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## **IMPACT OF COMPETITION ON THE GENERATION, TRANSMISSION, AND DISTRIBUTION OF ELECTRIC ENERGY STUDY - BACKGROUND MEMORANDUM**

The Electric Industry Competition Committee was created by House Bill No. 1237 (1997) to study the impact of competition on the generation, transmission, and distribution of electric energy within this state. The bill was codified as North Dakota Century Code (NDCC) Sections 54-35-18 through 54-35-18.3. Section 54-35-18 states that the Legislative Assembly finds that the economy of North Dakota depends on the availability of reliable, low-cost electric energy and that there is a national trend toward competition in the generation, transmission, and distribution of electric energy, and the Legislative Assembly acknowledges this competition has both potential benefits and adverse impacts on the state's electric suppliers as well as on their shareholders and customers and citizens of this state.

North Dakota Century Code Section 54-35-18.1 outlines the composition of the committee and directs the committee to study the impact of competition on the generation, transmission, and distribution of electric energy within this state and on this state's electric suppliers. Electric suppliers include public utilities, rural electric cooperatives, municipal electric utilities, and power marketers.

North Dakota Century Code Section 54-35-18.2 outlines the study areas that the committee is to address in carrying out its statutory responsibilities. This section provides that the committee is to study the state's electric industry competition and electric suppliers and financial issues, legal issues, social issues, and issues related to system planning, operation, and reliability and is to identify and review potential market structures.

Senate Bill No. 2015 (2003) extended the Electric Industry Competition Committee from August 1, 2003, to August 1, 2007. The bill also expanded membership of the committee from three or four members of the House of Representatives, no more than two of whom may be from the same political party, and three or four members of the Senate, no more than two of whom may be from the same political party, to six members of the House of Representatives, four of whom must be from the majority political party and two of whom must be from the minority political party, and six members of the Senate, four of whom must be from the majority political party and two of whom must be from the minority political party.

### **ELECTRIC INDUSTRY RESTRUCTURING**

#### **Background**

House Bill No. 1237 (1997) reflected the Legislative Assembly's concern that the electric industry is changing rapidly and if competition is to be introduced into North Dakota, it should be done in a fair and equitable manner. Nationally, builders of new technology generating plants, the natural gas industry, and states with high electric rates or excess generating capacity are promoting electric industry restructuring. Arguments put forward for restructuring or implementing competition in the electric industry include greater customer choice, the possibility that open competition may lower costs, encourage generating efficiency, and allocate capital. However, risks and challenges of retail competition include maintaining reliability of supply, pricing outcomes in which some customers may benefit at the expense of others, and allocating stranded costs. The impetus for electric industry restructuring has also come from large industrial and commercial energy users that are opposed to subsidizing residential electricity users. For example, some industrial users are paying 150 percent of the actual cost of providing energy to those users, while residential customers are paying only 60 to 70 percent of the actual cost of providing energy to them.

#### **Traditional Rationale for Regulation**

Under the current industry structure, electricity is provided to retail customers by utilities that have geographic monopolies on the provision of electric service within their service territories. Customers within a utility's service territory must purchase all their electric services from that utility. These services include generation, transmission, distribution, customer service, meter reading, demand-side management, and aggregation and ancillary services.

Generally, three major types of electric utilities exist--investor-owned utilities, municipal and other government-owned utilities, and rural electric cooperatives. States regulate investor-owned utilities regarding their profits, operating practices, and pricing to end-use retail customers, while the Federal Energy Regulatory Commission (FERC) governs the pricing of wholesale bulk power sales and transmission services. Although House Bill No. 1237 (1997) directed the committee to study the impact of competition on the generation, transmission, and distribution of electric energy, nationwide the restructuring debate concerns whether and how to separate the generation of electricity from other

electric services in order to allow retail customers to shop for the electricity supplier of their choice.

In North Dakota the Public Service Commission regulates electric utilities engaged in the generation and distribution of light, heat, or power. North Dakota Century Code Section 49-02-03 grants to the Public Service Commission the power to supervise and establish rates. This section provides:

The commission shall supervise the rates of all public utilities. It shall have the power, after notice and hearing, to originate, establish, modify, adjust, promulgate, and enforce tariffs, rates, joint rates, and charges of all public utilities. Whenever the commission, after hearing, shall find any existing rates, tariffs, joint rates, or schedules unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any of the provisions of this title, the commission by order shall fix reasonable rates, joint rates, charges, or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any provision of law.

Concerning electric utility franchises, NDCC Section 49-03-01 provides that an electric public utility must obtain a certificate of public convenience and necessity from the Public Service Commission before constructing, operating, or extending a plant or system. Similarly, the state's Territorial Integrity Act, Sections 49-03-01.1 through 49-03-01.5, requires an electric public utility to obtain a certificate of public convenience and necessity before constructing, operating, or extending a public utility plant or system beyond or outside the corporate limits of any municipality. However, Section 49-03-01.3 exempts electric public utilities from the requirement to obtain a certificate of public convenience and necessity for an extension of electric distribution lines within the corporate limits of a municipality in which it has lawfully commenced operations provided the extension does not interfere with existing services provided by rural electric cooperatives or another electric public utility within the municipality and that any duplication of services is not deemed unreasonable by the Public Service Commission.

Traditionally, an electricity customer must purchase all its electric services from the utility serving that customer's service territory, including the three primary services--generation, transmission, and distribution. Generation refers to the actual creation of electricity, which may be generated using a number of methods and fuel such as nuclear, coal, oil, natural gas, hydro, or wind. Transmission refers to the delivery of electricity over distances at high voltage from a generation facility through a transmission network usually to one or more distribution substations where the electricity is

stepped down for distribution to residential, commercial, and industrial customers. For the retail customer the costs for these functions are bundled into retail rates, along with the cost of distribution. Distribution involves the retail sale of electricity directly to consumers.

Other functions traditionally provided by vertically integrated utilities include customer service, billing, meter reading, demand-side management, research and development, and aggregation and ancillary services. Aggregation is the development and management of both a power portfolio, combining power from a variety of sources in order to match the demand for power with adequate power supply, and a portfolio of customers with combined demands in order to economically serve those customers. Ancillary services are those services necessary to effect a transfer of electricity between a seller and a buyer and to coordinate generation, transmission, and distribution functions to maintain power quality and system stability.

Under the current industry structure, the utility serving a service territory provides all these services and functions and sells them as a single bundle. Nationwide, the restructuring debate centers on whether or how the generation function should be separated from the bundle allowing retail customers to choose their electricity supplier. If generation is unbundled from transmission and distribution, these services may remain regulated functions.

### **The Regulatory Compact**

The provision of electric service traditionally has been considered to exhibit the characteristics of a natural monopoly. According to economic theory, a natural monopoly exists in a market if one service provider in the market can serve customers more efficiently than many competing service providers. A common explanation for electricity provision as a natural monopoly is that allowing competitors to string duplicate transmission and distribution lines and construct excess generation capacity would waste resources and increase electric rates for customers. Generally, the characteristics of a natural monopoly include a high, upfront capital investment in technology; limited storability of a provided service or goods; limited transportability, requiring operations near the end users; and cost advantages of large and integrated systems as a result of better utilization of existing capacity or economies of scale and scope.

In markets exhibiting the characteristics of a natural monopoly, government intervention in the form of regulation over a single firm is considered necessary to provide the market discipline competition cannot provide. In exchange for this monopoly, each utility is required to serve all customers within its service territory and to provide quality service at just and reasonable rates. The utility is permitted to recover

reasonable and prudent expenses associated with its provision of service plus a reasonable rate of return on its investment made to serve customers. This exchange is known as the Regulatory Compact.

Under the Regulatory Compact, the traditional method of rate determination has been rate of return regulation. This type of regulation is designed to ensure that utilities offer their services at prices that

are based on the cost of the services rather than on the value customers place on those services. In traditional rate of return regulation, the regulating entity determines the revenue requirement (the reasonable and prudent cost of providing a utility service), allocates the requirement among customer classes, and translates the allocated revenue requirement into rates.

Traditional rate of return regulation has been criticized for allowing a utility and its shareholders to pass all the utility's costs and risks to ratepayers and because the utility faces minimal risks, the utility has little or no incentive to increase its operating efficiency or to minimize its expenses. One critic has stated that rate of return regulation fails to penalize inefficient producers or reward efficient ones.

As an alternative to traditional rate of return regulation, some commentators have advocated and some states have implemented various forms of incentive regulation, including flexible regulation, targeted incentive plans, external performance indexing, price and revenue caps, and performance-based regulation. However, these forms of incentive-based regulation also have their critics. Performance-based regulation opponents have argued that this type of regulation may result in the selection of inappropriate performance benchmarks; incorporation of too many, or contradictory, societal or regulatory goals into the performance-based regulation plan; unreasonable returns to shareholders; or exacerbation of the information asymmetry between utilities and regulators.

### **Federal Actions to Promote Competition**

In 1978 Congress enacted the Public Utility Regulatory Policy Act. The goals of this Act were to make the United States self-sufficient in energy, increase energy efficiency, and encourage the use of renewable alternative fuels. The Act intended to achieve these goals by abandoning the use of natural gas to make electricity, mandating conservation of oil, and encouraging industry to cogenerate electricity using waste heat. The Act required utilities to purchase bulk power produced from cogeneration facilities to ensure that it was financially attractive. However, states were allowed to determine the avoided costs (the amount of money an electric utility would need to spend for the next increment of electric generation that it instead buys from a cogenerator) and quantity of such power. Some states capped the price at the utility's avoided costs and limited the obligation to purchase to the capacity of the utility. Other states allowed prices above the utility's avoided costs and ordered purchases of additional generation whether needed or not.

In 1992 Congress enacted the Energy Policy Act to encourage the development of a competitive, national, wholesale electricity market with open access to transmission facilities owned by utilities to both new wholesale buyers and new generators of power. In addition,

the Act reduced the regulatory requirements for new nonutility generators and independent power producers. The Federal Energy Regulatory Commission initiated rulemaking to encourage competition for generation at the wholesale level by assuring that bulk power could be transmitted on existing lines at cost-based prices. Under this legislation and rulemaking, generators of electricity, whether utilities or private producers, could market power from underutilized facilities across state lines to other utilities.

Finally, the Federal Energy Regulatory Commission has taken a number of steps to encourage competition in the wholesale market. These actions include authorizing market-based rates, issuing Section 211 wheeling orders, ordering open-access transmission tariffs, and issuing the open-access transmission rule (FERC Order No. 888). Market-based rates are those set by willing buyers and sellers of power. This method may be used instead of the more traditional method of rate-setting by regulators pursuant to administrative hearings, with rates based on the cost of producing power. On April 24, 1996, the Federal Energy Regulatory Commission issued Order Nos. 888 and 889, which require all utilities that own, control, or operate transmission lines to file nondiscriminatory open-access transmission tariffs that offer competitors transmission service comparable to the service that the utility provides. In addition, FERC Order No. 888 recognizes the right of utilities to recover legitimate, prudent, and verifiable costs stranded by opening the wholesale electricity market, i.e., stranded costs. Finally, FERC Order No. 888 requires public utilities to unbundle their power and services for wholesale power transactions by requiring the internal separation of transmission from generation marketing services.

### **Energy Act of 2005**

On August 8, 2005, President George W. Bush signed into law the Domenici-Barton Energy Policy Act of 2005. The bill is 1,725 pages long, consists of 18 titles, and authorizes \$85 billion in spending and tax incentives. The following are some of the provisions of the Act that relate to the generation, transmission, and distribution of electric energy in this state.

1. The Act authorizes funding and loan guarantees for "clean coal" technologies such as coal gasification and advanced combustion technologies. Over the next 10 years, \$5.23 billion is authorized in spending for clean coal technology. The Act creates a clean coal power initiative campaign that includes grants to universities to establish centers of excellence for energy systems of the future. The Act contemplates merit-based grants to institutions of higher education to be awarded to institutions with the greatest potential for

- advancing new clean coal technologies projects.
2. The Act establishes an independent organization to improve the reliability of the transmission grid to mandatory and enforceable standards. The Act replaces the North American Electric Reliability Council and 10 regional councils that are voluntary and operate independently without any Federal Electric Regulatory Commission oversight with an Electric Reliability Organization with authority to enforce reliability standards and impose penalties.
  3. The Act provides for new procedures for siting electric transmission lines, including federal preemption in some circumstances. The Act directs the Department of Energy secretary to identify national interest electric transmission corridors. If a state commission does not approve of a project or approve it with conditions that make construction economically or physically infeasible, the Act gives the Federal Energy Regulatory Commission authority to issue construction permits for these new lines and condemn land by federal government domain. There is an exception for siting jurisdiction for states if there are three contiguous states that form a regional transmission siting agency. In this case, the Federal Energy Regulatory Commission may only act if those three states disagree with the regional transmission siting agency.
  4. The Act provides Federal Energy Regulatory Commission limited authority over currently nonregulated entities to ensure nondiscriminatory access to electric transmission lines.
  5. The Act repeals the federal Public Utility Holding Company Act of 1935, which provided for Securities and Exchange Commission jurisdiction over public utility mergers and acquisitions. The Public Utility Holding Company Act prohibited acquisition of any wholesale or retail electric business through a holding company unless that business forms part of an integrated public utility system when combined with the utility's other electric business. The Public Utility Holding Company Act also restricted ownership of an electric business by a nonutility corporation.
  6. The Act expands the Public Utility Regulatory Policies Act of 1978 to require state regulators to conduct an investigation and issue a decision on smart metering and demand responsive devices, net metering of bond-site generation, utility fuel source diversification, fossil fuel generation efficiency, and interconnection for distributed generation. In addition,

the Act repeals on a prospective basis the obligation of an electric utility to buy electric energy from and sell electric energy to a qualifying facility under certain circumstances.

7. The Act authorizes the Federal Energy Regulatory Commission to require the posting of electricity and natural gas pricing information to provide price discovery and market transparency. In addition, manipulative or deceptive practices with the intent to manipulate market prices are prohibited.
8. The Act requires the Federal Energy Regulatory Commission to make rules implementing incentive pricing and allow recovery of prudently recovered costs necessary to comply with mandatory reliability standards and transmission infrastructure development.

### **Electric Industry Restructuring Initiatives in Other States**

According to the *Status of State Electric Industry Restructuring Activity as of February 2003* prepared by the United States Department of Energy Information Administration, 24 states and the District of Columbia have either enacted enabling legislation or issued a regulatory order to implement retail access. The local distribution company continues to provide transmission and distribution (delivery of energy) services. Retail access allows customers to choose their own supplier of generation energy services, but each state's retail access schedule varies according to the legislative mandate or regulatory orders.

Arizona, Connecticut, Delaware, District of Columbia, Illinois, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, and Virginia have either enacted enabling legislation or issued a regulatory order to implement retail access. Retail access is either currently available to all or some customers or will soon be available. In Oregon no customers are currently participating in the state's retail access program, but that state's laws allow nonresidential customers access. Alabama, Alaska, Colorado, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming are not actively pursuing restructuring. In West Virginia the legislature and Governor have not approved the Public Service Commission's restructuring plan authorized by state law. The legislature has not passed a resolution resolving the tax issues of the Public Service Commission's plan, and no activity has occurred since early in 2001. Arkansas, Montana, Nevada, New Mexico, and Oklahoma have delayed

their restructuring process or implementation of retail access. California has suspended direct retail access.

## TERRITORIAL INTEGRITY ACT

In conducting past studies of the impact of competition on the generation, transmission, and distribution of electric energy within this state, the committee has reviewed the history and operation of the Territorial Integrity Act. The Territorial Integrity Act was enacted by the Legislative Assembly in 1965 and is codified as NDCC Sections 49-03-01 through 49-03-01.5.

Although the legislative history of the Territorial Integrity Act is extensive, the rationale for its enactment was summarized in *Capital Electric Cooperative Inc. v. Public Service Commission*, 534 N.W.2d 587 (N.D. 1995). In this case, it was noted that "the Act was adopted at the request of the North Dakota Association of Rural Electric Cooperatives to provide 'territorial protection' for rural electric cooperatives and to prevent public utilities from 'pirating' rural areas," and the "primary purpose of the Act was to minimize conflicts between suppliers of electricity and wasteful duplication of investment in capital-intensive utility facilities." In *Capital Electric*, the North Dakota Supreme Court established a requirement that a request by a new customer for electric service from a public utility must be made before the Public Service Commission may consider whether to issue a certificate of public convenience and necessity to the utility.

The Territorial Integrity Act basically allowed cooperatives to extend service in rural areas and public utilities to extend service in municipal areas without first obtaining a certificate of public convenience and necessity from the Public Service Commission, the theory being that the delineation of service areas would allow each type of enterprise to expand within its own sphere without conflict with each other. Problems arose, however, as the public utility companies believed that by being confined to municipal areas except as provided in the Act, they were being denied a fair share of the business arising in the rural "growth" areas. This objection to the effect of the Territorial Integrity Act resulted in *Montana-Dakota Utilities Co. v. Johanneson*, 153 N.W.2d 414 (N.D. 1967), which squarely attacked its constitutionality. In *Johanneson*, the public utility companies took the position the law was an unconstitutional classification for several reasons. They contended cooperatives were given a monopoly in rural areas and were allowed to operate without Public Service Commission regulation, while the public utilities were regulated in every respect by that agency. They claimed that cooperatives could infringe on the existing service areas of public utility companies in rural localities and that new customers could be gained in municipal areas only if there was no interference with cooperative services already provided in the municipality. They also asserted cooperatives

had a right to complain against public utilities' actions, but the utilities had no such right against actions of the cooperatives. Thus, they maintained the Territorial Integrity Act was unfair, arbitrary, and unreasonable, and the Act discriminated against the public utility companies and the public generally.

The North Dakota Supreme Court in *Johanneson* upheld the constitutionality of the Act in all but one respect. It held that although the Act treated public utilities and cooperatives dissimilarly, the classification was not objectionable as it was based on legally justifiable distinctions. While public utilities were denied the right under the Act to complain of improper actions by cooperatives, the right remained to bring an action in the courts of the state for redress of any injury that might be suffered. Thus, the public utilities did have an adequate remedy and were not prejudiced.

However, the court found otherwise with regard to NDCC Section 49-03-01.2, which conditioned the issuance of certificates of public convenience and necessity on the written consent of the nearest cooperative, or upon a finding a cooperative could not provide the service. Here, the court found that it was "the cooperative, and not the public service commission . . . that determines whether a certificate of public convenience and necessity shall be granted to a public utility in the area outside the limits of the municipality" and that "[n]o guidelines are set out in the law to be followed by the cooperative in making such determination, and no safeguards are provided against arbitrary action . . . ." Thus, the court held that when "the Act attempts to delegate, to either the Public Service Commission or the cooperative, powers and functions which determine such policy and which fix the principles which are to control, the Act is unconstitutional." Likewise, the court found that the portion of the Act that permitted supplying of service without certificates if a "consent" agreement was entered by the cooperative and public utility as to service areas also was unconstitutional, as again the cooperative was permitted to determine whether a certificate should be granted.

The impact of *Johanneson* immediately became evident. Because the provisions of the Territorial Integrity Act allowing for "consent" agreements in lieu of certificates of public convenience and necessity were declared unconstitutional, it was apparent the caseload of the commission and the issuance of certificates would increase substantially. In anticipation of this increase and to reduce the delay caused by the notices and hearings necessary for the issuance of certificates, the Public Service Commission requested an opinion of the Attorney General as to whether conditional certificates could be issued without the usual full-scale hearing and determination. The Attorney General, in an opinion dated October 30, 1967, said the issuing of conditional certificates without hearing was proper, provided the controversy was fully submitted to

the commission by an interested party in such a manner so a decision could be made, and the parties waived the notice and hearing required in the issuance of a certificate of public convenience and necessity. Thus, the issuing of temporary certificates under certain conditions was allowed.

When NDCC Section 49-03-01.2 was declared unconstitutional, the legislative directions to the Public Service Commission were eliminated, and no criteria upon which the commission could make its decisions remained. However, this deficiency was remedied by the court in *Application of Otter Tail Power Co.*, 169 N.W.2d 415, 418 (N.D. 1969), in which the court established that in addition to customer preference, factors to be considered in determining whether an application for a certificate of public convenience and necessity should be granted include "the location of the lines of the supplier; the reliability of the service which will be rendered by them; which of the proposed suppliers will be able to serve the area more economically and still earn an adequate return on its investment; and which supplier is best qualified to furnish electric service to the site designated in the application and which also can best develop electric service in the area in which such site is located without wasteful duplication of investment service." Thus, customer preference is not a controlling factor but only one of a number of factors that must be considered for a certificate of public convenience and necessity to be granted.

## PREVIOUS STUDIES

### 1967-68 Study

In 1967 the Legislative Assembly approved House Concurrent Resolution No. B-2 which requested a two-year study be made of the laws relating to certificates of public convenience and necessity for extensions of service by electric suppliers and the extensions of electric transmission and distribution lines of electric utilities. The resolution directed that a committee composed of three members of the House of Representatives and two members of the Senate meet during the succeeding biennium with two persons representing electric public utilities and two persons representing rural electric cooperatives to study what method, if any, should be provided to resolve territorial disputes between electrical suppliers, whether more lucrative market areas were essential to the efficiency of rural electric cooperatives, and if rural electric cooperatives should be regulated in the same manner as rural telephone cooperatives.

This committee received testimony from the Public Service Commission, rural electric cooperatives, and public utility companies. The public service commissioners were basically of the opinion that the Territorial Integrity Act was beneficial, and they pointed out some

areas where improvements could be made. The position of the rural electric cooperatives was that the Territorial Integrity Act was working and that fair and adequate guidelines were being developed by the Public Service Commission in following the interpretation placed on the law by the North Dakota Supreme Court in *Johannesson*. The cooperatives maintained any change in the law would result in considerable expense to cooperatives and public utility companies alike, as interpretive measures would have to begin anew. The position of the public utility companies was that the Territorial Integrity Act stifled growth and created confusion and uncertainty as the utilities are not allowed to expand with the population move from city and rural areas into the fringe locations around cities. The public utilities maintained that in order to serve their customers economically and to provide a return to their stockholders, they must also continue to grow, and the only area in which growth was possible was in the metropolitan fringe areas. The committee made no recommendation as a result of this study.

### 1997-98 Study

In conducting its study of the impact of competition on the generation, transmission, and distribution of electric energy within this state, the 1997-98 interim Electric Utilities Committee reviewed the history and operation of the Territorial Integrity Act. The committee received testimony from representatives of the state's investor-owned utilities and the state's rural electric cooperatives.

Representatives of Montana-Dakota Utilities Company testified that the Territorial Integrity Act is unfair in fostering effective electric competition in North Dakota. They argued that the Act is a barrier to giving customers throughout the state the ability to make economic energy choices and as such should be repealed and fairplay rules substituted in its place for all competitors. They testified if rural electric cooperatives wish to pursue loads in urban areas, in competition with public utilities, then rural electric cooperatives engaging in such activity should no longer qualify for favorable financing arrangements with the federal government, exemption from state and federal income taxes, preferential access to low-priced federal power, and potential for debt forgiveness by the Rural Utilities Service, and should be subject to the same regulatory overview as public utilities.

The committee received testimony from a representative of Otter Tail Power Company that the Territorial Integrity Act is not accomplishing what its stated objectives are--to efficiently allocate scarce resources and to minimize disputes between electric suppliers--because the Act leads to a wasteful duplication of electrical facilities and increases, rather than minimizes, the likelihood of disputes between electric suppliers.

Representatives of the state's rural electric cooperatives responded that the Territorial Integrity Act is working well and is serving the purposes for which it was enacted. The committee received testimony that the state's investor-owned utilities have exclusive territories within the state's municipalities the rural electric cooperatives cannot penetrate and that the Act avoids the costly duplication of utility infrastructure. They

noted there is substantial undeveloped land within the service territories of the investor-owned utilities while there is an outmigration of population in the rural areas and a corresponding decline in electrical usage. They testified that if it were not for some larger industrial and commercial loads, and some growth around cities in areas that were previously rural, rural electric cooperatives would have experienced a substantial



decline in their sales, and it makes no sense to expand investor-owned utility territorial growth at the expense of the rural electric cooperatives that have invested in rural North Dakota. Representatives of the rural electric cooperatives responded to the charge investor-owned utilities are competitively disadvantaged by the Territorial Integrity Act by testifying that since enactment of the Territorial Integrity Act, investor-owned utilities have continued to grow in customers and revenue and have not lost market share to rural electric cooperatives.

Representatives of the rural electric cooperatives also argued that the Territorial Integrity Act is not responsible for rural electric cooperative expansion into urban areas; that rural electric cooperatives can continue to serve their traditional service areas even when these areas become urbanized; and that the growth of the local rural electric cooperative around Fargo is overstated. The committee made no recommendation as a result of this study.

### 1999-2000 Study

The 56th Legislative Assembly enacted legislation that required the Electric Industry Competition Committee to study statutes relating to the extension of electric lines and facilities and the provision of electric service by public utilities and rural electric cooperatives within and outside the corporate limits of a municipality and to specifically address the criteria used by the Public Service Commission under NDCC Chapter 49-03 in determining whether to grant a public utility a certificate of public convenience and necessity to extend its electric lines and facilities to serve customers outside the corporate limits of a municipality and the circumstances under which a rural electric cooperative may provide electric facilities and service to new customers and existing customers within municipalities being served by a public utility. The committee made no recommendation as a result of this study.

The committee received testimony from the Public Service Commission that the 10 issues or factors that the commission considers in Territorial Integrity Act disputes are:

1. From whom does the customer prefer electric service?
2. What electric suppliers are operating in the general area?
3. What electric supply lines exist within a two-mile radius of the location to be served, and when were they constructed?
4. What customers are served by electric suppliers within at least a two-mile radius of the location to be served?
5. What are the differences, if any, between the electric suppliers available to serve the area with respect to reliability of service?
6. Which of the available electric suppliers will be able to serve the location in question more

economically and still earn an adequate return on its investment?

7. Which suppliers extended electric service would best serve orderly and economic development of electric service in the general area?
8. Would approval of the application result in wasteful duplication of investment or service?
9. Is it probable that the location in question will be included within the corporate limits of a municipality within the foreseeable future?
10. Will service by either of the electric suppliers in the area unreasonably interfere with the service or system of the other?

Items 1, 9, and 10 were developed by the Public Service Commission while Items 2, 3, 4, 5, 6, 7, and 8 are taken from Supreme Court decisions concerning the Territorial Integrity Act. The Public Service Commission reported that it received 483 Territorial Integrity Act applications between 1988 and 2000. Of these, 458 applications were granted, 11 applications were denied, 12 applications were withdrawn, and 2 were pending. The commission reported that rural electric cooperatives filed 33 objections of which 15 applications were granted, 11 applications were denied, and 7 applications were withdrawn. There were four applications appealed during this time period and one complaint appealed.

The committee received testimony from representatives of the state's investor-owned utilities that the Territorial Integrity Act and subsequent court interpretations have provided the distribution cooperatives with an opportunity to infringe upon the cities that are served by investor-owned utilities. They testified that over the years this situation has cut off their opportunity to share in the growth of the communities they serve and thus it is not a question of whether a change in the law is necessary but what changes need to take place to ensure the future, long-term viability of all the electric service providers in the state. Representatives of the state's investor-owned utilities testified that rural electric cooperatives currently enjoy virtually all of the growth opportunities in the state.

Representatives of the state's rural electric cooperatives testified that the Territorial Integrity Act is working well and avoids costly duplication of service. They testified that rural electric cooperatives should be able to participate in the state's growth areas as well as rural areas and that Congress never intended to limit cooperatives to serving only remote farmsteads and pasture wells, but federal and state law encouraged cooperatives to grow with their service areas. They testified that as some cities have expanded into the countryside where only the cooperatives were first willing to serve, the investor-owned utilities want to take away these growth areas at great cost to the consumers who built and own their own cooperative business. Representatives of the Association of Rural

Electric Cooperatives argued that investor-owned utilities have had a fourfold increase in electric sales, a rate of growth comparable to the rural electric cooperatives, and the recent slowdown in the investor-owned utilities' growth rate is not because of state law, but because the state has not experienced the economic growth occurring in other states. They also said rural electric cooperatives have suffered more from this lack of growth than have the investor-owned utilities.

The committee received testimony from representatives of Fargo, Bismarck, and Minot concerning the franchising of electricity providers. The city of Fargo has entered franchise agreements with two electricity providers--an investor-owned utility and a rural electric cooperative. These franchise agreements are nonexclusive, in that either provider can provide electric service anywhere within the city of Fargo. The usual practice is for franchise agreements to be amended to allow the provider to provide service in areas annexed by the city, and if there is a conflict, it is referred to the Public Service Commission for resolution.

Concerning franchise agreements in Bismarck, in 1973 Montana-Dakota Utilities Company and Capital Electric Cooperative entered an area services agreement effectively demarcating the area of service by each provider. When Capital Electric Cooperative was granted a franchise by the city of Bismarck to operate within the city, the area service agreement was incorporated into Capital Electric Cooperative's franchise agreement. The committee received testimony from representatives of the city of Bismarck that this system has worked relatively well with only one serious dispute, which was resolved by the Bismarck City Commission without the Public Service Commission becoming involved.

Concerning franchise agreements in Minot, the franchise automatically follows into areas annexed by the city, and there has never been a disagreement between Xcel Energy, Inc., and Verendrye Electric Cooperative, the local rural electric cooperative, that has reached the city commission.

### **2001-02 Study**

In conducting its study of the impact of competition on the generation, transmission, and distribution of electric energy within this state, the 2001-02 interim Electric Industry Competition Committee again reviewed the history and operation of the Territorial Integrity Act. The committee received testimony from representatives of the state's investor-owned utilities, the state's rural electric cooperatives, and representatives of the cities of Fargo, Bismarck, and Minot. The committee made no recommendation as a result of this study.

A representative of the state's investor-owned utilities testified that the urgency for the state's investor-owned utilities to find a reasonable alternative to the

Territorial Integrity Act is becoming critical. Representatives of the state's investor-owned utilities testified that under the Territorial Integrity Act, if a customer located outside a city's limits wants service from an investor-owned utility, the investor-owned utility must file an application for a certificate of public convenience and necessity to extend service to that customer. However, inside city limits, the process is different. Rural electric cooperatives have no limitations placed on them in extending service to new customers, but investor-owned utilities, even inside the city limits of a community they presently serve, cannot extend service to a new customer if it interferes with an existing rural electric cooperative's service or duplicates the cooperative's facilities. Representatives of the state's investor-owned utilities testified that no such limitation applies to rural electric cooperatives.

A representative of Montana-Dakota Utilities Company said the current Territorial Integrity Act is stifling the opportunity for investor-owned electric utilities to add new customers. The representative testified that while it is true that Montana-Dakota Utilities Company will show growth in electric revenues of 4 percent for 2001, that growth is primarily due to off-system sales into the wholesale market, which although fairly robust for a few years have largely evaporated today--absent off-system sales and the operating efficiencies that Montana-Dakota Utilities Company has implemented, growth of its entire North Dakota electric system has been very minimal, probably in the 1 percent range. Representatives of the state's investor-owned utilities testified that in Fargo and Bismarck, the number of new customers they are adding annually is declining, and soon the areas remaining for the investor-owned utilities in those cities to serve will be fully developed and the number of new customers they will be able to add will be zero. Representatives of the state's investor-owned utilities testified that the Territorial Integrity Act continues to be of urgency to the investor-owned electric providers and it is an issue that needs to be resolved.

Representatives of the North Dakota Association of Rural Electric Cooperatives pointed out that the committee had not received any testimony from a consumer, a city official, or a representative of the Public Service Commission complaining or finding fault with the Territorial Integrity Act or how it has operated. They testified the Territorial Integrity Act works well for both the state's investor-owned utilities and the state's electric cooperatives. They testified the Act places service decisions where they belong, with local city governing bodies. They testified the Territorial Integrity Act creates a level playing field with a balanced approach and avoids duplication of expensive electric infrastructure and thus there is no need to change the Territorial Integrity Act.

Representatives of the North Dakota Association of Rural Electric Cooperatives advocated that the rural electric cooperative enabling law, NDCC Chapter 10-13, be amended to allow electric cooperatives an unlimited right to serve in urban areas and to make urban customers cooperative members, provided that the cooperative purchases or otherwise acquires electric facilities from another utility on a willing buyer-willing seller basis. Under this proposal, sales by investor-owned utilities to cooperatives would be subject to approval by the Public Service Commission and the local franchising authority just as sales of cooperative property to investor-owned utilities are regulated. Proponents of this proposal said that providing more options for local electric service, rather than fewer, supports the idea that territorial integrity issues should be resolved through negotiation rather than legislation.

The committee received testimony from representatives of the state's investor-owned utilities opposing the willing buyer-willing seller proposal submitted by the North Dakota Association of Rural Electric Cooperatives. They testified this would allow electric cooperatives to purchase much larger investor-owned or municipally owned utility electric systems than allowed under current law. They testified the proposal would encourage electric cooperatives to entice municipalities to acquire by purchase or eminent domain existing electric utilities from investor-owned utilities and an electric cooperative could subsequently repurchase the facilities from the municipality and thereby effectively remove the investor-owned utility from the community in a manner that could not otherwise be accomplished under current law. They testified electric cooperatives would also have a substantial advantage in competing with investor-owned utilities for the purchase of other investor-owned or municipal-owned electric utilities because investor-owned utility rates are set based upon the net book value of their investment rate base, and the Public Service Commission generally will not allow an acquisition premium in an investor-owned utility's rate base. Representatives of the state's investor-owned utilities testified that if an investor-owned utility attempted to purchase utility assets, it could not bid more than the book value of those assets because it could not recover any excess in its rates, while a rural electric cooperative could bid two or three times the book value of the assets.

The committee received testimony from representatives of the cities of Fargo, Bismarck, and Minot that the franchise agreements they have with the electricity providers in those cities are working well.

### **2003-04 Study**

In conducting its study of the impact of competition on the generation, transmission, and distribution of electric energy within this state, the 2003-04 interim Electric Industry Competition Committee reviewed the

Territorial Integrity Act. In addition to the committee's study of the impact of competition on generation, transmission, and distribution of electric energy in this state, the Legislative Council assigned to the committee a study directed by House Concurrent Resolution No. 3061 of the feasibility and desirability of enacting legislation to tax electric utility providers with a fair and uniform tax system. In addition, the Legislative Council assigned to the committee a study directed by Section 1 of Senate Bill No. 2310 of issues related to wind energy development in this state.

### **Taxation**

Electric industry taxation depends upon how an electric utility conducts business and different forms of taxation apply to each part of the process of generating and delivering electricity. Separate forms of taxation apply to severance of coal from the earth, generation of electricity or production of other products from coal, generation of electricity from wind, transmission of electricity through large capacity transmission lines, and distribution of electricity to consumers. The committee reviewed coal severance taxes, coal conversion taxes, property taxes, gross receipts taxes, transmission line taxes, city privilege taxes, and municipal utility revenues.

The committee considered a bill draft relating to the taxation of generation, transmission, and distribution of electric power. The proposal would have eliminated the public utility property tax on investor-owned utilities, the 2 percent gross receipts and city privilege taxes on rural electric cooperatives, and the high-voltage transmission line tax on rural electric cooperatives. The proposal would have retained coal conversion tax, wind tax incentives, property taxes on land owned by electric utilities, and city franchise fees on electric utilities.

Concerning the general function of the production of electricity, the proposal would have left the current coal conversion tax in place, continued tax incentives for wind generation facilities, and made the conversion tax applicable to noncoal or wind generation plants of five megawatts or more. Concerning the transmission function of electricity generation, the proposal would have taxed all transmission facilities on a line-mile basis based on an increasing tax based on transmission line voltage. Concerning the distribution function of electricity production, the proposal would have implemented a two-part formula--a flat tax of 52 cents per megawatt hour of delivered power and .88 percent of the revenue collected on the retail sale of kilowatt-hours of electricity.

Under the proposal, revenue from the transmission line tax would have been allocated to counties and taxing districts based on transmission line miles and rates of tax of each taxing district. Revenue from the megawatt-hour tax would have been allocated to the county in which the retail sale was made and allocated

among taxing districts in proportion to their most recent property tax levies in dollars. Revenue from the tax on retail revenue would have been allocated according to the ratio of miles of distribution line in a county compared to the total number of miles of distribution lines the utility had in the state. Revenue would have been allocated among taxing districts in proportion to their most recent property tax levies in dollars. In addition, the committee considered an amendment to the bill which would have limited the transmission line mile tax contained in alternating current lines and impose a separate tax on direct current lines.

The committee considered a bill draft that would have eliminated gross receipts taxes for rural electric cooperatives and would have subjected their property to centrally assess ad valorem property taxes. However, the committee made no recommendation concerning its study of the electric industry taxation.

### **Wind**

As revised by the Legislative Council, Senate Bill No. 2310 (2003) provided for a study of issues related to wind energy development in this state, including wind energy development contract provisions, the potential economic benefits of wind energy development, the potential adverse impacts of wind energy development, consideration of transmission of electrical energy, and the impact on the electric industry of wind energy development.

The committee was informed that North Dakota has the greatest wind resource of any of the lower 48 states. The single biggest obstacle identified in developing this state's wind resource is constraints on the state's existing transmission grid. North Dakota currently exports nearly 60 percent of the power generated within this state, and it is likely that most wind-generated electricity also will be exported. Thus, additions to the current transmission grid will be necessary for a significant generation expansion in the state, regardless of fuel source. Other issues related to the development of wind energy include identification of the market for wind energy and possible environmental issues related to raptors and nesting waterfowl.

The committee reviewed a bill draft relating to a renewable electricity credit trading and tracking system by the Public Service Commission. The bill draft would have allowed the Public Service Commission to establish a program for tradable credits for electricity generated from renewable sources, it would have allowed the commission to facilitate the trading of renewable electricity credits between states, and would have applied to all public utilities, including electric cooperatives and municipal electric utilities. However, the committee made no recommendation concerning its study of wind energy development.

Since the creation of the committee in 1997, the committee has not made any recommendations concerning its studies. However, there has been legislation adopted relating to the areas of study of the committee.

### **1999 Legislation**

In 1999, House Bill No. 1445 established the differentiation between electricity transmission lines and electricity distribution lines. The bill provided that except for purposes of transmission facility citing under NDCC Chapter 49-22 and regulatory accounting, including the determination of the demarcation between federal and state jurisdiction over transmission in interstate commerce and local distribution, for the purposes of Title 49 and Chapters 57-33 and 57-33.1, lines designated to operate at a voltage of 41.6 kilovolts or more are transmission lines and lines designed to operate at less than 41.6 kilovolts are distribution lines.

### **2001 Legislation**

In 2001, House Bill No. 1223 allowed installations on property leased by a taxpayer to qualify for a long-form income tax credit for installation of a geothermal, solar, or wind energy device. To qualify for the credit, the device must be installed before January 1, 2011. For a device installed before January 1, 2001, the credit is equal to 5 percent per year for three years, or for a device installed after December 31, 2000, is equal to 3 percent per year for five years, of the actual cost of acquisition and installation of the device.

In 2001, House Bill No. 1221 provided a sales and use tax exemption for production equipment and tangible personal property used in construction of a wind-powered electrical generating facility before January 1, 2011, if a facility has an electrical energy generation unit with a nameplate capacity of 100 kilowatts or more.

In 2001, House Bill No. 1222 reduced the taxable valuation of centrally assessed wind turbine electric generators from 10 percent of assessed value to 3 percent of assessed value if the generation unit has a nameplate generation capacity of 100 kilowatts or more and construction is completed before January 1, 2011.

In 2001, Senate Bill No. 2299 reduced the coal severance tax rate from 75 cents to 37.5 cents per ton and retains the two cent per ton research and development tax. The bill increased by .40 mill per kilowatt hour the coal conversion tax for electrical generating plants based on nameplate capacity of the facility. The bill adjusted the coal severance and coal conversion tax allocation formulas to retain approximately equal allocations among state and political subdivision recipients as were allocated under previous law. The bill reduced the generation capacity of an electrical generating plant to be classified as a coal conversion facility from 120,000 kilowatts to 10,000 kilowatts. The bill

## **RECENT LEGISLATION**

provided that each county may receive not less than it received in the previous calendar year under the coal conversion tax and for a county in which a facility is located that was not a coal conversion facility before the effective date of this bill, that county must receive an additional amount that is at least as much as was

received in property taxes for that facility for taxable year 2001. The bill eliminated sales tax provisions that have been determined to be unconstitutional with regard to sales tax to be imposed for imported coal. In addition, the bill required the

Public Service Commission to allow a public utility to recover all costs resulting from a coal severance tax pursuant to NDCC Chapter 57-61 and all costs resulting from a coal conversion tax pursuant to Chapter 50-60 in determining the value of property for ratemaking purposes.

### 2003 Legislation

In 2003, House Bill No. 1348 provided that a transmission line placed in service by an investor-owned utility on or after October 1, 2002, is exempt from property taxes for the first taxable year the line is placed in the service and is entitled to a property tax reduction of 75 percent for the second taxable year, 50 percent for the third year, and 25 percent for the fourth taxable year. After the fourth taxable year of operation, the transmission line and associated substations are exempt from property taxes and subject to a tax of \$300 per mile. For transmission of electric cooperatives, the tax on a transmission line of 230 kilovolts or larger initially placed in service on or after October 1, 2002, is increased from \$225 per mile to \$300 per mile. The bill provided an exemption from this tax for the first taxable year a transmission line is placed in service and provided for a reduction of the tax by 75 percent for the second taxable year, 50 percent for the third taxable year, and 25 percent for the fourth taxable year.

In 2003, Senate Bill No. 2286 provided that for taxation of rural electric cooperatives, the cooperative report of gross receipts must include a statement of the cost and amount of all electric energy purchased for resale and the cost and amount of all wind energy purchased for resale. The bill provided that all electric energy purchased for resale must be deducted from the cooperative's gross receipts before determining the cooperative's gross receipts tax liability.

In 2003, House Bill No. 1363 reduced the time period during which the Public Service Commission may suspend a rate increase or decrease filing, classification, contract, practice, or rule from seven months to six months beyond the time when it otherwise would go into effect. The bill also provided that notwithstanding that the Public Service Commission may suspend a filing and order a hearing, a public utility may file for an interim rate relief as part of its general rate increase application and filing. The bill provided that if interim rates are requested, the commission shall order, without a public hearing, that the interim rate schedule take effect no later than 60 days after the initial filing date. In addition, the bill established a procedure to calculate the interim rate schedule.

In 2003, Senate Bill No. 2115 provided that information received by the Public Service Commission which was developed or obtained by the market monitor of the Midwest Independent System Operator, Inc., or its successor, is confidential.

### 2005 Legislation

In 2005, Senate Bill No. 2239 provided a definition of and termination terms of a wind option agreement, which is a contract in which the property owner gives another the right to produce energy from wind on that property. The bill voids a wind option agreement, wind easement, or wind energy lease if the development to produce energy from wind power has not occurred within five years.

In 2005, Senate Bill No. 2018 reduced from 3 to 1.5 percent the portion of assessed value used to determine taxable valuation of wind turbine electric generation units with a generation capacity of 100 kilowatts or more. To qualify for the reduced taxable valuation, a generation unit must have a purchased power agreement executed after April 30, 2005, and before January 1, 2006, and construction must begin after April 30, 2005, and before July 1, 2006. The reduced taxable valuation applies to that property for the duration of the initial purchased power agreement for that generation unit.

In 2005, Senate Bill No. 2412 authorized electric providers to enter agreements with other electric providers having adjacent or intermingled electric supply facilities for the purpose of establishing service areas and designating the service locations to be served by each electric provider. The bill provided that electric providers may enter written agreements for the sale, transfer, exchange, or lease of equipment or facilities used to serve the areas that are the subject of a service area agreement. For purposes of electric service area agreements, electric providers include electric public utilities and rural electric cooperatives and a service area means a defined geographic area containing existing or future service locations established by an agreement among the electric providers and approved by the Public Service Commission.

In 2005, House Bill No. 1324 allowed a public utility proposing to construct, lease, or make improvements to an energy conversion facility, renewable energy facility, transmission facility, or proposed energy purchase contract from another entity or person for the purpose of ensuring reliable electric service to its customers to file an application with the Public Service Commission for an advanced determination of prudence regarding the proposal. The bill provided that the commission may issue an order approving the prudence of an electric resource addition if the public utility files with its application a projection of costs to the date of the anticipated commercial operation of the electric resource addition and the commission determines that the resource addition is reasonable and prudent.

In 2005, House Bill No. 1314 authorized the Public Service Commission by rule to establish or participate in a program to track, record, and verify the trading of

credits for electricity generated from renewable and recycled heat sources among electric generators, utilities, and other interested entities within the state and with similar entities in other states. The bill provided that the income tax credit for installation of geothermal, solar, or wind energy devices may be carried forward for five taxable years. The bill also allowed a group of corporations filing a North Dakota consolidated tax return under the combined reporting method to claim the credit against aggregate North Dakota tax liability on the consolidated return.

In 2005, Senate Bill No. 2278, which was vetoed by the Governor, would have provided that a public utility planning the construction of an energy conversion facility, major capital addition to an existing energy conversion facility in which the public utility has an ownership interest, new transmission facility, new renewable energy facility, or new power purchase that was expected to have a material impact on rates could have applied to the Public Service Commission for a rate stability plan providing for the phase-in of rate increases before the commercial operation of the electric resource addition.

In 2005, House Bill No. 1169 established the North Dakota Transmission Authority. The bill provided that the Industrial Commission acting as the North Dakota Transmission Authority is created with the purpose of diversifying and expanding this state's economy by facilitating development of transmission facilities. In support of that purpose, the authority has the power to, among other things, borrow money and issue evidences of indebtedness and do any and all things necessary or expedient for the purposes of the authority. The bonds may not exceed \$800 million.

The authority may construct transmission facilities after publication of its plans in certain newspapers and if a person does not deliver to the authority notice indicating willingness to construct transmission facilities contemplated by the authority and a bond as required by the authority. If the authority receives this notice, then the authority must find that exercising its authority would be in the public interest before constructing transmission facilities. The public interest includes the economic impact to the state, economic feasibility, technical performance, reliability, past performance, and the likelihood of successful completion and ongoing operation. The bill provides that the transmission facilities are not under the jurisdiction of the Public Service Commission and are exempt from property taxes for a period not to exceed the first five taxable years of operation. The bill required that the authority deliver a written report on its activities to the Legislative Council each biennium. The Legislative Council has assigned to this committee the duty of receiving this report.

In 2005, Senate Bill No. 2133 established a siting process expense recovery fund. The bill provides that

fees received from applicants for a certificate of site compatibility, certificate of corridor compatibility, or waiver and any additional fees imposed for the completion of an energy conversion facility site, transmission facility corridor, or transmission facility route evaluation and designation process by the Public Service Commission must be deposited in the fund. All money deposited in the fund is appropriated on a continuing basis to the commission to pay expenses incurred in the siting process.

In 2005, House Bill No. 1283 increased the threshold for an energy conversion facility which is subject to the Energy Conversion and Transmission Conversion Siting Act from a facility that generates 50,000 kilowatts or more of electricity to a facility that generates 100,000 kilowatts or more of electricity.

## **OTHER DUTIES - REPORTS RECEIVED**

The Legislative Council has assigned to the Electric Industry Competition Committee the duty of receiving two reports. Both reports are under NDCC Chapter 57-40.6 relating to emergency services communication system.

The first report is provided for under NDCC Section 57-40.6-11, which requires the Division of State Radio to report annually to the Legislative Council on the operation of and any recommended changes in the emergency 911 telephone system standards and guidelines. Under Section 57-40.6-10, the governing body with jurisdiction over an emergency 911 telephone system shall designate a governing committee. The governing committee shall hire a 911 coordinator and provide for the operation of a 911 system subject to particular requirements of this section, i.e., the standards and guidelines.

The second report is under NDCC Section 57-40.6-12, which requires the Public Safety Answering Points Coordinating Committee to provide by November 1 of each even-numbered year to the Legislative Council a report on income, expenditures, and status of the emergency services communication system. The information for the report is provided for by the cities and counties that have a telephone exchange access service and wireless service fee. Under Chapter 57-40.6, a governing body of a city or county may provide for a resolution, subject to the vote of the electors, for the imposition of a fee of up to \$1 per month per telephone access line and wireless access line for providing an emergency services communication system, and in the case of wireless, enhanced 911 service. The Public Safety Answering Points Coordinating Committee is composed of one member appointed by the North Dakota 911 Association, one member appointed by the North Dakota Association of Counties, and one member appointed by the Adjutant General to represent the Division of State Radio.

### **POSSIBLE STUDY APPROACH**

In carrying out its statutory responsibilities, the committee may wish to monitor the effect of recent changes in this state's law, federal electric industry restructuring initiatives, and electric industry restructuring in other states. In conducting this study, the committee could solicit testimony from a number of

sources. These include the Public Service Commission and its staff, representatives of the state's investor-owned utilities, representatives of the state's generation and transmission cooperatives, representatives of the state's distribution cooperatives, the North Dakota Association of Rural Electric Cooperatives, the state's municipal electric utilities, power marketers, and large commercial and industrial power users.