MICROFILM DIVIDER

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

ROLL NUMBER

DESCRIPTION

1385

2003 HOUSE APPROPRIATIONS

HB 1385

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1385

House Appropriations Committee

☐ Conference Committee

Hearing Date 02-13-03

Tape Number	Side A	Side B	Meter #
1		X	12.3
Committee Clerk Signature	Chris J. Nyhus		

Minutes:

Chairman Svedjan Called the meeting to order, a quorum was present.

Rep. Skarphol This is to reconcile a discrepancy in the law to mediate the unjustness of crude oil prices.

Joel Gilbertson, Attorney of the Vogel Law Firm, speaking on behalf of Continental Resources. See written testimony

Tom Luttrel, Senior VP of Continential Resources See written testimony.

Rep. Warner Oil can be stored in a non-pressurized tank or it can be in an underground tavern. How do you store natural gas when supply exceeds demand?

Luttrel It is stored just as easily as oil is, there are large gas storage facilities across the US, one large one is in MT. They take old reservoirs and they set up injection wells and put the gas back down into that formation. When they need it they take it out. It is not a problem now. Demand is higher than supply.

Rep. Kerzman Is all gas useable? What about "sour gas"?

Luttrel All gas is useable, some has a higher sulfur content and that is referred to as sour gas. There are sulfur stripping plants for that.

Rep. Wald At what point does the gathering of gas rather than flaring of it become economical?

Luttrel Lack of infrastructure is the key, and I don't think it is a problem in ND anymore. The NDIC would have jurisdiction on that.

Rep. Delzer Paragraph 4 of section 1 of the bill, prohibits a company that has gas gathering and production from favoring their own production. I want to understand the reasoning behind that. If a company pays for the capital, why should they not favor their own production?

Luttrel This relates to purchasers, not gatherers. The purchasers of the gas can't discriminate against their own production. They can't take their gas into their pipeline versus that of other companies. That is a national theory that makes all the sense in the world to have open access to these large pipelines across the United States. If parties are biases and don't have open access to these pipelines that the purchasers have, that will hinder the gas flow throughout the United States. That was studied and found on by the Federal Energy Regulatory Commission.

Rep. Delzer So you're talking about when they tie into the major gaslines, not when they go to the fist gas plant in the field.

Luttrel I'm talking about whoever the purchaser may ultimately be.

Rep. Kempenich Regarding the pipeline, is it like a toll-road, does the consumer pay all of this eventually?

Luttrel That is exactly how it will be.

Rep. Kroeber Do we have regulatory authority now?

Luttrel There is no regulatory authority on gas.

Rep. Skarphol Regarding Rep. Delzer's question on section 4. Give an example of that.

Luttrel They need to treat all of the producers the same.

Mike Armstrong, Independent oil and gas producer from Dickinson, ND. I fully agree with Mr. Luttrel. I've been against government intervention my whole life. I think we have an exception here. Please support HB 1385.

Rep. Aarsvold I'm a producer too, but I produce grain. I know there are grading factors that affect my product. Do people also grade gas and oil?

Armstrong Yes, it is tested.

Rep. Aarsvold Who tests it?

Armstrong Bear Paw, or whoever the purchaser is. I have never questioned the validity of any of those tests.

Rep. Earl Rennerfeldt, Williston I am the prime sponsor, yet I only introduced this for Rep. Skarphol. He was over his 5 bill limit. After signing on to this bill I realized it could cause many more problems that it will ever resolve. I'm also of the opinion that because of all the contract disputes There was a similar bill introduced in Oklahoma, sponsored by a company, and it failed. This will stifle gas hookups and increase flaring.

Ron Ness We want to advance oil and gas development in ND, but this bill is not the answer.

Rep. Wald What about the statement of "unregulated monopolies" being created?

Ness That's beyond my capabilities to answer.

Rep. Timm There have been lots of conflicts over these bills. You don't think its about anything personal on Rep. Skarphol's behalf?

Ness No, I don't.

Rep. Monson Does the big company just take care of themselves first by buying there own production?

Ness We don't have enough gas in ND to economically stimulate more gas plants for more competition.

Rep. Skarphol I was asked to introduce this bill and I have experience with this bill. That is the extent of my personal interests with it.

Ness I confirm that.

Wayne Biberdorf, Operation Manager for AHC ND located in Williston See written testimony.

Rep. Skarphol Isn't the issue a time issue? The longer negotiations take, the higher the cost and the more gas gets lost?

Rep. Rennerfeldt Please address the evergreen contracts.

Biberdorf All of the evergreen contracts would be brought to the forefront and cause a lot of problems and work if this bill passes.

John Morrison All gas in ND is sold on a percent of proceeds basis. AHS gets back 62% of tailgated gas.

Rep. Kempenich Producers lose money over the negotiation times, and between producers and operators, who is being pushed into this?

Morrison Its a natural contract situation.

Rep. Wald Respond to the "unregulated monopoly" comment.

Morrison If there is one, it is a natural monopoly.

Rep. Kempenich What is the toll to get onto a pipeline?

Morrison There is none since there are no 3rd party gathering lines in ND.

Rep. Skarphol How frequently are gas contracts negotiated?

Morrison It depends on the circumstances.

Rep. Skarphol The three wells in my handout, they have not been renegotiated. Subsection 6 in the bill says that all contracts in existence will not be subject to reconsideration.

Morrison It depends if evergreen contracts are encompassed.

Pierce Norton, JR., President of Bearpaw LLC See written testimony.

Rep. Monson Part of the reason ND is not moving forward in this is because of our lack of regulation. What other states do not have these laws?

Norton Montana and Wyoming.

Rep. Kerzman How is shallow well methane relating to your pipelines?

Norton We'd like to keep it out of our system, and it may require a different infrastructure.

Rep. Skarphol Evergreen contracts allow people to access markets at higher prices.

Norton We aren't price gouging. This is a relationship business.

Rep. Skarphol What percent of your gas do you sell in the long-term contracts?

Norton Not very many of them.

Al Golden, Owner of Golden Oil Company See written testimony.

Lynne Helms, Director of the Oil and Gas Division of the ND Industrial Commission We want to be on the record as being neutral on this bill.

Rep. Timm Flaring is regulated? There is one by West Hope that has been flaring for many years.

Rep. Kerzman Are there any other revenue streams for companies to flare?

Norton I'm not aware of any.

Rep. Skarphol If its not appropriate for regulation for this for natural gas, how about crude oil?

Helms I agree.

Rep. Skarphol Quality is not usually in dispute then, correct?

Helms Correct, what is disputed is the contract percentages.

Rep. Rennerfeldt So if its not broke, why fix it?

Helms The Industrial Commission is not trying to.

Rep. Wald If we pass this legislation, will it hinder or augment gas production in ND?

Helms It would augment it in my personal opinion.

Rep. Glassheim I'm not in favor of flaring. It wastes resources.

Chairman Svedjan Closed the hearing on HB 1385.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1385

House Appropriations Committee

☐ Conference Committee

Hearing Date 02-18-03

Tape Number	Side A	Side B	Meter #
2		X	8.1- end of tape
Committee Clerk Signature Chris S Nyhus			

Minutes:

Chairman Svedjan Opened HB 1385 for discusion.

Rep. Skarphol I think we need to be sensitive to the mineral owners here.

Rep. Skarphol The Oklahoma legislature passed this bill, but the governor vetoed it.

Rep. Brusegaard I move a Do Not Pass, 2nd by Koppleman.

Rep. Timm Does this allow the landowner to request a better price?

Rep. Skarphol It gives royalty owners a place to ask questions and get them answered.

Rep. Brusegaard Motion withdrew.

Rep. Wald I move to amendment number 30595.0101 to HB 1385. 2nd Carlson.

Motion Passes.

Rep. Wald I move Do Pass As Amended. 2nd Skarphol.

Motion fails.

Rep. Rennerfeldt I move to convert this a bill to a study. 2nd Carlisle

Motion fails.

Rep. Rennerfeldt I move a Do Not Pass As Amended. 2nd Brusegaard.

Motion carries 13 yea, 9 nay, 1 absent/not voting. Rep. Carlisle will carry this bill to the floor.

FISCAL NOTE

Requested by Legislative Council
02/05/2003

REVISION

Bill/Resolution No.: HB 1385

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.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 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.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

The fiscal impact of HB 1385 is difficult to estimate. This bill creates the same regulatory oversight of natural gas purchasers that the Industrial Commission now has over common purchasers of crude oil. To the best of our knowledge the Commission has never been petitioned to hear a case dealing with crude oil purchasers and arguably this legislation would create the same incentive to negotiate fair contracts in the case of gas contracts. However, there are hundreds of gas gathering contracts negotiated each year and if even 10% of them result in Oil and Gas Division hearings, it is estimated that the agency would need an additional 0.75 FTE to perform the required support staff work at $67,700 salary plus benefits for the 2003-2005 biennium and each following biennium. In 1988 the Commission held 3 hearings dealing with just one gas gathering case.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

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

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Karlene K. Fine	**Agency:**	Industrial Commission

Phone Number:	328-3722	Date Prepared:	02/05/2003

FISCAL NOTE

Requested by Legislative Council
01/31/2003

Bill/Resolution No.: HB 1385

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.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
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3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

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

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Karlene K. Fine	**Agency:**	Industrial Commission
Phone Number:	328-3722	**Date Prepared:**	02/04/2003

30595.0101
Title.0200

Prepared by the Legislative Council staff for
House Appropriations
February 18, 2003

VR
2/18/03

...HOUSE AMENDMENTS TO HOUSE BILL NO. 1385 APP 2-19-03

Page 1, line 8, after "**gas**" insert "**<u>or refusing to purchase gas</u>**"

HOUSE AMENDMENTS TO HB 1385 APP 2-19-03

Page 3, after line 5, insert:

"<u>7.</u> <u>This section applies only to purchasing, gathering, processing, and treating of natural gas produced in this state. This section does not apply to any other transportation or sale of natural gas, to the local distribution of natural gas, or to the facilities used for the local distribution which are otherwise subject to state or federal regulation.</u>"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1385: Appropriations Committee (Rep. Svedjan, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (13 YEAS, 9 NAYS, 1 ABSENT AND NOT VOTING). HB 1385 was placed on the Sixth order on the calendar.

Page 1, line 8, after "**gas**" insert "or refusing to purchase gas"

Page 3, after line 5, insert:

"7. This section applies only to purchasing, gathering, processing, and treating of natural gas produced in this state. This section does not apply to any other transportation or sale of natural gas, to the local distribution of natural gas, or to the facilities used for the local distribution which are otherwise subject to state or federal regulation."

Renumber accordingly

2003 TESTIMONY

HB 1385

House Bill No. 1385
House Appropriations Committee
February 13, 2003

Testimony of Pierce H. Norton, Jr.

Mr. Chairman, members of the House Appropriations Committee, my name is Pierce H. Norton, Jr. and I am the president of Bear Paw Energy, L.L.C., which operates the Grasslands Gas Processing Plant in McKenzie County, North Dakota, the Lignite Gas Processing Plant in Burke County, and the Marmarth Gas Processing Plant in Bowman County. Bear Paw employs approximately 70 people in the State of North Dakota. We're here to testify regarding House Bill No. 1385, which proposes common carrier and public utility regulation of gas processing and gas purchasing activities. We oppose this bill. It provides no benefits to anyone, including its proponent, and would add an unnecessary layer of regulation to our gas gathering and processing business that does not exist today. It would add $70,000 of additional cost to the Industrial Commission's budget, which in our opinion will only go up in the future. Administration under this bill will be confusing and ambiguous.

Bear Paw Energy is a gathering and processing company. We and our predecessors have operated our plants in North Dakota for more than twenty years. Our plants are not full and, compounding this problem, production is always in decline. Since our plants, like all other plants, are built to operate at a design capacity, being below that capacity causes us to suffer operational inefficiencies. We need gas and we want to connect wells. We currently have gas contracts in place with over 113 companies. In the past three years we have connected 108 wells from over thirty-five companies and to my knowledge we have not failed to connect a well that was economically beneficial to both Bear Paw and the producer. The proposed bill creates no further incentive for us to do our business. If there were some reason that we did not want to connect a well – the only one that I can think of being economic – this bill would provide no remedy and would certainly not expedite the process. It would only invite hearings, appeals (which equate to time), mandated rates of return and other non-productive processes.

Bear Paw treats producers fairly. The market place requires that. We are apt to face companies we do business with here in other parts of the country so we must treat all customers and potential customers equitably. The vast majority of gas produced in North Dakota is casinghead gas produced in association with oil. It requires processing before it can be sold to a pipeline customer. It is also produced in fairly small quantities. Bear Paw has approximately 1386 wells producing into our facilities for an average of 25 mcf per day. Wells are justified and drilled in locations determined by the oil, not proximity to a processor's facilities. To gather and process the gas, we must first know the gas quality and quantity, which we don't know until the well is completed and flow tested. We don't know the economics until that time.

We tailor our offers to producers to try to meet their needs. For us, factors that come into play are the number of wells, commitments to connect additional wells, capital requirements to build the facilities to make the connections, and gas volume and quality (including the amount of liquids in the gas and sulfur content). Some producers want to pay the costs of connecting their wells up front, while some want us to bear the capital costs of connection. Some want a higher share of residue gas sales, some like to bet on liquids pricing so want more of that. Some want fixed gathering fees, others like to share risk and upside opportunity. I can think of many different variables – at least forty – that affect the economics of any particular transaction. The point is, there are a lot of different contracts out there and the terms depend upon the needs of the producers and the processor. It's a matter of contract that has worked for decades in North Dakota without government writing our contracts for us.

Until a well is connected, for oil to be produced, gas must be flared. We don't like to see gas flared as it is a lost opportunity for us. A reservoir has a defined amount of gas and any mcf flared can never be recovered and is a lost economic opportunity for us. We understand that the Industrial Commission has never refused to grant a request to flare gas as an exception to North Dakota's anti-flaring law.

Let me speak further to fairness. Hydrogen sulfide content has been a problem in the past. It is dangerous, environmentally difficult and costly to dispose of. We have done something innovative, working with the state we have drilled acid gas disposal wells which allow us to dispose of sulfur in a more economical manner and have passed the substantial savings of this approach directly to our producers.

In short, House Bill No. 1385 will raise many questions, would add a whole new layer of bureaucracy and governmental control over the natural gas purchasing and processing business, would lead to decreased competition in the gas purchasing and processing business, and would ultimately lead to fewer gas processing plants, fewer gas gathering systems, and more flared gas in the state of North Dakota. There is nothing broken here requiring fixing, especially at this cost. As you know, regulation never results in decreased costs.

HOUSE BILL NO. 1385

Good morning, Mr. Chairman and members of the committee. I am Joel Gilbertson, an attorney with the Vogel Law Firm in Fargo and Bismarck and I am here on behalf of Continental Resources in support of this bill. We will have someone from Continental before you shortly, but I should mention that Continental is and has been for quite some time actively involved in oil and gas exploration in North Dakota.

I will be brief because there will be others testifying before you with much more information and background than me. However, I did want to mention two items.

The first is that H.B. No. 1385 is meant to address a problem. One of the first questions you as legislators must ask is whether there is a problem. As proponents of a bill, we need to outline that problem. You will hear much more detail about the present problems in gas production and gathering. However, in a nutshell, we have an unregulated monopoly and the unfair losers are the independent gas producers and royalty owners of North Dakota. I guess, for that matter, that many others in North Dakota are the losers in this system as well because further gas exploration is discouraged. This bill seeks to do the same for gas, from a regulatory oversight position, as is presently done for oil.

I also wanted to point out that perhaps the last people in the entire world you expect to see before a legislative committee requesting authorization for further regulatory oversight are two people you are going to hear from. Tom Luttrell is Senior Vice President of Continental Resources and Mike Armstrong is the President of The Armstrong Corporation in Dickinson. Both are independent oil and

gas producers and the word "independent" is not just there for show. They are two of the wildcatters of oil patch lore. Their last choice would be a regulatory oversight request. That is probably as much of a confirmation that this bill is needed as anything. Both have extensive experience in the oil industry (both in the office and in the field) and, as we are addressing here, the natural gas patch as well.

Thank you, Mr. Chairman. I will be happy to respond to questions and in that absence would turn it over to Mr. Luttrell.

Testimony in Support of House Bill 1385

Presented by Tom Luttrell
Continental Resources, Inc.
February 13, 2003

Mr. Chairman and Members of the Committee, my name is Tom Luttrell. I am a Senior Vice President of Continental Resources, Inc. I appear before you today in support of House Bill 1385.

First, I should explain who Continental is so that you understand the perspective from which we strongly support House Bill 1385. Continental is one of the most active exploration and production companies in the state of North Dakota.

During 2002 we spent over $50 million on oil & gas development in the state. We operate over 200 wells in the state and are the state's 4th largest oil producer. Our wells in the state produce about 6,000 barrels of oil and 4 million cubic feet of gas per day. We currently have 4 rigs drilling in the state, which is 40% of all rigs presently drilling.

But we're not just on the producer side of this matter. Our wholly owned subsidiary, Continental Gas owns pipelines and processing facilities and purchases natural gas from more than 100 wells here in the state. I'd like to make the point very clear, we are on both sides of the fence - we are a producer and also a purchaser and pipeline company.

The need for House Bill 1385 is very straightforward and simple to explain. Basically, there exists an unregulated monopolistic situation and the independent gas producers and the royalty owners are the losers. Everyone else in North Dakota loses as well because this system wastes a valuable natural resource by venting it into the atmosphere and discourages further exploration in the state.

First, I'll explain the details of the problem existing here in North Dakota. And then I'll explain how the problem isn't unique to North Dakota, but is in fact part of a national problem of price gouging on the part of gas pipelines who are charging monopoly-type rates and fees which are stifling exploration.

Oil wells produce associated natural gas. Oil is produced into tanks while the natural gas, a valuable natural resource, is vented or flared to the atmosphere. When that gas is flared, no royalty is paid to the mineral owners and no tax is collected by the state. How long the natural gas is wasted by flaring depends upon if and when a gas contract can be negotiated with a gas purchaser and the well can be connected to a pipeline.

The waste is so severe that in 1985 legislation was passed (NDCC Section 38-08-06.4) requiring that every well must either be hooked to a pipeline for gas sales within one (1) year or be capped. In some cases, the NDIC has further shortened the flaring time limit to as little as 30 days.

Because natural gas is such a valuable natural resource, the restrictions imposed by the flaring statute are logical and necessary. However, the law is flawed because it only requires the producer to connect the well or to cap it. The law doesn't relate to gas purchasers or pipeline companies, nor does it give the NDIC any authority to intervene and correct a well connection or unfair price problem.

Obviously, a producer can't get its well connected if a gas purchaser won't buy the gas - and there is no impetus whatsoever upon the gas purchaser or pipeline company to buy the gas and stop the wasteful flaring, or to pay a fair price for the gas.

Obviously, because the one-sided law burdens only the producer (and in turn the royalty owner) it creates an incredibly uneven playing field. Think about it, the producer faces a deadline to get the well connected for gas sales while the purchaser has no pressure whatsoever upon it - not even so much as any incentive to deal in good faith to get the well connected or to pay a fair price for the gas.

Certainly, the big national gas purchasing companies enjoy the leveraged bargaining position afforded them by the one-sided law. Of course they will adamantly oppose this attempt to level the playing field – and in a moment I'll address the irrational opposing arguments I've heard thrown out.

The problem for North Dakota's producers attempting to get wells timely connected for gas sales is further compounded by an extremely limited gas pipeline infrastructure and choice of purchasers.

In North Dakota, there are a few small, localized gathering pipeline systems, primarily installed by producers because there were no reasonable alternatives. However, all natural gas produced in the state ends up in pipelines owned by WBI Holdings, Inc. or Bear Paw Energy, L.L.C.

WBI Holdings is a subsidiary of MDU. Bear Paw is a subsidiary of Enron, which we've all heard and read so much about in the past year.

Here in North Dakota, these large pipeline companies enjoy a monopoly-type situation. But the problem isn't limited to here. A few huge natural gas pipeline companies are methodically headed to a national monopolistic situation.

That is the very urgent situation jointly facing North Dakota and the other oil and gas producing states – a scenario that is resulting in unfair pricing and negotiating practices and is stifling domestic exploration and production.

But you don't have to take my word for it. I'd like to pass out copies of a natural gas white paper taken from the December 2002 issue of the American Oil & Gas Reporter. Please take the time to read this article. It will clearly bring into focus for you the problem existing in North Dakota and throughout the United States and the urgent necessity of passing House Bill 1385.

In the article the problem is defined in detail by key industry and regulatory representatives from the states of Texas, Oklahoma, Kansas, New Mexico, Pennsylvania, West Virginia, Ohio, Colorado and Wyoming and also from various industry associations, including the Independent Petroleum Association of America.

Other states are taking action. Texas and Kansas already have in place laws similar to House Bill 1385 and Oklahoma should pass the same during the current session.

As you may be aware, the North Dakota Oil & Gas Association is opposing House Bill 1385, and I'm sure you wonder why. There's a simple explanation; the association is closely affiliated with and significantly funded by the American Petroleum Institute ("API"). The large national pipeline companies are big in API and therefore carry much influence nationally and with the local associations.

Continental is a member of the North Dakota Oil & Gas Association and in fact, I personally am an active member of the association's Legislative Committee, having participated in every meeting.

I was in the meeting where the decision was made to oppose this bill, and I know that the decision was influenced by gas purchasing companies. I've heard their reasons for opposing. I suspect you will here some of those reasons in a moment so I'll go ahead and fill you in now.

The reason most often given is that the purchasers are just plain opposed to government interference – the gas purchasing & pipeline companies say, "let the fair market dictate how long it will take to negotiate a gas sales contract and how long it will take to get a well connected".

As part of an independent oil company, I'd be lying to you if I said I don't oppose government interference. But the fact is we are already regulated and the gas purchasers aren't – and that simply isn't fair!

It is easy to understand why the purchaser and pipeline companies are screaming and kicking against regulation. They've currently got one heck of a nice deal at the expense of all producers, royalty owners, school districts and states.

Don't be fooled; House Bill 1385 doesn't even create true pipeline regulation; it just simply requires purchasers to buy gas that is tendered to them.

But the very limited oversight it does impose is enough to get the pipeline and gas-purchasing companies attention big time – I guess if your in a situation of not being accountable to anyone, you don't want to give up that luxury without a fight.

I've also heard another twist on the fair market argument that says "we don't need the NDIC playing judge & jury in these type matters" - I can't think of a more appropriate regulatory agency to handle it.

Still another twist is the absurd argument that "the economics of the pipeline and gas purchasing business is too complicated to have the NDIC passing judgment on whether it's feasible to connect a well" Of course we all know that isn't the case.

You will probably also here the purchasers say there is no problem hooking up wells because they are starved for gas to buy from wells and put into their pipelines. That doesn't seem to be the case from our first hand experience in negotiating with them.

But even if it is the case, then why would they be opposed to this bill - it won't have any impact on them.

Still just one more; I've heard it said that the current flaring bill doesn't have any teeth to it, because supposedly the NDIC easily grants waivers from the requirement to cease flaring gas.

I don't believe that's the case, but even assuming it is, is that truly the right way to handle the problem? Of course not, the right solution is to require the producer and gas purchaser to do their part and get wells connected ASAP or make sure the NDIC has an effective hammer to make them do it.

Let's just tell it like it is; if parties are dealing in good faith, they have nothing to fear by this law and NDIC intervention will never be a factor.

This law will be an effective deterrent to delayed well connections. Both the producer and purchaser will be motivated to expeditiously negotiate sales contracts and get wells connected rather than deferring their fate to the NDIC.

Flaring will be held to a minimum, and the well participants, royalty owners, state school land department and tax collections at county and state levels will receive a fair and reasonable price for the gas production.

And in those instances where issues do arise, it will be much more efficient to defer the decision-making authority to the NDIC instead of district court. Certainly, that is the way to most expeditiously get the gas being sold for a fair price and stop being flared, which is the real point of the matter.

I'd also like to point out there is already a law preventing the wasting of oil. NDCC Section 38-08-19 requires oil purchasers to take all oil delivered to them. The bill before you simply applies that same type law to natural gas – it virtually duplicates the language existing in the oil purchasing statute.

Now, opponents will say there's major difference between the language in this proposed legislation and the existing oil purchasing law. The additional language prohibits gas purchasers from paying inferior prices or charging exorbitant fees.

That's a very necessary difference. Compared to the oil purchasing business, there is inherently much more room in the gas purchasing business for manipulating price, processing fees, etc.

Anyway, why would the gas purchaser and pipeline folks fear this additional language if they deal in good faith?

In closing, I must tell you that there is a stigma that exists throughout the industry against exploring for oil and gas in North Dakota. The difficulties in getting wells connected and inability to receive a fair price for your gas are a big part of the stigma and are certainly negatives deterring companies from coming here to explore.

As you may be aware, you have an enormous and urgent problem facing you that you need to be keenly aware of. The facts clearly show the oil & gas business in the state is in a desperate situation that requires your attention. Oil price is selling for over $30 per barrel and natural gas for over $6 per mcf.

But North Dakota only has 10 rigs running in the state - and 7 of those are drilling in enhanced recovery units that having nothing at all to do with exploration for new reserves. If that isn't an attention getter, then I don't know what is.

It's common knowledge that there is an enormous amount of oil and gas remaining to be found in the state. However, the statutory and regulatory environment must be conducive to investment, or regardless of the potential the activity will be stymied, as is the current case.

This bill is an extremely important piece of legislation to eliminate the gas problem by leveling the playing field between producers and purchasers.

It is part of a package of several critical bills pending before this legislative assembly that together goes a long way to eliminate the negative stigma and reverse the spiraling decline of drilling activity and production in the state.

Bear in mind while you ponder how to vote this bill that it is the exploration and production companies, not the purchasers and pipeline companies, who are going take the risk and invest the dollars to find the remaining reserves of North Dakota.

I'm confident you will do what's necessary by passing this bill and the others pending before you to ensure that all North Dakotans realize maximum benefit from this vital natural resource of oil and gas that you have been blessed with.

If you do, then I believe 20 years from now, everyone will look back and say that the 2003 legislative assembly passed perhaps the most visionary and impactual package of legislation ever for the development of North Dakota's oil & gas reserves.

That concludes my testimony, but before I finish, I'd like to propose for your consideration a couple of amendments to House Bill 1385, and I'll pass those out at this time.

The first amendment is additional language to make it clear that one of the key points of this law is to prohibit a purchaser from refusing to purchase all gas tendered it.

The second amendment makes it clear that this law only applies to that part of the gas pipeline business associated with the initial purchase of gas from the well. The gas pipeline and marketing business is full of various deals made downstream of the processing facilities. This bill has nothing to do with those activities.

Thank you for allowing me this opportunity to provide testimony. I'll be happy to answer any questions you may have.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1385

Page 1, line 8, after "**gas**" insert "**<u>or refusing to purchase gas</u>**"

Page 3, after line 5, insert:

> <u>7.</u> <u>The provisions of this section shall apply to purchasing, gathering, processing and treating of natural gas produced in this state, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution which are otherwise subject to state or federal regulation.</u>

Renumber accordingly

HB1385

Wayne Biberdorf, Operation Manager for AHC ND located in Williston.

I am here to voice opposition to HB1385. As manager for Amerada Hess, I have first hand experience with this issue from both a producer's and gas gatherer / processor's point of view.

First as a gas processor, Gas Plants can only stay in business by working with the producers. Both must talk early in the prospect development process to ensure prompt wellhead connections, adequate processing and gathering system capacity, and low operating costs. On the other hand, if the producers don't drill, the gas plant will enter a "death spiral" as fixed costs are spread over a declining volume. So there is a natural "economic survival" incentive for both producers and processors to work together.

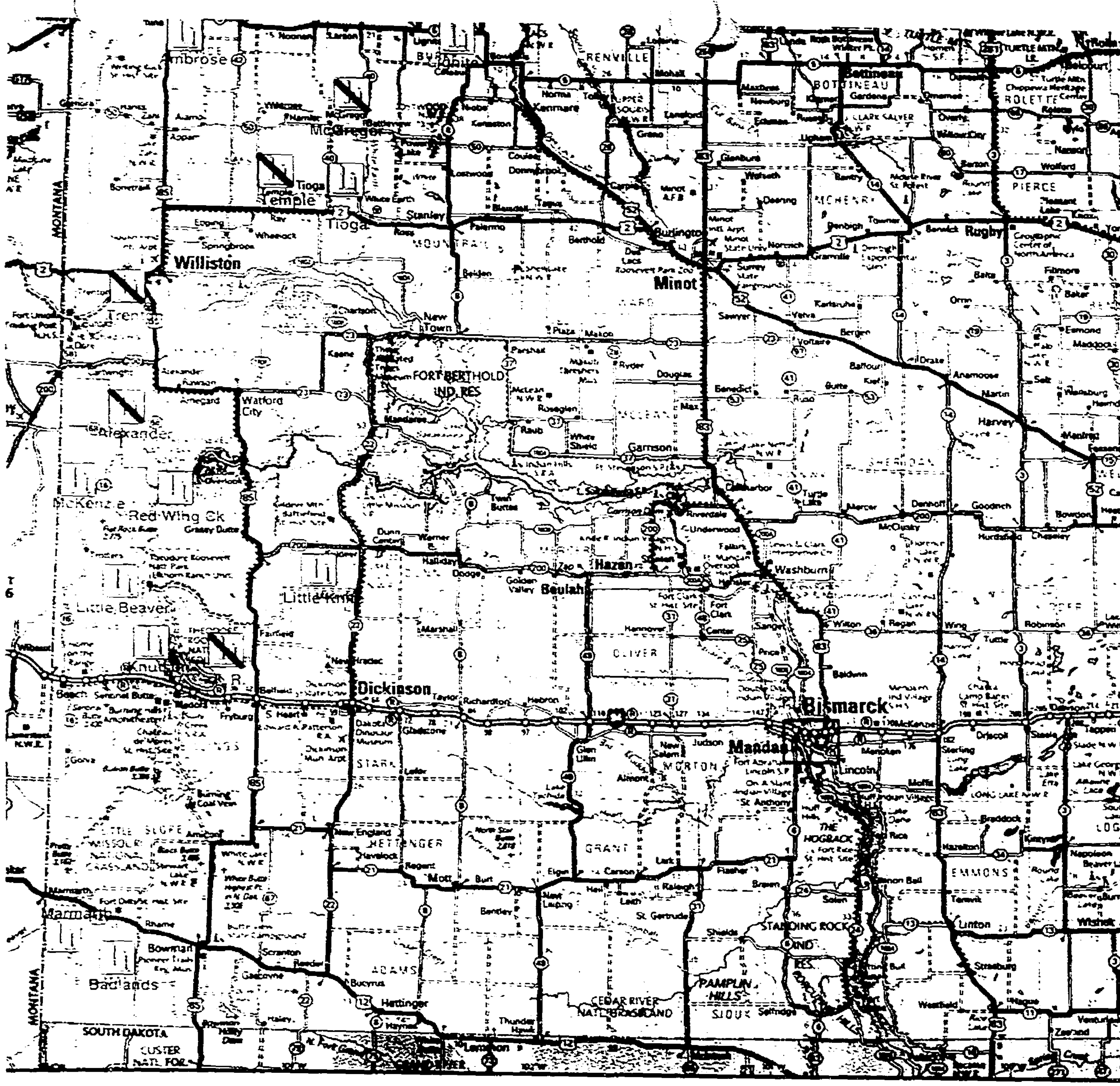
The bill would erase 15 years of federal deregulation work for gas prices, as well as decades of unregulated processing and gathering services designed to make casinghead, sour, and, in some cases, high nitrogen gas production into commercially viable, pipeline quality hydrocarbon products. The bill would ask the NDIC to determine the commercial terms and operating conditions for gas gathering, processing and purchase contracts - i.e. regulate what is presently a negotiation process between producers and Plant operators.

Two points:

1.) There appears to be a perception that there is large profit in gas processing/gathering and/or that the present flaring rules favors the processor in contract negotiations. The fact is, the pie is just so big and what the bill asks is for the state to determine how to slice it. I think this is a bad precedent. Historical data shows fewer gas plants in ND, which is indicative of how "low margin" the gas processing business really is.

2.) Another point is that asking or allowing the NDIC to validate/approve gas contracts and connection costs to ensure "just and reasonable" fees and costs in said contracts could result in unnecessary delays and added administrative / regulatory costs that would ultimately be borne by the Producers. This has the potential to reduce the number of wells connected as small volume producers simply are unable to cover the additional overhead costs or absorb the loss/delay of cash flow on a truly marginal well.

In summary we oppose HB1385 as unnecessary and burdensome to the industry.
Thank you, Mr. Chairman for the opportunity to address the Committee.



LEGEND

North Dakota Gas Plants

Active Gas Plants

Inactive Gas Plants

Gas Plant locations shown are estimated

Plant names and volumes originated from the NDIC production statistics book

2001 FY Ave Processed Gas

Plant	MCFPD
Ambrose	111
Badlands	3.156
Knutson	123
Lignite	5.078
Little Beaver	22
Little Knife	10.176
Marmarth	2.302
McKenzie	35.607
Red Wing Ck	1.639
Tioga	94.133