

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2387

2005 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2387

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2387

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 2-01-05

Tape Number	Side A	Side B	Meter #
1	xxx		1500-end
1		xxx	0-2675
Committee Clerk Signature <i>Dusan Berkorn</i>			

Minutes: **Chairman Mutch** opened the hearing on SB 2387. All Senators were present.

SB 2387 relates to the jurisdiction of the public service commission over electric cooperatives.

Senator Ben Tollefson, introduced the bill. See attached.

Senator Heitkamp : As I look at the bill, can't we somehow, in these chambers, make a difference in definition in our own minds, between an investor owned utility and a member owned utility. Much of what you are talking about in this bill is dealt with through the fact that it is the members themselves that own it and the members keep an eye on it. Can you sight me some examples of when a member owned system has broke down?

Senator Tollefson: I don't say that it's broken down. I say that the actual rift is between the rural and urban society of North Dakota. I think that we must recognize, that whether you are a member of the REC's or municipality, you are working with a monopoly. It's the nature of the

beast. It would be absolutely imprudent to duplicate lines and distribution for the sake of

competition. The rate payer is the one that pays for those excessive fees and charges.

That is what the PSC is in place. They are to look at all of the electric industry, however at the present time, only the investor owned utilities.

Senator Heitkamp : You talk about a monopoly and an urban rural rift. Can't you see that the members that own it, control it?

Senator Tollefson: It's obvious, that Cass County people can only get their utilities from the coop. I know what you are saying. No one says that they are handling it in a bad way. I think that the relationship between the two philosophically different parts of the electric industry is what we should address. Some of our efforts have been too specific on territory.

Chairman Mutch : I think we are getting off of the subject of this bill. As I understand it, this bill would require all utilities to have rates controlled by the PSC?

Senator Tollefson: Correct.

Senator Fairfield : We don't have any examples of how the current system has failed. I don't see the argument in your testimony on why the people of North Dakota would be better served if this were placed under the jurisdiction of the PSC. How will this bill make the lives of North Dakota citizens better.

Senator Tollefson: Making the lives of North Dakotans better would be accomplished by the effort of the industry to work together. I've been there. I know how this works.

Senator Klein : How do you envision that this bill will pull us together?

Senator Tollefson: The issue would be that the PSC would be over ALL of the electric industry, as was originally conceived years ago. The result is hard feelings, hearings, attorney fees.

Senator Espegard : Has this issue come again before the electric interim committee and if so, what was the result of that?

Senator Tollefson: This issue was roughly discussed. I think that we should look at this as North Dakotan's, a benefit to the state. The overall approach to the industry, by the PSC, is in place and should be used that way.

Senator Espegard : Can you give me an example, should this bill be passed, how would I , as a rural electric customer benefit from the oversight of the PSC?

Senator Tollefson: If you've ever had the opportunity of visiting with any of the Public Service Commission today, the number of calls and people that contact them is a multitude. A lot of people, can call the PSC if you have a grievance. This would centralize the issues.

Senator Krebsbach: I notice the title reads "Public Service Commission over electric coops", however on page two of the bill on line 12, it also brings in the telecommunications. Was this part of the intent also?

Senator Tollefson: No, it does not include telecommunications.

Dennis Boyd, MDU Resources Inc, spoke in support of the bill. See attached.

Senator Heitkamp : You have been in several times trying to take some control from the PSC. How did you do last year? Did MDU have a good year?

Dennis: MDU Resources Group, had a very good year. Our electric operations are a very very small percentage of the contribution earnings of our corporate stock. When I started in this business 28 years ago, electric operations probably comprised, easily sixty to seventy percent. Today that percentage is ten or eleven and I predict that in 2004 it is going to be less.

Senator Heitkamp : You talk about limited opportunity for growth. When I look at what you have done, not only grown, but profited. I'm trying to figure out what your problem is.

Dennis: Let me give you an example. The lack of consumer protection. My youngest daughter and her family have a house in north Bismarck. It is the last lot, the last house in that part of the city that is provided electric services by MDU. Her next door neighbor, is provide electricity by the rural electric cooperative here. My daughters rates are probably at least a penny lower than her neighbors rates. That's why I suggest an acceptable amendment to limit it's application to urban rural electric cooperatives.

Senator Nething : If this bill passed, we still don't know if the company's rates would change, do we?

Dennis: I'm not suggesting that the rates be the same, their costs is probably different than ours. What I am suggesting that they do have the opportunity to depart from strictly cost of services to raising or lowering their rates.

Bob Graveline, Utility Shareholders of North Dakota, spoke in support of the bill. He submitted written testimony but did not recite it.

There were no questions of the committee.

Kathy Aas, Excel Energy, stated support for the bill.

There were no questions.

John Olson, Otter tail Power Company, stated support of concepts of the bill.

There were no questions from the committee.

Chairman Mutch allowed opposing testimony to be heard.

Harlan Fuglesten, North Dakota Association of REC's spoke in opposition to the bill. See attached testimony.

Senator Fairfield : I need a little bit more information on the certificates of public convenience. Under this bill, would it be assumed that current customers would not be required a certificate, or would there be a possibility that they would.

Harlan: This bill was initially enacted, there were several provisions of Chapter 49-03 were first adopted in 1965 and at that time the law provided that the investor owned utilities had to provide maps in the rural areas to show exactly where they were serving. If they did not provide those maps, then it was presumed that they were not serving those locations. Now, this effort is being made to put us under that section of the law, so technically, we would have to supply maps to the PSC, before we would be allowed to continue to serve customers in rural areas.

Cindy Smith, Verendrye Electric Cooperative board of directors, spoke in opposition. See attached testimony.

Senator Fairfield : It sounds as though local control is working just fine. There is accountability built in.

Cindy: Yes.

Tom Mund, Dakota Valley Electric Cooperative board of directors, spoke in opposition to the bill. See attached.

Senator Klein: Do your neighbors call you?

Tom: They always have the opportunity.

Senator Klein : As a board member, you gather issues that your customers have and work them over at the meetings.

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Senate Industry, Business and Labor Committee

Bill/Resolution Number SB 2387

Hearing Date 2-01-05

Tom: In fact, two months ago, we had a customer meet with our board about rates.

Senator Heitkamp: How many people were at your annual meeting?

Tom: I would guess about five hundred people.

Dale Niezwaag, Basin Electric Power Cooperative, spoke in opposition to the bill.

See attached testimony.

There were no questions from the committee.

Woody Barth, North Dakota Farmers Union, submitted written testimony.

There were no further questions.

Chairman Mutch closed the hearing. No action was taken.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2387

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 2-02-05

Tape Number	Side A	Side B	Meter #
2	xxx		176
Committee Clerk Signature <i>Lisa VanBerkom</i>			

Minutes: **Chairman Mutch** opened committee discussion on SB 2387. All Senators were present. SB 2387 relates to the jurisdiction of the public service commission over electric cooperatives.

Chairman Mutch gave the committee amendments that would make the bill only affect the electric distribution cooperatives, not the telecommunications.

Senator Klein moved to adopt the amendments.

Senator Espgaard seconded.

Roll Call Vote: 6 yes. 0 no. 1 absent.

Senator Klein moved a DO NOT PASS AS AMENDED.

Senator Espgaard seconded.

Roll Call Vote: 5 yes. 1 no. 1 absent.

Carrier: Senator Fairfield

FISCAL NOTE

Requested by Legislative Council
02/07/2005

Amendment to: SB 2387

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	\$110,000	\$0	\$70,000	\$0
Appropriations	\$0	\$0	\$110,000	\$0	\$70,000	\$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.*

This bill would do two things, both related to the jurisdiction of the PSC over electric cooperatives. First, it would require certain electric cooperative to obtain a certificate of public convenience and necessity (PCN) before extending their systems, much as investor owned utilities do now. We believe this would apply to 11 of 17 distribution cooperatives, although we do not have first hand knowledge of the number of members served by each cooperative. We do not expect this part of the bill to have a substantial financial impact because many of these PCN applications will be uncontested, and under current law we deal today with some contested PCN applications. The second impact of this law is to bring the 11 largest of the state's 17 electric distribution cooperatives under the jurisdiction of the Commission for ratemaking purposes. We believe it is this component of the engrossed bill that will have fiscal impact. The Commission would have the responsibility for ensuring that the rates of these 11 electric cooperatives are just, reasonable and nondiscriminatory.

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 to the general fund (tariff filings fees would not be sufficient to cause fiscal impact). It is possible that there will be revenues to the Valuation Fund if a regulated cooperative files a rate increase application. In that case, the Commission would pay out-of-pocket expenses (like the costs of publishing notice and hiring an administrative law judge) from the Valuation Fund and then the cooperative would pay these expenses back to the Valuation Fund. We do not expect such applications to be the bulk of the work from this bill. Rather, the bulk of the work will come in the form of the initial rate proceedings in which the Commission will have to have to determine just and reasonable rates for each of the 11 cooperatives. These initial proceedings will not be "rate increase applications" and so will not be eligible for the Valuation Fund use. We expect no other revenues.

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.*

Expenditures will be incurred to regulate the rates of electric distribution cooperatives with 2500 or more members served. The bill would make these 11 electric cooperatives subject to traditional rate of return regulation, including rate setting, cost of service studies, rate design, tariff filing requirements, tariff suspension, analysis of terms and

conditions of tariff provisions, disconnects, bill payments, deposits, reliability and resource planning, among others. The Commission would also be responsible for handling customer complaints and inquiries for these cooperatives. We previously estimated (when the bill called for regulation of all electric cooperatives) that we would require at least an additional 1/2 FTE in an analyst position, plus support staff. We estimated the cost of an analyst at \$100,000 per biennium and support staff at \$70,000. Consequently, for the original version of the bill, we estimated needing an additional \$67,500 in staff costs (1/2 of \$100,000 plus 16% of \$70,000). We also estimated associated operating expenses, including training, of approximately \$10,000 per biennium as well as an additional \$10,000 per biennium for out of pocket expenses such as the cost of publishing notices, obtaining a transcript or hiring an administrative law judge for a hearing. Finally, we estimated that we would incur some additional costs during the implementation of this new law, when we have the rates of all the jurisdictional cooperatives to deal with at the same time. We estimated that we would most likely out source those needs. We estimated this cost at approximately \$50,000. This totaled \$137,500 for the 2005-2007 biennium, and \$87,500 for the 2007-2009 biennium when all electric cooperatives were included in the bill. Under the engrossed bill, even though 35% of the cooperatives would not come under PSC jurisdiction, the other 65% are the largest cooperatives with the greatest customer bases and most complicated rate structures. The smaller cooperatives, which would remain outside PSC jurisdiction, would require substantially fewer agency resources than the larger cooperatives. Consequently, we estimate expenditures under the engrossed bill at 80% of our original estimates, or \$110,000 for the 2005-2007 biennium and \$70,000 for the 2007-2009 biennium.

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.*

An additional appropriation would be required for the additional FTE required above and the additional expenditures in salaries and operating expenses noted above.

Name:	Illona Jeffcoat-Sacco	Agency:	PSC
Phone Number:	701-328-2400	Date Prepared:	02/08/2005

FISCAL NOTE

Requested by Legislative Council
01/25/2005

Bill/Resolution No.: SB 2387

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	\$137,500	\$0	\$87,500	\$0
Appropriations	\$0	\$0	\$137,500	\$0	\$87,500	\$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.*

This bill would do two things, both related to the jurisdiction of the PSC over electric cooperatives. First, it would require each electric cooperative to obtain a certificate of public convenience and necessity (PCN) before extending its system, much as investor owned utilities do now. This would include distribution and intrastate transmission systems. We do not expect this part of the bill to have a substantial financial impact because many of these PCN applications will be uncontested, and under current law we deal today with some contested PCN applications. The second impact of this law is to bring electric cooperatives under the jurisdiction of the Commission for ratemaking purposes. We believe it is this component of the bill that will have fiscal impact. The Commission would have the responsibility for ensuring that the rates of the electric cooperatives are just, reasonable and nondiscriminatory.

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 to the general fund (tariff filings fees would not be sufficient to cause fiscal impact). It is possible that there will be revenues to the Valuation Fund if a cooperative files a rate increase application. In that case, the Commission would pay out-of-pocket expenses (like the costs of publishing notice and hiring an administrative law judge) from the Valuation Fund and then the cooperative would pay these expenses back to the Valuation Fund. We do not expect such applications to be the bulk of the work from this bill. Rather, the bulk of the work will come in the form of the initial rate proceedings the Commission will have to have to determine just and reasonable rates for each cooperative. These initial proceedings will not be "rate increase applications" and so will not be eligible for the Valuation Fund use. We expect no other revenues.

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.*

Expenditures will be incurred to regulate the rates of electric cooperatives. The bill would make electric cooperatives subject to traditional rate of return regulation, including rate setting, cost of service studies, rate design, tariff filing requirements, tariff suspension, analysis of terms and conditions of tariff provisions, disconnects, bill payments, deposits, reliability and resource planning, among others. The Commission would also be responsible for handling

cooperative customer complaints and inquiries. We estimate that we would require at least an additional 1/2 FTE in an analyst position, plus support staff. We estimate the cost of an analyst at \$100,000 per biennium and support staff at \$70,000. Consequently, we estimate needing an additional \$67,500 in staff costs (1/2 of \$100,000 plus 1/4 of \$70,000). We also estimate associated operating expenses, including training, of approximately \$10,000 per biennium as well as an additional \$10,000 per biennium for out of pocket expenses such as the cost of publishing notices, obtaining a transcript or hiring an administrative law judge for a hearing. Finally, we expect some additional costs during the implementation of this new law, when we have the rates of all the cooperatives to deal with at the same time. We would most likely out source these needs. We estimate this cost at approximately \$50,000. This totals \$137,500 for the 2005-2007 biennium, and \$87,500 for the 2007-2009 biennium.

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.*

An additional appropriation would be required for the additional FTE required above and the additional expenditures in salaries and operating expenses noted above.

Name:	Ilona Jeffcoat-Sacco	Agency:	PSC
Phone Number:	701-328-2400	Date Prepared:	01/28/2005

PROPOSED AMENDMENTS TO SENATE BILL NO. 2387

Page 1, line 4, after "electric" insert "distribution"

Page 1, line 9, after "cooperative" insert "that has two thousand five hundred or more members served"

Page 1, line 22, after "Electric" insert "distribution" and after "cooperatives" insert "that have two thousand five hundred or more members served and are"

Page 2, line 12, remove "telecommunications"

Page 2, line 13, after "cooperative" insert "except an electric distribution cooperative having two thousand five hundred or more members served"

Page 3, line 2, remove the overstrike over "or" and insert immediately thereafter "a"

Page 3, line 3, after "~~any~~" insert "rural" and remove the overstrike over "~~electric-cooperative~~"

Page 3, line 4, after "~~the~~" insert "rural" and remove the overstrike over "~~electric-cooperative~~"

Page 3, line 15, remove the overstrike over "~~a rural electric-cooperative or another~~" and remove "an"

Page 4, line 3, remove the overstrike over "~~rural~~"

Page 4, line 4, remove the overstrike over "~~electric-cooperative~~"

Page 4, line 11, remove the overstrike over "or" and insert immediately thereafter "rural" and remove the overstrike over "~~electric~~"

Page 4, line 12, remove the overstrike over "~~cooperative~~"

Page 4, line 18, after "public" insert "and an electric distribution cooperative that has two thousand five hundred or more members served"

Page 4, remove the overstrike over line 21

Page 4, line 22, remove the overstrike over "~~chapter 10-13~~" and insert immediately thereafter "which has fewer than two thousand five hundred members served", remove the overstrike over the overstruck period, after "An" insert "A rural", remove the overstrike over "~~electric-cooperative~~" and insert immediately thereafter "that has two thousand five hundred or fewer members served", and remove the overstrike over "~~, composed of members as prescribed by~~"

Page 4, remove the overstrike over line 23

Page 5, line 15, remove the overstrike over "~~including~~", after "~~local~~" insert "an", remove the overstrike over "~~electric~~" and insert immediately thereafter "distribution", remove the overstrike over "~~cooperative~~" and insert immediately thereafter "that has fewer than two thousand five hundred members served", and remove the overstrike over the second overstruck comma

Page 5, line 24, remove the overstrike over "~~electric~~" and insert immediately thereafter "distribution" and remove the overstrike over "~~cooperative corporation~~" and insert immediately thereafter "that has fewer than two thousand five hundred members served"

Page 6, line 8, remove the overstrike over "~~or~~" and insert immediately thereafter "electric distribution" and remove the overstrike over "~~cooperative corporation~~" and insert immediately thereafter "that has fewer than two thousand five hundred members served"

Page 6, line 11, remove the overstrike over "~~or~~" and insert immediately thereafter "electric distribution" and remove the overstrike over "~~cooperative corporation~~" and insert immediately thereafter "that has fewer than two thousand five hundred members served"

Renumber accordingly

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

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2387

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

Espegard

Senators	Yes	No	Senators	Yes	No
Senator Mutch, Chairman	X		Senator Fairfield	X	
Senator Klein, Vice Chairman	X		Senator Heitkamp	A	
Senator Krebsbach	X				
Senator Nething	X				
Senator Espegard	X				

Total (Yes) 6 No 0

Absent 1

Floor Assignment _____

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

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

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2387

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass As Amended

Motion Made By Klein Seconded By Espegard

Senators	Yes	No	Senators	Yes	No
Senator Mutch, Chairman	X	X	Senator Fairfield	X	
Senator Klein, Vice Chairman	X		Senator Heitkamp	A	
Senator Krebsbach	X				
Senator Nething	X				
Senator Espegard	X				

Total (Yes) 5 No 1

Absent 1

Floor Assignment Fairfield

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

REPORT OF STANDING COMMITTEE

SB 2387: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (5 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). SB 2387 was placed on the Sixth order on the calendar.

Page 1, line 4, after "electric" insert "distribution"

Page 1, line 9, after "cooperative" insert "that has two thousand five hundred or more members served"

Page 1, line 22, after "Electric" insert "distribution" and after "cooperatives" insert "that have two thousand five hundred or more members served and are"

Page 2, line 12, remove "telecommunications"

Page 2, line 13, after "cooperative" insert "except an electric distribution cooperative having two thousand five hundred or more members served"

Page 3, line 2, remove the overstrike over "or"

Page 3, line 3, after "~~any~~" insert "a rural" and remove the overstrike over "~~electric-cooperative~~"

Page 3, line 4, remove the overstrike over "or", after "~~the~~" insert "rural", and remove the overstrike over "~~electric-cooperative~~"

Page 3, line 15, remove the overstrike over "~~a rural electric cooperative or another~~" and remove "an"

Page 4, line 3, remove the overstrike over "~~or rural~~"

Page 4, line 4, remove the overstrike over "~~electric-cooperative~~"

Page 4, line 11, remove the overstrike over "or" and insert immediately thereafter "rural" and remove the overstrike over "~~electric~~"

Page 4, line 12, remove the overstrike over "~~cooperative~~"

Page 4, line 18, after "public" insert "and an electric distribution cooperative that has two thousand five hundred or more members served"

Page 4, remove the overstrike over line 21

Page 4, line 22, remove the overstrike over "~~chapter 10-13~~" and insert immediately thereafter "which has fewer than two thousand five hundred members served", remove the overstrike over the overstruck period, after "~~An~~" insert "A rural", remove the overstrike over "~~electric-cooperative~~" and insert immediately thereafter "that has two thousand five hundred or fewer members served", and remove the overstrike over "~~, composed of members as prescribed by~~"

Page 4, remove the overstrike over line 23

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Renumber accordingly

2005 TESTIMONY

SB 2387

**Testimony of Basin Electric Power Cooperative, Great River Energy, and Minnkota Power Cooperative, Inc., in Opposition to Senate Bill 2387
Before the Senate Industry, Business & Labor Committee
February 1, 2005**

Mr. Chairman and members of the committee, my name is Dale Niezwaag and I represent Basin Electric Power Cooperative, a generation and transmission (G&T) cooperative based in Bismarck. I am here to testify in opposition to Senate Bill 2387, which would extend full Public Service Commission regulation to electric cooperatives engaged in the generation and distribution of light, heat, or power.

In providing this testimony, I have been authorized by representatives of Minnkota Power Cooperative and Great River Energy G&Ts to state that those organizations join in this testimony in opposition to SB 2387. At the conclusion of this testimony, Mark Bring of Minnkota and Gary Jacobson of Great River Energy also stand ready to answer any questions you may have. We also wish to note that our organizations are members of the North Dakota Association of Rural Electric Cooperatives. We join the comments of the Association and its individual distribution co-op members in opposition to SB 2387.

It may be helpful to members of the committee to first provide some brief introductory remarks on the electric cooperative business structure. Distribution co-ops deliver electricity to the ultimate consumer/member. G&T co-ops generate and transmit electricity at wholesale to distribution co-ops that own the G&T.

The G&Ts on whose behalf I provide this testimony have invested approximately \$5 billion in 3,500 megawatts of installed generation capacity in North Dakota, which represents nearly 90% of all coal-based generation in North Dakota. They directly employ more than 1,300 people in

North Dakota and contribute to many other jobs in the lignite coal companies that supply the fuel we need to generate electricity.

Boards of directors elected from our membership govern G&Ts, like distribution co-ops. The G&T board is comprised of one board member from each of the G&T member-owner systems. The boards set policies and procedures that are implemented by the cooperatives' professional staff. G&Ts, like all electric co-ops, are private, independent electric utility businesses owned by the consumer members they serve, and established to provide at-cost electric service.

In the 2001 legislative session, a bill that would have subjected electric co-ops with 2,500 or more members to Public Service Commission jurisdiction was defeated in the North Dakota Senate on a vote of 17 to 31. In 2003, a nearly identical bill was defeated on a vote of 13 to 32.

Senate Bill 2387 would go even further than the bills introduced and defeated in 2001 and 2003, subjecting every electric co-op in the state, including G&Ts Basin Electric, Great River Energy, and Minnkota to full Public Service Commission regulation.

SB 2387 is unnecessary and counterproductive for a number of reasons. First, just like our distribution members, G&T co-ops are not in business to make profits, rates are set only to cover costs and provide capital necessary to operate. Margins, if any, are returned to members as capital credits. There is no incentive to set rates higher than necessary. Indeed, state electric co-op enabling acts and federal tax laws require electric co-ops to operate on a non-profit basis. Consequently, PSC regulatory oversight is unnecessary.

Second, regulation of electric co-ops by the Public Service Commission would add additional and duplicative costs that electric co-op members would pay for in their rates. If the G&Ts were

forced to obtain PSC approval for new facilities and rates it would follow an extensive member and lender review and approval process.

All cooperatives are regulated by their member owners. It doesn't matter if they are distribution, G&T, elevator, feed or oil, they all run on the same principles and philosophy. The number one principle is member control, which means our members, the ones who use the product and services we provide already regulate us. Our members who, on an annual basis, elect the directors that run all the organizations involved. Every decision made by our member elected directors and member systems is made to ensure that the consumers "at the end of the line" are being served in the most beneficial and efficient manner.

As United States Department of Agriculture – Rural Utilities Service (RUS) borrowers, Basin Electric, Great River Energy, and Minnkota are subject to numerous financial, rate, operational, safety, and environmental policies, procedures, and regulations. In the case of Basin Electric a majority of their funds borrowed to cover investments come from the public market through the issuance of bonds. Companies issuing bonds have bond ratings developed by rating agencies on Wall Street. These ratings are an evaluation of a company's credit standing and impact the interest rate the company will pay to finance construction projects. During the past few years many utilities have had their ratings downgraded due to scandals, failed efforts at diversification and unsuccessful efforts to deregulate the industry. Due to the cooperative structure and conservative mindset, Basin has had its ratings upgraded during the same time period. Additional regulation would serve no useful societal purpose.

Third, North Dakota's G&Ts are already regulated by the Public Service Commission in areas that could affect non members, namely, the siting of generation and transmission assets. Under the North Dakota Energy Conversion and Transmission Facility Siting Act, no energy conversion

facility or transmission facility may be located, constructed, and operated without a certificate of site compatibility or a route permit acquired from the Public Service Commission pursuant to Chapter 49-22. Electric co-ops are also subject to PSC jurisdiction in the important area of safety.

Fourth, SB 2387 would also have a significant cost to state taxpayers. The resources necessary for the Public Service Commission to take on the unnecessary additional task of electric co-op regulatory oversight would be substantial.

The question offered by proponents of this legislation is, "why should investor-owned utilities be subject to PSC jurisdiction and not cooperatives". The answer is that the characteristics of electric co-ops stand in sharp contrast to the innate characteristics of investor-owned utilities. Investor-owned utilities have an incentive to maximize profits and enhance shareholder value that could, absent regulatory review, lead them to establish rates that generate excessive profits at the expense of ratepayers, or to forego prudent utility facility investments in order to reduce expenses.

Mr. Chairman and members of the committee, SB 2387 represents a significant, unnecessary and burdensome departure from existing law. Therefore, we urge a DO NOT PASS recommendation on SB 2387. We would be happy to answer any questions you may have.

SB 2387

Testimony Submitted To the Senate Industry, Business and Labor Committee

**Thomas Mund, Board President, Dakota Valley Electric Cooperative
February 1, 2005**

Mr. Chairman and members of the committee, good morning. My name is Tom Mund. I own and operate a farm located southeast of Milnor. I am a member of the Dakota Valley Electric Cooperative board of directors, and presently serve as board president.

Dakota Valley has offices in Milnor and Edgeley, and provides electrical service to approximately 5,000 members in southeast North Dakota.

As an electric cooperative board member, I oppose Senate Bill 2387. Our cooperative board efficiently regulates rates and standards of service for our cooperative. Like you, our board members are democratically elected, and we each stand for election every three years. Senate Bill 2387 would take away our local control, and would subject all of our decisions to another layer of costly review and approval by the Public Service Commission.

Our board meets each month to monitor and direct the activities of our cooperative. In between the monthly meetings, we receive and review a mailing of cooperative operating reports and information pertaining to all aspects of the cooperative's operations. Throughout the year, directors on our board regularly attend other association meetings dealing with power supply, transmission lines and other industry issues. Additionally, at Dakota Valley, we have committees that meet separately, and sometimes at length over a number of days each year, to review rates and policies of the cooperative.

I presently serve on the board of directors' rate committee for Dakota Valley. I will describe the work of this committee over the last several years to illustrate the comprehensive nature of our work.

Two years ago, our board authorized a comprehensive cost of service and rate study which was conducted by an independent engineering firm which specializes in this field. This study updated a previous study which was completed four years earlier. The 2003 study, as with previous cost of service studies, measured the cost of serving each rate category -- whether residential, commercial, irrigation, or industrial -- and compared that cost to the revenues received from the individual categories. In the rate study, we also looked at whether our rate structures were fair to the various size accounts within each rate category.

At the completion of this study, our board rate committee spent a day reviewing the results of the study with cooperative management and the rate engineering consultant. We held a follow up meeting of the committee to review additional information supplied to answer questions generated in the first meeting.

From this process, the rate committee and management developed recommendations for several revenue neutral rate adjustments which were presented to and reviewed by the full board of directors. The aim of these adjustments is the same as the objective of the PSC in their process, that is to insure that each rate category is paying their fair share of the costs.

From the board room, we took the rate adjustments out to our membership. We explained in detail the rate adjustment at nine district meetings held throughout our service area. In addition, we discussed the change in a series of articles in the Dakota Valley section of the monthly ND Living magazine sent to each member, and sent out a separate letter to each member impacted by one or the other of our rate adjustments. At each step of the way, we

solicited comments from our members. Any comments received by management or board members were carried into the next board meeting for consideration by the board.

We feel that our rate setting process – as well as our work in establishing service standards – is comprehensive and meets the needs of our members. We do not feel these processes would be improved by removing them from local control and placing that responsibility in Bismarck.

I am up for election this spring. If the members in my district do not feel I am doing a good job at the cooperative, I will not be re-elected if I decide to run for another term.

Each director position on our nine-member board is up for election every three years, and any member in good standing can easily declare their candidacy for the board. Last year, in the district just to the east of my district, there were three candidates running for an open director seat; and in the district to the west of me, there were two candidates for the director seat.

As a locally-elected board member for an electric cooperative, I believe our board has the tools to effectively govern the operation of the cooperative, and has the opportunity and means for good member communication. I feel that electric cooperative boards are able to recognize the needs of the membership, and are able to combine those needs with the financial and engineering data of the cooperative.

With all due respect for the work of the North Dakota PSC, I do not believe that regulation of our cooperative would be improved by moving regulation from our locally-elected board over to regulation by the PSC in Bismarck, rather only made more costly.

Dakota Valley Electric Cooperative respectfully urges your DO NOT PASS recommendation on SB 2387.

Thank you.

TESTIMONY OF CINDY SMITH
TO THE SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE
SENATE BILL 2387
Tuesday, February 1, 2005

Good Morning Chairman Mutch and members of the Senate Industry, Business and Labor committee. My name is Cindy Smith. I appear before you this morning to request a "do not pass" recommendation on SB 2387.

In 2002 some neighbors urged me to run for the Verendrye Electric Cooperative board of directors. They felt the board needed more diversity and a new perspective. I attended a caucus meeting, was nominated, ran and won. I am now finishing my third year on this nine-person board.

I am here today for the same reasons I ran for the Verendrye board. I am passionate about the future of rural North Dakota. My husband Mike and I have farmed SW of Minot longer than I care to admit. We have three adult children, Justin who attends college and farms and ranches, Nathan, an NDSU graduate who is back home farming, is married and has a 5 month old son and Karlee, who is married and works at Minot State University. Our children intend to stay in North Dakota. I hope they will have a future here on the farm, which has reliable, reasonably priced electrical service. This is one reason I serve as a rural electric cooperative director. I have a passion for North Dakota and our kids. I wish you could all experience having sons be a part of the business you do here in North Dakota and the joy of having our grandson 8 miles down the road.

I tell you this to show that like members of this committee, I ran for and was elected to a position of responsibility, representing my district on my electric cooperative's board. This is true democracy. This is a basic example of local control, for our "member elected" board hires the manager, sets rates, determines policy and makes long range plans for the co-op. Also, Verendrye, like other electric co-ops, has oversight from USDA's Rural Utility Service, which sets standards and financial ratios that must be met.

We really do not need a state agency such as the Public Service Commission to regulate us. Co-op members own the company, unlike consumers of investor owned utilities such as Xcel Energy, which have little or no say in company policies. Remember, I am elected just like a Public Service Commissioner, by the member "owners" of the cooperative. Who can possibly serve them better than a local person committed to the welfare of their neighbors and this company?

Verendrye is divided into three districts, each of which elects one board member at our annual meeting. In other words, the membership decides each year if three VEC directors will keep their board seats. These board members do not serve for life by any means. Some decline to run again and some are defeated by a challenger like myself. By the way, our members take seriously the election of directors; over 3,200 folks attended our annual meeting last June at the State Fair Center in Minot. I will be up for re-election this year along with two other directors. If we are not doing our jobs, we will be challenged.

In electric cooperatives, local control is real, it works and it is effective. We do not need costly, time-consuming oversight by the PSC. We know our fellow members. We see them in church and at ball games. If they have a complaint with their co-op, they let us know and we respond. They don't need to call an 800 number several states away. They can walk into our offices in either Minot or Velva to visit our staff face to face. They can even schedule a home visit by one of Verendrye's 60 local employees.

In May of 2004, Verendrye experienced a severe ice storm. My district was one area affected by this storm. Neighbors called me, their "local director" to report their lights were out and to get an update on what was happening. One of my callers informed me that he had not had his morning coffee due to the outage, so I delivered him a thermos of coffee! I doubt that an IOU stockholder would have done this!

Xcel Energy serves my personal rental properties in Minot. The 1-800 number in Minnesota is not the same as getting a person on the other end and of the line at our local cooperative.

Representing a cooperative located in the community, I'm proud that Verendrye has returned almost \$2.5 million in the past five years to our membership in the form of capital credit retirement checks and electric bill rebates. I'm proud of Verendrye's wind program and our two new REC machines that stand 300 feet tall in my area south of Minot. I'm also proud of the many member services programs offered to the cooperative owners. I'm proud of the \$360,000 in Operation Roundup grants that VEC has given out to worthy causes throughout our eight county service area. I ask you, what are we doing that would warrant the proposed PSC jurisdiction?

Directors are accessible and responsive. We are here. We are locally owned, managed and controlled. I think it should be kept that way. I urge a do not pass recommendation on SB 2387. Thank you.

Testimony of Harlan Fuglesten
North Dakota Association of Rural Electric Cooperatives
Before the Senate Industry, Business & Labor Committee
On SB 2387
February 1, 2005

Mr. Chairman and members of the committee, my name is Harlan Fuglesten, representing the North Dakota Association of RECs. This morning I want to comment on the proposed changes in definitions in this bill and primarily leave it to others to discuss why electric co-ops are and should remain exempt from rate and service jurisdiction by the Public Service Commission. I do, however, want to make just a few introductory comments on this issue.

There are currently 141 directors serving on 17 distribution cooperative boards in North Dakota. These boards are made up of farmers, insurance agents, bankers, nurses, teachers, business owners, and even some legislators. Some of these directors, in turn are elected to serve on the Generation and Transmission cooperative boards of directors. All were elected by their neighbors to manage the affairs of the cooperative in an honest, careful and prudent manner. We think they do a great job of living up to the trust the members place in them.

Because an electric cooperative is not in business to make a profit, the co-op board sets rates to cover costs and provide operating capital. As the recent discussion before this committee on SB 2309 showed, any margin of income over expenses is eventually returned to the members in the form of capital credits as the financial status of the cooperative allows. Under the co-op business model, there is no incentive to set rates higher than absolutely necessary. In this respect, it makes little sense to go before the

PSC to ask for rate reductions, which many of our co-ops have given in the past few years as bill credits or rebates.

By contrast, investor-owned utilities are for-profit businesses that want to achieve the best possible stock value and income for their shareholders. Without PSC rate review, an IOU with substantial monopoly power could set electric rates to generate excessive profits at the expense of electric ratepayers.

In most states, electric cooperatives are not subject to state rate or service jurisdiction, or are subject to state regulation only at the option of the cooperative. I have attached to my testimony a state by state review of state regulation prepared by our national association, NRECA.

You will note that I have referred to the electric co-ops not being under the rate and service jurisdiction of the PSC. My comments relate to rates and services because co-ops are under PSC jurisdiction for other matters, such as safety, siting and resolution of territorial disputes. Section 1 of the bill tries to expand the definition of the term "public utility" to include RECs, but this is unnecessary as the definition already includes electric co-ops. Breaking down the definition, the first requirement is that the public utility must be any "association, person, firm, corporation or agency." Electric co-ops fit into several of these categories. Electric cooperatives are associations as that term is defined in ND CC Chapter 10-15-01 dealing with cooperative associations. See NDCC 10-15-01(1). Electric cooperatives are also corporations incorporated under NDCC Chapter 10-13 entitled "Electric Cooperative Corporations." All electric cooperatives operating in North Dakota do so as corporate entities. Finally, RECs are also persons as defined within Title

49. See NDCC 49-03-01.5 specifically defining "person" to include a rural electric cooperative. Thus, electric co-ops meet the first part of the definition.

Likewise, electric cooperatives also meet the second part requiring the entity to be "engaged or employed in any business enumerated in this title." Electric co-ops are engaged in the generation, transmission, and distribution of electricity, which falls squarely within the general jurisdiction of the PSC enumerated in Title 49. See NDCC 49-02-01(4)(PSC general jurisdiction includes "Electric utilities engaged in the generation and distribution of light, heat and power."). Thus, sections 1 and 2 of SB 2387 are meaningless and unnecessary.

The key to the rate and service jurisdiction issue in this bill is section 3, which would remove the PSC rate and service exemption for nonprofit and cooperative entities, except for those engaged in telecommunications. We oppose this section for reasons that others will present.

Sections 4, 5, 6, 8, 9 and 10 delete references to the terms "electric cooperative corporation" or "rural electric cooperative" for consistency with the changes proposed in section 7, and make some style changes presumably to conform to current provisions of the Legislative Council bill drafting manual. It is section 7 of this bill, however, that would make a major substantive change affecting how all of these sections would work.

Section 7 would amend NDCC 49-03-01.5, which is part of the state's Territorial Integrity Act. This section changes the definition of "electric public utility", which should not be confused with the term "public utility" defined in NDCC 49-01-01. As noted earlier, an electric cooperative is a public utility, but by the express terms of NDCC 49-03-01.5, a distinction is made between an electric public utility and a rural electric

cooperative. In statute today, an electric public utility basically refers only to an investor-owned utility (IOU). This legislation seeks to eliminate the distinction between an IOU and an electric cooperative under the Territorial Integrity Act.

As you might imagine, this would have far-reaching consequences. The major consequence it would have is that no longer would an electric co-op be allowed to extend service to a rural customer without first receiving a certificate of public convenience and necessity from the PSC, even if no other utility has lines within miles of the area. It would be like requiring an IOU to get a certificate of public convenience to extend service within a city when it might be the only service provider there. The law doesn't require this for obvious reasons.

Under this bill, the PSC cannot issue a certificate without a hearing unless no one has requested a hearing after receiving at least 20 days notice of the opportunity to request a hearing. In many cases, this could result in a 30-day delay or more before construction could begin. This same procedure and delay would apply for facility upgrades in rural areas, such as loop-feeding lines for greater reliability. Under this legislation, this could not be done without advance approval from the PSC. Now, in practice the PSC might grant temporary authority for the co-op to extend its lines pending a final determination on whether it will grant a certificate. In every case, however, the co-op would be extending service at its own risk and without assurance that it may not be challenged by an IOU.

While it's true that the procedures I've described already apply to IOUs, the burden is entirely different. Electric co-ops have about 60,000 miles of electric distribution line in North Dakota, almost all of it in rural areas. By contrast, one IOU,

Xcel Energy, has almost no rural distribution system, while the rural lines of the other two IOUs represent a small fraction of the co-op lines. Thus, the requirement to obtain a certificate to extend service off these IOU lines is small compared to the burden it would place on the electric co-ops. For IOUs, the certificate process has worked well and has resulted in their obtaining about 3,000 certificates for line extensions over the past 35 years. In most cases, these extensions have been made without co-op objection. Still, in this process, the IOUs have been able to pick and choose which customers they want to seek to serve.

A question this legislation fails to address is whether the PSC could order a utility to provide service if no utility seeks a certificate of public convenience and necessity. Unlike IOUs, electric cooperatives have always assumed an obligation to serve rural areas. This obligation arises from history, state law, RUS mortgage obligations, and the co-ops' commitment to the members and geography they have served for sixty years or more. IOUs, on the other hand, have no legal or fiduciary obligation to serve in rural areas. Because the RECs have the obligation to serve, they have not needed a certificate from the PSC to build out their systems. With a minimum of bureaucracy and conflict, the Territorial Integrity Act has been very successful in promoting the public interest.

If adopted, SB 2387 will lead to more bureaucracy and greater costs for electric co-ops to serve their rural service areas. When REA was adopted in the 1930s, a utility could not get a loan to serve an area with less than two customers per mile of line because it was not considered prudent to do so. Today, there are few areas in rural North Dakota with even this density. In fact, our distribution co-ops today, on average, serve less than

two customers/mile of line, even with the growth they have seen in some suburban areas. In many rural areas today, there is less than one customer per mile of line.

Passage of this bill would promote competition and investment in serving rural North Dakota at a time when co-ops are struggling to maintain their existing investments there. I am not suggesting that co-ops would ignore their obligation to serve. I'm sure they will strive to serve new customers in rural areas as they have done in the past. After all, they need these customers to help pay off the nearly \$800 million investment our distribution co-ops have made to serve these areas. What I am saying is this: This bill places extra costs and burdens on electric co-ops to provide service in some areas where they are often the only electric utility. In these cases, requiring certificates of public convenience and necessity before extending service would cause unnecessary costs and delays. In areas where there may be an incidental IOU line passing through, this bill gives the IOU an even greater opportunity than it currently has to cherry pick the best loads without assuming any responsibility to serve the less favorable ones. Putting the IOUs on an equal footing in serving rural areas, without their having an obligation to serve, will allow them to seek to expand their operations in rural areas when they see a profitable customer but ignore the obligation to serve the public interest. To the extent that the IOUs are successful in skimming the cream, it will be more costly and expensive for the co-op to continue to serve the area economically.

Mr. Chairman and members of the committee, this bill represents a potential catastrophe for electric cooperatives in North Dakota. I urge the committee to vote a DO NOT PASS recommendation on SB 2387.

STATE REGULATION OF ELECTRIC CO-OPS SURVEY COMPILATIONS

AS OF JUNE 2003

	<u>Rate Regulated¹</u> (Y = yes, N = no, O = optional, P = partial)	<u>If Yes²</u> (F = full, S = streamlined)	<u>Terms & Conditions of Service³</u>	<u>Safety</u>	<u>Facility Siting⁴</u>	<u>Territorial Issues</u>	<u>Financing</u>	<u>Other⁵</u>	<u>Complaints⁶</u>	<u>Did Restructuring Change Status?</u>	<u>If regulation optional - how many in, how many out?</u> <u>State law citation?</u>
Alabama	N		N	N	N	N			PSC refers member complaints to Alabama statewide; some actions litigated in court	----	
Alaska	O	F	Y	Y		Y			PSC, for rate-regulated co-ops		6 in / 10 out AK 42.05.711(h) (1980)
Arizona	Y	F/S	Y	Y	Y	Y	Y	Y	Ariz. Corp. Comm.	Y	
Arkansas	Y	F/S ⁹	Y	Y	Y	Y			PSC	Y	
California	N		Y	Y	N	Y				N	
Colorado	O		N	N	Y for generation and transmission facilities	Y		Y (certain reporting requirements)	Co-op Bds required by statute to adopt complaint procedures, CRS 40-9-5-109, however, PUC retains complaint jurisdiction		1 in / 22 out (incl. G&T) CRS 40-9-5-103-104 (1983)

¹ "Optional" means co-ops have the right under state law to opt into or out of state regulation. "Partial" means the state has some oversight authority over co-op rates, but not the specific ability to set rates.

² This question asks whether rate regulation of co-ops is the same as or similar to regulation of IOUs, or if there is a streamlined process.

³ In a number of states (MO, OH, PA, SC for example), co-ops that are not regulated for terms and conditions of service nevertheless model their policies closely after what their state regulator requires of IOUs. This is often useful for resolving member complaints.

⁴ In California, South Dakota, and Texas, the state has regulatory authority over siting of 115 kV and higher lines. In New Mexico, the regulatory authority has jurisdiction over transmission and "major" generation, and notification to the Commission is required for any construction within one mile of another utility. In Wyoming, the PSC has jurisdiction over siting of large-scale facilities. In Colorado and Wisconsin, the G&Ts are regulated for new construction, but not the distribution co-ops.

⁵ Other areas where states exercise jurisdiction over co-ops include: sale of assets (Arizona); certificates of need, IRPs, state PURPA (Minnesota); interest paid on deposits (Nevada); diversification activities (New Mexico); long-term forecasts (Ohio); adequacy of service (South Dakota); stray voltage investigations (Wisconsin); and mergers and reorganizations (Wyoming).

⁶ Assuming that most complaints are resolved at the co-op or board level, this indicates the ultimate arbiter for complaints not resolved at that level.

⁷ In those states that have adopted restructuring, or retail choice, the current regulatory status of co-ops generally will not change unless the co-op chooses to become a competitive retail supplier and to provide services to customers outside its service territory (exceptions: Delaware and New Hampshire, see below). In that case, the co-op first must be certified or licensed by the state to be a competitive supplier. As a competitive supplier serving customers outside its service territory, the co-op would then also be subject to all the rules established by the regulatory authority that apply to all other competitive suppliers.

⁸ Generally, the larger co-ops in Alaska are state rate-regulated, while the smaller ones are more easily able to opt out of state rate regulation.

⁹ Arkansas distribution systems may increase rates up to 10% without Commission approval. The G&T is regulated by the state Public Service Commission. This would have ended with the state's adoption of retail electric competition, however, Arkansas has delayed implementation of competition, so the G&T will continue to be state regulated.

STATE REGULATION OF ELECTRIC CO-OPS SURVEY COMPILATIONS

AS OF JUNE 2003

	<u>Rate Regulated</u> (y = yes, n = no, o = optional, p = partial)	<u>If Yes</u> (f = full, s = streamlined)	<u>Terms & Conditions of Service</u>	<u>Safety</u>	<u>Facility Siting</u>	<u>Territorial Issues</u>	<u>Financing</u>	<u>Other</u>	<u>Complaints</u>	<u>Did Restructuring Change Status?</u>	<u>If regulation optional - how many in, how many out?</u> <u>State law citation?</u>
Connecticut	No Distribution Co-ops	In	Connecticut								
Delaware	O ¹⁰	F	Y	Y	Y	Y				N	
Florida	N ¹¹		N	Y	Y	Y	N		Co-ops, then circuit court if necessary	---	
Georgia	P ¹²		P	N	N	Y	Y		PSC, if complaint alleges discriminatory rates		
Idaho	N		N	N	N	N (except for service territory disputes)			Co-op Boards of Directors; court, if necessary	---	
Illinois	N		N	N	Y	Y			Ill. Commerce Comm. for complaints alleging "inadequacy of service," however, none filed to date; member complaints received at ICC are referred to Illinois statewide	P	
Indiana	O		O (yes, if co-op is rate-regulated)	O	Y (certificates of public convenience and necessity)	Y	N		URC, if co-op is rate regulated, or if customer is requesting service from another provider; Court, if complaint cannot be resolved at co-op/board level	---	4 Dist. co-ops & 1 G&T in / 35 Dist. co-ops & 1 G&T out IC § 8-1-18.5 (1995)

¹⁰ After the adoption of retail electric competition in Delaware, a law was passed allowing the co-op to opt out of state regulation as long as it fully complies with the PSC's retail open access rules.

¹¹ Florida has jurisdiction over co-op rate structure: the rate relationship between various customer classes, but not the rate charged for utility service.

¹² EMCs in Georgia are required to file rate revisions with the PSC to make sure they aren't "unreasonably discriminatory," but the PSC does not set rates.

STATE REGULATION OF ELECTRIC CO-OPS SURVEY COMPILATIONS

AS OF JUNE 2003

	Rate Regulated (y = yes, n = no, o = optional, p = partial)	If Yes (f = full, s = stream- lined)	Terms & Conditions of Service	Safety	Facility Siting	Territorial Issues	Financing	Other	Complaints	Did Restructuring Change Status?	If regulation optional - how many in, how many out? State law citation?
Iowa	O ¹³		Y	Y	Y	Y			IUB if complaint alleges discriminatory rates; otherwise, court	----	1 in / 36 out -- Iowa St. 476.1a
Hawaii ¹⁴	Y		Y	Y	Y	Y	Y		Y		
Kansas	O ¹⁵	S	Y	Y	Y	Y		Y (sales of power for resale)	Kansas Corp. Comm in certain circumstances ¹⁶	----	3 in (2 dist. co- ops and one G&T) / 26 out KSA 66-104d (1992)
Kentucky	Y	S ¹⁷	Y	Y	Y	Y			PSC	----	5 TVA co-ops not subject to PUC jurisdiction
Louisiana	Y	F	Y	N	N	Y	Y		PSC	----	
Maine	Y	F	Y	Y		Y	Y	Y		N	
Maryland	Y	F	Y	Y	Y	Y			PSC	N	
Massachusetts	No Distribution	Co-ops In	Massachusetts								
Michigan	Y	S	Y	Y	Y	Y				N	

¹³ Iowa co-ops are statutorily exempt from state rate regulation, but may "opt in" by a board or membership vote.

¹⁴ The new Kaua'i Island Utility Cooperative is fully subject to state regulation by the Hawaii PUC for now, but the PUC may revisit the extent of its regulation after a few years.

¹⁵ In Kansas, distribution cooperatives serving fewer than 10,000 customers may elect to opt out of state regulation. One cooperative, Midwest Energy, exceeds that number. The two G&Ts are fully regulated and do not have the ability to opt out.

¹⁶ The KCC may investigate a deregulated co-op's rate if 5% of all members or 3% of any rate class petitions to have the rate reviewed.

¹⁷ Rate regulation of co-ops in Kentucky is streamlined only for wholesale flow-through adjustments, and for all rate decreases. Otherwise, all distribution rate increases are subject to the full regulatory process.

STATE REGULATION OF ELECTRIC CO-OPS SURVEY COMPILATIONS

AS OF JUNE 2003

	<u>Rate Regulated</u> (Y = yes, N = no, O = optional, P = partial)	<u>If Yes</u> (F = full, S = streamlined)	<u>Terms & Conditions of Service</u>	<u>Safety</u>	<u>Facility Siting</u>	<u>Territorial Issues</u>	<u>Financing</u>	<u>Other</u>	<u>Complaints</u>	<u>Did Restructuring Change Status?</u>	<u>If regulation optional - how many in, how many out?</u> <u>State law citation?</u>
Minnesota	O ¹⁸		N ¹⁹	N	Y	Y	N	Y (renewable energy goals, IRPs, stray voltage)	PUC may review co-op rates if 5% of membership petitions for PUC rate review, followed by membership vote in favor. PUC has jurisdiction over complaints involving "service standards and practices"		1 in / 44 out
Mississippi	N		Y	Y	Y	Y					
Missouri	N		N	Y	N	Y			Cooperative, PSC or other state agencies refer complaints to Mo. Statewide		
Montana	N		N	N	N	Y			Cooperative	N	
Nebraska ²⁰	N		N	N	Y	Y	N	Transmission Access	PRB for certain issues, rate disputes litigated in court		
Nevada	N		N	N	N	Y		Y		N	
New Hampshire	O ²¹		N	N	Y	Y	N			N	
New Jersey	N		N	N	Y	Y			Courts (although this has not happened)	P	
New Mexico	Y	S ²²	Y	N	Y	Y	Y	Y	Publ. Regul. Comm.	N	

¹⁸ In Minnesota the co-ops are statutorily exempted from state rate regulation, but have the ability to "opt in." This is different from other "O" states where the co-ops are under state regulation but have the ability to vote to "opt out."

¹⁹ Co-ops are statutorily required to have their own rules for issues like consumer protection, green power, safety, service quality, DG interconnection; and in some cases are required to adopt policies consistent with the PUC.

²⁰ There are no investor-owned utilities in Nebraska: all retail electric distribution service is through public power districts, electric cooperatives, municipalities, and joint action agencies. The entity that oversees retail electric service is the Power Review Board (PRB).

²¹ After the adoption of retail electric competition in New Hampshire, a law was passed allowing the co-op to opt out of state regulation as long as it fully complies with the PSC's retail open access rules.

²² In New Mexico, a distribution co-op must file a notice of a proposed change in rates with the Commission. After 15 days the co-op then notifies its members of the proposed rate change via publication in the statewide magazine. Thirty days after that the co-op files a tariff and supporting documentation at the Commission. A 20-day clock begins to run, during which any co-op member may protest the rate filing. If there are no protests, the rates go into effect ten days after the 20-day protest period, or a total of 75 days after first filed. If there is a protest a full-blown rate proceeding takes place. Since its merger with Tri-State, the G&T is no longer state regulated.

STATE REGULATION OF ELECTRIC CO-OPS SURVEY COMPILATIONS

AS OF JUNE 2003

	<u>Rate Regulated</u> (y = yes, n = no, o = optional, p = partial)	<u>If Yes</u> (f = full, s = streamlined)	<u>Terms & Conditions of Service</u>	<u>Safety</u>	<u>Facility Siting</u>	<u>Territorial Issues</u>	<u>Financing</u>	<u>Other</u>	<u>Complaints</u>	<u>Did Restructuring Change Status?</u>	<u>If regulation optional - how many in, how many out?</u> <u>State law citation?</u>
New York	Y ²³	F	Y	Y	N	N			NY Power Authority if unable to resolve member complaint at co-op level (this rarely happens)	N	
North Carolina	N		Y	N	N	Y			N.C. Rural Electrification Authority on certain issues	---	
North Dakota	N		N	Y	Y	Y			Complaints to PSC are referred to affected co-op; matters not resolved at co-op level are litigated in court		
Ohio	N		N	N	Y	Y		Y	Complaints filed at PUC are referred to Ohio statewide; Court (if they get that far)	N	
Oklahoma	O ²⁴	S ²⁵	Y (those that are rate-regulated)	N	N	Y			Complaints filed at Okla. Corp. Comm. are referred to Okla. Statewide; ultimate recourse is to court if all else fails	P	9 in / 17 out
Oregon	N		N	Y	Y	Y		Y (energy curtailment and pole attachment rate issues)	PUC for issues over which it has jurisdiction; otherwise, PUC refers complaints to Or. Statewide for resolution; sometimes legal action	N	
Pennsylvania	N		N	N	N	Y	N	Mergers with IOUs	PUC refers complaints to Pa. Statewide for resolution; if that is not successful, court	N	
Rhode Island	No Co-ops	In	Rhode Island								

²³ Distribution co-ops in New York are regulated by the New York Power Authority (NYPA), not the Public Service Commission.

²⁴ In Oklahoma, co-ops with fewer than 17,000 members may opt out of regulation. There are nine distribution co-ops that exceed the 17,000 threshold and are not eligible for the opt-out. If they opt out, they are not regulated for terms and conditions of service, but will still be regulated as to territorial issues.

²⁵ Oklahoma distribution co-ops may increase rates up to 3% without Commission approval.

STATE REGULATION OF ELECTRIC CO-OPS SURVEY COMPILATIONS

AS OF JUNE 2003

	<u>Rate Regulated</u> (y = yes, n = no, o = optional, p = partial)	<u>If Yes</u> (Y = full stream-lined)	<u>Terms & Conditions of Service</u>	<u>Safety</u>	<u>Facility Siting</u>	<u>Territorial Issues</u>	<u>Financing</u>	<u>Other</u>	<u>Complaints</u>	<u>Did Restructuring Change Status?</u>	<u>If regulation optional - how many in, how many out?</u> <u>State law citation?</u>
South Carolina	N		N	N	N	Y			Cooperative; then Court (except for territorial disputes; PUC)		
South Dakota	N		N	Y	Y	Y	N	Y	PUC, for complaints alleging inadequacy of service; complaints referred back to co-op	----	
Tennessee	N		N	N	N	N					
Texas	N		N	N	Y	Y			Cooperative; ultimate recourse is to state district court, but remedies limited	Y	
Utah	P		Y	Y	Y	Y		Mergers	PSC for rate complaints		
Vermont	Y	F	Y	Y	Y	Y	Y		Complaints go first to the Dep't of Public Service; disputes not resolved at that level go to the Public Service Board	N	
Virginia	Y	S	Y	Y	Y (for generation)	Y	Y		Va. Corp. Comm.	N	
Washington	N		N	N	N	N	N				
West Virginia	Y	S	Y	Y	Y	Y	Y			N	
Wisconsin	N		N		P (transmission line and generation facility siting; administration of "anti-duplication" of service law)	Y		Y ²⁹	PSC refers co-op member complaints to Wisc. Statewide for resolution; ultimate recourse is to circuit court	----	

²⁶ All cooperatives in Tennessee now are regulated by the Tennessee Valley Authority. The TVA also regulates some co-ops in Alabama, Mississippi, Kentucky, and Georgia.

²⁷ In Utah, the co-ops must file proposed rate increases with the PSC and comply with notice and hearing requirements.

²⁸ Under the streamlined approach, Virginia allows a 5% rate increase based on operating revenue. Co-ops are still required to submit a cost of service study. Hearings are required upon a motion of Commission staff or Division of Consumer Counsel or if 150 customers or 5% of any rate class protests. One rate increase is allowed per calendar year and no more than three consecutive streamlined filings allowed. The G&T is not rate regulated.

²⁹ The Wisconsin PSC has regulated co-op rates and terms and conditions of service only when a co-op acquired the assets and customers of an existing public utility, and not all of the utility's customers chose to become members of the co-op. When all of the customers eventually did become members of the co-op, the PSC's rate jurisdiction was abandoned.

AS OF JUNE 2003[illegible]

(From June 2003 Legal Reporting Service)

MISSOURI

Missouri enacts law limiting public service commission jurisdiction over electric cooperative

On May 8, 2003, the Governor of Missouri signed into law Senate Bill 255, which provides, in relevant part, that: "the public service commission shall not have jurisdiction over the rates, financing, accounting, or management of any electrical corporation which is required by its bylaws to operate on the not-for-profit cooperative business plan, with its consumers who receive service as the stockholders of such corporation, and which holds a certificate of public convenience and necessity to serve a majority of its consumer-owners in counties of the third classification as of August 28, 2003." The law specifically reserved the commission's authority with regard to safety and health regulation and review of territorial agreements, among other things.

S.B. 255, 92nd Gen. Assem. 2003 First Reg. Sess., 2003 Mo. Laws S.B. 255 (Mo. 2003), amending Mo. Rev. Stat. § 393.110.

Editor's Note: This legislation brought the treatment of one electric cooperative in the state that had purchased a financially distressed for-profit utility into parity with all other electric cooperatives that are not subject to rate regulation. For questions or comments, please contact Tracey Steiner, NRECA Corporate Counsel, at 703-907-5847 or tracey.steiner@nreca.org

(From May 2004 Legal Reporting Service)

OKLAHOMA

Oklahoma amends regulatory opt-out statute for electric cooperatives

On March 23, 2004, the Governor of Oklahoma signed into law Senate Bill 848, which amended Oklahoma law to permit larger electric cooperative members to vote on the issue of

“self regulation” in place of state corporation commission (Commission) regulation. S.B. 848, 49th Leg. Sess. (Okla. 2004). Under Oklahoma law, electric cooperatives are subject to Commission rate regulation unless the majority of the membership of a cooperative, following statutory procedures, approves a proposition for deregulation. Prior to amendment by S.B. 848, which amends Okla. Stat. tit. 17, § 158.27, the ability of electric cooperatives to “opt out” of Commission regulation was limited to those Oklahoma electric cooperatives serving less than 17,000 meters.

Editor's Note: If you have questions or comments, please contact Tracey Steiner, NRECA Corporate Counsel, at 703-907-5847 or tracey.steiner@nreca.coop.

Testimony on SB 2387
Dennis Boyd
MDU Resources Group, Inc.
February 1, 2005

Good morning, Mr. Chairman and members of the committee. For the record, my name is Dennis Boyd. I am with MDU Resources Group, Inc. and am appearing this morning on behalf of our utility division, Montana-Dakota Utilities Co. in support of passage of SB2387. Let me say at the outset, this bill was not introduced at the request of my company. It is, however, of significant interest to my company, and the discussion you will have over this bill does represent a significant public policy decision which is becoming increasingly important as some of our state's rural electric cooperatives are growing at a much faster rate than the investor-owned utilities are growing. The lack of Public Service Commission jurisdiction over the rates of rural electric cooperatives not only gives the RECs a competitive advantage in the marketplace, it also leaves a growing segment of consumers without the uniform protection provided by PSC oversight.

Regulation of public utilities as we know it today evolved in the very early 1900's as a method of offsetting the lack of competition. Initially, utility regulation centered on railroads, but by 1907, it extended to other businesses which had natural monopolies – providers of electricity, natural gas, water, and telephones. For Montana-Dakota Utilities, Public Service Commission jurisdiction of our rates has been a reality since the very organization of our company in 1924. Although we may grumble about individual

Commission decisions on occasion, their authority over our electric and natural gas utility operations is a fact of life for us.

Conversely, in the past 20 -30 years, another utility monopoly has been quietly growing, and in some instances, growing at very rapid rates. That monopoly sells the same commodity – electricity – as Montana-Dakota Utilities, but their rates remain unregulated by the Public Service Commission. I am referring, of course, to rural electric cooperatives. Not only do they sell the same commodity, but in many instances, their customers are now residential consumers who live inside our state's cities, and in many instances, are next door neighbors to our customers. Probably in most respects, their customers and our customers are identical. Their customers probably use about the same amount of electricity and for the same purposes as our customers. And yet, our rates and services are regulated by state authority, while their rates and services are not.

The Rural Electric Cooperatives counter this argument by saying their rates are “regulated” by the Board of Directors. The investor-owned electric utilities also have Boards of Directors but nobody, since PSC jurisdiction has become a reality, has seriously suggested our Board should be allowed to set our electric rates. Such a proposal today would be laughable, and so is the notion of “coffee shop regulation” for rural electric cooperatives.

During the 2003 legislative session, I recall a conversation I had with a member of the House Appropriations Committee. Their Appropriations subcommittee had the manager of a large state institution in front of the committee, as the committee was delving into the institution's budget. A question was asked why there was a very

large increase in the electricity costs for the institution – I recall it was in the neighborhood of \$500,000. The manager responded that the institution had received a notice from the Rural Electric Cooperative which was serving the institution that their Board had decided a rate adjustment was necessary. If that institution was served by an investor-owned electric utility, any rate changes would have to be approved by the Public Service Commission after filing a rate case and conducting a public hearing at which the customer would have an opportunity to participate in the process.

As you know, the subject of PSC jurisdiction has been debated from time to time over the past several years by members of the Electric Utility Competition Committee. Although this issue has been subjugated by other issues in front of the committee and the committee has not passed out any legislation on this issue, I recall testimony prior to the 2003 legislation session during which several REC managers were describing their rate making process. One REC manager described their departure from setting rates based on the cost of service for various customer classes to setting rates based on what I would describe as “what the traffic will bear”.

I want to emphasize, Mr. Chairman and members of the committee, that my company's support of SB2387 does not indicate an interest in destroying or harming our REC neighbors. The Rural Electric Cooperatives, with the cooperation and assistance of the state's investor-owned electric companies, have done a marvelous job of electrifying rural North Dakota. Today our lines are interconnected in hundreds of locations, and despite the antagonism which surfaced during recent legislative sessions, we generally have

a pretty good working relationship with most of them. However, their reality has changed since the passage of the Rural Electrification Act in the 1930s, and today several RECs are serving substantial and growing portions of our state's largest cities. Perhaps an acceptable amendment to this bill would be to limit its application to distribution RECs serving customers in those urban areas. Perhaps a population or a percentage of membership cap could be developed. You also may want to exempt the North Dakota G&Ts from this bill as their power plants serve electricity to customers in many states in our area.

Not only is there a powerful consumer interest at stake here, Mr. Chairman and members of the committee, there is also an issue of fairness. In many instances, RECs enjoy a competitive advantage in attracting customers to their service territories because their rates are unregulated and can be changed quickly. Montana-Dakota Utilities is actively involved in economic development. We have an economic development tariff on file at the Public Service Commission, and it is a matter of public record. The rate has been approved by the Public Service Commission, and has limitations and conditions attached to it. We use it to try to attract new businesses and development to our service areas. Because we have an established economic development tariff with minimal flexibility, we often find ourselves at a competitive disadvantage if a business is comparing energy costs as a factor in their location decisions. RECs can change their rates in a matter of minutes with a conference call to a majority of the Board members.

The cost of energy is a major operating expense for many businesses, and who can blame a potential customer for seeking the lowest electric rates. In addition to their ability to rapidly change their rates, RECs also have the ability to make grants and subsidize or underwrite federal loans to attract customers to their service areas.

The end result is Montana-Dakota Utilities is at a competitive disadvantage in attracting new development.

In summation, Mr. Chairman and members of the committee, the current lack of jurisdiction by the Public Service Commission over the rates of certain distribution Rural Electric Cooperatives not only puts my company at a competitive disadvantage when attempting to attract new development to our service territory, but it also leaves a large and growing percentage of the population without the consumer protection afforded by the Public Service Commission. I said at the front end of my presentation that certain distribution Rural Electric Cooperatives have been quietly growing at rates much faster than investor-owned electric utilities have been growing, and that they, too, have a monopoly. It is our belief that in 2004, Capital Rural Electric Cooperative added more electric customers to their distribution system than Montana-Dakota Utilities added in ALL FOUR STATES – North Dakota, South Dakota, Montana, and Wyoming! We believe Capital Rural Electric Cooperative now provides electric service to approximately 30% of the city of Bismarck, all consumers who lack the reassurance that the rates charged are “just and reasonable”.

That concludes my testimony, Mr. Chairman and members of the committee.

Testimony
SB 2387
Senator Ben Tollefson

Chairman Mutch, Members of the Senate IBL Committee,

I come to you this day as an experienced former electric industry employee. For 32 years I worked with Northern States Power Company in Minot, seventeen of those years as sales manager with direct responsibility for intracompany relations.

Electricity, we know, is an essential service today. It performs many tasks for us in our homes as well as in industry. Inevitably we are a captive customer of some power supplier, whether it is an investor-owned utility, an REC, or a municipal electric service utility. There is no competition for our business. Each power supplier has a monopoly on the area they serve. The customer for the most part is concerned only with cost, quality, and continuity of service. "If the light goes on when I flip the switch, this is all I care about!" say many consumers. This is most certainly true!

Interconnection through the grid (all electric utilities) enhances continuity and price.

When electric service first was offered in North Dakota, it was the IOU's that generated and sold it (other than some small isolated power plants). The cities and other communities were provided with electricity first, because that's where the load was.

Stockholders in the IOU's insist on a profit, and concentrated load in the cities provided that. This was a product of a capitalistic society (for profit). The electric utility business is a capital intense business.

The constitution of this state provides for "artificial competition". A monopoly and essential service like electricity is under the jurisdiction of the North Dakota Public Service Commission, where rates and quality of service are structured.

In 1936 Congress established the REA. Federal money became available to extend electric service to rural America. The REC's did a wonderful job! The farm now had electricity with all its benefits. The REC's had no concern for a return on the investment. Gradually some of the rural electric load began to disappear. In order to maintain their organizations, the REC's began serving electric customers around cities and towns that had

traditionally been served by central station service (IOU's). Some communities have granted the REC's a modified franchise allowing them to serve in newly annexed areas. All of this has caused the dilemma we have today.

Since 1965 we have witnessed a huge struggle in the electrical industry in North Dakota. The legislature has debated this issue for at least four sessions in a row, with no avail. A wedge has been created between the urban and rural areas which never before existed. We are pulling apart rather than pulling together for the sake of our great state. The differences in philosophy should not hinder cooperation.

SB 2387 can bring the industry together again for all our sakes. Take this issue out of the legislative arena. Let's waste no more money on one-upmanship. SB2387 will work for all of us!



Utility Shareholders of North Dakota

BOARD OF DIRECTORS

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Devils Lake

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Jamestown

Bob Graveline, President
Bismarck

Comments before the Senate Industry, Business and Labor Committee, 2/1/05
RE: SB-2387

Mr. Chairman, members of the Committee, I'm Bob Graveline of the Utility Shareholders of North Dakota (USND). Our association represents the interests of nearly 2,100 North Dakota members who own shares of stock in Otter Tail Corporation, Xcel Energy, or MDU Resources Group, the three investor owned utility companies providing service to North Dakota consumers.

I APPEAR THIS MORNING IN SUPPORT OF SB-2387

The USND supports the concept of fair and equitable treatment of all utility companies that do business in the same market areas. You can drive through residential and business neighborhoods in North Dakota cities and towns where people and businesses on one side of the street are served by an investor owned utility while those on the other side of the street are served by a cooperative.

All investor owned electric utility companies operating within the state are subject to oversight by the North Dakota Public Service Commission while Rural Electric Cooperatives are not. The USND supports this legislation to bring all players in the same marketplace under the same rules and regulations.

If the IOU must apply for rate oversight to the PSC, then the cooperative providing service in the same market should be subjected to the same PSC oversight. If one utility must apply to the PSC for a Public Convenience and Necessity ruling before beginning service to a prospective new customer, then any competitor in the same marketplace should also be required to follow the same application procedure. The same rules and regulations should apply to all utilities providing service in the same market.

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I presume you will hear from opponents of this bill that their many different boards of directors all across the state provide more than adequate oversight of their operations, and therefore PSC oversight would be redundant. I suggest, however, there is a great deal of difference between a utility board of directors making business decisions and a utility company having their every action reviewed by the Public Service Commission.

Mr. Chairman, members of the committee, I urge you to help bring fairness to the utility market in North Dakota and forward a **DO PASS RECOMMENDATION** ON SB-2387.

North Dakota Farmers Union

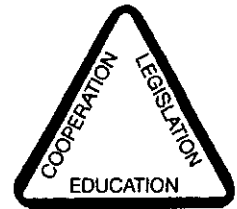
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Senate Bill 2387

Senate Industry, Business, and Labor

Chairman Mutch and members of the Senate Industry, Business and Labor Committee: My name is Woody Barth and I am here representing over 35,000 members of North Dakota Farmers Union.

We oppose Senate Bill 2387 because it essentially redefines an electric cooperative and places these cooperatives under the jurisdiction of the Public Service Committee.

The cooperative business model is unique in that its patrons are also its owners. Membership is placed at the top of the organizational chart of a cooperative.

As is the case in the rural electric that serves my farm, the members approve the bylaws and any subsequent changes or amendments to those bylaws. The members elect a board of directors as their representatives. The members conduct these and other items of business at their annual meeting. Cooperatives are member owned; member controlled.

Electric cooperatives like other cooperatives have a long and successful history of self-regulation by their member owners. Further regulation by a state agency is both duplicative and costly.

In conclusion, we oppose any effort to place our rural electric cooperatives under the jurisdiction of the Public Service Committee.

We, therefore, urge a do not pass on Senate Bill 2387.

Thank you Chairman Mutch, and members of the committee, I will answer any questions at this time.