MICROFILM DIVIDER

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

ROLL NUMBER

DESCRIPTION

1314

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1314

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1314**

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date **26 January 2005**

Tape Number	Side A	Side B	Meter #
2	X		7-end

Committee Clerk Signature Jan M Rindal

Minutes:

Chairman Keiser opened the hearing on HB 1314.

Rep. Jon Nelson, District 7, introduced the bill. **(Testimony attached.)**

Rep. Ekstrom: I'm going to carry the bill so you need to back me up. On Page 1, you talk about biomass using agricultural products and agricultural waste. This would include the production of ethanol?

Nelson: Biomass is in the definition section. The answer is yes to your question. I would like to point that the recycled energy does cause some concern with the environmental community. In ND we have a great opportunity in our coal generation plant to capture CO2 and use that for industrial uses and that is a qualifying credit as well for those utilities and businesses that would interested in buying that credit. We are the only state that I know of that has that capability and there's a vast potential in the coal fired energy field for utilizing that resource. It could have a

great effect in clean air standards and global warming standards across the country. I think it important that we included that in this legislation.

Rep. Ekstrom: Under the provision of the bill we say hydrogen is generated from a source listed in this section. Not hydrogen from lignite or other nonrenewable resources, correct?

Nelson: Yes, any of the sources defined in section 2 and that is one that would qualify.

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

Rep. Ekstrom: Who are you marketing these credits to primarily?

Niezwaag: At this time we have done some sales to the federal government.

Harlen Fugelsten, Rural Electric Cooperative Association, testified in favor of the bill and recommended a do pass on the legislation.

Kathy Aas, representing Xcel Energy, testified in favor of the bill. **(Testimony attached.)**

Rep. Dosch: Who issues these credits?

Aas: I don't know. **Nieswaag:** They belong to the utility that generates them.

Chairman Keiser: Who authorizes the issuance of these credits. Who defines what a credit is and who then says, "you have one credit or ten credits?" How do you know how many credits you have.

Brad Crabtree, director, Powering the Plains Project, Great Plains Institute, testified in favor of the bill. **(Testimony attached.)** His testimony addressed the question asked of Nancy Aas.

Rep. Dosch: I'm still not sure my question was answered. I understand you are given credits based on the production of electricity, etc. Who determines how much of a credit is going to be given and who can give the credit. Is this a federal program.

Crabtree: There's a technical review committee that includes major utilities, environmental groups, regulators and some legislators meeting right now to design some of these technical issues. We've already defined what constitutes a renewable energy credit. It's megawatt hour of qualified generation. The actual M-Ret itself will be software system. It will have a technical staff person and an administrative staff person. It will have an advisory board that will have at least one regulator or public service commissioner from each jurisdiction represented. The actual M-Ret system and program could be housed with the midwest independent system operator, we're also looking at the possibility of a state providing a hosting service. The key thing is that each jurisdiction through their elected or appointed officials will have oversight through a board function of the program. All these technical operating rules and design aspects will vetted thoroughly by utilities and other interests and ultimately presented to regulators in this calendar year for their approval. The state of ND through the public service commission through this bill would have the opportunity for input.

Rep. Dosch: So this is the way the industry can get around regulatory requirements for having to produce X amount of dollars worth of renewal energy? You can shift one to the other. If I'm not meeting my regulatory requirements I can buy it from someone else?

Crabtree: Let's say that I'm a MN based utility and have not met my requirements, I'm able to purchase a credit and get that from a wind farm in ND or SD or whatever the marketplace deems appropriate and I can purchase a credit to do that. Yes, it's allowing renewable energy

development to take place elsewhere. My impression is that those involved in this effort see the development of renewable energy, where ever it occurs, as an environmental benefit generally. From an economic development standpoint the reality is that resource rich states like ND will go to the bank in this kind of system where resource core states like NY and Mass. will be spending money on credits.

Rep. Ekstrom: These credits would also be available to individuals?

Crabtree: Right. You or I could purchase a credit right now from Basin through their internal system you will have the right to purchase credit through this system. Any institution or individual could open an account. There is a feasibility question of whether you do that directly or through some firm that aggregates the credit.

Rep. Ekstrom: The other question has to do with international market. Who would be in the market there.

Crabtree: If you talk internationally beyond the North American market, then it depends on how those market play out. Right now they are forming in the context of emissions, in particular CO2 emissions, rather than the renewable theme.

Rep. Ruby: The way you explained it, it's possible that MN could purchase credits and we could get paid for generating power that never goes to MN.

Crabtree: That's not clear in MN yet. They have on their docket a decision on issue. I suspect utilities would want the ability to not have to transfer that power.

Rep. Klein: Where will the actual dollars go?

Crabtree: They will go to the seller, the generator. It could be a locally owned wind farm, or an individual who owns the windmill.

Susan Wefald, Public Service Commissioner, testified in favor of the bill. **(Testimony attached.)** The commission prepared an amendment which she discussed with the committee. **(Attached.)**

Jay Haley, representing the Wind Energy Council and The ND Renewable Energy Partnership, testified in favor of the bill. **(Testimony attached (2 pieces))**

Patrice Lahlum, ND Department of Agriculture, testified that her agency is favor of the legislation we feel will advance renewable energy in the state of ND and we are very much in favor of it and we urge you to give it a do pass.

Dennis Boyd, MDU Resources Group, appearing on behalf the utility division. I do not term my testimony in opposition, I do want to plant the first seeds of doubt that in our opinion this is exactly a first step toward renewable portfolio objectives which we would very much be opposed to. **(Testimony attached.)**

Mary Mitchell, representing the Dakota Resource Council, testified in opposition to the bill. **(Testimony attached.)**

Rep. Ruby: In relation to your disagreement with the use of geothermal, don't you think that some technology is used for heat pumps, don't you agree.

Mitchell: It's not the geothermal aspect that we are concerned about it is the actual use waste heat from facilities like pumping stations or things like that where this waste heat might be used to generate electricity. It's not from renewable energy sources because if those pumping stations are not running, there is no energy being generated.

Rep. Ruby: Isn't that similar landfill gas like methane. That's a waste product just as much as the heat?

Mitchell: You may be right in some respects. I think that the methane gas would be more of a source that exists and coming off there naturally. You're not having to generate that like waste heat which is actually being generated by a piece of equipment.

Rep. Ruby: Would you be opposed having garbage burned to generate.

Mitchell: That's something I don't know. We discussed only what was in the bill and we don't have a definite position on that issue.

Rep. Ekstrom: Do you know what other states allow?

Mitchell: I don't know.

Hearing closed.

A written statement of testimony in favor of HB 1314 was submitted by Roger Johnson, Agriculture Commissioner is attached to these minutes.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1314**

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date **26 Jan 05**

Tape Number	Side A	Side B	Meter #
3	X		839 - 1100

Committee Clerk Signature Jan Prindle

Minutes:

Chairman Keiser opened discussion of HB 1314. This also has technical amendments that were submitted by the PSC that would delegate to the PSC the authority to set up rules regarding the green credits. Do you want to hold this or proceed?

Rep. Froseth: In subsection 4, hydroelectric. Hydroelectric to generate electricity has been in place for many, many years. I think that ought to be removed.

Rep. Keiser: Is that a motion?

Rep. Froseth: Yes, move to strike subsection 4 of section 2 of the amendment and accept the amendment submitted by the PSC.

Rep. Ekstrom: I Second.

A voice vote was taken. Passed unanimously.

Rep. Keiser: The bill is before you as amended, what are the wishes of the Committee?

Rep. Ekstrom: I move a Do Pass as Amended on HB 1314.

Rep. Clark: I **Second.**

Rep. Ekstrom: I want to address the concerns that Dennis Boyd brought up about the removal of portfolio standards. This bill does not do that. That's not the issue here and I don't see it as an issue in the general conversation of what we're trying to do.

A roll call vote was taken.

Yes: 14 No: O Absent: 0 The motion to pass HB 1314 as amended Carried.

Rep. Ekstrom will carry the bill.

FISCAL NOTE

Requested by Legislative Council
03/17/2005

Amendment to: Engrossed HB 1314

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						
Expenditures						
Appropriations						

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

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

Section 4 of Engrossed HB 1314 with Senate Amendments allows the existing income tax credit for installation of geothermal, solar or wind energy devices to be claimed against the entire tax liability of a corporate consolidated group. Under current law, the tax credit would apply only to the liability of the corporation involved in the project, not the remainder of the consolidated group.

Currently, tax records indicate there are existing project costs totaling approx. $65 million available to be used in computing tax credits under this section. The tax credits associated with these existing projects is computed at 3%, or $1.95 million per year. It is unknown how much of the existing tax credits will be used against the liabilities of other members of a consolidated group. Additionally, it is unknown the degree to which new projects will be undertaken increasing the overall amount available tax credits.

The fiscal impact of the carryforward provisions contained in Section 4 are also unknown.

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.*

See note to fiscal impact, above.

   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:	Kathryn L. Strombeck	**Agency:**	Office of Tax Commissioner
Phone Number:	328-3402	**Date Prepared:**	03/18/2005

FISCAL NOTE

Requested by Legislative Council
01/12/2005

Bill/Resolution No.: HB 1314

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.*

Some aspects may cause fiscal impact, such as the cost of tracking software, etc. However, we have no information on which to base an estimate for these costs.

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.*

No revenues are expected.

   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.*

See note to fiscal impact, above.

   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:	Illiona A. Jeffcoat-Sacco	**Agency:**	PSC
Phone Number:	701-328-2400	**Date Prepared:**	01/12/2005

VK
1/27/05

50098.0401
Title.0500

Adopted by the Industry, Business and Labor Committee

January 26, 2005

HOUSE AMENDMENTS TO HOUSE BILL NO. 1314 IBL 1-27-05

Page 1, line 9, after "verify" insert "the trading of credits for"

Page 1, line 10, remove ". The program must track, record, and verify the trading of credits for electricity"

Page 1, line 11, remove "generated from renewable and recycled heat sources"

Page 1, remove line 24

HOUSE AMENDMENTS TO HB 1314 IBL 1-27-05

Page 2, line 1, replace "5." with "4."

Page 2, line 3, replace "6." with "5."

Page 2, line 5, replace "7." with "6."

Renumber accordingly

Date: 1-26-05

Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1314

House **INDUSTRY, BUSINESS AND LABOR** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Moves to Strike subsection 4. & Adopt Amend.

Motion Made By Froseth Seconded By Ekstrom. by PSE.

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman			**Rep. B. Amerman**		
N. Johnson-Vice Chairman			**Rep. T. Boe**		
Rep. D. Clark			**Rep. M. Ekstrom**		
Rep. D. Dietrich			**Rep. E. Thorpe**		
Rep. M. Dosch					
Rep. G. Froseth					
Rep. J. Kasper					
Rep. D. Nottestad					
Rep. D. Ruby					
Rep. D. Vigesaa					

Total (Yes) 14 No 0

Absent

Floor Assignment

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

Date: 1-26-05

Roll Call Vote #: 2

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1314

House **INDUSTRY, BUSINESS AND LABOR** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass As Amended

Motion Made By Ekstrom Seconded By Clark

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman	X		Rep. B. Amerman	X	
N. Johnson-Vice Chairman	X		Rep. T. Boe	X	
Rep. D. Clark	X		Rep. M. Ekstrom	X	
Rep. D. Dietrich	X		Rep. E. Thorpe	X	
Rep. M. Dosch	X				
Rep. G. Froseth	X				
Rep. J. Kasper	X				
Rep. D. Nottestad	X				
Rep. D. Ruby	X				
Rep. D. Vigesaa	X				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Ekstrom

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

REPORT OF STANDING COMMITTEE

HB 1314: Industry, Business and Labor Committee (Rep. R. Kelsch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1314 was placed on the Sixth order on the calendar.

Page 1, line 9, after "verify" insert "the trading of credits for"

Page 1, line 10, remove ". The program must track, record, and verify the trading of credits for electricity"

Page 1, line 11, remove "generated from renewable and recycled heat sources"

Page 1, remove line 24

Page 2, line 1, replace "5." with "4."

Page 2, line 3, replace "6." with "5."

Page 2, line 5, replace "7." with "6."

Renumber accordingly

2005 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1314

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1314

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 3-02-05

Tape Number	Side A	Side B	Meter #
1		xxx	2100-end
2	xxx		0-1635

Committee Clerk Signature Lisa VanBerkom

Minutes: **Chairman Mutch opened the hearing on HB 1314. All Senators were present. HB 1314 relates to a renewable electricity and recycled energy credit trading and tracking system by the public service commission.**

Rep. Nelson, introduced the bill. See written testimony.

Susan Wefald, Public Service Commissioner, spoke in support of the bill. See written testimony.

There were no questions from the committee.

Brad Crabtree, Director of Powering the Plains Institute, spoke in support of the bill. See written testimony.

Senator Klein: Who is going to buy these credits and why?

Brad: There are several markets. Renewable energy policy standards or they have voluntary objectives. Credit trading system allows those utilities to purchase credit rather than develop the renewable themselves.

Chairman Mutch: So where is the money generated to create these credits?

Brad: Well, they are purchased by the utility or third party that have interest in acquiring the credits.

Chairman Mutch: I know, but where is the money coming from for these credits that you sell? They have to be worth something.

Brad: The wind farm is an example.

Rep. Nelson: The commodity is a mega watt of power that is produced in North Dakota. So that there is no fictiscious flow of energy. It has to be produced here. That is where the PSC comes into play, is that they verify that is a qualifying credit and it has only been accounted for one time.

Senator Klein: Shouldn't we be banking those credits for North Dakota?

Rep. Nelson: When will we need wind?

Senator Klein: My concern is that we should be looking to the future.

Rep. Nelson: The wind energy industry is growing in this state. When and if we decide that we have an objective in this state, the industry would look at it in the marketplace as well.

Dale Niezwaag, Basin Electric Power Cooperative, spoke in support of the bill.
See written testimony.

Chairman Mutch: How would Basin Electric be entitled to any renewable credits?

Dale: What we have done is we have installed two wind farms. We committed into a long-term contract before the power line was purchased.

Kathy Aas, Xcel Energy, spoke in support of the bill. See written testimony.

Chuck Flemming, North Dakota Department of Agriculture, submitted and read testimony of Roger Johnson. See written testimony.

John Olson, Ottertail Power, spoke in support of the bill. Also submitted amendments. See attached testimony.

Senator Krebsbach: You use the example of a Limited Liability Company, is it only that structure that is affected, or could it be any corporate entity?

John: I believe it would any corporate entity.

Chairman Mutch allowed opposition at this time.

Tim Simons, Crown Butte Wind Power, spoke in opposition to the bill.

The hearing was closed. No action was taken.

On March 15, 2005, the committee met to make a recommendation on this bill.

Senator Klein moved a DO PASS AS AMENDED. Senator Krebsbach seconded.

Roll Call Vote: 7 yes. 0 no. 0 absent.

Carrier: Senator Krebsbach.

50098.0501
Title.0600

Adopted by the Industry, Business and Labor Committee Senate
March 15, 2005

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1314

Page 1, line 1, after "49-02" insert "and two new subsections to section 57-38-01.8"

Page 1, line 3, after "commission" insert "and a tax credit for a wind energy device; and to provide an effective date"

Page 2, after line 11, insert:

"**SECTION 4.** Two new subsections to section 57-38-01.8 of the North Dakota Century Code are created and enacted as follows:

If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all of the corporations included in the North Dakota consolidated return.

The credit allowed under this section may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be used as a credit carryover to each of the five succeeding taxable years.

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004."

Renumber accordingly

Date: 3-15-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1314

Senate **Industry, Business, and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Adopt Amendments

Motion Made By Klein Seconded By Krebsbach

Senators	Yes	No	Senators	Yes	No
Chairman Mutch	X		**Senator Fairfield**	X	
Senator Klein	X		**Senator Heitkamp**	X	
Senator Krebsbach	X				
Senator Espegard	X				
Senator Nething	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment

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

Date: 3-15-05
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1314

Senate **Industry, Business, and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken DPAM

Motion Made By Klein Seconded By Krebsbach

Senators	Yes	No	Senators	Yes	No
Chairman Mutch	X		**Senator Fairfield**	X	
Senator Klein	X		**Senator Heitkamp**	X	
Senator Krebsbach	X				
Senator Espegard	X				
Senator Nething	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Krebsbach

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

REPORT OF STANDING COMMITTEE

HB 1314, as engrossed: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1314 was placed on the Sixth order on the calendar.

Page 1, line 1, after "49-02" insert "and two new subsections to section 57-38-01.8"

Page 1, line 3, after "commission" insert "and a tax credit for a wind energy device; and to provide an effective date"

Page 2, after line 11, insert:

"**SECTION 4.** Two new subsections to section 57-38-01.8 of the North Dakota Century Code are created and enacted as follows:

If a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all of the corporations included in the North Dakota consolidated return.

The credit allowed under this section may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds the liability for tax under this chapter, the excess may be used as a credit carryover to each of the five succeeding taxable years.

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004."

Renumber accordingly

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

CONFERENCE COMMITTEE

HB 1314

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1314

House Industry, Business and Labor Committee

☑ Conference Committee

Hearing Date 3-30-05

Tape Number	Side A	Side B	Meter #
1	x		35.9-end

Committee Clerk Signature

Minutes:

Chairman Ruby: Opened the conference committee on HB 1314.

Chairman Ruby, Representative Vigesaa, Representative Ekstrom, chairman Krebsbach, Senator Mutch, Senator Heitkamp were present.

Chairman Ruby: We just want to discuss the changes that were made on this bill

Chairman Krebsbach: I carried this bill, and it was basically brought forward by Otter tail Power and there are tax advantages that they can utilize, however they had to have the law changed to be able for them to do so.

John Olson, Attorney, Otter Tail Power: Appeared in support of the bill, there is a wind energy income tax credit available to accompany the construction facilities and Otter Tail, because of the nature of their company, they have affiliates engaged in various operation, so when they file an income tax return in North Dakota, they file a consolidated tax return, some of those companies may or may not have a tax base in the state but they are all part of Otter Tail,

and so this amendment gives them a tax credit to which they should be entitled, but they cant take advantage of it because of the various entity that file under the consolidated tax law. This provides them a path for the various entities. The other feature of the bill provides that they can carry over the use of that tax credit for 5 years.

Chairman Ruby: As I read the original language of the code, it talks about the credit only effecting the portion of the total system directly contributing to the cost of the geo thermal solar, or wind energy device, that may be included in determining the credit, but now can the credit that is available be applied to any tax liability for the company as a whole? So all of that would apply then to Otter Tail even if that is over and above the amount that Otter Tail put into this project or not?

Anita Wahl, Legal Council, Tax Department: No, the example that John gave whether they have a partnership, or a 50/50 joint venture, 50% of those costs would be passed through to Otter Tail.

Representative Vigesaa: I **MOVE** that the **HOUSE ACCEDE** to the **SENATE** amendments.

Representative Ekstrom: I **SECOND THE MOTION.**

Motion carried **VOTE: 6-YES 0-NO 0-ABSENT.**

Representative Ruby will carry the bill to the floor.

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)

Bill Number 1314 (, as (re)engrossed): Date: 3-30-05

Your Conference Committee IBL

For the Senate:	YES / NO	**For the House:**	YES / NO
Chairman Krebsbach P.	Y	Chairman Ruby P.	X
Senator Mutch P.	Y	Rep. Vigesaa P.	X
Senator Heitkamp P.	Y	Rep E. Kstrom P.	X

recommends that the (SENATE/~~HOUSE~~) (~~ACCEDE~~ to) (RECEDE from)

the (~~Senate~~/House) ~~amendments~~ on (SJ/~~HJ~~) page(s) 1189 -- 1190

V, and place 1314 on the Seventh order.

~~X~~ adopt (further) amendments as follows, and place on the Seventh order:

____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) 1314 was placed on the Seventh order of business on the calendar.

DATE: 3-30-05
CARRIER: Representative Ruby

LC NO. of amendment

LC NO. of engrossment

Emergency clause added or deleted
Statement of purpose of amendment

MOTION MADE BY: Rep. Vigesaa

SECONDED BY: Rep E. Kstrom

VOTE COUNT 6 **YES** — **NO** — **ABSENT**

Revised 4/1/05

REPORT OF CONFERENCE COMMITTEE

HB 1314, as engrossed: Your conference committee (Sens. Krebsbach, Mutch, Heitkamp and Reps. Ruby, Vigesaa, Ekstrom) recommends that the **HOUSE ACCEDE** to the Senate amendments on HJ pages 1189-1190 and place HB 1314 on the Seventh order.

Engrossed HB 1314 was placed on the Seventh order of business on the calendar.

2005 TESTIMONY

HB 1314

Roger Johnson
Agriculture Commissioner
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North Dakota
Department of
Agriculture

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Bismarck, ND 58505-0020

Testimony of Roger Johnson
Agriculture Commissioner
HB 1314
House Industry, Business & Labor Committee
Peace Garden Room
January 26, 2005

Chairman Keiser and members of the House Industry, Business & Labor Committee, I am Agriculture Commissioner Roger Johnson and I support HB 1314, which will allow the Public Service Commission to facilitate North Dakota's participation in the development and oversight of the Midwest Renewable Energy Tracking System (MRETS).

This new authority and North Dakota's participation in MRETS is important to the future of renewable energy. MRETS will verify the generation, exchange and retirement of renewable energy credits and will provide an accounting system that will support the credit trading market in the Midwest. HB 1314 also defines renewable electricity and specifies what qualifies for credits in North Dakota.

The development of tracking systems is not unique to this region. Tracking systems are being developed in a number of other regions including New England (NEPOOL), the Mid-Atlantic (PJM), Texas (ERCOT) and several Western States (WREGIS).

Participation in a regional credit tracking system will help temper the costs of renewable energy, encourage additional renewable energy development and will promote trade with neighboring states and other areas of the country.

I believe we need to do all we can to promote renewable energy in North Dakota and this legislation will certainly benefit the industry. Chairman Keiser and committee members, I urge you to give HB 1314 a "do pass" recommendation.

Good Morning Chairman Keiser and members of the House IBL Committee. For the record my name is Jon Nelson and I represent the 7th District in the North Dakota House of Representatives.

I am pleased to appear before you today to introduce HB 1314. With its passage, this initiative would allow North Dakota the opportunity to participate, through the Public Service Commission, in a regional credit tracking and trading authority. In addition, Section 2 of the bill defines what sources would qualify as a renewable energy in North Dakota in this section. With passage of this proposal, this definition section would be the only reference in North Dakota Century Code of renewable energy.

Section 3 of the bill states that only those sources defined in Section 2 would qualify to be traded for renewable and recycled credits.

My interest with this issue began through my involvement with the Legislators Forum. This group consists of legislators from North Dakota, South Dakota, Minnesota, and the province of Manitoba. I was chosen from that group monitor regional partnerships in the energy segment.

Throughout the interim, I attended meetings of Powering the Plains, whose membership is comprised of legislative, regulatory, industry, private sector, and environmental interests that promote the use of renewable energy in the Midwest region of our country. I have also attended two workshops regarding credit trading in Minnesota and Wisconsin that were sponsored by their respective Public Utilities Commission.

Throughout these meetings and workshops it became apparent to me that if North Dakota is going to be a leader in renewable energy development we will need to access a larger, regional market. In fact, some of our neighboring states through renewable energy requirements or objectives within their state, require potential trading state partners to have similar policies in those states. Hence the need for this legislation in North Dakota. At a minimum, we need to have a definition of renewable energy in our code and this bill accomplishes that. The other aspect of this legislation is allowing North Dakota to enter into a regional trading authority and the ability to count and verify the credits that are created in our state.

This legislation, if passed, opens the door for marketing our vast renewable energy resources throughout the Midwest and eventually the entire country. For the free

market system to work for renewable energy development, it is essential that we pass HB 1314.

I respectfully ask this committee to recommend a DO PASS motion on HB 1314 and thank you for the opportunity appear today.

Pig emissions play part in global warming

■ Exchange essential for Kyoto Protocol targets, Canadian executive says, but others disagree

By Charles J. Hanley
Associated Press

SANTIAGO, Chile — Pig manure in Chile will keep neon lights glowing on Tokyo's Ginza in years to come. It's a grand north-south tradeoff to slow global warming. You reduce your "greenhouse gas" emissions so I don't have to cut back on mine.

In this case, a Chilean pork producer is eliminating methane fumes from animal waste and selling the resulting "credits" to Japanese and Canadian utilities, requiring that much less of them as they reduce carbon dioxide emissions at their coal- and oil-burning power plants.

It's one of the biggest deals in a potential multibillion-dollar market, a global exchange a Canadian executive calls "absolutely essential" for meeting targets under the Kyoto Protocol. But some warn that abuses may subvert the spirit of that climate treaty.

Clean Development Mechanism

In November in Buenos Aires, Argentina, the annual international climate conference approved an expansion of this Clean Development Mechanism and a strengthening of the U.N. office overseeing it.

Carbon dioxide, methane and a few other gases trap heat that otherwise would escape the atmosphere. A scientific consensus, endorsed by a U.N.-sponsored network of climate experts, blames much of the Earth's temperature rise of recent decades on these emissions and warns it will lead to damaging climate disruptions.

The 1997 Kyoto pact, effective Feb. 16, sets mandatory targets for industrial nations to reduce emissions by 2012. Although the U.S government rejects Kyoto, other nations are setting emissions quotas for industries that spew out the gases, particularly carbon dioxide, the most common.

The CDM was established under Kyoto on the theory that emission reductions help the climate wherever they occur. It allows northern industries to underwrite reductions in developing countries — where they're not mandatory — and get credit for them.

Cutbacks

Japan says up to one-third of its required cutbacks may come from foreign sources. Don Wharton, director of sustainable development for Canada's TransAlta utility, says the CDM is "absolutely essential" because there's too little time to install new technologies at home.

"We believe most large Canadian companies will have to rely on offsets (credits) to meet their reduction requirements," he says.

TransAlta and Tokyo Electric Power Co. found a partial answer in pig manure pits in the green valleys south of Santiago.

Industrial pork operations usually collect excrement in pits where it decomposes naturally, emitting methane into the open air. But Chilean food producer AgroSuper, spotting the Kyoto opportunity, installed $30 million in technology to handle the waste of 100,000 pigs, covering pits with vast plastic sheets and drawing off the methane, some to flare, some to use in generators to power farm operations.

Though less prevalent than carbon dioxide, methane is a more potent greenhouse gas. Each ton of contained methane earns AgroSuper some 20 "CERs" — certified emission reductions equivalent to 20 tons of carbon dioxide.

Carbon prices

The Chilean agribusiness will divide 400,000 CERs per year for nine years between the Japanese and Canadian companies. Wharton estimates this will meet 10 percent of TransAlta's needs for reductions.

A credit currently sells on the new European carbon market for about $10. But terms of the AgroSuper deal, still awaiting final U.N. approval, were not disclosed.

That carbon price is expected to rise, and big players are jumping into the market. A firm called CO2e ("carbon dioxide equivalent"), a subsidiary of the New York financial house Cantor Fitzgerald, brokered the AgroSuper deal and is developing another involving Brazilian power plants using sugar cane, a renewable fuel less carbon-heavy than coal or oil. China, meanwhile, is working to qualify more than 500 projects for salable credits.

Environmentalists worry that a flood of questionable projects may win U.N. certification as Kyoto comes into force in 2005. They cite CDM proposals for hydropower dams, for example, saying they're often "business-as-usual" projects that aren't replacing carbon-heavy alternatives, but would have been built without the Kyoto trading mechanism.

"The fact they're getting CDM credits is not helping the climate," says Ben Pearson, Australian founder of a campaign called CDM Watch. He says climate change will be slowed not through "marginal" projects with animal waste, but by addressing "the real issue, which is to fundamentally reform the way we produce and consume energy."

Santiago lawyer Sergio Vives, who helped negotiate the AgroSuper deal, defends it as a real reduction.

"It's quite clear they probably wouldn't have gone ahead with this technology" — and methane still would rise into the atmosphere — "without an incentive like the CDM," he says.

The world is taking notice of South America's porcine potential.

A Florida-based firm, AgCert, is installing methane-capture technology at 30 pig farms in Brazil. In one Brazilian state alone, Minas Gerais, 3.4 million pigs produce 7 million tons of waste per year — a lot to work with to keep lights burning in the credits-hungry north. □

Dale Niezwaag - Basin Electric Power Cooperative
North Dakota House Bill No. 1314
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 HB 1314 which will allow the Public Service Commission to join with other states in the region in developing and operating a system to verify, track, and record renewable energy credits in North Dakota.

A renewable energy generator produces two products. First is the actual energy produced by the generator, the second is a credit for the environmental benefits of producing energy from a renewable source. Depending on the policies of the states and the federal government, these energy credits, certificates, or green tags, as they are sometimes called will vary in value. At this time the value of the credits in our region is low. In states that have renewable energy mandates or objectives the value of the credits is significantly higher because utilities have to buy renewable energy credits or build renewable energy resources. Another point to keep in mind is that the value of a credit decreases over time. In most markets credits have little or no value after one or two years.

The value of a state recognized tracking system at this time is two fold. 1) A tracking system provides credibility to the buyer that the credit is real, it was produced by a renewable source and it has not been sold to anyone else. As a result, it could help in the marketing of credits from North Dakota resources. 2) In our region, the states of

Wisconsin, Minnesota, and Iowa plus the province of Manitoba, are working to establish a regional tracking system that North Dakota could be involved in. South Dakota is also considering participation in this program. Participating with other states will lower the development and operating costs to the state and guarantee that North Dakota's program will tie into the regional effort. When fully established, fees charged to utilities to use the tracking system will fund this program.

People and organizations will purchase these credits for two reasons. 1) If the state has a mandate or objective for renewable energy, a utility that doesn't have access to, or the desire to own a renewable generation system can fulfill their requirement by purchasing the appropriate number of credits. 2) If a person, organization, or utility feels that purchasing or providing renewable energy has a social or public relations value they can purchase credits instead of investing in their own generation. Naturally, if a state has a requirement for renewable energy, the credits will be in higher demand and the value will be higher.

A couple of points need to be stressed. Approving a tracking system does not mean that you support or commit the state to a renewable standard or objective. If North Dakota wants to discuss a renewable energy requirement, that must be a completely separate debate. Also approval of this legislation doesn't mean that the other states involved will accept any renewable credits produced by North Dakota or that North Dakota must accept credits from other states. All the states involved will develop their own rules about what they will accept as renewable credits. It is also important to

understand that there are renewable credit markets throughout the United States, not just in our region.

Basin Electric currently holds over 100,000 credits in inventory, and receives approximately 250,000 credits per year. We have also sold approximately 200,000 credits to various organizations and individual throughout the past few years. Current market values range from $1.50-$2.00 per credit for large quantities, to $5 for very small quantities.

Basin is also working to develop distributed generation based on the use of recycled heat. These systems with have the same environmental benefits of renewable energy. A recycled heat system produces electricity using waste heat that is currently being expelled into the atmosphere. These systems produce electricity with little or no additional fuel uses and little or no additional emissions. Under the proposed tracking system the energy produced by the recycled energy systems would also be verified, tracked, and recorded.

At this time we would ask the committee for a "Do Pass" recommendation on HB 1314. We believe that a tracking system recognized by the state will benefit the renewable energy industry in North Dakota.

That concludes my testimony and I would be happy to answer any questions at this time.

Xcel Energy Testimony
HB 1314
House Industry, Business and Labor Committee
January 26, 2005

Good morning, Mr. Chairman, Members of the Committee. For the record, my name is Kathy Aas, representing Xcel Energy.

Xcel Energy supports HB 1314, recognizing the establishment of an energy credit tracking system is one of the critical first steps to taking North Dakota's wind energy resources to another level.

This bill provides an opportunity for the Public Service Commission to establish the framework for our state to become a player in the Renewable Energy Credit system that already exists in other areas of the country. Regional credit tracking is a policy-neutral tool that individual jurisdictions can use in meeting their renewable objectives while promoting cooperation and trade with neighboring jurisdictions.

As a company, we support the principles of this type of legislation because it can help promote a state's renewable energy potential through an approach that is both efficient and private market-based. Renewable Energy Credits allow utilities an opportunity to derive actual monetary value from the real but often intangible benefits associated with renewable energy resources. This new tool could be used to provide an additional stimuli to the state's economy, further benefiting North Dakota and its citizens through our rich energy resources.

We respectfully urge you to pass this bill. Then, we encourage the designers of the renewable energy credit system to work with others in the Upper Midwest to design a methodology that will be compatible with other jurisdictions so that trades can take place between systems.

House Bill 1314:
Legislative Authority for Renewable Energy Credit Tracking and Trading

Testimony to the Industry, Business and Labor Committee of the North Dakota House of Representatives
January 26th, 2005

Brad Crabtree, Director
Powering the Plains Project
Great Plains Institute
Ashley, North Dakota
(701) 647-2041
bcrabtree@gpisd.net

Thank you Chairman Keiser and members of the Committee for the opportunity to testify in favor of House Bill 1314. I want to recognize Representative Jon Nelson for his leadership in crafting this legislation with industry, regulators and other organizations and to thank the legislators from both parties who have joined Representative Nelson in sponsoring this bill.

I am here today as director of the Powering the Plains project. PTP brings together representatives of industry and agriculture, government officials and legislators, and environmental advocates from the Dakotas, Iowa, Minnesota, Wisconsin and Manitoba to develop regional energy strategies, policies and projects.

In May of 2003, North Dakota legislative delegates to the Legislators Forum joined colleagues in Manitoba, Minnesota and South Dakota in tasking PTP with development of regional renewable energy policy recommendations. In response, PTP participants identified renewable energy credits as an area where public policy could help foster renewable energy development in the Upper Midwest. They specifically recommended a regional system to track, record and verify the creation, exchange and final retirement of renewable energy credits as a way to stimulate a robust credit market that supports investment in renewable power generation.

Beginning last fall, legislators and regulators joined utilities and renewable energy advocates through PTP to jointly design and implement the Midwest Renewable Energy Tracking System, or M-RETS. This legislation now before you would grant the State's Public Service commissioners the authority they need to participate in the development of M-RETS so that it meets the needs of North Dakota generators and consumers of renewable energy.

Why is credit tracking and trading important? Renewable energy credit trading allows a utility or non-utility consumer of electric power to purchase a credit from another utility or generator, rather than invest in renewable energy generation themselves. Buyer of credits may be subject to regulatory requirements to supply renewable electricity to retail customers, or they may simply wish to voluntarily support the development and use of renewable energy through credit purchases. Credit transactions may or may not involve the actual transfer of electricity. However, the credit represents real electricity generated from a renewable source and delivered somewhere to the public grid. Thus, the buyer is

directly supporting generation of renewable power through a credit purchase, whether or not the buyer actually consumes the electricity itself.

Having utilities and other entities around the country purchasing renewable credits, rather than generating the power themselves, is economically advantageous to North Dakota, which ranks number one in wind resource potential and where wind represents America's low-cost form of new power generation. In this context, North Dakota can become a net supplier of credits by a large margin.

However, private markets can only flourish when buyers and sellers have confidence in the information on which they base their decisions. That's where M-RETS will come in. Like other tracking systems in Texas, New England, the mid-Atlantic states, and the western states, M-RETS will record the generation of renewable electricity, verify that the electricity comes from a qualified source, and then issue an electronic certificate for each Megawatt hour produced. M-RETS will then document and verify subsequent exchange of credits between parties until their final retirement from the marketplace. With M-RETS' independent, third-party accounting, buyers and sellers will know that credits in the marketplace represent real renewable energy that those credits have not already been sold to another party or retired for regulatory purposes. Finally, M-RETS will operate seamlessly with other regional tracking systems, enhancing the ability of North Dakota generators to sell credits into markets beyond the Upper Midwest.

This legislation represents an important and necessary step toward ensuring North Dakota participation in this emerging regional tracking system. Minnesota legislators passed an authority last year as part of a larger bill that allows its utilities to purchase credits from generators in North Dakota and other bordering states to meet a renewable energy objective of 10 percent of all electricity retailed by 2015. Wisconsin already has a credit tracking system that is expected to become part of M-RETS. The Iowa Utility Board has the necessary authority to participate as well. That leaves North Dakota, South Dakota and Manitoba where additional authority is needed and is being sought from legislators.

This legislation is modest in scope. Beyond providing a statutory definition of renewable electricity and recycled energy that would qualify for credits in North Dakota, this legislation requires no other policy changes, nor obligates State officials to any particular action. It merely grants the PSC the authority to work with other jurisdictions to develop a tracking system that major cooperative and investor-owned utilities and other constituencies have expressly requested.

Around the country, Fortune 500 companies, private and public institutions of all kinds, and state governments are strengthening commitments to renewable energy. As this trend accelerates, the market for renewable energy credits will expand as well. North Dakota can be on the front end of this economic development opportunity, but our state's generators and utilities will need a credit tracking system like M-RETS to help maximize their participation in this important new market.

Please give the PSC the authority to help make it happen by recommending passage of House Bill 1314. Thank you.

H.B. 1314

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. We thank you for the opportunity to visit with you on this important bill. The PSC is in support of this bill.

This bill will allow the North Dakota Public Service Commission by rule to establish or participate in a program to track, record, and verify the trading of credits for electricity generated from renewable and recycled heat sources among electric generators, utilities, and other interested entities within this state and with similar entities in other states. The Commission is willing to take on this responsibility.

An important part of this bill is the definition of what counts as "renewable energy and recycled energy" in North Dakota. Section 2 of the bill includes the following sources: Solar, Wind, Biomass, Hydroelectric, Geothermal, Hydrogen, and Recycled energy systems producing electricity from currently unused waste heat as defined in

#7. These sources of energy are the only sources of energy that qualify for renewable electricity and recycled energy credits, as stated in Section 3.

This bill will allow the Commission to work on rules with interested stakeholders to determine if it wishes to set up its own certification process or to work with other states on these important issues. One option would be to work with neighboring states to participate in a regional approach to renewable energy credits to (1) ensure that when end customers want to purchase renewable energy, that they are actually buying renewable energy (2) ensure that North Dakota is an active participant in the renewable energy market (3) better track valid renewable energy, so that one renewable energy source is not double counted.

It is the Commission's understanding that this bill does not in any way authorize the Commission to set a voluntary or mandatory renewable energy objective by rule or otherwise. The activities the Commission is authorized to do in this bill can be done without any state energy objective.

Of course the Commission is concerned about possible costs that would be passed on to customers for a program to track, record

and verify the trading of credits. We appreciate the permissive language in the bill which allows us to evaluate the merits of any regional plan that comes forward.

The Commission has prepared a proposed amendment, which we have attached to this testimony. The purpose of the amendment is to eliminate duplicative language.

Prepared by Public Service Commission
1-26-05

PROPOSED AMENDMENT TO HOUSE BILL NO. 1314

Page 1, line 9, after "verify" insert "the trading of credits for"

Page 1, line 10, after "sources" delete ". The program must track, record, and verify the trading of credits for electricity"

Page 1, line 11, delete "generated from renewable and recycled heat sources"

Renumber accordingly

NDREP
North Dakota Renewable Energy Partnership

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Testimony of
Jay Haley
Vice-Chairman
North Dakota Renewable Energy Partnership
HB 1314
House Industry, Business & Labor Committee
Peace Garden Room
January 26, 2005

Good morning Chairman Keiser and members of the Industry, Business & Labor Committee. My name is Jay Haley and I am here today on behalf of the North Dakota Renewable Energy Partnership (NDREP) to testify in support of HB 1314.

The NDREP is an alliance of organizations and individuals aimed at advancing renewable energy in North Dakota. The NDREP focuses on renewable sectors – biodiesel, biomass, ethanol and wind. The organization has more than 40 general and associate members.

The NDREP has endorsed HB 1314, which allows the Public Service Commission to create or participate in a regional renewable energy tracking and trading system. This will help to develop a renewable energy market for North Dakota.

The NDREP urges to look favorably on HB 1314 and other legislation that will benefit renewable energy industries in North Dakota. I'd be happy to answer any questions.

Chair
Jocie Iszler
ND Corn Utilization Council
jiszler@state.nd.us

Vice-Chair
Jay Haley
Wind Energy Council
jhaley@eapc.net

Secretary-Treasurer
Terry Goerger
ND Biodiesel Taskforce
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Wind Energy Council
Growing the wind energy industry in the Upper Great Plains

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Testimony of
Jay Haley
Founding Chairman
Wind Energy Council
HB 1314
House Industry Business & Labor Committee
Peace Garden Room
January 26, 2005

Good morning Chairman Keiser and members of the Industry, Business and Labor Committee. My name is Jay Haley and I am here today representing the Wind Energy Council to testify in support of HB 1314.

The Wind Energy Council's primary objective is to promote and foster the development and growth of a vibrant wind energy industry in the Upper Midwest. Members of the Wind Energy Council include wind farm developers, owners and operators, wind turbine manufacturers, wind turbine component manufacturers, and businesses providing goods or services to the wind industry.

The Wind Energy Council has endorsed HB 1314 which allows the Public Service Commission to create or participate in a regional renewable energy credit tracking and trading system. This will help to develop a renewable energy market for North Dakota.

The Wind Council encourages the Committee to look favorably upon HB 1314 and any other legislation that promotes the growth of the renewable energy industry in North Dakota. I'd be happy to answer any questions.

Chair
Mike Hohl
Whohle Management Solutions
mike@whohle.com

Secretary
Steve Scott
Energy Maintenance Systems
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Treasurer
Craig Hoiseth
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Testimony on HB 1314
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. appearing this morning on behalf of our utility division, Montana-Dakota Utilities Co. We do not support HB1314.

In Section 2, subsection 4 (line 24) of the bill, we object to including Hydroelectric generation in this definition of a renewable or recycled energy source. All of the other sources are new and emerging sources of generating electricity. Hydroelectric generation is one of the oldest sources of generation, and it is unlikely any new hydroelectric facilities will be built in North Dakota. By including hydroelectric in the broad definition of renewable energy sources, anyone taking service with a Western Area Power Administration (WAPA) contract is eligible for green credits, even though the WAPA contracts are for existing generation. We would suggest either eliminate hydroelectric completely, or further define eligible hydroelectric facilities as those of "5 megawatts or less" or hydroelectric facilities "built after January 1, 2006".

Our biggest concern with this bill, Mr. Chairman and members of the committee, is the fear the creation of a tracking mechanism is the first step toward Renewable Portfolio Standards (RPOs). Minnesota, for instance, has RPOs, under which the state legislature or regulatory agencies set goals for companies. These goals or standards require a percentage of baseload generation to be from some type of renewable energy source, primarily wind. MDU would resist RPOs in North Dakota.

In setting these goals, most states require the renewable energy source to be located in their state, unless an adjoining state has similar RPOs or goals. If a neighboring state has a similar goal, then a company can locate the facility in that state, but trade a "green tag" for credit against the other states' goal. For example, Minnesota has RPOs, requiring Minnesota utilities to have a certain percentage of their baseload generation from renewable sources, primarily wind. North Dakota does not have RPOs. However, if North Dakota did move toward RPOs or goals, and those goals were similar to Minnesota, a utility could construct renewable facilities in North Dakota and trade a "green tag" or credit for use against their Minnesota goal.

This bill proposes to allow the Public Service Commission to monitor and track the green tags or credits which are traded. We see it as a first step toward attempting to create Renewable Portfolio Standards in North Dakota.

In conclusion, Mr. Chairman and members of the committee, we ask you to delete or amend the definition of hydroelectric facilities in Section 2, and to then give the bill a DO NOT PASS recommendation. That concludes my testimony.

Dakota Resource Council

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Testimony: HB 1314: Credit tracking and trading
Industry, Business and Labor Committee
January 26, 2005

Chairman Keiser and Members of the Committee,

My name is Mary Mitchell and I am representing Dakota Resource Council.

Dakota Resource Council (DRC) works to change policy regarding sustainable energy, responsible oil and gas development, fair trade in agriculture and other issues that directly affect our 600+ members.

Dakota Resource Council supports the concept of a renewable energy credit tracking and trading system. However, we have concerns with several portions of this bill. Because of these concerns, we must oppose the bill.

One of the major problems with this bill is that it would allow electricity generated from heat, called 'recycled energy' in this bill, to be eligible for the same credits as energy generated from renewable sources such as wind and solar.

DRC also supports energy efficiency and recognizes the value of projects that utilize waste heat. However, this is not renewable energy generation and should not be eligible for the same credits afforded generation from truly renewable sources.

Another concern we have with this bill is the provision for hydroelectric. Hydroelectric power is not commonly accepted as renewable energy because of the huge impacts it has on ecosystems. Small-scale hydro projects could possibly qualify as renewable. If this bill were to enable entities to trade for power generated from WAPA allotments, it would mean that Basin Electric, for example, would be able to trade these credits and avoid developing real renewable energy projects, which undermines the purpose of such a program.

If the goal of this bill is to develop a sound 'green credit' tracking and trading program, it would seem that an examination of what constitutes 'green credits' elsewhere would be prudent. The entire concept could be undermined if our 'green credits' were not acceptable to other states and nations.

A system that would identify and track renewable energy credits for trade would stimulate the growth of North Dakota's fledgling renewable energy industry. DRC supports this concept, however, we do not think that this bill does an adequate job of defining renewable electricity.

Roger Johnson
Agriculture Commissioner
www.agdepartment.com

Submitted By Chuck Flemming

North Dakota Department of Agriculture

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Testimony of Roger Johnson
Agriculture Commissioner
HB 1314
Senate Industry, Business & Labor Committee
Roosevelt Park Room
March 2, 2005

Chairman Mutch and members of the Senate Industry, Business & Labor Committee, I am Agriculture Commissioner Roger Johnson and I support HB 1314, which will allow the Public Service Commission to facilitate North Dakota's participation in the development and oversight of the Midwest Renewable Energy Tracking System (MRETS).

This new authority and North Dakota's participation in MRETS is important to the future of renewable energy. MRETS will verify the generation, exchange and retirement of renewable energy credits and will provide an accounting system that will support the credit trading market in the Midwest. HB 1314 also defines renewable electricity and specifies what qualifies for credits in North Dakota.

The development of tracking systems is not unique to this region. Tracking systems are being developed in a number of other regions including New England (NEPOOL), the Mid-Atlantic (PJM), Texas (ERCOT) and several Western States (WREGIS).

Participation in a regional credit tracking system will help temper the costs of renewable energy, encourage additional renewable energy development and will promote trade with neighboring states and other areas of the country.

I believe we need to do all we can to promote renewable energy in North Dakota and this legislation will certainly benefit the industry. Chairman Mutch and committee members, I urge you to give HB 1314 a "do pass" recommendation.

neutral

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Testimony: HB 1314: Credit tracking and trading
Senate Industry, Business and Labor Committee
March 2, 2005

Chairman Mutch and Members of the Committee,

My name is Mary Mitchell and I am representing Dakota Resource Council.

Dakota Resource Council (DRC) works to change policy regarding sustainable energy, responsible oil and gas development, fair trade in agriculture and other issues that directly affect our 600+ members.

Dakota Resource Council supports the concept of a renewable energy credit tracking and trading system. However, we have concerns with this bill because it allows electricity generated from heat, called 'recycled energy', to be eligible for the same credits as energy generated from renewable sources such as wind and solar.

DRC also supports energy efficiency and recognizes the value of projects that utilize waste heat. However, this is not renewable energy generation and should not be eligible for the same credits afforded generation from truly renewable sources.

The idea of green credit trading is for an industry to either offset pollution from one source by a) cleaning up that source; b) developing a real renewable energy project elsewhere; or c) purchasing green credits.

If companies can count waste heat recovery toward their green credits they can avoid all three of these options and could, theoretically, increase pollution from other sources.

A system that would identify and track renewable energy credits for trade would stimulate the growth of North Dakota's fledgling renewable energy industry. DRC supports this concept, however, we do not think that this bill does an adequate job of defining renewable electricity.

Prepared for by John M. Olson on behalf of Otter Tail Power Co.
February 25th, 2005

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1314

Page 1, line 1, after "49-02" insert "and two new sections to chapter 57-38-01.8"

Page 1, line3, after "commission" insert ", and to provide that a credit for a wind energy device may be passed through to members of a group filing a consolidated income tax return made as a unitary group based on their share of North Dakota taxable income."

Page 2, line 12, insert "**SECTION 1.** A new subsection to section 57-38-01.8 of the North Dakota Century Code is created and enacted as follows:

Where a taxpayer entitled to the credit provided by this section is a member of a group of corporations filing a North Dakota consolidated tax return using the combined reporting method, the credit may be claimed against the aggregate North Dakota tax liability of all of the corporations included in the North Dakota consolidated return.

SECTION 2. A new subsection to section 57-38-01.8 of the North Dakota Century Code is created and enacted as follows:

The credit allowed under this section may not exceed the liability for tax under this chapter. If the amount of credit determined under this section exceeds this liability for tax under this chapter, the excess may be used as a credit carryover to each of the five succeeding taxable years.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2004."

Renumber Accordingly

under this chapter for the year, or two hundred fifty dollars, whichever is less.

b. In the case of a corporation, the amount allowable as a credit under this subsection for any taxable year may not exceed twenty percent of the corporation's total income tax under this chapter for the year, or two thousand five hundred dollars, whichever is less.

3. For the purpose of this section, the term "nonprofit private institution of higher education" means only a nonprofit private educational institution located in the state of North Dakota which normally maintains a regular faculty and curriculum, which normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, and which regularly offers education at a level above the twelfth grade. The term "nonprofit private institution of secondary education" means only a nonprofit private educational institution located in North Dakota which normally maintains a regular faculty and curriculum approved by the state department of public instruction, which normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, and which regularly offers education to students in the ninth through the twelfth grades.
4. For purposes of this section, a taxpayer may elect to treat a contribution as made in the preceding taxable year if the contribution and election are made not later than the time prescribed in section 57-38-34 for filing the return for that taxable year, including extensions granted by the commissioner.

Source: S.L. 1975, ch. 537, § 1; 1979, ch. 607, § 1; 1979, ch. 608, § 1; 1981, ch. 591, § 1; 1983, ch. 629, § 1.

57-38-01.8. Income tax credit for installation of geothermal, solar, or wind energy devices.

1. Any taxpayer filing a North Dakota income tax return pursuant to the provisions of this chapter may claim a credit for the cost of a geothermal, solar, or wind energy device installed in a building or on property owned by the taxpayer in North Dakota. The credit provided in this section must be in an amount equal to five percent per year for three years of the actual cost of acquisition and installation of the geothermal, solar, or wind energy device and must be subtracted from any income tax liability of the taxpayer as determined pursuant to the provisions of this chapter.
2. For the purposes of this section:
   a. "Geothermal energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, by a method which extracts or converts the energy natu-

rally occurring beneath the earth's surface in rock structures, water, or steam.

b. "Solar or wind energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, or to store any of these, by a method which converts the natural energy of the sun or wind.

If a geothermal, solar, or wind energy device is a part of a system which uses other means of energy, only that portion of the total system directly attributable to the cost of the geothermal, solar, or wind energy device may be included in determining the amount of the credit. The costs of installation may not include costs of redesigning, remodeling, or otherwise altering the structure of a building in which a geothermal, solar, or wind energy device is installed.

Source: S.L. 1977, ch. 537, § 1; 1981, ch. 592, § 1.

57-38-01.9. Deduction of contributions to individual retirement account. Repealed by S.L. 1983, ch. 630, § 2.

57-38-01.10. Deferral of crop disaster payments and proceeds of livestock sold on account of drought. Repealed by S.L. 1983, ch. 630, § 2.

57-38-01.11. Reporting net operating loss. Repealed by S.L. 1983, ch. 630, § 2.

57-38-01.12. Reporting of investment credit carryback for prior taxable years. Repealed by S.L. 1983, ch. 628, § 2.

57-38-01.13. Taxation of the gain or loss resulting from the sale of a principal residence. Any gain or loss resulting from the sale or exchange of a principal residence in this state by a taxpayer who reinvests in another principal residence outside of this state must be treated in the same way for state income tax purposes as it is treated for federal income tax purposes.

Source: S.L. 1979, ch. 609, § 1.

57-38-01.14. No gain recognized on property subject to eminent domain sale or transfer. If any private property, through the exercise of eminent domain, is involuntarily converted into property of either like or unlike kind, no gain, either ordinary or capital, may be recognized for income tax purposes.

Source: S.L. 1979, ch. 610, § 1.

Xcel Energy Testimony
HB 1314
Senate Industry, Business and Labor Committee
March 2, 2005

Good morning, Mr. Chairman, Members of the Committee. For the record, my name is Kathy Aas, representing Xcel Energy.

Xcel Energy supports HB 1314, recognizing the establishment of an energy credit tracking system is one of the critical first steps to taking North Dakota's wind energy resources to another level.

This bill provides an opportunity for the Public Service Commission to establish the framework for our state to become a player in the Renewable Energy Credit system that already exists in other areas of the country. Regional credit tracking is a policy-neutral tool that individual jurisdictions can use in meeting their renewable objectives while promoting cooperation and trade with neighboring jurisdictions.

As a company, we support the principles of this type of legislation because it can help promote a state's renewable energy potential through an approach that is both efficient and private market-based. Renewable Energy Credits allow utilities an opportunity to derive actual monetary value from the real but often intangible benefits associated with renewable energy resources. This new tool could be used to provide an additional stimuli to the state's economy, further benefiting North Dakota and its citizens through our rich energy resources.

We respectfully urge a do pass of this bill. Then, we encourage the designers of the renewable energy credit system to work with others in the Upper Midwest to design a methodology that will be compatible with other jurisdictions so that trades can take place between systems.

Dale Niezwaag - Basin Electric Power Cooperative
Supporting North Dakota House Bill No. 1314
Senate Industry Business and Labor Committee
March 2, 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 HB 1314 which will allow the Public Service Commission to join with other states in the region in developing and operating a system to verify, track, and record renewable energy credits in North Dakota.

A renewable energy generator produces two products. First is the actual energy produced by the generator, the second is a credit for the environmental benefits of producing energy from a renewable source. Depending on the policies of the states and the federal government, these energy credits, certificates, or green tags, as they are sometimes called will vary in value. At this time the value of the credits in our region is low. In states that have renewable energy mandates or objectives the value of the credits is significantly higher because utilities have to buy renewable energy credits or build renewable energy resources. Another point to keep in mind is that the value of a credit decreases over time. In most markets credits have little or no value after one or two years.

The value of a state recognized tracking system at this time is two fold. 1) A tracking system provides credibility to the buyer that the credit is real, it was produced by a renewable source and it has not been sold to anyone else. As a result, it could help in the marketing of credits from North Dakota resources. 2) In our region, the states of

Wisconsin, Minnesota, and Iowa plus the province of Manitoba, are working to establish a regional tracking system that North Dakota could be involved in. South Dakota is also considering participation in this program. Participating with other states will lower the development and operating costs to the state and guarantee that North Dakota's program will tie into the regional effort. When fully established, fees charged to utilities to use the tracking system will fund this program.

People and organizations will purchase these credits for two reasons. 1) If the state has a mandate or objective for renewable energy, a utility that doesn't have access to, or the desire to own a renewable generation system can fulfill their requirement by purchasing the appropriate number of credits. 2) If a person, organization, or utility feels that purchasing or providing renewable energy has a social or public relations value they can purchase credits instead of investing in their own generation. Naturally, if a state has a requirement for renewable energy, the credits will be in higher demand and the value will be higher.

A couple of points need to be stressed. Approving a tracking system does not mean that you support or commit the state to a renewable standard or objective. If North Dakota wants to discuss a renewable energy requirement, that must be a completely separate debate. Also approval of this legislation doesn't mean that the other states involved will accept any renewable credits produced by North Dakota or that North Dakota must accept credits from other states. All the states involved will develop their own rules about what they will accept as renewable credits. It is also important to

understand that there are renewable credit markets throughout the United States, not just in our region.

Basin Electric currently holds over 100,000 credits in inventory, and receives approximately 250,000 credits per year. We have also sold approximately 200,000 credits to various organizations and individual throughout the past few years. Current market values range from $1.50-$2.00 per credit for large quantities, to $5 for very small quantities.

Basin is also working to develop distributed generation based on the use of recycled heat. These systems with have the same environmental benefits of renewable energy. A recycled heat system produces electricity using waste heat that is currently being expelled into the atmosphere. These systems produce electricity with little or no additional fuel uses and little or no additional emissions. Under the proposed tracking system the energy produced by the recycled energy systems would also be verified, tracked, and recorded.

At this time we would ask the committee for a "Do Pass" recommendation on HB 1314. We believe that a tracking system recognized by the state will benefit the renewable energy industry in North Dakota.

That concludes my testimony and I would be happy to answer any questions at this time.

H.B. 1314

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

Before: **Senate Industry Business and Labor**
Honorable Duane Mutch, Chairman

Date: **March 2, 2005**

TESTIMONY

Mr. Chairman and committee members, I am Public Service Commissioner Susan Wefald. We thank you for the opportunity to visit with you on this important bill. The PSC is in support of the engrossed bill.

This bill will allow the North Dakota Public Service Commission by rule to establish or participate in a program to track, record, and verify the trading of credits for electricity generated from renewable and recycled heat sources among electric generators, utilities, and other interested entities within this state and with similar entities in other states. The Commission is willing to take on this responsibility.

An important part of this bill is the definition of what counts as "renewable energy and recycled energy" in North Dakota. Section 2 of the bill includes the following sources: Solar, Wind, Biomass, Hydroelectric, Geothermal, Hydrogen, and Recycled energy systems

producing electricity from currently unused waste heat as defined in #7. These sources of energy are the only sources of energy that qualify for renewable electricity and recycled energy credits, as stated in Section 3.

This bill will allow the Commission to work on rules with interested stakeholders to determine if it wishes to set up its own certification process or to work with other states on these important issues. One option would be to work with neighboring states to participate in a regional approach to renewable energy credits to (1) ensure that when end customers want to purchase renewable energy, that they are actually buying renewable energy (2) ensure that North Dakota is an active participant in the renewable energy market (3) better track valid renewable energy, so that one renewable energy source is not double counted.

It is the Commission's understanding that this bill does not in any way authorize the Commission to set a voluntary or mandatory renewable energy objective by rule or otherwise. The activities the Commission is authorized to do in this bill can be done without any state energy objective.

Of course the Commission is concerned about possible costs that would be passed on to customers for a program to track, record and verify the trading of credits. We appreciate the permissive language in the bill which allows us to evaluate the merits of any regional plan that comes forward.

2 sides

HB 1314: Legislative Authority for Renewable Energy Credit Tracking and Trading

Testimony to the Senate Industry, Business and Labor Committee
March 2nd, 2005

Brad Crabtree, Director
Powering the Plains Project
Great Plains Institute
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Thank you Mr. Chairman and members of the Committee for the opportunity to testify in favor of HB 1314. I want to recognize Representative Jon Nelson for his leadership in crafting this legislation with industry, regulators and other organizations and to thank the legislators from both parties who have joined Representative Nelson in sponsoring this bill.

I am here today as director of the Powering the Plains project. PTP brings together representatives of industry and agriculture, government officials and legislators, and environmental advocates from the Dakotas, Iowa, Minnesota, Wisconsin and Manitoba to develop regional energy strategies, policies and projects.

In May of 2003, North Dakota legislative delegates to the Legislators Forum joined colleagues in Manitoba, Minnesota and South Dakota in tasking PTP with development of regional renewable energy policy recommendations. In response, PTP participants identified renewable energy credits as an area where public policy could help foster renewable energy development in the Upper Midwest. They specifically recommended a regional system to track, record and verify the creation, exchange and final retirement of renewable energy credits as a way to stimulate a robust credit market that supports investment in renewable power generation.

Beginning last fall, legislators and regulators joined utilities and renewable energy advocates through PTP to jointly design and implement the Midwest Renewable Energy Tracking System, or M-RETS. This legislation now before you would grant the State's Public Service commissioners the authority they need to participate in the development of M-RETS so that it meets the needs of both generators and consumers of renewable energy in our state and throughout the region.

Why is credit tracking and trading important? Renewable energy credit trading allows a utility or non-utility consumer of electric power to purchase a credit from another utility or generator, rather than invest in renewable energy generation themselves. Buyer of credits may be subject to regulatory requirements to supply renewable electricity to retail customers, or they may simply wish to voluntarily support the development and use of renewable energy through credit purchases. Credit transactions may or may not involve the actual transfer of electricity. However, the credit represents real electricity generated from a real renewable source and delivered somewhere to the public grid. Thus, the buyer is directly supporting generation of renewable power through a credit purchase, whether or not the buyer actually consumes the electricity itself.

Having utilities and other entities around the country purchasing renewable credits, rather than generating the power themselves, is economically advantageous to North Dakota, which ranks number one in wind resource potential and where wind

re[redacted]nts America's low-cost form of new power generation. In this context, North Dakota can become a net supplier of credits by a large margin.

However, private markets can only flourish when buyers and sellers have confidence in the information on which they base their decisions. That's where M-RETS will come in. Like other tracking systems in Texas, New England, the mid-Atlantic states, and the western states, M-RETS will record the generation of renewable electricity, verify that the electricity comes from a qualified source, and then issue an electronic certificate for each Megawatt hour produced. M-RETS will then document and verify subsequent exchange of credits between parties until their final retirement from the marketplace. With M-RETS' independent, third-party accounting, buyers and sellers will know that credits in the marketplace represent real renewable energy and that those credits have not already been sold to another party or retired for regulatory purposes. M-RETS will operate seamlessly with other regional tracking systems, enhancing the ability of North Dakota generators to sell credits into markets beyond the Upper Midwest and throughout the U.S. and Canada.

Finally, M-RETS will not represent a cost to the State of North Dakota. Up-front technical design and software development costs will be paid for with non-State resources, and M-RETS' modest future program budget for a full-time staff person and system maintenance will ultimately be self-financed by credit market participants through account and transaction fees.

This legislation represents an important and necessary step toward ensuring North Dakota participation in this emerging re[redacted]al credit tracking system. Minnesota legislators passed an authority last year as part of a larger bill that allows its utilities t[redacted]chase credits from generators in North Dakota and other bordering states to meet a renewable energy objective of 10 percent of all electricity retailed by 2015. Wisconsin already has a credit tracking system that will become part of M-RETS. The Iowa Utility Board has the necessary authority to participate as well. That leaves North Dakota, South Dakota and Manitoba where additional authority is needed and is being sought from legislators.

This legislation is modest in scope. Beyond providing a statutory definition of renewable electricity and recycled energy that would qualify for credits in North Dakota, this legislation requires no other policy changes, nor obligates State officials to any particular action. It merely grants the PSC the authority to work with other jurisdictions to develop a tracking system that major cooperative and investor-owned utilities and other constituencies have expressly requested.

Around the country, Fortune 500 companies, private and public institutions of all kinds, and state governments are aggressively strengthening commitments to renewable energy. As this trend accelerates, the market for renewable energy credits will expand as well. North Dakota can be on the front end of this economic development opportunity, but our state's generators and utilities will need a credit tracking system like M-RETS to help maximize their participation in this important new market.

Please give the PSC the authority to help make it happen by recommending passage of HB 1314. Thank you.

Testimony of John Olson
Otter Tail Power Company
Presentations of Amendments House Bill 1314
Before the Senate Industry, Business, and Labor Committee
March 2nd, 2005

Good Morning Chairman Mutch, and members of the Senate Industry, Business, and Labor Committee. My name is John Olson, of Olson Cichy Bliss Attorneys in Bismarck, North Dakota, and I represent Otter Tail Power Company. We are here to support an amendment to engrossed House Bill 1314. Our company has encountered a problem with the tax credit allowed for wind projects in accordance with Section 57-38-01.8 of the North Dakota Century Code. The following sets forth our concern, and how the amendments that we have drafted for your consideration, address that concern.

First, it is not an issue of Otter Tail Power Company qualifying for the tax credit allowed by this section of law, it is rather an issue of being able to "trap" the tax credit allowed to an entity that has no North Dakota tax base. Essentially, in the manner in which Otter Tail Power Company is structured, and how it comprises its membership on wind energy projects, there is no ability to transfer the tax credit within the various companies or corporate members of Otter Tail Power Company.

For example, if a new limited liability company ("LLC") is formed to construct and operate a wind energy project, the LLC may have several corporate members and would be taxed accordingly as a partnership for federal income tax purposes. If Otter Tail participates in the newly formed LLC via a newly formed corporation, with several additional corporate members, as it has done in the past, it will file under North Dakota state income tax laws as a unitary group. Such filing under a single state income tax return is called a consolidated return. Otter Tail has had thirty-six of its affiliates as members of this unitary group

filing a consolidated return in past years. Some of those members do have income tax status with North Dakota, while others may not.

Thus, according to the law it may not be feasible for members of this unitary group to avail itself of the tax credit status, as a result of little or no income attributable to that specific entity in North Dakota. For this reason, section one of the amendments provides that the credit may be claimed against the aggregate of all North Dakota tax liability of those corporations included in the North Dakota consolidated tax return. One may argue that current law would provide for the availability of this tax credit based upon an aggregate determination, however, tax attorneys and consultants for Otter Tail Power Company state that the forms employed by the North Dakota state tax department would argue against such construction or interpretation of the law.

Section two of the amendments addresses another disadvantage to Otter Tail Power Company attempting to avail itself of the tax credit for wind energy projects. Current law provides that the credit provided "must be an amount equal to five percent per year for three years of the actual costs of that acquisition and installation of the . . . wind energy device and must be subtracted from any income tax liability of the taxpayer . . ." The amendment seeks to allow the availability for the tax credit as a carry over for each of five succeeding taxable years. In other words, the maximum credit remains the same, only the availability of the credit will become more flexible allowing the company to realize an intended economic incentive.

Renewable energy resources, such as wind energy, are important to the State of North Dakota, and recognition of this importance already exists in the current law giving income tax credit for installation of such wind energy devices. Otter Tail Power Company foresees future growth and therefore the company

asks that it be given the opportunity to avail itself of the tax incentive provided by the North Dakota Legislature which is on record as encouraging the development of these resources. Future expansion is dependent upon removing the obstacles that Otter Tail Power Company has experienced with the implementation of current law. We respectfully request that you give our amendment favorable consideration and proceed to pass this legislation. Thank you for your time and the opportunity to present this important issue to your committee.

Good Morning Chairman Mutch and members of the Senate IBL Committee. For the record my name is Jon Nelson and I represent the 7th District in the North Dakota House of Representatives.

I am pleased to appear before you today to introduce HB 1314. With its passage, this initiative would allow North Dakota the opportunity to participate, through the Public Service Commission, in a regional credit tracking and trading authority. In addition, Section 2 of the bill defines what sources would qualify as a renewable energy in North Dakota in this section. With passage of this proposal, this definition section would be the only reference in North Dakota Century Code of renewable energy.

Section 3 of the bill states that only those sources defined in Section 2 would qualify to be traded for renewable and recycled credits.

My interest with this issue began through my involvement with the Legislators Forum. This group consists of legislators from North Dakota, South Dakota, Minnesota, and the province of Manitoba. I was chosen from that group monitor regional partnerships in the energy segment.

Throughout the interim, I attended meetings of Powering the Plains, whose membership is comprised of legislative, regulatory, industry, private sector, and environmental interests that promote the use of renewable energy in the Midwest region of our country. I have also attended two workshops regarding credit trading in Minnesota and Wisconsin that were sponsored by their respective Public Utilities Commission.

Throughout these meetings and workshops it became apparent to me that if North Dakota is going to be a leader in renewable energy development we will need to access a larger, regional market. In fact, some of our neighboring states through renewable energy requirements or objectives within their state, require potential trading state partners to have similar policies in those states. Hence the need for this legislation in North Dakota. At a minimum, we need to have a definition of renewable energy in our code and this bill accomplishes that. The other aspect of this legislation is allowing North Dakota to enter into a regional trading authority and the ability to count and verify the credits that are created in our state.

This legislation, if passed, opens the door for marketing our vast renewable energy resources throughout the Midwest and eventually the entire country. For the free

market system to work for renewable energy development, it is essential that we pass HB 1314.

I respectfully ask this committee to recommend a DO PASS motion on HB 1314 and thank you for the opportunity appear today.

Note: This bill relates to HB 1314. Much of todays discourse refers to HB1314. Both bills & related amendments are along a similar theme. K Bonnet

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **SB 2239**

House Natural Resources Committee

☐ Conference Committee

Hearing Date **March 18, 2005**

Tape Number	Side A	Side B	Meter #
1	x		55-1500

Committee Clerk Signature Karen Bonnet

Minutes:

Chr. Jon O. Nelson: I will call the House Natural Resources Committee to order. Roll was called, Rep. Norland absent. We will take up SB 2239. We had a proposed amendment to this bill that were handed out at a previous meeting. Rep. Brandenburg, did you want to speak to the amendment?

Rep. Mike Brandenburg, Dist. 28: Would the committee like to hear the Tax Department's fiscal note to explain it? I want to save the bill, and I don't want to clutter it up with the carry forward on the investment tax credit. The Tax Dept. is here so if you want them to explain, I think that would be appropriate. We can go from there.

Chr. Nelson: O.K., please come to the podium.

Donnita Wald, Legal Counsel, State Tax Dept.: I talked with our fiscal analyst and looked at this amendment. We don't anticipate that there will be any fiscal impact for the carry forward. The reason for that is that credit has already been assumed into the revenue forecast of the

budget. All this does is allow it to carry forward what they already earned and accounted for in the future biennium.

Chr. Nelson: Donnita, would you like to speak to the amendment on HB 1314 as well?

Donnita Wald: Yes, I can do that. An amendment was adopted by the Senate IBL Committee I believe, kind of doing the same thing on HB 1314. That bill is on the calendar today. What HB 1314 does is (similar). What the problem was is a lot of taxpayers who were able to take the credit, were unable to use the credit, because of the way they had set up their businesses, and because of the fact that some of these companies didn't have a tax liability in the state. They had some losses. ND has consolidated return filing and usually, when one member of that consolidated group earns a tax credit only that member can take advantage of that. One of the things that HB 1314's amendment does is allow them to take that credit against a consolidated group tax liability, not just that one member's, because that one member may have a loss. It also allows a 5-year carry forward instead of a 15-year carry forward for the unused credit. So, there are multiple things out there-this amendment, Rep. Brandenburg's amendment, and the HB 1314 amendment that are attempting to address the same issue-the inability to use the tax credit-just going about it differently.

Chr. Nelson: Are there any questions?

Rep. David Drovdal: Is the 5-year in HB 1314 going to take care of 99% of the tax payers that are covered under this one? Or do we need the 15-years?

Donnita Wald: It's hard to say. Five years might help some and might not help others. I really can't say. It depends on their taxes each year and what their situation is. Fifteen years allows for a longer use, there is no doubt about that.

Chr. Nelson: Further questions?

Rep. George J. Keiser: I'm confused on your fiscal note. If you read the current bill, and the amendment, and I'm assuming you're talking about .0303, As I read .0303, we're not just extending it. We're on the tax credit because it's in current law and then we're going to extend it. What percent of the tax credits have been used in the past?

Donnita Wald: We don't have exact numbers on that. It's been limited in some instances by the taxpayers tax liability.

Keiser: That's my concern. But that limit should change dramatically when we go from five to fifteen years so there should be a fiscal note. There should be a fiscal impact.

Donnita Wald: When this change was adopted in 2003, the fiscal note at that time accounted for the credits, assuming that all the credits earned would be able to be taken immediately. That's why we think there is no fiscal impact because it's already been accounted for in some manner.

Keiser: I understand, but that was for the last two years. We're now going into a new two years. So we're just going to extend the credit allowable. Is there a limit on the credit allowable?

Donnita Wald: The credit is 3% of your cost, and you can take 3% of those costs for five years. So that 15 years probably starts depending when the project was.

Keiser: It says effective...

Donnita Wald: I think there are some other limitations.

Keiser: We're just using the old fiscal note and saying that's what it's going to be in the future, even though we thought in the current biennium this much would be used, but it wasn't used,

we're still going to carry that forward and say that's how much it's going to be, now that we're going to 15 years. What is that total fiscal impact for the next 15 years?

Donnita Wald: I talked to Kathy Strombach, the fiscal analyst, and the base already had it out. It depends on how many businesses come in and build these type of projects.

Keiser: It's any tax payer. As I see this, I could do it at my home.

Donnita Wald: That's correct. You can install a renewable energy source.

Keiser: So where is the fiscal note? There should be one.

Donnita Wald: We can't make assumptions like that. We don't know how many people will be seek the incentive of this particular bill, if any. That's why a lot of these things have no fiscal impact or it cannot be determined. That's the situation with this.

Keiser: My concern is, for the last two years, you have a track record that you can use and say this is how much was used in those two years, let's now assume that a lot more will be using the (credit) in 15 years. Two years ago, you couldn't possibly tell us, but I would assume you could do a fiscal note based on two years experience.

Chr. Nelson: Further questions?

Rep. Duane DeKrey: I move a do pass on engrossed SB 2239.

Rep. David Drovdal: Second.

Chr. Nelson: A motion by Rep. DeKrey to move a do pass on the engrossed SB 2239. Second by Rep. Drovdal. Discussion.

Rep. Todd Porter: I am still going to oppose the bill as I did last session. I think that we're hamstringing the ability of landowners to come to an agreement with a company that wants to rent or have an easement on their land. If they want seven years, they can't do it anymore. If

they want to do ten years that's their right between a landowner and whoever they are doing the lease with. I think it is perfectly acceptable for someone to sit down with their land or business and sign a contract. I just cannot understand why we as their big brothers seem to think we have to stick our noses into their business. I think this goes too far. Now I'm a landowner and want to enter into a seven-year easement with a company and you're telling me I can't because you know more about my land and my business than I do. I can't support this bill.

Chr. Nelson: Is there any further discussion? Seeing none, I'll ask the clerk to call the roll on a do pass motion on engrossed SB 2239.

Do pass, vote:

8-Yeas; 3-Nays; 3-Absent; CARRIER: Kelsh