

2009 SENATE FINANCE AND TAXATION

SB 2297

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2297

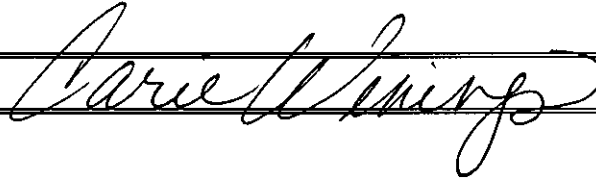
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 01/28/2009

Recorder Job Number: 7995

Committee Clerk Signature



Minutes:

Vice Chairman Miller: Opened the hearing on SB 2297.

Senator Dwight Cook, District 34: Introduced the bill as a sponsor and in support of the bill.
(See Attachment #10 for copy of testimony)

Representative Wesley Belter, District 22: Testified as a sponsor and in support of the bill.

In North Dakota we have been very fortunate that those that built the electrical energy system in this state built in excess capacity. We will see increased costs of electricity because of the many environmental things that companies have to face as well as the lack of development due to environmental standards. Our current tax rate that the REC's face is not going to become fair as the cost of energy is driven up. We need to make an adjustment for the consumers of North Dakota.

Senator Connie Triplett, District 18: Testified as a sponsor and in support of the bill. (See Attachment #11 for testimony)

Representative David Monson, District 10: Signed in support of the bill.

6.20 Harlan Fuglesten, North Dakota Association of Rural Electric Cooperatives: See Attachment # 1 for testimony in support of bill.

26.35 **Senator Dotzenrod:** In looking at the numbers on attachment #3 and Page 7 of testimony question, the numbers per MWH/KWH are different from each other, can you explain that?

Harlan Fuglesten: Attachment #3 references \$2 per KW that is a measure of capacity not production. We used the same formula, it is just on the example given that allots for the difference.

Senator Dotzenrod: I have 107 on page 7 and \$2 on the other.

Harlan Fuglesten: You can take a capacity factor and determine what it would be, or you can take a capacity tax, like \$2, and you can translate it using the # of hours in a year times the capacity factor to find out how much that would be on average on a straight production tax basis. You are taking that \$2 KW tax and you are turning it into a KW hour tax and then adding it to the other half of the formula. The coal conversion tax that exists under current North Dakota law is actually expressed as KW hours. The capacity is described as KW hours because they say that it is bases on 65/100 of a mill times 60% of the capacity per year and that translates into a KW hour tax rather than a KW tax. We are just trying to explain what the equivalent would be.

Senator Dotzenrod: Asks for a little more clarification on the same subject.

Harlan Fuglesten: Answers once more.

Senator Hogue: On the allocation of the distribution tax, I thought I heard you say that it is based on fairness and you decided to pose a 50% to be allocated based on line miles and 50% based on where the power is sold. How did you come up with that? If it is fair to do the allocation where the power was sold, why wouldn't it be fairer to allocate it 100% where the power was sold?

Harlan Fuglesten: We think of it as a network, and we think that the integrity is built on the whole network. We don't want to lose the whole concept of value as it applies to the entire network. The truth is that we have areas in the state where a couple of miles of line extension are attracting a lot of revenue from a tax basis, where it is not attracting a lot of revenue from a sales basis. We have other miles of line in the state in which we heavily invested because we have a density of customers and sales and newer facilities. In recognizing both elements on an equal basis will much more mirror where we actually have put our investment than the current system. We think that 50/50 is about as close as we can call it.

34.25 **Harlan Fuglesten:** Proceeded to walk through explanation of the bill section by section.

44.35 **Chairman Cook:** On page 7, line 12 of the bill, is that where you are going to do the 50/50 split occurs?

Harlan Fuglesten: Correct

Chairman Cook: How difficult would it be for you to also report the taxable valuation of property that would be required to generate the same amount of revenue if it was taxed at 110 mills?

Harlan Fuglesten: I don't think it would be difficult at all, it is just math. If you know the mills. We would have a discrete figure for each school district that we are paying, and what you are asking is how we could reverse that to reflect it in terms of taxable value that would produce that same amount of revenue. My initial reaction is that we would be able to do that.

Chairman Cook: Give that some thought.

46.28 **Senator Hogue:** In terms of? provisions, those were essentially borrowed from the old portions of the code?

Harlan Fuglesten: Yes they were, and there may be some small amendments to this bill for constitutional issues.

Chairman Cook: There is no specific fiscal impact of this bill, so we can keep it here for a while.

48.20 **George Berg, President and CEO, Nodak Electric Cooperative:** See Attachment #2 on support of bill.

52.35 **Jay Jacobson, General Manager, Dakota Valley Electric Cooperative:** See Attachment #3 in support of bill.

56.55 **Robert Huether, Chairman, Minnkota Power Cooperative Inc.:** See Attachment #4 in support of bill.

1.00.02 **Steve Tomac, Basin Electric Power Cooperative:** See Attachment #5 in support of bill and also Attachment #6 for additional information.

1.04.52 **Al Christianson, Great River Energy:** Appeared in support of bill. The fiscal impact to Great River Energy is that we will pay more, but we think that this is long overdue to be done.

1.05.31 **Bruce Carlson, Manager of Verendrye Electric Cooperative:** See attachment #7 in support of bill.

1.06.57 **Richard Schlosser:** See Attachment #8 in support of bill.

1.08.38 **John Olson, Ottertail Power Company:** I am authorized to speak on behalf of Excel Energy as well. We have studied this bill up and down and we still have not reached any determinations as to the impact. We would like to have more time to review this bill.

Obviously, the investor owned utilities are placed in this bill and the key provision that I want to point out to you is on page 4, in section 6, which is subsection 3 under 57-38.201. That is the provision that provides for an irrevocable election by the investor owned utility or any company that is covered by taxation under the central assessment method in 57-06. That election has to be made prior to October 1st, 2010. That doesn't give us very much time. We are either in

or out prior to the commencement of the next legislative session. I am glad that Harlan would have no objection to either taking that out or extending the time period in which we could make that election.

Chairman Cook: When you talk about additional time, do you mean moving to 2011?

John Olson: Yes, at least by the end of the next biennium.

1.11.10 **Dennis Boyd, MDU Resources Group:** We neither favor nor oppose this bill. The key to us is in fact the opt in clause that Mr. Olson just referenced, and that we have the opportunity to decide if we want to be taxed under gross receipts or continue under central assessment. We echo Mr. Olson's request that either that date be deleted or extended for some period of time so that we have a good opportunity to take a good look at this. Over the past 10-12 years, moving to a gross receipts tax was a rather serious and rather complicated, expensive proposition. We need more time.

1.12.26 **Senator Hogue:** Would MDU have any objection to taking that provision out?

Dennis Boyd: We would be very much opposed to this bill if that section with the ability to opt in was removed.

1.12.45 **Marcy Dickerson, State Supervisor of Assessments, Director of the Property Tax**

Division: See Attachment # 9 offering comments on bill.

Chairman Cook: Will you talk to Harlan and work out some amendments and get back to us on that.

Marcy Dickerson: Yes I will.

Chairman Cook: Closed hearing on SB 2297.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2297

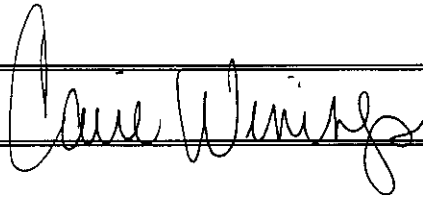
Senate Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 02/11/2009

Recorder Job Number: 9264

Committee Clerk Signature



Minutes:

Chairman Cook: Reopened discussion on SB 2297.

Harlan Fugelsten, North Dakota Association of Rural Electric Cooperatives: Appeared before committee to explain amendments 90342.0701 (See Attachment #1).

10.40 **Chairman Cook:** So these amendments basically the major change is the amendment you brought forward, the amendments meet the concerns that we had during the testimony both from Marcy Dickerson and then the opt in which was the wish of the IOU's.

Harlan Fugelsten: That is correct.

Senator Dotzenrod: I just want to make sure that I follow the amendments. That last amendment there, that section you are amending is subsection 3 of 5733.219 – allocation containing appropriation. What does that section do? Does it take the monies that are generated and allocates where they go, or does it apply to how you gather the money in?

Harlan Fugelsten: What it does is that there are other provisions of the bill that establish what the tax would be on a generation resource, and those tax formulas are in another part of the bill. That will determine how much of the tax is collected. Then you need to distribute that tax where the facility is located, but you will have multiple taxing districts in that area, so it

basically spells out the formula for doing that which is to prorate it in proportion to the most

recent respective property mill rates that apply to the land on which the wind farm and associated collector systems wind generate or other generation unit is located. So if it is 300 mills and 100 mills go to the county then they get 1/3 of the money.

Senator Dotzenrod: You are just assuring that the proportions stay the same?

Harlan Fugelsten: Yes, the same distribution as any other property tax payer.

Senator Hogue: Have IOU representatives given you any indication which way they are leaning as far as opting in or not opting in within the current period under the bill?

Harlan Fugelsten: We had lots of preliminary discussions before we ever brought this bill, we offered to come up with a plan that we could jointly bring forward to the legislature and the stumbling block prior to the legislative session was that it did not appear that they were interested in opting in because it did not work out financially for them. I have not had specific

detailed conversations with any IOU representatives during the session, but my impression would be that there wouldn't be any current interest on their part in opting in to the plan now, for a couple of them I think the formulas would produce revenues that are tax liabilities that are quite a bit higher than what they pay currently and what they would likely pay if there was any further tax relief provided this legislative session for assessed property taxes. One of the investor owned utilities it might be a somewhat closer quest, but even that utility, I don't think they see the benefit of opting in at the present time. That situation could change in the future.

Chairman Cook: Is it safe to say that they don't have a clue yet whether this will benefit them or not?

Harlan Fugelsten: They may have a clue, but the clue that they have may be that it wouldn't necessarily at this time benefit them.

Chairman Cook: I think that is the right way to put it. The will probably not save very much in the end. I don't think they would opt in to pay more.

Harlan Fugelsten: That would tend to be the case.

Senator Dotzenrod: On page 4, is that where, under definitions, line 17, we set up this choice to opt in for the other companies?

Harlan Fugelsten: That is correct.

Senator Dotzenrod: If we adopt these amendments, does it mean that those time periods, once they have elapsed and gone by and they haven't elected, that the choice to elect in is gone?

Harlan Fugelsten: That is true; however the legislature can change legislation at any time.

Chairman Cook: Committee, what are your wishes?

Vice Chairman Miller: Moved a Do Pass on the amendments – 90342.0701.

Senator Dotzenrod: Seconded.

A voice vote was taken: 6 yeas, 0 nays, 1 Absent (Senator Triplett).

Senator Hogue: Moved a Do Pass As Amended.

Senator Oehlke: Seconded.

A Roll Call vote was taken: Yea 6, Nay 0, Absent 1 (Senator Triplett).

Senator Cook will carry the bill.

FISCAL NOTE
Requested by Legislative Council
02/13/2009

Amendment to: SB 2297

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 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.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
			(\$1,753,000)					

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed SB 2297 changes the taxation of rural electrical cooperatives and includes "opt-in" provisions for changing the taxation of investor-owned electrical utilities.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The tax department does not have information upon which to base the fiscal impact of this bill. However, Harlan Fuglesten, Community and Government Relations Director of the ND Association of Rural Electric Cooperatives furnished the tax department with an analysis he prepared. The analysis indicates a first-year reduction in tax revenue totaling an estimated \$1.753 million. (There would be only one year of impact in the 2009-11 biennium.)

The tax department concurs with Mr. Fuglesten's assertion that the investor-owned utilities will not "opt-in". He also determined that provisions for wind facilities should be revenue neutral, which the tax department cannot confirm.

Engrossed SB 2297 increases the tax rate from \$2 to \$2.50 per kilowatt times the rated capacity of the generator for wind electrical generating facilities. There is no indication of wind facilities "opting in" so the potential for any additional revenue from the increased tax rate in the engrossed bill is uncertain.

The impact shown above is the amount of first-year reduction in total tax for the rural electric cooperatives, as supplied by Mr. Fuglesten.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a*

continuing appropriation.

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	02/16/2009

FISCAL NOTE
Requested by Legislative Council
01/20/2009

Bill/Resolution No.: SB 2297

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 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.*

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Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
			(\$1,753,000)					

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SB 2297 changes the taxation of rural electrical cooperatives and includes "opt-in" provisions for changing the taxation of investor-owned electrical utilities.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The tax department does not have information upon which to base the fiscal impact of this bill. However, Harlan Fuglesten, Community and Government Relations Director of the ND Association of Rural Electric Cooperatives furnished the tax department with an analysis he prepared. The analysis indicates a first-year reduction in tax revenue totaling an estimated \$1.753 million. (There would be only one year of impact in the 2009-11 biennium.)

The tax department concurs with Mr. Fuglesten's assertion that the investor-owned utilities will not "opt-in". He also determined that provisions for wind facilities should be revenue neutral, which the tax department cannot confirm.

The impact shown above is the amount of first-year reduction in total tax for the rural electric cooperatives, as supplied by Mr. Fuglesten.

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B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	01/27/2009

February 10, 2009

PROPOSED AMENDMENTS TO SENATE BILL NO. 2297

Page 4, line 18, replace ", or" with an underscored semicolon

Page 4, line 19, after "2010" insert "; by October 1, 2011, for taxable periods after December 31, 2011; or by October 1, 2012, for taxable periods after December 31, 2012"

Page 6, line 11, after "facility" insert "that became operational before January 1, 2009, and which is"

Page 6, line 20, after "dollars" insert "and fifty cents"

Page 6, line 30, after "by" insert "the state board of equalization under"

Page 7, line 23, after the underscored comma insert "each wind farm, wind generator, and generator of electricity from sources other than coal subject to the coal conversion tax and"

Page 7, line 25, after "commissioner" insert "on a form prescribed by the commissioner any and all information required by the commissioner. The form must include a notice of a company's right to appeal its assessment to the state board of equalization before or at the August meeting of the state board of equalization. Required information includes"

Page 7, line 26, remove "Information about the company, including:"

Page 8, line 12, after "capacity" insert ", and all components of the collector system, if any"

Page 12, line 24, replace "most recent respective property tax levies" with "respective most recent property tax mill rates that apply to the land on which the wind farm and associated collector system, wind generator, or other generation unit is located"

Page 12, line 25, remove "in dollars on property within the county"

Renumber accordingly

Date: 02/11/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.: 2297

Senate Finance and Taxation Committee

Check here for Conference Committee

Amendments

90342.0701

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Senator Miller Seconded By Senator Dotzenrod

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman			Sen. Arden Anderson		
Sen. Joe Miller - Vice Chairman			Sen. Jim Dotzenrod		
Sen. David Hogue			Sen. Constance Triplett		
Sen. Dave Oehlke					

All in Favor

Total: Yes 6 No 0

Absent 1 Triplett

Floor Assignment _____

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

Date: 02/11/09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. : 2297

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended ^{AS}

Motion Made By Senator Hogue Seconded By Senator Oehlke

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson	✓	
Sen. Joe Miller - Vice Chairman	✓		Sen. Jim Dotzenrod	✓	
Sen. David Hogue	✓		Sen. Constance Triplett		
Sen. Dave Oehlke	✓				

Total: Yes 6 No 0

Absent 1 Triplett

Floor Assignment Senator Cook

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

REPORT OF STANDING COMMITTEE

SB 2297: Finance and Taxation Committee (Sen. Cook, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2297 was placed on the Sixth order on the calendar.

Page 4, line 18, replace ",_or" with an underscored semicolon

Page 4, line 19, after "2010" insert " ; by October 1, 2011, for taxable periods after December 31, 2011; or by October 1, 2012, for taxable periods after December 31, 2012"

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Re-number accordingly

2009 HOUSE FINANCE AND TAXATION

SB 2297

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2297**

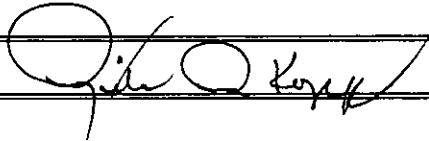
House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: March 10, 2009

Recorder Job Number: 10636

Committee Clerk Signature



Minutes:

Chairman Belter: We will open the hearing on SB 2297.

Representative Dwight Cook: District 34. I will try to be brief. There are people in the hallway who have higher pay grades than I do that can speak better to this bill, but I just want to make a couple of comments about it. We have had a lot of discussions this session about the electric generation industry, the electric industry in general. No matter where you are at on the issue of global warming, I think we all will agree that many things are going to change in this electrical industry, the industry of generating electricity and getting it to the end user and the end user, being able to flip the light switch and see the electricity turn on the lights and the rate that they are going to pay. That is one thing we can all be sure of is it is going to change. The bottom line is our constituents are going to know and probably are going to get a lot of higher electricity rates in the future. That is really the main reason that I have gotten involved in SB 2297. Over the last few years, I have had many a conversation with our friends in the RECs and the IOUs about the various tax policies and the differences in them, trying to find some common ground. I think it is safe to say that a comprehensive tax policy is not very likely at this time, but I do think the issues that are addressed in this bill are very important and need to be addressed. First of all, if you look at the ways the RECs are taxed, in lieu of taxes, gross

receipts tax, taxes on the sales volume, as the electricity rates start going up, just think of what that is going to do to the tax. The biggest change that this bill makes is that it changes that and it starts putting the tax based on the volume of electricity capacity. I think that is a very smart move. We have to be very sensitive to our tax policy, I believe, when we look at the tax, we are pretty free of tax on electricity that is going out of the state. But when it is taxed on electricity that is consumed by taxpayers, our constituents here in ND, we have got to understand that it is just passed on. I think a very sound tax policy is important. We are not changing how coal conversion or coal generation is done; there are some changes in wind generation, other generations; they are some changes in the transmission and there are some changes in the distribution tax policy and also some changes in how that revenue is generated from the taxing of how the distribution lines is distributed. That is the meat of the bill and I will yield to any questions, but there are people here who can better explain the bill than I can. I would urge a very favorable support to this bill; give it a "do pass". I would be happy to answer any questions.

Representative Phil Mueller: District 24. I will very briefly echo those comments that were made by Senator Cook. I think he said it well. You will have others that get into the details of SB 2297. I agreed to sponsor SB 2297 for many of the same reasons that the other sponsors did. The bill is very important to our state's electrical cooperatives and our electrical cooperatives are vitally important to ND. Our state's electrical cooperatives are among the largest of all property tax payers in ND. I believe, as I read through some of my background information, they are being hit for about 1% now that is in lieu kinds of taxes that you probably all have a better understanding of than I do. I think it is important that we insure that these taxes are collected in ways that are fair to those important utilities and are allocated in ways that are fair to our local taxing districts. I believe that the bill you have before you does both of

those things. There are some property tax relief measures built into the bill, built into the in lieu property tax provisions but the relief is similar to what I believe other property taxpayers will likely receive this session. At least, I hope that they do. Moreover, coop taxes have gone up at a faster rate than other taxpayers so their tax burden has become disproportionate to what other property taxpayers pay. The reductions in this bill, however, I suspect will only be temporary as coop property taxes will continue to rise with the expected growth in electrical sales. This is a good bill and I would urge the committee to give it a "do pass". (05:39) I will try to answer questions if there are some.

Representative Dwight Wrangham: District 8. I rise in support of SB 2297 and thank the sponsors for bringing it forward. I also have the privilege of serving as the president of the board of directors of Capital Electric Cooperative headquartered here in Bismarck. From experience in that capacity, I have first-hand knowledge that SB 2297 is the product of years of study on electric utility properties, studies done both by the cooperatives, by the state legislature, by many parties. During these studies, it became clear that the 2% gross receipts tax paid by electric coops is not the best means to determine property taxation. With increasing electric power demand and new environmental regulations, power costs are increasing. This leads to higher electric rates, which under current law, drive higher property taxes for the coops even without property improvements, expansions or new facilities. I think SB 2297 is a balanced approach to property taxation that recognizes that property tax should rise only with greater power production and with construction of more transmission. Property taxes should not rise simply because costs increase. This plan will correct that concern. This is a good plan for rural electric cooperatives and also gives investor-owned utilities the option to be taxed in the very same way. Thank you, Mr. Chairman.

Al Christianson, Great River Energy: I am out of order here because I have to go to another hearing. Great River Energy supports this and hopes that you will. We will see a large increase in our taxes by this bill; but over the years, we have worked with the statewide REC with our fellows at Basin and we think it is a fair and equitable way to do it. We will support it even though it is a tax increase for us. I would stand for any questions.

Harlan Fuglesten, ND Association of Rural Electric Cooperatives: (Testimony 1) I am handing out, not only my own testimony, but also testimony of others who were scheduled and for weather reasons, cannot be here. (08:46-27:19) Mr. Chairman, if you would like, I would be happy to go through the bill section by section and show you where the various provisions that I have discussed are located or I could just answer your questions.

Chairman Belter: Are there any questions at this time? Committee members, would you like him to go through the sections or are you satisfied?

Representative Headland: You have property tax relief built into the bill, which I think is fair considering we will more than likely pass property tax relief. The question I have is if, in the future, we find as a state legislature that we cannot sustain the property tax relief, how does your tax structure change?

Harlan Fuglesten: I think one of the real advantages of a tax based on formulas is that you can change the formulas whenever you find it is necessary to do so either to raise revenue or to maintain fairness in the system. It is a very transparent way of taxing. We can provide a lot of data to be able to predict exactly how much tax will increase in the future and so what we expect to see happen, as we look forward, is that while there will be an initial reduction in our taxes, we have every confidence that electricity sales are going to go up in the future. We are going to find new uses for electricity, whether it be plugging in hybrid vehicles or any number of other things. As our sales increase, so will the tax revenue from those sales. We think there

may be a temporary slowdown in the rate of our growth of tax revenue, but in fact our tax revenue will continue to grow. But if at any point, it is unfair in relation to other taxpayers, the formulas can be adjusted.

Chairman Belter: Harlan, on the bottom of page 6, where you go over the \$1.3 million in annual tax, you said one third of that goes to the counties. Have the political subdivisions that have attended the Senate hearings, were they comfortable with the provisions there?

Harlan Fuglesten: They were in attendance at the hearing; they took no position against this. We have been in contact with the Association of Counties on many occasions over the past year and previous years to explain our dilemma and our situation. So far as I know, they have no opposition to our plan.

Representative Pinkerton: On page 5 on both your notes and on the bill, in section 57-33.2-02, it talks about the transmission taxes and on also on your notes on page 5, that we have the rate per mile of line. So you increase it according to the size it looks like; you actually increase it a 50 volt line is 4 times the volt of a 200 volt line. How much more than 300 kilovolts do your lines go?

Harlan Fuglesten: The largest line we currently have in ND is 400 kilovolts.

Representative Pinkerton: Is there a difference between your AC and your DC lines?

Harlan Fuglesten: There is a difference in an AC line and a DC line in terms of how they are operated and their carrying capacity. An alternating line can be tapped into much more easily than can a direct current line. A direct current line is generally associated with a large generation facility and a point to point transmission of that power

Representative Pinkerton: So a 300 kilovolt DC line would carry the same amount of energy as a 300 AC line?

Harlan Fuglesten: The same size line, a DC line would carry more power. Mr. Chairman, that is correct. It would carry more power, but that does not necessarily imply that it is a more valuable line. It is a different line for different purposes.

Representative Pinkerton: So if you had a 300 AC line and a 300 DC line, how much more energy would the 300 DC line carry? Is it like twice as much?

Harlan Fuglesten: I had better not say; it is a difference. It is considerably more, but I don't know the exact amount of kilowatts that are...

Representative Pinkerton: I wonder if someone else in the room could answer that question for us.

Representative Drovda: When Mr. Christianson was in front of us a few minutes ago, he mentioned that to him the current taxes are actually going up. Could you explain, is that part of the transmission taxes? Why are his taxes going up? So we can understand it.

Harlan Fuglesten: Really the only asset in ND that Great River Energy owns which is subject to this tax bill is their 400 KV line that runs from the Cold Creek Station to Minnesota. That line is presently taxed at the rate of \$225 a mile. Under our plan, it would be taxed at \$600 a mile so it is an increase of more than 100%.

Representative Drovda: His line serves only Minnesota taxpayers, doesn't it?

Harlan Fuglesten: That is absolutely correct.

Representative Drovda: That is fine; I like that.

Representative Schmidt: In your testimony, you put Grafton and Valley City in there. Can we add Maddock?

Harlan Fuglesten: You can add Maddock absolutely, all 16 municipal utilities.

Representative Schmidt: Is that defined in the bill?

Harlan Fuglesten: Yes, in the definition of companies. (35:02)

Representative Brandenburg: If I can just answer Representative Pinkerton's question dealing with an AC and DC line. If you take a 345 DC line and you send 1000 megawatts of power from out here at the coal plant all the way to Minneapolis, you have 1000 megawatts of power from point a to point b. If you deal with an alternating current line and send 1000 megawatts down that line on a 345, you are going to lose 10% of that power every 100 miles. That is why you are able to have line loss and that might be the question. That is the difference in the line. With that AC line, you lose power, but it is easier to hook up. DC you have all your power there, but you need a big converter to convert it from AC to DC and then get it back from DC to AC and that is the difference. It is the same kind of power. You are transmitting power, but you have different capacities. (36:03)

Representative Pinkerton: There are some costs because you have to have converters at both ends, don't you or at least at one end?

Representative Brandenburg: Somewhere along the line you have to have another converter and they are very expensive. A DC line has its purpose and an AC line has its purpose.

Representative Pinkerton: But if we are taxing on the numbers of electricity that goes through those lines, on the number of electrons we are pushing through, should there be some difference on the tax between an AC line and a DC line?

Representative Brandenburg: I just think it is all part of the same system. We will visit about it later.

Chairman Belter: Further testimony in support of 2297?

Scott Handy, CEO, Cass County Electric Cooperative, Kindred: (Testimony 2) (37:27)

(Scott Handy also handed out testimony of Robert Huether).

Robert Huether, Chairman, Minnkota Power Cooperative, Inc. Grand Forks: (Testimony 3)

Thomas L. Meland, General Manger, Central Power Electric Cooperative, Inc. Minot: (Testimony 4) (40:50-46:27)

Curtis Jabs, Basin Electric Power Cooperative: (Testimony 5) (46:35-49:45)

Representative Pinkerton: Not that it is in my district, but I think that South Prairie School District would be the recipient of the enormous windfall from Ward County that would have a bond issue out for a building probably based on those property taxes.

Curtis Jabs: We did meet with that school district two or three years ago. We told them at that time that this is the way the gross receipts taxes is allocated; however, it could change if Basin Electric owned more wind towers in a different county, their taxes would go down. We did meet with the school board and told them the potential that the tax could be changed and the way things are taxed so we did make them aware of that.

Representative Pinkerton: But have you met with them since this bill was introduced?

Curtis Jabs: No, I know that Bruce Carlson at Verendrye has talked with them because they are a member of his; I believe he has, but I am not sure. I could find out.

Representative Brandenburg: Could you go to another county (inaudible); the tax is going to change for everybody in the state so those two towers it is going to affect, but any future building is not going to change because one county or another county, it is all going to be equal. It will only affect those two towers (inaudible).

Curtis Jabs: That is correct; it will affect those two.

Submitted testimony:

Jay Jacobson, Dakota Valley Electric Cooperative: (Testimony 6)

George Berg, Nodak Electric Cooperative: (Testimony 7)

Bruce R. Carlson, Verendrye Electric Cooperative: (Testimony 8)

Chairman Belter: Any further testimony in support of SB 2297? If not, is there any opposition to SB 2297? Any neutral testimony? Any questions of the Tax Department? If not, we will close the hearing on SB 2297.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2297**

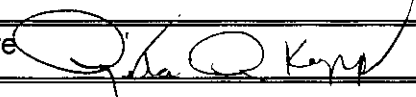
House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: March 10, 2009

Recorder Job Number: 10637 (Also has SB 2035 on it)

Committee Clerk Signature



Minutes:

Chairman Belter:

Representative Weiler: Mr. Chairman, are we back in?

Chairman Belter: We are back in.

Representative Weiler: I just want to go on record as stating my extreme displeasure with the fiscal note on 2297. I have never seen before a fiscal note that comes to us with an individual's name on it that is in support of the bill. The fiscal note has information from that person. It says that there is not enough information and they do not have enough information upon which to base the fiscal impact of this bill. However, and it goes on to state the gentleman's name. I just have never seen a fiscal note with an oil bill on it where they can't determine it and it has Ron Ness on the fiscal note. I have never seen a fiscal note that benefits the Association of Counties that has Mark Johnson's name on it and I just want to go on record as stating that I am extremely disappointed in the fiscal note. Thank you, Mr. Chairman.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2297**

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: March 17, 2009

Recorder Job Number: 11134 (Recording also contains 4022)

Committee Clerk Signature

Minutes:

Chairman Belter: Let's look at SB 2297. We have a motion for a "do pass" from Representative Wrangham and a second from Representative Brandenburg. Is there any discussion?

Representative Weiler: I wasn't here for the majority of this hearing, but I was here long enough to realize that there could be a rate increase for the citizens if I am not mistaken in this. It was a \$1.75 million reduction to county revenue which is another increase that I am not in favor of. Could I maybe just get a little information on the \$2 and \$2.50 per kilowatt rate increase; could I just get a little more information? It increases the tax rate from \$2.00 to \$2.50 per kilowatt.

Chairman Belter: Well what the bill does is take it from the bill's charge on the kilowatts...

Representative Wrangham: It takes it from the 2% gross revenue tax and changes it to a kilowatt charge but it also....

Representative Weiler: But, Mr. Chairman, the benefit is to whom? Who is benefitting from the passage of this bill?

Chairman Belter: Well I would say the customer is going to.

Representative Weiler: The customer is going to benefit from this so the rural electric cooperatives are actually going to be hurt from this?

Chairman Belter: If you don't pass the bill, because you have taxes now on gross receipts so all indications are that utility rates are going to go up and as the utility rates go up, consequently the tax that the RECs pay is going to have to go up. Of course that tax is going to get passed along to the customer.

Representative Brandenburg: This has always been kind of an issue dealing with the gross receipts tax paid on generation and also on distribution. This would put everything on a fairer playing field for everybody dealing with how we pay taxes, how we pay property tax versus gross receipts tax on generation and distribution. So when you are talking fiscal note, there is actually not a fiscal note; less property tax is paid by changing from gross receipts tax on generation and distribution for paying property tax on kilowatt hours so everybody is on the same playing field dealing with the way their electricity is taxed in the state. Because of the higher cost of generation; generation costs are going higher and higher, you can see that their cost is going higher and higher and their gross receipts tax is going to go down to the customer, which is going to make a higher cost to the person paying the bill. So if we change to the kilowatt hour, this would be a fairer way to pay the tax. Megawatt to megawatt-- everybody would pay the same comparing IOUs and the RECs; everybody is paying the same. I was a member of an electrical competition committee at one time, and it has always been a contentious issue in the legislature. Coops and IOUs will be taxed on the same basis. Now we will be paying property tax the same way; megawatt to megawatt, power to power would be the same cost. The reason it has a fiscal note, the difference is what would happen if it stayed the same and the cost of power keeps going up. You are going to have an impact of

difference of cost of power today; but if you don't switch, it is going to be more of an impact in the future.

Vice Chairman Drovdal: Maybe Representative Brandenburg can answer this question. In the fiscal note it talks about the increase in tax rate from 2 to 2.5 per kilowatt and it said that it is for wind, electric, electrical and generating facilities only. It goes on to say there is no indication that the wind facilities will be opting in on this. What do they mean by opting in on this? Would you explain that part of it?

Representative Brandenburg: Mr. Chairman, I have seen it too and I have to look at it too. What page is that on?

Representative Drovdal: It is on the fiscal note.

Chairman Belter: Harlan, would you want to address this?

Harlan Fuglesten, ND Association of RECs: When we introduced the bill, part of the bill involved a new tax or a different tax on the wind energy facilities owned by coops or if others opted into the plan owned by an investor owned utility company. As we introduced the bill, we had a two-part formula, half of the tax would be raised based upon the nameplate rated capacity of the wind farm and the other half on the actual production in kilowatt hours of the energy. Our original bill had \$2 per kilowatt on the capacity tax so for example, a 100 megawatt wind farm would have 100,000 kilowatts and a \$2 tax would raise \$200,000. We decided that it was probably better for us to move that up a little bit to \$2.50. That puts us almost exactly identical with the equivalent tax in Minnesota which is an all production tax. If we looked at it in comparison to our two-part tax and assumed a 40% capacity factor, our tax would be equivalent to \$1.21 per megawatt hour; theirs is \$1.20 per megawatt hour so it is almost identical. We felt that was a fair thing to do; it provides for a little more revenue for the counties and for the political subdivisions and so we actually asked for that change in the bill,

which I think then got mentioned in the fiscal note, a rather modest change actually to the bill but one that is positive for counties and political subdivisions that get a wind farm.

Vice Chairman Drovdal: What I don't understand is this opting in for these other wind farms because we don't usually give them a choice about whether to pay tax or not; we just tax them.

Harlan Fuglesten: The opt in provision is put in there because for many years, as you know, the Electric Industry Competition Committee looked for a way to create a comprehensive system that applied to all utilities. We aren't quite there yet. One of the problems has been that as our gross receipts taxes have gone up due to rate increases and volume increases, our tax rates have been actually rising faster than other utilities. It isn't advantageous at this point for those other utilities to get onto this tax plan, particularly when there is property tax relief in other avenues this legislative session. We designed the bill to be mandatory for electric cooperatives and to give a four-year opt-in period for the investor-owned utilities, which would include developers of wind farms, to opt in to the same formula. We want it understood that we are not trying to create a system that makes a permanent tax credit, but one that is fair and can be applied across the board. We hope that in the next few years, as we prove the merits of this plan, that we can work towards getting everyone taxed exactly the same.

Representative Weiler: My apologies to the rural electric cooperatives, by beneficial you mean you will be paying less tax than you are now.

Harlan Fuglesten: Yes, it is true that it would put in something equivalent to a 20% tax reduction similar to what is provided to other taxpayers on SB 2199, but it does more than that. It creates some rationality in some areas which don't exist today and eliminates the concern going forward that we are under a gross receipts tax as Representative Brandenburg said, both with respect to part of our generation, as well as our distribution facilities. We know that we are going to be seeing very substantial rate increases in the future due to environmental

regulations, climate change issues, cost of power, building new capacity and so, yes, there is some tax benefit which does go to the consumers.

Representative Weiler: Thank you for that. I am certainly not opposed to anybody paying fewer taxes, but is the \$1.75 million revenue to counties, is that the less tax that you are going to pay. Is that what that number reflects?

Harlan Fuglesten: That is the tax number; that is the difference we are talking about. We are basically not changing a lot of our taxes, particularly the \$17 million we pay in coal conversion taxes, the land taxes that we pay that are on an assessed basis. We are primarily changing out of the 2% gross receipts taxes and the high voltage transmission taxes that we currently pay and we are creating a different system designed to tax that transmission and distribution property as well as non-coal generation property.

Representative Pinkerton: I think maybe to clarify for my mind and Representative Weiler's questions, one is that you believe that your rates will go up faster than what property taxes will and so you would like to switch from a tax basis based on percentage of electrical cost more to a property tax mode. Two is that you are going to transfer some of the revenue that currently counties are receiving to end users. If someone is in the surrounding area of a town and there are currently served by rural electrics, that area will see increased benefit where areas that are out in the country where your transmission lines will see a decreased benefit. Is that correct also?

Harlan Fuglesten: As to your last point, yes, there is another change that this bill would implement and that is a change to the distribution or allocation formula of the distribution tax, which is currently done 100% on the basis of line miles, which tends to benefit particularly remote areas where there is little load but lots of miles of line between loads. Under this plan, which we think is just fundamentally fairer, we would do 50% of the distribution based on the

current system of line miles and 50% on the basis of where the sales occur. That will tend to have a more beneficial benefit on those areas where there is more density of load and sales and hence, more property and more value to the property. That is another shift in this. As to your first point, we are still dealing with in lieu property tax formulas. The current formula is based on gross receipts and that gross receipts formula means increased taxes when we sell more or when we raise our rates. Under the plan criteria, it will be based on volume sales which still means that as we sell more, we will be paying more in taxes but we don't automatically get a 10% property tax increase every time we have a 10% rate increase.

Representative Pinkerton: The point would be that the dc line would service exclusively Minnesota customers; it has no point that comes off that. The rates are going up; they are probably not going up as much as the volume of electricity carried through. The intent might be to revisit that in the future and to see if that seems unfair to ND consumers and that rate might be changed.

Harlan Fuglesten: This bill does provide actually a rate of increase in transmission lines that are higher than under current law and substantially higher for example for the Great River Energy line, where they will see their taxes would more than double under this plan. I think from that standpoint, we have done a great deal with respect to the tax on that. I don't know that we could go further than that at this point. But under current law a new high-voltage transmission line pays \$300 per mile per line; under our bill a 400 kilovolt line (a 300 and above kilovolt line) will pay \$600 per mile.

Representative Pinkerton: I would hope the intent of the hearing would read for the record though would be that it would be revisited in the future if that seems to be. There is quite a bit in the news right now about how downstream states (that are downstream in coal) (there was

something in USA Today in yesterday's edition about that) that are receiving the benefits of electrical production should be contributing more to the costs of it.

Harlan Fuglesten: I think I said this before to the committee, but one of the benefits of having these kinds of formulas is that they are very transparent and as circumstances change or a perceived unfairness occurs, one can go back and revisit them and look at whether the formulas still are fair.

Representative Wrangham: This bill comes to us after many, many years of hard, hard work and we can get into the numbers, we get into the numbers like this with the rural electric cooperatives whose gross receipts taxes went up in 2006 by 17%, in 2007 it went up 26%, and in 2008 it went up by 42%, much faster than anybody else's rates. I would like to address what does this do for the common person, what does this do for everybody when we hear all these numbers? It is a fairness thing. It is a fairness tax shift. Up until this point in time, I as a rural electric consumer have been taxed in lieu of property taxes by a 2% gross revenue tax. I have used 1100 kilowatts; I have paid \$70. A year from now when I am still using 1100 kilowatts and power is starting to cost each of us \$100, I have continued to pay more in property taxes. (18:40)... I hope not, but my rate is probably going to be \$100. If we don't change this, I will be paying tax even though I am still using the same rural electricity system and the same benefit that it had, I will be paying much more in tax because it is currently based on a gross revenue sales tax formula. No other electric suppliers are taxed that way on gross revenues tax so this makes it fairer. Plus the distribution, up until now, the distribution system has probably been just as unfair with the way the money is distributed to the political subdivisions as this tax has been, cost prices have gone up (19:29). So this addresses it. To get it perfect, I am not sure. Harlan, you did a lot of work; I am sure you would like things

perfect. Nothing ever is, but we have made great strides toward redistributing the revenues that are collected in a better way. This is just a commonsense win-win bill for the consumer.

Representative Headland: I think in a prior conversation you and I had, did you tell me that this bill if passed would reduce your taxes so they would be similar to the IOUs?

Harlan Fuglesten: It certainly keeps the gap from getting any higher than it currently is. By our estimates, if we were to compare investor-owned utility average property tax with co-op average taxes on an in lieu basis on the same measure such as kilowatt hour sales, we are paying about 35% more currently on our transmission and distribution system than investor-owned utilities. I say that not to make any issue with the investor-owned utilities, but simply to show what has happened as a consequence of the increase in our gross receipts taxes over time at a more rapid rate than other forms of property taxes. By taking this, by putting these formulas at the level they are in currently, we won't widen that gap any further. I don't know that we will actually narrow it, but we certainly won't make it any wider than it currently is.

Representative Headland: What I am trying to get at is if property tax relief passes, the IOUs will benefit from that. There is kind of built-in property tax relief for you in this bill. I guess I am wondering if the state cannot sustain property tax relief, the IOUs will lose their portion that they are getting relieved. At that time, I don't think there is any language in here that will increase your taxes to reflect the relief that is built in it. I am wondering if at that point, are you on a more level playing field with the IOUs still that would give them the incentive to want to opt in to this package?

Harlan Fuglesten: I think that is exactly what could happen if there is no future tax relief in two years. There would be greater incentives for the IOUs to look at this and consider opting in. We think there are some administrative and other advantages to opting in that may even overcome the fact that they might be paying slightly less even in two years, but that is our hope

that at some point the circumstances will be such that investor-owned utilities would want to look at this tax plan and move forward. Again if we are looking down the road at issues of fairness, these tax rates can change as the legislature determines to the levels they feel are appropriate and fair. That is particularly so if we can bring everybody onto the same tax system.

Chairman Belter: Are there any other questions? Committee members, what are your wishes on 2297?

Vice Chairman Drovdal: We have a "do pass" before us.

Chairman Belter: Will the clerk read the roll for a "**do pass as amended**" on **SB 2297**. **(A roll call vote resulted in 10 ayes, 1 nay, 2 not voting. Representative Wrangham will carry the bill.)**

(I had such a difficult time hearing this recording that I contacted Harlan Fuglesten and Representative Brandenburg to clarify portions of their testimony. Rita, committee clerk)

Date: March 17, 2009

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2297

House FINANCE AND TAXATION Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Wrangham Seconded By Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	/		Representative Froelich		
Vice Chairman David Drovdal	/		Representative Kelsh	/	
Representative Brandenburg	/		Representative Pinkerton	/	
Representative Froseth	/		Representative Schmidt	/	
Representative Grande			Representative Winrich	/	
Representative Headland	/				
Representative Weiler		/			
Representative Wrangham	/				

Total (Yes) 10 No 1

Absent 2 (Froelich + Grande)

Floor Assignment Representative Wrangham

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

REPORT OF STANDING COMMITTEE

SB 2297, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman)
recommends **DO PASS** (10 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING).
Engrossed SB 2297 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SB 2297

#1

SB 2297

Testimony of Harlan Fuglesten
North Dakota Association of Rural Electric Cooperatives
Before the Senate Finance and Tax Committee
Jan. 28, 2009

Mr. Chairman and members of the committee, my name is Harlan Fuglesten with the North Dakota Association of Rural Electric Cooperatives. I am here today to explain and support SB 2297. In my prepared remarks, I will outline the plan. I will then briefly review the bill section by section to answer questions and cover other details of the bill.

This legislation is the top priority of our Association. Our members include the five generation and transmission cooperatives operating in North Dakota and our state's 16 local distribution cooperatives. Together, our cooperatives largely built the lignite generation industry in North Dakota and electrified every corner of the state. Today, our G&Ts account for nearly 90% of the investment in our coal generation industry, they are leaders in wind development, and they operate much of the state's transmission system. More than one-third of our state's citizens are member-owners of our state's distribution cooperatives that supply about 45% of the retail electricity sold in North Dakota.

Together, our electric cooperatives are among the largest property taxpayers in the state. This fact often goes unrecognized, however, because most of the property taxes we pay are formula-based, in lieu property taxes. These include the coal conversion tax on our coal plants (\$17,112,000), a transmission line tax on our high voltage transmission lines (\$415,000), and a 2% gross receipts tax that applies to other co-op-owned generation, transmission and distribution assets (\$7,809,000). In addition, our co-ops pay a locally assessed property tax on

land owned for utility purposes (\$600,000 est.). Altogether, these various property taxes produce annual property tax revenues of more than \$25 million.

SB 2297, however, only deals with a portion of that total. This is because the plan does not change the coal conversion tax. It also retains local assessment of co-op owned land used for utility purposes.

The bill sets forth a new plan under which all electric cooperative property would be taxed, and offers the same tax system on a voluntary basis for those utilities taxed partially or completely under the central assessment method. This bill does not affect municipally-owned distribution systems that operate in communities such as Valley City and Grafton.

SB 2297 focuses on three areas; non-coal generation taxes, transmission taxes, and distribution taxes. These taxes currently account for more than \$8 million in taxes paid by electric co-ops, mostly from the 2% gross receipts taxes. This \$8 million is equivalent to more than 1% of the total of all property taxes paid in the State of North Dakota.

Fiscal Impact

Before explaining SB 2297 in some detail, I want to comment on the fiscal impact of placing the co-ops under this new tax system. Attachment 1 to my testimony is a spreadsheet that compares the taxes paid under current law for the 2008 tax year with what would be paid under SB 2297 formulas. Please note that 2008 taxes are payable in 2009 and are based on 2007 sales data.

This tax plan would first apply to the 2010 tax year, with the new taxes payable in 2011. Thus, this bill would impact only one year of the next biennium.

We estimate the tax plan will result in about a 20% reduction in overall tax revenue, or about one and three quarter million dollars. Let me put this figure in context. If you look at Attachment 2 to my testimony, you will see that co-op gross receipts taxes have increased by 42.5% in the last five years. Co-op gross receipts taxes jumped by nearly \$900,000 just between 2007 and 2008. This plan scales back co-op tax liability to about the level it was in 2005.

The revenue reduction proposed in this bill is influenced to some extent by the likelihood that most property taxpayers, including centrally assessed taxpayers such as the IOUs, may see a 20% reduction in their tax liability this session. We think property tax relief is appropriate and necessary. But, even without considering the impact of property tax relief this session, co-ops on average pay one third more than IOUs on their in-state transmission/distribution systems when compared on a common measure such as kilowatt hour sales. Thus, building some tax relief into this proposal really just keeps the co-op property tax gap from further widening.

I will address another possible fiscal impact later when I describe wind taxes. But, now I would like to turn to the details of the tax plan.

Bill Explanation

Distribution Taxes:

The biggest change in this bill relates to how our distribution co-ops pay property taxes. This bill eliminates the 2% gross receipts tax and replaces it with a tax based upon a formula of \$1/megawatt hour of retail sales. Since some distribution co-ops also own transmission lines, they would also pay a line mile tax which I will discuss shortly. As you will note from the last column of Attachment 1, distribution co-ops will realize an average savings of about 19%,

although one co-op will see a tax increase and another will see a nearly 50% decrease. The differences relate to the current pricing of electricity. Co-ops with large commercial and industrial customers with high load factors have lower average rates than co-ops with less volume serving mainly farm and residential customers. The lower-rate co-ops initially benefit less than the higher-rate co-ops from the change from a revenue tax to a tax on kilowatt hour sales. All of our co-ops recognize, however, that in the future each kilowatt hour will be priced higher than it is today, so all of our co-ops believe this is a necessary and reasonable change to make.

There is another change that applies to the distribution tax and relates to fairness. Currently, the gross receipts taxes paid by our distribution co-ops are allocated to local taxing districts 100% on the basis of where the miles of line are located. This has a tendency to benefit the most remote and rural areas of our co-op systems with few customers and lots of miles of line. We believe that the legislature should adopt a new allocation system that recognizes the importance of our network of facilities, but also recognizes that greater electric system plant value resides in areas with more customers and higher sales. Therefore, SB 2297 proposes that 50% of the revenue from the new distribution tax be allocated by miles of distribution line and 50% be distributed in accordance with where the sales occurred. Overall, this will tend to shift some revenue allocation from rural to urban and suburban areas. For some co-ops, this shift will be minor, but it may be more significant for some other co-ops. Regardless, we think it is the right thing to do.

Because our co-ops have sophisticated computer capabilities and mapping systems, they can provide detailed information on both line miles and sales in each taxing area for the Tax Department and the counties to allocate these taxes using both line miles and sales.

Before leaving the distribution tax, I want to note that the bill defines a retail sale so as not to include a sale to an existing coal conversion facility. This language is intended to address the situation at Dakota Gasification Company (DGC), which receives its power from the adjacent Antelope Valley Station (AVS), both of which are owned by Basin Electric. Together, these facilities pay over \$11.5 million annually in coal conversion taxes in lieu of property taxes. Under current law, electric sales from AVS to DGC are exempt from gross receipts taxes, so this definition recognizes this unique situation.

Transmission Taxes:

Under this bill, transmission facilities will be taxed on the basis of a graduated line mile tax related to voltage level. The taxes would be as follows:

<u>Operating Voltage</u>	<u>Rate</u>
Less than 50 kilovolts	\$ 50
50 – 99 kilovolts	100
100-199 kilovolts	200
200-299 kilovolts	400
300 or more kilovolts	600

To provide an incentive to build more needed transmission, transmission lines built after January 1, 2009 would have a first year property tax exemption, and then a declining exemption

of 75%, 50%, and 25% before being fully taxed in year five. This is similar to the tax incentive for the high voltage tax on new transmission lines for both co-ops and investor-owned utilities.

Currently, co-ops pay a line mile tax of \$225/mile for lines of 230 kilovolts or larger. The tax for new lines is \$300 but the four-year declining exemption applies to these lines. In addition, our G&T co-ops also pay gross receipts taxes on their lower voltage transmission system. These gross receipts taxes, however, are not closely related to the value of these transmission lines. Instead, the gross receipts taxes they pay are determined mostly by wholesale sales of electricity from facilities other than power plants subject to the coal conversion tax. This is because revenue received from sales from power plants subject to the coal conversion tax is exempt from the gross receipts tax. This exemption, however, does not apply to market power purchased for resale. It is this revenue from power purchased for resale that largely accounts for the gross receipts taxes paid by co-ops like Minnkota Power. Thus, as energy markets change and our generation co-ops buy more market power for resale, their gross receipts taxes increase without regard to whether they have built more facilities. If you look at Attachment 2 to my testimony, you will see that Minnkota's gross receipts taxes fluctuate, but they are \$160,000 higher than just two years ago. Basin's gross receipts tax liability has increased by about 175% in the last five years, or an increase of about \$435,000.

We believe SB 2297 provides a much more stable, fair and logical transmission tax system than the present combination of gross receipts and high voltage transmission line taxes. The new transmission line taxes would raise about \$1.3 million annually. One third of this amount would go directly to the counties. This would replace the \$415,000 in revenue that currently goes to county general funds from the co-op high voltage transmission line tax

payments. The remainder would be split among the taxing districts where the lines are located in proportion to their respective most recent property tax mill rates.

Generation Taxes:

As noted previously, this plan does not change the coal conversion tax, which is an in lieu property tax that has formulas to tax both the capacity and production of coal plants. We took this concept and applied it to a new tax on wind generation and another generation tax covering all other non-coal or wind facilities.

Wind tax: The wind tax in SB 2297 is \$2/kilowatt of rated capacity and one half of one mill per kilowatt hour (\$.50/megawatt hour) of production. The tax would cover not only the wind turbines but the collector system as well.

We arrived at the wind tax formula in two ways. First, we considered that the tax should be competitive with other states such as Minnesota, which taxes its wind farms at a rate of \$1.20/megawatt hour. Assuming an average capacity factor of 40%, our combined production/capacity tax computes to \$1.07/megawatt hour. Second, again using a 40% capacity factor, we compared the taxes actually paid by four wind farms in operation in 2007 to what they would pay under this proposed wind tax. Attachment 3 summarizes this information and shows that overall our formula tax produced almost identically the same revenue. Unlike an assessed tax, however, which tends to decline in value over time due to depreciation, a formula tax should continue to produce revenue at the same rate in the future, provided the facilities are maintained.

It's been suggested to us that for new wind farms being built now at higher costs, our formula may not equal what taxing districts would receive under the assessment method. If this

is so, it is not our intent to shortchange anyone. We are open to considering any additional data that might bear on whether the wind tax formula should be adjusted upward to better reflect what assessed wind farms pay, on a present value basis, over a 20 or 25 year period.

For co-ops, the wind tax would only apply to four turbines with a combined capacity of 4.4 megawatts. As such, this tax is presently very small.

Under this bill, generation taxes would be allocated to the taxing districts where the wind farm is located on a basis proportionate to their mill levies.

Other generation tax: With the exception of some standby diesel generators, the co-ops do not own any generation in North Dakota that is not generated from wind or coal. To have a complete plan, however, we needed a tax for any other generation that might be built in the future. Because we don't know whether such generation would be base load, peaking or intermediate, we decided that we should not place a heavy reliance on the capacity tax, but should put greater weight on the production tax. Therefore, we set this tax at \$.50/kilowatt of capacity and \$1.00/megawatt^{hour} of production.

This other generation tax would also be allocated to the taxing districts where the generation is located on a basis proportionate to their mill levies.

Conclusion

SB 2297 is the product of more than 10 years of study of the state's electric utility industry tax system. The legislation has been reviewed extensively by our members and others. This legislation establishes formulas that we believe are logical and fair. We respectfully request a DO PASS recommendation from the committee.

REC Tax Reform Proposal
 (Without real estate tax replacement)
 (Based on 2008 tax year)
 Transmission Tax (\$50-600)

	MWH Sales	Dist/Trans	1.00	New	New	Proposed		%
	2007	Current tax	Based on	Trans	Gen	Tax	Change	Change
		2008	1.00	Tax	Tax	Total		
Distribution Co-ops:								
Burke Divide	62,009	\$99,747	\$62,009	\$4,860		\$66,869	(\$32,878)	-33%
Capital	246,690	371,450	246,690	8,305		254,995	(116,455)	-31%
Cass	865,029	1,175,687	865,029			865,029	(310,658)	-26%
Cavalier	33,218	65,348	33,218			33,218	(32,130)	-49%
Dakota Valley	431,445	452,504	431,445			431,445	(21,059)	-5%
KEM	63,076	103,186	63,076	6,075		69,151	(34,035)	-33%
McKenzie	298,529	383,922	298,529	16,555		315,084	(68,838)	-18%
McLean	88,853	120,939	88,853			88,853	(32,086)	-27%
Mor-Gran-Sou	145,555	252,737	145,555	30,870		176,425	(76,312)	-30%
Mountrail - Williams	270,369	331,518	270,369	8,260		278,629	(52,889)	-16%
Nodak	807,038	909,082	807,038			807,038	(102,044)	-11%
North Central	195,124	267,013	195,124			195,124	(71,889)	-27%
Northern Plains	320,538	417,510	320,538			320,538	(96,972)	-23%
Roughrider	448,247	534,472	448,247	24,905		473,152	(61,320)	-11%
Slope	406,455	407,838	406,455	9,305		415,760	7,922	2%
Verendrye	391,816	460,801	391,816			391,816	(68,985)	-15%
Other	44,000	70,787	44,000	2,000		46,000	(24,787)	-35%
Subtotal	5,117,991	6,424,542	5,117,991	111,135	-	5,229,126	(1,195,416)	-19%
G & T Co-ops:								
Basin		849,021 (1)		413,480	9,755 *	423,235	(425,786)	-50%
Minnkota		567,060 (1)		312,195	24,835 **	337,030	(230,030)	-41%
Square Butte		53,318 (2)		94,800		94,800	41,482	78%
Great River Energy		122,643 (2)		271,040		271,040	148,397	121%
Central		159,740 (3)		92,730		92,730	(67,010)	-42%
Upper Mo.		48,243 (3)		23,730		23,730	(24,513)	-51%
Subtotal	-	1,800,025	-	1,207,975	34,590	1,242,565	(557,460)	-31%
Grand Total	5,117,991	\$ 8,224,567	\$ 5,117,991	\$ 1,319,110	\$ 34,590	\$ 6,471,691	\$ (1,752,876)	-21%

* 2.6 MW - wind at 40% production

** 1.8 MW - wind at 40% production and 33.25 MW standby diesel at .5% production

(1) Gross receipts and transmission line tax

(2) Transmission line tax only

(3) Gross receipts tax only

**Rural Electric Cooperatives Gross Receipt Taxes
2003 - 2008**

*Same
attachment
given to
House.*

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Distribution Co-ops:						
Burke-Divide	\$ 86,056	\$ 84,881	\$ 85,380	\$ 90,787	\$ 88,906	\$ 99,747
Capital	260,824	273,397	283,489	303,180	348,868	371,450
Cass	760,040	811,552	882,677	972,420	1,051,722	1,175,687
Cavalier	53,568	52,153	58,110	57,670	56,884	65,348
Dakota Valley	389,363	390,302	412,400	414,188	435,834	452,504
KEM	97,458	97,345	98,536	99,670	102,444	103,186
McKenzie	313,507	291,785	331,442	339,639	357,532	383,922
McLean	79,522	75,875	81,049	83,141	86,166	120,939
Mor-Gran-Sou	177,278	178,249	186,166	197,144	223,146	252,737
Mountrail-Williams	227,241	220,535	250,444	251,383	296,708	331,518
Nodak	692,983	700,431	751,848	780,596	808,752	909,082
North Central	230,841	235,702	252,032	255,918	255,924	417,510
Northern Plains	379,782	362,540	396,295	402,433	392,192	267,013
Roughrider	449,446	437,010	456,195	468,048	489,942	534,472
Slope	110,570	197,982	264,935	274,592	307,862	407,838
Verendrye	362,070	372,280	396,357	417,230	432,726	460,801
Border co-ops	54,856	52,768	53,531	55,574	61,916	70,787
Subtotal	<u>4,725,405</u>	<u>4,834,786</u>	<u>5,240,885</u>	<u>5,463,614</u>	<u>5,797,522</u>	<u>6,424,542</u>
G&T Co-ops:						
Basin	249,611	260,553	329,015	420,931	524,792	683,956
Central Power	171,075	171,289	153,335	167,209	145,651	159,740
Minnkota Power	281,225	419,246	367,185	333,152	423,281	492,956
Upper Missouri G&T	52,847	51,638	55,281	52,986	44,427	48,243
Subtotal	<u>754,758</u>	<u>902,724</u>	<u>904,815</u>	<u>974,277</u>	<u>1,138,150</u>	<u>1,384,895</u>
Grand Total	<u>\$ 5,480,163</u>	<u>\$ 5,737,511</u>	<u>\$ 6,145,700</u>	<u>\$ 6,437,891</u>	<u>\$ 6,935,672</u>	<u>\$ 7,809,437</u>
% Increase/Year		4.7%	7.1%	4.8%	7.7%	12.6%
Cumulative Increase		4.7%	12.1%	17.5%	26.6%	42.5%

Attachment #3

Comparison of 2007 Wind Taxes with Proposed Wind Taxes
Proposed tax is \$2/kW and \$.0005/kWh
Based on 40% Capacity Factor

Wind Farm	Size (mWs)	2007 Tax	Proposed Tax
Velva	12.0	\$ 68,135	\$ 45,024
Edgeley-Kulm	61.5	269,699	230,748
Wilton	49.5	141,533	185,724
Oliver County	50.6	175,491	189,851
Total	173.6	\$ 654,858	651,347

#2

Senate Bill 2297

Testimony Presented to the Senate Finance and Taxation Committee
on Wednesday, January 28, 2009

My name is George Berg, and I am the President and CEO of Nodak Electric Cooperative headquartered in Grand Forks, ND. Nodak is a distribution cooperative serving roughly 16,000 locations in all or part of 10 counties in northeastern North Dakota. We are one of 11 distribution cooperatives that purchase all of our wholesale electric requirements from Minnkota Power Cooperative also headquartered in Grand Forks. I am here today asking you to cast a "do pass" vote on Senate Bill 2297. Among the many improvements incorporated into this tax plan are two, which are particularly important to a distribution cooperative like Nodak.

First, the proposed tax plan changes the computation of tax liability from being based on dollars of sales to being based on kilowatt hours of sales. We agree there is justification for our taxes to increase when we grow in sales, which generally requires additions to our utility plant; however, we disagree that a tax increase is warranted if and when we increase our retail rates. Rate increases can have little or nothing to do with adding new utility plant and more often are needed to cover increases in wholesale power cost and inflationary impacts on administrative and general expenses. For example, this month we implemented a retail rate increase, which will average about 9% for all rate classes, needed to offset a 13% increase in our wholesale power cost from Minnkota Power Cooperative. With no changes to the tax structure, our property taxes will increase as a result of the rate increase from \$920,000 this year to \$1,002,800 payable in 2010, plus another \$25,000 due to projected growth in kwh sales.

The second improvement with the proposed tax plan is that the property taxes would not be allocated to the counties and political subdivisions based solely upon miles of line. We don't disagree that the location of our plant is important, and do agree that plant location should be considered in the allocation of the tax revenue; however, it is not the only factor that should be considered. The proposed tax plan puts equal weight on where the sales are made when allocating the tax revenue. This makes sense because distribution lines which deliver large amounts of energy characteristically have more capacity, are generally three-phase lines, require more switching gear and protective equipment, and in fact, are much more expensive to build. The proposed tax plan is more equitable in that it recognizes this differential in plant value per mile of line in areas such as urban delivery or industrial delivery.

Nodak and our members have enjoyed a period of 20 years with very stable electric rates due at least somewhat to moderate growth in our service area. With that growth, we have invested in our utility plant and rightfully paid an increasing amount of property taxes every year. We wish we could project another 20 years of stable rates, but everyone who understands the electric utility business knows that is an unrealistic expectation. It is very important to our member rate payers that rate increases in the future do not carry an automatic increase in our property taxes.

For these reasons, I ask you to vote "do pass" on SB 2297.

#3

SB 2297

*Same
Given to
House*

**Testimony Submitted To the
Senate Finance and Tax Committee**

**Jay Jacobson, General Manager, Dakota Valley Electric Cooperative
January 28, 2009**

Mr. Chairman and members of the committee, my name is Jay Jacobson. I am the General Manager and Alliance Manager of Dakota Valley Electric Cooperative. Dakota Valley provides electric service to 4,400 member consumers with 6,400 accounts in all or parts of eight counties in the southeast corner of North Dakota. The owners of Dakota Valley – our member consumers – are farmers, ranchers, residential consumers, rural business owners, pipeline companies, and owners of large agriculture-related processing facilities.

I am here to testify in support of Senate Bill 2297.

Tax expense is a significant part of our annual budget, with the expense paid by our member consumers as a portion of their electric rates. In 2009, our 4,400 member consumers will pay through their electric rates approximately \$574,000 in accrued gross receipts taxes attributable to Dakota Valley's distribution sales. In addition, our member consumers will pay another \$63,800 as their share of gross receipts taxes passed along to us for lines owned by our transmission cooperative Central Power Electric Cooperative, as well as our share of taxes incurred and passed along by our power supply cooperative, Basin Electric, relating to coal conversion, wind generation, and the operation of high-voltage transmission lines.

Presently, the distribution gross receipts tax we pay is calculated as a percentage of our operating revenue. As our loads grow or as we increase our rates, our operating revenue increases. For many years we have benefited from stable rates, but in 2008 and again in 2009 we needed to raise our electric rates to address increases in the cost of generating power. These power cost increases – when we calculate them separately from any increase in load – will result in our consumer members paying approximately \$101,000 more in gross receipts taxes in 2009 when compared to taxes accrued in 2007.

Our average farm-residential consumer who has not added equipment to his farm, who has not increased his usage, and who has seen no change in the lines serving his account, will nevertheless pay through his rates approximately 9 percent more in taxes accrued in 2009 than what was accrued in 2007 due to the higher cost of generated power. An industrial consumer, with a greater proportion of costs associated with power, will have a larger tax increase. At this time, we anticipate increases in the cost of power generation each year for the next four years, bringing about additional tax increases each year which are not associated with improvements to our electrical system.

We believe that the proposed tax plan which calculates the tax amount based on actual energy sold – kilowatt-hours – rather than on dollars appropriately addresses this inequity. Under the proposed tax plan, our tax will increase as we add new load, generally reflective of the need to add new electrical facilities.

The proposed tax plan further serves to provide a more equitable distribution of tax revenues by allocating the tax based on both the location of the cooperative's distribution lines and the location of the sale. Dakota Valley serves a number of large industrial accounts. Under the present taxing arrangement, the tax revenue – including the revenue

associated with those large accounts – is distributed to the counties within our service area based upon the location of all our distribution lines. The proposed tax plan will appropriately allocate more of the tax revenue from the large industrial loads to the counties where those loads are located, better reflecting the greater cost of electrical equipment associated with large industrial service.

Dakota Valley Electric Cooperative respectfully urges your DO PASS recommendation on Senate Bill 2297. Thank you for your consideration.

#4

**Testimony in support of SB2297
Robert Huether, Chairman
Minnkota Power Cooperative Inc.
Grand Forks, ND**

*Same Given
to House*

**Before the North Dakota Senate's Finance and Taxation Committee
January 28, 2009**

Mr. Chairman and members of the Finance and Taxation Committee, my name is Bob Huether and I serve as chairman of the board of Minnkota Power Cooperative headquartered in Grand Forks, North Dakota. Thank you for this opportunity to appear in support of SB2297.

Minnkota Power supports the electric cooperative property tax revisions in this bill. These revisions place our industry's property taxation on a more rational basis than now exists. I'm no stranger to this issue, having served on the legislature's Electric Industry Competition Committee where we heard about this idea many times.

Three of the provisions in SB2297 are of particular interest to Minnkota. The first is the elimination of the gross receipts tax at the wholesale power level. Even though this tax has served as a surrogate for ad valorem taxes on certain of our transmission lines, the revenue generated by it bears little relationship to the value or usefulness of these lines. The amounts collected under the gross receipts tax in fact are determined by the energy purchased from others for resale and not by the use of the property being taxed.

The second provision of interest to us is the transmission line mile tax. The proposed line mile tax is a fairer and more rational approach to taxing transmission property because 1) it replaces the gross receipts tax for lines under 230,000 volts as I stated earlier; and 2) the tax is graduated according to line voltage, which makes sense both in terms of the value of the line and the impact to rights of way.

The third provision is for the taxation of wind farms. Minnkota currently owns two commercially-sized wind turbines in North Dakota (including the first in our state.) We also support the change in wind farm taxation because it aligns wind generation taxes with other generation in the state in that it is based on a split between nameplate capacity and energy production, which has more to do with the value of the property than does the original installation cost.

In summary, Minnkota Power supports SB2297 and we urge your DO PASS recommendation.

Senate Finance & Taxation Committee

By

Steve Tomac

Basin Electric Power Cooperative

January 28, 2009

Mr. Chairman and members of the Senate Finance & Taxation Committee, my name is Steve Tomac from Basin Electric Power Cooperative. Basin Electric is in support of SB 2297 for the following reasons:

1. The gross receipts tax is an outdated and inequitable method of computing an in lieu of property tax. Presently Basin Electric pays a gross receipts tax on all power purchased from out of state sources, and on the net revenue of power purchased from in-state wind generators. As our need for supplemental power sources have increased over the past years, the amount generated by the gross receipts tax has also increased. This has been further exacerbated by the increase in the cost of power. Furthermore the current tax has become disproportionate to the fair market value of the asset over the years. As Harlan has pointed out, the tax has increased disproportionately to the increase in the asset value. What was designed to be an in lieu of property tax has become inequitable.
2. The distribution of the tax is also at issue. Presently all of the gross receipts tax collected are allocated with 85% going to our non-coal generation and 15% to the location of the transmission lines under 230KV. Basin Electric only owns two wind towers south of Minot and this has been an enormous windfall for Ward County because they get 85% of the total gross receipts tax. The remaining 15% is distributed to the political subdivisions that are crossed by the approximately 80 miles of lower voltage

transmission line that Basin owns. Replacing the gross receipts tax and addressing the allocation of the tax remedy is overdue.

3. This bill brings all transmission lines under one form of taxation and increases the mile tax on transmission lines. The lower voltage transmission lines from 41.6KV to 230KV which are presently taxed under the gross receipts tax would now be taxed with a mile tax. The rates outlined on Page 5 of the bill raise the mile tax from \$250/mile to \$600/mile on those lines 300KV and above.
4. This bill will tax the two wind turbines owned by Basin Electric in Ward County differently. They will be taxed on capacity and production similar to way coal conversion facilities are presently taxed. Wind farms owned by non cooperative entities will have an option in this bill to be taxed in a different manner. Presently they are assessed and taxed based upon fair market value. This will give them an option to be taxed on capacity and production as well. This method levels the tax payments over the life of the wind farm and taxes all wind farms at the same level regardless of when they were put into service.
5. And finally, this bill provides an option for non cooperatives entities to change the method of taxation in which non-coal generators, like waste heat recovery stations, to be taxed on capacity and production. Presently these stations are assessed and taxed upon fair market value. This gives all non coal and wind generation the option of a modified conversion tax similar to the coal conversion tax.

He

Steve Tomac

From: Don Boehm
Sent: Tuesday, January 27, 2009 4:40 PM
To: Steve Tomac
Subject: Basin Electric Gross Receipts Tax

Steve,

Here are the numbers.

1999 Tax Year - \$ 99,656.73
2000 Tax Year - \$ 125,999.75
2001 Tax Year - \$ 238,828.33
2002 Tax Year - \$ 307,932.13
2003 Tax Year - \$ 249,611.01
2004 Tax Year - \$ 260,552.53
2005 Tax Year - \$ 329,014.86
2006 Tax Year - \$ 389,442.82
2007 Tax Year - \$ 524,791.67
2008 Tax Year - \$ 683,955.56

Donald J. Boehm
Multistate Tax Section
Basin Electric Power Cooperative
phone: 701-557-5312
701-557-5111
Email: djboehm@bepc.com

#17

**TESTIMONY OF BRUCE R. CARLSON
MANAGER OF VERENDRYE ELECTRIC COOPERATIVE
TO THE ND SENATE FINANCE AND TAXATION COMMITTEE
January 28, 2009**

Mr. Chairman and members of the committee, my name is Bruce Carlson, General Manager of Verendrye Electric Cooperative, headquartered in Velva, ND. Verendrye serves 11,400 meters in six counties over 4,400 miles of power line. I am here to speak in favor of SB 2297 and ask for your support of a new tax plan for distribution cooperatives based on KWH sales rather 2% of gross receipts for a number of reasons.

There is a \$350 million electric cooperative investment coming to our region of the state next summer. We are excited about the new 120 MW cooperative owned wind farm coming south of Minot along with the associated natural gas fired back up generation. Under Verendrye's present 2% gross receipts tax formula, we are penalized for this investment paying increased taxes as our rates pick up the debt service on new generation. It isn't right to penalize the cooperatives with more taxes just because we have had a wholesale power cost increase and therefore retail rate increase, resulting in more gross receipts. We feel it is much fairer to tax us based on actual kWh's of energy sold. As an example, major expenditures have already been paid out on this project without any generation expected until late 2009 or early 2010.

With the new Basin Electric Cooperative wind farm coming to Minot, we agree with the new formulas in the bill which encourages renewable energy development. The 4 year tax exemption for new transmission lines together with having wind farm taxes based on capacity and production only makes good sense. Verendrye Electric is optimistic for the future of renewable energy projects and therefore new tax revenue for North Dakota, with our service area having some of the best wind generation potential in the state.

SB 2297 also addresses a second concern of Verendrye Electric regarding the distribution of our gross receipts tax which is presently done based on where our power lines are located. We have a lot of power line in the rural areas that are not growing in kWh sales while it is just the

opposite in the Minot area. With a large percentage of our non military kWh sales now occurring in the City of Minot and the surrounding high density service area, this new bill distributes the tax money more fairly based half on where we have miles of power line and the other half on where the kWh's are sold.

This bill is positive since it recognizes the "up side" of potential kWh growth. Taxes will continue to increase as kWh sales continue to increase, especially in western North Dakota tied to oil development and the sale of electric heat. We hope the Bakken oil development continues to move east in Ward County with major investments of power line cable already in the ground in new housing developments and the new Minot Energy Park. Basing taxes on the old system of gross receipts and therefore rate increases due to debt service on new infrastructure, is not right when the investment is often done well in advance of energy sales. The best solution is to have taxes based on actual kWh sales. Verendrye Electric, as an example, has seen a 10% increase in demand for electricity this winter as compared to the past two years. This growth is an offset to any temporary fiscal concerns that you might have as legislators regarding SB 2297.

My final example of a need for change is tied to Verendrye Electric's transmission cooperative, Central Power, located in Minot. Because we have chosen to separate transmission and distribution functions to increase reliability and efficiency, there is an unfair pancaking of 2% gross receipts tax paid by the ultimate member on the end of the line. Not only do they pay 2% of all Verendrye's gross receipts, they are also paying 2% of Central Power's gross receipts less power costs as part of our monthly wholesale energy bill. This bill will solve that problem.

On behalf of Verendrye Electric Cooperative, I strongly urge the committee to support SB 2297 and recommend a do pass recommendation to the full Senate. Thank you!



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January 28, 2009

SB 2297
Senate Finance and Tax Committee

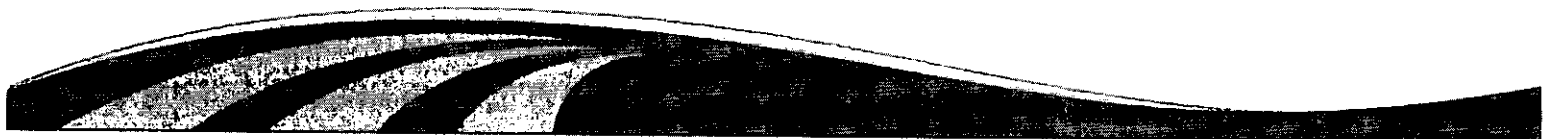
Chairman Cook and members of the Senate Finance and Tax Committee,

My name is Richard Schlosser; I am testifying on behalf of the members of NDFU. We support SB2297 understanding that it is basically a tax reform proposal that will replace the gross receipts tax on distribution cooperatives with a tax on kilowatt-hour sales of electricity. This change will eliminate the automatic and unfair tax increase whenever a rate increase is implemented even though the cooperative may not sell any more electricity.

Secondly, as we understand the bill, it establishes a new formula for allocating revenues to local taxing districts. In general, SB 2297 balances the interests of rural, low population density areas with many miles of line and low sales with the more densely populated urban areas with few miles of line but larger energy sales. As a general farm organization representing farmers and ranchers, NDFU recognizes the need for this balance in order to fund the maintenance of our rural infrastructure.

Finally, we view the declining four-year tax exemption as supportive of transmission. This provision will help the development of ND's energy development, especially the development of renewables. Because of its economic potential for our producers, North Dakota Farmers Union has long supported the development of renewable energy.

Mr. Chairman that concludes my testimony; I would answer any questions that the committee may have. Thank you.



#9

TESTIMONY OF THE OFFICE OF STATE TAX COMMISSIONER
BEFORE THE
SENATE FINANCE AND TAXATION COMMITTEE

SENATE BILL 2297

JANUARY 28, 2009

Chairman Cook, members of the Senate Finance and Taxation Committee, I am Marcy Dickerson, State Supervisor of Assessments and Director of the Property Tax Division for the Office of State Tax Commissioner, and I am here today to offer some comments on Senate Bill 2297.

BACKGROUND

For the last 10 or 12 years there has been an ongoing effort to change the way power companies' property is taxed so there would be uniformity, regardless of the structure of the companies. That change has not been accomplished. SB 2297 provides for a change in taxation of rural electric cooperatives and further provides that investor-owned utilities and other companies engaged in generation, distribution, or transmission of electricity may make an irrevocable election to be taxed under the provisions of this bill. If those other companies do not make that election, rural electric cooperatives and other electric companies will continue to be taxed differently.

CONCERNS

The Office of State Tax Commissioner is not taking a position in favor of or in opposition to this bill. However, we have some concerns that I want to bring to your attention.

1. The proposed reduction in rural electric cooperatives' gross receipts tax will have to be made up somewhere, probably by increases in property taxes on other taxpayers.
2. There will necessarily be a shift in distribution of revenue from taxation of rural electric cooperatives and any other companies that elect to be taxed under Senate Bill 2297. Some shift will always take place when taxing methods are changed.
3. If investor-owned utilities or wind farms elect to be taxed under Senate Bill 2297, their taxable valuations will be removed from the taxing districts in which their property is located, shifting property taxes and impacting programs that are tied to true and full, assessed, or taxable valuation of a political subdivision.

4. Article X, § 4 of the North Dakota Constitution requires that the state board of equalization assess the operating property of any person, firm, or corporation used for the purpose of furnishing electric light, heat or power, or in distributing the same for public use. There should be a statement that the tax imposed by Senate Bill 2297 is assessed by the state board of equalization. There should also be language similar to that in § 57-34-02 about a reporting form prescribed by the tax commissioner that must include a notice of the taxpayer's right to appeal its assessment to the state board of equalization prior to or at the board's August meeting.

The only references to the state board of equalization that I have found in Senate Bill 2297, other than in existing language in § 57-06-03, are in §§ 57-33.2-11 and 57-33.2-11 regarding assessment of additional tax after audit, and in section 57-33.2-20 regarding penalty if a company refuses or neglects to make required reports.

5. I know of no reason to exempt retail sales of power to coal a conversion facility from taxation, as shown on lines 29 to 31 of page 4 and lines 10 and 11 of page 6. When I asked Mr. Fuglesten about that, he referred to the decision in McLean Electric Cooperative, Inc. vs. Cooperative Power Association and United Power Association, A1-94-40. There is no reference to taxation or exemption of power sold to a coal conversion facility in that case. The decision does not prohibit a rural electric cooperative from selling electricity to a coal conversion facility. Rather, it says that McLean Electric Cooperative does not have an exclusive right to provide electricity to the Falkirk Mine, which is affiliated with the Coal Creek Station and which was receiving power from that station.

CONCLUSION.

The Office of State Tax Commissioner hopes you will consider Senate Bill 2297 and other options, including further study, carefully. If this bill is enacted, we will cooperate with the industry to implement it.

#10

Mr. Chairman, for the record, my name is Dwight Cook, State Senator from District 34 in Mandan, which is of course that western, upper class suburb to our great capital city.

I'm here to introduce SB 2297 and encourage your favorable support. I will be brief.

Mr. Chairman, committee members, so far this session we have had many discussions on our states' electrical generation tax policy. We have had many discussions on what we think the future might bring regarding the cost of electricity. I think we all agree it's going up, the question is how much?

I believe it is imperative that we have a serious and meaningful discussion on our states' electrical generation, transmission, and distribution tax policy.

I believe it's imperative that we have a tax policy that will assure the people of North Dakota a reliable and affordable source of electricity. *Well into the Actuarial*

The energy producing company's, all of them, and the people that work for them, are our neighbors and our friends. They need to be successful. Our state needs them to be successful. Our neighboring states' need the electricity that they can produce. Their biggest challenge is a world of ever changing environmental policies and we need a tax policy that can help them deal with this challenge.

Mr. Chairman over the ^{many times} last couple of years I've met with the North Dakota Association of REC's - which by the way is located in Mandan. We have discussed the work done by the REC's, previous legislative committees, and others to put the electric utility industry, both co-ops and investor-owned utilities, under a common property tax system. I have come to the opinion that the goal of comprehensive utility property tax reform is not currently possible, given the differences in how the IOU's and REC's are taxed. I believe, however, that it is time to update the in lieu tax system, the means by which REC's are taxed, which is what Senate Bill 2297 will do.

including IOU's to be included

I've also met with I.O.U.

I will let them explain the bill so that you will be able to ask them your questions.

Again, I urge your support of SB 2297.

#11

Talking points for Sen. Connie Triplett
RE: SB 2297

*I agreed to co-sponsor SB 2297 for the same reasons that Sen. Cook has identified. This bill is very important to our state's electric cooperatives and our electric cooperatives are vitally important to our state.

*I know that in Grand Forks two of our best and most stable employers are Nodak Electric Cooperative and Minnkota Power Cooperative. Representatives of these companies and others are here today to tell you in detail why SB 2297 is so important to them, so I will leave it to them to go through the details of the bill.

*I will just add that I know that our state's electric cooperatives are among the largest of all property tax payers in the state. Therefore, it's important to ensure that these taxes are collected in ways that are fair to these important utilities and allocated in ways that are fair to our local taxing districts. I believe this bill does both of these things, and I hope you will agree to support SB 2297.

TESTIMONY

SB 2297
Testimony of Harlan Fuglesten
North Dakota Association of Rural Electric Cooperatives
Before the House Finance and Taxation Committee
March 10, 2009

Mr. Chairman and members of the committee, my name is Harlan Fuglesten with the North Dakota Association of Rural Electric Cooperatives. I am here today to explain and support SB 2297. In my prepared remarks, I will outline the plan. I will then briefly review the bill section by section to answer questions and cover other details of the bill.

This legislation is the top priority of our Association. Our members include the five generation and transmission cooperatives operating in North Dakota and our state's 16 local distribution cooperatives. Together, our cooperatives largely built the lignite generation industry in North Dakota and electrified every corner of the state. Today, our G&Ts account for nearly 90% of the investment in our coal generation industry, they are leaders in wind development, and they operate much of the state's transmission system. More than one-third of our state's citizens are member-owners of our state's distribution cooperatives that supply about 45% of the retail electricity sold in North Dakota.

Together, our electric cooperatives are among the largest property taxpayers in the state. This fact often goes unrecognized, however, because most of the property taxes we pay are formula-based, in lieu property taxes. These include the coal conversion tax on our coal plants (\$17,112,000), a transmission line tax on our high voltage transmission lines (\$415,000), and a 2% gross receipts tax that applies to other co-op-owned generation, transmission and distribution assets (\$7,809,000). In addition, our co-ops pay a locally assessed property tax on

land owned for utility purposes (\$600,000 est.). Altogether, these various property taxes produce annual property tax revenues of more than \$25 million.

SB 2297, however, only deals with a portion of that total. This is because the plan does not change the coal conversion tax. It also retains local assessment of co-op owned land used for utility purposes.

The bill sets forth a new plan under which all electric cooperative property would be taxed, and offers the same tax system on a voluntary basis for those utilities taxed partially or completely under the central assessment method. This bill does not affect municipally-owned distribution systems that operate in communities such as Valley City and Grafton.

SB 2297 focuses on three areas; non-coal generation taxes, transmission taxes, and distribution taxes. These taxes currently account for more than \$8 million in taxes paid by electric co-ops, mostly from the 2% gross receipts taxes. This \$8 million is equivalent to more than 1% of the total of all property taxes paid in the State of North Dakota.

Fiscal Impact

Before explaining SB 2297 in some detail, I want to comment on the fiscal impact of placing the co-ops under this new tax system. Attachment 1 to my testimony is a spreadsheet that compares the taxes paid under current law for the 2008 tax year with what would be paid under SB 2297 formulas. Please note that 2008 taxes are payable in 2009 and are based on 2007 sales data.

This tax plan would first apply to the 2010 tax year, with the new taxes payable in 2011. Thus, this bill would impact only one year of the next biennium.

We estimate the tax plan will result in about a 20% reduction in overall tax revenue, or about one and three quarter million dollars. Let me put this figure in context. If you look at Attachment 2 to my testimony, you will see that co-op gross receipts taxes have increased by 42.5% in the last five years. Co-op gross receipts taxes jumped by nearly \$900,000 just between 2007 and 2008. This plan scales back co-op tax liability to about the level it was in 2005.

The revenue reduction proposed in this bill is influenced to some extent by the likelihood that most property taxpayers, including centrally assessed taxpayers such as the IOUs, may see a 20% reduction in their tax liability this session. We think property tax relief is appropriate and necessary. But, even without considering the impact of property tax relief this session, co-ops on average pay one third more than IOUs on their in-state transmission/distribution systems when compared on a common measure such as kilowatt hour sales. Thus, building some tax relief into this proposal really just keeps the co-op property tax gap from further widening, and may make it possible for the IOUs to opt in to the plan in the future.

I will address another possible fiscal impact later when I describe wind taxes. But, now I would like to turn to the details of the tax plan.

Bill Explanation

Distribution Taxes:

The biggest change in this bill relates to how our distribution co-ops pay property taxes. This bill eliminates the 2% gross receipts tax and replaces it with a tax based upon a formula of \$1/megawatt hour of retail sales, or one mill/kilowatt hour. Since some distribution co-ops also own transmission lines, they would also pay a line mile tax which I will discuss shortly. As you

will note from the last column of Attachment 1, distribution co-ops will realize an average savings of about 19%, although one co-op will see a tax increase and another will see a nearly 50% decrease. The differences relate to the current pricing of electricity. Co-ops with large commercial and industrial customers with high load factors have lower average rates than co-ops with less volume serving mainly farm and residential customers. The lower-rate co-ops initially benefit less than the higher-rate co-ops from the change from a revenue tax to a tax on kilowatt hour sales. All of our co-ops recognize, however, that in the future each kilowatt hour will be priced higher than it is today, so all of our co-ops believe this is a necessary and reasonable change to make.

There is another change that applies to the distribution tax and relates to fairness. Currently, the gross receipts taxes paid by our distribution co-ops are allocated to local taxing districts 100% on the basis of where the miles of line are located. This has a tendency to benefit the most remote and rural areas of our co-op systems with few customers and lots of miles of line. We believe that the legislature should adopt a new allocation system that recognizes the importance of our network of facilities, but also recognizes that greater electric system plant value resides in areas with more customers and higher sales. Therefore, SB 2297 proposes that 50% of the revenue from the new distribution tax be allocated by miles of distribution line and 50% be distributed in accordance with where the sales occurred. Overall, this will tend to shift some revenue allocation from rural to urban and suburban areas. For some co-ops, this shift will be minor, but it may be more significant for some other co-ops. Regardless, we think it is the right thing to do.

Because our co-ops have sophisticated computer capabilities and mapping systems, they can provide detailed information on both line miles and sales in each taxing area for the Tax Department and the counties to allocate these taxes using both line miles and sales.

Before leaving the distribution tax, I want to note that the bill defines a retail sale so as not to include a sale to an existing coal conversion facility. This language is intended to address the situation at Dakota Gasification Company (DGC), which receives its power from the adjacent Antelope Valley Station (AVS), both of which are owned by Basin Electric. Together, these facilities pay over \$11.5 million annually in coal conversion taxes in lieu of property taxes. Under current law, electric sales from AVS to DGC are exempt from gross receipts taxes, so this definition recognizes this unique situation.

Transmission Taxes:

Under this bill, transmission facilities will be taxed on the basis of a graduated line mile tax related to voltage level. The taxes would be as follows:

<u>Operating Voltage</u>	<u>Rate</u>
Less than 50 kilovolts	\$ 50
50 – 99 kilovolts	100
100-199 kilovolts	200
200-299 kilovolts	400
300 or more kilovolts	600

To provide an incentive to build more needed transmission, transmission lines built after January 1, 2009 would have a first year property tax exemption, and then a declining exemption

of 75%, 50%, and 25% before being fully taxed in year five. This is similar to the tax incentive for the high voltage tax on new transmission lines for both co-ops and investor-owned utilities.

Currently, co-ops pay a line mile tax of \$225/mile for lines of 230 kilovolts or larger. The tax for new lines is \$300 but the four-year declining exemption applies to these lines. In addition, our G&T co-ops also pay gross receipts taxes on their lower voltage transmission system. These gross receipts taxes, however, are not closely related to the value of these transmission lines. Instead, the gross receipts taxes they pay are determined mostly by wholesale sales of electricity from facilities other than power plants subject to the coal conversion tax. This is because revenues received from sales from power plants subject to the coal conversion tax are exempt from the gross receipts tax. This exemption, however, does not apply to market power purchased for resale. It is this revenue from power purchased for resale that largely accounts for the gross receipts taxes paid by co-ops like Minnkota Power. Thus, as energy markets change and our generation co-ops buy more market power for resale, their gross receipts taxes increase without regard to whether they have built more facilities. If you look at Attachment 2 to my testimony, you will see that Minnkota's gross receipts taxes fluctuate, but they are \$160,000 higher than just two years ago. Basin's gross receipts tax liability has increased by about 175% in the last five years, or an increase of about \$435,000.

We believe SB 2297 provides a much more stable, fair and logical transmission tax system than the present combination of gross receipts and high voltage transmission line taxes. The new transmission line taxes would raise about \$1.3 million annually. One third of this amount would go directly to the counties. This would replace the \$415,000 in revenue that currently goes to county general funds from the co-op high voltage transmission line tax

payments. The remainder would be split among the taxing districts where the lines are located in proportion to their respective most recent property tax mill rates.

Generation Taxes:

As noted previously, this plan does not change the coal conversion tax, which is an in lieu property tax that has formulas to tax both the capacity and production of coal plants. We took this concept and applied it to a new tax on wind generation and another generation tax covering all other non-coal or wind facilities.

Wind tax: The wind tax in SB 2297 is \$2.50/kilowatt of rated capacity and one half of one mill per kilowatt hour (\$.50/megawatt hour) of production. The tax would cover not only the wind turbines but the collector system as well.

We arrived at the wind tax formula in two ways. First, we considered that the tax should be competitive with other states such as Minnesota, which taxes its wind farms at a rate of \$1.20/megawatt hour. Assuming an average capacity factor of 40%, our combined production/capacity tax computes to the equivalent of \$1.21/megawatt hour, or an almost identical tax level. Second, again using a 40% capacity factor, we compared the taxes actually paid by four wind farms in operation in 2007 to what they would pay under this proposed wind tax. Attachment 3 summarizes this information and shows that overall our formula tax produced about 12% more revenue. Unlike an assessed tax, which tends to decline in value over time due to depreciation, a formula tax should continue to produce revenue at the same rate in the future, provided the facilities are maintained. So we think this is a very fair tax.

For co-ops, the wind tax would currently only apply to four turbines with a combined capacity of 4.4 megawatts. As such, this tax is presently very small.

Under this bill, generation taxes would be allocated to the taxing districts where the wind farm is located on a basis proportionate to their mill levies.

Other generation tax: With the exception of some standby diesel generators, the co-ops do not own any generation in North Dakota that is not generated from wind or coal. To have a complete plan, however, we needed a tax for any other generation that might be built in the future. Because we don't know whether such generation would be base load, peaking or intermediate, we decided that we should not place a heavy reliance on the capacity tax, but should put greater weight on the production tax. Therefore, we set this tax at \$.50/kilowatt of capacity and \$1.00/megawatt hour of production.

This other generation tax would also be allocated to the taxing districts where the generation is located on a basis proportionate to their mill levies.

Conclusion

SB 2297 is the product of more than 10 years of study of the state's electric utility industry tax system. The legislation has been reviewed extensively by our members and others. This legislation establishes formulas that we believe are logical and fair. We respectfully request a DO PASS recommendation from the committee.

Attachment #1

REC Tax Reform Proposal
 (Without real estate tax replacement)
 (Based on 2008 tax year)
 Transmission Tax (\$50-600)

	MWH Sales	Dist/Trans	1.00	New	New	Proposed		
	2007	Current tax	Based on	Trans	Gen	Tax	Change	%
		2008	1.00	Tax	Tax	Total		Change
Distribution Co-ops:								
Burke Divide	62,009	\$99,747	\$62,009	\$4,860		\$66,869	(\$32,878)	-33%
Capital	246,690	371,450	246,690	8,305		254,995	(116,455)	-31%
Cass	865,029	1,175,687	865,029			865,029	(310,658)	-26%
Cavalier	33,218	65,348	33,218			33,218	(32,130)	-49%
Dakota Valley	431,445	452,504	431,445			431,445	(21,059)	-5%
KEM	63,076	103,186	63,076	6,075		69,151	(34,035)	-33%
McKenzie	298,529	383,922	298,529	16,555		315,084	(68,838)	-18%
McLean	88,853	120,939	88,853			88,853	(32,086)	-27%
Mor-Gran-Sou	145,555	252,737	145,555	30,870		176,425	(76,312)	-30%
Mountrail - Williams	270,369	331,518	270,369	8,260		278,629	(52,889)	-16%
Nodak	807,038	909,082	807,038			807,038	(102,044)	-11%
North Central	195,124	267,013	195,124			195,124	(71,889)	-27%
Northern Plains	320,538	417,510	320,538			320,538	(96,972)	-23%
Roughrider	448,247	534,472	448,247	24,905		473,152	(61,320)	-11%
Slope	406,455	407,838	406,455	9,305		415,760	7,922	2%
Verendrye	391,816	460,801	391,816			391,816	(68,985)	-15%
Other	44,000	70,787	44,000	2,000		46,000	(24,787)	-35%
Subtotal	5,117,991	6,424,542	5,117,991	111,135	-	5,229,126	(1,195,416)	-19%
G & T Co-ops:								
Basin		849,021 (1)		413,480	11,055 *	424,535	(424,486)	-50%
Minnkota		567,060 (1)		312,195	25,735 **	337,930	(229,130)	-40%
Square Butte		53,318 (2)		94,800		94,800	41,482	78%
Great River Energy		122,643 (2)		271,040		271,040	148,397	121%
Central		159,740 (3)		92,730		92,730	(67,010)	-42%
Upper Mo.		48,243 (3)		23,730		23,730	(24,513)	-51%
Subtotal	-	1,800,025	-	1,207,975	36,790	1,244,765	(555,260)	-31%
Grand Total	5,117,991	\$ 8,224,567	\$ 5,117,991	\$ 1,319,110	\$ 36,790	\$ 6,473,891	\$ (1,750,676)	-21%

* 2.6 MW - wind at 40% production

** 1.8 MW - wind at 40% production and 33.25 MW standby diesel at .5% production

(1) Gross receipts and transmission line tax

(2) Transmission line tax only

(3) Gross receipts tax only

Attachment # 3

Comparison of 2007 Wind Taxes with Proposed Wind Taxes
Proposed tax is \$2.50/kW and \$.0005/kWh
Based on 40% Capacity Factor

Wind Farm	Size (mWs)	2007 Tax	Proposed Tax
Velva	12.0	\$ 68,135	\$ 51,024
Edgeley-Kulm	61.5	269,699	261,498
Wilton	49.5	141,533	210,474
Oliver County	50.6	175,491	215,151
Total	173.6	\$ 654,858	738,147

Testimony 2

**Testimony in support of SB2297
Scott Handy, President/CEO
Cass County Electric Cooperative Inc.
Kindred, ND**

**Before the North Dakota House Finance and Taxation Committee
March 10, 2009**

Chairman Belter and members of the Finance and Taxation Committee, my name is Scott Handy and I serve as CEO of Cass County Electric Cooperative headquartered in Kindred, North Dakota. Thank you for this opportunity to appear in support of SB2297.

Cass County Electric supports the electric cooperative property tax revisions in this bill. For years our industry has paid an in-lieu property tax based on a percent of revenue. In times of rate stability this method worked well and provided a relatively simple and straightforward method for calculating and distributing the taxes. However, we are no longer in a period of rate stability and it appears we won't be for some time. Under the current system a rate increase automatically means a property tax increase, giving our members a double whammy on costs.

As Mr. Fuglesten explained, SB2297 would set the tax on electric distribution systems at 1 mill, or one tenth of one cent per kilowatt hour of retail electricity sold. Just out of curiosity I took a look at the property taxes Cass County Electric paid historically per kilowatt hour. What I found was that our tax rate as recently as 2001 was almost exactly one mill per kilowatt hour. Since then, and due to nothing other than increased electric rates, our tax rate per kilowatt hour has risen to 1.4 mills in 2008 and is projected to rise to 1.5 mills in 2009.

SB2297 does not guarantee a cap on total property taxes for distribution cooperatives. Our total tax bills will continue to increase as energy sales increase, which they are

certainly projected to do. The bill before you, however, does lock in a tax rate per kilowatt hour which provides for better planning and a more rational taxing method.

I'd like to comment just briefly on the allocation formula for the distribution tax proposed in SB2297. Half of the tax distribution would remain exactly as it is now – based on the proportion of line miles in each taxing district. The other half follows the energy sales, which acknowledges the fact that a mile of line with heavy energy sales has a higher value than a mile of line with comparatively light sales. Put another way, a mile of line in an industrial area should direct somewhat more taxes to a political subdivision than a mile of line in a remote area. We believe this is fair, and it serves to correct a long-standing imbalance found in the current distribution formula.

In summary, Cass County Electric supports SB2297 and we urge your DO PASS recommendation.

**Testimony in Support of SB2297
Thomas L. Meland, General Manager
Central Power Electric Cooperative, Inc.
Minot, ND**

**Before the North Dakota House Finance and Taxation Committee
March 10th, 2009**

Mr. Chairman and members of the Finance and Taxation Committee, my name is Tom Meland and I am the General Manager of Central Power Electric Cooperative headquartered in Minot. Thank you for this opportunity to appear in support of SB 2297.

Central Power is a wholesale power supply and transmission cooperative organized in 1949 to generate power for its member rural electric distribution cooperatives. Having transferred its generating plant to Basin Electric in 1973, Central Power today supplies the bulk power needs of its members through our purchases from Basin Electric and the Western Area Power Administration. The six member electric cooperatives that make up Central Power include Capital, Dakota Valley, McLean, North Central, Northern Plains, and Verendrye. These co-ops serve a combined 52,000 pasture wells, farms, homes, businesses, and industrial consumers located in 25 counties in central and southeastern North Dakota.

Central Power delivers its six members' wholesale power requirements over its transmission system which includes 1,004 miles of transmission lines operated at 41.6, 57, 69, 115, and 230 kilovolts.

Central Power and its six members support the property tax revisions contained in this bill. These revisions place our industry's property taxation on a more rational basis than presently exists.

For many years Central Power and its members paid an unfair duplication of property tax under the 2% gross receipts formulation due to our "three-tiered" structure of Basin Electric, Central Power, and the member systems. In the 2003 legislative session, the North Dakota Legislature passed a bill that largely addressed this inequity by providing the two "intermediate" G & T's of Central Power and Upper Missouri with an exemption for our purchase power expense from the gross receipts tax. In other words, co-ops did not have to pay a 2% tax on the revenue from wholesale sales in addition to the retail sales of the same power. While this change provided significant relief from this inequity, it fell short of completely addressing the duplication of tax expense resulting from our three-tiered structure. This is because Central Power's operating costs are paid from revenues provided by its members and each member's share of these operating costs is built into the member's retail rates and associated retail sales. These retail sales are taxed at 2% and then the Central Power cost of operations component of these sales is taxed again at 2% when Central Power collects its required operating revenue from its members.

The important point I want to make is that under this proposed tax plan, taxation is based on tangible things such as generation capacity and production, miles of transmission line, and retail sales of electricity. Unlike under the current system, one does not pay a penalty for how your business relationships are structured nor can you avoid taxation by changes in your corporate structure. This is a very positive feature of this tax plan.

SB 2297 replaces Central Power's current gross receipts tax liability with a line mile tax that is a fairer and more rational approach to taxing transmission property. The tax is graduated according to line voltage, which makes sense both in terms of the value of the line and the impact to rights of way. Also, since the tax is the same whether the transmission line is owned by a distribution co-op or an "intermediate" G & T like Central Power, there is no potential for duplicating tax burdens.

As others have said, another major problem of the current tax system that will be fixed by adopting SB 2297 is that property taxes go up automatically as wholesale power costs increase. Central Power purchases approximately 18% of its members' power supply requirements from the Western Area Power Administration (WAPA) and 82% from Basin Electric. We have seen a nearly doubling of WAPA rates and over a 25% increase from Basin over the past several years. These added costs have nothing to do with the property values of Central Power or its member systems. However, these increases have lead to significant increases in our members' property tax obligations. Unfortunately, we expect larger and more frequent increases in wholesale power costs in the coming years.

For these reasons and all the other reasons given in previous testimony, Central Power respectfully urges your DO PASS recommendation on Senate Bill 2297. Thank you for your consideration.

**Curtis Jabs - Basin Electric Power Cooperative
North Dakota SB 2297
House Finance & Taxation Committee
March 10, 2009**

Mr. Chairman and members of the House Finance & Taxation Committee, my name is Curtis Jabs from Basin Electric Power Cooperative. Basin Electric is in support of SB 2297.

Besides the small amount of property subject to gross receipts, Basin Electric also pays a gross receipts tax on all power purchased from all sources, including the net revenue of power purchased from instate wind. As our need for supplemental power sources have increased over the past years, the amount generated by the gross receipts tax has also increased. This has been further exacerbated by the increase in the cost of power. Furthermore the current tax has become disproportionate to the fair market value of the asset over the years. As pointed out, the tax has increased disproportionately to the increase in the asset value. What was designed to be an in lieu of property tax has become inequitable.

The distribution of the tax is also at issue. Presently all of the gross receipts tax collected are allocated with 85 percent going to Basin Electric's Minot wind generation and 15 percent to the location of the transmission lines under 230KV. Basin Electric only owns two wind towers south of Minot and this has been an enormous windfall for Ward County because they get 85 percent of the total gross receipts tax. The remaining 15 percent is distributed to the political subdivisions that are crossed by the approximately 80 miles of lower voltage transmission line that Basin Electric owns. Replacing the gross receipts tax and addressing the allocation of the tax remedy is overdue.

This bill brings all transmission lines under one form of taxation and increases the mile tax on transmission lines. The lower voltage transmission lines from 41.6KV to 230KV lines, presently

taxed under the gross receipts tax, would now be taxed with a per mile tax. The rates outlined on Page 5 of the bill raise the mile tax from \$250/mile to \$600/mile on those lines 300KV and above.

This bill will tax the two wind turbines owned by Basin Electric in Ward County differently. The two turbines will be taxed on capacity and production similar to way coal conversion facilities are presently taxed. Wind farms owned by non-cooperative entities will have an option to be taxed under this bill. Presently they are centrally assessed and taxed based upon fair market value. This will give non-cooperative entities an option to be taxed on capacity and production as well. This method levels the tax payments over the life of the wind farm and taxes all wind farms at the same level regardless of when they were put into service.

Basin Electric is fully supportive of SB 2297 and asks for a "do pass" recommendation. I will answer any questions of the committee.

SB 2297
Testimony of George Berg,
Nodak Electric Cooperative
House Finance and Taxation Committee
March 10, 2009

My name is George Berg and I am the President and CEO of Nodak Electric Cooperative headquartered in Grand Forks, ND. Nodak is a distribution cooperative serving roughly 16,000 locations in all or part of 10 counties in North Eastern North Dakota. We are one of 11 distribution cooperatives that purchases all of our wholesale electric requirements from Minnkota Power Cooperative also headquartered in Grand Forks. I am submitting this testimony asking you to cast a "do pass" vote on Senate Bill 2297.

Among the many improvements incorporated into this tax plan there are two which are particularly important to a distribution cooperative like Nodak.

First, the proposed tax plan changes the computation of tax liability from being based on dollars of sales to being based on kwhs of sales. We agree there is justification for our taxes to increase when we grow in sales which generally requires additions to our utility plant. We disagree a tax increase is warranted if and when we increase our retail rates. Rate increases can have little or nothing to do with adding new utility plant and more often are needed to cover increases in wholesale power cost and inflationary impacts on administrative and general expenses. For example this month we implemented a retail rate increase which will average about 9% for all rate classes, needed to offset a 13% increase in our wholesale power cost from Minnkota Power Cooperative. With no changes to the tax structure, our property taxes will increase as a result of the rate increase from \$920,000 this year to \$1,002,800 payable in 2010 plus another \$25,000 due to projected growth in kwh sales.

The second improvement with the proposed tax plan is that the property taxes would not be allocated to the counties and political subdivisions based solely upon miles of line. We don't disagree that the location of our plant is important and agree that plant location should be considered in the allocation of the tax revenue. However it is not the only factor that should be considered. The proposed tax plan puts equal weight on where the sales are made when allocating the tax revenue. This makes sense because distribution lines which deliver large amounts of energy characteristically have more capacity, are generally three phase lines, require more switching gear and protective equipment and in fact are much more expensive to build. The proposed tax plan is more equitable in that it recognizes this differential in plant value per mile of line in areas such as urban delivery or industrial delivery.

Nodak and our members have enjoyed a period of 20 years with very stable electric rates due at least somewhat to moderate growth in our service area. With that growth we have invested in our utility plant and rightfully paid an increasing amount of property taxes every year. We

wish we could project another 20 years of stable rates but everyone who understands the electric utility business knows that is an unrealistic expectation. It is very important to our member rate payers that rate increases in the future do not carry an automatic increase in our property taxes.

For these reasons we ask you to vote "do pass" on SB 2297. Thank you.

SB 2297
TESTIMONY OF BRUCE R. CARLSON
MANAGER OF VERENDRYE ELECTRIC COOPERATIVE
TO THE ND HOUSE FINANCE AND TAXATION COMMITTEE
March 10, 2009

Mr. Chairman and members of the committee, my name is Bruce Carlson, General Manager of Verendrye Electric Cooperative, headquartered in Velva, ND. Verendrye serves 11,400 meters in six counties over 4,400 miles of power line. I am here to speak in favor of SB 2297 and ask for your support of a new tax plan for distribution cooperatives based on kilowatt hour sales rather than 2% of gross receipts.

There is a \$350 million electric cooperative investment coming to our region of the state next summer. We are excited about the new 120 MW cooperative-owned wind farm coming south of Minot along with the associated natural gas fired backup generation. Under Verendrye's present 2% gross receipts tax formula, we are penalized for this investment paying increased taxes as our rates pick up the debt service on new generation. It isn't right to penalize the cooperatives with more taxes just because we have had a wholesale power cost increase and therefore a retail rate increase, resulting in more gross receipts. We feel it is much fairer to tax us based on actual kilowatt hours of energy sold. As an example, major expenditures have already been paid out on this project without any generation expected until late 2009 or early 2010.

With the new Basin Electric Cooperative wind farm coming to Minot, we agree with the new formulas in the bill which encourage renewable energy development. The 4-year tax exemption for new transmission lines together with having wind farm taxes based on capacity and production only makes good sense. Verendrye Electric is optimistic for the future of renewable energy projects and therefore new tax revenue for North Dakota, with our service area having some of the best wind generation potential in the state.

SB 2297 also addresses a second Verendrye Electric concern regarding the distribution of our gross receipts tax that is presently done based on where our power lines are located. We have

many power lines in the rural areas that are not growing in kWh sales while it is just the opposite in the Minot area. With a large percentage of our non-military kWh sales now occurring in the city of Minot and the surrounding high density service area, this new bill distributes the tax money more fairly based half on where we have miles of power line and the other half on where the kWhs are sold.

This bill is positive since it recognizes the “up side” of potential kWh growth. Taxes will continue to increase as kWh sales continue to increase, especially in western North Dakota which is tied to oil development and the sale of electric heat. We hope the Bakken oil development continues to move east in Ward County with major investments of power line cable already in the ground in new housing developments and the new Minot Energy Park. Basing taxes on the old system of gross receipts and therefore rate increases due to debt service on new infrastructure, is not right when the investment is often done well in advance of energy sales. The best solution is to have taxes based on actual kWh sales. Verendrye Electric, as an example, has seen a 10% increase in demand for electricity this winter as compared to the past two years. This growth is an offset to any temporary fiscal concerns that you might have as legislators regarding SB 2297.

My final example of a need for change is tied to Verendrye Electric’s transmission cooperative, Central Power, located in Minot. Because we have chosen to separate transmission and distribution functions to increase reliability and efficiency, there is an unfair pancaking of 2% gross receipts tax paid by the ultimate member on the end of the line. Not only do they pay 2% of all of Verendrye’s gross receipts, they are also paying 2% of Central Power’s gross receipts less power costs as part of our monthly wholesale energy bill. This bill will solve that problem.

On behalf of Verendrye Electric Cooperative, I strongly urge the committee to support SB 2297 and recommend a do pass recommendation to the full ND House of Representatives.

Thank you!