

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2369

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Deanna Hall
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10/22/03

Date

2003 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2369

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2369

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 02-12-03

Tape Number	Side A	Side B	Meter #
1	XXX		0
Committee Clerk Signature <i>Lisa VanBerkem</i>			

Minutes: Chairman Mutch opened the hearing on SB 2369. All Senators were present.

SB 2369 relates to the jurisdiction of the public service commission over certain rural electric cooperatives.

Testimony in support of SB 2369.

Senator Tollefson introduced the bill. See attached testimony.

Senator Nething: What is the problem? Are our co-ops abusing someone or are they being abused? What drives the bill?

Senator Tollefson: The bill is one of my own. It isn't that there's a problem. The problem is that there is a lack of uniformity. How can you make things better if you don't work together? How do you work together if you don't have a common control? It isn't a matter of someone doing something wrong, there is just a lack of uniformity.

Senator Espgaard: You say they need to work together better, how would they work together better with the Public Service Commission involved?

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Senate Industry, Business and Labor Committee

Bill/Resolution Number 2369

Hearing Date 02-12-03

Senator Tollefson: Having a common control would give them the ability to work together through the PSC.

Senator Mutch: The disparity in the rates within the confines of a REC seems to be growing.

I wonder if the PSC would give the user a contact to find out what is going on?

Senator Tollefson: Uniformity of the rate structure is defined and approved by the PSC. Also the consumer can make complaints or address concerns with the PSC. This bill would start the uniformity.

Senator Every: For the record, there are not many REC's left out of this bill. I would like to point out that I have attended several meetings with REC's and the customers pack the gymnasiums with over a thousand people. I don't see where the rift is. That is real democracy.

Senator Tollefson: I meant the rift between Investor Owned Utilities and the Rural Electric Cooperatives, that is where the rift is. Why not have a common ground to sit down and iron things out? It will benefit the state of North Dakota.

Senator Heitkamp: Why would you exclude 6 of the REC's if you want common ground between the two?

Senator Tollefson: The 2500 number was kind of randomly picked. Also in the beginning, a co-op was less than 2500 people. I am not saying that the individual member of a REC doesn't have a say, but it is not as loud now.

Senator Heitkamp: I am assuming that when you say "lack of uniformity" that you are referring to rates, can you sight some examples when REC's have abused their customer?

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Senate Industry, Business and Labor Committee

Bill/Resolution Number 2369

Hearing Date 02-12-03

Senator Tollefson: Not off hand any, but I do know about the lack of uniformity in rates. It can create problems within the organization. This bill is not to pick on REC's. I think it is an issue to better ND.

Senator Espgaard: This bill doesn't seem to create harmony between IOU's and REC's. It is putting the competitor under regulation of the PSC.

Senator Tollefson: I believe if there is a common ground, things will be more harmonious.

Senator Nething: There is a \$201,000 appropriation, does that make sense to you?

Senator Tollefson: That sounds correct because it will take extra time to coordinate this.

Senator Nething: In this bill, it states about 18 different issues that the consumer can inquire on, but of all of these things, not one of them talk about helping the groups get along better or establishing common jurisdiction, and that is what your objective is.

Senator Tollefson: Whoever wrote the fiscal note does not get into the philosophical aspect of the legislature. (tape 1, side B, meter no. 2450)

Dennis Boyd, MDU Resources Group, Inc., also spoke in support of SB 2369. See written testimony. He stated that their intention was not to harm the REC's. MDU's rates are regulated by the PSC and REC's are not. That puts the IOU's at a competitive disadvantage by limiting the rates and not regulating the REC's. REC's can change their rates in a matter of minutes.

Steve Schultz, Otter Tail Power Company, also spoke in support of the bill. See attached testimony.

Senator Heitkamp: Can you give us an example of a time when someone(a customer) from the REC wasn't treated well?

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Senate Industry, Business and Labor Committee

Bill/Resolution Number 2369

Hearing Date 02-12-03

Steve: Not a specific case.

Bob Graveline, Utility Shareholders of North Dakota, spoke in support of the bill. See attached testimony.

Senator Heitkamp: Your company is a profit company, REC's are not.

Bob: There is still competition.

Kathy Aas, Xcel Energy, supported the bill. See written testimony.

Opposition on SB 2369

Senator Tom Seymour, testified in opposition to the bill. This bill is unnecessary. I have personal knowledge of how locally elected directors govern cooperative utilities and thus know this bill is not needed. He was elected to the board of directors of SRT Communications, Inc., in 2000. In his short 10 years on the board he has come to know that there is no need for oversight of the PSC on co-ops.

Representative Craig Headland testified in opposition to the bill as well. I am a member of several co-ops, including Dakota Valley Electric. I also serve as a director on the board of directors for Dakota Central Telecommunications Co-op. The beliefs and regulations of the co-ops make regulation of the PSC unnecessary. If directors don't take the path desired by the customers/owners, the director will be replaced in the next election. Also, the additional cost associated with this bill causes my opposition. First of all, it will increase the cost of the service to the membership and second, it will increase the cost of the tax payers as additional regulation takes additional time and personnel. In these tough economic times, I believe this bill creates an expense for the tax payer that is not in the best use today.

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Senate Industry, Business and Labor Committee
Bill/Resolution Number 2369
Hearing Date 02-12-03

Senator Klein: How do you, as a director, handle a complaint from a customer?

Representative Headland: Anytime there is a problem with a customer, we invite them to the board meeting to explain the problem. Generally we are able to come to some kind of compromise or remedy to fix the situation. I don't believe it has happened more than one or two times in the twelve years that I have been a director. It is just not common.

Senator Klein: Do all of your members know at least one person on the board?

Rep. Headland: These people are my neighbors and friends and I would say that all of them know someone at least.

Senator Heitkamp: If the member is still not satisfied after a meeting with the board, there is an annual meeting that they can attend and address their issue with the membership as a whole.

Harlan Fuglesten, North Dakota Association of REC's, also spoke in opposition to SB 2369.

See attached testimony as well as testimony from Scott Handy. Mr. Handy did not speak, but was present and contributed written testimony. (continue tape 1, side B, meter no. 0)

Cindy Smith, Verendrye Electric Co-op board member, also spoke in opposition. See attached testimony.

Robert Gipp, Mor-Gran-Sou Electric Co-op, opposed SB 2369. See attached testimony.

Shirley Montgomery, Cass County Electric Co-op, spoke in opposition. See written testimony.

Dale Haugen, Mountrail-Williams Electric Co-op, also was opposed. See written testimony.

Senator Heitkamp: Are the other 6 REC's that were not included opposed as well?

Dale: Yes.

Richard Schlosser, ND Farmers Union, stated for the record that they are opposed to the bill.

Senator Klein: How many complaints do you get per month?

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Senate Industry, Business and Labor Committee

Bill/Resolution Number 2369

Hearing Date 02-12-03

Richard: Maybe 1 per month. The complaints are handled either with the director before the meeting, or at a county meeting.

Hearing was closed.

Senator Heitkamp moved a DO NOT PASS. Senator Klein seconded.

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

Carrier: Senator Heitkamp

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FISCAL NOTE
Requested by Legislative Council
01/28/2003

Bill/Resolution No.: SB 2369

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	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$200,876	\$0	\$110,000	\$0
Appropriations	\$0	\$0	\$200,876	\$0	\$110,000	\$0

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
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

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

This bill would bring additional utility companies under the Public Service Commission's jurisdiction for ratemaking and other purposes.

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.

The expected revenue from tariff filing fees is insufficient to require indication on the fiscal note.

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.

This bill would bring 11 of 17 rural electric cooperatives under regulation for the first time. These electric cooperatives would be subject to rate regulation, including rate setting, cost of service studies, rate design, tariff filing requirements, tariff suspension, analysis of terms and conditions in tariffs, disconnects, bill payments, deposits, allowable expenses, accounting methods, meter accuracy, meter disputes, cogeneration, fuel adjustments, reliability and resource adequacy, etc. The Commission would be responsible for handling consumer inquiries on these matters, as well. The expenditure impact figures represent 1 additional FTE, plus a second additional FTE or consulting services in the 2003-2005 biennium, plus additional funds for publication of notices and hearing costs.

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

An appropriation would be required to fund the expenditures noted above.

Name:	Ilona A. Jeffcoat-Sacco	Agency:	PSC
Phone Number:	328-2407	Date Prepared:	02/07/2003

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Date: 2-12-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2369

Senate _____ Committee _____

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT PASS

Motion Made By Heitkamp Seconded By Klein

Senators	Yes	No	Senators	Yes	No
Sen. Jerry Klein, Vice Chairman	X				
Sen. Karen Krebsbach	X				
Sen. Dave Nething	X				
Sen. Joel Heitkamp	X				
Sen. Mike Every	X				
Sen. Duane Espgaard	X				
Sen. Duane Mutch, Chairman		X			

Total (Yes) 6 No 1

Absent 0

Floor Assignment ~~Heitkamp~~ Heitkamp

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

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REPORT OF STANDING COMMITTEE (410)
February 12, 2003 1:16 p.m.

Module No: SR-27-2404
Carrier: Heltkamp
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2369: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO NOT PASS (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2369 was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-27-2404

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2003 TESTIMONY

SB 2369

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Support

TESTIMONY OF [REDACTED] AND
MONTANA-DAKOTA UTILITIES CO. ON SB 2369

Mr. Chairman and members of the committee, for the record my name is Dennis Boyd. I am appearing this morning on behalf of MDU Resources Group, Inc. and our utility division, Montana-Dakota Utilities Co. in support of SB2369. My testimony will be fairly brief, and I apologize in advance for leaving, as I have another hearing at 9:30 and a third at 10:00. At the outset, let me say our support of this bill is not intended to harm the RECs. They do, however, enjoy certain advantages which are to the detriment of their customers.

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

Conversely, in the past 20-30 years, another utility monopoly has been growing which also provides electricity, but remains today unregulated by the Public Service Commission. I am, of course, referring to the Rural Electric Cooperatives. They provide the same commodity to customers as the investor-owned utilities provide - electricity - and in many instances, their customers are next door neighbors or live right across the street from our customers. Probably in most respects, our customers and

their customers are identical and probably use about the same amount of electricity for the same purposes. And yet, our rates and service are regulated by state authority, while their rates and service are not. As the attached chart indicates, in some cases there are vast disparities between the rates of our customers and the REC customers.

The Rural Electric Cooperatives counter this argument by saying their rates are "regulated" by their Board of Directors. The investor-owned electric utilities also have Boards of Directors, but nobody has ever suggested that our Board of Directors should set our electric rates. Such a proposal would be laughable. Within the past two weeks, I was engaged in a conversation with a member of the House, who happens to serve on the Appropriations committee. Their subcommittee had the manager of a large state institution in front of them as they were delving into the institution's budget. A question was asked why there was a very large increase in the electricity costs for the institution - I recall it was almost \$500,000. The manager responded "we received a notice from the Rural Electric Cooperative which serves the institution that their Board had decided a rate adjustment was necessary". If that institution was served by an investor-owned electric utility any rate changes would have to be approved by the Public Service Commission, and that customer would have the opportunity to participate in the process. A change in general rates typically takes 8 months for the Commission to issue a decision.

Early last summer I listened with interest as several Rural Electric Utility managers were explaining to the members of the Electric Utilities Committee how the RECs determine their rates. After describing how the RECs try to determine their costs, etc. etc., one REC manager said we then look at

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the rates and "socialize" them. I thought that was a curious term to describe their departure from setting rates based on the cost of service for various customer classes to setting rates based on "what the traffic will bear" and allowing one class of customers to subsidize another class of customers, again, rate making philosophies not generally proscribed by the Public Service Commission.

Not only is there a powerful consumer interest at stake here, Mr. Chairman and members of the committee, there is also a potential competitive disadvantage for regulated investor owned companies under the current situation. MDU has an "economic development" tariff on file with the Public Service Commission. It is a matter of public record which ranges from 2.5 cents to 4.5 cents. There are limitations and other conditions attached to that rate, which we use to try to attract new businesses to our service territory. The RECs, on the other hand, can change their rates in a matter of minutes with a conference call to a majority of their Board members. If we have attracted a new economic development load to our service territory, the RECs can offer a lower rate to the same potential customer to locate in their service area. This is hardly a level playing field.

Finally, Mr. Chairman and members of the committee, the investor-owned electric utility companies have tried for the past three legislative sessions to convince the legislature to change an onerous law which is severely restricting our ability to grow our electric distribution businesses. So far, we have been unsuccessful, although another effort is working its way to the House floor. In Bismarck, Capital [REDACTED] from 1996 through 2000 has grown at a [REDACTED] average annual rate, while MDU has grown over the same time period at an average annual rate of [REDACTED]. We estimate Capital REC has 3500 - 3800

customers inside the city limits. Not a one of them is guaranteed the consumer protection of the Public Service Commission. Capital REC is every bit as much of a monopoly as MDU is, and they are growing better than twice as fast as we are growing. This does not seem to be good public policy.

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

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Here's how those prices compare to Xcel Energy and Montana-Dakota Utilities Co.
based on January, non-heating usage of 865kwh:

Bismarck

MDU --- \$58.86

Capital Electric Cooperative "urban" --- \$62.66

Capital Electric Cooperative "rural" --- \$73.83 (18 percent higher than "urban")

Fargo

Xcel Energy --- \$50.37

Cass Electric Cooperative "urban" --- \$69.45

Cass Electric Cooperative "rural" --- \$84.77 (22 percent higher than "urban")

Grand Forks

Xcel Energy --- \$50.37

NoDak Electric Cooperative "urban" --- \$57.63.

NoDak Electric Cooperative "rural" --- \$78.01 (35 percent higher than "urban")

Mandan

MDU -- \$58.86

Mor-Gran-Sou Electric Cooperative "urban" --- \$69.17

Mor-Gran-Sou Electric Cooperative "rural" --- \$78.67 (12 percent higher than "urban")

Both Montana-Dakota Utilities Co. and Xcel Energy have a single residential electricity
price for all customers regardless of where they live -- big city, small town or farm.

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Support

**Xcel Energy Testimony
SB 2369**

Senate Industry, Business and Labor Committee
February 12, 2003

Chairman Mutch, members of the Committee, my name is [REDACTED] and I represent Xcel Energy. I am here in support of SB 2369.

Currently, rural electric cooperative rates are established without any third party regulatory oversight. This is not a good situation for their customers, who generally do not have the expertise to determine if their rates are appropriate.

Consider the differences in the cooperative urban and rural rates. Neither farmers nor urban customers can be confident that the rates they are paying are appropriate. No outside regulatory entity evaluates whether or not one class of customer is subsidizing another.

In addition, it's time to level the playing field between rural electric cooperatives and investor owned utilities. At times, our company has competed head-to-head with cooperatives for particular businesses that have decided to locate in Fargo or Grand Forks, near the perimeters of our respective service areas. In nearly every case, we've lost the price battle, because being under Public Service Commission regulation; we can only offer rates that have been approved. Furthermore, these rates are a matter of public record and cooperatives, being aware of these approved rates, clearly have a competitive advantage in head-to-head bidding for new customers.

Our ability to "flex" these in any way is severely restricted. Cooperatives, on the other hand, can offer "sweetheart deals" or special rates if doing so would win the customer. Nothing in the present situation prevents the cooperative from subsidizing these rates through revenues from other customers, including farmers and other rural members. In fact, this kind of pricing agreement could happen without the members even being aware that such a deal had occurred.

Therefore, to bring equality to competitive pricing situations and to protect electric consumers in the State of North Dakota, Xcel Energy urges a DO PASS recommendation on SB 2369.

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Utility Shareholders of North Dakota

Support

BOARD OF DIRECTORS

Bob Pile
Fargo

Harold Bruschwein
Wahpeton

Clarence Storseth
Dickinson

Gary Hovdestad
Minot

Larry Hanson
Williston

John M. Olson
Bismarck

Moine Gates
Grand Forks

Richard Kunkel
Bismarck

Charles Axtman
Jamestown

Bob Graveline, President
Bismarck

Comments before the Senate Industry, Business and Labor Committee
February 12, 2003

RE: SB-2369

Mr. Chairman, members of the Committee, I'm [REDACTED] of the Utility
Shareholders of North Dakota (USND).

I APPEAR THIS MORNING IN SUPPORT OF SB-2369

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

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

If a shareholder owned utility company must apply for rate oversight to the PSC, then a rural electric cooperative providing service to the same class of customer in the same market should also. The same rules and regulations should apply to all utilities providing service in the same market location.

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

Should you agree with the opponents of this bill that the several boards of directors of the rural electric cooperatives are the bodies best suited to making rate determinations for their organizations, let me suggest you apply the same standard to shareholder owned utility companies, and allow the boards of directors of Otter Tail, Xcel Energy, and MDU set the energy rates for their customers.

Mr. Chairman, members of the committee, I urge you to help bring fairness to the utility market in North Dakota and forward a **DO PASS RECOMMENDATION ON SB-2369**.

P.O. Box 1856
Bismarck, ND 58502
8-8864
Fax 701-258-8865
1-800-981-5132
E-mail usnd@usnd.org
www.usnd.org

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10/22/03
Date

Support

Testimony of [REDACTED] Otter Tail Power Company concerning
SB2369

Mr. Chairman and members of the committee, my name is Steve Schultz and I represent Otter Tail Power Company.

The marketplace that the electricity industry operates in today has changed drastically in the past few years. Growth rates have slowed for many, costs continue to rise, and consumers and shareholders alike are looking for better deals.

Over the past biennium, the industry, along with the Electric Utilities Committee have searched for answers to Tax and Territorial issues. The effort has been to find common ground, such as having all investor-owned companies and coops taxed under the same structure. We would suggest that this is another way to move our industry toward a like structure. As the competition for growth increases it is important that we all operate under like regulation.

Mr. Chairman and members of the committee, we would ask for a do pass recommendation. Thank You.

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February 10, 2003

Membership in the North Dakota Rural Electric Cooperatives based on the
NDAREC's 2003 directory:

Burke-Divide Electric Cooperative.....	1, 390
Capital Electric Cooperative.....	9, 373
Cass County Electric Cooperative.....	22, 729
Cavalier Rural Electric Cooperative.....	1, 150
Dakota Valley Electric Cooperative.....	4, 362
KEM Electric Cooperative.....	2, 194
McKenzie Electric Cooperative.....	2, 327
McLean Electric Cooperative.....	2, 418
Mor-Gran-Sou Electric Cooperative.....	4, 667
Mountrail-Williams Electric Cooperative.....	4, 458
Nodak Electric Cooperative.....	12, 353
North Central Electric Cooperative.....	4, 652
Northern Plains Electric Cooperative.....	8, 437
Oliver-Mercer Electric Cooperative.....	2, 729
Slope Electric Cooperative.....	1, 862
Verendrye Electric Cooperative.....	7, 995
West Plains Electric Cooperative.....	3, 436

TOTAL.....96, 532

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TESTIMONY
HB 2369
by Senator [REDACTED]

Intro

SB 2369 is a recurrence of an issue that is long over due.

Historically, (1919 session) "not for profit" electric distribution systems in ND have been exempt from jurisdiction by the ND Public Service Commission.

A study will tell you that the rural electric distribution systems at that time were truly rural. Small neighborhood systems that really needed no oversight, "Coffee Klatch" regulation worked just fine. In 2003 the scene is just the opposite. The REC's have grown up and now serve customers within the city limits of literally all major communities in the state. Their services are sophisticated and their rates are complicated as well as lacking some uniformity.

No longer are they rural electric cooperatives. In many cases, their customer load is more urban than rural. They are exclusive and in need of overview just as the investor owned utilities are.

This bill can bring a solution to a very nagging problem that the Legislature attempts to deal with each session -- service territories. The answer to that problem lies with common jurisdiction. This is the PSC's reason for being.

SB 2369 exempts REC's with fewer than 2500 members.

SB 2369 is important for all of North Dakota.

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Deanna Walcott
Operator's Signature

10/22/03

Date

UPPOSED

TESTIMONY OF CINDY SMITH
TO THE SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE
SENATE BILL 2369
WEDNESDAY, FEBRUARY 12, 2003

Good Morning Chairman Mutch and members of the Senate Industry, Business and Labor committee. My name is [REDACTED] I appear before you this morning to request a [REDACTED] recommendation on SB 2369.

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

I am here today for the same reasons I ran for the Verendrye board. I am passionate about the future of rural North Dakota. My husband Mike and I have farmed SW of Minot longer than I care to admit. We have three adult children, Justin and Karlee attending college in ND and Nathan, an NDSU graduate who is back home farming. Our children intend to stay in North Dakota. I hope they will have a future on a farm, which has reliable, reasonably priced electrical service. This is one reason I serve as a rural electric cooperative director.

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

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

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Verendrye is divided into three districts, each of which elects one board member at our annual meeting. In other words, the membership decides each year if three VEC directors will keep their board seats. Actually, this year five people ran for three board positions. These board members do not serve for life by any means. Some decline to run again and some are defeated by a challenger like myself. By the way, our members take seriously the election of directors; about 3,500 folks attended our annual meeting last June at the State Fair Center in Minot.

In electric cooperatives, local control is real, it works and it is effective. We do not need costly, time-consuming oversight by the PSC. We know our fellow members. We see them in church and at ball games. If they have a complaint with their co-op, they let us know and we respond. They don't need to call an 800 number several states away. They can walk into our offices in either Minot or Velva to visit our staff face to face. They can even schedule a home visit by one of Verendrye's 46 local employees.

Xcel serves my home remodeling business in Minot, so I have experienced the frustration of calling an 800 number, in one case to get information about tree trimming. After several attempts and three days of confusing directions and messages left, I finally made contact with a "real" person.

Representing a cooperative located in the community, I'm proud that Verendrye has returned \$1.67 million in the past three years to our membership in the form of capital credit retirement checks and electric bill rebates. I'm proud that Verendrye has had rate stability since 1985 and in fact has reduced some rate classes. I'm proud of Verendrye's wind program and our two new REC machines that stand 300 feet tall in my area south of Minot. I'm also proud of the many member services programs offered to the cooperative owners. I'm proud of the \$282,000 in Operation Roundup grants that VEC has given out to worthy causes throughout our eight county service area. I ask you, what are we doing wrong that would warrant the proposed PSC jurisdiction?

Directors are accessible and responsive. We are here. We are locally owned, managed and controlled. I think it should be kept that way. I urge a do not pass recommendation on SB 2369. Thank you.

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10/22/03
Date

OPPOSED

**Testimony of Harlan Fuglesten
North Dakota Association of Rural Electric Cooperatives
Before the Senate Industry, Business & Labor Committee
On SB 2369
February 12, 2003**

Mr. Chairman and members of the committee, my name is Harlan Fuglesten, Communications and Government Relations Director for the North Dakota Association of RECs. This morning I want to make a few brief comments about the issue of regulation of electric cooperatives by the Public Service Commission, and then introduce several directors and a manager who can speak to you from personal experience.

The reason electric cooperatives are not subject to state regulation over rates and service is simple. Electric co-ops are operated on a nonprofit basis for the benefit of their consumer-owners. Locally-elected boards of directors adopt policies, set rates, and represent the interests of electric consumers. Because the directors are themselves cooperative members, they are in a unique position to understand the service needs of their neighbors.

There are currently 145 directors serving on 17 distribution cooperative boards in North Dakota. These boards are made up of farmers, insurance agents, bankers, nurses, teachers, business owners, and even some legislators. These men and women all have one thing in common. They are democratically elected by their neighbors to manage the affairs of the cooperative in an honest, careful and prudent manner. We think they do a great job of living up to the trust co-op members place in them.

Because an electric cooperative is not in business to make a profit, the co-op board sets rates to cover costs and provide operating capital. Any margin of income over expenses is returned to the members in the form of capital credits as the financial status

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of the cooperative allows. Under the co-op business model, there is no incentive to set rates higher than absolutely necessary.

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

In most states, electric cooperatives are not subject to rate or service jurisdiction, or are subject to state regulation only at the option of the local co-op. Attached to my testimony is a state by state review of state regulation prepared by our national association, NRECA.

As written, this bill would initially affect 11 of North Dakota's 17 distribution cooperatives. With a little growth, two or three additional co-ops could be included in the future. Eventually, it could affect every co-op as smaller co-ops consider mergers or consolidations.

North Dakota electric cooperatives have successfully governed themselves for more than 60 years. Each year, many thousands of North Dakota citizens attend electric co-op annual meetings to hear reports from management, elect directors, pass resolutions, ask questions, vote on by-laws, and participate in the most effective type of regulation possible -- direct regulation by the members themselves.

I urge the committee to vote a DO NOT PASS recommendation on SB 2369.

STATE REGULATION OF ELECTRIC CO-OPS SURVEY COMPILATIONS

AS OF 2003

State	Electric Service	Facilities	Transmission	Generation	Regulation	Rate of Return	Other	Notes
Alabama	N	N	N	N	N	N	N	
Arizona	Y	F/S	Y	Y	Y	Y	Y	
California	N	Y	Y	N	Y	N	N	
Connecticut	No Co-ops	In	Connecticut					
Florida	N ⁷	N	Y	Y	Y	Y	Y	
Georgia	N	N	N	N	N	N	N	
Idaho	N	N	N	N	N	N	N	
Indiana	O	O	O	O	N	Y	Y	4 Dist. co-ops & 1 G&T in / 35 Dist. co-ops & 1 G&T out IC 8-1-13.3 (1995)

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

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

³ In California, South Dakota, and Texas, the state has regulatory authority over siting of 115 kV and higher lines. In New Mexico, the regulatory authority has jurisdiction over transmission and "major" generation, and notification to the Commission is required for any construction within one mile of another utility. In Wyoming, the PSC has jurisdiction over siting of large-scale facilities. In Colorado and Wisconsin, the G&Ts are regulated for new construction, but not the distribution co-ops.

⁴ Other areas where states exercise jurisdiction over co-ops include: sale of assets (Arizona); complaints (Maine, Iowa, Wisconsin); certificates of need, IRPs, state PURPA (Minnesota); interest paid on deposits (Nevada); diversification activities (New Mexico); long-term forecasts (Ohio); adequacy of service (South Dakota); stray voltage investigations (Wisconsin); and mergers and reorganizations (Wyoming).

⁵ In those states that have adopted restructuring, the current regulatory status of co-ops generally will not change unless the co-op becomes a competitive retail supplier and seeks to provide services to customers outside its service territory. In that case, the co-op first must be certified or licensed by the state to be a competitive supplier. As a competitive supplier serving customers outside its service territory, the co-op would then also be subject to all the rules established by the PSC that apply to all other competitive suppliers. As noted above, in Arkansas the G&T will no longer be state regulated as to rates when retail choice begins.

⁶ Arkansas distribution systems may increase rates up to 10% without Commission approval. The G&T is fully regulated, however, this will end with retail competition.

⁷ Florida has jurisdiction over co-op rate structure: the rate relationship between various customer classes, but not the rate charged for utility service.

⁸ EMCs in Georgia are required to file rate revisions with the PSC to make sure they aren't "unreasonably discriminatory," but the PSC does not set rates.

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Operator's Signature *Deanna Waller*

Date 10/22/03

STATE REGULATION OF ELECTRIC CO-OPS SURVEY COMPILATIONS

State	Rate	Service	Condition	Facility	Electricity	Restructuring	Other	Notes
Iowa	O							1 in / 36 out - Iowa St. 476.1a
Kansas	O ⁹	S						3 in / 26 out KSA 66-104(1) (1992)
Louisiana	Y	F						5 TVA co-ops not subject to PUC jurisdiction
Maryland	Y	F						
Michigan	Y	S						
Minnesota	N							
Mississippi	N							
Montana	N							
Nevada	N							
New Jersey	N							
New York	Y ¹²	F						

⁹ In Kansas, distribution cooperatives serving less than 10,000 customers may elect to opt out of state regulation. One cooperative, Midwest Energy, exceeds that number. The two G&Ts are fully regulated and do not have the ability to opt out.

¹⁰ Rate regulation of co-ops in Kentucky is streamlined only for wholesale flow-through adjustments, and for all rate decreases. Otherwise, all distribution rate increases are subject to the full regulatory process.

¹¹ In New Mexico, a distribution co-op must file a notice of a proposed change in rates with the Commission. After 15 days the co-op then notifies its members of the proposed rate change via publication in the statewide magazine. Thirty days after that the co-op files a tariff and supporting documentation at the Commission. A 20-day clock begins to run, during which any co-op member may protest the rate filing. If there are no protests, the rates go into effect ten days after the 20-day protest period, or a total of 75 days after first filed. If there is a protest a full-blown rate proceeding takes place. Since its merger with Tri-State, the G&T is no longer state regulated.

¹² Distribution co-ops in New York are regulated by the New York Power Authority (NYPA), not the Public Service Commission.

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Operator's Signature

Date

CTRI CO-
As of Jan 1993

¹³ In Oklahoma, co-ops with fewer than 17,000 members may opt out of regulation. There are nine distribution co-ops that exceed the 17,000 threshold and are not eligible for the opt-out. If they opt out, they will not be regulated as to terms and conditions of service, but will still be regulated as to territorial issues.

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

¹⁶ Under the streamlined approach, Virginia allows a 5% increase based on operating revenue. Hearings are required upon a motion of Commission staff or Division of Consumer Counsel or if 150 customers or 5% of any rate class protests. One rate increase is allowed per calendar year and no more than three consecutive streamlined filings allowed. The G&T is not rate regulated.

Operator's Signature

Date _____

Opposed

SB 2369

**Testimony before the Senate Industry, Business and Labor Committee
██████████ General Manager, Mountrail-Williams Electric Cooperative
February 12, 2003**

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Mr. Chairman and members of the committee, good morning. My name is Dale Haugen. I am the general manager of Mountrail-Williams Electric Cooperative, with offices in New Town, Stanley and Williston, North Dakota. Presently I am also chairman of the North Dakota Electric Cooperative's managers association.

When you hear the word local, think of my electric cooperative. The fact that we are a locally owned company – keeps us focused on local needs and priorities.

My co-op is a local business, owned by the consumers it serves. That means conducting business through a locally elected board of directors and an annual meeting where policy is proposed and voted on by the consumers. It's the "people" part, the grassroots activities – that's what electric co-ops are all about. Just like locally elected school boards.

My co-op's commitment begins by helping keep electric bills as reasonably low as possible. We deliver electricity at the cost of service as determined through a professional cost of service study. There are no hidden fees and no profits for investors in faraway cities. Any money that is left over stays in our community and is put to work strengthening the economic well being of our towns.

1 Our board communicates with the consumers on rate setting activity through district
2 meeting discussions, articles in the monthly ND Living Magazine, as well as bill stuffers.
3 Members that are not satisfied with the rates or programs communicate to their local
4 directors or nearest cooperative office, not to some forum in Bismarck. People who know the
5 community resolve questions about service and billing locally.

6

7 In summary, Mountrail-Williams Electric Cooperative opposes Senate Bill 2369 as an
8 unnecessary cost upon our membership. We do not believe that removing cooperative
9 regulation from locally elected boards and giving it to the PSC would improve electric
10 cooperatives.

11

12 I urge a Do Not Pass recommendation on Senate Bill 2369.

13

14 Thank you.

Cass County Electric Cooperative takes a firm stand against SB2369.

Attached to my testimony for your consideration is a resolution in opposition to this bill, unanimously approved by our board at our January 28th board meeting.

Mr. Chairman and members of the committee, I respectfully urge your **DO NOT PASS** recommendation for Senate Bill 2369, and remind you that this identical bill was soundly defeated on the Senate floor in the 57th Legislative Assembly. Thank you for your consideration, and I'd be pleased to answer any questions you may have.



RESOLUTION

The following resolution was offered by Director Anderson, seconded by Director Huether and unanimously approved:

WHEREAS, North Dakota's electric cooperatives were founded on the principles of consumer governance; and,

WHEREAS, the Directors of Cass County Electric Cooperative, Inc., are democratically elected from among the members at annual membership meetings; and,

WHEREAS, the Directors provide governance, guidance and final authority on the terms and rates for Cass County Electric Cooperative's services; and,

WHEREAS, the monthly meetings of the Board of Directors are conducted in an open, democratic and participatory manner; and,

WHEREAS, the Cass County Electric Cooperative Board of Directors participate routinely in training and professional development specific to the electric industry; and

WHEREAS, Cass County Electric Cooperative's board members are sensitive and responsive to their fellow member's and neighbor's concerns about electric service; and

WHEREAS, Senate Bill 2369 removes local member control and would increase costs to both the consumer and the State of North Dakota,

NOW THEREFORE BE IT RESOLVED: That the Board of Directors of Cass County Electric Cooperative (listed below) strongly oppose SB 2369 and would urge North Dakota's legislators to vote NO on this bill.

John Froelich - 11405 28th St. SE, Valley City, ND
Bill Bertram - 3444 120th Ave. SE, Valley City, ND
Doug Anderson - 14935 23rd St. SE, Box 166, Arthur, ND
Dean Rust - 16695 31st St. SE, Harwood, ND
Steve Swiontek - 3919 17th St. S, Fargo ND
Shirley Montgomery - 4118 Timberline Drive, Fargo, ND
Russell Berg - PO Box 9, Horace, ND
Robert Huether - PO Box 679, Lisbon, ND
Marian Olson - 16441 52nd St. SE, Kindred, ND

I, John Froelich, do hereby certify that I am the Secretary of Cass County Electric Cooperative, Inc., and that further the above is a true copy of a resolution adopted at the meeting of the Board of Directors on January 28, 2003.

John Froelich

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Deanna Hall
Operator's Signature

10/22/03
Date

SB2369

OPPOSED

**Testimony before the Senate Industry Business and Labor Committee
Scott Handy, President/CEO, Cass County Electric Cooperative**

not here

February 12, 2003

Mr. Chairman and members of the committee, good morning. My name is Scott Handy, and I represent Cass County Electric Cooperative, headquartered in Kindred, North Dakota. I am here today in opposition to Senate Bill 2369.

Cass County Electric Cooperative takes a firm stand against such legislation, for several reasons. The first is the general and long-standing principle that electric cooperatives are, and of right should be, locally regulated. Each cooperative has an elected board of directors whose duty is to ensure the fairness and appropriateness of each rate class. Local regulation has worked well and is a fair, democratic and low-cost rate setting principle that should remain in place.

The second reason to leave electric cooperative rates under local regulation is cost. Regulation by a state agency is costly, and requires expensive consultants. Many cooperatives would be additionally burdened to employ in-house expertise to work with these regulatory issues. All these additional costs of state agency regulation would need to be added to the electric rates, which would only serve to make them more expensive.

The third, and perhaps the most compelling reason to leave cooperative electric rates under local regulation is that these rates are already as low as

they can be. Rates are set based on cost of service studies performed by financial experts such as the Eide Bailly accounting firm to ensure minimal cross subsidies exist.

An examination of Cass County Electric Cooperative's selling prices illustrates that there is no problem in search of a solution here. Following is a table showing our average selling price per kilowatt hour (kWh) for each member rate class, compared to the comparable rate class for the investor owned utilities in our area.

<u>Rate class</u>	<u>2001 CCEC</u>	<u>2001 Xcel</u>
Rural residential	\$.05564	n/a*
Urban residential	\$.05821	\$.06527
Apartment	\$.06170	n/a*
Small commercial	\$.04756	\$.05613
Large commercial	\$.03382	\$.04449
Company average	\$.05240	\$.06189

* Xcel has no rate class for rural residential or apartments

Keep in mind that CCEC's average selling price is lower than the investor owned competition even though we have a fraction of the number of electric accounts per mile of line compared to them.

The State of Minnesota, in the 1970s, brought the rates for electric cooperatives under state jurisdiction, similar to what is proposed in SB2369. A provision of the Minnesota bill allowed the cooperative members to vote

to remove the cooperative from state jurisdiction. It is instructive to note that in every single cooperative except one the members did vote to remove themselves from state jurisdiction. The one that did not has over 85,000 members in the southern area of the Twin Cities.

The plain truth is that a new regulatory method is not needed. The good old-fashioned cooperative principle of working together with our member-owners to set fair and appropriate rates is working well. We rarely receive complaints about our rates. In fact, we've recently received many compliments for our ability to hold the line on rates while costs for natural gas and other fossil fuels are sky rocketing.

In summary, Cass County Electric Cooperative urges your **DO NOT PASS** recommendation for Senate Bill 2369.

**Testimony of Robert Gipp, Director
Mor-Gran-Sou Electric Cooperative
Senate Bill 2369 - 9 a.m. Wednesday, Feb. 12, 2003**

OPPOSED

I'm Robert Gipp from Fort Yates. I am a director for Mor-Gran-Sou Electric serving Morton, Grant and Sioux Counties. I have been a director since 1976.

I stand to testify against SB 2369 because it puts Mor-Gran-Sou under the jurisdiction of the Public Service Commission. We have more than 2,500 cooperative members. This bill would take away the power of the cooperative directors to set rates, pay capital credits and oversee the cooperative. It's important for us to have local control. Local control is the voice of our people which is very democratic.

Mor-Gran-Sou like other cooperatives continues to lose members in the rural areas. Our growth areas are in the Fort Yates and Mandan area. Because the Mandan area is our largest service area the board of directors felt Mandan needed a designated area of representation. The board recommended to the membership:

1. A new director district for the Mandan area in Morton County and,
2. An increase in the size of the board from 7 to 9 with the 2 directors to represent the Mandan area.

In September the membership approved the bylaw change. In January, this past month two new directors were elected. This is an example of local control. We know our members needs because we are part of the communities.

- I ask that you do not pass SB 2369
- Let the local rural electric cooperatives manage their business
- Let the local RECs do what's best for their members

As I think into the future I hope my grandchildren and great grandchildren will be able to be served with affordable electric power with local control.

Thank you.

**Mor-Gran-Sou
Electric Cooperative, Inc.**

Toll-free (800) 750-8212

P.O. Box 287
202 6th Avenue West
Fletcher, ND 58535-0287
Telephone: (701) 597-3301
Fax: (701) 597-3915

P.O. Box 1175
2816 37th Street NW
Mandan, ND 58554
Telephone: (701) 663-0267
Fax: (701) 663-2279

To: Board of Directors
Mor-Gran-Sou Employees

From: Donald A. Franklund

Date: February 6, 2003

RE: 2002 Mor-Gran-Sou Fact Sheet

Service Area

Morton, Grant and Sioux Counties
More than 4,600 square miles

Membership

Total Number of Members = 4,662
Members voting in last election = 1,166
Percent of members voting = 25%

Board of Directors

9 Members
2 directors from each district
☐ Morton County = 31% Mbrs
☐ Grant County = 19% of Mbrs
☐ Sioux County = 21% of Mbrs
☐ Mandan Area = 29% of Mbrs
1 director At-Large

Accounts

Number of Active Services = 6,311
☐ 72% Residential
☐ 7% Commercial
☐ 19% Seasonal
☐ 2% Others

Number of Idle Services = 871

Miles of Line

Underground Distribution line = 574 miles
Overhead Distribution line = 3,055 miles
Transmission line = 234 miles
Density is 1.63 consumer/mile of line

Total Utility Plant = \$44 million
Average Interest Rate = 4.48%

Employment

Full Time Employees = 30
Part Time Employment = 4
Annual Payroll \$1.4 million plus benefits

Power Purchases

Purchased more than 128,000,000 kWh
Purchase from WAPA = 21%
Purchase from Basin = 79%
Total Cost of Power = \$3.6 million

Capital Credit Retirement

Patronage Holders = 9,929
Total \$ Retired in 2002 = \$294,500
Numbers of checks issued = 5,901 (59%)

Number not receiving checks = 4,028
o Their check was less than \$5
Total Retirement \$ of this group = \$83

Rate Classes

Based on type and location of service
☐ Rural Residential
☐ Urban Residential
o \$9.50 per month less than Rural Residential
o Typically multiple homes served from single transformer
☐ Small Commercial <50kw
☐ Large Commercial >50kw
☐ Light Industrial >1,000 kw
☐ Seasonal
☐ Irrigation

Taxes Paid

Morton County = \$96,040
Grant County = \$54,761
Sioux County = \$28,326
Oliver County = \$794
Mercer County = \$100
Hettinger County = \$109
Others = \$6,238

Opposed

SB2369

**Testimony before the Senate Industry Business and Labor Committee
Shirley Montgomery, Director
Cass County Electric Cooperative, Inc.**

February 12, 2001

Mr. Chairman and members of the committee, good morning. My name is Shirley Montgomery, and I am a member of the board of directors for Cass County Electric Cooperative, headquartered in Kindred, North Dakota. I rise in opposition to Senate Bill 2369.

I have served on the board of directors at Cass County Electric Cooperative since my election in June, 2000, and also serve on the Cooperative's Rate, Audit and Finance Committee. I will run for re-election to the board at our annual membership meeting this coming June.

I've had the privilege of serving on a number of boards of directors in the Fargo - Cass County area, including those of organizations such as the United Way, the Fargo Cass County Economic Development Corporation, the Fargo Chamber of Commerce, the advisory board of the NDSU College of Business Administration and several others. From a statewide perspective I'm involved as a member of the [REDACTED] of Directors, a board I now chair, and the Executive Committee of the North Dakota Department of Commerce Foundation. My 25-year career in management positions in the banking industry has prepared me for serving in these roles. When the opportunity to run for an open director's position came up at our local electric cooperative, it seemed like a good way to put

my business experience to work. Becoming a director has offered me the opportunity to take an active role in my cooperative.

In my nearly three years of serving on the governing board of our cooperative, I've been impressed with the level of oversight, representation and expertise our board provides the organization. We carefully study rate and service issues, and consider all points of view before decisions are made. In particular, cost of service studies performed by outside firms are consulted when rate decisions come before us. We take input at membership meetings, and our cooperative's directors and management are open and sensitive to member concerns at all times.

Our directors take advantage of numerous training opportunities to gain and maintain industry expertise. In fact, this week I'm enrolled in a six-day director training program, from which I am taking an absence to be here today.

Mr. Chairman and members of the committee, SB2369 is a bill that is not necessary. REC directors are democratically elected from among the membership at our annual membership meetings. We take great pride in providing objective oversight to our cooperative. Our members can contact us at any time, usually by just driving down the road or calling us up. Proponents of this bill are fond of saying that RECs are not regulated. Nothing could be further from the truth. We are locally regulated by the very people who use our cooperative's services. Adding another layer of regulatory oversight to a system that is already working very well will only increase costs for our members and for the State of North Dakota.