

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2286

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Operator's Signature

10/21/03  
Date

2003 SENATE FINANCE AND TAXATION

SB 2286

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Deanna G. Smith  
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12/21/03  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2286

Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date January 27, 2003

Tape Number	Side A	Side B	Meter #
1	X		4840-end
1		X	1-2550

Committee Clerk Signature

Minutes:

Senator Urlacher opened the hearing on SB2286. All committee members are present. This bill relates to reporting of cooperative gross receipts for purposes of taxation of rural electric cooperatives.

Senator Robert S. Erbele (mtr #4894) - This bill will help encourage wind energy development in our state. Part of this bill addresses the concerns about excess property taxation of central power, second my district is the site of a proposed wind farm by Florida Power and Light (FPL). Basin Electric was instrumental in bringing this project to North Dakota. FPL will pay property taxes on this wind farm but in addition Basin will also be required to pay in lieu property tax on its sales from the wind farm that will not benefit the area where the wind farm is located. Urges support for SB2286.

Senator Larry Robinson (mtr #5175) - Testified in support of SB2286. Has served on the Electric Utilities Restructuring Committee for the past six years. Taxation is a main concern.

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Senate Finance and Taxation Committee

Bill/Resolution Number SB2286

Hearing Date January 27, 2003

As a member of that committee, the issue of electric utility taxation in North Dakota is very complex and extremely sensitive and at the same time very important to our state. Both, IOU's and REC's pay significant property taxes in North Dakota. Property tax burdens are not fairly distributed. Current bill creates fairness and equity. Urge a do pass.

Harlan Fuglesten, Communications and Government Relations Director for the North Dakota Association of Rural Electric Cooperatives (mtr #5570) - Testified in support of SB2286.

Written testimony, including background and an explanation of the first of two exemptions included in this bill, is attached.

Representative Matthew M Klein, (mtr #755) - For the past five years have served on the Electric Utilities Deregulation/Re regulation Committee. Electric generation in the state comes from Basin Electric, Knife River Energy and Minnekota. Other generation source comes from the dam, Western Area Power Administration. Then have IOU's that run several plants in the state. The tax at the generation point is standard. With the coal conversion tax, everybody that uses coal is taxed at the same level. The problem becomes, an old setup that included three levels. The super GNT's that generate, the transmission operations, then the distribution cooperatives. Because of the this the taxing situation in the northwestern and central corridor has been different. In the past tried to come up with a system of fair taxation, but backed off due to recent electricity problems in other states.

(mtr #1090) This bill is necessary if we are going to do wind energy. 75% of power generated in North Dakota leaves the state. We export 75%-80% of our power. This has a fiscal effect.

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Senate Finance and Taxation Committee  
Bill/Resolution Number SB2286  
Hearing Date January 27, 2003

Dale Niezwaag, representing Basin Electric Power Cooperative (mtr #1230) - Testified in support of SB2286. Written testimony is attached. Goal of this bill is to treat wind energy the same as lignite energy.

Marcy Dickerson, State Supervisor of Assessments by the State Tax Commissioner (mtr #1630) - Tax Commissioner is neutral on this bill. Here to provide information. Written testimony is attached.

Terry Traynor, Association of Counties (mtr #2000) - We are neutral on the bill but support making a more equitable bill. Concerned that the burden will be shifted to other entities.

Senator Wardner (mtr #2121) - A question for Marcy, is there going to be a shift of the burden?

Ms. Dickerson (mtr #2167) - I disagree with Mr. Traynor. Property tax is different then revenue tax. There is not a provision to adjust property tax to make up for tax lost in the area of revenue tax.

Senator Wardner - Other entities could shift tax burden if they had unused mills.

Ms. Dickerson - That is correct.

Senator Tollefson - On this fiscal note, there is a struggle to come up with the amount of lost revenue.

Ms. Dickerson (mtr #2385) - We didn't have numbers as to how many dollars would be involved if changes were made. Fiscal note shows the maximum amount of dollars lost and that probably would not happen. This tax is intended to be a property tax.

Senator Urlacher - Closed the hearing on SB2286.

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2286

Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date January 28, 2003

Tape Number	Side A	Side B	Meter #
2	X		1,645
Committee Clerk Signature <i>Mary Kay Hensley</i>			

Minutes:

Senator Urlacher (mtr #1645) opened the hearing on SB2286. All committee members are present. Bill relates to reporting of cooperative gross receipts for purposes of taxation of rural electric cooperatives.

Senator Wardner (mtr #1810) - There is no fiscal effect for the state, the fiscal effect is for political subdivisions.

Senator Urlacher (mtr #1845) - This bill attempts to eliminate double taxation. Involves 140 miles of line.

Senator Tollefson (mtr #1901) - This was brought in by interim committee, has there been discussion about any organization buying energy from MAP. Is there a tax on that purchase.

It is similar because you're buying energy from another supplier, that pancaking effect.

Senator Uriacher - This seems to be the only area with a double taxation effect.

Senator Tollefson (mtr #2055) - I would like to clarify in my mind, how it effects all utilities.

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Senate Finance and Taxation Committee

Bill/Resolution Number SB2286

Hearing Date January 28, 2003

Senator Urlacher - Problem seems to be just here.

Senator Tollefson - I will get it clarified

Senator Nichols - Minnekota Power didn't have this problem, it is just in this area because of a different setup.

Senator Tollefson - Some utilities buying off of MAP. How are they taxed?

Senator Urlacher - Taxed in a different form.

Senator Wardner (mtr # ) - Answer to Senator Tollefson's question, some taxed at distribution level, tax as a transmission company. Minnekota's distribution and transmission are done at some company, other co-ops generation and transmission are different companies, Harlen

Fugelstad's testimony clarified some of the issues.

Senator Urlacher - Will hold on this bill. Closed hearing on SB2286.

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*Deanna Waller*  
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12/21/03  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2286

Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date February 3, 2003

Tape Number	Side A	Side B	Meter #
2	X		6135 - end
2		X	1-290
Committee Clerk Signature <i>Mary Kay Leland</i>			

Minutes:

Senator Urlacher opened discussion on SB2286. All committee members are present. The bill relates to reporting of gross receipts for purposes of taxation of rural electric cooperatives.

Senator Nichols (mtr #5) - With regard to testimony, clarifying the issue of purchasing, selling, and reselling power.

Senator Urlacher (mtr #60) - As I understood, tax relates to mileage of line.

Senator Tollefson (mtr #104) - Question on how this relates to purchases off of MAP.

Senator Tollefson move Do Pass. 2nd Senator Wardner.

General Discussion:

Senator Wardner - Political subs will have fiscal effect.

Roll call vote 6 yea, 0 nay, 0 absent. Carrier Senator Wardner.

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*Deanne Hall*  
Operator's Signature

*10/21/03*  
Date



**FISCAL NOTE**  
Requested by Legislative Council  
01/22/2003

Bill/Resolution No.: SB 2286

**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 first provision of SB 2286 will reduce the amount of gross receipts tax paid by two transmission cooperatives. It allows them to deduct from taxable gross receipts the cost of electric energy purchased for resale. Because gross receipts taxes paid by rural electric cooperatives are distributed to all political subdivisions in which the lines are located, the State Medical Center, counties, cities, school districts and other taxing districts will all experience a loss in revenue.

It is not possible to estimate the amount of revenue that will be lost. The maximum possible amount per fiscal year is the total amount paid by the two cooperatives, which is approximately \$449,000 for one year, or \$898,000 for a biennium. That amount, less the tax on any markup included in the cooperatives' gross receipts and the tax on any gross receipts from sources other than resale of electricity, is the maximum that could be lost by political subdivisions.

The second provision of SB 2286 allows any copoperative that purchases wind power for resale to deduct from its taxable gross receipts the cost of all such wind energy purchased for resale. Gross receipts tax revenue received by political subdivisions will be reduced by the amount attributable to wind energy.

**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*

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budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	Kathryn Strombeck	Agency:	Tax Dept.
Phone Number:	328-3402	Date Prepared:	01/24/2003

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Deanna Waller  
Operator's Signature

10/21/03  
Date

Date: 2.3.03  
Roll Call Vote #:

**2003 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2286**

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By Sen. Tollefson Seconded By Sen. Lundberg

Senators	Yes	No	Senators	Yes	No
Senator Urlacher - Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Senator Nichols	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Senator Wardner - Vice Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Senator Seymour	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Senator Syverson	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Senator Tollefson	<input checked="" type="checkbox"/>	<input type="checkbox"/>			

Total (Yes) 6 No 0

Absent \_\_\_\_\_

Floor Assignment Senator Lundberg

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

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Operator's Signature Deanna D. L. Smith Date 12/21/03

**REPORT OF STANDING COMMITTEE (410)**  
February 3, 2003 4:27 p.m.

**Module No: SR-20-1571**  
**Carrier: Wardner**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2286: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2286 was placed on the Eleventh order on the calendar.**

(2) DESK, (3) COMM

Page No. 1

SR-20-1571

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*Deanna Waller*  
Operator's Signature

*10/21/03*  
Date

2003 HOUSE FINANCE AND TAXATION

SB 2286

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Deanna D. North  
Operator's Signature

10/21/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2286

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date March 4, 2003

Tape Number	Side A	Side B	Meter #
1		x	16.1
Committee Clerk Signature <i>Janice Stein</i>			

Minutes:

**REP. WES BELTER, CHAIRMAN** Called the hearing to order.

**REP. MATTHEW KLEIN, DIST. 40, MINOT** Introduced the bill. Gave a background on rural electric power companies. The way the system is set up in the bill, gross receipts tax are supposed to replace in lieu of property tax. There is a two percent gross receipts tax. This bill will level the playing field for in-state consumers. In regard to the wind energy, he had concerns about opening that door, in regard to its long term impact. We can't predict how that thing is going to take off. We are already giving wind energy various tax breaks. I don't know what is going to happen twenty years from now. I don't want to get into another area like we did when we set up the transmission line tax, at the time when the highest transmission line was 230 KV and we said anything 230 KV, would be taxed at \$250 per mile. It didn't take a genius to figure out, if you took a 345 KV line, you could run just about twice as much power, but still only pay \$225 per mile. Then they came in with a DC line which shoves six times as much power and

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*Dennis D. Hall*  
Operator's Signature

10/21/03  
Date

Page 2  
House Finance and Taxation Committee  
Bill/Resolution Number SB 2286  
Hearing Date March 4, 2003

still only pay \$225 per mile. For that reason, I have concerns about that wind energy portion of the bill.

**REP. BELTER** Asked if there was any attempt on the Senate side to amend out the wind energy?

**REP. KLEIN** Stated he didn't know. The real problem is economic impact, how do you calculate that. In five to ten years, we will possibly have five hundred of these, its economic impact will be quite terrific, if this takes off.

**REP. WINRICH** I assume the stuff about the wind energy was put into the bill to encourage the development of wind energy.

**REP. KLEIN** Here is what it would do. Basin would buy that power, more then likely, they would ship it to Minnesota. But, net tax dollars to the state, from that transaction, would be zero. If Ottertail would buy that power and ship it to Minnesota, that would be a tax consequence. I am afraid again, are we doing this to the field. This could take off, but we also know that we don't need the energy in North Dakota, seventy five percent of what we generate goes out of state. Many times what goes out of state, other than the coal severance tax, the instate consumer, pays the gross revenue tax and the gross property tax on the investor owned utilities. Our friends in Minnesota, somehow, we the North Dakota electric consumer, are sort of subsidizing our friends in Minnesota, and that is where I have a problem with this.

**REP. WINRICH** Your concern is with the possible anamoly this would create in the tax system.

**REP. KLEIN** That is correct.

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House Finance and Taxation Committee

Bill/Resolution Number SB 2286

Hearing Date March 4, 2003

**SEN. ROBERT ERBELE, DIST. 28** Co-sponsor of the bill. He stated he agreed to be a co-sponsor of the bill for two reasons. He represents the area that is served by the Dakota Valley Electric Cooperative. Part of this bill addresses concerns about excess property taxation, which affects the consumers of cooperatives such as Dakota Valley. Secondly, my district is the site of the proposed megawatt wind farm that will be built in the Edgeley area beginning this summer. Basin Electric was instrumental in bringing this project to North Dakota by guaranteeing the purchase of the output of these wind farms for the next twenty five years. Without this legislation, it will be more difficult, economically, for cooperatives to be involved with projects such as the one in Edgeley.

**SEN. LARRY ROBINSON, DIST. 24** Testified in support of the bill. Echoed comments made by the two previous sponsors. He stated this issue is highly complex, and having served on the Electric Utilities Competition Committee for the last number of years, about the time you think you have a handle on it, you don't. This bill before you does represent some progress.

**REP. DWIGHT WRANGHAM, DIST. 8** Testified in support of the bill. He stated he sponsored the bill because the "pancaking" has been recognized as a problem by many entities including the interium utility restructuring committee. This bill fixes the problem.

**HARLAN FUGLESTEN, COMMUNICATIONS & GOVERNMENTAL RELATIONS**  
**DIRECTOR FOR THE ND ASSOCIATION OF RURAL ELECTRIC COOPERATIVES**

Testified in support of the bill. See attached written testimony. He also submitted charts of gross receipts taxes for 2001, showing how they are distributed. Also attached is a map showing Basin Electric members. The bill will effect Central Power, Minot and Upper Missouri of Sidney, Montana.



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House Finance and Taxation Committee

Bill/Resolution Number SB 2286

Hearing Date March 4, 2003

**DALE NIEZWAAG, REPRESENTING BASIN ELECTRIC POWER COOPERATIVE**

Testified in support of the bill. See attached written testimony.

**MARCY DICKERSON, STATE SUPERVISOR OF ASSESSMENTS BY THE STATE**

**TAX COMMISSIONER** Testified in a neutral position. See attached written testimony.

With no further testimony, the hearing was closed.

**COMMITTEE ACTION**

**REP. IVERSON** Suggested they amend out the wind energy part of the bill.

He felt it should be reviewed a little more.

During discussion, committee members decided not to amend the bill.

**REP. WINRICH** Made a motion for a DO PASS.

**REP. KLEIN** Second the motion. **MOTION CARRIED.**

13 YES

0 NO

1 ABSENT

**REP. KELSH** Was given the floor assignment.

Date: 3-4-03  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2186

House FINANCE & TAXATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Rep. Winrich Seconded By Rep. Klein

Representatives	Yes	No	Representatives	Yes	No
BELTER, CHAIRMAN	✓				
DROVDAL, VICE-CHAIR	✓				
CLARK	✓				
FROELICH	✓				
GROSZ	✓				
HEADLAND	✓				
IVERSON	✓				
KELSH	✓				
KLEIN	✓				
NICHOLAS	✓				
SCHMIDT	✓				
WEILER	A				
WIKENHEISER	✓				
WINRICH	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Kelsh

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

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Operator's Signature Diana Dallas Date 12/21/03

REPORT OF STANDING COMMITTEE (410)  
March 4, 2003 3:08 p.m.

Module No: HR-38-3889  
Carrier: S. Ketch  
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2286: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO  
PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2286 was placed on  
the Fourteenth order on the calendar.

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10/21/03  
Date

2003 TESTIMONY

SB 2286

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10/21/03  
Date

Testimony in support of SB 2286  
Harlan Fuglesten  
Communications and Government Relations Director,  
North Dakota Association of Rural Electric Cooperatives  
Before the Senate Finance and Taxation Committee  
January 27, 2003

Mr. Chairman and members of the committee. My name is Harlan Fuglesten, Communications and Government Relations Director for the North Dakota Association of Rural Electric Cooperatives. I appear today in support of SB 2286. This bill includes two exemptions to the electric cooperative gross receipts tax. The first exemption would affect two transmission cooperatives. The purpose is to bring their taxes more in line with the property they own. The second exemption would eliminate double property taxation of centrally-assessed wind generation facilities in North Dakota. I will speak to the first exemption, and then Dale Niezwaag of Basin Electric will address the second issue.

**Background**

Before explaining exactly what the bill will do, I want to provide a little background about electric utility taxation. Investor-owned utilities pay centrally-assessed property taxes on their North Dakota electric operations. Electric cooperatives pay a combination of property and in-lieu property taxes. For the past six years, the legislature's Electric Industry Competition Committee has been working to establish a common property tax replacement system for both investor-owned utilities and electric cooperatives. The electric cooperatives have taken a leading role in this effort, in part, because we discovered early in the process that the current system of taxation creates some unfair benefits and burdens. In particular, the gross receipts taxes paid by the cooperatives can lead, in our view, to unfair and duplicate taxation.

In working with the committee, our preference has been to enact comprehensive utility tax reform. With this in mind, we offered specific and detailed proposals, including a bill draft, for in-lieu property taxation of generation, transmission, and distribution property. While we had support from some committee members, we were unable to obtain majority approval for our plan. Because we have not yet been able to get complete consensus on our tax plan, we believe SB 2286 is a necessary interim step to remedy some inequities in current state law.

#### **How co-ops are taxed now**

As you can see, SB 2286 adds new language to section 57-33-03 of the North Dakota Century Code pertaining to reporting co-op gross receipts. Electric cooperatives are exempt from paying personal property taxes or taxes on improvements to land such as our transmission and distribution lines, poles, and facilities. Instead, cooperatives pay a two percent gross receipts tax as an in-lieu property tax on the facilities we own in the state. In addition, co-ops pay taxes on land and we pay a tax of \$225 per mile on transmission lines of 230 kilovolts or more. Revenues from coal-based generation plants owned by cooperatives are not subject to the two percent gross receipts tax because the coal conversion tax paid on the generation is itself an in-lieu property tax. For the same reason, investor-owned utilities do not pay the public utility property tax on their coal generation facilities.

All other cooperative revenues, except for revenues from the sale of capital assets, are subject to the gross receipts tax.

### **Co-op tax system leads to unfair benefits and burdens**

When we first began working with the Electric Industry Competition Committee, we were surprised to learn that electric cooperatives paid as much as 50 percent more than the IOUs in property taxes on transmission and distribution facilities when compared on an equivalent basis, such as retail sales or revenue. The main reason for this disparity is what we call the "pancaking" effect of paying gross receipts taxes at more than one level of our cooperative structure. Let me try to explain. There are 17 distribution cooperatives in North Dakota. Three of these cooperatives are part owners of Minnkota Power Cooperative of Grand Forks, a cooperative that provides both generation and transmission services. This bill does not directly affect these cooperatives. The other 14 distribution cooperatives are part owners of Basin Electric Power Cooperative. Three of these 14 cooperatives own their own transmission and buy all of their electric generation directly from the Western Area Power Administration (WAPA) and Basin. This bill does not directly affect these cooperatives.

This bill will affect two cooperatives, Central Power Electric Cooperative of Minot and Upper Missouri G & T, headquartered in Sidney, MT. These two cooperatives are owned by 11 distribution cooperatives serving primarily in central in western North Dakota that have pooled their transmission resources and their generation purchases. For years, these two cooperatives have held their member-cooperatives' rights to purchase WAPA power and also purchased all their members' remaining power needs from Basin Electric. When this power was sold to the member cooperatives, Central Power and Upper Missouri would pay a two percent gross receipts tax on every dollar of revenue they received. When this same power was re-sold by the distribution cooperatives to

individual consumers, the two percent gross receipts tax was applied again. By having an intermediate purchaser of power, the consumers of these 11 cooperatives were basically paying twice to support the same facilities that the other six cooperatives in North Dakota paid for only once. This is called "pancaking" because the taxes are stacked up like a stack of pancakes. It's sort of like paying a sales tax at the wholesale level and again at the retail level.

We discussed this issue with the Electric Industry Competition Committee for years, and everyone, including the investor-owned utilities, agreed that this led to an unfair level of taxation. One example will help to illustrate this point. Upper Missouri G & T owns a relatively small amount of property -- about 147 miles of 69 kV and 115 kV transmission lines. These are not the large tower transmission lines that come out of the generation plants, but rather smaller lines that serve a sub-transmission or distribution function. In 1996, Upper Missouri G & T paid over \$535,000 in gross receipts taxes on this small amount of property. This amounted to more than \$3,600 per mile of line, a tax rate far in excess of what was paid by any other utilities in the state. By anyone's reckoning, the taxes paid by Upper Missouri did not bear any relationship whatsoever to the extent of facilities it owned. Although not quite so dramatic, it was the same situation with Central Power.

After working with the committee for more than two years, Central Power realized that it could wait no longer for development of comprehensive tax reform to obtain some relief from the onerous taxation system that had developed. Accordingly, Central Power worked with its member distribution cooperatives and Basin Electric to re-structure their purchase power agreement so that the individual distribution cooperatives



could purchase most of their excess power needs directly from Basin. For legal and governance reasons, however, Central Power would continue to purchase and re-sell WAPA power and a small percentage of Basin Power to the member cooperatives. Before proceeding with this restructuring, Central Power met with Tax Commissioner Rick Clayburgh and requested and received a favorable Tax Commissioner's Opinion to the effect that this was a legitimate means to reduce a portion of this onerous tax burden.

Subsequently, Central Power and Upper Missouri G & T proceeded with Basin to make the necessary contract changes. This served to reduce, but did not eliminate what we believe to be over taxation of the facilities of these two cooperatives through the gross receipts tax. This is because there is still a significant amount of electric generation that is purchased by these cooperatives from WAPA for resale, creating the imposition of the gross receipts tax at two different levels. Thus, for example, Upper Missouri G & T still pays over \$1,100 per mile in taxes on its transmission, still far in excess of what other utilities pay on similar facilities.

#### **What SB 2286 will do**

What SB 2286 proposes to do is allow these two cooperatives to deduct pass through power sales from their gross receipts before computing their gross receipts tax liability. If this bill had been in effect in 2001, this would have reduced Upper Missouri's tax liability from about \$164,000 to approximately \$59,000. This is still a significant tax burden for Upper Missouri and we think more reasonably represents the value of the property this cooperative owns in the state. For Central Power, its 2001 tax liability was about \$284,000 and would have been reduced by this bill to \$181,000. Again, this more closely represents the value of its property, we believe, than existing law.

Deanna Waller  
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Undoubtedly, there will be concern about the revenue impact on the political subdivisions that are currently receiving this revenue. In the case of Central Power, it has facilities running through 22 counties and numerous taxing districts. In the case of Upper Missouri, its lines run through several counties in western North Dakota. It is our belief that the fiscal impact on any individual county or political subdivision will be relatively small, almost to the point that it would go unnoticed given the changes in property tax assessments and valuations that occur from year to year. I have attached some information to my testimony showing how this tax reduction would be distributed.

Mr. Chairman and members of the committee, in our view, utility property tax reform is overdue. We will continue to support progressive property tax reform and we stand ready to pay our fair and equal share of such taxes. However, this pancaking or duplication of purchase power taxation is not fair. Until such time as we have agreement on comprehensive tax reform, we believe this bill is necessary to somewhat equalize tax burdens among electric cooperatives. Also, if this bill passes, it could actually help promote tax reform because it would tend to equalize existing overall property tax burdens of the cooperatives and the investor-owned utilities.

Dale Niezwaag of Basin Electric will offer some comments about another problem with the gross receipts tax that involves non-owned wind energy facilities. I would be happy to answer any questions the committee may have, either now or following Dale's presentation.

Thank you.

Upper Missouri G & T

2001 Gross Receipts

AS IS NOW

System Gross Receipts	9,850,139.71
Ratio of ND Property to System Property	0.8338
Taxable Gross Receipts	8,213,046.49
Tax Due - 2%	164,260.93

SUBTRACTING POWER COST

Sytem Gross Receipts	9,850,139.71
Power Supply Cost	-6,325,031.00
	3,525,108.71

Ratio of ND Property to System Property	0.8338
Taxable Gross Receipts	2,939,235.64
Tax Due - 2%	58,784.71

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COUNTY	TOWNSHIP-RANGE CITY	SCHOOL DISTRICT	FIRE DISTRICT	OTHER TAXING DISTRICT	NUMBER OF MILES	TAX PER MILE	TAX TO BE APPORTIONED TO EACH TAXING DISTRICT
<b>BILLINGS</b>							
	T139-R102	Billings	Medora Community	City of Medora School Dist	3.046	1114.33678	3394.27
<b>BOTTINEAU</b>							
	R83WT161N			Sec 13-14-15	8.848	1114.33678	9859.65
<b>BOWMAN</b>							
	T131N-R103	Bowman		Talbot Township	6	1114.33678	6684.09
<b>HETTINGER</b>							
	T136N-R97W				7.143	1114.33678	7959.71
	T135N-R97W				0.0444	1114.33678	49.48
	TOTAL HETTINGER						8009.19
<b>MCKENZIE</b>							
	145-103	18	Earl Dist		7.75	1114.33678	8636.11
	145-102	19	Bowling Butte Dist		6.8	1114.33678	7577.49
	145-101	19	Bowling Butte Dist		6.25	1114.33678	6964.6
	145-100	28	Maverick Flat Dist		6.25	1114.33678	6964.6
	145-99	1	McKenzie Co School Dist		7.25	1114.33678	8078.94
	145-98	1	McKenzie Co School Dist		3.5	1114.33678	3900.18
	145-103	18	Earl Dist		5.5	1114.33678	6128.35
	147-104	18	Earl Dist		7.5	1114.33678	8357.53
	148-105	32	Horse Creek Dist		5.75	1114.33678	6407.44
	146-103	18	Earl Dist		7.12	1114.33678	7934.08
	TOTAL MCKENZIE						70949.82
<b>RENVILLE</b>							
	9-9030-1751/R84WT161	9	Mohall	Sec 13-14	1.341	1114.33678	1494.33

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STARK	T130N-R97W				4.0426	1114.33678	4804.82
	T138N-R97W				6.0088	1114.33678	6883.6
	T137N-R97W				5.8886	1114.33678	6674.43
	TOTAL STARK						17872.85
WILLIAMS	T154S-R101W	8	Williston		0.0197	1114.33678	21.95
	T154F-R102W	8	Williston		4.346	1114.33678	4842.91
	T155S-R102W	8	Williston		6.7483	1114.33678	7519.88
	T156S-R102W	8	Williston		2.3848	1114.33678	2688.61
	T156S-R103W	8	Grenora		3.8108	1114.33678	4246.63
	T156S-R103W	99	Grenora		0.6745	1114.33678	751.82
	T156S-R102W	99	Grenora		2.0827	1114.33678	2320.83
	T157S-R103W	99	Grenora		4.471	1114.33678	4882.2
	T158S-R103W	99	Grenora		6.0238	1114.33678	6712.85
	T159S-R10W	99	Grenora		8.7037	1114.33678	9888.85
	TOTAL WILLIAMS						43786.13
TOTALS					147.4089		184280.93

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Central Electric Cooperative  
Gross Revenue Tax & Property Tax  
December 31, 2002

County	Total Amount	(1) - A/C 238.1	(2) A/C 238.6	2001 Total	2000 Total	1999 Total	1998 Total	1997 Total
Benson	16,328.26	67.72	16,260.54	16,410.31	36,272.91	44,614.03	42,054.48	44,454.59
Bolivar	20,859.50	135.80	20,523.70	20,765.87	45,822.32	58,428.17	53,180.25	58,711.86
Dickey	679.20	57.45	621.75	684.12	1,441.85	1,761.91	1,662.50	1,824.91
Eddy	2,847.11	48.32	2,847.11	2,861.23	6,339.04	7,809.72	7,358.58	8,127.13
Foster	14,911.25	5.12	14,906.13	14,905.11	33,142.40	40,820.06	36,291.91	42,301.68
Kidder	12,817.43	41.92	12,812.31	12,861.36	28,532.06	35,150.50	33,111.11	36,578.86
Lamoure	6,864.24	2.64	6,822.32	6,869.15	14,788.13	18,212.36	17,158.53	18,948.93
Logan	2.64	2.64		2.80	2.82	2.84	2.82	2.71
McHenry	36,638.35	436.81	36,201.54	36,848.94	85,519.40	105,231.85	99,174.96	109,534.21
McLean	20,430.59	81.01	20,349.58	20,530.46	45,387.32	55,897.54	52,858.90	58,167.95
Pierce	6,799.97	27.73	6,759.24	6,820.43	15,077.47	18,589.48	17,805.91	19,438.30
Ramsey	1.81	1.81		1.82	1.80	1.80	1.81	1.76
Ransom	1,863.34	8.72	1,854.62	1,873.68	4,140.25	5,997.87	4,802.18	5,303.61
Renville	3,113.57	35.77	3,077.80	3,126.75	6,885.51	8,474.89	7,983.81	8,818.02
Richland	9,842.17	228.20	9,415.97	9,661.49	21,187.61	28,051.96	24,536.18	27,067.11
Rolla	12,535.86	45.63	12,490.33	12,586.11	27,853.87	34,304.75	32,316.27	28,236.55
Sargent	423.85	93.44	330.41	422.16	829.35	1,004.99	946.33	1,040.03
Sheridan	5,945.74	8.45	5,939.29	5,974.83	13,229.68	16,297.78	15,362.06	16,889.38
Stutsman	23,628.37	257.12	23,371.75	23,734.88	52,282.61	64,343.72	60,845.75	66,970.90
Towner	19,028.51	151.75	18,874.76	19,122.53	42,177.04	51,935.62	48,929.47	54,034.31
Ward	90,843.03	25,893.40	64,959.63	69,914.54	168,508.55	200,030.92	189,183.91	204,468.95
Wells	4,361.91	5.59	4,356.32	4,383.17	9,705.16	11,955.70	11,282.34	12,441.40
	312,152.30	27,620.40	284,531.90	312,321.78	659,128.15	804,059.08	758,198.10	823,430.97
		tax per mile	312.59					
		proportionate tax w/ PP exemption	0.637724276					

- \* Paid property tax to these counties in addition to gross revenue tax last year.
- (1) Per property tax statements.
- (2) Per gross revenue tax return received back from state & county property tax share.

grossed (3) XLS

1/16/03

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Date 12/21/03

**Schedule "BB"**  
**List Pole Line Mileage in Each County By Taxing Districts**  
**As of January 1, 2002**

County: summary by SD Name of Company: Central Power Electric Cooperative, Inc.

Address: 525 - 20th Ave. SW Minot, ND 58701

List information for only one county on each page of Schedule "BB".

Township - Range Or City	School District (2)	Fire District (3)	Other Taxing District Name & Type (4)	Number Of Miles (5)	Net Reduction by SD
Benson 155-67	CF #4				39.30
Benson 152-65	Ft. Totten				7.81
Benson 152-71	Harvey				177.80
Benson 155-69	Leeds #6				2,122.44
Benson 152-70	Maddock #9				3,022.75
Benson 154-68	Minn #5				401.91
Benson 152-67	Oberon				1.02
Benson 156-71	Rugby #5				117.78
Bottineau 162-75	Bottineau #1				3,231.34
Bottineau 160-63	Lansford #35				181.19
Bottineau 161-62	Mohall #M9				464.42
Bottineau 161-62	Newburg U				2,539.07
Bottineau 162-81	WH #17				1,019.21
Dickey 130-59	Oakes				225.25
Eddy 148-65	NR #1				117.78
Eddy 148-67					782.75
Eddy 148-66					130.91
Foster 148-66	CA #10				4,138.78
Foster 148-64	GC #16				339.74
Foster 148-63	Glenfield #7				905.96
Kidder 142-70	Pett #11				710.61
Kidder 143-72	Rob #14				3,102.02
Kidder 143-74	Tuttle #20				828.96
LaMoure 133-62	Edgeley				61.38
LaMoure 136-66	Glen Gackle				678.11
LaMoure 135-66	Kulm				120.04
LaMoure 135-62	LaMoure				1,539.57
McHenry 73	1				1,962.88
McHenry 82	4				1,953.26
McHenry 150-76	13				695.33
McHenry 151-75	14				736.09
McHenry 75	25				792.72
McHenry 150-80	26				912.08
McHenry 77	37				560.79
McHenry 79	48				453.77
McHenry 77	54				712.20
McHenry 77	57				5,060.37
McLean 61	4				693.63
McLean 60	50				1,373.10
McLean 62	51				3,108.81
McLean 63	58				793.06
McLean 68	72				1,403.56
Pierce 66	5				1,793.13
Pierce 60	14				113.25
Pierce 60	#31 Selz				0.23

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Pierce	79	Harvey #38			542.11
Ransom	79	Lisbon			127.97
Ransom	79	Milnor			543.92
Renville	77	2			117.78
Renville	77	9			629.19
Renville	76	26	2		368.05
Richland	86	Wahpeton			1,598.12
Richland	83	WM Spec #42			1,813.06
Rolette	183-73	1			1,941.82
Rolette	87	5			117.44
Rolette	91	28			9.40
Rolette	89	29			2,456.29
Sargent	78	Milnor			110.98
Sargent	72	Sargent Cen			8.72
Sheridan	73	19			821.03
Sheridan	76	38			509.60
Sheridan	74	57			821.03
Stutsma	78	Carrington			1,506.16
Stutsma	69	Geckle	70		1,132.45
Stutsma	77	JT #1	40		2,049.85
Stutsma	75	Medina			226.26
Stutsma	71	Medina #3	60		752.06
Stutsma	72	Medina SD#	20		465.44
Stutsma	73	Pett #11			453.55
Stutsma	76	Pingree			258.77
Stutsma	78	Pingree #10			1,622.47
Towner	92	#2 WC			1,251.36
Towner	95	#28 NC			1,056.81
Towner	94	#4 MT PL			354.57
Towner	95	28A RL			460.34
Towner	89	Leeds #6			672.79
Towner	90	Southern #8			3,042.00
Ward	73	1	MRFD		2,530.13
Ward	155-82	4	MRFD		2,132.07
Ward	70	7	MRFD		4,529.48
Ward	72	10	MRFD		711.63
Ward	73	16	SFD		1,698.68
Ward	73	19	MRFD		789.43
Ward	74	26	GFD		3,667.56
Ward	74	41	SUFD		1,245.70
Ward	71	54	BEFD		1,189.08
Ward	71	70	MRFD		2,939.96
Ward	67	156	RMFD		2,099.57
Wells	Hilldale 7	36	91420	36-38-03-00	622.85
Wells	Fairville 80	#1 NR	91390	04-01-00-00	25.59
Wells	Hasland 75	F-B #25	91410	20-25-00-00	929.74
					103,079.02

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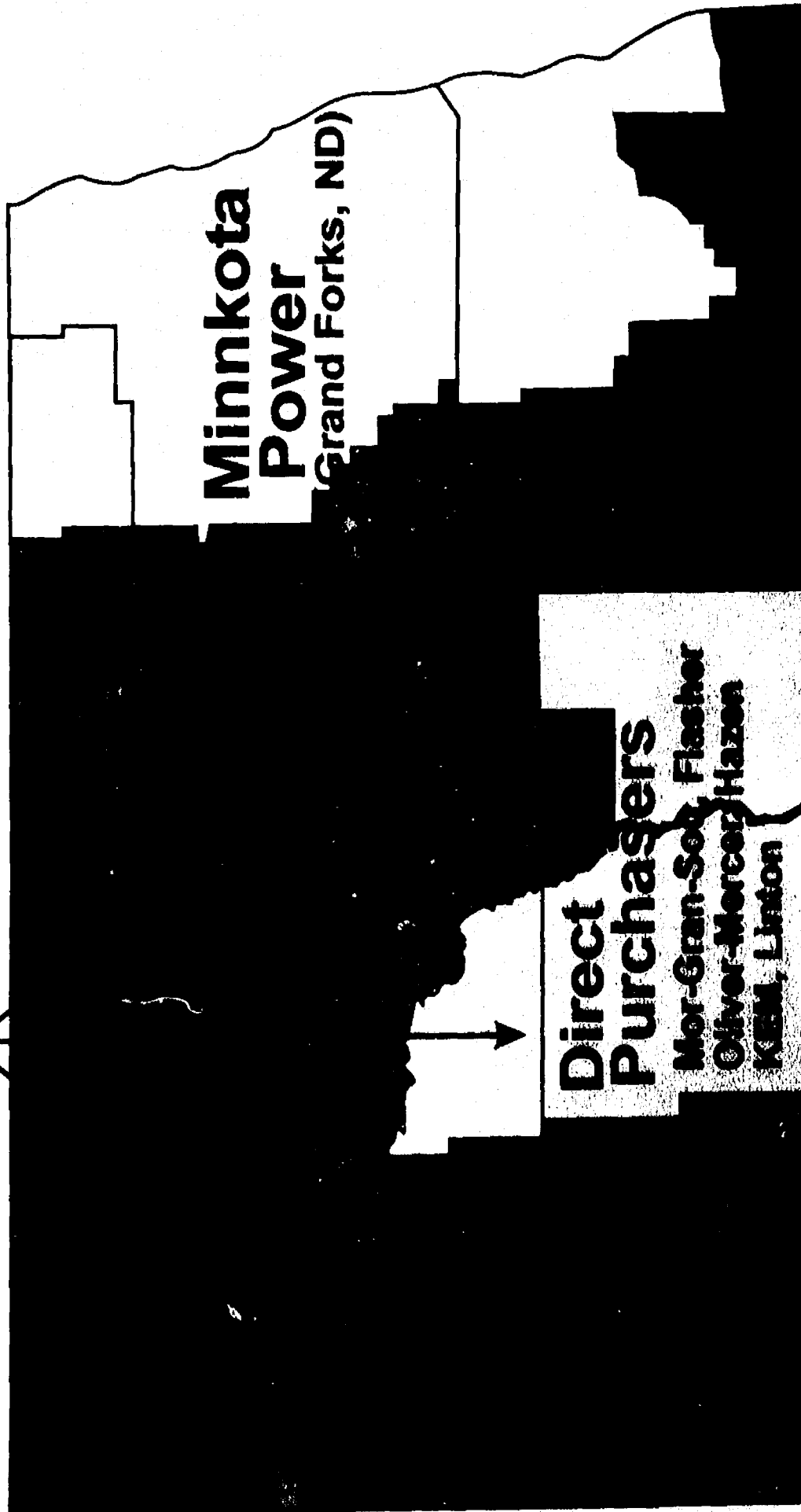
Operator's Signature

Date



# North Dakota Generation and Transmission Cooperatives

**Basin Electric Members**  
(Bismarck, ND)



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Testimony in support of SB 2286  
Dale Niezwaag  
Legislative Representative  
Basin Electric Power Cooperative  
Before the Senate Finance and Taxation Committee  
January 27, 2003

Mr. Chairman and Members of the Committee, my name is Dale Niezwaag and I am here today representing Basin Electric Power Cooperative in our support of Senate Bill No. 2286. As Mr. Fuglesten stated, the bill is made up of two parts, the first of which addresses changes in the gross receipts taxation of two existing cooperatives. Basin Electric is firmly supporting these changes. The second part of the bill deals with a level of tax that is imposed from the development of wind energy in the state under certain circumstances. It is this issue that I wish to address.

As you are aware, Basin Electric has entered into a contract to purchase energy from a 40 MW wind farm that Florida Power & Light (FPL) Energy Corporation is building in the Edgeley, North Dakota area. The project is moving ahead and is projected to be complete before the end of December 2003. The project must be in operation by this date for FPL Energy to be eligible for the federal wind tax production credit, which currently expires at the end of this year (2003).

As North Dakota law is written, FPL Energy will pay public utility property taxes on the wind farm (both land and equipment) that will be distributed to the political subdivision where the project is located. This bill will not change that aspect of the tax collection or distribution.

However, As North Dakota law is written, Basin will also pay property tax in the form of gross receipts tax (in-lieu of property tax) on energy purchased and resold (receipts) to our distribution cooperatives. This level of taxation is what we seek to eliminate.

Again, when the distribution cooperatives sell the electric energy to their members, those distribution cooperatives will also pay a gross receipts tax on the energy resold (receipts).

The maximum impact of this tax change, based on a 30% output factor, would be \$67,277 per year. That amount assumes that all the electricity produced by the wind project is added to Basin Electric's normal purchases of power. If overall power purchases from other producers are less then the tax impact would also be less.

So you can see, an excessive property tax is being placed upon the wind energy purchased from FPL Energy. FPL Energy pays property (land & equipment) tax on the wind farm. Basin will pay an in lieu of property tax on the wind farm energy. This bill is written to alleviate that problem. The bill allows cooperatives that do not own the generation facilities but only purchase the energy to exclude the electric energy receipts for resale from the cooperatives gross receipts on which tax is owed.

This will not impact projects owned by cooperatives. If the cooperative owns the wind facilities, as Basin does with the two wind turbines in the Minot area, then Basin will pay the gross receipts tax on that production resold to our distribution cooperatives. This bill does not change that aspect of current tax collection.

**Benefits of this bill:**

- Eliminates an excessive property tax collected from energy generated by wind facilities not owned by the cooperatives purchasing the energy output.
- Encourages wind development in the state by allowing wind developers and cooperatives to work together without being burdened with duplicative taxation on the same property.

Thank you Mr. Chairman. I'll answer any questions you or the committee members might have.

**SENATE FINANCE AND TAXATION COMMITTEE**  
January 27, 2003

Testimony of Marcy Dickerson, State Supervisor of Assessments

**SENATE BILL NO. 2286**

Mr. Chairman, Members of the Committee, for the record my name is Marcy Dickerson and I am employed as State Supervisor of Assessments by the State Tax Commissioner. My testimony concerns Senate Bill 2286. I just want to share a little information with you.

The tax imposed by N.D.C.C. chapter 57-33 is a property tax measured by gross receipts. We have documentation of this interpretation back at least as far as 1959. The legislature has determined that 2 percent of gross receipts is the appropriate rate of tax on property other than land of generation, transmission, and distribution cooperatives. (The taxes imposed on electrical generating plants by chapter 57-33 have been superseded by the coal conversion tax - section 57-60-06.)

It has been said by some that the gross receipts tax rate on property of transmission cooperatives is too high because of the large amount of power carried by those lines and the resulting large amount of revenue received. If those lines were subject to property assessment and taxation instead of the in-lieu provisions of the gross receipts tax, they would correctly be valued higher than lines that produce less revenue. Property is worth what a willing buyer will pay for it, and buyers decide what they are willing to pay for commercial property based on the return they can expect from that property. The tax rate on gross receipts is the same for all rural electric cooperatives. The difference in their tax amounts per mile reflects the relative amount of revenue per mile received by each cooperative.

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SB 2286  
Testimony of Marcy Dickerson  
January 27, 2003  
Page 2

If a deduction from taxable gross receipts is allowed for certain cooperatives, their property will be taxed differently from that of other cooperatives.

Any reduction in the gross receipts tax will result in reduced revenue to the affected political subdivisions. The gross receipts tax is different from property tax, where a reduction in valuation of taxable property does not necessarily reduce tax revenue. A political subdivision may levy the same dollars as before, but other taxpayers pick up the burden when any particular valuation is reduced. A reduction in gross receipts tax payments is a loss of dollars to political subdivisions.

A cooperative or investor-owned utility that purchases wind power, or any power, purchases it from a facility that is subject to some kind of property tax or in-lieu tax, except for power purchased from exempt federal government facilities. Purchased wind power is no different from any other purchased power for purposes of the gross receipts tax.

If a cooperative owns a wind energy facility, it has a unique advantage. A cooperative-owned wind energy facility is considered part of that cooperative's operative property, and the cooperative's 2 percent gross receipts tax covers the wind energy facility as well as other cooperative property. An investor-owned wind energy facility is subject to property tax, whether owned by a public utility or by another owner who sells power to a public utility.

This concludes my prepared testimony. I will be happy to try to answer any questions you may have.

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Date

Testimony in support of SB 2286  
Harlan Fuglesten  
Communications and Government Relations Director,  
North Dakota Association of Rural Electric Cooperatives  
Before the House Finance and Taxation Committee  
March 4, 2003

Mr. Chairman and members of the committee. My name is Harlan Fuglesten, Communications and Government Relations Director for the North Dakota Association of Rural Electric Cooperatives. I appear today in support of SB 2286. This bill includes two exemptions to the electric cooperative gross receipts tax. The first exemption would affect two transmission cooperatives. The purpose is to bring their taxes more in line with the property they own. The second exemption would eliminate double property taxation of centrally-assessed wind generation facilities in North Dakota. I will speak to the first exemption, and then Dale Niezwaag of Basin Electric will address the second issue.

**Background**

Before explaining exactly what the bill will do, I want to provide a little background about electric utility taxation. Investor-owned utilities pay centrally-assessed property taxes on their North Dakota electric operations. Electric cooperatives pay a combination of property and in-lieu property taxes. For the past six years, the legislature's Electric Industry Competition Committee has been working to establish a common property tax replacement system for both investor-owned utilities and electric cooperatives. The electric cooperatives have taken a leading role in this effort, in part, because we discovered early in the process that the current system of taxation creates some unfair benefits and burdens. In particular, the gross receipts taxes paid by the cooperatives can lead, in our view, to unfair and duplicate taxation.

In working with the committee, our preference has been to enact comprehensive utility tax reform. With this in mind, we offered specific and detailed proposals, including a bill draft, for in-lieu property taxation of generation, transmission, and distribution property. I presented a copy of this bill draft to this committee last week in conjunction with the hearing on HCR 3061, the study resolution to complete the work of the Electric Industry Competition Committee in establishing a fair and uniform property tax replacement system. Because we have not yet been able to get complete consensus on a comprehensive tax plan, we believe SB 2286 is a necessary interim step to remedy some inequities in current state law.

#### **How co-ops are taxed now**

As you can see, SB 2286 adds new language to section 57-33-03 of the North Dakota Century Code pertaining to reporting co-op gross receipts. Electric cooperatives are exempt from paying personal property taxes or taxes on improvements to land such as our transmission and distribution lines, poles, and facilities. Instead, cooperatives pay a two percent gross receipts tax as an in-lieu property tax on the facilities we own in the state. In addition, co-ops pay taxes on land and we pay a tax of \$225 per mile on transmission lines of 230 kilovolts or more. Revenues from coal-based generation plants owned by cooperatives are not subject to the two percent gross receipts tax because the coal conversion tax paid on the generation is itself an in-lieu property tax. For the same reason, investor-owned utilities do not pay the public utility property tax on their coal generation facilities.

All other cooperative revenues, except for revenues from the sale of capital assets, are subject to the gross receipts tax.

Deanne Wallis  
Operator's Signature

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### **Co-op tax system leads to unfair benefits and burdens**

When we first began working with the Electric Industry Competition Committee, we were surprised to learn that electric cooperatives paid as much as 50 percent more than the IOUs in property taxes on transmission and distribution facilities when compared on an equivalent basis, such as retail sales or revenue. The main reason for this disparity is what we call the "pancaking" effect of paying gross receipts taxes at more than one level of our cooperative structure. Let me try to explain. There are 17 distribution cooperatives in North Dakota. Three of these cooperatives are part owners of Minnkota Power Cooperative of Grand Forks, a cooperative that provides both generation and transmission services. This bill does not directly affect these cooperatives. The other 14 distribution cooperatives are part owners of Basin Electric Power Cooperative. Three of these 14 cooperatives own their own transmission and buy all of their electric generation directly from the Western Area Power Administration (WAPA) and Basin. This bill does not directly affect these cooperatives.

This bill will affect two cooperatives, Central Power Electric Cooperative of Minot and Upper Missouri G & T, headquartered in Sidney, MT. These two cooperatives are owned by 11 distribution cooperatives serving primarily in central and western North Dakota that have pooled their transmission resources and their generation purchases. For years, these two cooperatives have held their member-cooperatives' rights to purchase WAPA power and also purchased all their members' remaining power needs from Basin Electric. When this power was sold to the member cooperatives, Central Power and Upper Missouri would pay a two percent gross receipts tax on every dollar of revenue



they received. When this same power was re-sold by the distribution cooperatives to individual consumers, the two percent gross receipts tax was applied again. By having an intermediate purchaser of power, the consumers of these 11 cooperatives were basically paying twice to support the same facilities that the other six cooperatives in North Dakota paid for only once. This is called "pancaking" because the taxes are stacked up like a stack of pancakes. It's sort of like paying a sales tax at the wholesale level and again at the retail level.

We discussed this issue with the Electric Industry Competition Committee for years, and everyone, including the investor-owned utilities, agreed that this led to an unfair level of taxation. One example will help to illustrate this point. Upper Missouri G & T owns a relatively small amount of property - about 147 miles of 69 kV and 115 kV transmission lines. These are not the large tower transmission lines that come out of the generation plants, but rather smaller lines that serve a sub-transmission or distribution function. In 1996, Upper Missouri G & T paid over \$535,000 in gross receipts taxes on this small amount of property. This amounted to more than \$3,600 per mile of line, a tax rate far in excess of what was paid by any other utilities in the state. By anyone's reckoning, the taxes paid by Upper Missouri did not bear any relationship whatsoever to the extent of facilities it owned. Although not quite so dramatic, it was the same situation with Central Power.

After working with the committee for more than two years, Central Power realized that it could wait no longer for development of comprehensive tax reform to obtain some relief from the onerous taxation system that had developed. Accordingly, Central Power worked with its member distribution cooperatives and Basin Electric to re-

structure their purchase power agreement so that the individual distribution cooperatives could purchase most of their excess power needs directly from Basin. For legal and governance reasons, however, Central Power would continue to purchase and re-sell WAPA power and a small percentage of Basin Power to the member cooperatives. Before proceeding with this restructuring, Central Power met with Tax Commissioner Rick Clayburgh and requested and received a favorable Tax Commissioner's Opinion to the effect that this was a legitimate means to reduce a portion of this onerous tax burden.

Subsequently, Central Power and Upper Missouri G & T proceeded with Basin to make the necessary contract changes. This served to reduce, but did not eliminate what we believe to be over taxation of the facilities of these two cooperatives through the gross receipts tax. This is because there is still a significant amount of electric generation that is purchased by these cooperatives from WAPA for resale, creating the imposition of the gross receipts tax at two different levels. Thus, for example, Upper Missouri G & T still pays over \$1,100 per mile in taxes on its transmission, still far in excess of what other utilities pay on similar facilities.

#### **What SB 2286 will do**

What SB 2286 proposes to do is allow these two cooperatives to deduct pass through power sales from their gross receipts before computing their gross receipts tax liability. If this bill had been in effect in 2001, this would have reduced Upper Missouri's tax liability from about \$164,000 to approximately \$59,000. This is still a significant tax burden for Upper Missouri and we think more reasonably represents the value of the property this cooperative owns in the state. For Central Power, its 2001 tax liability was

about \$284,000 and would have been reduced by this bill to \$181,000. Again, this more closely represents the value of its property, we believe, than existing law.

Undoubtedly, there will be concern about the revenue impact on the political subdivisions that are currently receiving this revenue. In the case of Central Power, it has facilities running through 22 counties and numerous taxing districts. In the case of Upper Missouri, its lines run through several counties in western North Dakota. It is our belief that the fiscal impact on any individual county or political subdivision will be relatively small, almost to the point that it would go unnoticed given the changes in property tax assessments and valuations that occur from year to year. I have attached some information to my testimony showing how this tax reduction would be distributed.

Mr. Chairman and members of the committee, in our view, utility property tax reform is overdue. We will continue to support progressive property tax reform and we stand ready to pay our fair and equal share of such taxes. However, this pancaking or duplication of purchase power taxation is not fair. Until such time as we have agreement on comprehensive tax reform, we believe this bill is necessary to somewhat equalize tax burdens among electric cooperatives. Also, if this bill passes, it could actually help promote tax reform because it would tend to equalize existing overall property tax burdens of the cooperatives and the investor-owned utilities.

Dale Niezwaag of Basin Electric will offer some comments about another problem with the gross receipts tax that involves non-owned wind energy facilities. I would be happy to answer any questions the committee may have, either now or following Dale's presentation.

Thank you.

Testimony in support of SB 2286  
Dale Niezwaag  
Legislative Representative  
Basin Electric Power Cooperative  
Before the House Finance and Taxation Committee  
March 4, 2003

Mr. Chairman and Members of the Committee, my name is Dale Niezwaag and I am here today representing Basin Electric Power Cooperative in our support of Senate Bill No. 2286. As Mr. Fuglesten stated, the bill is made up of two parts, the first of which addresses changes in the gross receipts taxation of two existing cooperatives. Basin Electric is firmly supporting these changes. The second part of the bill deals with a level of tax that is imposed from the development of wind energy in the state under certain circumstances. It is this issue that I wish to address.

As you are aware, Basin Electric has entered into a contract to purchase energy from a 40 MW wind farm that Florida Power & Light (FPL) Energy Corporation is building in the Edgeley, North Dakota area. The project is moving ahead and is projected to be complete before the end of December 2003. The project must be in operation by this date for FPL Energy to be eligible for the federal wind tax production credit, which currently expires at the end of this year (2003).

As North Dakota law is written, FPL Energy will pay public utility property taxes on the wind farm (both land and equipment) that will be distributed to the political subdivision where the project is located. This bill will not change that aspect of the tax collection or distribution.

However, As North Dakota law is written, Basin will also pay property tax in the form of gross receipts tax (in-lieu of property tax) on energy purchased and resold (receipts) to our distribution cooperatives. This level of taxation is what we seek to eliminate.

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Dale Niezwaag  
Operator's Signature

10/21/03  
Date

Again, when the distribution cooperatives sell the electric energy to their members, those distribution cooperatives will also pay a gross receipts tax on the energy resold (receipts).

The maximum impact of this tax change, based on a 30% output factor, would be \$67,277 per year. That amount assumes that all the electricity produced by the wind project is added to Basin Electric's normal purchases of power. If overall power purchases from other producers are less then the tax impact would also be less.

So you can see, an excessive property tax is being placed upon the wind energy purchased from FPL Energy. FPL Energy pays property (land & equipment) tax on the wind farm. Basin will pay an in lieu of property tax on the wind farm energy. This bill is written to alleviate that problem. The bill allows cooperatives that do not own the generation facilities but only purchase the energy to exclude the electric energy receipts for resale from the cooperatives gross receipts on which tax is owed.

This will not impact projects owned by cooperatives. If the cooperative owns the wind facilities, as Basin does with the two wind turbines in the Minot area, then Basin will pay the gross receipts tax on that production resold to our distribution cooperatives. This bill does not change that aspect of current tax collection.

**Benefits of this bill:**

- Eliminates an excessive property tax collected from energy generated by wind facilities not owned by the cooperatives purchasing the energy output.
- Encourages wind development in the state by allowing wind developers and cooperatives to work together without being burdened with duplicative taxation on the same property.

Thank you Mr. Chairman. I'll answer any questions you or the committee members might have.

Deanne Waller  
Operator's signature

10/21/03  
Date

**HOUSE FINANCE AND TAXATION COMMITTEE**

March 4, 2003

Testimony of Marcy Dickerson, State Supervisor of Assessments

**SENATE BILL NO. 2286**

Mr. Chairman, Members of the Committee, for the record my name is Marcy Dickerson and I am employed as State Supervisor of Assessments by the State Tax Commissioner. My testimony concerns Senate Bill 2286. I just want to share a little information with you.

The tax imposed by N.D.C.C. chapter 57-33 is a property tax measured by gross receipts. We have documentation of this interpretation back at least as far as 1959. The legislature has determined that 2 percent of gross receipts is the appropriate rate of tax on property other than land of generation, transmission, and distribution cooperatives. (The taxes imposed on electrical generating plants by chapter 57-33 have been superseded by the coal conversion tax - section 57-60-06.)

The tax rate on gross receipts is the same for all rural electric cooperatives. The difference in their tax rates per mile reflect the different amounts of revenue per mile received by the various cooperatives. (Total gross receipts divided by miles of wire equals the tax rate per mile.) If a deduction from taxable gross receipts is allowed for certain cooperatives, their property will be taxed differently from that of other cooperatives.

Any reduction in the gross receipts tax will result in reduced revenue to all the political subdivisions in which the companies' wires are located. The gross receipts tax is different from property tax. A political subdivision may levy the same property tax dollars as before when valuation is reduced, but other taxpayers pick up the additional burden. A reduction in gross receipts tax payments is a loss of dollars that will not be replaced by other taxpayers.

*Deanna D. Dickerson*  
Operator's Signature

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A cooperative or investor-owned utility that purchases wind power, or any power, purchases it from a facility that is subject to some kind of property tax or in-lieu tax, except for power purchased from exempt federal government facilities. Purchased wind power is no different from any other purchased power for purposes of the gross receipts tax.

An investor-owned wind energy facility is subject to property tax, whether owned by a public utility or by another owner who sells power to a public utility or rural electric cooperative.

However, if a cooperative owns a wind energy facility, it has a unique advantage. A cooperative-owned wind energy facility is considered part of that cooperative's operative property, and the cooperative's 2 percent gross receipts tax is in lieu of property tax on the wind energy facility as well as other cooperative-owned property. If revenue from the sale of wind power merely replaces revenue from the sale of power formerly purchased from another source, no additional gross receipts tax is produced by that new cooperative-owned wind generation property. The gross receipts tax does not increase because of additional property unless that property produces new, additional revenue.

This concludes my prepared testimony. I will be happy to try to answer any questions you may have.

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