickerson: I don't believe they would but certain things are available to home rule cities and counties as long as they are written into their charter. I cannot say 100% that they wouldn't be able to. I think it is conceivable that a home rule charter might allow them to impose a tax.

Utilities are centrally assessed, they have a graduated exemption through five years. I'd like to

see something in this language to make it clear that if it were a five year exemption then they going to pay the 300 mile tax that it wouldn't be five year exemption and the four year graduated tax and then the 300. Make sure its all five years, or all graduated, make it 100% clear.

Rep. Kelsh: This goes back to last session where new transmission lines were not taxed the first year, then 25%, 50%, 75%. The way this would read they pay no taxes for five years and then you would phase in that law. It would be ten years before you tax them. That's a per mile cost.

Rep. Keiser: We need to clarify that in this language.

Dickerson: That's exactly my point and I got a different interpretation from our earlier reading. You have to tell them what you want now.

Rep. Keiser: Can we ask Marci to check on that home rule charter. It has to be on a per mile cost centrally assessed. This is transmission so it makes sense.

Dickerson: I will do that.

Rep. Klein: Is it the consensus here that it would be a 5 year exemption and then the phase in begins or five years then 100%

Rep. Keiser: 5 years and then no phase in.

Chair Johnson: That's not the way I see it.

Rep. Klein: Go up to five years and then the contract negotiations take care of it. Why not make it simple and say 5 years and then 100%

Skarbakka: I would argue for "up to 5." It gives them a tool in the negotiation. We have no idea who or what this animal will look like. We want flexibility in all sides. You might be involved in the negation on a deal where you could actually propose a 2 and then come back to

the players and say "if you do that, we'll go 5." If you put 5, you're in 5. Having been involved in negotiation, you do not want to tie your hands before you get to the table.

Rep. Klein: Why would they not use the 5?

Skarbakka: What will they give you to get to the 5?

Rep. Boe: What's the downside of having the flexibility?

Skarbakka: Probably not a lot.

Rep. Klein: I think we go with the figures and leave the flexibility.

Chair Johnson: The last thing is pretty obvious. Just report to Legislative Council every two years. When we met last week, Rep. Klein's concern was better definitions for owning, leasing, maintaining, operating. Are you comfortable with these changes?

Rep. Klein: I think so. I may not be happy with the exit strategy. I think the idea of contracting instead of the state doing it . . .

Rep. Keiser: I raised a few other questions as well. One was who the authority was and we had a discussion about the industrial commission. Unfortunately I have now the SD bill and it's pretty simple, but it's not their industrial commission. It is a committee appointed. A board that's created separate from government entities. It's dramatically different from what we are proposing that it's amazing. It truly is designed to be a facilitating entity that helps. There's clearly no ownership issues, no operational issues, any of those things. The language of the bill we have as amended before us for example we struck construction but we left in developing, acquiring and owning and entering into contract. We still in a position where we can own and operate and we can enter into contracts. That language has to be clarified. We gave a very quick and complete report to the committee chairs the other day as this is a very important piece

of legislation. There were two things that I got out of that. One is they didn't want the state's good faith and name in bonding. There was little doubt on that issue. The other thing was on the ownership. They wanted to make sure we were not interested in owning and operating. We need to clearly state that. Eventually this bill is going to go on the floor for debate and we have to pass it. We have to do this thing.

Rep. Kasper: Wasn't there an advantage to state ownership to avoid FERC problems and that's why you want state ownership for at least for a little period of time.

Rep. Klein: Yes, that had some possibilities but it didn't fly with the committee chairs.

?: If there is no state ownership on the front end do we have FERC problems?

Skarbakka: Ownership opens two possible doors for you. One is the ability to not be FERC jurisdictional with the transmission facility so that gives you some flexibility with respect to rates, potentially with respect to whether the facilities would be part of a reasonable transmission organization, etc. The other door it potentially opens is it increases your chance of getting favorable treatment with respect to federal taxation on the income tax portion of the revenue bonds. There are several hurdles to get the revenue bonds considered tax exempt. One of the key hurdles is state ownership.

Rep. Klein: One more clarification. Would the income tax free bonds only occur as long as the state owned or does it occur with the entire duration if the state only owns it for a time and sells it later?

Skarbakka: My read, I'm not a great expert in this area, but my read on it is that it's for as long as there is ownership. If future non ownership I'm not sure it will be considered tax exempt.

Rep. Klein: We really need to have someone who understands it. That would be the people in the financial arena that work in this all the time. The big money players that come in and do these large bonding things can answer these questions. If we require an exit strategy and ownership to be transferred, which is in my opinion, the only way we are going to pass this bill, you can play all the games you want, but the feds are going to look at it and say this is a sell/leaseback, lease/leaseback with a sale, some combination and it's not gonna fly. I'm not qualified to make that statement but I just have my beliefs that you're going to get a good return for the bondholder and it's going to be a bond that the markets are going to be very interested in, but it's not going to be a municipal bond without the tax liability unless the state truly owns it. That's my gut feeling.

Rep. Kasper: Going back to the last page, item 1. If the ownership under item 1 is not the state in fact until it's sold the end or does the lease with the purchase at the end make it a sale of funds. My belief is the feds are pretty smart and they're going to say no you're buying it on time. Providing you don't default you have the option to pay that dollar at the end of the deal and own it. We need someone else to answer those questions.

?: Let me go back to where MDU built and owned a transmission line into that Ellendale area way back when using a REA loan through Dakota Electric which got loan and at the end of the 35 years. During that period of time, the 35 years, MDU did not pay taxes on that line. It was owned by Dakota Electric which was REA funded. There's gotta be a way.

Rep. Keiser: That's entirely different. Whether you pay taxes on the line. Whether the bond purchaser pays taxes is what we are talking about. If you buy a municipal bond that's not taxable, it qualifies with the federal government and you do not pay taxes. You're not going to

get a high return if you go out and pay taxes. We shouldn't be afraid of that bond. A bond on this issue if you pay taxes, would pay a lot higher interest rate and those bonds will sell instantly on the market because it's secured, it's got great players in it.

Rep. Kasper: My other concern is when the line is built and becomes part of the cooperation system, can we really avoid FERC oversight?

Keiser: I asked the very same question. If an IOU is really involved in any part of this deal can we avoid FERC.

Skarbakka: I think the key element is the ownership. For example a facility owned by Basin Electric is non-jurisdictional. Others can use that facility but ownership really drives the question.

Keiser: Basin doesn't go out for bonding or do they go to the federal loan program?

Skarbakka: . . .about 89 - 99% is bonding.

Rep. Kasper: I want to get back to state ownership and the FERC. Can you give us some degree of assurance that FERC will be avoided?

Skarbakka: I don't believe it is but I think it would be.

Rep. Kasper: With the concern about the chairman's meeting. Maybe we ought to consider getting rid of number 2 or putting something that doesn't leave it open the way it is.

Rep. Keiser: We need something in number 2. Number 1 only talks about the lease options and there are other financing options that exist.

Rep. Kasper: We could take the facilities owned by the authority without any other type of ownership besides the lease or something along that line.

Rep. Keiser: Again, I think we need that and then put the language in there to make sure it's still sold.

Chair Johnson: And we can leave it to the authority to determine what that would be.
What if it's 60 years?

Rep. Keiser: Then no one is going to enter the deal. If it's structured right and the rates are right, it might be the avenue out.

Chair Johnson: At the last meeting another question Rep. Keiser had was stakeholder involvement in the operation oversight. Did you get that resolved in this?

?: Bringing in the Lignite Council as advisory. That's a very large group.

Chairman Johnson: Another issue was the "tax in lieu of."

Rep. Keiser: I think they've addressed the tax to my satisfaction. We must soon address the question of a common tax structure for the various facilities and how they can be more equitable.

Chair Johnson: The bonding. I would have preferred to see some bonding by the state. I think that's a dead issue.

Rep. Klein: I think that would jeopardize it in the legislature. I would like to see something passed and with that in there. . . If that's a problem in the House, it's a bigger problem in the Senate.

Chair Johnson: Another question was that Rep. Kasper had was the PSC involvement in oversight. Are you comfortable with what. .

Rep. Kasper: Yes, what would be the PSC involvement be at the end of the effort?

Skarbakka: On the unmarked page 7. Is that enough? The long and the short of it is that there would be an exemption for the authority itself and the facilities built under this would be exempt

from PSC jurisdiction with the exception of jurisdiction ally of starting up; however, upon sale or disposal of facilities that exemption ends.

Chair Johnson: Then we need to investigate the home rule and get more specific language in page 8 section 12 on the exit strategy in that second section. We need to more specifically identify that and go up to five years or just do five?

Rep. Boe: If you go to five years everyone knows where that sets.

Skarbakka: Am I allowed to vote? I think it should be up to five years.

Rep. Kelsh: I looked for it and I didn't see it in here. Is there any eminent domain authority?

Skarbakka: We had that question at the last meeting. The eminent domain authority for the state is no stronger for the state than it is for an existing REC or IOU

Rep. Kelsh: Does the FERC have any preemptive authority over all transmission authorities or facilities to for instance avoid a rolling blackout?

Skarbakka: Yes, in regards to reliability. There is pretty wide spread agreement that if FERC doesn't have it today, they will have in the future pretty much total authority over transmission related reliability.

Chair Johnson: One other thing we need to talk about that we gotta make sure it's not a graduated tax after the fifth year.

Rep. Keiser: If we look at page 2, line 21 and 22 and on page 3, line 19 and 20, I would feel much better if we limited to "plan, finance" and strike "develop, acquire, own and hold whole or in part" but leave "lease, grant" and strike "maintain and operate." That language still leaves us in the position of owning and operating. We need to prepare further amendments and bring them back. We might share with the Committee and the people here the schedule.

Rep. Kasper: I'm really confused. If we take the action that you suggested, there would never be anything warranted by the state. Therefore we would never have any ability to be outside of FERC involvement. Am I missing something here? Then it defeats the purpose of trying to get FERC out of the action. If the state cannot own it at some point in time why wouldn't we want to have the state own it or lease. In order to get some of the exemptions we need, we need to have ownership. I don't think we can make those changes.

Rep. Keiser: That is correct. That is why they need to work on it. We need to make sense and be consistent. We say in one place "own" and other places "you can own under this condition." We have to make sure it's constant. We think this is an important issue. Due to having stellar committee we are basically finished with our work. That doesn't mean we won't be meeting next week because we will take one bill each morning and we'll kick that out by about 10 o'clock. That leaves the rest of our day available so it our intention to meet as often and frequently as is reasonable next week and the first part of the following week because we need to pick our pace up a little bit. This bill has to come back into the Committee the following week and Tuesday at the latest for us to take action prior to crossover. What has happened to other major pieces of legislation like this we would literally meet, go draw amendments, come back and meet, for about seven days until we got everything resolved and ready to go to the floor. We have to go to the floor with this on about the 15th.

Chair Johnson: The next meetings will be Monday at 3:00 and Tuesday at 10:30.

Adjourned.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1169**

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date **7 February 2005**

Tape Number	Side A	Side B	Meter #
X	X		0 - 22

Committee Clerk Signature



Minutes:

SUBCOMMITTEE: Rep. N. Johnson, Chair, Rep. Ekstrom, Rep. Boe, Rep. Keiser, Rep. Kasper, Speaker Klein. (Rep. Scott Kelsh attended in the absence of Rep. Ekstrom)

Chairman Johnson called the subcommittee on HB 1169 to order. I'll ask Mr. Skarbakka to go over the proposed changes with us.

Skarbakka: What you have before you--everything in red is a change from last Wed afternoon's meeting. I have highlighted the most significant points that arose out of that meeting. I'll focus on those changes that are in yellow. Page 2: We added a new section 7 to the declarations of finding and purpose. We want to make clearly that ownership of transmission facilities by the state should be not be any longer than necessary to accomplish the purpose of the act.

Line 12: Defines facilities to "transmission facilities" and you will see that now used throughout the document. He continued through the document discussing the changes. **(Copy Attached.)**

Rep. Kelsh: I'd like to go back to page 2 where it says "transportation, and utilization, ND electric energy" is that the same thing as saying "electric energy generated in ND?"

Skarbakka: That's what we're trying to say.

Chair Johnson: Marci, would you check on the Home Rule.

Marci Dickerson: I believe that Section 1109.105, subsection 2 covers it. It says, . . ."the governing body of a home rule county may not supersede any law that determines what property or acts are subject to or exempt from ad valorem tax." I think that covers it adequately.

Rep. Keiser: Look at Section 5. I am thinking of some of the legislators reactions. For example, giving the authority the power to make grants. I would prefer that we try to develop this so that it does not require a fiscal note. If the authority is going to make the grants, where is the money coming from for the grants? I need to have a better understanding where the dollars come from. The other part: "make and execute contracts." I don't think that has a fiscal note. "Borrow money, issue evidence of indebtedness providing they have a stream of repayment." We're granting them the power and I'm just asking who is holding the indebtedness? I raise those questions because we would ideally like to structure this so there is not a significant fiscal note. Is there a way to tighten up so we can clearly show that the authority given doesn't mean any exposure financially? If they do, then we need a fiscal note and I'm not sure who wants to address that. In my mind I see a lot of questions raised by a few legislators. I see those questions coming and we have to have answers for them. I'd be open to discussion/input on that. I'm not seeing where these dollars come from or how they all work.

Rep. Klein: I have the same concerns in item 4: "receive and collect aid, grants, contributions, money or other things of value from any source. That could also raise some questions.

Rep. Keiser: I think we can tighten this down.

Chair Johnson: The way I look at the section on powers to make grants, if they have no finances anywhere that's going to preclude them from making grants or loans. If we don't put a revenue stream into this they have no revenue.

Rep. Keiser: Let me be the devil's advocate. Then you don't need this section. If there is no revenue to make grants work, then we don't need it. But we want them to have this power. We need to address how to link it to the revenue bonds or whatever else might be associated with the financing. These are the powers. Where's the money coming from and how do we link it so there isn't an exposure for the state.

John Dwyer: As chairman of the Lignite Research Council. I can answer subsection 4. In the authorizing statute for the Lignite Research Development Fund they can do things such as this for developing the lignite industry. There is language specifically relating to transmission. That section is important if this thing is going to get off the ground. Perhaps someone else can address subsection 5.

Karlene Fine: What we've put in there is some flexibility depending on how we structure the financing. If then the agreements be reached with the parties being a lease, or if a loan agreement. We needed some flexibility so that we would have the ability to negotiate the best way that we can to get the best rating that we can. That's really in there for flexibility purposes.

Rep. Keiser: I understand that. How do we say that? You need the flexibility, but the source to fund the indebtedness will be from. . .?

Fine: The source to fund the indebtedness will be the kinds of agreements we enter be it loan agreements, be it a lease agreement we enter to. It could be some other program that becomes

available through the government or some other place. We would be able to incorporate all those into our financing and be able to provide the mechanism that we need to get this agreement going.

Rep. Keiser: If we could then have some broad statement that says revenue would come from the financing package put together for the generating facilities. Something to that effect so it takes away the need for an appropriate. It must be very clear. I maybe that's someplace else in the document.

Fine: We do have it in the document regarding the fact that any indebtedness: Page 5 Section D.

Rep. Keiser: That might deal with section 5. What about the previous pages?

Do we want the grant on the second page, number 1. Would that be from the same source?

Fine: Yes

Rep. Keiser: Could we have a "sub D" that would say "revenues generated may also be used for grants"? I know they are going to say, "how are you making these grants?"

Fine: We can put that in.

Rep. Keiser: If we don't, we're going to have trouble.

Fine: In the provision we have right now. Where we can issue evidence of indebtedness in the current structure. Within that structure there is a clause that if there is some reserve fund that is established we can seek an appropriation from the Legislature. But there is no moral obligation or there is no requirement, but they could seek that as one of the sources if they needed to.

Chair Johnson: What we're trying to do is clarify page 5?

Rep. Keiser: When we give them those powers we want to make sure that we address where those dollars will come from so that it isn't left hanging. Is there a possible exposure or appropriation required? By doing that it does not have to be rereferred to Appropriations.

Chair Johnson: Did we figure out then on Page 2, Section 5, do we need to state in there where this money is coming from that may be granted or loaned. Should we put something in there?

Rep. Keiser: They may be able to work it out in Page 5.

Chair Johnson: Any other questions? The questions that we brought up at the end of last week, have they all been responded to?

Rep. Klein: I now understand what they're trying to do.

Keiser: What they are simply saying is: Don't close the door, the Legislature 5 years from now may want to appropriate some dollars for this project. If so, how would you handle those. They're not saying dollars must be appropriated but addressing what if in its wisdom the Legislature may want to appropriate some dollars.

Bob Dwyer: I would take the same logic and apply it to the "make grants and loans" as well. There may be an energy policy passed by congress that may have requirements and gives the legal authority in the event there were an consortium. We're not anticipating any appropriation.

Rep. Keiser: I understand that. It's just we control the word "granting" and we tie it back in. Where is the money for that coming.

Rep. Klein: Item 2.D on page 5. What are we basically trying to say there.

Rep. Keiser: That the revenue may be used for grants and loans or whatever.

Skarbakka: Let's think about this a little bit. I'm thinking rather than adding an item D, maybe it would work up on 2. If they have an "indebtedness issued by the authority and any grants, loans, etc. --something like that?

Rep. Keiser: Good. That would do it.

Rep. Kelsh: In going along with that, a possible red flag on page 3, section 5 is the number of \$800 million.

Chair Johnson: Those were the revenue bonds remember. We've got to have some source of funding.

Rep. Keiser: I think the point Rep. Kelsh is making are we better off leaving it open or saying \$800 million? Which is worse? I'm not sure.

Chair Johnson: What was the point of the \$800 million in the beginning?

Tom Dwyer: First we had a billion dollars that's the level that was there. We looked at the transmission study that went anywhere from \$500 million to \$550 million. We just thought the \$800 million was rational. There was no scientific base. It's enough to cover what we know are the issues in ND.

Chair Johnson: What's the feeling? Leave it in?

Rep. Klein: Yes, leave it in.

Chair Johnson: Are we in consensus on item B? Everything else changed for today is acceptable. We will go on that premise and try to get those tie in made.

The meeting will be Tuesday, Feb 8, 11 a.m., in the Peace Garden Room. Then we can come back in at 3:30 if we need to.

Adjourned.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1169**

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date **8 February 2005**

Tape Number	Side A	Side B	Meter #
1	X		0 -23

Committee Clerk Signature

Jan Prindle

Minutes:

SUBCOMMITTEE: Rep. N. Johnson, Chair, Rep. Ekstrom, Rep. Boe, Rep. Keiser, Rep. Kasper, Speaker Klein. (Rep. S. Kelsh attended in the absence of Rep. Ekstrom)

Chairman Johnson called the subcommittee on HB 1169 to order. She asked the group to look at the newest revision of the bill as well as an amendment to the original bill prepared by Legislative Council. **(Copies of each are attached.)**

On the latest bill there are only three highlighted changes from the bill looked at yesterday. On page 5, does that meet your concern about where the revenue comes from?

Rep. Keiser: Yes, that ties it in.

Chair Johnson: Any other questions or concerns? Are we getting there? This would then be the engrossed bill.

Rep. Keiser: Does anyone in our audience have any additional concerns or areas we should address? Speak now or forever hold your peace.

Illona Jeffcoat-Sacco: There was a concern raised yesterday about the appeal. If the authority were to hold a hearing because the authority is exempt from 2832, the standard procedure for the hearing and appeal wouldn't apply. There was some talk between Commissioner Wefald and myself that perhaps you could put in there "where the hearing is discretionary there is still the right to appeal." You might have the procedure that goes with it.

Chair Johnson: Who would they appeal it to?

Jeffcoat-Sacco: Would you want some of these protections. You have standards for the decisions and then you would appeal district court by getting other administrative decisions to the appeal. The judge has standards right in there about how to decide when the agency did or didn't do the right thing. If you decided to give that right, I would make it the 2832 right because everyone knows how it works.

Rep. Keiser: How would that language be stated? What would we add?

Jeffcoat-Sacco: Off the top of my head. You would probably add, "if a hearing is held the decision may be appealed under Chapter 2832" or the actual sections that apply. You may need one little change on the bottom of the page in Section 11 say, "except as provided in Section 9" or something like that. I could certainly work on that.

Chair Johnson: What is the Committee's feeling about adding the appeal process?

Rep. Keiser: If we're going to allow a hearing but there is no appeal, why is there a hearing. Either eliminate the hearing or provide the opportunity for appeal.

Chair Johnson: Is the purpose of the hearing to get the information out?

Tom Dwyer: Let me give you the opposite view. One of the reasons for the language in 21 and 22 is in order to attract investors and not get into the issue of taking it all up the PSC's hearing process.

Rep. Keiser: Why don't we just eliminate the hearing? Then you can set the rates and do what is necessary to make the deal work.

Dwyer: That's another option. We're trying to make sure that they have the opportunity to hold a hearing to hear all the views. I think they can have a hearing if it's in there not. Once you put in the process to the Supreme Court, you may detract from investment. That's the same reason why transmission isn't being built in this country right now. People don't know what the rules of the road are going to be. With the language the way it is it makes it clear that investment commission or the transmission authority shall set the rates. Then you don't need a hearing. You just make sure that people can express their views.

Rep. Kasper: If we don't put that in the authority could meet, set the rates, and away we go. There is no input from the players. We need to keep input from the players until the rates are set.

Rep. Keiser: They "may" do it. They don't have to do it. We might argue it's good business to do it. But they may do it. They can set the rates.

Rep. Kasper: Maybe then the word needs to be "shall." That's where you have your opportunity at the hearing. If you have an appeal process you never get going, you appeal and you appeal.

Rep. Boe: If we strike this out. We probably have the right to the hearing anyway and I would assume you have the appeal process that's already in statute to follow or do you have to provide for the appeal process?

Jeffcoat-Sacco: That section 11 on page 7 exempts the Bank of ND and other investors and entities from 2832. The reason is none of these hoops have to be jumped through for rule making or hearing or appeals or any of that. A statutory challenge to something the Bank of ND does is going to be in litigation. Some big business that is denied a loan may try to litigate against the Bank, but not the standard appeals process. My concern is that the ND people or the rate payers, I don't think that's where your litigation is going to come from. I think it will come from potential customers, potential transporters, potential generators. My feeling is that you could get that stuff out in the open up front early in the process when you are just setting these rates. They show up for the hearing or they don't, they appeal or don't, it's over. You have a process. I really feel you're going to have that litigation one way or the other especially if the rates are out of line that they might be. The reason you want all this discretion in the authority is so you can set any rate you want which means the rates are going to be different than how regular people set rates. I'm saying just get it out up front, get the appeal process done, gather the facts, your appeal firmed and it's over with. Even if it's discretionary put in the procedure you use or get rid of this because there's nothing to follow if you don't do that.

Rep. Keiser: The problem with that is that as the authority I will choose not to have the hearing because then I'll never have an appeal.

Jeffcoat-Sacco: That's true. There is a problem. I guess this is the place to air these things out.

Marci Dickerson: Is it possible to have a hearing that would be advisory only with no appeal?

Just to take input and that's all it would be for. I myself am a little leery about sneaking anything under 2832 in to it. If you get a little bit in to it next thing it's going to actually hold this authority in to 2832. Which you certainly want to stay out of. An attorney could probably advise you better on that than I can.

Rep. Keiser: One option would be "shall" have an advisory hearing. It just becomes almost unnecessary if you aren't going to listen and you're still going to set the rates wherever you set the rates to make the deal work. I'm not sure what we are achieving with it.

Bob Harms: The purpose of this bill really is to attract new transmission investment. That's the theme throughout the bill. It's designed so that it's most attractive to potential transmission investment. Section 9 that we're talking about today really was designed to take advantage of the political realities that the three public service commissions and the three members of the industrial commission have. What we're trying to do is set up a process where transmission authority would in fact consult with the public service commissioners and access the expertise that is there within that state agency to help set the rates. What the reality is that's built into subsection 2 of section 9 is that that consultation will result in input from within the public service commission and the transmission authority members are not likely to set rates that are exorbitantly high. Why would a customer agree to have rates that are way outside the market? There are some built in protections that come to play here. I hear what Illona is saying and there's some merit to that idea but as I think it through if you have an administrative process and you have an appeal provision in there then you go down the road to appeals. I just think that goes in the opposite direction of where the bill was intended to go.

Rep. Kasper: What about this language starting on line 20 on page 7, "the authority shall consult with the public service commission and shall conduct a hearing with respect to the rates charged by the authority to obtain public input for it's use and consideration before setting the rates for the use of it's transmission facilities and such rates shall thereafter be considered just and reasonable."

Rep. Keiser: I don't like the language we have. I like Rep. Kasper's language a little better. I personally starting to move away from having any language in subsection 2 that says "a hearing." When you say you are going to have a hearing there are a lot of implications. It means someone is going to listen. It means I have a right and there are a lot of other implications that I don't think we want. I would suggest that on line 20 we simply strike the words "and may conduct a hearing." I think the gist of the intent of what we were looking for was we have expertise in the public service commission they're going to be able to look at a proposal and say, "you guys are crazy" or "this is going to work." We're still saying the authority is in control. If we are going to have a hearing, we need an appeal process. If we have an appeal process it becomes a big formal structure. If we are going to have an advisory hearing it suggests that we will listen. I think that hearing is causing us some problems that we don't want ultimately.

Rep. Kasper: If we don't have the area where the various stakeholders can have their input, where in the bill do they have their input? The public input?

Rep. Keiser: To put the deal together they are going to have a reasonable rate. I don't think we have given any opportunity for the public hearing. This is a vehicle to make financing package deals without public input. When the authority meets the public can be there for that discussion. It gets back to flexibility argument. We need to give the authority enough flexibility that they

can make the deal. They have to sell the deal to the those people who buy the bonds. They have to create a revenue stream and create the opportunity to bond. That's where the participants in the package can say they can't live with those rates.

Rep. Kasper: Let's say you are the Industrial Commission and you're trying to get to some decisions and everybody in here has a stake in the deal. If we don't have an opportunity for you to have their point of view, how can you make the best possible decision if you haven't had the input. The question is you don't have it this way, where do you get it.

Rep. Keiser: Again. We're confusing transmission with the ultimate retail sale and the rates established at the retail sales level. The public service commission will still have authority over any rate change that a utility wants to charge out there. Right? They're going to use their transmission costs as a base.

Jeffcoat-Sacco: Transmission rates are set in statute. The transmission part of that retail rate. They won't be setting that.

Rep. Kasper: I would equate the process we've gone through here in our subcommittee hearing to what this is all about here. I think this process that we've gotten to today has been very valuable. It's been input of ideas and I think that process is good. The decision makers are you but ultimately we would like to have input as much as possible before you sign it in stone.

Chair Johnson: If you look at section 3 it says "the authority shall conduct its activities in consultation with transmission providers. . ." So it says that you need to be involved to get the knowledge and the information. There is that.

Rep. Kasper: That's a little more comforting. I forgot about that.

Rep. Keiser: I think the public hearing is not a bad idea but if you're gonna do it then you should listen and if you're gonna listen there should be an opportunity for appeal in case I didn't listen. That's my hang-up.

Chair Johnson: Without that provision in there about a hearing there still is opportunity for legal if whatever happened is not right.

Rep. Keiser: In subsection 2, I wanted to make sure that although we are granting the authority the power to do this that the public service commission would stay in the loop and be informed and involved. I think Glen crafted this so that public service with their experience stayed in the loop.

Harms: In listening. Maybe the appeal process is not bad. If you take section 2 out altogether you can still get this project done and people can't go to court to stop it. With item 3 in there I have no problem taking 2 out.

Rep. Keiser: I would suggest that we only strike on line 20 "and may conduct a hearing" so that the PSC stays in the loop. I move we strike "and may conduct a hearing."

Rep. Kasper: I second.

Voice Vote: All in favor. Amendment carried.

Rep. Keiser: I would move that with that amendment and all the other amendments that the Committee has addressed that we recommend the bill as amended back to the Committee with a Do Pass.

Rep. Boe: I second.

A roll call vote was taken: Yes: 5, No: 0, Motion carried.

Adjourned

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1169

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 2-9-05

Tape Number	Side A	Side B	Meter #
3	xx		4.3--28.8

Committee Clerk Signature 

Minutes: **Chair Keiser:** Rep. Johnson, would you like to introduce Glen and explain what we have to the committee and explain the bill.

Rep. Johnson: This is on HB 1169 which is the ND transmission authority bill. A handout is before you a special engrossment with all the amendments in .0103, almost. We have one more addition. On page 4, line 15 and line 17, you will see the changes. We will use the engrossed bill today. Glen Skarbakka will go through this with us.

Glen Skarbakka: Start on page 1, section 1; the whole purpose of this bill is economic development for ND. ND has both coal and wind energy. Transmission constraints are the primary impediment to developing those resources. That is an essential governmental function to develop and expand the transmission group to facilitate the development of those resources. One of the additions that has been made, since the bill's original introduction is on page 2, section 1.7, line 6; we have a statement *state ownership of transmission facilities may not exceed the extent and duration necessary for use to promote the public interest*. We have added statements

like this. Section 2, defines and establishes the transmission authority and states that it be governed by the Industrial Commission. We have several definitions in section 3; we use the term *transmission facilities* throughout this bill. We are in no way talking about electrical generating facilities. Section 4 is the statement of the purposes of the authority which is *to divert, define, expand the state's economy by facilitating development of transmission facilities to support the production transportation utilization of ND electric energy*. The powers are listed in section 5. (11.0) On page 3, section 5, is the issue of evidence indebtedness. We are talking revenue bonds; bonds that are secured by a pledge of revenue stream. Not a call on the state treasurer. We added on page 3, item 8; entered *lease sale on contracts*. Section 10, a statement limiting the actions of the authority to the extent and period of time necessary to accomplish the public purpose behind the act. We are trying to restrict the transmission authority actions. Section 11, on page 3, 5.11; we say *enter contracts to construct, maintain and operate*, this is to make it clear that the transmission authority is not going to have line trucks and crews all over the state maintaining lines, etc. Section 12, we have *to consult with the PSC and others to establish the rates and fees that the authority would charge for the use of their facilities*. We left it more general. On page 4, section 6; this establishes the mechanism by which the transmission authority would be a builder of last resort. It would not be involved in construction at all if others are able to fulfill the need. The authority would have to plan through the regional planning mechanisms. In section 7, this provision give the authority permission to enter in the partnership with other organizations. Section 8, is a long provision that parallels other statutory language. Establishes the terms and requirements for revenue bonds and reserve funds, etc. Page 7, section 9; exempts the authority and transmission facilities it would build from the jurisdiction of the PSC with the

exception of siting and permitting aspects of building transmissions. Also a provision in section 9.1 that *upon sale or disposal of the authority's interest in transmission facilities, that exemption goes away*. When the state is out of this, the rules go back to before the authority was ever involved. In section 9.2 , *require the authority to consult with PSC when establishing rates*. In section 9.3; we require the authority to conduct it's activities in consultation with others in expertise in this area. In section 11, there has been a renumbering, develops an exit plan requires an identification of the public purpose which the authority is trying to accomplish by taking an ownership interest. What conditions would make that ownership no longer necessary. Section 11.3 covers the situation where the authority owns the facility but there is no fee. This is a requirement that the authority divest it's ownership as soon as it prudently can do so once the public purpose has been accomplished. Section 12 there would be an exemption from property taxes up to five taxable years before the first five years of operation. At the end of the five year period, transmission facilities less than 230kv would go back to the normal property taxation. With greater than 230kv, there would be a per mile tax paid. Section 13 requires the authority to make a written report each biennium to Legislative Counsel. In section 14, exempts the transmission authority from the administrative _____? with that.

Rep. N. Johnson: I don't read the 230kv reference in here. Explain.

Glen: All of the transmission facilities have an exemption for up to five years. At the end of five years, there is a provision in here for the per mile tax.

Rep. Dosch: Under section 5, page 2; the power of the authority. Will this be eminent domain?

Glen: It will, but not by the action of this bill. The authority has no special rights.

Chair Keiser: I'm not sure if that refers to all eminent domains. There are different kind of cities have eminent domain. Utilities have access to some. That's in a different section.

Rep. Kasper: 21.4 Is it in the eminent domain statute now? Is that eminent domain power of attrition to accomplish the bill, do that?

Glen: I believe it does.

Chair Keiser: We wanted to create flexibility in financing options and other areas. This has been a challenge. We have excluded the state from using it's good name for financing. We can't issue bonds, general obligation bonds, based on the state; only revenue bonds. Power is the other goal, besides flexibility. At one point in this bill it says up to \$850 M in financing is the sealing. That's a lot of financing. The state won't be at risk. That high sealing gives us more than enough.

Rep Ruby: 24.0 What happens if the revenue doesn't come to what's expected?

Chair Keiser: The best bond is the one that you use the good name and credit of the state. Then the state, city, or county have to go back to the tax payers to collect the money, if they fall short. That's why those bonds come in at 2%, 3%, and 4% interest. Almost no risk. Next thing you can do is pledge something. Bismarck has on occasion pledged it's sewer to back up a bond. The revenue bond is the third or fourth tier out there. This is high finance. In their document and would never enter into a revenue bond until you had identified the revenues. For a city it's easy. They can pledge their water income, sewer income. Traffic ticket income is not a reliable source. You have to marker revenue bonds. What we have pledged here is, I owe you X and Y and maybe an REC, and they have all signed 30 year contracts. These are binding and have pledged to buy so much transmission. They are guaranteeing annually on buying \$2M here, \$5M there. You go to the markets and say here is the quality of our contracts. What happens if one of those

Page 5

House Industry, Business and Labor Committee

Bill/Resolution Number HB 1169

Hearing Date 2-9-05

goes bankrupt. That's where the bondholders come in. A higher return, but you need to have great contracts. ND revenue bonds are very popular.

Rep. Boe: Chairman Keiser was very diligent to make sure we did not end up with a fiscal note.

Chair Keiser: What are the wishes of the committee?

Rep. Dosch: I move the amendments.

Rep. N. Johnson: I second. .0103

VOICE VOTE ON AMENDMENTS - Passed

Rep. N. Johnson: I move a DO PASS as AMENDED on HB1169

Rep. Boe: I second.

VOTE: 13 Yes, 0 No, 1 Absent Passed Rep. N. Johnson will carry the bill.

FISCAL NOTE
Requested by Legislative Council
02/14/2005

Amendment to: HB 1169

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.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 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.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 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.*

Any costs that are incurred by the Industrial Commission in resolving the critical transmission issues facing the State and in establishing the Transmission Authority would come from the Lignite Research Fund and are included in the proposed 2005-2007 Industrial Commission budget.

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: Karlene Fine
Phone Number: 328-3722

Agency: Industrial Commission
Date Prepared: 02/14/2005

FISCAL NOTE
Requested by Legislative Council
01/03/2005

Bill/Resolution No.: HB 1169

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.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 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.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 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.*

Any costs that are incurred by the Industrial Commission in resolving the critical transmission issues facing the State and in establishing the Transmission Authority would come from the Lignite Research Fund and are included in the proposed 2005-2007 Industrial Commission budget.

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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: Karlene K. Fine
Phone Number: 328-3722

Agency: Industrial Commission
Date Prepared: 01/17/2005

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1169

Page 1, line 2, remove "and" and after "operating" insert ", and disposing"

Page 1, line 3, remove the third "and"

Page 1, line 6, after "authority" insert "; and to provide for reports to the legislative council"

Page 2, after line 5, insert:

"7. State ownership of electrical transmission facilities may not exceed the extent and duration necessary or useful to promote the public interest."

Page 2, line 12, remove "'Facilities" means electric transmission facilities and related supporting"

Page 2, remove line 13

Page 2, line 14, remove "4."

Page 2, line 15, after "construct" insert "transmission"

Page 2, line 16, after "such" insert "transmission"

Page 2, line 17, replace "5." with "4." and after "a" insert "transmission"

Page 2, after line 18, insert:

"5. "Transmission facilities" means electric transmission lines and substations, and related structures, equipment, rights of way, and works of public improvement, located within and outside this state, excluding electric generating facilities."

Page 2, line 20, replace "through improvements in the state's infrastructure and" with "by facilitating development of transmission facilities to support"

Page 2, line 21, remove "to facilitate", after "the" insert "production, transportation, and", after "Dakota" insert "electric", and remove "by planning, financing, constructing,"

Page 2, remove lines 22 and 23

Page 2, line 24, remove "transportation, and utilization of electric energy"

Page 3, line 16, after "8." insert "Enter lease-sale contracts;

9."

Page 3, line 17, replace "project" with "transmission facility"

Page 3, line 19, replace "9." with "10.", replace "Plan" with "To the extent and for the period of time necessary for the accomplishment of the purposes for which the authority was created. plan", and remove "construct."

Page 3, remove line 20

Page 3, line 21, replace "structures. equipment," with "and dispose of transmission" and remove "and works of public improvement necessary or"

Page 3, remove line 22

Page 3, line 23, remove "including the obtaining of permits and the acquisition of rights of way"

Page 3, after line 23, insert:

"11. Enter contracts to construct, maintain, and operate transmission facilities:"

Page 3, line 24, replace "10." with "12."

Page 3, line 26, after "for" insert "transmission" and remove "administered by the authority"

Page 3, line 27, replace "it, consistent with cost-causation principles until such time as" with "the authority"

Page 3, line 28, remove "the costs of the regional transmission system are shared on a systemwide basis"

Page 3, line 29, replace "11." with "13." and replace "Operate. lease" with "Lease", after "of" insert "transmission", replace "constructed" with "owned", and remove the fourth underscored comma

Page 3, line 30, remove "and all incidental and necessary facilities, structures, and properties"

Page 3, line 31, replace "12." with "14."

Page 4, line 1, replace "13." with "15."

Page 4, line 2, replace "14." with "16."

Page 4, line 5, after "constructing" insert "transmission"

Page 4, line 7, replace "Prior to" with "Before" and after "construct" insert "transmission"

Page 4, line 9, after "for" insert "transmission"

Page 4, line 10, after the second "the" insert "transmission"

Page 4, line 11, remove "shall"

Page 4, line 14, replace "shall" with "may" and after "construct" insert "transmission"

Page 4, line 20, after "the" insert "transmission"

Page 4, line 22, replace "constructing" with "contracting for construction of"

Page 4, line 25, replace "project" with "transmission facility"

Page 5, line 9, after "indebtedness" insert "and grants, loans, or other forms of financial assistance"

Page 5, line 10, replace "projects." with "transmission"

Page 5, line 14, replace "projects or" with "transmission"

Page 7, line 6, replace "project or" with "transmission"

Page 7, line 7, replace "project or" with "transmission"

Page 7, line 8, replace "project or" with "transmission"

Page 7, line 10, replace "shall be" with "are"

Page 7, line 11, replace "project or" with "transmission"

Page 7, line 16, after "jurisdiction" insert "and consultation"

Page 7, line 17, after the first "the" insert "transmission" and replace "constructed or operated by the authority" with "built under this chapter, until sold or disposed of by the authority."

Page 7, line 18, remove ". the North Dakota Energy"

Page 7, line 19, remove "Conversion and Transmission Facility Siting Act" and after the underscored period insert "Upon sale or disposal by the authority, transmission facilities built under this chapter are subject to the provisions of title 49."

Page 7, line 20, after "commission" insert "and may conduct a hearing"

Page 7, line 21, after "its" insert "transmission"

Page 7, after line 23, insert:

- "3. The authority shall conduct its activities in consultation with transmission providers, wind interests, the lignite research council, and other persons having relevant expertise."

Page 7, after line 29, insert:

"SECTION 11. Disposal of transmission facilities.

1. Before becoming an owner or partial owner of a transmission facility, the authority shall develop a plan identifying:
 - a. The public purposes of the authority's ownership;
 - b. Conditions that would make the authority's ownership no longer necessary for accomplishing those public purposes; and
 - c. A plan to divest the authority's ownership interest as soon as economically prudent once those conditions occur.
2. For transmission facilities that are leased to another entity by the authority, at the end of the lease, absent default by the lessee, the authority shall convey its interest in the transmission facilities to the lessee.

3. For transmission facilities that are owned by the authority without a lessee, the authority shall divest itself of ownership as soon as economically prudent in accordance with the divestiture plan developed pursuant to subsection 1.

SECTION 12. Exemption from property taxes. Transmission facilities built under sections 1 through 14 of this Act are exempt from property taxes for a period determined by the authority not to exceed the first five taxable years of operation; after this initial period, transmission lines of two hundred thirty kilovolts or larger and the transmission lines' associated transmission substations remain exempt from property taxes but are subject to a per mile tax at the full per mile rate and subject to the same manner of imposition and allocation as the per mile tax imposed by subsection 2 of section 57-33.1-02 without application of the discounts provided in that subsection.

SECTION 13. Biennial report to legislative council. The authority shall deliver a written report on its activities to the legislative council each biennium."

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1169

Page 1, line 2, remove "and" and after "operating" insert ", and disposing"

Page 1, line 3, remove the third "and"

Page 1, line 6, after "authority" insert "; and to provide for reports to the legislative council"

Page 2, after line 5, insert:

"7. State ownership of electrical transmission facilities may not exceed the extent and duration necessary or useful to promote the public interest."

Page 2, line 12, remove "'Facilities" means electric transmission facilities and related supporting"

Page 2, remove line 13

Page 2, line 14, remove "4."

Page 2, line 15, after "construct" insert "transmission"

Page 2, line 16, after "such" insert "transmission"

Page 2, line 17, replace "5." with "4." and after "a" insert "transmission"

Page 2, after line 18, insert:

"5. "Transmission facilities" means electric transmission lines and substations, and related structures, equipment, rights of way, and works of public improvement, located within and outside this state, excluding electric generating facilities."

Page 2, line 20, replace "through improvements in the state's infrastructure and" with "by facilitating development of transmission facilities to support"

Page 2, line 21, remove "to facilitate", after "the" insert "production, transportation, and", after "Dakota" insert "electric", and remove "by planning, financing, constructing,"

Page 2, remove lines 22 and 23

Page 2, line 24, remove "transportation, and utilization of electric energy"

Page 3, line 16, after "8." insert "Enter lease-sale contracts:

9."

Page 3, line 17, replace "project" with "transmission facility"

Page 3, line 19, replace "9." with "10.", replace "Plan" with "To the extent and for the period of time necessary for the accomplishment of the purposes for which the authority was created, plan", and remove "construct."

Page 3, remove line 20

Page 3, line 21, replace "structures, equipment," with "and dispose of transmission" and remove "and works of public improvement necessary or"

Page 3, remove line 22

Page 3, line 23, remove "including the obtaining of permits and the acquisition of rights of way"

Page 3, after line 23, insert:

"11. Enter contracts to construct, maintain, and operate transmission facilities;"

Page 3, line 24, replace "10." with "12."

Page 3, line 26, after "for" insert "transmission" and remove "administered by the authority"

Page 3, line 27, replace "it, consistent with cost-causation principles until such time as" with "the authority"

Page 3, line 28, remove "the costs of the regional transmission system are shared on a systemwide basis"

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Page 4, line 5, after "constructing" insert "transmission"

Page 4, line 7, replace "Prior to" with "Before" and after "construct" insert "transmission"

Page 4, line 9, after "for" insert "transmission"

Page 4, line 10, after the second "the" insert "transmission"

Page 4, line 11, remove "shall"

Page 4, line 14, replace "shall" with "may" and after "construct" insert "transmission"

Page 4, line 16, after "including" insert "economic impacts to the state"

Page 4, line 17, after the second underscored comma insert "past performance."

Page 4, line 20, after "the" insert "transmission"

Page 4, line 22, replace "constructing" with "contracting for construction of"

Page 4, line 25, replace "project," with "transmission facility"

Page 5, line 9, after "indebtedness" insert "and grants, loans, or other forms of financial assistance"

Page 5, line 10, replace "projects," with "transmission"

Page 5, line 14, replace "projects or" with "transmission"

Page 7, line 6, replace "project or" with "transmission"

Page 7, line 7, replace "project or" with "transmission"

Page 7, line 8, replace "project or" with "transmission"

Page 7, line 10, replace "shall be" with "are"

Page 7, line 11, replace "project or" with "transmission"

Page 7, line 16, after "jurisdiction" insert "and consultation"

Page 7, line 17, after the first "the" insert "transmission" and replace "constructed or operated by the authority" with "built under this chapter, until sold or disposed of by the authority,"

Page 7, line 18, remove ", the North Dakota Energy"

Page 7, line 19, remove "Conversion and Transmission Facility Siting Act" and after the underscored period insert "Upon sale or disposal by the authority, transmission facilities built under this chapter are subject to the provisions of title 49."

Page 7, line 21, after "its" insert "transmission"

Page 7, after line 23, insert:

3. The authority shall conduct its activities in consultation with transmission providers, wind interests, the lignite research council, and other persons having relevant expertise."

Page 7, after line 29, insert:

"SECTION 11. Disposal of transmission facilities.

1. Before becoming an owner or partial owner of a transmission facility, the authority shall develop a plan identifying:
 - a. The public purposes of the authority's ownership;
 - b. Conditions that would make the authority's ownership no longer necessary for accomplishing those public purposes; and
 - c. A plan to divest the authority's ownership interest as soon as economically prudent once those conditions occur.
2. For transmission facilities that are leased to another entity by the authority, at the end of the lease, absent default by the lessee, the authority shall convey its interest in the transmission facilities to the lessee.

- 3.** For transmission facilities that are owned by the authority without a lessee, the authority shall divest itself of ownership as soon as economically prudent in accordance with the divestiture plan developed pursuant to subsection 1.

SECTION 12. Exemption from property taxes. Transmission facilities built under sections 1 through 14 of this Act are exempt from property taxes for a period determined by the authority not to exceed the first five taxable years of operation; after this initial period, transmission lines of two hundred thirty kilovolts or larger and the transmission lines' associated transmission substations remain exempt from property taxes but are subject to a per mile tax at the full per mile rate and subject to the same manner of imposition and allocation as the per mile tax imposed by subsection 2 of section 57-33.1-02 without application of the discounts provided in that subsection.

SECTION 13. Biennial report to legislative council. The authority shall deliver a written report on its activities to the legislative council each biennium."

Renumber accordingly

Date: 2-9-05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1169

House

INDUSTRY, BUSINESS AND LABOR

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Adopt Amendment .0103

Motion Made By

Rep. Dosch

Seconded By

Rep. Johnson

Representatives
G. Keiser-Chairman
N. Johnson-Vice Chairman
Rep. D. Clark
Rep. D. Dietrich
Rep. M. Dosch
Rep. G. Froseth
Rep. J. Kasper
Rep. D. Nottestad
Rep. D. Ruby
Rep. D. Vigesaa

Yes No

Representatives Yes No
Rep. B. Amerman
Rep. T. Boe
Rep. M. Ekstrom
Rep. E. Thorpe

Total (Yes) 13 No 0

Absent (1) Rep. Ekstrom

Floor Assignment Rep. Johnson

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

Voice vote - all yes
0-No

Roll Call Vote #: 2 Date: 2-9-05

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1169

House

INDUSTRY, BUSINESS AND LABOR

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 58229.0103 .0200

Action Taken Do Pass As Amended .0103

Motion Made By

Rep. Johnson

Seconded By

Rep Boe

Representatives
G. Keiser-Chairman
N. Johnson-Vice Chairman
Rep. D. Clark
Rep. D. Dietrich
Rep. M. Dosch
Rep. G. Froseth
Rep. J. Kasper
Rep. D. Nottestad
Rep. D. Ruby
Rep. D. Vigesaa

Yes **No**
X
X
X
X
X
X
X
X
X
X

Representatives
Rep. B. Amerman
Rep. T. Boe
Rep. M. Ekstrom
Rep. E. Thorpe

Yes **No**
X
X
A A
X

Total (Yes)

13

No

0

Absent

(1) Rep. EKstrom

Floor Assignment

Rep. Johnson

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

REPORT OF STANDING COMMITTEE

HB 1169: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1169 was placed
on the Sixth order on the calendar.

Page 1, line 2, remove "and" and after "operating" insert ", and disposing"

Page 1, line 3, remove the third "and"

Page 1, line 6, after "authority" insert "; and to provide for reports to the legislative council"

Page 2, after line 5, insert:

"7. State ownership of electrical transmission facilities may not exceed the
extent and duration necessary or useful to promote the public interest."

Page 2, line 12, remove "'Facilities" means electric transmission facilities and related
supporting"

Page 2, remove line 13

Page 2, line 14, remove "4."

Page 2, line 15, after "construct" insert "transmission"

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Page 2, line 17, replace "5." with "4." and after "a" insert "transmission"

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generating facilities."

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facilitating development of transmission facilities to support"

Page 2, line 21, remove "to facilitate", after "the" insert "production, transportation, and", after
"Dakota" insert "electric", and remove "by planning, financing, constructing."

Page 2, remove lines 22 and 23

Page 2, line 24, remove "transportation, and utilization of electric energy"

Page 3, line 16, after "8." insert "Enter lease-sale contracts;

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Page 3, line 17, replace "project" with "transmission facility"

Page 3, line 19, replace "9." with "10.", replace "Plan" with "To the extent and for the period of
time necessary for the accomplishment of the purposes for which the authority was
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Page 3, line 27, replace "it, consistent with cost-causation principles until such time as" with "the authority"

Page 3, line 28, remove "the costs of the regional transmission system are shared on a systemwide basis"

Page 3, line 29, replace "11. Operate, lease" with "13. Lease", after "of" insert "transmission", replace "constructed" with "owned", and replace the fourth underscored comma with an underscored semicolon

Page 3, remove line 30

Page 3, line 31, replace "12." with "14."

Page 4, line 1, replace "13." with "15."

Page 4, line 2, replace "14." with "16."

Page 4, line 5, after "constructing" insert "transmission"

Page 4, line 7, replace "Prior to" with "Before" and after "construct" insert "transmission"

Page 4, line 9, after "for" insert "transmission"

Page 4, line 10, after the second "the" insert "transmission"

Page 4, line 11, remove "shall"

Page 4, line 14, replace "shall" with "may" and after "construct" insert "transmission"

Page 4, line 16, after "including" insert "economic impact to the state,"

Page 4, line 17, after the second underscored comma insert "past performance,"

Page 4, line 20, after "the" insert "transmission"

Page 4, line 22, replace "constructing" with "contracting for construction of"

Page 4, line 25, replace "project." with "transmission facility"

Page 5, line 9, after "indebtedness" insert "and grants, loans, or other forms of financial assistance"

Page 5, line 10, replace "projects," with "transmission"

Page 5, line 14, replace "projects or" with "transmission"

Page 7, line 6, replace "project or" with "transmission"

Page 7, line 7, replace "project or" with "transmission"

Page 7, line 8, replace "project or" with "transmission"

Page 7, line 10, replace "shall be" with "are"

Page 7, line 11, replace "project or" with "transmission"

Page 7, line 16, after "jurisdiction" insert "and consultation"

Page 7, line 17, after the first "the" insert "transmission" and replace "constructed or operated by the authority" with "built under this chapter, until sold or disposed of by the authority."

Page 7, line 18, remove ", the North Dakota Energy"

Page 7, line 19, remove "Conversion and Transmission Facility Siting Act" and after the underscored period insert "Upon sale or disposal by the authority, transmission facilities built under this chapter are subject to the provisions of title 49."

Page 7, line 21, after "its" insert "transmission" and replace "shall" with "must"

Page 7, after line 23, insert:

- "3. The authority shall conduct its activities in consultation with transmission providers, wind interests, the lignite research council, and other persons having relevant expertise."

Page 7, after line 29, insert:

"SECTION 11. Disposal of transmission facilities.

1. Before becoming an owner or partial owner of a transmission facility, the authority shall develop a plan identifying:
 - a. The public purposes of the authority's ownership;
 - b. Conditions that would make the authority's ownership no longer necessary for accomplishing those public purposes; and
 - c. A plan to divest the authority's ownership interest as soon as economically prudent once those conditions occur.
2. For transmission facilities that are leased to another entity by the authority, at the end of the lease, absent default by the lessee, the authority shall convey its interest in the transmission facilities to the lessee.

3. For transmission facilities that are owned by the authority without a lessee, the authority shall divest itself of ownership as soon as economically prudent in accordance with the divestiture plan developed pursuant to subsection 1.

SECTION 12. Exemption from property taxes. Transmission facilities built under sections 1 through 11 of this Act are exempt from property taxes for a period determined by the authority not to exceed the first five taxable years of operation; after this initial period, transmission lines of two hundred thirty kilovolts or larger and the transmission lines' associated transmission substations remain exempt from property taxes but are subject to a per mile tax at the full per mile rate and subject to the same manner of imposition and allocation as the per mile tax imposed by subsection 2 of section 57-33.1-02 without application of the discounts provided in that subsection.

SECTION 13. Biennial report to legislative council. The authority shall deliver a written report on its activities to the legislative council each biennium."

Renumber accordingly

2005 SENATE NATURAL RESOURCES

HB 1169

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1169

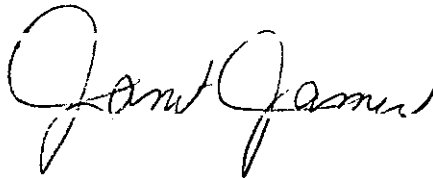
Senate Natural Resources Committee

☐ Conference Committee

Hearing Date March 10, 2005

Tape Number	Side A	Side B	Meter #
1	X		0.0 - end
		X	0.0 - 33.7

Committee Clerk Signature



Minutes:

Senator Stanley Lyson, Chairman of the Senate Natural Resources Committee brought the committee to order.

Senator Lyson opened the hearing on HB 1169 to provide for North Dakota transmission authority, provide for the planning, construction, owning, financing, maintaining, operating, and disposing of electric transmission facilities and related infrastructure, and to authorize issuance of revenue bonds.

All members of the committee were present.

Karlene Fine, Executive Director and Secretary for the Industrial Commission opened the hearing in support of HB 1169 (See attached testimony). She also distributed to the committee copies of the Lignite Vision 21 Program as prepared by Glen Skarbakka. (See attached).

Ron Rauschenberger, (4.9) Deputy Chief of Staff for Governor Hoeven testified in support of HB 1169 on behalf of the Governor (See attached testimony).

Senator Lyson asked if "Electric Transmission Authority" might be a better name or if there is a difference as there might be other transmission authority in the state.

Ron Rauschenberger saw no problem with that name changed and confirmed there were no other transmission authorities in the state.

Robert Harms, (7.8) special assistant attorney general to the North Dakota Industrial Commission and Chairman of the Upper Great Plains Transmission Coalition testified in support of HB 1169 (See attached testimony).

Senator Lyson asked Mr. Harms, being that he drew up the bill, will North Dakota own the transmission line.

Robert Harms answered that the way the bill is drafted, North Dakota would own the transmission line, but there are provisions in the bill that the line would be sold off or transfer the ownership at the line at the end of an amortization period.

Senator Lyson asked who would maintain the transmission line and if it is stated in the contract.

Robert Harms answered the line would be maintained by the utilities or companies that lease the line and would be included in the contract.

Senator John Traynor asked if North Dakota Transmission Authority have any authority to construct and maintain a line in Minnesota and if so where is it in the bill.

Robert Harms answered yes, after going through the usual permitting processes within Minnesota and possibly build a coalition with them. He further stated there is specific language in the bill that provides for this.

Senator Traynor asked if the authority has the right to emanate domain.

Robert Harms answered they believe it does just like any other utility.

Senator Rich Wardner asked if it was the Industrial Commission or the Transmission Authority that will issue the bonds and if he had an opinion if there would be problem if the legislature gave their approval of the issuance of the bonds.

Robert Harms stated it would be the Industrial Commission who issued the bonds and that the intent of the bill is to attract new transmission investment and provide them with more certainty which would not exist with the additional time needed for legislative approval.

Glen Skarbakka (14.8) consultant retained by the Industrial Commission testifying in support of HB 1169 presenting to the committee testimony of pictures and charts (See attached). He stated transmission is the bearer that is impeding development of both coal and wind power generation. It is difficult to make a long term commitment or purchase of transmission lines because of the uncertain quote of the delivered price.

Senator Lyson asked about section 12 concerning the exemption of taxes and how the state can exempt county taxes.

Glen Skarbakka referred the question to Robert Harms who stated that it will come from state law and statute.

Senator Ben Tollefson asked for a walk through of a scenario starting with interest of power producers wanting to move their product to market.

Glen Skarbakka stated there are many scenarios which is the problem with much of this. If an entity wanting to build a power plant with a customer in Minnesota, he would need to apply for a transmission service through existing channels. If this does not happen, the entity could approach the transmission authority for help. Once last check would be made for an interested supplier of

the transmission. If there is no response, the transmission authority would consider helping if this is in the best interest of the public.

Senator Tollefson asked if there could be conflict of interest if there is a joint ownership of a transmission line by the state and a utility. He further asked if there is a contradiction of jurisdiction from the stand point of regulation.

Glen Skarbakka stated that the PSC's regulation of rates is shows up at the retail level and that regulation at the wholesale level is the domain of the Federal government.

Senator Tollefson stated that the ultimate plan is to sell power to Minnesota and beyond. Which will come first, the ability to reach the market from the Minnesota line into North Dakota or reach Minnesota with the transmission line from North Dakota.

Glen Skarbakka stated that it really will not do any good just to reach the Minnesota boarder and there are plans to strengthen the grid system in Minnesota and there is many different scenarios with a lot of things to be worked out.

Senator Joel Heitkamp stated sections of the bill that might create a pan caking effect of rates.

Glen Skarbakka stated they have created a little different structure to try and keep the transmission authorities rate structure out of FERC jurisdiction to avoid pan caking. The transmission authority will have some flexibility to avoid the pan caking by the way things are structured.

Senator Traynor asked if the existing transmission facilities have the capacity for additional transmit additional energy.

Glen Skarbakka answered that not as they system presently stands. Upgrades and the best use of the present facilities is always considered first before a new system is considered.

Illona A. Jeffcoat-Sacco, (48.8) Executive Secretary of the Public Service Commission and the Director of the Public Utilities Division of the PSC testified in support of HB 1169 (See attached testimony). She also proposed an Amendment (see attached).

Tape 1, Side B

Illona Jeffcoat-Sacco shared some other thoughts with the committee stating her concerns that there should some input up front from the retail price levels so that there is not a problem of no input later after the rates have been set. The proposed amendment includes adding "adjudicative proceeding" to leave out rule making of Chapter 28-32 . The second part of the amendment would make things consistent about the exemption of Chapter 28-32.

Senator Traynor asked if the change on Page 3 would require the transmission authority to have a hearing not only on rates but everything else they intend to do.

Illona Jeffcoat-Sacco stated that was not her intent but only for the rate.

Senator Traynor asked why consultation by the authority with the PSC is not a sufficient safe guard.

Illona Jeffcoat-Sacco answered the commission can not think of every interest of every stake holder and there might be a need for someone to have the opportunity to be heard.

Senator Traynor asked if she has shared her amendment with others including the governor's office and those in the room.

Illona Jeffcoat-Sacco answered there was discussion during the hearing in the house committee and the amendment was just developed and distributed to the Industrial Commission and others.

Senator Lyson asked Glen Skarbakka to address the proposed amendment.

Glen Skarbakka commented that it boils down to consultation in comparison to something more formal than that. The transmission authority is trying to bring more certainty to the transmission development process. If the rate setting process is tied up in an appellate procedure it would decrease the amount of certainty when trying to tie a business deal together. This amendment might not be a fatal flaw but is more of striking a balance between flexibility and responsiveness to check and balances.

John Dwyer (8.5) President of the Lignite Energy Council testified in support of HB 1169 (see attached testimony). A letter of support of HB 1169 from Dave Loer, President of Minnkota Power Cooperative (See attached). He further commented on the amendment proposed by the Public Service Commission, stating there are implications with the adjudicative process. After the hearing there would be another 12-18-30 months onto the process. To be able to get away from those delays and uncertainty of this long process is the reason for the transmission authority. Language in the bill is very clear to allow the hearing and input from those interested. The language also says you "shall" consult with six elected officials responsible for rates and development under state law. With these elected officials, a 180 day notice, a hearing for those concerned, he urged the committee not to adopt the amendment that has been proposed by the PSC.

Senator Heitkamp asked if this is a fix all for the transmission issues.

John Dwyer denied that bill is a fix all for the problems but that it is a good start. The bill does offer wind and lignite resource developers a tool to help weave through the regulatory maze. It will allow them to lower their capital costs of projects because they can get potential state tax exempt

financing with state ownership.

Senator Heitkamp asked to have on the record why the state should not maintain and retain the ownership of the transmission lines.

John Dwyer stated is has been a concern of many, therefore a balance has tried to be reached by providing an exist plan. There will be a method for the state to get out of the business, at the same time the state being involved brings the advantages of financing, recoverage of rates and creditability for permitting of routing.

Rich Voss, (18.9) Vice President - Power Development, Great Northern Power Development, L.P. testified in support of HB 1169 as proposed (See attached testimony).

Senator Traynor asked if there should be an emergency clause on HB 1169.

Rich Voss did not think it was necessary for his company's development of their project.

Bob Markee representing Energy Unlimited and RES of America testified in support of HB 1169 stating today is a great day with 30-40-50 mile an hour winds. He informed the committee of the Wind Conferences in the state and how the interest has grown. But even with the increased interest of wind producing energy, things are not progressing because of the lack of transmission. This bill is needed in order for further development of this abundant resource in North Dakota.

Dean Peterson (26.7) representing the North American Coal Corporation testified in support of HB 1169 (See attached testimony).

Mark Nisbet, (27.7) Principal Manager for Xcel Energy testified in support of HB 1169 (See attached testimony).

Gary Jacobson (29.7) representing the Great River Energy testified in support of HB 1169 (See attached testimony).

Dale Niezwaag (31.4) representing Basin Electric Power Cooperative testified in support of HB 1169 (See attached testimony).

Renee Pfenning (32.9) representing the North Dakota Electrical Workers and the North Dakota Building and Construction Trades Council testified their support of HB 1169.

Senator Lyson asked for opposing testimony and hearing non closed the hearing on HB 1169.

Tape #3, Side A 0.4 - 3.8

Senator Stanley Lyson opened the committee work on HB 1169 relating to the Transmission Authority.

All members of the committee were present except **Senator Joel Heitkamp**.

Senator Lyson stated there were two amendments offered.

Discussion was held that the industry does not want these amendments and that it might be a mistake to adopt them because this would slow down the process.

Senator John Traynor stated he did not think the amendments should be adopted because there is plenty of provisions in the bill for public notice and hearing. The bill is well thought out and the process should not be disturbed.

Senator Rich Wardner stated he was not in favor of the amendments.

Senator Traynor made a motion for Do Pass of HB 1169.

Senator Wardner second the motion.

Roll call vote for a Do Pass of HB 1169 was taken indicating 6 YEAS, 0 NAYS AND 1 ABSENT.

Senator Ben Tollefson will carry HB 1169.

Date: 3-10-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1169

Senate Senate Natural Resources

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Pass

Motion Made By

Traynor

Seconded By

Wardner

Senators
Senator Stanley Lyson, Chairman
Senator Ben Tollefson, Vice Chair
Senator Layton Freborg
Senator Rich Wardner
Senator John Traynor

Yes	No
✓	
✓	
✓	
✓	
✓	

Senators
Senator Joel Heitkamp
Senator Michael Every

Yes	No
✓	

Total (Yes)

6

No

0

Absent

1

Floor Assignment

Tollefson

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

REPORT OF STANDING COMMITTEE (410)
March 10, 2005 4:29 p.m.

Module No: SR-44-4703
Carrier: Tollefson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1169, as engrossed: Natural Resources Committee (Sen. Lyson, Chairman)
recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed HB 1169 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1169



1169
26 Jan 05

INDUSTRIAL COMMISSION OF NORTH DAKOTA

John Hoeven
Governor

Wayne Stenehjem
Attorney General

Roger Johnson
Agriculture Commissioner

Testimony on House Bill 1169
By Karlene Fine
Executive Director and Secretary
Industrial Commission of North Dakota
January 26, 2005 – House Industry, Business and Labor Committee

Mr. Chairman and members of the House Industry, Business and Labor Committee, my name is Karlene Fine and I am Executive Director and Secretary for the Industrial Commission. With me today is:

- Ron Rauschenberger from the Governor's Office;
- Robert Harms who serves as special counsel to the Industrial Commission and is Chairman of the Upper Great Plains Transmission Coalition who will be commenting on the work of the Coalition;
- Glen Skarbakka, a consultant retained by the Commission to focus on transmission issues. Glen's expertise is extensive including 20 years of experience in the transmission and power resource segments of the electric utility industry. His career path has included positions in engineering, planning, business development, and management. He holds an MS degree in Electrical Engineering and an MBA in Strategic Management and a law degree. He is licensed as a professional engineer and as an attorney in Minnesota. He served as Vice President of Transmission Services at United Power Association, and has served on advisory committees of a number of industry organizations. Glen will walk you through each section of HB 1169;
- John Dwyer with the Lignite Energy Council will be speaking in regards to lignite interests along with lignite producers, developers and utility representatives;
- Rich Voss, with Great Northern Power Development, one of the current participants in the Lignite Vision 21 Project, will comment on the constraints they are seeing as they develop their project;
- Bob Markee with Energy Unlimited will be speaking in regards to wind interests;
- Organized labor representative.

As you all know, North Dakota is a state with valuable natural resources—lignite and wind—as well as human resources. North Dakota has an 800-year supply of recoverable lignite coal and an enormous supply of wind but we are constrained from using these resources because we cannot move the power generated from those resources out of the state.

In the late 80's the Legislature recognized that if we were to utilize our vast lignite resources we needed to plan ahead and formed a partnership between the lignite industry and the State—the Lignite Research Council and Program.

As part of that Lignite Research Program the Industrial Commission developed the Lignite Vision 21 Project a few years ago with the goal of having constructed in North Dakota the finest coal-fired electrical generating plants in the world, utilizing the latest clean-coal technology to provide energy for a rapidly growing region. We currently have contracts with three companies on two projects.

Two major impediments face the State in regards to development of a plant in North Dakota. The most significant one is transmission. The Legislature last session recognized this fact and adopted a resolution which states:

The legislative assembly finds and declares that it is an essential governmental function and public purpose to assist with the removal of electrical transmission export constraints and to assist with the upgrading and expansion of the region's electrical transmission grid in order to facilitate the development of the state's abundant natural resources for export to the region's consumers. The Industrial Commission shall give priority to those projects, processes, or activities that assist with the resolution of electricity transmission export constraints in this state.

The Industrial Commission in early 2003 facilitated the formation of the Upper Great Plains Transmission Coalition which is a group of entities representing lignite, wind and transmission developers. This has been an exciting and rewarding effort of seeing these entities working side-by-side to develop strategies that address mutual transmission constraints.

In addition the Industrial Commission's consultant Glen Skarbakka developed a Transmission Issues Background Paper last year which I have included in the handouts. For anyone interested in the issues facing North Dakota in regards to transmission I encourage you to read this document. Glen had done an excellent job of outlining this very complex issue.

With this background information and what the Commission was hearing from potential developers the Commission directed that House Bill 1169 be drafted and presented to the Legislature for its consideration. The Commission believes the Transmission Authority will be an important tool in dealing with the transmission crisis we are facing. Other states have already taken steps in forming Transmission Authorities—Wyoming passed legislation in 2004; Montana, New Mexico, and South Dakota are all looking at similar legislation.

This proposed Transmission Authority would be working with the current electrical generating companies and cooperatives in North Dakota. As Glen will outline, the Transmission Authority will only proceed with the development of a transmission line after the private sector has had an opportunity to resolve the transmission constraints. I call it transmission "builder of last resort".

This proposed Transmission Authority isn't the answer to all the transmission constraints the State faces. It would be one tool in our efforts to developing our valuable natural resources—lignite and wind—and providing opportunities for our children to stay in North Dakota and find employment in well paying jobs.

Thank you for the opportunity to appear and to ask, on behalf of the Industrial Commission, for your support of House Bill 1169.

Rep. Nottestad's

1169
26 Jan #2

Page 1 of 2

Time
given to
the Senate

**Statement of Ron Rauschenberger
Before the House Industry, Business and Labor Committee
HB 1169
January 26, 2005**

Mr. Chairman, Members of the House IBL Committee.

My name is Ron Rauschenberger and I am the Deputy Chief of Staff for Governor Hoeven. I am appearing today in support of HB 1169 and want you to know of Governor Hoeven's personal support for this measure.

When Gov. Hoeven first announced his support for a state transmission authority in September, he stated that:

"Our single greatest challenge in developing North Dakota's coal and wind generated energy capacity is the ability to move power to markets outside our state."

The Governor believes that the major solution to unlocking the potential for our state's energy and wind resources is the resolution of the transmission constraints that our state faces. While the transmission authority would be a "vehicle of last resort," as outlined in Section 6 of the bill, the Governor believes that a transmission authority could help jump start the process and expedite the kinds of large investments we need to expand the grid and build new power plants and wind facilities by being able to access more attractive financing for transmission investors.

I also want to emphasize that after the Industrial Commission unanimously approved the transmission authority concept on September 22nd, the draft bill was then circulated to the lignite industry for their comments, to the wind industry for their comments, to the PSC and to other interested parties. Glen Skarbakka, consultant to the Industrial Commission, who is here today, coordinated many meetings with the interested parties in October, November and December and made many changes that were requested. In other words, we have welcomed input from the very beginning of this process.

Finally, while we know that the transmission problems are extremely complex and that the transmission authority is not a cure all for all our transmission problems, we do view the transmission authority as an important "economic development tool" that can help North Dakota's generation be competitive with local generation in surrounding states. If no private entity or private/public entity steps forward, we believe the transmission authority would serve as a catalyst for new investments and as a catalyst to involve all the players in solving the transmission problems.

We realize you will hear much testimony today, and we know you will carefully consider all views. On behalf of Governor Hoeven, we urge the Committee to give a Do Pass recommendation to HB 1169.

Rep. Notte's

#3

**HB 1169
North Dakota Transmission Authority Bill
Industry, Business and Labor Committee
North Dakota House of Representatives
January 26, 2005**

Mr. Chairman, members of the committee, my name is Robert W. Harms, and I serve as a special assistant attorney general to the North Dakota Industrial Commission to assist in resolving transmission constraints in North Dakota. I am also Chairman of the Upper Great Plains Transmission Coalition (UGPTC) which was formed with the assistance of the Industrial Commission.

The mission of the UGPTC is to resolve transmission constraints that limit the export of electricity from the region. It has been in existence for nearly 2 years.

The UGPTC has members in North Dakota, South Dakota and Minnesota, representing the coal industry, the wind industry, the environmental community, and transmission interests. You will hear from Coalition members this morning in support of HB 1169.

The UGPTC participates in, or otherwise coordinates its activities with the Midwest Independent Transmission System Operator (MISO), the Federal Energy Regulatory Commission (FERC), and the Organization of MISO States (OSM), all of which are heavily engaged in transmission issues affecting our state. North Dakota Congressional staff and representatives from Minnesota and South Dakota state government also regularly attend or participate in the UGPTC activities.

Even though it is a diverse group, the Coalition has been able to reach agreement on a variety of transmission issues, including an agreement on a host of transmission issues in the most recent energy bill that we were able to provide to Senator Dorgan.

All of its activities, including comments to FERC, testifying at federal hearings, offering comments to Congress, or participating in MISO planning processes, are designed to advance the singular goal of resolving transmission constraints.

In my view, HB 1169 is another positive step towards resolving transmission constraints and is a useful tool to further develop our energy resources. I support HB 1169.

H.B. 1169

Presented by: **Commissioner Susan Wefald**
 Public Service Commission

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


Date: **January 26, 2005**

TESTIMONY


Mr. Chairman and committee members. I am Public Service Commissioner Susan Wefald. I am speaking in my own behalf. I am in support of establishing a North Dakota Transmission Authority. However, the bill is not yet perfect, and I would like to share with you two areas of concern.

This bill is about North Dakota looking at new ways to build needed electric transmission in our state. Many things are different now in the electric industry than they were when large generation and transmission facilities were being built in our state in the late 1970's and 1980's.

At that time, electric generation facilities were not in competition with each other in the wholesale electric market. Today, independent power producers such as Florida Power and Light, which built the wind farm in south central North Dakota, can come to our state and




produce electricity and they are separate companies from the investor owned utilities and the electric cooperatives that have served North Dakota customers for years. These companies must find a customer for their power production, and in the case of Florida Power and Light, when they built the wind farm, they sold the power to Basin Electric and Otter Tail Power. Another independent power producer interested in building generation in North Dakota is Great Northern Properties. They are interested in building a plant in western North Dakota using North Dakota lignite.



These new electric generation companies coming to our state and building generation facilities will also need transmission to compete on the wholesale market. In these situations, it would be helpful to have a North Dakota Transmission Authority, which could explore using the Purposes contained in Section 4 of this bill.

Let me make it perfectly clear that the transmission business is a very complicated business these days, and the state would want to be very careful about which projects it wished to consider. However, it would give the state an opportunity to ensure that certain transmission projects are given special consideration and attention. In North Dakota, the markets for our electricity are mainly out of state,



and just as we are dependent on the railroads and interstate highways to move our other commodities to market, we need transmission highways to move the commodity of electricity to these markets. Wyoming coal can be moved by rail car – North Dakota lignite needs to be moved by transmission lines to market. North Dakota wind can not be shipped by any means other than transmission lines to markets.

When this bill was being drafted I visited with members of the Industrial Commission regarding some special concerns I had. The whole Public Service Commission also visited with staff of the Industrial Commission in the drafting stage. I would like to thank the Industrial Commission for these consultations. At the present time, there are two areas of the bill on which I have questions. These are section 5, Part 10 (on page 3) which deals with consulting the Public Service Commission and establishing reasonable fees etc. I have questions about what certain words mean, (for example “administrated by the authority”) and whether all of the language which is included in part 10 is needed or should be included (for example, “consistent with cost-causation principles”). I also have concerns regarding language in Section 9, part 2. I have some

concern about whether the two sections work together in the best way possible. I look forward to working together with all of the stakeholders to address these concerns.

Mr. Chairman, that concludes my testimony. I would be happy to respond to questions.

PROPOSED AMENDMENT TO HOUSE BILL NO. 1169

Page 3, line 20, after "maintain," insert "establish fees, rates, tariffs or other charges for"

Page 3, remove lines 24 through 28

Page 3, line 29, replace "11" with "10"

Page 3, line 31, replace "12" with "11"

Page 4, line 1, replace "13" with "12"

Page 4, line 2, replace "14" with "13"

Page 7, line 17, remove "1."

Page 7, remove lines 20 through 23

Renumber accordingly

1169
26 Jan

Lignite Vision 21 Program

**Transmission Issues Background
for the
North Dakota Industrial Commission**

July 15, 2004

**Glen Skarbakka, P.E., Esq.
Skarbakka PLLC**

Transmission Consultant

Lignite Vision 21 Program

Transmission Issues Background for the North Dakota Industrial Commission

July 15, 2004

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I. Introduction

Electric transmission issues continue to seriously impede achieving the economic development benefits of exporting additional lignite and wind derived energy from the state of North Dakota. This background paper provides an overview of the current status of those issues and activities conducted to date to address them.

II. Background

This section provides background on the economic impact that electric energy production has on the state and the technical and regulatory issues that inhibit expansion of the transmission system to support additional energy production.

A. Economic Impact of Transmission on North Dakota

North Dakota has nearly 4700 megawatts of electric generating capacity, including 4100 megawatts of coal fired plants, 515 MW of hydroelectric capacity, and about 70 megawatts of wind generation. The state exports approximately 75% of the energy produced by those plants through a transmission system composed of facilities owned and operated by several utilities. The export capacity of the transmission system is regarded as fully subscribed by its current users, although additional capacity may be available intermittently on a nonfirm or short-term firm basis.

The State is encouraging new development of both wind and coal resources. Increasing transmission capacity is a condition precedent to the development of new generation of any kind, except to serve local load growth. What economic impact might the transmission constraint in North Dakota represent and how do we measure that impact? Quantifying those impacts precisely is beyond the scope of this background paper, but the following are some possible examples:

1. Additional Coal fired generation (500 Megawatt Plant and Mine)

Permanent employees	200 (with \$58,000- 65,000 annual average wage)
Construction employees	850 peak (4 years of construction)
Secondary jobs following construction	690
New Residents	335
Housing units needed	500
Capital investment	\$800 million
One-time impact of construction (gross business volume)	\$390 million
Annual impact after construction (gross business volume)	\$68 million, including \$23 million of household income.
Sales and income taxes during construction	\$2 million
Coal severance and conversion taxes to state and local government	\$3 million ¹ .

The mining/utility sector² provides the highest average wages in the State, specifically:

<u>County</u>	<u>Average Wage</u>
Mercer (mining/utility):	\$64,493
Oliver (mining/utility):	\$58,342
McLean (mining/utility):	\$63,586
Statewide average: (all sectors):	\$26,550
Compare with Stark County:	
(average wage)	\$23,717
(mining/utility)	\$35,481

¹ Data in this table per *Potential Socioeconomic Impacts of Developing the Great Northern Power Development Vision 21 Power Plant Near South Heart, North Dakota*, F. Larry Leistritz (2003).

² This sector also includes agriculture to avoid disclosure of specific wages.

2. Additional wind generation (100 megawatts)

Permanent employees	10
Construction employees	125
Secondary jobs following construction	44
New Residents	10
Housing units needed	5
Capital investment	\$80 - 100 million
One-time impact of construction (gross business volume)	\$187 million
Annual impact after construction	\$4.4 million
Sales and income taxes during construction	\$200,000
Local property taxes	\$55,000 ³

3. Additional Transmission investment:

Estimates of the cost of new transmission facilities to support generation additions range from \$50 million to as much as \$350 million, depending on the amount of generation added and the location of the customers. New transmission will include capital investments, jobs during construction, and ongoing maintenance.

Total miles of new or upgraded lines	200 – 500 miles depending on specific plan.
Cost of new line (recent examples, excluding right of way costs).	115 kV line: \$75,000-\$180,000 per mile
	230 kV line: \$130,000-260,000 per mile
	345 kV line: \$300,000 per mile.

4. Economic Impact of resolving transmission constraints

Power transactions are curtailed when demand for use of the transmission system exceeds its capacity. This limits economic transactions, resulting in over utilization of higher cost power plants and under utilization of lower cost resources. One study⁴ suggests that alleviating transmission constraints in the North Dakota/Minnesota/Iowa areas through a \$667 million transmission investment would save \$387 million in energy costs annually.

³ Data in this table per *Potential Impacts of Commercial Wind Power Development in North Dakota*, F. Larry Leistritz (2001) and estimates of wind developer members of the Upper Great Plains Transmission Coalition.

⁴ *MISO Transmission Expansion Plan 2003* ("MTEP-03"), June 19, 2003.

B. Context

The electric industry is in a state of flux. This section provides the context for several key issues that are creating unprecedented levels of uncertainty about the future of electric transmission and a negative shift in the perceived risk of electric utility investments.

1. Transmission Ownership

Despite widespread changes in the electric industry, the major transmission facilities in North Dakota remain, for the most part, owned by the utilities that originally built them. Transmission facilities owned by the Western Area Power Administration (WAPA) and Basin Electric Power Cooperative (Basin) are pooled into a network called the "Integrated System" (IS). Transmission facilities owned by the other utilities are not part of the IS. Historically, the IS and non-IS facilities were developed somewhat independently and were only loosely interconnected.

2. Federal versus State Regulation

Long-standing tensions continue between federal authority over wholesale electricity (interstate commerce) versus retail regulation by states. The lines of physical demarcation between the federally-regulated transmission system and the state-regulated distribution system have been clarified somewhat in recent years⁵. However, much gray area remains, particularly with respect to, among other things, retail rate recovery of transmission costs and wheeling for retail competition.

Investor-owned utilities are directly under FERC jurisdiction with respect to transmission and wholesale transactions. Cooperatives, municipal joint action agencies, and federal agencies are generally not under FERC jurisdiction; however the FERC indirectly exerts authority over them in certain respects⁶.

⁵ Although the FERC has declined to make a bright line distinction between transmission and distribution, it adopted in Order 888 a *Seven Factors Test* to provide guidance in classifying the electric system into transmission and distribution components. Under this test, distribution facilities are indicated by: (1) proximity to retail customers, (2) radial, as opposed to networked, character, (3) power flowing in, rarely, if ever, out, (4) once in the facility, power is not reconsigned or transported to another market, (5) power consumed in a relatively restricted geographic area, (6) meters at the transmission/distribution interface, and (7) lower voltages compared to transmission.

⁶ See footnote 8 for one example.

3. MAPP

Essentially all of the utilities in the upper Midwest formed the MidContinent Area Power Pool (MAPP) in the 1960s to:

- provide a generating reserve sharing pool,
- serve as a reliability region within the North American Electric Reliability Council (NERC)⁷,
- provide region-wide transmission access to "spare" transmission capacity among MAPP members, and
- coordinate numerous planning and operating activities.

Until the early 1990s, transmission arrangements for new power plants were made through studies and negotiations among the plants' developer(s) and other affected transmission providers, culminating in contracts among them. Plans for plants and transmission additions were reviewed and approved by MAPP to assure reliability.

4. Open Transmission Access

This structure began to change with the passage of the Energy Policy Act of 1992. That Act put in motion a broad shift toward competition in the wholesale electric industry, envisioned by Congress to follow a path similar to other "deregulated" industries such as airlines, railroads, and natural gas. A policy of open access to the transmission system was viewed as a condition precedent to developing such competition. As a first element of open access, the Federal Energy Regulatory Commission (FERC) in 1996 issued its seminal Orders 888 and 889 requiring, among other things, that transmission owners⁸ offer transmission service on a nondiscriminatory basis under open access transmission tariffs (OATTs) and take their own use of their transmission facilities under those tariffs.⁹

⁷ NERC was organized by the electric utility industry to develop reliability standards after a series of blackouts in the 1960s. NERC consists of a central organization with member "regional reliability organizations" such as MAPP. Most versions of the yet-unpassed federal energy bill bring the functions of NERC directly under FERC authority, with reliability directives having the force of law. FERC will designate a reliability organization to carry out this function, which is widely expected to be a reformulated version of NERC known as the North American Electric Reliability Organization (NAERO).

⁸ The effects of Orders 888 and 889 reach well beyond the investor-owned utilities that are directly under FERC jurisdiction. The FERC requires "nonjurisdictional" utilities (cooperatives, municipal joint action agencies, and federal agencies) to offer reciprocal open access when taking service under a jurisdictional utility's OATT. The practical result of this "reciprocity" provision is that open access applies across all sectors of the transmission system under similar, though not necessarily identical, tariff provisions.

⁹ Existing transmission contracts were not abrogated. However, such "grandfathered" contracts are disfavored by the FERC, which will generally not approve significant amendments such as term extensions.

5. Regional Transmission Operators

As a second element of open access to transmission, the FERC has pushed to give transmission users and other stakeholders a greater voice in how the transmission system is planned and operated. Initially, the FERC required transmission organizations to open their membership to such stakeholders, forming what were called Regional Transmission Groups (RTGs). MAPP complied with this requirement in 1996¹⁰. More recently, the FERC has strongly encouraged utilities to turn "operational control" of their transmission facilities over to FERC-approved independent organizations variously known as Independent System Operators (ISOs) or Regional Transmission Organizations (RTOs)¹¹. RTOs are to have governance structures that are independent of the transmission facility owners and broadly representative of transmission users and other stakeholders. FERC has not gone so far as to order all utilities under its jurisdiction to join RTOs, but it has made RTO membership a condition of approval of certain utility requests, such as mergers.¹²

To date, the development of RTOs has been uneven. Parts of the country with "tight" power pools¹³, such as the Northeast, have been more successful in forming RTOs than other parts of the country, such as the West or Southeast, where RTO developments have stalled. In this area, most notable was the failure of the MAPP utilities to agree to form a MAPP RTO in 1999. This prompted several key MAPP members (particularly Xcel) to search for an alternative, leading them to join the Midwest Independent System Operator ("Midwest ISO" or simply "MISO"), an RTO initially formed in the Indiana, Illinois, and Kentucky region. The other investor-owned utilities in MAPP, feeling pressure from FERC to join an RTO and seeing a bandwagon toward MISO, quickly followed suit.

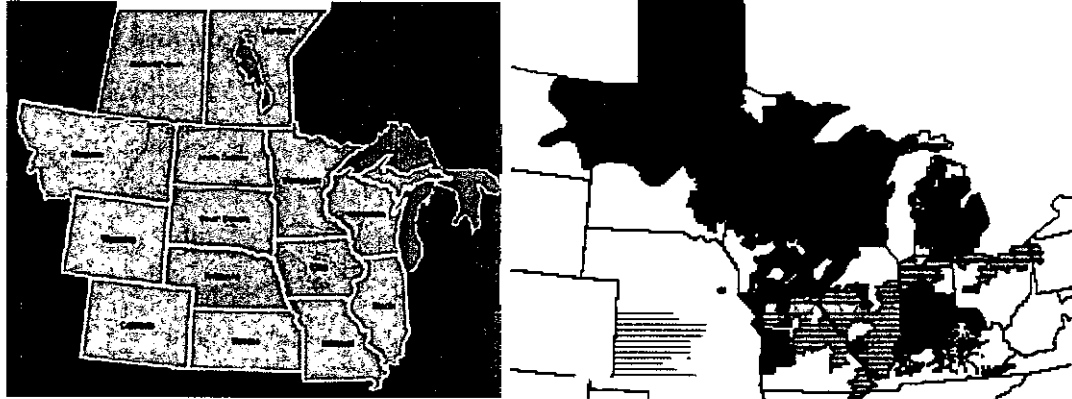
¹⁰ MAPP Restated Agreement, 1996.

¹¹ FERC Order 2000, Issued December 20, 1999. The concept and terminology has been evolving from one FERC proceeding to the next; however the current practice, adopted in FERC Order 2003, is to refer to such independent organizations as "RTOs".

¹² For example, FERC required RTO membership as a condition of approving the Xcel merger.

¹³ A "tight" power pool centrally dispatches the power plants of its members; i.e. the pool sets the level of output of each unit. A "loose" power pool, such as MAPP, may provide market information or facilitate transactions, but does not actually dispatch units.

General Territories of MAPP (left) and MISO (right) members¹⁴.



MISO has assumed for its members many, but not all, of the functions of MAPP. Transmission service using facilities owned by MISO members is provided using the MISO OATT. MISO develops transmission plans and policies and provides high level operational directives to local control centers. MAPP continues to function as a reliability council, a generating reserve sharing pool, an energy market, and a regional transmission group (for members that have not joined MISO)¹⁵. For nonmembers of MISO, MAPP continues to provide the services it traditionally has, but in a vastly smaller footprint and in coordination with MISO.

MISO became the first RTO to be approved by FERC. FERC has shown continued strong interest in its success. In many respects, MISO is off to a good start, but there remain gaping holes in its membership and resistance to certain policies it is trying to implement, particularly in the MAPP region¹⁶. Expansion of MISO to include the remainder of the MAPP region has stalled. In fact, in the last several months there has been talk of withdrawals from MISO. Additionally, MAPP has explored reviving the concept of a MAPP RTO or, alternatively, forming a "MISO West" subgroup within the MISO organization with rules and policies better adapted to this region's circumstances.¹⁷ The effort to form "MISO West" was recently terminated, however.¹⁸

Most of the investor owned utilities in the MAPP region are now members of MISO, but almost none of the nonjurisdictional utilities (cooperatives, municipals, and federal agencies) have joined. A major reason for this difference is the MISO transmission rate structure,

¹⁴ These maps should be interpreted with caution. The MAPP map shows all of the members of the MAPP reliability region. However most of the investor-owned utilities in MAPP are MISO members and provide transmission service pursuant to the MISO tariff. The MISO map omits "holes" where nonjurisdictional utilities are not MISO members (e.g., Basin, GRE, Minnkota, and others).

¹⁵ MAPP is in the process of unbundling certain of these functions into separate organizations. The energy market function has been spun off to a new organization, the Midcontinent Energy Marketers Association (MEMA). MAPP is in the process of forming a new organization for its regional reliability functions, the Midwest Reliability Organization (MRO). The generation reserve sharing pool remains with MAPP, as does the regional transmission function for members that have not joined MISO.

¹⁶ Utilities that have not joined MISO have discussed forming RTOs of their own. Notably, Basin, Minnkota, and other nonjurisdictional utilities in the plains states have explored forming an RTO called Crescent Moon.

¹⁷ On November 21, 2003 the MAPP Executive Committee created a Strategic Review Team to explore the alternatives of (1) forming a new RTO and (2) developing a "MISO West" subregion within MISO.

¹⁸ The MAPP Executive Committee terminated work on "MISO West" on March 25, 2004.

which the nonjurisdictional utilities find disadvantageous. Efforts to modify that rate structure have been unsuccessful to date. The fact that some utilities in this region are MISO members while others are not complicates operation of the grid and planning its future development.

6. Standard Market Design

The FERC's third element of open transmission access was to develop comprehensive standardized rules and procedures for electric transmission and power transactions -- a Standard Market Design (SMD) -- to replace various regional practices¹⁹. However, the FERC put this initiative on hold after encountering stiff opposition during its rulemaking proceeding on it²⁰. This experience made it abundantly clear that there is little national consensus on many aspects of electric transmission, especially aspects that involve paying for use and expansion of the transmission grid.²¹

7. Organization of MISO States

After pulling back on SMD, the FERC's current posture²² is to accept regional rules that meet the broad standards of being "just, reasonable, and nondiscriminatory" and that have been developed through a suitably open consensus-building process. In particular, the FERC has encouraged the formation of regional organizations of states to deal with issues such as transmission cost allocation.²³

Public utility commissioners from states in the MISO footprint formed the first such regional organization, the Organization of MISO States (OMS)²⁴. The issues OMS is addressing, particularly transmission cost allocation issues, are vital to resolving the North Dakota transmission constraint. North Dakota PSC Commissioner Susan Wefald is currently the president of OMS.

¹⁹ FERC Notice of Proposed Rulemaking: *Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design*, FERC Docket RM01-12-000, July 31, 2002.

²⁰ The NDIC filed comments in this proceeding on February 28, 2003.

²¹ The reasons for this lack of consensus are both philosophical (differing views on the appropriateness of changing the status quo) and situational (differing cost impacts on local constituencies due to differing regional circumstances). The FERC's proposed Standard Market Design was heavily influenced by more-or-less successful implementation of such a model in the Northeastern states. The proposal was strongly opposed by the Southeastern and Northwestern states, whose generating, transmission, and historical circumstances differ markedly from those of the Northeast.

²² *White Paper on Wholesale Power Market Platform*, FERC, April 28, 2003.

²³ Such regional organizations were envisioned by the National Governors Association and by the FERC in their Standard Market Design proposed rule. The NGA called them Multi-State Entities, the FERC called them Regional State Advisory Committees. See, *Interstate Strategies for Transmission Planning and Expansion*, National Governors Association Task Force on Electricity Infrastructure, August 6, 2002; FERC Notice of Proposed Rulemaking: *Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design*, FERC Docket RM01-12-000, July 31, 2002.

²⁴ The OMS bylaws also provide for Associate Memberships for state agencies that (a) are involved with energy planning, and or environmental issues that relate to electric transmission, or (b) are involved with consumer advocacy issues that relate to electric transmission, or (c) are approved by the OMS Board of Directors for associate member status.

8. DOE Grid Study – National Interest Transmission Bottlenecks

In 2002, the Department of Energy published a study²⁵ that, among other things, identified the existence of transmission bottlenecks with impacts affecting the interests of the nation or at least broad regions of it. The study was reviewed by an advisory group, which recommended²⁶ that the DOE develop an approach for identifying such National Interest Transmission Bottlenecks, suggesting criteria such as:

- effect on national security,
- risk of widespread unreliability,
- adequacy of electric supply to major load centers, and
- risk of cost increases with serious consequences to broad regional economy.

The study recommended facilitating solutions to such bottlenecks through means such as financial incentives, regional coordination, and increased federal authority. The DOE established an Office of Electric Transmission and Distribution to carry out this task as well as to manage transmission-related research programs and reliability initiatives. Drafts of the yet-to-be-passed federal energy bill also have contained provisions addressing the need to resolve transmission bottlenecks. With or without the energy bill, the DOE is in the process of initiating a rulemaking proceeding on this matter.

C. Physical Aspects of Electric Transmission

Customers expect the transmission system to operate reliably despite storms, equipment failures, plant trips, and other events that disable parts of the system. Such events are factored into the design of the system. The goal is not to provide perfect reliability, but is to maintain the system's integrity despite a limited number of credible adverse events. When such events occur, use of the system must be reduced to maintain its ability to survive subsequent events and to avoid cascading failures that could lead to a widespread blackout.

1. North Dakota Export Limit

The utilities in the upper Midwest, acting through MAPP, have established export limits and other guidelines for operating the system reliably. One of those guidelines sets a limit of 1950 MW for exports from North Dakota (NDEX) when the transmission system is fully intact. Lower limits apply when one or more transmission lines are out of service.

²⁵ *National Transmission Grid Study*, U.S. Department of Energy, May, 2002. Note that this study did not identify the North Dakota Export interface as a National Interest Transmission Bottleneck. The study used curtailed transactions (transmission loading relief incidents) as the basis for initially identifying bottlenecks. This approach fails to identify situations such as North Dakota's, where transmission is adequate for existing needs but cannot support additional generation. The director of what is now the DOE Office of Electric Transmission and Distribution subsequently visited North Dakota and noted that the list was not to be taken as comprehensive or exclusive.

²⁶ *Transmission Grid Solutions Report*, US DOE Electricity Advisory Board, Sept., 2002.



The NDEX limit arises primarily due to stability constraints, although thermal and voltage limitations are also considered. The natures of these limitations are as follows:

- **Stability:** The transmission grid must withstand shocks such as short circuits and loss of critical lines or power plants. Immediately following such events, the system will experience fluctuations in voltage and other parameters. Those fluctuations must fall within a range that won't damage equipment or lead to other, cascading failures – all in a timeframe too short for human intervention.
- **Thermal limits:** Transmission lines, transformers, and other equipment have ratings arising from heat created by resistance to the flow of current. Operating beyond those ratings could lead to sagging transmission lines, conductor damage, or premature failures of expensive equipment such as transformers.
- **Voltage:** The voltage on the transmission system must be maintained within certain limits to avoid damage to equipment and to provide adequate service to customers.

Exporting power from a new plant in North Dakota would necessitate increasing the NDEX limit²⁷, requiring transmission improvements to alleviate the underlying stability, thermal, and voltage limitations of the system. Extensive engineering studies and design work would be required, well beyond the scope of the exploratory studies performed to date under the LV21P.

2. Other constrained interfaces

Power flows across the transmission system in a manner determined by the physical characteristics of the many lines comprising the system. Even when new lines are built between a new power plant and a load center, some power will flow across other transmission lines that may be quite distant from the desired plant-to-load path. Bottlenecks arise when the additional power pushes those lines over their operating limits.

²⁷ Transmission capacity for exports from North Dakota may be available intermittently on a nonfirm or short-term firm basis when the existing transmission system is not fully loaded, such as when plants are out of service, when local loads are high, when export energy market conditions are unfavorable, or when other transmission constraints are binding. However, a new plant would almost certainly require long-term firm transmission capacity to be economically viable.

Several such bottlenecks (called "constrained interfaces") may be impacted by a new North Dakota plant, in addition to the NDEX limit. Among these are constrained interfaces in Nebraska, between Manitoba and the United States, and between Minnesota and Wisconsin. These must be addressed in transmission studies that are part of the process of arranging transmission service for the new plant.

3. AC and DC Transmission

The vast majority of the transmission system uses alternating current (AC) because it can be readily transformed from one voltage to another. However, direct current (DC) is used in certain circumstances involving long distances or connections between asynchronous alternating current systems (that is, systems that are not interconnected and operating at exactly the same frequency).

DC transmission systems require very complex and expensive converter stations at each end of the line and at any intermediate tap points. However, the DC transmission lines themselves are less expensive and have appreciably lower losses than AC lines of similar capacity.

DC transmission could be used to transfer power from a new plant in North Dakota to eastern markets, as is done with Coal Creek and Milton Young plants. DC transmission could also be used to transfer power between North Dakota and the western states, although the economic prospects for exports from North Dakota to the west do not appear to be as favorable at this time.

D. Procedures for Arranging Transmission Service

New transmission service must be arranged pursuant to the open access transmission tariff (OATT) of one or more transmission provider(s). A new power plant must have two distinct services for power to flow from the plant to a customer:

- **Generator Interconnection Service**, which conveys a right to interconnect the plant with the grid; and
- **Transmission Service**, which conveys the right to deliver the plant's production to a particular customer.

The FERC requires that these services be provided on a first-come, first-served basis. Transmission providers maintain queues that list service requests in the order of receipt²⁸.

The party requesting transmission service may be required to pay for necessary transmission system improvements, which may be quite distant from the desired path of power flow. Some or all of those payments may be reimbursed over time by other users of the transmission system if the improvements are beneficial to other users. Regional rules for determining who pays for transmission system improvements are currently under debate²⁹. Uncertainty about the outcome of that debate is a major source of investment risk for new transmission projects.

A transmission line could, in theory, be built outside of this process. So called "merchant transmission lines" have been proposed in special circumstances where the owner can exert control over who uses the line³⁰. However, transmission lines built in this region will likely need to be operated as part of the overall grid, precluding avoidance of the complicated issues of compensation by the merchant for reliance on other transmission facilities and compensation to the merchant for benefits provided to the other users of the grid.³¹

²⁸ MISO manages common queues for its member utilities and coordinates those queues with the queues of other utilities. As of early June, 2004, the MISO generator interconnection queue had 290 active projects, totaling 51,108 MW. Of those projects, 17 were in North Dakota (2550 MW), 27 were in South Dakota (3675 MW), and 87 were in Minnesota (8625 MW). A list of North Dakota projects in the MISO and WAPA generator interconnection queues is shown in Attachment 1.

²⁹ MISO has established a Regional Expansion Criteria and Benefits Task Force to develop a cost allocation policy for new transmission lines within the MISO region, subject to FERC approval.

³⁰ DC transmission lines allow such control. Back-to-back DC converters and undersea cables have been proposed as merchant transmission lines.

³¹ A radial configuration in which a new plant is connected solely to a dedicated transmission line extending to a distant market would avoid these issues on the plant end of the line. Such a radial configuration may be technically feasible, but would likely be less reliable than a grid-connected plant because of the plant's dependence on the dedicated line's availability. It would also likely be more costly because there would be no other beneficiaries to share costs with.

III. Activities to Date

A. Studies

1. Phase I Lignite Vision 21 Program (LV21P)

During Phase I of the LV21P, which began in July of 1999 and was completed in July of 2000, a "fatal flaw analysis" transmission study³² was conducted by ABB, Inc. The study used power flow techniques to identify a transmission corridor (Antelope Valley Station – Huron – Sioux Falls – Lakefield Junction) to accommodate an additional 500 MW to the North Dakota export capacity. ABB determined that this route would likely increase stability and reliability of the MAPP network and, in particular, the North Dakota sub-region of MAPP, but would require additional studies for verification.

2. Phase II LV21P

During Phase II of the LV21P, which began April 1, 2000 and was completed in July of 2001, transmission studies were conducted for a new 500 MW lignite-fired plant located at any of seven potential sites in North Dakota³³. The studies included powerflow, stability, and loss evaluations. The results indicated that it was technically feasible to add a new 500 MW generating unit in North Dakota and to upgrade the transmission system from North Dakota to Minnesota.

3. Phase III LV21P

During Phase III of the LV21P, which began September 1, 2001 and was completed April 30, 2004, several transmission studies were conducted. One study³⁴ identified transmission improvements necessary to deliver power from each of the Great River Energy, Great Northern Power Development, and MDU/Westmoreland prospective project sites to the Minneapolis area for both 750 and 500 MW plants. The six basic route scenarios shown in Attachment 2 were investigated. The study developed cost information for each scenario and determined that each was technically feasible, though much more detailed study would be required before such a project could be constructed.

In a another study³⁵, Great Northern Power Development, MDU-Westmoreland, and the NDIC contracted with ABB to investigate transmission options to increase power flows between the Western Electricity Coordinating Council (WECC) and the Mid-Continent Area Power Pool (MAPP) and identify transmission upgrades required to transmit 500 MW and 1000 MW of new lignite generation in the MAPP System to the Northwest Region in the WECC. Seven alternatives were developed for transmission of power from the Belfield and Gascoyne locations to the WECC. The results of the study included cost estimates and indicate that the transmission scenarios studied are technically feasible; however, much more detailed studies would be required.

³² *North Dakota Transmission Study Second Report* (ABB, May 8, 2000).

³³ *Phase II Transmission System Impact Study Summary Report* (ABB, February 6, 2001, Revised February 23, 2001).

³⁴ *LV21P Transmission Alternatives Preliminary Analysis* (ABB, February 12, 2002).

³⁵ *MAPP-WECC Transmission Study* (ABB, December 2, 2002).

In a third study³⁶, several entities, including wind developers, contracted with ABB to evaluate the feasibility of 1500/2250 MW high-voltage direct current transmission lines from North Dakota to Chicago. The results of the study included cost estimates and indicate that the transmission scenarios studied are technically feasible; however, much more detailed studies would be required.

In a fourth study³⁷, ABB evaluated the transmission required to export 250 MW and 500 MW based upon a review of existing studies. This study excluded upgrading the Antelope Valley-Huron line, whose owners have indicated that they have reserved such an upgrade for other purposes. The study included transmission routes and cost estimates for a 250 MW station located at Gascoyne and a 500 MW station located at either Gascoyne or Belfield and delivering power to the Minneapolis area.

Most recently, the Transmission Study Committee (TSC) of the UGPTC has prepared a draft Dakotas Transmission Study Scope, December 4, 2003. This study will identify potential transmission projects to deliver 500 MW from a new North Dakota lignite generating station and 1500 MW from wind generating sites in North and South Dakota to the Twin Cities and other markets further south and east. Maps showing the placement of these generating sites and examples of the transmission configurations being considered are shown in Attachment 3. The TSC subcommittee and MISO transmission planners are in the process of developing a scope of work. MISO has committed to performing the study and integrating the results into the MISO Transmission Expansion Plan 2004 (MTEP-04), which is scheduled for completion by the end of 2004 and approval by the MISO Board of Directors in early 2005. At that point, it would be up to the LV21P participants, the wind interests, existing plant operators, transmission owners, and other stakeholders to determine how they would work together to develop specific transmission plans, cost sharing mechanisms, and permitting and siting strategies.

³⁶ *North Dakota to Zion HVdc Transmission Feasibility Study* (ABB, November 14, 2002).

³⁷ *Review of System Alternatives for Lignite Vision 21 Program* (ABB, July 28, 2003, Revised September 16, 2003)

B. Upper Great Plains Transmission Coalition

The NDIC has been instrumental in forming the UGPTC, which is comprised of coal, wind, and transmission interests in the upper Great Plains region.

1. UGPTC Mission and Objectives

The UGPTC has identified the following mission and objectives:

Mission: To identify, publicize, and advocate solutions to resolve the transmission constraints that limit export of electrical energy from the Upper Great Plains.

Objectives:

1. Submit identified transmission constraint solutions to applicable Regional Transmission Organizations and Regional Multi-state committees that are responsible for transmission planning and approval and advocate their approval.
2. Identify laws, rules, regulations, and policies that are barriers to the implementation of transmission constraint solutions and recommend strategies and plans to remove such barriers.
3. Submit application, if appropriate, to the United States Department of Energy for National Interest Transmission Bottleneck designation of the Upper Great Plains transmission constraints and advocate for it approval.
4. Identify permits, licenses, and routing and develop construction plans for the proposed transmission solutions.

2. UGPTC Structure

The UGPTC has developed the following committees:

- **Transmission Study Committee** to review existing and conduct new studies. The committee is to select the solution(s) that best meets the mission and objectives of the Coalition and advocate its approval.
- **Rules, Regulations and Policies Committee** to review existing federal, state and RTO rules, regulations and policies to identify barriers that could affect implementing the transmission constraint solutions identified by the Coalition. The Committee is to develop strategies and plans to resolve barriers that are identified.
- **National Interest Transmission Bottleneck (NITB) Committee** to develop an application to DOE to designate the Upper Great Plains transmission constraint as a NITB and develop plans for advocating its approval.
- **Siting, Routing, and Construction Planning Committee** to review the siting and routing requirements within the states affected by the proposed transmission solution and develop a strategy and plans to construct it.

3. UGPTC Activities

The UGPTC has met ten times: seven times in Bismarck, twice in St. Paul, MN, and once in Pierre, SD. The committees are active and meet as needed. Bob Harms, Special Attorney General, serves as the UGPTC Chairman. Attachment 4 includes a list of the UGPTC members. Attachment 5 includes a list of the committees and their members. Attachment 6 is a Memorandum of Understanding among the members. The UGPTC has received recognition by MISO, OMS, and WAPA in their programs and planning.

Following is a summary of the current activities of each of the UGPTC committees:

(a) Transmission Study Committee

This committee is working to include a conceptual plan addressing lignite and wind expansions in the 2004 MISO Transmission Expansion Plan. This plan would provide transmission for up to 500 MW of lignite-fired generation and 1500 MW of wind generation at various locations in North Dakota, South Dakota, and Minnesota.

(b) Rules, Regulations and Policy Committee

In August 2003, this committee made a presentation to Senator Dorgan on transmission issues and provided pricing language for the energy bill that would be favorable to North Dakota lignite and wind projects³⁸. The committee has also been developing strategies for influencing MISO and the OMS to adopt favorable pricing policies. Susan Wefald, North Dakota Public Service Commission, is the current President of the OMS and meets regularly with UGPTC members, providing an opportunity for interfacing with the OMS.

(c) National Interest Transmission Bottleneck Committee

This committee has been evaluating the North Dakota export constraint and bringing attention to it. Efforts include sharing information obtained through Great Northern Power Development's participation in a national study of transmission bottlenecks³⁹. The NITB Committee is also monitoring development of the U.S. Department of Energy's (DOE) Office of Electric Power Systems Operations and Analysis, which will be primarily responsible for identifying significant ("national interest") transmission bottlenecks. This office is expected to conduct a rulemaking regarding designation of such bottlenecks in the near future, which may have a favorable impact on new transmission development in North Dakota.

³⁸ The UGPTC adopted the committee's endorsement of pricing that would : (1) promote capital investment in economically efficient transmission systems; (2) encourage the construction of transmission facilities in a manner which provides the lowest overall cost to consumers and risk to investors; (3) encourage improved operations of transmission facilities and deployment of transmission technologies designed to increase capacity and efficiency of existing networks; (4) ensure that parties who invest in facilities necessary for transmission expansion or interconnection receive appropriate compensation for those facilities; (5) eliminate regional barriers to transmission development; (6) promote the adoption of: (a) a single region-wide average rate for high voltage transmission facilities that provide regional benefit consistent with the development of an economically efficient system and support wholesale interstate transactions, and (b) zonal rates for sub-regional transmission facilities.

³⁹ *Grounded in Reality: Bottlenecks and Investment Needs of the North American Transmission System* (Cambridge Energy Research Associates).

(d) Siting, Routing, and Construction Planning Committee

This committee has identified the pertinent state transmission siting and permitting requirements and points of contact in North Dakota, South Dakota, and Minnesota. In addition, the committee has made contact with the OMS Transmission Planning and Siting Committee, the chair of which is now participating in UGPTC meetings. The OMS is currently in the process of surveying states in the MISO footprint regarding transmission siting authority, practices, and experiences.

4. Other interests:

Members or representatives of the Minnesota Governor's office, Minnesota Board of Environmental Quality, Minnesota Department of Commerce, Minnesota PUC, Minnesota Attorney General's office, South Dakota Governor's Office, and the South Dakota PSC have all attended the meetings held in their respective states. North Dakota congressional delegation staff have also participated in most of the UGPTC meetings.

5. Public Policy:

The 2003 Legislature established transmission as a key public policy for the State of North Dakota by enacting the following legislation⁴⁰:

Governmental public purpose - Electricity transmission export constraint priority. The legislative assembly finds and declares that it is an essential governmental function and public purpose to assist with the removal of electrical transmission export constraints and to assist with the upgrading and expansion of the region's electrical transmission grid in order to facilitate the development of the state's abundant natural resources for export to the region's consumers. The industrial commission shall give priority to those projects, processes, or activities that assist with the resolution of electricity transmission export constraints in this state.

In summary, the UGPTC has established objectives, organized itself into functioning committees, and has begun pursuing transmission solutions (technical and legislative) that will benefit the lignite and wind industries, and thus the economy in this state and region.

⁴⁰ Electricity Transmission Export Constraint Resolution, House Bill 1339.

IV. Conclusion

Electric generation is a major economic activity within the state of North Dakota. Exporting additional electricity to out-of-state markets will require expanding the transmission system. The technical and financial issues involved in such an expansion are formidable. Studies completed through the LV21P and elsewhere have indicated that adding transmission capacity for exports from North Dakota is technically feasible. Costs have been quantified in those studies, however more analysis would be required to identify a narrower range for the cost of a specific transmission plan for a specific generating project.

A number of complex, interrelated organizational and regulatory issues must be resolved before any such transmission plan will be implemented. The present state of flux associated with these issues has created an unprecedented level of uncertainty and perceived risk for new investments in transmission.

Potential expansions of both lignite and wind resources are similarly affected by those issues. The formation of the UGPTC has created a forum for raising their visibility and for identifying common interests in moving toward their resolution.

Attachments

1. North Dakota projects in the MISO and WAPA generator interconnection queues
2. Transmission scenarios evaluated in Phase III of Lignite Vision 21 Program
3. Examples of scenarios to be considered in MISO 2004 Transmission Expansion Plan
4. UGPTC Members
5. UGPTC Committees
6. UGPTC Memorandum of Understanding

Attachment 1

North Dakota Projects in the MISO and WAPA Generator Interconnection Queues

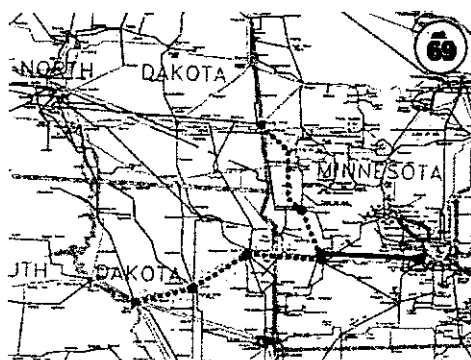
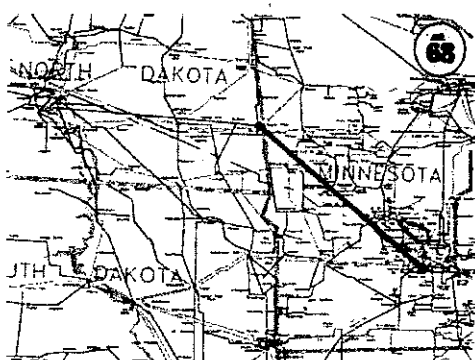
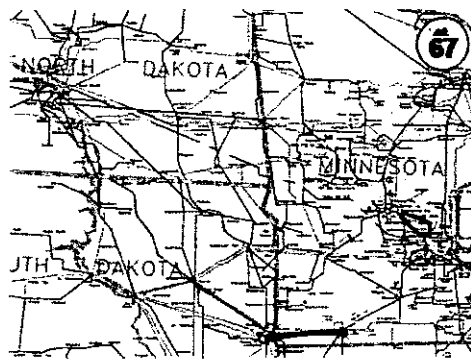
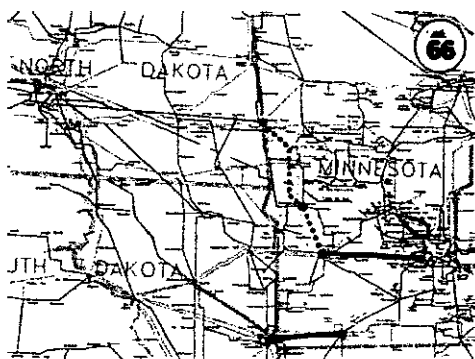
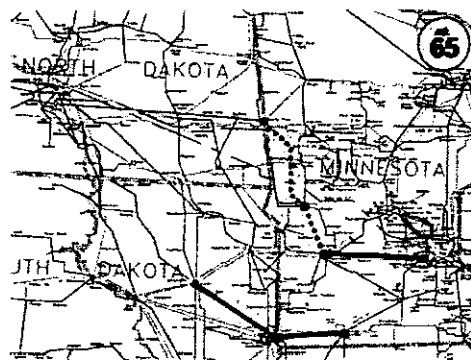
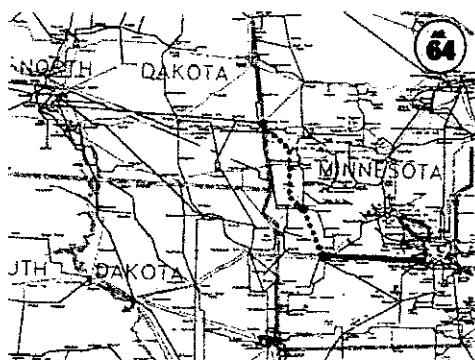
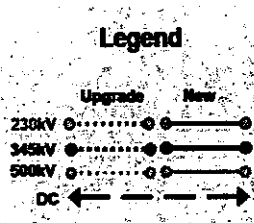
(as of June 7, 2004)

Queued Date	Queue	Control Area	County or other ID	Net Plant Max MW	In Service Date
09-Nov-00	MISO	OTP	Cass	2	01-Oct-01
31-Jan-01	WAPA	WAUE	Antelope Valley Station	300	
17-Sep-01	MISO	MDU	Dickey	180	01-Oct-04
23-Oct-01	WAPA	WAUE	Minot	3	
30-Apr-02	WAPA	WAUE	Hettinger	100	
30-Apr-02	WAPA	WAUE	Hettinger	400	
20-Jun-02	WAPA	WAUE	Edgeley	40	
26-Jun-02	WAPA	WAUE	Antelope Valley Station	20	
20-Aug-02	MISO	MDU	Dickey	19	01-Dec-03
12-Nov-02	WAPA	WAUE	Stark	500	
05-Feb-03	MISO	OTP	LaMoure	19	01-Oct-03
19-Mar-03	MISO	MDU	Bowman	19	01-Sep-04
13-Jun-03	WAPA	WAUE	Morton	8	
24-Sep-03	WAPA	WAUE	Mercer	600	
21-Nov-03	MISO	MDU/OTP?	Pierce	150	01-Dec-05
02-Mar-04	MISO	NSP	McHenry	40	31-Dec-05
27-Mar-04	MISO	MDU	Dickey	150	01-Dec-05
<i>Total</i>				2550	

Note: "WAUE" is the WAPA Upper Great Plains Eastern control area, which includes the systems of WAPA, Basin, and others in the eastern interconnection.

Attachment 2

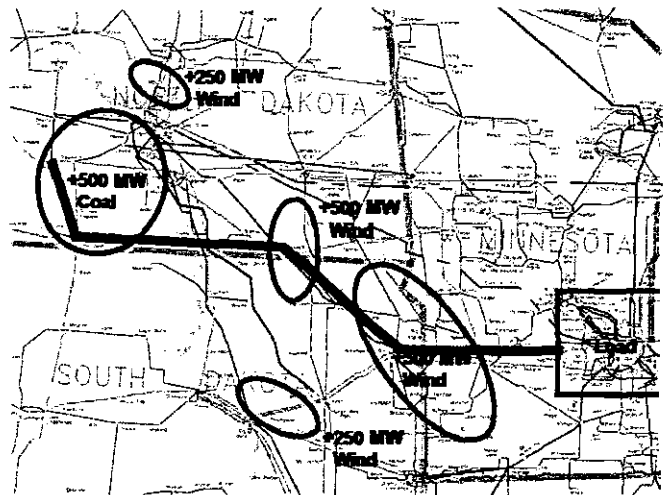
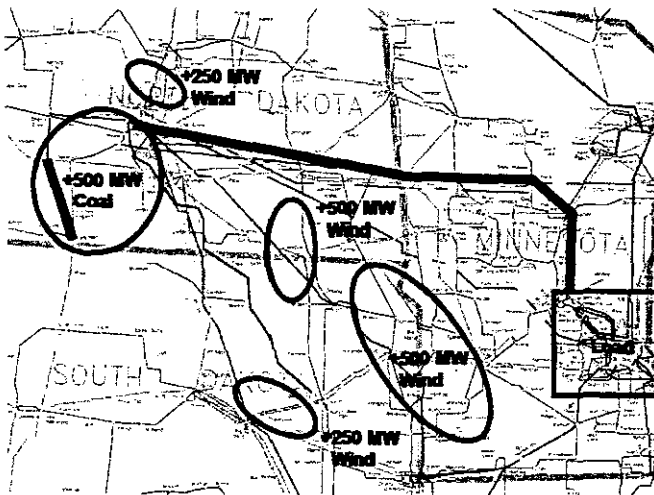
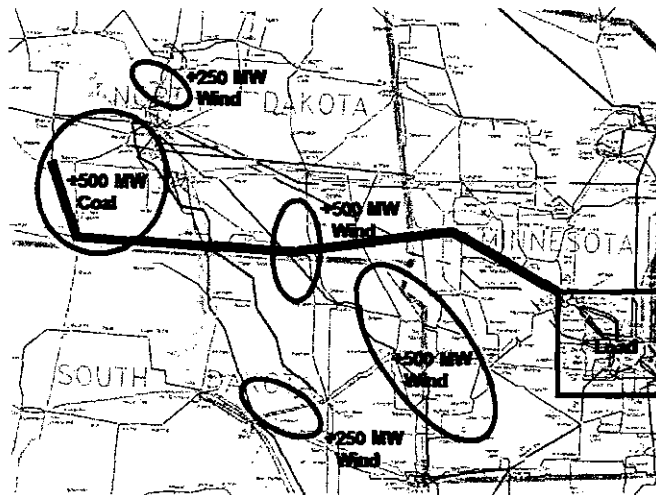
Transmission Scenarios Evaluated in Phase III of Lignite Vision 21 Program



Attachment 3

Examples of Scenarios to be Considered in MISO 2004 Transmission Expansion Plan

(The routes shown are for study purposes only and do not represent specific line corridors.)



Attachment 4

Upper Great Plains Transmission Coalition Membership List

Robert W. Harms, Chairman

American Wind Energy Association

James H. Caldwell, Jr., Policy Director

John Dunlop, Great Plains Representative

Basin Electric Power Cooperative

Mike Eggl, Vice President of Government Relations

Curt Jabs, Legislative Representative

Dan Klempel, Director, Transmission Regulatory Compliance

Mike Risan, Senior Vice President of Transmission

Crownbutte Wind Power

Tim Simons, Chief Executive Officer

Brad Krenz, Project Manager

Dakota Resource Council

Mark Trechock, Staff Director

Energy Unlimited, Inc.

Robert M. Markee, Vice President Marketing

The Falkirk Mining Company/Coteau Properties Company

Mike Briggs, Staff Engineer

E. B. (Brett) Schafer, Engineering and Administrative Manager

Gamesa Energia S.A.

Gabriel Alonso, Business Development Manager

Global Winds Harvest, Inc.

Erich Bachmeyer, Vice President, Development

Dr. Ingo Stuckmann, Vorstand Board Manager

Todd Wilen, Energy Consultant

Great Northern Power Development L.P.

Gerald (Jerry) E. Vaninetti, President

Richard A. Voss, Vice President

Great River Energy

Betsy Engelking, Manager Resource Planning

Terry Grove, Manager, Transmission Engineering and Services

Michele Beck Jensen, Markets and Pricing Analyst

John Pelerine, Plant Manager, Coal Creek Station

Gordon Pietsch, Manager, System Operations

John Weeda, Plant Manager, Coal Creek Station

Industrial Commission of North Dakota

Karlene Fine, Executive Director and Secretary
Robert W. Harms, Special Assistant Attorney General

Lignite Energy Council

John Dwyer, President

Lignite Vision 21 Program

Jeff Burgess, Manager of Environmental Services
Glen Skarbakka, Skarbakka, PLLC, Transmission Consultant to NDIC

Minnkota Power Cooperative, Inc.

Alvin Tschepen, VP Planning & System Operations

Missouri River Energy Services

Raymond J. Wahle, Director, Power Supply & Operations
Terry Wolf, Manager of Transmission Services

Montana-Dakota Utilities

Geoff Fecske, Systems Operations Engineer
David Mangskau, Senior Projects Manager – Energy Supply

Otter Tail Power Company

Timothy Rogelstad, Manager, Delivery Planning

***ND Public Service Commission**

Jerry Lein, Public Utility Analyst

Trans-Elect

Perry Cole, Senior Vice President

***Western Area Power Administration**

Edward Weber, Transmission System Planning Manager

Westmoreland Coal Company

Michael Lepchitz, Vice President and General Counsel

Wind Energy Council

Jay Haley, Founding Chairmen, Board of Directors
Mike Hohl, Chairman

Wind on the Wires

Beth Soholt, Director

Xcel Energy

Robin Kittel, Director, Market Relations

*The Public Service Commission and WAPA cannot be members of the Coalition but have volunteered to serve as advisors—serve on committees, etc.

Attachment 5

Upper Great Plains Transmission Coalition Committees

National Interest Transmission Bottleneck (NITB) Committee

Co-Chair: Tim Simons, Crownbutte Wind Power
G. E. (Jerry) Vaninetti, Great Northern Power Development
Jeff Burgess, Lignite Vision 21 Program
Jim Caldwell, American Wind Energy Association
Mike Eggl, Basin Electric Power Cooperative
Ingo Stuckmann, Global Winds Harvest, Inc.
Ed Weber, Western Area Power Association (*non-voting*)

Rules, Regulations and Policies Committee

Co-Chair: Dan Klempel, Basin Electric
Bob Markee, Energy Unlimited
Michele Beck Jensen, Great River Energy
Betsy Engelking, Great River Energy (*Alternate*)
Terry Grove, Great River Energy (*Alternate*)
Jerry Lein, Public Service Commission (*non-voting*)
David Mangskau, Montana-Dakota Utilities
Tim Rogelstad, Otter Tail Power
Glen Skarbakka, Lignite Vision 21 Program
Beth Soholt, Wind on the Wires

Siting, Routing and Construction Planning Committee

Co-Chair: Jeff Burgess, Lignite Vision 21 Program
Erich Bachmeyer, Global Winds Harvest, Inc.
John Dunlop, American Wind Energy Association
Brad Krenz, Crownbutte Wind Power
Jerry Lein, Public Service Commission (*non-voting*)
Beth Soholt, Wind on the Wires
Ingo Stuckmann, Global Winds Harvest, Inc. (*Alternate*)
Mark Trechock, Dakota Resource Council
Todd Wilen, Global Winds Harvest, Inc. (*Alternate*)

Transmission Study Committee

Co-Chair: Glen Skarbakka, Lignite Vision 21 Program
Beth Soholt, Wind on the Wires
Geoff Fecske, Montana-Dakota Utilities
Terry Grove, Great River Energy
Gordon Pietsch, Great River Energy (*Alternate*)
Jay Haley, Wind Energy Council
Robert Markee, Energy Unlimited
Mike Risan, Basin Electric Power Cooperative
Timothy Rogelstad, Otter Tail Power
Matt Schuerger, Wind on the Wires (*Alternate*)
Rich Voss, Great Northern Power Development
Ed Weber, Western Area Power Association (*non-voting*)

Steering Committee

The Steering Committee consists of the Chairman of the Coalition and the Co-Chairs of the four Committees:

Robert W. Harms, Chairman
Jeff Burgess, Co-Chair - Siting, Routing and Construction Planning Committee
Dan Klempel, Co-Chair - Rules, Regulations and Policies Committee
Bob Markee, Co-Chair - Rules, Regulations and Policies Committee
Glen Skarbakka, Co-Chair - Transmission Study Committee
Tim Simons, Co-Chair - National Interest Transmission Bottleneck Committee
Beth Soholt, Co-Chair - Transmission Study Committee
Jerry Vaninetti, Co-Chair - National Interest Transmission Bottleneck Committee
Erich Bachmeyer, Co-Chair - Siting, Routing and Construction Planning Committee

Updated April 26, 2004

Attachment 6

UPPER GREAT PLAINS TRANSMISSION COALITION MEMORANDUM OF UNDERSTANDING (AS AMENDED)

This memorandum represents the understanding and commitment of members in forming a coalition for the purposes expressed herein, and to define the manner in which the coalition conducts itself:

MISSION of coalition:

To identify, publicize, and advocate solutions to resolve the transmission constraints that limit export of electrical energy from the Upper Great Plains Region.

OBJECTIVES of the coalition are to:

1. Submit identified transmission constraint solutions to applicable Regional Transmission Organizations and Regional Multi-State Committees that are responsible for transmission planning and approval and advocate where appropriate, for their approval.
2. Identify laws, rules, regulations, and policies that are barriers to the implementation of transmission constraint solutions and recommend strategies and plans to remove such barriers.
3. Submit application, if appropriate, to the United States Department of Energy for National Interest Transmission Bottleneck designation of the Upper Great Plains transmission constraints and advocate for its approval.
4. Identify permits, licenses, and routing and develop construction plans for the proposed transmission solutions.

COMMITTEES of the Coalition are:

Transmission Study Committee – A technical committee for the purpose of reviewing existing and conducting new studies, which would select the solution(s) that best meets the mission and objectives of the Coalition and advocate, where appropriate for approval.

Rules, Regulations and Policies Committee:

A rules, regulations and policies committee for the purpose of reviewing existing federal, state and RTO rules, regulations and policies in order to identify any barriers that may exist that would affect the Coalition from

implementing transmission constraint solutions identified by the Coalition. The Committee would develop strategies and plans to resolve barriers that are identified.

National Interest Transmission Bottleneck (NITB) Committee:

A national interest transmission bottleneck (NITB) committee for the purpose of developing an application to DOE for the designation of the Upper Great Plains transmission constraint as a NITB and develop plans of how to advocate for its approval.

Siting, Routing, and Construction Planning Committee:

A siting, routing, and construction committee for the purpose of reviewing the siting and routing requirements within the applicable states affected by the proposed transmission solution. Additionally, the committee would develop the strategy and plans to construct the proposed solution.

DECISION-MAKING;ADMINISTRATION:

The Coalition and its committees will operate ordinarily by consensus (unanimous vote). In the absence of unanimity, it may act by partial consensus (majority vote of members present.)

- a.) **Minutes:** The minutes should adequately express discussion of issues that are decided by vote rather than by consensus, and not include a minority report. Minutes can then be made available as needed.
- b.) **Proxy:** No proxy is allowed in UGPTC proceedings. (A member may not assign its vote to another member.)
- c.) **Chairmanships:** Chairmanships are designated by the UGPTC and are not subject to reassignment by the member. However, members may designate more than one representative to the UGPTC, and should notify the UGPTC of their representatives. (A member has only one vote.)
- d.) **Quorum:** A quorum of 50% plus one is required to conduct business.
- e.) **Notice prior to action:** The UGPTC members should receive notice of at least 1 week before action is taken on an issue. The one week notice requirement may be suspended by 2/3s majority vote.

DUES/MEMBERSHIP:

Each member will pay its own costs for attending and participating in coalition functions and will pay to the coalition \$1,000 dues initially, in support of coalition activities. Additional dues will be assessed by the Coalition as the members deem necessary for Coalition activities.

A Steering Committee consisting of the committee co-chairs shall be convened by the Chairman regularly to provide management direction and recommendations to the Coalition. Members will select a chairman and direct the financial matters of the coalition, including the accounting and use of dues for coalition activities. Financial accounting will be provided at least once annually, unless otherwise directed by members.

A member may withdraw from the Coalition at anytime without liability or legal obligation.

Adopted May 22, 2003

Amended September 23, 2003

Amended March 22, 2004

Amended April 20, 2004

**Dale Niezwaag - Basin Electric Power Cooperative
North Dakota House Bill No. 1169
House Industry Business and Labor Committee
January 26, 2005**

Mr. Chairman and members of the committee, my name is Dale Niezwaag and I am here representing Basin Electric Power Cooperative. Basin Electric supports the development of a State Transmission Authority.

As everyone is well aware of there is a lack of surplus transmission capacity in the state of North Dakota. This situation hinders the development of additional generation resources within North Dakota without the development of new transmission infrastructure. In our opinion the lack of financing is not keeping new transmission from being built. The main problems are current rules and pricing mechanisms of Regional Transmission Organizations (RTO's) that determine who benefits and who pays for transmission services and siting lines across multiple states and jurisdictions.

Although the proposed transmission authority may not have an immediate affect of getting new transmission facilities built across North Dakota and other states, it does offer the potential to assist the development of transmission lines in the future.

The potential benefits of a State Transmission Authority include the ability to streamline the siting and permitting process and obtain tax exempt financing. Another potential benefit is the ability to work with surrounding states and develop interstate compacts.

At this time Wyoming is setting up their authority, Montana and South Dakota are considering legislation to establish their authorities. If these states all establish transmission authorities, efforts could begin to develop agreements that would establish guidelines and procedures for building lines in each other's states. These agreements could then be promoted in states such as Minnesota and Colorado that are very unwilling at this time to allow new transmission lines to be built in their state.

Basin Electric encourages a "Do Pass" recommendation on HB 1169. That concludes my testimony and I would be happy to answer any questions at this time.

**TESTIMONY BEFORE THE HOUSE INDUSTRY,
BUSINESS AND LABOR COMMITTEE**

Concerning HB1169

January 26, 2005

**Dean Peterson, THE NORTH AMERICAN COAL
CORPORATION**

Mr. Chairman and members of the Committee, my name is Dean Peterson. I am here today representing The North American Coal Corporation – North Dakota's largest lignite producer. North American Coal has two subsidiaries, The Coteau Properties Company and The Falkirk Mining Company that collectively produce over 23 million tons of lignite each year for energy conversion facilities located in North Dakota.

We support the passage of HB1169 that establishes a North Dakota transmission authority for the purposes stated in Section 4 of the bill. I want to make just a few comments regarding our interest in **HB1169**.

As North Dakota's largest lignite producer, it is important for our lignite mining business to have good connections to our markets. Our lignite production reaches markets near and far via electric transmission facilities. This bill provides another tool for North Dakota to use in the effort to improve market connections for all electricity generated within the state.

We would appreciate your **do pass** vote for this bill. Thank you.

Testimony on HB 1169
Dennis Boyd
MDU Resources Group, Inc.
January 26, 2005

Good morning Mr. Chairman and members of the Committee -

For the record, my name is Dennis Boyd. I am with MDU Resources Group, Inc. and appearing this morning on behalf of our utility division, Montana-Dakota Utilities. We support the concept of HB 1169 and commend the Governor for bringing forth and beginning the discussion on a concept which, if structured correctly, might have the potential to be useful and helpful to the energy industry in North Dakota.

Our initial reaction to the bill was one of concern. We also have some technical difficulties with the bill, but I understand transmission experts with numerous companies have met with the Governor's staff in an effort to understand or correct those difficulties. As the bonding intention has been explained, our concerns are less acute.

Having said that, I would like to offer a story about an experience which Montana-Dakota Utilities had in the 1940's which might be analogous to what we believe is the intent of HB1169. In 1945, MDU through a subsidiary company applied for and received a loan from the Rural Electrification Administration to build a transmission line from Glendive, Montana, to Dickinson, North Dakota. The loan was made by the REA because 50% of the capacity of the line was being made available to assist the distribution cooperatives in SW North Dakota receive electricity. In 1946, a second REA loan was approved to build a transmission line from Dickinson to Williston to Crosby and eventually to Kenmare. Again, 50% of the capacity was made available to the distribution cooperatives which did not otherwise have transmission available to them.

In 1948, MDU applied for a third REA loan, this time to build a transmission line south from Beulah to Bismarck to Wishek and eventually to Ellendale. In addition generation would be built in Mobridge. Neither MDU nor the Bureau of Reclamation had the power or transmission available to serve the distribution RECs which were growing by leaps and bounds. Unfortunately the size of the loan, and perhaps political considerations, made the REA nervous, and the loan was denied.

As a result fourteen distribution cooperatives in south central North Dakota and northern South Dakota organized a Generation and Transmission Cooperative (G&T) and applied for the same loan from the REA. Now because the REA was dealing with a new G&T Cooperative, and because the REA had had a similar experience with Minnkota Power Cooperative which was organized in 1941, the loan was approved and granted to Dakotas Electric Cooperative. Here's where the story might be analogous to the intent of HB1169. Dakotas Electric Cooperative received the low interest loan from the REA, and then contracted with Montana-Dakota Utilities to operate and maintain the line. In addition MDU serviced the debt, and after making the payments for 35 years, MDU took ownership of the facilities.

I offer that story, Mr. Chairman and members of the committee, because it might offer a method in which the concept of this bill could work. If the Transmission Authority could make available low interest financing through bonding, as the REA did for MDU in the 1940's, but then contract with individual companies or cooperatives or consortiums to build, operate and maintain the facilities, and to service the debt, but to then eventually own the facilities, then this is a proposal with merit.

We applaud the Governor for his out-side-the-box thinking, and we trust the technical difficulties can all be fixed.

That concludes my testimony.

**Overview
of**

H.B. 1169

North Dakota Transmission Authority

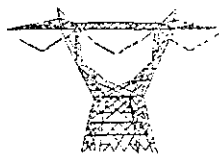
**Industry, Business and Labor Committee
January 26, 2005**

1-26-05

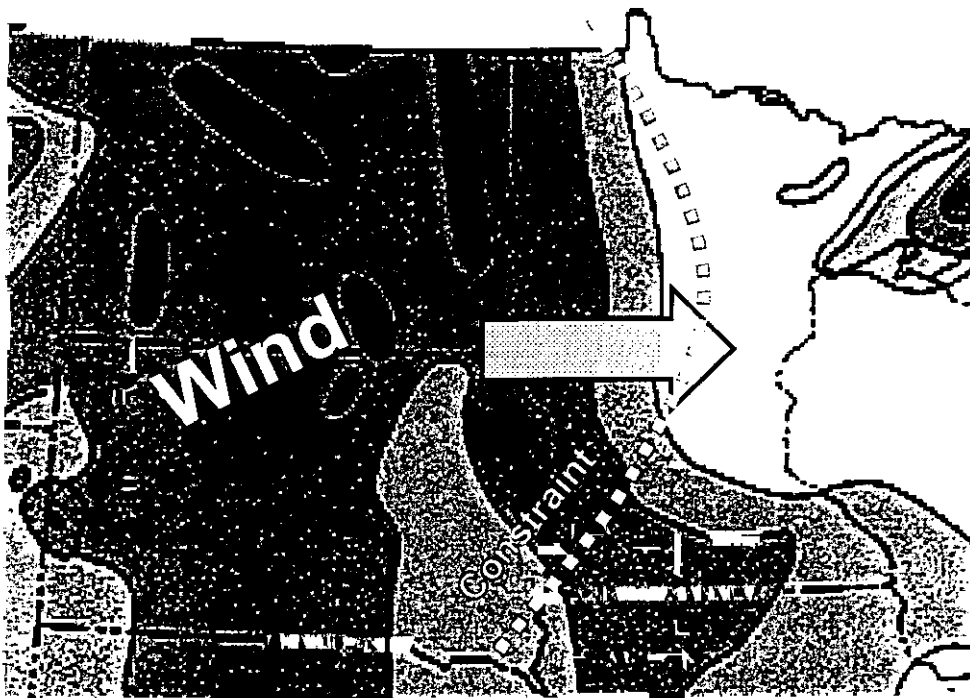
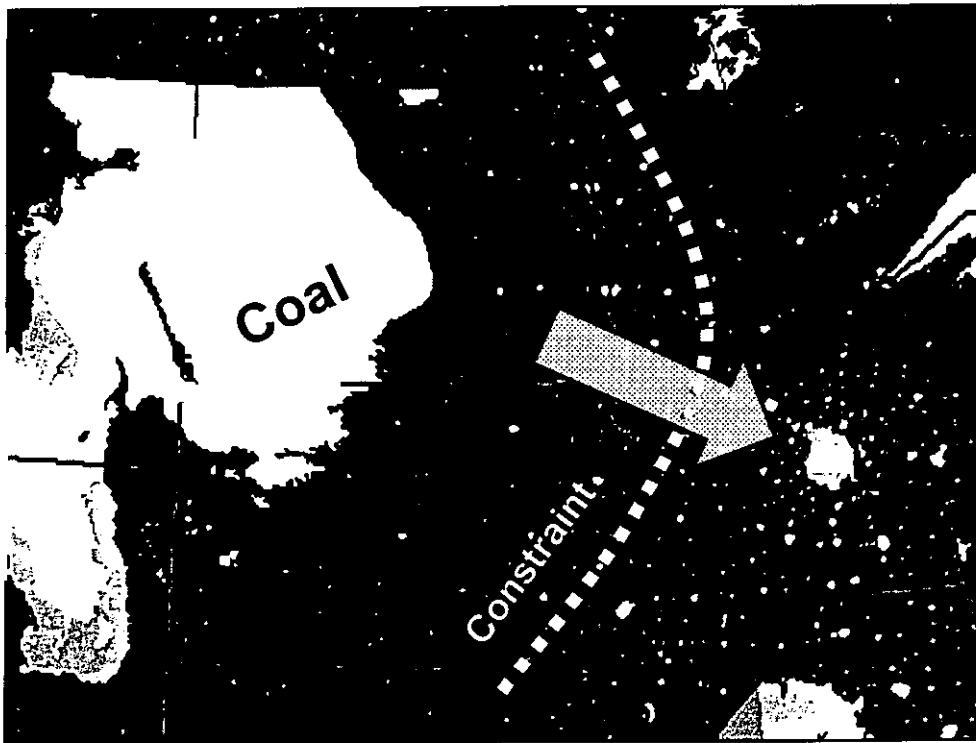
H.B. 1169 - Background

Overview

- Transmission constraints are the chief impediment to new lignite and wind generation in ND.
- Transmission development entails major risk because of regulatory uncertainty at the federal and regional levels.
- A Transmission Authority is proposed by the ND Industrial Commission as a tool to facilitate adding transmission.
- The Transmission Authority would be a builder of last resort and potential partner with transmission developers.



1-26-05



H.B. 1169 - Background

Adding new transmission is difficult because of

- Physical constraints
- Regulatory constraints and uncertainties

⇒ *Financial risk!*



1-26-05

H.B. 1169 - Background

Physical Constraints

- Long distances to markets
- Complex system
- Stability, thermal, and voltage limitations



1-26-05

Regulatory Climate in Flux

• Federal (FERC)



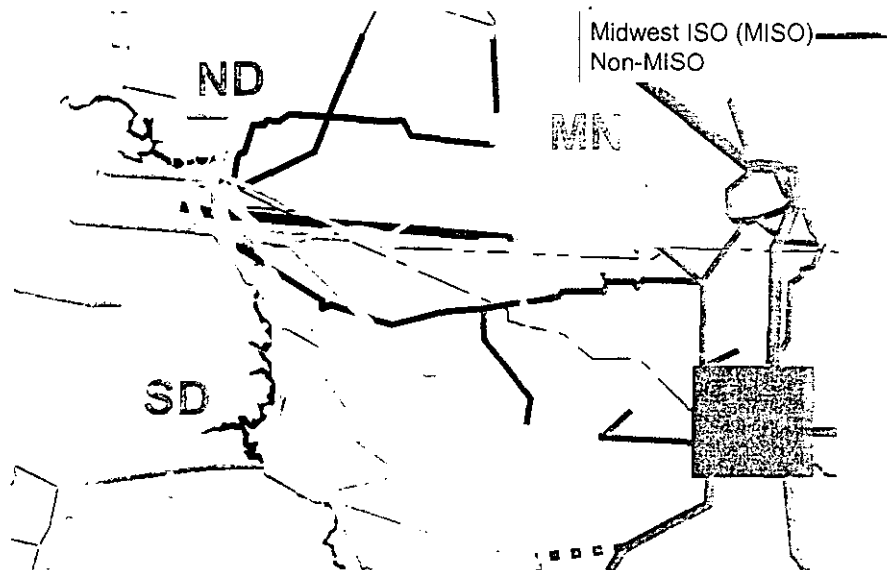
- regulates transmission rates and practices
- regulates investor-owned utilities directly, others indirectly
- flurry of "open access" orders and initiatives

• States



- regulate transmission line permitting and routing
- eminent domain authority
- retail rates

1-26-05



1-26-05

Great Uncertainty about:

- Ability to get transmission permitted and built
- Long term costs
 - to generating project
 - to transmission provider
 - to customers

Results:

- Underinvestment in transmission
- Underdevelopment of remote wind and lignite resources

1-26-05

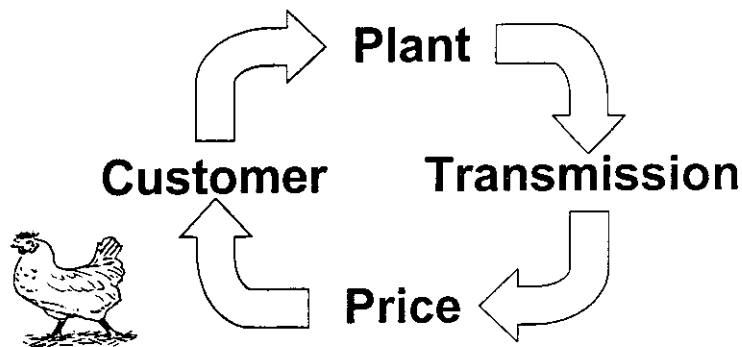
Adding new transmission is difficult

- Physical constraints are costly to overcome
- Uncertainties make investment risky
 - federal “deregulation” is still playing out
 - rate structures and cost allocations are evolving
 - “players” are changing
 - permitting and routing delays are common
 - many stakeholders



1-26-05

Fundamental Problem



1-26-05

H.B. 1169 - Background

Why a transmission authority?

- Catalyst for new investment.
- Alternative source of financing.
- Partner with investors and transmission providers.
- Foster development of transmission corridors.
- Serve as a transmission developer if others unable.
- Offer alternative rate structures.



1-26-05

H.B. 1169 - Background

Approach to legislation

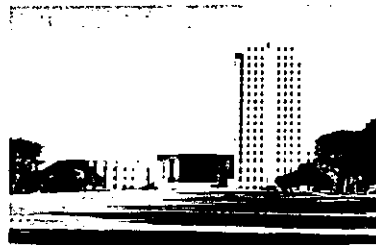
- Maximize flexibility
- Provide checks and balances

1-26-05

H.B. 1169 - Provisions

§ 1 - Findings & public purpose

- ND has abundant lignite and wind.
- Transmission constraints impede development.
- Essential governmental function & public purpose to assist with:
 - removal of transmission constraints
 - upgrading & expanding grid to facilitate resource development.



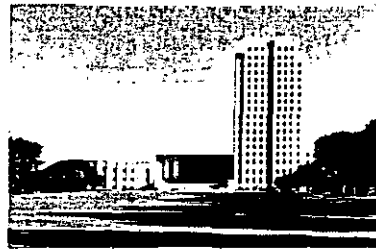
1-26-05

H.B. 1169 - Provisions

§ 1 - Findings & public purpose (con't):

Public interests:

- increasing employment
- stimulating economic activity
- augmenting tax revenue
- fostering economic stability
- improving state's economy.



1-26-05

15

H.B. 1169 - Provisions

§ 2 – ND Transmission Authority

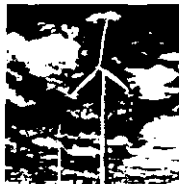
- Creates NDTA, governed by NDIC.

§ 3 – Definitions

- "Authority", "Commission", "Facilities", "Notice of Intent", "Project Area"

§ 4 – Purpose

- Diversify & expand ND economy by developing transmission to facilitate utilization of its energy resources.



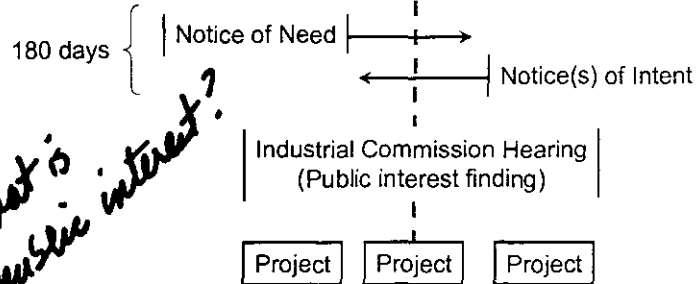
1-26-05

16

H.B. 1169 - Provisions

§ 6 – Authority may act

"Builder of last resort."



§ 7 – Authority may participate upon request

"Partner."

- NDTA may participate thru financing, joint development, or other arrangement.

1-26-05

H.B. 1169 - Provisions

§ 5 - Powers

Enable Transmission Authority to help solve transmission constraints that prevent development of North Dakota's wind and coal resources by:

- Planning and developing transmission facilities and corridors
- Contracting with others
- Receiving contributions
- Pledging revenue as security
- Issuing and selling revenue bonds



1-26-05

H.B. 1169 - Provisions

§ 8 – Evidences of Indebtedness

- NDIC may authorize revenue bonds (not debts of the state).
- Provisions similar to other state bonding authority, e.g., maintain reserve fund, generate revenue

§ 9 – Public Service Commission Jurisdiction

- Subject to PSC routing / siting jurisdiction.
- Must consult with PSC regarding rate design.
- NDTA rates "just and reasonable" in PSC rate cases.

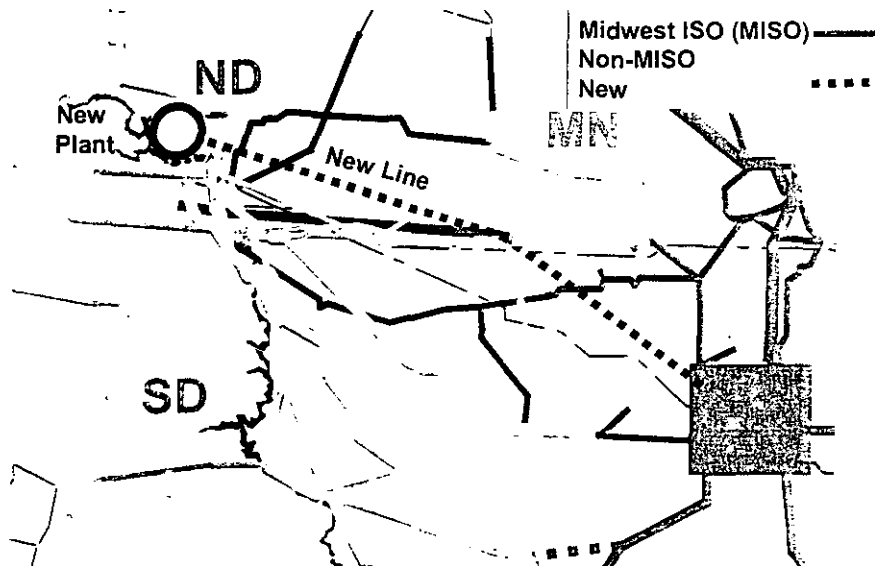
§ 10 – Bonds as legal investments

- The state and others may legally invest in NDTA bonds.

§ 11 – Exempt from Administrative Practices Act

1-26-05

H.B. 1169 - Background



1-26-05

Hypothetical 1: Developer Initiated

1. New power plant proposed.
2. Plant included in regional transmission plans.
3. Plant developer asks for NDTA help.
4. NDTA agrees and publishes Notice of Need.
5. Transmission Company responds with Notice of Intent
6. Industrial Commission holds hearing, finds public interest.
7. NDTA develops project plan.
(route, design, rates, financing, construction)
8. Industrial Commission approves financing plan (rev. bonds)
9. Transmission service agreement signed.
10. Execute project plan.

1-26-05

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Hypothetical 2: Trans. Provider Initiated

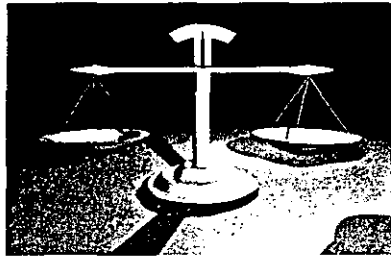
1. New power plant proposed.
2. Plant included in regional transmission plans.
3. Transmission Company asks for NDTA help.
4. NDTA agrees and publishes Notice of Need.
5. Transmission Company responds with Notice of Intent
6. Industrial Commission holds hearing, finds public interest.
7. NDTA develops project plan.
(route, design, rates, financing, construction)
8. Industrial Commission approves financing plan (rev. bonds)
9. Transmission service agreement signed.
10. Execute project plan.

1-26-05

22

Checks & Balances on NDTA:

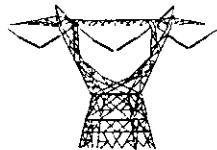
- Directly governed by elected officials (Industrial Commission).
- Legislature controls operating appropriations.
- PSC governs siting & routing.
- TA must participate in regional planning.
- Public Interest finding required before building.



1-26-05

Summary

- Establishing a Transmission Authority is one strategy for facilitating wind and lignite development.
- A Transmission Authority cannot itself solve all of the barriers to adding transmission, but it may be a useful as circumstances evolve.
- Wyoming has established a similar authority. Other states (including Montana, South Dakota, and New Mexico) are considering doing so.



1-26-05

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**Testimony of John W. Dwyer
President, Lignite Energy Council
Before the House Industry, Business and Labor Committee
HB 1169
January 26, 2005**

- I. Represent various interests
 - A. G&T Cooperatives
IOUs
Lignite Producers
Main Street
 - B. All have company agendas as they should / Always differences / Always see landscape a little differently
 - C. But all come together in efforts to develop and utilize abundant lignite resource
- II. Have had several opportunities to review drafts of HB 1169 since originally circulated in October 2004
 - A. Appreciate changes that have been made to accommodate various lignite interests
 - B. Believe Glen Skarbakka has done a superb job in accommodating various interest (lignite, wind, PSC, others)
- III. Also want to provide historical context to formal partnership between state and lignite industry and transmission activities we have conducted over past five years
 - A. Have had formal working partnership since 1991 when Legislature authorized lignite research, development and marketing program
 1. Voters also approved constitutional amendments in 1990 and 1994 to provide source of money for lignite state/industry partnership
 2. 10 cents per ton / \$3 million a year
 - B. Industrial Commission has had several powers under existing law (NDCC 54-17.05-05). Includes:
 1. Authority to issue and sell evidence of indebtedness (Bonds)
 2. Requirements for evidence of indebtedness (NDCC 54-17.05-05)
 - a. Not subject to taxation
 - b. Requires a reserve fund
 - c. Legislature may appropriate dollars to reserve fund
 - d. Other

3. NDIC/Industry have utilized NDIC bonding authority in past
 - a. Great Plains Project / \$129 million – anhydrous ammonia project
 - b. Strategy to diversify revenue stream to keep Great Plains operating
 - c. Why?
Protect 4,000 jobs, 6.5 million tons of lignite production, \$17.5 million tax revenue for state
- C. Point is this: We have a track record of working with the state / We have a track record of issuing revenue bonds for a lignite/state purpose and more importantly, it has worked!
- IV. Also have history of working with NDIC on transmission studies to resolve number one priority – ***Transmission Constraints!!***
 - A. Have briefed Electric Competition Committee over past five years; Legislative Briefings conducted around state last five years; Legislative Tours last five years
 1. Can talk about wind/coal development enthusiastically, but...
 2. Unless we solve transmission / ***Not*** going to develop our state's abundant wind and coal resources
 - B. Joint transmission studies undertaken with NDIC last five years (Summary attached)
 1. Looked at whether transmission expansion possible
 2. Looked at seven potential sites
 3. Looked at east and west access
 4. Looked at specific routes
 - C. Point is: We know what needs to be done, question now is: How do you do it?
- V. We think one way (Not the only way) is to enact HB 1169 / Fully support concept of HB 1169
 - A. Recognize bold step
 - B. But we are ***not*** going to develop wind and coal resources and realize economic benefits for state ***unless*** we ***act now***
 - C. Must also know we are learning the hard way
 1. GRE suspended consideration of ND site in 2002 for expansion due to transmission problems
 2. MDU / Westmoreland's downsized Gascoyne plant from 500 MW to 175 MW due to transmission problems
 3. Great Northern Power Development has been unable to obtain customer commitments for its South Heart plant due to transmission problems
 4. Other examples
 - D. Bottom Line: We have lost economic opportunities due to transmission constraints

VI. Summary

- A. Support concept of HB 1169
- B. Would request Chair that we have opportunity to review any amendments that may be offered / Happy to sit down with you to make HB1169 better
- C. Have other members here of the Lignite Energy Council that wish to testify – Lignite producers / G&T Cooperatives / IOUs / developers
 - 1. Have letter from Minnkota's CEO Dave Loer (Handout)
 - 2. Dale Niezwaag, Basin Electric
 - 3. Dennis Boyd, MDU
 - 4. Gary Jacobson, Great River Energy
 - 5. Dean Peterson of North American Coal Corporation
 - 6. Rich Voss of Great Northern Power Development
 - 7. Others
- D. Happy to try and answer any questions when they are finished

Summary of Lignite Vision 21 Program Studies to Date

1. Phase I Lignite Vision 21 Program (LV21P)

During Phase I of the LV21P, which began in July of 1999 and was completed in July of 2000, a "fatal flaw analysis" transmission study¹ was conducted by ABB, Inc. The study used power flow techniques to identify a transmission corridor (Antelope Valley Station – Huron – Sioux Falls – Lakefield Junction) to accommodate an additional 500 MW to the North Dakota export capacity. ABB determined that this route would likely increase stability and reliability of the MAPP network and, in particular, the North Dakota sub-region of MAPP, but would require additional studies for verification.

2. Phase II LV21P

During Phase II of the LV21P, which began April 1, 2000 and was completed in July of 2001, transmission studies were conducted for a new 500 MW lignite-fired plant located at any of seven potential sites in North Dakota². The studies included powerflow, stability, and loss evaluations. The results indicated that it was technically feasible to add a new 500 MW generating unit in North Dakota and to upgrade the transmission system from North Dakota to Minnesota.

3. Phase III LV21P

During Phase III of the LV21P, which began September 1, 2001 and was completed April 30, 2004, several transmission studies were conducted. One study³ identified transmission improvements necessary to deliver power from each of the Great River Energy, Great Northern Power Development, and MDU/Westmoreland prospective project sites to the Minneapolis area for both 750 and 500 MW plants. The six basic route scenarios shown in Attachment 1 were investigated. The study developed cost information for each scenario and determined that each was technically feasible, though much more detailed study would be required before such a project could be constructed.

In a another study⁴, Great Northern Power Development, MDU-Westmoreland, and the NDIC contracted with ABB to investigate transmission options to increase power flows between the Western Electricity Coordinating Council (WECC) and the Mid-Continent Area Power Pool (MAPP) and identify transmission upgrades required to transmit 500 MW and 1000 MW of new lignite generation in the MAPP System to the Northwest Region in the WECC. Seven alternatives were developed for transmission of power from the Belfield and Gascoyne locations to the WECC. The results of the study included cost estimates and indicate that the transmission scenarios studied are technically feasible; however, much more detailed studies would be required.

¹ *North Dakota Transmission Study Second Report* (ABB, May 8, 2000).

² *Phase II Transmission System Impact Study Summary Report* (ABB, February 6, 2001, Revised February 23, 2001).

³ *LV21P Transmission Alternatives Preliminary Analysis* (ABB, February 12, 2002).

⁴ *MAPP-WECC Transmission Study* (ABB, December 2, 2002).

In a third study⁵, several entities, including wind developers, contracted with ABB to evaluate the feasibility of 1500/2250 MW high-voltage direct current transmission lines from North Dakota to Chicago. The results of the study included cost estimates and indicate that the transmission scenarios studied are technically feasible; however, much more detailed studies would be required.

In a fourth study⁶, ABB evaluated the transmission required to export 250 MW and 500 MW based upon a review of existing studies. This study excluded upgrading the Antelope Valley-Huron line, whose owners have indicated that they have reserved such an upgrade for other purposes. The study included transmission routes and cost estimates for a 250 MW station located at Gascoyne and a 500 MW station located at either Gascoyne or Belfield and delivering power to the Minneapolis area.

Most recently, the Transmission Study Committee (TSC) of the UGPTC has prepared a draft Dakotas Transmission Study Scope, December 4, 2003. This study will identify potential transmission projects to deliver 500 MW from a new North Dakota lignite generating station and 1500 MW from wind generating sites in North and South Dakota to the Twin Cities and other markets further south and east. Maps showing the placement of these generating sites and examples of the transmission configurations being considered are shown in Attachment 2. The TSC subcommittee and MISO transmission planners are in the process of developing a scope of work. MISO has committed to performing the study and integrating the results into the MISO Transmission Expansion Plan 2004 (MTEP-04), which is scheduled for completion by the end of 2004 and approval by the MISO Board of Directors in early 2005. At that point, it would be up to the LV21P participants, the wind interests, existing plant operators, transmission owners, and other stakeholders to determine how they would work together to develop specific transmission plans, cost sharing mechanisms, and permitting and siting strategies.

⁵ *North Dakota to Zion HVdc Transmission Feasibility Study* (ABB, November 14, 2002).

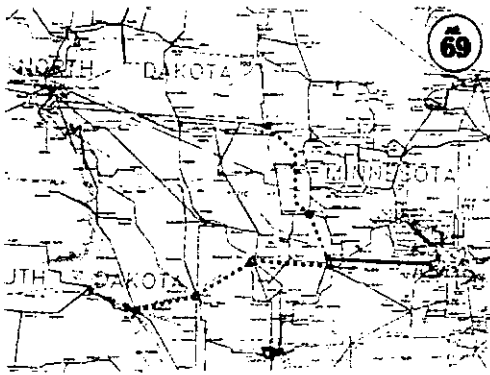
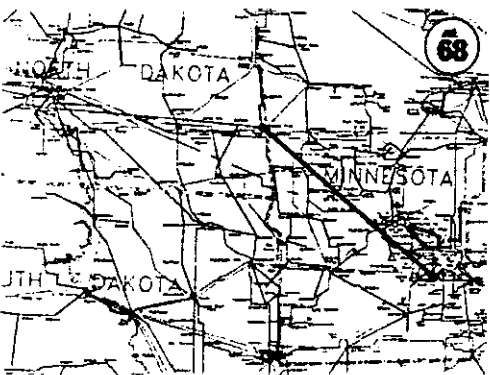
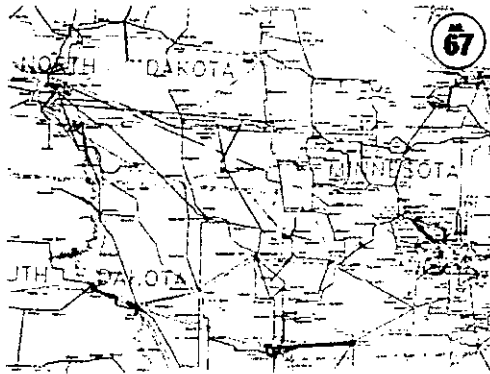
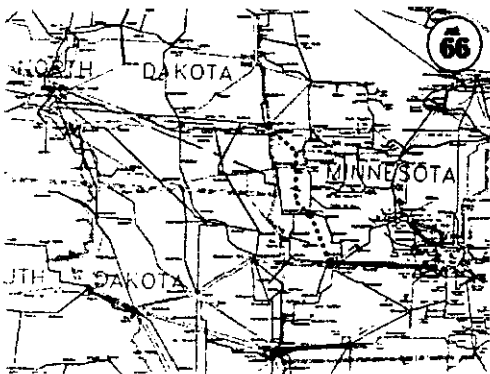
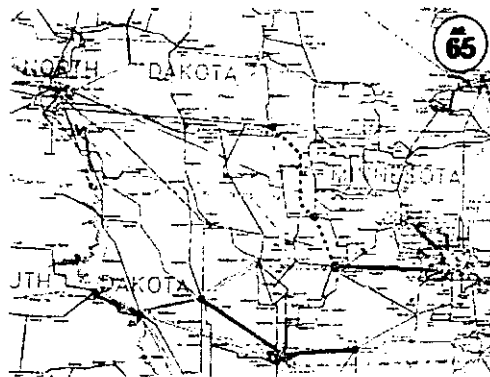
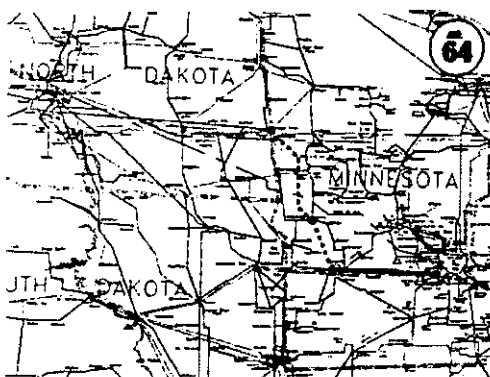
⁶ *Review of System Alternatives for Lignite Vision 21 Program* (ABB, July 28, 2003, Revised September 16, 2003)

ATTACHMENT 1

Transmission Scenarios Evaluated in Phase III of Lignite Vision 21 Program

Legend

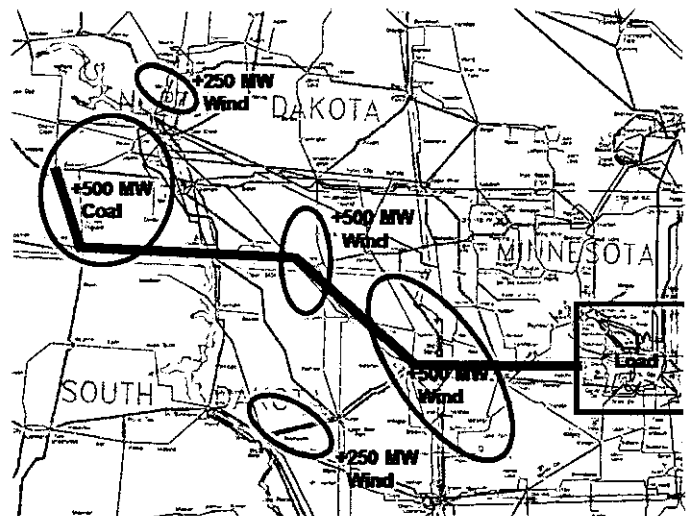
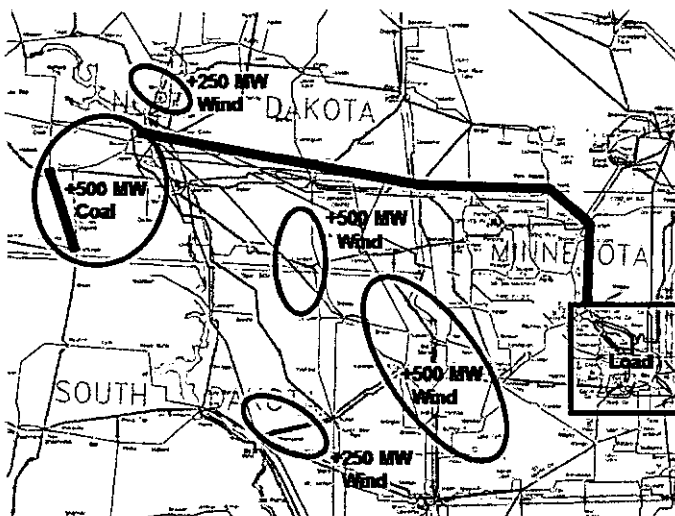
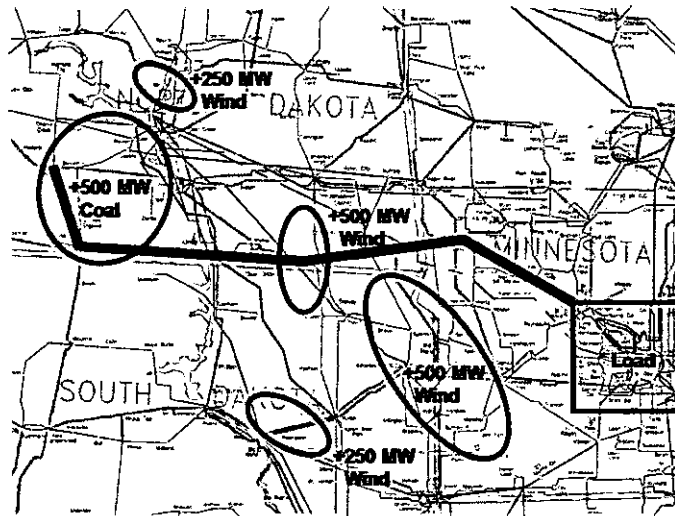
	Upgrade	New
230kV●	——●
345kV●	——●
500kV●	——●
DC	←———→	——→



ATTACHMENT 2

**Examples of Scenarios to be Considered in MISO 2004 Transmission
Expansion Plan**


(The routes shown are for study purposes only and do not represent specific line corridors.)



HB 1169
18 Jan

Minnkota Power

MPC COOPERATIVE, INC.

Your Touchstone Energy® Partner 

1822 Mill Road • P.O. Box 13200 • Grand Forks, ND 58208-3200 • Phone (701) 795-4000

January 25, 2005

The Honorable George J. Keiser
Chairman, House Industry, Business & Labor Committee
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Representative Keiser:

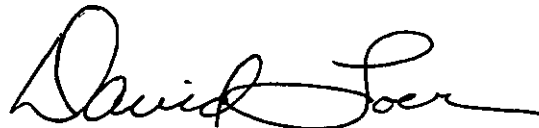
This letter is to express Minnkota's support of HB 1169, which was introduced at the request of the North Dakota Industrial Commission. The purpose of HB 1169 is to assist in developing transmission and related facilities, thereby facilitating utilization of North Dakota's vast energy resources and expansion of the State's economy.

Minnkota Power Cooperative owns and operates two electric generating facilities at the Milton R. Young Station near Center, North Dakota. Minnkota is presently studying the need for new generation resources and transmission necessary to carry this generation to our loads in eastern North Dakota and northwestern Minnesota. We believe HB 1169's conception of a Transmission Authority as a "builder of last resort" and as a mechanism for potential bonding authority would be an important tool for addressing transmission constraints that now stand in the way of new generation development in North Dakota.

We encourage a "Do Pass" on HB 1169 by your committee. Thank you for your attention to this matter.

Yours very truly,

MINNKOTA POWER COOPERATIVE, INC.



David W. Loer
President & CEO

gae

1169
26 Jan

**Xcel Energy Testimony
HB 1169
House Industry, Business and Labor Committee
January 26, 2005**

Good morning, Mr. Chairman, Members of the Committee. For the record, my name is Mark Nisbet, North Dakota principal manager for Xcel Energy.

We agree with the findings in HB 1169: North Dakota has abundant energy resources that are underutilized, limited by the lack of transmission lines to take our available, valuable exports to the areas of this country that face an increasing need for this energy. We admire the proactive approach taken by the Industrial Commission to stimulate economic stability and improve the state's economy through the energy industry. We know that an increased opportunity to market our state's energy will result in new jobs that pay well and that, in turn, will build tax revenue from which all citizens can benefit.

This bill could provide many benefits; key among them is the ability to initiate tax-exempt financing.

We believe Xcel Energy's experience could help maximize benefits and minimize costs for consumers if we have a role in developing – under the authority of the state industrial commission – a business plan and incentives necessary to build new transmission lines. We believe that it would be prudent for members from the state's transmission line owners to have membership in this committee. This committee, comprised of the state's utilities, would have the needed expertise to fully understand the workings of MAPP, MISO, RTO issues and FERC, which would be necessary for the authority to function properly in this complex industry.

Xcel Energy testimony – page 2

The committee needs to ensure North Dakota electric customers receive fair allocations of the costs and benefits of each project.

In conclusion, we understand the benefits this bill could provide and support the basic principles laid out in it, please carefully consider our offer of help so that we can fully realize the positive potential this concept could have for the state and our industry.

Testimony of Richard A. Voss, Vice President – Power Development, Great Northern Power Development, L.P., before the North Dakota Legislative House Industry, Business and Labor Committee January 26, 2005 Peace Garden Room, State Capitol.

RE: Comments in support of HB 1169
A Bill for an Act to provide for the North Dakota Transmission Authority

I. Background - The South Heart Power Project

- a. Great Northern's coal reserves / NDIC / Kiewit Mining Group
- b. 500 MW plant w/adjacent lignite mine
- c. 1000 construction jobs
- d. 1200 direct and indirect permanent jobs
- e. \$800-\$900 MM project cost
- f. \$75MM/yr to state's economy
- g. \$6MM/yr tax revenues

II. Progress

- a. 3 years of studies
 - i. Permitting – projected application 2nd qtr. 2005
 - ii. Mine & Plant – conceptual designs complete - competitive
 - iii. Transmission – feasible but who will build/pay for?
 - 1. Rate uncertainty – FERC / MISO
 - 2. Protect existing customers/ratepayers

III. Outlook

- a. Customer needs / requirements
- b. Current window of opportunity

IV. Effects of the Transmission Authority

- a. Removes financing uncertainty
- b. Removes potential burdens to existing ratepayers
- c. Provides option to build if unattractive to existing utilities
- d. Positive responses from potential customers
- e. Improves new projects' competitive position

V. Summary

- a. Lack of adequate transmission is critical to project
- b. TA will enhance project development
- c. TA will bolster economic development
- d. Critical timeframe relative to existing/projected needs
- e. Request favorable vote on HB No. 1169

Great River Energy Testimony

House Bill: 1169

House of Representatives IBL Committee

Chairman-Rep. George Kaiser

#11

For the record, my name is Gary Jacobson . I am the N.D. legislative consultant for G.R.E. I appear before you today in support of HB1169. G.R.E. is a generation and transmission wholesaler of electricity to 28 member cooperatives located in Minnesota with headquarters in Elk River, Minnesota. G.R.E.'s N.D. generating facilities are located near Underwood (Coal Creek Station) and Stanton (Stanton Station). G.R.E. has 2,500 megawatt generation capability consisting of a diverse mix of baseload and peaking plants. Associated with the generating capabilities is the 4,400 miles of transmission line located in the region. Our largest line is a 500KV direct current line extending from the Coal Creek Station near Underwood,ND 435 miles to the Twin Cities area.

HB 1169 in its current form represents a working tool that could aid in the development of future transmission lines to markets beyond the states boundary. We look forward to working with you towards this goal. Thank you for allowing me to give you this brief testimony.

HB 1169 Issues & Actions
2/2/05

1. **Clarified that Authority will contract out construction, operation, and maintenance.**
p. 2, line 22 and p. 3, line 19
2. **Expressly permitted lease-sale contracts. (p.3, line 15)**
3. **Removed language prescribing tariff and cost recovery theories. (p. 3, line 26)**
4. **Broadened list of public interest factors. (p.4, line 16)**
 - Economic impacts (positive & negative) to state
 - Past performance of entity proposing to build.
5. **Restored PSC oversight over facilities once sold or disposed of. (p. 7, line 19)**
6. **Added requirement for Authority to work in consultation with others. (p.7, line 23)**
 - Transmission providers, wind interests, LRC, others with relevant expertise.
 - Requirement to consult with PSC regarding rates – may conduct hearing.
 -
7. **Added exit strategies. (Page 8, New §12)**
 - Leases to others will be leases-to-own.
 - Facilities owned but not leased to others will be sold when ownership is no longer necessary.
8. **Added a limited property tax exemption. (New §13)**
 - Exempt for 5 years.
 - For transmission lines 230kV & above: exemption continues, but pay per-mile tax.
9. **Added biennial reporting to legislative council. (Page 8, New §14)**
10. **Did NOT add “moral obligation” or “general obligation” to bonding authority.**

HB 1169
Sub
246 05Add Notes**State of South Dakota****EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005**

400L0782

HOUSE BILL NO. 1260**Introduced by: The Committee on State Affairs at the request of the Governor**

FOR AN ACT ENTITLED, An Act to create the South Dakota Electric Transmission Assistance Authority.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. Terms used in this Act mean:

- (1) "Authority," the South Dakota Electric Transmission Assistance Authority created by this Act;
- (2) Board," the board of directors of the authority.

Section 2. The authority is created and has a five-member board of directors. The Governor shall appoint the board members and not all members of the board may be of the same political party. The members of the initial board shall be appointed for staggered terms with two members for terms of one year each and the other members for terms of two, three, and four years, respectively, as designated at the time of appointment. Hereafter all members shall be appointed for four year terms. Members of the board may serve more than one term. The members shall elect from the membership a chair, vice-chair, and secretary. A majority of persons appointed and serving as members shall be qualified voters of the State of South Dakota and a majority of members shall possess special knowledge in the field of electric power or energy transmission or generation. The board members shall receive per diem set pursuant to § 4-7-10.4 and expenses at the same rate as other state employees while engaged in their official duties.

Section 3. The authority shall:

- (1) Contact all owners of transmission lines in South Dakota and all generators and distributors of electricity to consumers in South Dakota by August first of each year to ask them if they need any assistance in creating or enhancing the transmission of electricity to, from, or within South Dakota;
- (2) Report its findings and make recommendations to the Governor, the Legislature, and the South Dakota congressional delegation by December first of each year concerning what the private sector, the state, and the federal government can do to create and enhance the transmission of electricity to, from, and within South Dakota;
- (3) Annually evaluate state laws and rules affecting electric transmission and make recommendations to the Governor and the Legislature for improvements by December first of each year;
- (4) Annually evaluate federal laws and rules affecting electric transmission and make recommendations to the South Dakota congressional delegation for improvements by December first of each year;
- (5) Identify opportunities where owners of transmission lines in South Dakota and generators and distributors of electricity to consumers in South Dakota can cooperate to improve and increase electric transmission in South Dakota and communicate those opportunities to owners, generators, and distributors of electricity in South Dakota;
- (6) Assist any entity or group of entities who wish to create or enhance electric transmission to, from,

and within South Dakota by helping them develop a business plan and identify financing options; and

(7) Assist the electric transmission authorities of other states and any other federal or regional entity wanting to create additional transmission or enhance current transmission of electricity to, from, and within South Dakota.

Section 4. The authority shall be administered by the Department of Tourism and State Development.



INDUSTRIAL COMMISSION OF NORTH DAKOTA

John Hoeven
Governor

Wayne Stenehjem
Attorney General

Roger Johnson
Agriculture Commissioner

Testimony on Engrossed House Bill 1169
By Karlene Fine, Executive Director and Secretary
Industrial Commission of North Dakota
March 10, 2005 – Senate Natural Resources Committee

Mr. Chairman and members of the Senate Natural Resources Committee, my name is Karlene Fine and I am Executive Director and Secretary for the Industrial Commission. With me today is:

- Ron Rauschenberger from the Governor's Office;
- Robert Harms who serves as special counsel to the Industrial Commission and is Chairman of the Upper Great Plains Transmission Coalition who will be commenting on the work of the Coalition;
- Glen Skarbakka, a consultant retained by the Commission to focus on transmission issues. Glen's expertise is extensive including 20 years of experience in the transmission and power resource segments of the electric utility industry. His career path has included positions in engineering, planning, business development, and management. He holds an MS degree in Electrical Engineering and an MBA in Strategic Management and a law degree. He is licensed as a professional engineer and as an attorney in Minnesota. He served as Vice President of Transmission Services at United Power Association, and has served on advisory committees of a number of industry organizations. Glen will walk you through each section of Engrossed House Bill 1169;
- John Dwyer with the Lignite Energy Council will be speaking in regards to lignite interests along with lignite producers, developers and utility representatives;
- Rich Voss, with Great Northern Power Development, one of the current participants in the Lignite Vision 21 Project, will comment on the constraints they are seeing as they develop their project;
- Bob Markee with Energy Unlimited will be speaking in regards to wind interests;
- Organized labor representative.

As you all know, North Dakota is a state with valuable natural resources—lignite and wind—as well as human resources. North Dakota has an 800-year supply of recoverable lignite coal and an enormous supply of wind but we are constrained from using these resources because we cannot move the power generated from those resources out of the state.

In the late 80's the Legislature recognized that if we were to utilize our vast lignite resources we needed to plan ahead and formed a partnership between the lignite industry and the State—the Lignite Research Council and Program.

As part of that Lignite Research Program the Industrial Commission developed the Lignite Vision 21 Project a few years ago with the goal of having constructed in North Dakota the

finest coal-fired electrical generating plants in the world, utilizing the latest clean-coal technology to provide energy for a rapidly growing region. We currently have contracts with three companies on two projects.

Two major impediments face the State in regards to development of a plant in North Dakota. The most significant one is transmission. The Legislature last session recognized this fact and adopted a resolution which states:

The legislative assembly finds and declares that it is an essential governmental function and public purpose to assist with the removal of electrical transmission export constraints and to assist with the upgrading and expansion of the region's electrical transmission grid in order to facilitate the development of the state's abundant natural resources for export to the region's consumers. The Industrial Commission shall give priority to those projects, processes, or activities that assist with the resolution of electricity transmission export constraints in this state.

The Industrial Commission in early 2003 facilitated the formation of the Upper Great Plains Transmission Coalition which is a group of entities representing lignite, wind and transmission developers. This has been an exciting and rewarding effort of seeing these entities working side-by-side to develop strategies that address mutual transmission constraints.

In addition the Industrial Commission's consultant Glen Skarbakka developed a Transmission Issues Background Paper last year which I have included in the handouts. For anyone interested in the issues facing North Dakota in regards to transmission I encourage you to read this document. Glen had done an excellent job of outlining this very complex issue.

With this background information and what the Commission was hearing from potential developers the Commission directed that House Bill 1169 be drafted and presented to the Legislature for its consideration. The Commission believes the Transmission Authority will be an important tool in dealing with the transmission crisis we are facing. Other states have already taken steps in forming Transmission Authorities—Wyoming passed legislation in 2004; South Dakota passed legislation last week, and Montana and New Mexico are looking at somewhat similar legislation.

This proposed Transmission Authority would be working with the current electrical generating companies and cooperatives in North Dakota. As Glen will outline, the Transmission Authority will only proceed with the development of a transmission line after the private sector has had an opportunity to resolve the transmission constraints. I call it transmission "builder of last resort".

This proposed Transmission Authority isn't the answer to all the transmission constraints the State faces. It would be one tool in our efforts to developing our valuable natural resources—lignite and wind—and providing opportunities for our children to stay in North Dakota and find employment in well paying jobs.

Thank you for the opportunity to appear and to ask, on behalf of the Industrial Commission, for your support of Engrossed House Bill 1169.

**Statement of Ron Rauschenberger
Before the Senate Natural Resources Committee
HB 1169
March 10, 2005**

Mr. Chairman, Members of the Senate Natural Resources Committee.

My name is Ron Rauschenberger and I am the Deputy Chief of Staff for Governor Hoeven. I am appearing today in support of HB 1169 and want you to know of Governor Hoeven's personal support for this measure.

When Gov. Hoeven first announced his support for a state transmission authority in September, he stated that:

"Our single greatest challenge in developing North Dakota's coal and wind generated energy capacity is the ability to move power to markets outside our state."

The Governor believes that the major solution to unlocking the potential for our state's energy and wind resources is the resolution of the transmission constraints that our state faces. While the transmission authority would be a "vehicle of last resort," as outlined in Section 6 of the bill, the Governor believes that a transmission authority could help jump start the process and expedite the kinds of large investments we need to expand the grid and build new power plants and wind facilities by being able to access more attractive financing for transmission investors.

I also want to emphasize that after the Industrial Commission unanimously approved the transmission authority concept on September 22nd, the draft bill was then circulated to the lignite industry for their comments, to the wind industry for their comments, to the PSC and to other interested parties. Glen Skarbakka, consultant to the Industrial Commission, who is here today, coordinated many meetings with the interested parties in October, November and December and made many changes that were requested. In other words, we have welcomed input from the very beginning of this process.

Finally, while we know that the transmission problems are extremely complex and that the transmission authority is not a cure all for all our transmission problems, we do view the transmission authority as an important "economic development tool" that can help North Dakota's generation be competitive with local generation in surrounding states. If no private entity or private/public entity steps forward, we believe the transmission authority would serve as a catalyst for new investments and as a catalyst to involve all the players in solving the transmission problems.

We realize you will hear much testimony today, and we know you will carefully consider all views. On behalf of Governor Hoeven, we urge the Committee to give a Do Pass recommendation to HB 1169.

Engrossed HB 1169
North Dakota Transmission Authority Bill
Natural Resources Committee
North Dakota Senate
March 10, 2005

Mr. Chairman, and members of the committee, my name is Robert W. Harms, and I serve as a special assistant attorney general for the North Dakota Industrial Commission to assist in resolving transmission constraints in North Dakota. I am also Chairman of the Upper Great Plains Transmission Coalition (UGPTC) which was formed with the assistance of the Industrial Commission.

The UGPTC has been in existence for nearly 2 years and its mission is to resolve transmission constraints that limit the export of electricity from our region.

It has members in North Dakota, South Dakota and Minnesota, representing the coal industry, the wind industry, the environmental community, and transmission interests. You will hear from a number of Coalition members this morning, in support of HB 1169.

The UGPTC participates in, or otherwise coordinates its activities with Midwest Independent Systems Operator (MISO), the Federal Electrical Regulatory Commission (FERC), and the Organization of MISO States (OMS). North Dakota Congressional staff and representatives from Minnesota and South Dakota state government regularly attend or participate in the UGPTC activities.

Even though it is a diverse group, the Coalition has been able to reach agreement on a variety of issues, including an agreement on a host of transmission issues in the energy bill last year that we were able to provide to Senator Dorgan to advance our goal of resolving transmission constraints in our region.

All of its activities, whether comments to FERC, testifying at federal hearings, or participating in MISO planning processes are designed to advance the singular goal of resolving transmission constraints in order to export more electricity (whether from wind or coal, or both) from our region.

In my view, HB 1169 is another positive step towards attaining new transmission investment and a useful tool to help the region develop additional energy resources. I support HB 1169.

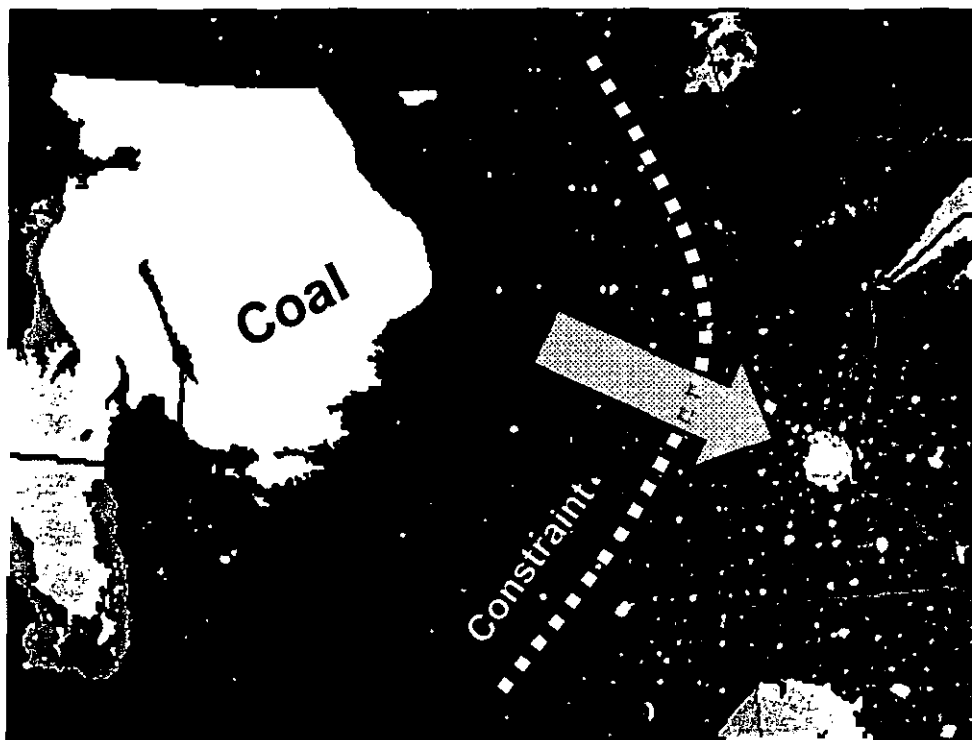
**Overview
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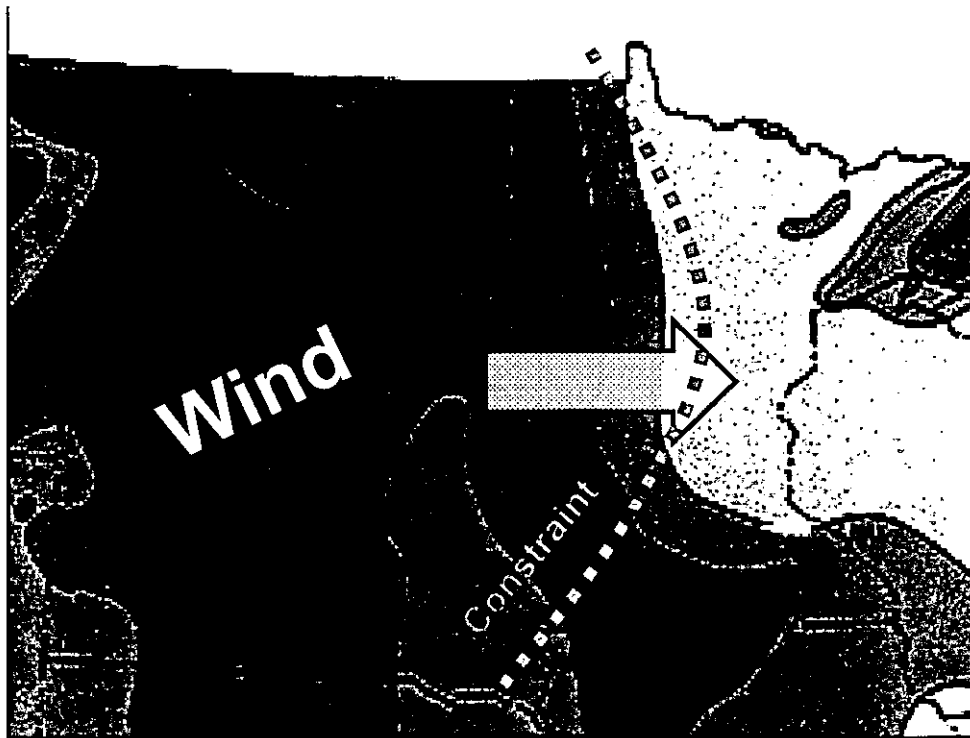
H.B. 1169

North Dakota Transmission Authority

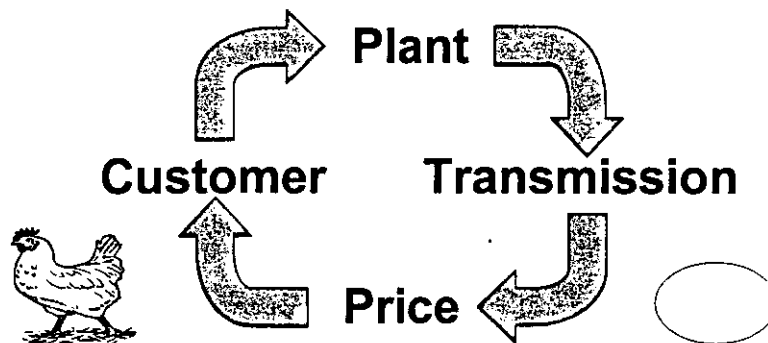
**Senate Natural Resources Committee
March 10, 2005**

3-10-05





Fundamental Problem



Why a transmission authority?

- **Catalyst** for new investment.
- Alternative source of **financing**.
- **Partner** with investors and transmission providers.
- Foster development of transmission **corridors**.
- Serve as a transmission **developer** if others unable.
- Offer alternative **rate structures**.



3-10-05

Approach to legislation

- Maximize flexibility
- Provide checks and balances
- Limit state ownership
 - No more than necessary
 - No longer than necessary
 - Requires “exit strategy”

3-10-05

Why consider state ownership?

- Limited federal (FERC) jurisdiction.
- Potentially more attractive financing.
- Increased credibility for permitting, routing.

3-10-05

17

Limitations on state ownership

- Builder of last resort.
- Own only to extent / time necessary for public purpose.
- Exit plan required.
- Leases to others must be lease-to-own.
- Revenue bond financing.

3-10-05

18

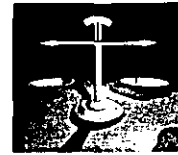
H.B. 1169 - Summary

Not a competitor with private industry:

- Builder of last resort.
- Role limited to minimum needed to further public interests.
- Ownership exit plan.
- Contract out construction, operation, & maintenance.
- May act in partnerships to increase odds of success.

Revenue bonds only:

- State not obligated to repay.
- Risk of default lies with bondholders.



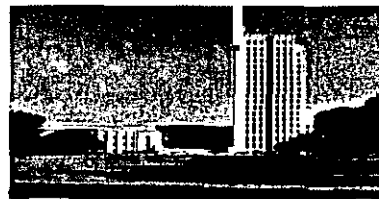
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9

H.B. 1169 - Provisions

§ 1 - Findings & public purpose

- ND has abundant lignite and wind.
- Transmission constraints impede development.
- Essential governmental function & public purpose to assist with:
 - removal of transmission constraints
 - upgrading & expanding grid to facilitate resource development.
- State ownership only as necessary to promote public interest.



3-10-05

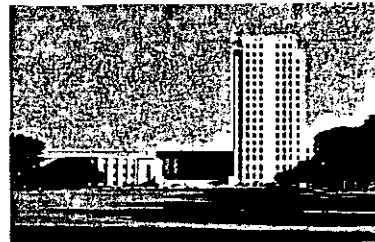
10

H.B. 1169 - Provisions

§ 1 - Findings & public purpose (con't):

Public interests:

- increasing employment
- stimulating economic activity
- augmenting tax revenue
- fostering economic stability
- improving state's economy.



3-10-05

#11

H.B. 1169 - Provisions

§ 2 – ND Transmission Authority

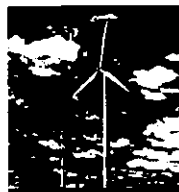
- Creates NDTA, governed by NDIC.

§ 3 – Definitions

- "Authority", "Commission", "Transmission Facilities", "Notice of Intent", "Project Area"

§ 4 – Purpose

- Diversify & expand ND economy by developing transmission to facilitate utilization of its electric energy resources.



3-10-05

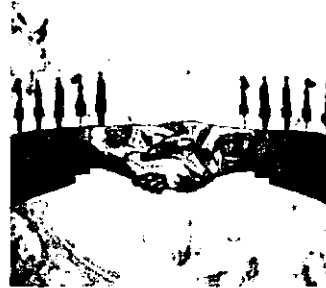
#12

H.B. 1169 - Provisions

§ 5 - Powers

Enable Transmission Authority to help solve transmission constraints that prevent development of North Dakota's wind and coal resources by:

- **Planning and developing** transmission facilities and corridors
- **Contracting** with others, e.g.:
 - Transmission service contracts
 - Construction
 - Operation & maintenance
- **Receiving contributions**
- **Pledging revenue** as security
- Issuing and selling **revenue bonds**



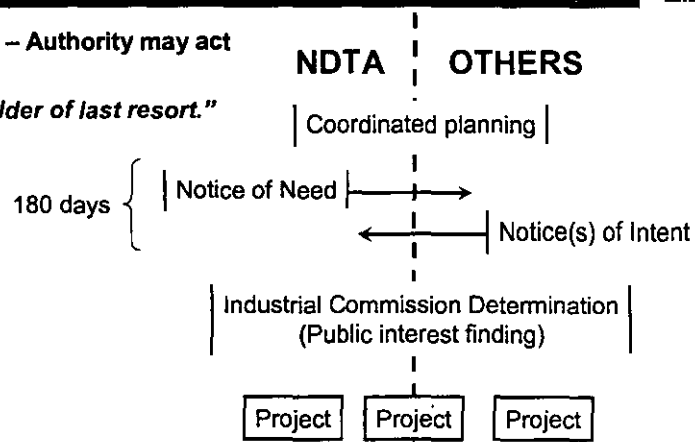
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13

H.B. 1169 - Provisions

§ 6 – Authority may act

"Builder of last resort."



§ 7 – Authority may participate upon request

"Partner."

- NDTA may participate thru financing, joint development, or other arrangement.

3-10-05

14

H.B. 1169 - Summary

§ 8 – Evidences of Indebtedness

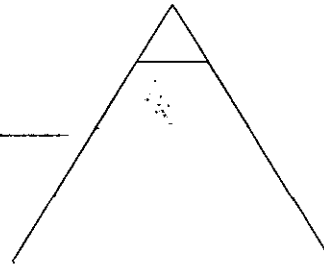
- NDIC may authorize revenue bonds (not debts of the state).
- Provisions similar to other state bonding authority, e.g., maintain reserve fund, generate revenue

☒ General Obligation Bonds

☒ Appropriation Bonds

☒ Moral Obligation Bonds

☐ Revenue Bonds



3-10-05

15

H.B. 1169 - Provisions

§ 9 – Public Service Commission Jurisdiction; Consultation

- Subject to PSC routing / siting jurisdiction.
- **Must consult with PSC** regarding rate design.
- NDTA rates “**just and reasonable**” in PSC rate cases.
- NDTA **must consult** with
 - Transmission providers
 - Wind interests
 - Lignite Research Council
 - Others with relevant experience

3-10-05

16

H.B. 1169 - Provisions

§ 10 – Bonds as legal investments

§ 11 – Disposal of Transmission Facilities

- Requires **exit plan**.
- Facilities leased to others: **lease-to-own**.
- Facilities owned but not leased: **sell ASAP** in accordance with plan.

§ 12 – Exemption from Property Taxes

- NDTA-owned facilities **exempt** for up to 5 years.
- After 5 years, lines $\geq 230\text{kV}$ pay **per mile tax**.

§ 13 – Biennial Report to Legislative Council

§ 14 – Exemption from Administrative Practices Act

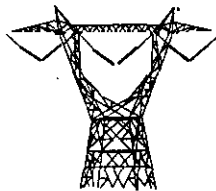
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17

Strategies

Summary

- Establishing a Transmission Authority is **one strategy** for facilitating remote resource development.
- A Transmission Authority **cannot itself solve all of the barriers** to adding transmission, but it may be a useful as circumstances evolve.



3-10-05

18

H. B. 1169

Presented by: Illona A. Jeffcoat-Sacco
Executive Secretary
Director, Public Utilities Division
Public Service Commission

Before: Senate Natural Resources
Honorable Stanley W. Lyson, Chairman

Date: 10 March 2005

TESTIMONY

Chairman Lyson and committee members, my name is Illona Jeffcoat-Sacco. I am the Executive Secretary of the Public Service Commission and Director of the Public Utilities Division. The Commission asked me to appear here today to testify on HB 1169.

The Commission is generally supportive of HB 1169. However, the Commission is concerned with the provisions of the bill that allow the transmission authority to set transmission rates, fees or other charges without any due process protections in place. The Commission asked me to appear here today to propose an amendment to address this concern by requiring that the authority provide notice and an opportunity for hearing before the authority could set transmission rates or charges. A copy of the proposed amendment is attached.

We recognize that the transmission authority is under the Industrial Commission and that consequently, the bill proposes to exempt the authority from the application of the Administrative

Agencies Practices Act, Chapter 28-32, much as other business under the Industrial Commission are exempt. Such an exemption might seem appropriate at first glance. However, such an exemption for the rate setting function of the authority is not appropriate. The authority's power to set transmission rates will impact all electric ratepayers throughout North Dakota. This function is more analogous to those Industrial Commission functions that are not exempt from Chapter 28-32, such as the decisions made by the Industrial Commission on oil and gas issues. We believe the best policy is to require procedural due process, including notice, an opportunity for hearing and an opportunity for appeal, when transmission rates are set.

Today electric and gas ratepayers pay for transmission in the rates they pay for the energy they consume. While the electric transmission business and resulting transmission costs are in a state of flux due to the implementation of regional markets, the costs of transmission are still eventually recovered from ratepayers as part of what they pay their distribution company. These transmission costs are most often set by the Federal Energy Regulatory Commission (FERC) through the filing of tariffs for FERC's review and approval. FERC filings are publicly noticed, subject to comment by interested parties, subject to a formal hearing, and subject to review on appeal. We believe the same procedural safeguards should apply to the rates set by the transmission authority.

As you can see from the provisions of section 9 of the bill, lines 24-26, once the authority sets transmission rates, those rates must be considered reasonable by the Public Service Commission when a

utility asks for recovery of the transmission costs in retail rates. This means that the rates set by the transmission authority cannot be challenged for reasonableness in a retail rate case before the Public Service Commission. We can understand the purpose of this provision. However, since transmission costs will not be subject to any substantive review when they are included in a rate case at the retail level, they should be subject to a more formal review when initially set by the authority. Even transmission rates set by other government entities, such as the Western Area Power Administration, are subject to public input and FERC review.

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

PROPOSED AMENDMENT TO ENGROSSED HOUSE BILL NO. 1169

Page 3, line 27, after "authority" insert ", after notice and opportunity for hearing as an adjudicative proceeding under chapter 28-32"

Page 9, line 4, after "authority" insert "except for the setting of fees, rates, tariffs or other charges, which are subject to the provisions regarding adjudicative proceedings in this chapter"

Renumber accordingly

**Testimony of John W. Dwyer
President, Lignite Energy Council
Before the Senate Natural Resources Committee
HB 1169
March 10, 2005**

- I. Represent various interests
 - A. G&T Cooperatives
IOUs
Lignite Producers
Main Street
 - B. All have company agendas as they should / Always differences / Always see landscape a little differently
 - C. But all come together in efforts to develop and utilize abundant lignite resource
- II. Have had several opportunities to review drafts of HB 1169 since originally circulated in October 2004
 - A. Appreciate changes that have been made to accommodate various lignite interests
 - B. Believe Glen Skarbakka has done a superb job in accommodating various interest (lignite, wind, PSC, others)
- III. Also want to provide historical context to formal partnership between state and lignite industry and transmission activities we have conducted over past five years
 - A. Have had formal working partnership since 1991 when Legislature authorized lignite research, development and marketing program
 - 1. Voters also approved constitutional amendments in 1990 and 1994 to provide source of money for lignite state/industry partnership
 - 2. 10 cents per ton / \$3 million a year
 - B. Industrial Commission has had several powers under existing law (NDCC 54-17.05-05). Includes:
 - 1. Authority to issue and sell evidence of indebtedness (Bonds)
 - 2. Requirements for evidence of indebtedness (NDCC 54-17.05-05)
 - a. Not subject to taxation
 - b. Requires a reserve fund
 - c. Legislature may appropriate dollars to reserve fund
 - d. Other

3. NDIC/Industry have utilized NDIC bonding authority in past
 - a. Great Plains Project / \$129 million – anhydrous ammonia project
 - b. Strategy to diversity revenue stream to keep Great Plains operating
 - c. Why?
Protect 4,000 jobs, 6.5 million tons of lignite production, \$17.5 million tax revenue for state
- C. Point is this: We have a track record of working with the state / We have a track record of issuing revenue bonds for a lignite/state purpose and more importantly, it has worked!
- IV. Also have history of working with NDIC on transmission studies to resolve number one priority – ***Transmission Constraints!!***
 - A. Have briefed Electric Competition Committee over past five years; Legislative Briefings conducted around state last five years; Legislative Tours last five years
 1. Can talk about wind/coal development enthusiastically, but...
 2. Unless we solve transmission / ***Not*** going to develop our state's abundant wind and coal resources
 - B. Joint transmission studies undertaken with NDIC last five years (Summary attached)
 1. Looked at whether transmission expansion possible
 2. Looked at seven potential sites
 3. Looked at east and west access
 4. Looked at specific routes
 - C. Point is: We know what needs to be done, question now is: How do you do it?
- V. We think one way (Not the only way) is to enact HB 1169 / Fully support concept of HB 1169
 - A. Recognize bold step
 - B. But we are ***not*** going to develop wind and coal resources and realize economic benefits for state ***unless we act now***
 - C. Must also know we are learning the hard way
 1. GRE suspended consideration of ND site in 2002 for expansion due to transmission problems
 2. MDU / Westmoreland's downsized Gascoyne plant from 500 MW to 175 MW due to transmission problems
 3. Great Northern Power Development has been unable to obtain customer commitments for its South Heart plant due to transmission problems
 4. Other examples
 - D. Bottom Line: We have lost economic opportunities due to transmission constraints

VI. Summary

- A. Support concept of HB 1169
- B. Would request Chair that we have opportunity to review any amendments that may be offered / Worked on several amendments in House to improve bill and would be happy to do again if necessary
- C. Have other members here of the Lignite Energy Council that wish to testify – Lignite producers / G&T Cooperatives / IOUs / developers
 - 1. Have letter from Minnkota's CEO Dave Loer (Attached)
 - 2. Dale Niezwaag of Basin Electric
 - 3. Kathy Aas of Xcel Energy
 - 4. Gary Jacobson of Great River Energy
 - 5. Dean Peterson of North American Coal Corporation
 - 6. Rich Voss of Great Northern Power Development
 - 7. Dennis Boyd of MDU
 - 8. Others
- D. Happy to try and answer any questions when they are finished

Summary of Lignite Vision 21 Program Studies to Date

1. Phase I Lignite Vision 21 Program (LV21P)

During Phase I of the LV21P, which began in July of 1999 and was completed in July of 2000, a "fatal flaw analysis" transmission study¹ was conducted by ABB, Inc. The study used power flow techniques to identify a transmission corridor (Antelope Valley Station – Huron – Sioux Falls – Lakefield Junction) to accommodate an additional 500 MW to the North Dakota export capacity. ABB determined that this route would likely increase stability and reliability of the MAPP network and, in particular, the North Dakota sub-region of MAPP, but would require additional studies for verification.

2. Phase II LV21P

During Phase II of the LV21P, which began April 1, 2000 and was completed in July of 2001, transmission studies were conducted for a new 500 MW lignite-fired plant located at any of seven potential sites in North Dakota². The studies included powerflow, stability, and loss evaluations. The results indicated that it was technically feasible to add a new 500 MW generating unit in North Dakota and to upgrade the transmission system from North Dakota to Minnesota.

3. Phase III LV21P

During Phase III of the LV21P, which began September 1, 2001 and was completed April 30, 2004, several transmission studies were conducted. One study³ identified transmission improvements necessary to deliver power from each of the Great River Energy, Great Northern Power Development, and MDU/Westmoreland prospective project sites to the Minneapolis area for both 750 and 500 MW plants. The six basic route scenarios shown in Attachment 1 were investigated. The study developed cost information for each scenario and determined that each was technically feasible, though much more detailed study would be required before such a project could be constructed.

In a another study⁴, Great Northern Power Development, MDU-Westmoreland, and the NDIC contracted with ABB to investigate transmission options to increase power flows between the Western Electricity Coordinating Council (WECC) and the Mid-Continent Area Power Pool (MAPP) and identify transmission upgrades required to transmit 500 MW and 1000 MW of new lignite generation in the MAPP System to the Northwest Region in the WECC. Seven alternatives were developed for transmission of power from the Belfield and Gascoyne locations to the WECC. The results of the study included cost estimates and indicate that the transmission scenarios studied are technically feasible; however, much more detailed studies would be required.

¹ *North Dakota Transmission Study Second Report* (ABB, May 8, 2000).

² *Phase II Transmission System Impact Study Summary Report* (ABB, February 6, 2001, Revised February 23, 2001).

³ *LV21P Transmission Alternatives Preliminary Analysis* (ABB, February 12, 2002).

⁴ *MAPP-WECC Transmission Study* (ABB, December 2, 2002).

In a third study⁵, several entities, including wind developers, contracted with ABB to evaluate the feasibility of 1500/2250 MW high-voltage direct current transmission lines from North Dakota to Chicago. The results of the study included cost estimates and indicate that the transmission scenarios studied are technically feasible; however, much more detailed studies would be required.

In a fourth study⁶, ABB evaluated the transmission required to export 250 MW and 500 MW based upon a review of existing studies. This study excluded upgrading the Antelope Valley-Huron line, whose owners have indicated that they have reserved such an upgrade for other purposes. The study included transmission routes and cost estimates for a 250 MW station located at Gascoyne and a 500 MW station located at either Gascoyne or Belfield and delivering power to the Minneapolis area.

Most recently, the Transmission Study Committee (TSC) of the UGPTC has prepared a draft Dakotas Transmission Study Scope, December 4, 2003. This study will identify potential transmission projects to deliver 500 MW from a new North Dakota lignite generating station and 1500 MW from wind generating sites in North and South Dakota to the Twin Cities and other markets further south and east. Maps showing the placement of these generating sites and examples of the transmission configurations being considered are shown in Attachment 2. The TSC subcommittee and MISO transmission planners are in the process of developing a scope of work. MISO has committed to performing the study and integrating the results into the MISO Transmission Expansion Plan 2004 (MTEP-04), which is scheduled for completion by the end of 2004 and approval by the MISO Board of Directors in early 2005. At that point, it would be up to the LV21P participants, the wind interests, existing plant operators, transmission owners, and other stakeholders to determine how they would work together to develop specific transmission plans, cost sharing mechanisms, and permitting and siting strategies.

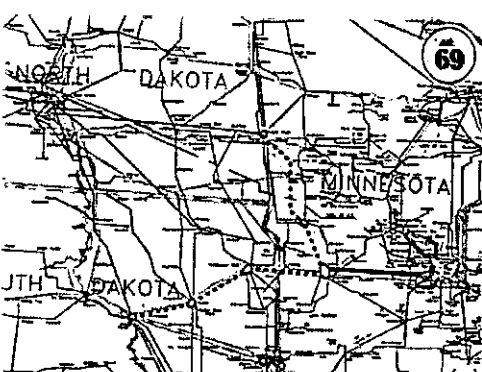
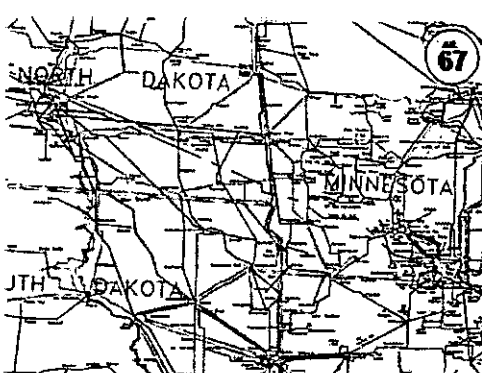
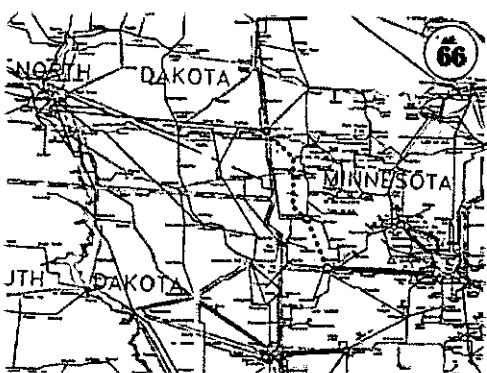
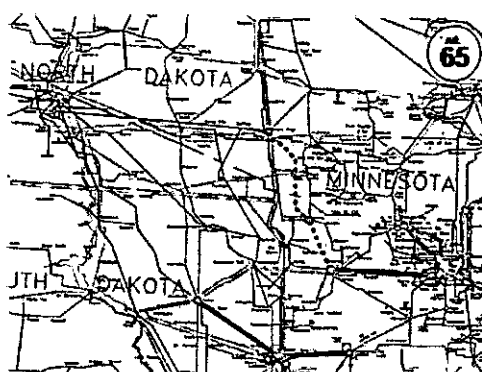
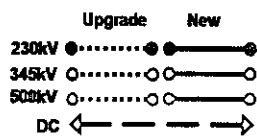
⁵ *North Dakota to Zion HVdc Transmission Feasibility Study* (ABB, November 14, 2002).

⁶ *Review of System Alternatives for Lignite Vision 21 Program* (ABB, July 28, 2003, Revised September 16, 2003)

ATTACHMENT 1

Transmission Scenarios Evaluated in Phase III of Lignite Vision 21 Program

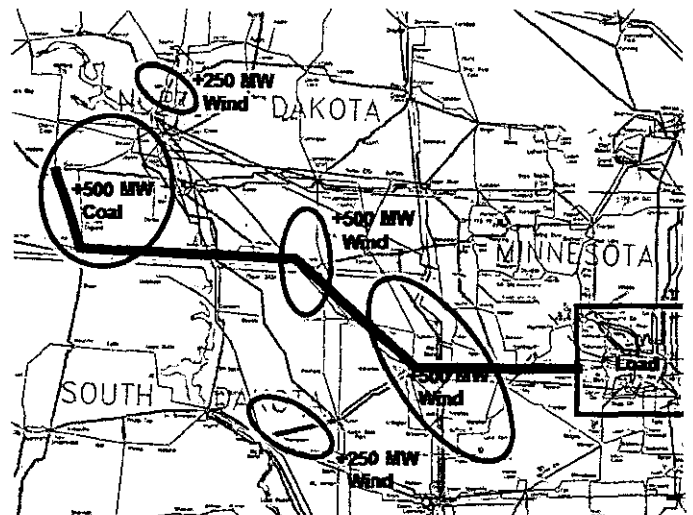
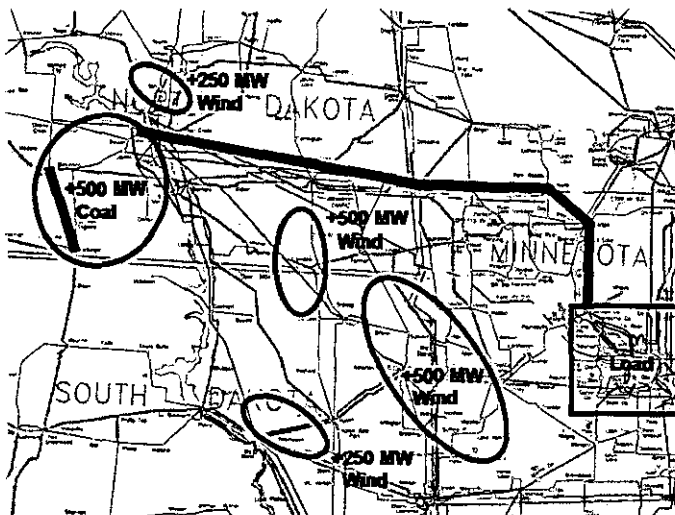
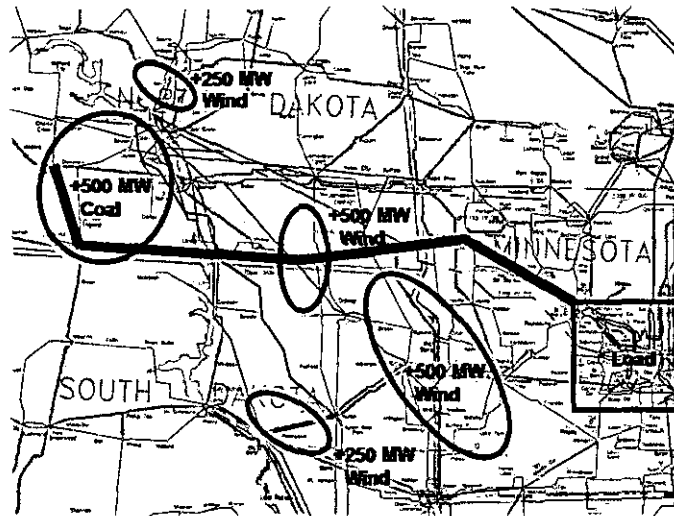
Legend



ATTACHMENT 2


**Examples of Scenarios to be Considered in MISO 2004 Transmission
Expansion Plan**

(The routes shown are for study purposes only and do not represent specific line corridors.)



Minnkota Power

MPC COOPERATIVE, INC.

Your Touchstone Energy® Partner 

1822 Mill Road • P.O. Box 13200 • Grand Forks, ND 58208-3200 • Phone (701) 795-4000

March 7, 2005

The Honorable Stanley Lyson
Chairman, Natural Resources Committee
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Senator Lyson:

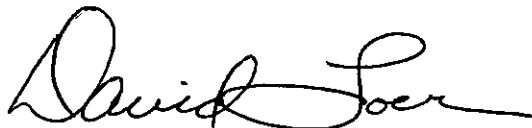
This letter is to express Minnkota's support of HB 1169, which was introduced at the request of the North Dakota Industrial Commission. The purpose of HB 1169 is to establish a Transmission Authority to assist in developing transmission and related facilities, thereby facilitating utilization of North Dakota's vast energy resources and expansion of the State's economy.

Minnkota Power Cooperative owns and operates two electric generating facilities at the Milton R. Young Station near Center, North Dakota. Minnkota is presently studying the need for new generation resources and transmission necessary to carry this generation to our loads in eastern North Dakota and northwestern Minnesota. We believe HB 1169's conception of a Transmission Authority as a "builder of last resort" and as a mechanism for potential bonding authority would be an important tool for addressing transmission constraints that now stand in the way of new generation development in North Dakota.

We encourage a "Do Pass" on HB 1169 by your committee. Thank you for your attention to this matter.

Yours very truly,

MINNKOTA POWER COOPERATIVE, INC.



David W. Loer
President & CEO

gae

Testimony of Richard A. Voss, Vice President – Power Development, Great Northern Power Development, L.P., before the North Dakota Legislative Senate Natural Resources Committee
March 10, 2005 Ft. Lincoln Room, State Capitol.

RE: Comments in support of HB 1169
A Bill for an Act to provide for the North Dakota Transmission Authority

I. Background - The South Heart Power Project

- a. Great Northern's coal reserves / NDIC / Kiewit Mining Group
- b. 500 MW plant w/adjacent lignite mine
- c. 1000 construction jobs
- d. 1200 direct and indirect permanent jobs
- e. \$800-\$900 MM project cost
- f. \$75MM/yr to state's economy
- g. \$6MM/yr tax revenues

II. Progress

- a. 3 years of studies
 - i. Permitting – projected application 2nd qtr. 2005
 - ii. Mine & Plant – conceptual designs complete - competitive
 - iii. Transmission – feasible but who will build/pay for?
 - 1. Rate uncertainty – FERC / MISO
 - 2. Protect existing customers/ratepayers

III. Outlook

- a. Customer needs / requirements
- b. Current window of opportunity

IV. Effects of the Transmission Authority

- a. Removes financing uncertainty
- b. Removes potential burdens to existing ratepayers
- c. Provides option to build if unattractive to existing utilities
- d. Positive responses from potential customers
- e. Improves new projects' competitive position

V. Summary

- a. Lack of adequate transmission is critical to project
- b. TA will enhance project development
- c. TA will bolster economic development
- d. Critical timeframe relative to existing/projected needs
- e. Request favorable vote on HB No. 1169

**TESTIMONY BEFORE THE SENATE NATURAL
RESOURCES COMMITTEE**

Concerning HB1169

March 10, 2005

**Dean Peterson, THE NORTH AMERICAN COAL
CORPORATION**

Mr. Chairman and members of the Committee, my name is Dean Peterson. I am here today representing The North American Coal Corporation – North Dakota's largest lignite producer. North American Coal has two subsidiaries, The Coteau Properties Company and The Falkirk Mining Company that collectively produce over 23 million tons of lignite each year for energy conversion facilities located in North Dakota.

We support the passage of HB1169 that establishes a North Dakota transmission authority for the purposes stated in Section 4 of the bill. I want to make just a few comments regarding our interest in **HB1169**.

As North Dakota's largest lignite producer, it is important for our lignite mining business to have good connections to our markets. Our lignite production reaches markets near and far via electric transmission facilities. This bill provides another tool for North Dakota to use in the effort to improve market connections for all electricity generated within the state.

We would appreciate your **do pass** vote for this bill. Thank you.

Xcel Energy Testimony
HB 1169
Senate Natural Resources Committee
March 10, 2005

Good morning, Mr. Chairman, Members of the Committee. For the record, my name is Mark Nisbet, North Dakota principal manager for Xcel Energy.

We agree with the findings in HB 1169: North Dakota has abundant energy resources that are underutilized, limited by the lack of transmission lines to take our available, valuable exports to the areas of this country that face an increasing need for this energy. We admire the proactive approach taken by the Industrial Commission to stimulate economic stability and improve the state's economy through the energy industry. We know that an increased opportunity to market our state's energy will result in new jobs that pay well and that, in turn, will build tax revenue from which all citizens can benefit.

This bill could provide many benefits; key among them is the ability to initiate tax-exempt financing.

We believe Xcel Energy's experience could help maximize benefits and minimize costs for consumers if we have a role in developing – under the authority of the state industrial commission – a business plan and incentives necessary to build new transmission lines. We believe that it would be prudent for members from the state's transmission line owners to have membership in this committee. This committee, comprised of the state's utilities, would have the needed expertise to fully understand the workings of MAPP, MISO, RTO issues and FERC, which would be necessary for the authority to function properly in this complex industry.

Xcel Energy testimony – page 2

The committee needs to ensure North Dakota electric customers receive fair allocations of the costs and benefits of each project.

In conclusion, we understand the benefits this bill could provide and support the basic principles laid out in it, please carefully consider our offer of help so that we can fully realize the positive potential this concept could have for the state and our industry.

Great River Energy Testimony

House Bill: 1169

Natural Resources

Senate Industry Business & Labor

Lyson

Chairman: Sen. Match

For the record, my name is Gary Jacobson. I am the N.D. legislative consultant for G.R.E. I appear before you today in support of H.B. 1169. G.R.E. is a generation and transmission wholesaler of electricity to 28 Member cooperatives located in Minnesota with headquarters in Elk River, Minnesota. G.R.E.'s N.D. Generating facilities are located near Underwood [Coal Creek Station] and Stanton [Stanton Station]. G.R.E. has 2500 megawatt generation capability consisting of a diverse mix of baseload and peaking plants. Associated with the generating capabilities is the 4,400 miles of transmission line located in the Region. Our largest line is a 500KV direct current line extending from the Coal Creek Station near Underwood, N.D. 435 miles to the Twin Cities area.

H.B. 1169 in its current form represents a working tool that could aid in the development of future Transmission lines to markets beyond the states boundary. We look forward to working with you Towards this goal. Thank you for allowing me to give you this brief testimony.

**Dale Niezwaag - Basin Electric Power Cooperative
North Dakota House Bill No. 1169
Senate Natural Resources Committee
March 10, 2005**

Mr. Chairman and members of the committee, my name is Dale Niezwaag and I am here representing Basin Electric Power Cooperative. Basin Electric supports the development of a State Transmission Authority.

As everyone is well aware of there is a lack of surplus transmission capacity in the state of North Dakota. Without the development of new transmission infrastructure, the development of additional generation resources within North Dakota is hindered. In our opinion the lack of financing is not keeping new transmission from being built. The main problems are current rules and pricing mechanisms of Regional Transmission Organizations (RTO's) that determine who benefits and who pays for transmission services and siting lines across multiple states and jurisdictions.

Although the proposed transmission authority may not have an immediate affect of getting new transmission facilities built across North Dakota and other states, it does offer the potential to assist the development of transmission lines in the future.

The potential benefits of a State Transmission Authority include the ability to streamline the siting and permitting process and obtain tax exempt financing. Another potential benefit is the ability to work with surrounding states and develop interstate compacts.

At this time Wyoming is setting up their authority, South Dakota has approved transmission authority legislation and Montana is considering legislation to establish their authority. With transmission authorities in our surrounding states, efforts could begin to develop agreements that would establish guidelines and procedures for building lines in each other's states. These agreements could then be promoted in states such as Minnesota that are very unwilling at this time to allow new transmission lines to be built in their state.

Basin Electric encourages a "Do Pass" recommendation on HB 1169. That concludes my testimony and I would be happy to answer any questions at this time.