2011 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2322

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2322
January 31, 2011
Job Number 13683

☐ Conference Committee

Committee Clerk Signature Eva Lieberth

Explanation or reason for introduction of bill/resolution:

Relating to electric transmission providers

Minutes: Testimonies Attached

Chairman Klein: Opened the hearing.

John Olson: Introduced the bill.

Andrea Stomberg, Vice-President Electric Supply, Montana-Dakota Utilities Co.: Testimony Attached.

Senator Andrist: When you say this will prohibit the PSC from issuing a certificate, is the PSC now have the opportunity to use its judgment on whether to issue a certificate to build a transmission line. Does this come from real case or is it something you want for the utilities protection in the future?

Andrea: The process to obtain a CPCN, Certificate of Public Convenience and Necessity, for any utility that services retail customers in the state of North Dakota is in place we do that on a routine bases in our business. She isn't aware of any one who has had any problems. It is bringing anyone else that wants to build transmissions in the state and that it impacts their lines.

Chairman Klein: Things were going well until the Federal Energy Regulatory said we are going to change the rules?

Andrea: This came about when the FERC came in and said that the smaller utilities had to join the larger ones that have regional planning organizations because they don't build transmissions that go out of state. They joined the ISO and believed they would have the right, if the new line being built would affect their customers, in terms of cost; they would get the first right to say they want to build the line.

Chairman Klein: Commented about North Dakota having enough transmissions for the State, and asked if this goes beyond our state.

Andrea: If we want to move our energy out we would have to build some additional transmission. There are transmissions being built.

John Olson, Otter Tail Power Company: Testimony Attached.

Senator Murphy: Asked what FERC was trying to do, provide more competition?

John: Doesn't know for sure but would assume that they would like to see more competition.

Kathy Aas, Xcel Energy: In support of the bill.

Sandi Tabor, Lignite Energy Council: In favor of the bill.

Illona A, Jeffcoat-Sacco, General Counsel with the Public Service Commission: Testimony Attached.

Questions asked about the amount of money the Public Service Commission is asking for if the bill is passed.

Todd D. Kranda, Missouri River Energy Service: He is representing Deb Birgen and hands out her testimony and then reads it to the committee.

Harlan Fuglesten, The North Dakota Association of Rural Electric Cooperatives: They contacted Basin Electric and they have no objections to it. They also contacted all of their other generation and transmission cooperatives that are members of their association and they did not have any opposition from them.

Andrea: She was asked if this would help or if it would retard the development. She felt it would help but there would be a lot of companies wanting to build transmission lines. She stated that this was a nationwide issue. In the upper Midwest there are one or two transmission companies that have a business to build only transmissions. She said those who have built transmissions in the state want to continue to build transmissions in the state. In reference to the amendments she has a couple issues with the language she believes Todd had addressed. She is concerned that the language would allow any power supplier to have to be approached to see if they want to build it and receive written affirmation that they don't before they could proceed. She would like to see it narrowed down and would oppose it as it is now stated.

Dan Kuntz, Attorney for MDU Resources Group: Answers questions asked to Andrea that she was unable to answer. He stated that some entities do not need PSC jurisdiction to build outside of city limits. The amendments would cause them to have to offer a piece of the project to the other suppliers. He answered more questions about transmission projects.

Chairman Klein: Closed the hearing.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2322
February 1, 2011
Job Number 13801

☐ Conference Committee

Committee Clerk Signature Eva Luebelt

Explanation or reason for introduction of bill/resolution:

Relating to electric transmission providers

Minutes: Discussion and Vote

Chairman Klein: Opened the meeting on Senate Bill 2322.

Senator Andrist: Move a do pass to adopt the amendments by the Public Service Commission.

Senator Laffen: Seconded the motion.

Roll Call Vote: Yes-7 No-0

Senator Schneider: Moved a do pass to adopt the Schneider's, emergency Claus, amendment.

Senator Andrist: Seconded the motion.

Roll Call Vote: Yes-7 No-0

Senator Andrist: Moved a do pass as amended.

Senator Laffen: Seconded the motion.

Roll Call Vote: Yes-7 No-0

Senator Klein to carry the bill

FISCAL NOTE

Requested by Legislative Council
02/08/2011

Amendment to: SB 2322

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$0	$0	$0
Expenditures	$0	$0	$0	$0	$0	$0
Appropriations	$0	$0	$0	$0	$0	$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

This bill would require electric transmission providers to obtain a CPCN before interconnecting with an exisitng transmission line owned or operated by an electric public utility. No fiscal impact (see below).

Bill now authorizes the fee. No fiscal impact, as noted previously.

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

We see no fiscal impact because we do not know how many such applications we would have in a biennium, perhaps none. Also, applications that are not controversial will not use significant resources. The amendment to this bill authorizes the commission to impose a fee for cases that might use significant resources, and use the fee to retain outside assistance. The unused balance of any such fee will be refunded.

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.*

Any revenue from any imposed fee will be used to pay expenses with the remaining balance refunded.

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.*

Any expenses for outside assistance will be paid from the fee with the balance refunded.

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

None, see above

Name:	Illona A. Jeffcoat-Sacco	**Agency:**	PSC
Phone Number:	328-2407	**Date Prepared:**	02/08/2011

FISCAL NOTE

Requested by Legislative Council
01/26/2011

Bill/Resolution No.: SB 2322

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$0	$0	$0
Expenditures	$0	$0	$0	$0	$0	$0
Appropriations	$0	$0	$0	$0	$0	$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

This bill would require electric transmission poviders to obtain a CPCN from the commission before interconnecting with an exisitng transmission line owned or operated by an electric public utility (both as defined by the statute). No fiscal impact (see below).

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

We see no fiscal impact because we do not know how many such applications we would have in a biennium, perhaps none. Also, applications that are not controversial will not use significant resources. The commission plans to request an amendment to this bill authorizing the commission to impose a fee for cases that might use significant resources, and use the fee to retain outside assistance.

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.*

none, see above

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.*

none, see above

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

none, see above

Name:	Illona A. Jeffcoat-Sacco	**Agency:**	PSC
Phone Number:	328-2407	**Date Prepared:**	01/28/2011

PREPARED BY THE PUBLIC SERVICE COMMISSION
February 2, 2011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2322

Page 1, line 3, after "providers" insert ",and application fees for certificates of public convenience and necessity"

Page 4, after line 16, insert:

3. The commission may impose an application fee of up to one hundred twenty-five thousand dollars for an application under this chapter. With the approval of the emergency commission, the commission may impose an additional amount. The commission shall pay the expenses of processing an application under this chapter from the application fee paid by the public utility in accordance with section 49-02-02.

Renumber accordingly

Date: 2/2/2011
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2322

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Andrist Seconded By Senator Laffen

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Philip Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Public Service Commissions Amendments

PROPOSED AMENDMENTS TO SENATE BILL NO. 2322

Page 1, line 3, after "providers" insert "and declaring an emergency"

Page 5, after line 17, insert:

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure.

Date: 2/2/2011
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2322

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☑ Do Pass ☐ Do Not Pass ☐ Amended ☑ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Schneider Seconded By Senator Andrist

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Philip Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Senator Schneider's, emergency claus, amendment.

Date: 2/2/2011
Roll Call Vote # 3

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2322

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Andrist Seconded By Senator Laffen

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Philip Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Klein

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

REPORT OF STANDING COMMITTEE

SB 2322: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2322 was placed on the Sixth order on the calendar.

Page 1, line 3, after "providers" insert "; and to declare an emergency"

Page 4, after line 16, insert:

"3. The commission may impose an application fee of up to one hundred twenty-five thousand dollars for an application under this chapter. With the approval of the emergency commission, the commission may impose an additional amount. The commission shall pay the expenses of processing an application under this chapter from the application fee paid by the public utility in accordance with section 49-02-02."

Page 5, after line 17, insert:

"**SECTION 8. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2322

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2322
March 9, 2011
15141

☐ Conference Committee

Committee Clerk Signature Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Relating to electric transmission providers and provide an emergency

Minutes:

Chairman Keiser: Opens the hearing on SB 2322.

John Olson: Introduces the bill and introduces Andrea Stomberg.

Andrea Stomberg~Vice-President Electric Supply-Montana-Dakota Utilities Company: (See attached testimony 1).

Representative Ruby: Does this only apply to the line if it connects to an existing line?

Andrea Stomberg: That's correct, it only applies where a line interconnects with lines built or owned by a existing company or utility.

Representative Ruby: Could their proposal to put in a line that would connect force you to some involvement in the project?

Andrea Stomberg: We would still have a keen interest how that transmission would impact our system.

Representative Ruby: That would force your involvement whether you are planning it or not?

Andrea Stomberg: To some extent.

Representative Nathe: What is the certificate of public convenience?

Andrea Stomberg: If a certificate that is embedded in the territorial integrity section of the statute right now and it's a very simple form that we use that introduces to the public service commission what the line is and what the need is for the line. The last CPC we turned in was less than 10 pages. It's a simple introduction to the project.

Chairman Keiser: We still have territorial integrity in the state and country. Is that correct?

Andrea Stomberg: Yes, absolutely.

Chairman Keiser: So MDU, Ottertail or the Co-ops, they have areas that they are designated to serve. Those areas are protected, is that correct?

Andrea Stomberg: That's correct

Chairman Keiser: For someone to construct an alternate line, they can't take wind energy and sell within one of those territories within the state, is that correct?

Andrea Stomberg: That's correct?

Chairman Keiser: So, the only value that someone could have in constructing an alternate line would be if it could interface with your existing lines for sales across the country. How is it financially a good thing for somebody to construct a line that doesn't have the territory they serve? Don't they have to connect to an existing line to get into the FERC system?

Andrea Stomberg: In theory they don't, you could build a wind farm and run a line to inter connect in theory to a line outside of MYSO on the east coast. You are not likely to do that ever. Those people who build in this area want to connect with a line that efficiently touches MYSO.

Chairman Keiser: That's the key. You have to get to MYSO.

Andrea Stomberg: You could also sell to the co-op's. That is also not touched by this bill.

Chairman Keiser: If they can't connect to your line, they can't get to MYSO, reasonable?

Andrea Stomberg: That's correct.

Representative M Nelson: How are transmission lines needs identified and are you independent in that you can build something that the Midwest ISO doesn't recognize as a need? How does that work?

Andrea Stomberg: One of the things that FERC wanted to fix by forming these RTO's was to make sure that transmissions, as they grew in this country, was much more regional. So indeed we could use this coal and wind resources from this pocket of energy. As an investor owned utility that is not our business model. Our model is to serve our customers in North Dakota, so we are not likely to look for lines that would feed to wherever. FERC says that is not good for the country. We need to have a broader picture when we do this transmission planning. Hence, that is one of the reasons they formed these RTO's. RTO and MYSO will look at overall, the problems in the transmissions system that inhibit our ability to move power out as we have some constraints. The engineers do the sophisticated modeling to understand how energy flows across this large

regional system. It identifies the constraints and says if we build this line here, that will eliminate or reduce this constraint and MYSO is doing that. Then comes this question, how do you get these lines built and paid for regionally? This is being fought out right now at MYSO and FERC.

Chairman Keiser: If I were to build alternate lines and interface with one of your lines, can you charge me a fee for access to your line?

Andrea Stomberg: The way that works under MYSO is that the entire region pays for these projects that have multi-high value projects which we expect will be sought after other entities. They have multiple purposes and MYSO has said because they are regionally important, all of MYSO footprint, everybody pays a little bit.

Chairman Keiser: If I wanted to build a line, somebody else pays for it.

John Olson~Behalf of Otter Tail Power Company: (See attached testimony 2).

Representative Amerman: Why is FERC repealing this rule?

John Olson: They are repealing the rule to spread across the right beyond public utilities to any transmission builder that would want to build that transmission line. They are doing so with the understanding that if the state decides that its public utilities are in such a situation that they would required that right to be preserved for the benefit of their consumers. I think they recognize that element as well.

Kathy Aas~Exel Energy: We are in support of this bill without any amendments.

Chairman Keiser: How does this benefit our consumers?

Kathy Aas: If we construct the line, we have the ability to earn on that investment.

Chairman Keiser: If you can earn on that investment, it reduces the overall rate charged to consumers.

Kathy Aas: Indirectly, I better not go there.

Chairman Keiser: Andrea, would you like to come back and answer that question?

Andrea Stomberg: What happens when we are allowed to invest in one of these MYSO lines, that recovery investment is guaranteed by FERC from the entire footprint. It makes sense to keep that investment available to us.

Vice Chairman Kasper: If the line is owned by the outside entity, how are the charges set for the electricity to run along their line compared to how the charges be set for the electricity set along your line?

Andrea Stomberg: It's controlled by tariffs.

Vice Chairman Kasper: Are the charges to the consumer in North Dakota higher if you don't own the lines compared to an outside entity who owns the lines?

Andrea Stomberg: That is all set by MYSO.

Representative Clark: Is there a pressing need for transmission lines right now?

Andrea Stomberg: As far as we know, we have enough lines for our customers in North Dakota. If you build more green renewable energy that we could develop in North Dakota to other markets, there are a lot of questions about the economics of that. There is a keen interest on the part of Congress. If we built a lot more green resource, it would be tough to move it.

Bob Graveline~Utilities Shareholders of North Dakota: We support SB 2322 as it is passed in the Senate.

Illona A Jeffcoat-Sacco~General Counsel-Public Service Commission: (See attached testimony 3).

Chairman Keiser: The real issue isn't the certificate of need, it the right of first refusal and you didn't comment on that.

Illona A Jeffcoat-Sacco: That I think is true but I also think that it can be wrapped up in the concept of the certificate. In conversations with IGC, many of the concerns like that could be addressed in a certificate proceeding depending on how the issues are raised before the commission. That's where I'm coming from.

Representative Ruby: If an upgrade of a line or a new line is done in another state, do you have the authority to approve the project or is it basically a rate increase that would affect the North Dakota residents?

Illona A Jeffcoat-Sacco: We do not have a certificate of public convenience in necessity authority over a project in the other state. We have two different ways of looking at that. A company can ask for an advanced determination of prudence or they can ask for a recovery in rates or both. Eventually they are going to ask for a recovery rates and that question of prudence is in that rate issue. We had an advanced determination of prudence case on the whole thing because we had two of our companies that will end up making those investments, Ottertail and NSP. That's the way the commission would look at it if it's being built in another state but eventually charged to us.

Representative Boe: What is a queue?

Illona A Jeffcoat-Sacco: The transmission building waiting line. You are waiting in that line waiting for them to give you the blessing.

Representative Clark: If somebody decides to build a line, then it's decision time for our local utility serving North Dakota whether or not they want to build that line. Is that right? If they do decide that they will exercise their right then they do it no matter what it costs?

Illona A Jeffcoat-Sacco: What we expect of a utility that we regulate, where we are worried about what they are doing for investment and whether they serve their customers is that they are going to make the best decision for their obligation to serve their customers. Even if they think that they can sell a bunch of power outside their system to another market, that's good for customers. We expect the best business decision to be made. When that happens, that's when they have to come in and ask us for this public convenience of necessity certificate and that's where they tell us the business decision and the commission decides if we agree or not. An entity that's not regulated is making its business decisions based on their business model. They are not coming to ask us about it. The bill is trying to tie together when ratepayers pay for it. Let's let the commission have some involvement in that decision.

Chairman Keiser: If the bill passes, and another entity says we want to build a transmission line, they have to come and get a certificate. They try to get a certificate but they also have to inform the existing utility that we are considering building this and the existing utility could then say, no we will build it. That utility still needs to come and get a certificate?

Illona A Jeffcoat: That's correct.

Chairman Keiser: Then both of them would be getting into the queue with MYSO for funding? It's really a two step process. The state could issue a certificate and MYSO could say up or down.

Illona A Jeffcoat-Sacco: That's the way I understand it. Which would come first? I don't know because I don't know what the different planning horizons are?

Representative M Nelson: Moving the right of refusal from the federal agency down to the state level, what is first refusal?

Illona A Jeffcoat-Sacco: I don't know the answer to that.

Francie Brown~Director of State Governmental Affairs for ITC Holding Corp: (See attached testimony 4).

Chairman Keiser: What do these amendments do?

Francie Brown: The major amendment is to address a situation should an incumbent utility decide not to build? There is a process or timeline in which they make that decision, so another entity that has the expertise can then build those facilities. They have been identified as needed through a transmission planning process like MISO and the incumbent utility may or may not want to build that line. If they don't want to build that line, they can assign that right to build to someone else. The idea is to notify the commission within a specific period of time so another entity could apply and build. There is a new amendment added in the Senate, which requires a fee of $125, 000 when you apply for the certificate.

Representative Nathe: How do the out-of-state developers impact our consumers rates?

Francie Brown: The higher, bigger lines we are talking about, FERC, there is a tariff that would spread the costs of building those regional lines across the regions.

Vice Chairman Kasper: How does your company make a profit on what you do compared to how the utilities make additional over-ride on transmission lines. What are the differences?

Francie Brown: We both receive a return on equity and investment, which is our business model. We are regulated by FERC.

Vice Chairman Kasper: Would there be any difference in cost to the consumers in North Dakota if your company built the lines versus the utility building the line?

David Grover~ITC Midwest: Both the IOU's in North Dakota and ITC would use the same Midwest ISO formula rates to calculate the costs of the project. Sometimes there are very minor differences but are essentially the same.

Chairman Keiser: In theory, your company would make a profit by making this investment. In theory the local entities would make a profit by having this line, in their case, their profit is returned to their financial statement. When the PSC looks at rates of increase, they are going to factor that profit in and it could affect the local customers in our state. Will you profitability be incorporated in any filing with the PSC for rate payers in the state of North Dakota?

David Grover: Only to an extent. If we were to build a project, then costs would be charged all customers in the Midwest, customers in ISO, including those in North Dakota.

Chairman Keiser: It may happen.

David Grover: I don't recall frequent North Dakota rate case filings.

Representative Ruby: With the way this law is, the change at the federal level, this is basically put in to be consistent. Why is it a problem to work in this structure?

Francie Brown: If the incumbent utility hasn't made that decision, when does the independent transmission company make that application that is going to cost $125,000 for the CPCN? We don't know their decision. The right of first refusal is a process we support; we are just trying to figure out at what in point in time does the independent transmission go through the process, time, and effort of putting together a certificate? When do we do that process? Shouldn't there be a timeline to make a decision to build?

Representative Ruby: Was there a time line at this time with the federal?

Francie Brown: Not to my knowledge.

Representative Ruby: Are the timelines in your amendments reasonable for the amount of time to make their decision?

Francie Brown: Maybe the 90 days wasn't the right timeline and maybe it's a different one. Setting some milestone advances the development. These are friendly amendments and are meant to move the ball forward but make sure there is a process in place.

Representative Ruby: You want to date certain guidelines?

Francie Brown: Yes it's helpful for those who are interested in building.

Representative Nathe: In regards to your proposed amendment, the right of first refusal, what are other states are doing?

Francie Brown: It is a different situation in Michigan. We are the transmission provider there. Iowa and Minnesota are the same, we acquired those assets. We are the transmission provider there also. This is the case as we read through the bill. Electric transmission companies have now pull CPCN process. How is it then when we know the decision by the incumbents has been made that they don't want to build?

Representative Nathe: Do they have laws in any of those states that address the right of first refusal?

Francie Brown: Not that I'm aware of.

Chairman Keiser: Walk me through, MYSO approves this is a line that we would approve if they wanted to build it, that's an important step there. In terms of the right of first refusal, that's not the certificate, how does that work? Do you contact the PSC?

Francie Brown: That is the process the way the bill is currently written, it's unclear. There is a process for us to apply to be able to build the line, but because the incumbents have the right of first refusal, how do we know when to make that application?

Chairman Keiser: If they respond to you, no, we are refusing that request, it's not done.

Francie Brown: Their right of first refusal currently is open for however long.

Chairman Keiser: They could not build the project, but not let anyone else build the project.

Francie Brown: Correct.

Chairman Keiser: By placing your amendment on this bill, they would have 90 days to issue a certificate of need?

Francie Brown: They would have 90 days after the planning authority, MYSO, has approved it.

Chairman Keiser: MYSO approves the line, then they have to take action in 90 days.

Francie Brown: In 90 days they would need to notify the commission that in fact that it's their intent to request the certificate and then at some point they would need to apply for the CPCN for that line.

Chairman Keiser: If they don't do that, then the door is open to anyone else after the 90 day period.

Francie Brown: Correct, then at that point in time, if those steps are not taken within those time frames, then another entity would be able to file to CPCN.

Chairman Keiser: They would be in first position.

Francie: Correct.

Representative M Nelson: Under the current system with FERC, what timelines do they have in their rules?

Francie Brown: I don't believe they have any timelines.

Representative M Nelson: So, currently you operate under right of first refusal under FERC, but there is no time line?

Francie Brown: That is what they are working on right now.

Representative Nathe: Back to the right of first refusal, you stated in the other states, they do not have this. Have you tried to get this similar language passed in those states? I'm trying to figure out why you are trying to change it here and the other states where you do this, you do not have this.

Francie Brown: We are the utility in other states.

Chairman Keiser: You are not filing this in those other states where you are already in first position to open it up to other people.

Francie Brown: That would be true.

Chairman Keiser: Is there anyone else here to testify in support with the amendment of SB 2322.

Illona A Jeffcoat-Sacco: I do not have a commission position on this amendment; I did not know it was formal. I would like to get time to try and get a commission position on the amendment. The commission as a group did not consider these issues. I want to clarify some things. With my discussion with ITC still holds true, regardless of the merits and agreement of all of these concerns or issues, the existing commission process, general administrative procedure, general PC could accommodate these concerns in a way that allows full discretion. I can see this playing out like the trucking issue was a while back in this statute without the amendments. Another point, there will not be a hearing in the commission at the state level over the costs of that transmission. If the commission or the

state of North Dakota for ratepayers wants to have any input on transmissions costs, it's going to be at FERC. When those costs come through, they are getting flowed through at the state level. We do appreciate that added fee but the fee is not mandatory.

Representative N Johnson: Where is the $125,000 coming from? Was it a request from the PSC?

Illona A Jeffcoat-Sacco: Yes.

Representative M Nelson: Do you think it is necessary to have the technical correction of adding "or electrical transmission provider" or would they be considered a utility?

Illona A Jeffcoat-Sacco: That should be as opposed to adding more words.

Chairman Keiser: Anyone else here to testify in support, in opposition, in the neutral position. Closes the hearing, what are the wishes of the committee?

We will hold it.

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2322
March 9, 2011
15200

☐ Conference Committee

Committee Clerk Signature Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Electric transmission providers and declare an emergency

Work Session Minutes:

Chairman Keiser: Opens the work session on SB 2322.

Chairman Keiser: I have mixed emotions on this bill. If you recall that if you overstrike "utility" and insert "applicant", my instinct tells me that I know what utility is and it's one and the same thing. She also suggested that the commission refund the portion of the fee, which exceeds the expenses incurred for processing the case for which the fee was paid. I asked her, can't you just do that? It doesn't need to be in the law because the fee may be charged up to that amount to cover the expenses. She said, yeah, that's true. What are the wishes of the committee? (See attached testimony).

Vice Chairman Kasper: If we change, the word is somewhat meaningless; we go back to the Senate and open the whole thing back up.

Vice Chairman Kasper: Moves a Do Pass SB 2322.

Representative Gruchalla: Second.

Chairman Keiser: Further discussions? When I did ask the question that in those states that you are the principle transmission provider, have you turned in this legislation, the answer was no, we haven't. Which suggest to me they have motivation to do it here, but not in their home state? I support the motion.

Roll call was taken for a Do Pass on SB 2322 with 13 yeas, 0 nays, 1 absent and Representative Nathe is the carrier.

Date: March 9, 2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2322

House **House Industry, Business and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

Motion Made By Rep Kasper Seconded By Rep Gruchalla

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe	✓	
Representative Clark	✓		Representative Gruchalla	✓	
Representative Frantsvog	✓		Representative M Nelson	✓	
Representative N Johnson	✓				
Representative Kreun	✓				
Representative Nathe	✓				
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	~~AB~~				

Total Yes 13 No 0

Absent 1

Floor Assignment Rep. Nathe

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

REPORT OF STANDING COMMITTEE

SB 2322, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2322 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2322

Testimony of Andrea Stomberg

Vice-President Electric Supply

Montana-Dakota Utilities Co.

Before the Senate Industry, Business and Labor Committee

January 31, 2011

Senate Bill 2322

Montana-Dakota, and the other investor owned utilities that serve electric customers in this State, have done so reliably for many years- Montana-Dakota for over 80. With the oversight of the North Dakota Public Service Commission, we have an obligation to serve our customers, and also have the obligation and opportunity to invest in needed infrastructure and to maintain it in the interest of our customers. These proposed changes to the century code clarify the first right to own new lines interconnecting with existing transmission built by regulated utilities within the State, cost of which will be passed on to those same utilities, belongs to the regulated utilities .

Montana-Dakota, Otter Tail Power Company and Xcel Energy have built high voltage transmission lines in North Dakota under the watchful eye of the Public Service Commission who evaluates the need for them, issues permits for them, and determines the recovery of our investments in them through the rates they allow us to charge our customers.

In recent years, all of the investor owned utilities that serve customers in this state have joined the Federal Energy Regulatory Commission, or FERC, recognized regional transmission organizations, or RTO's. These organizations were formed in part to answer the concerns that utility-specific transmission planning was inadequate to address broader regional transmission needs, such as we see in this state for the export of fossil or renewable energy to markets outside the state boundaries.

The regional RTO to which Montana-Dakota, Otter Tail and Xcel energy belong is the Midwest Independent System Operator, or Midwest ISO. The Midwest ISO encompasses 13 states from Montana to Ohio, to Kentucky and Missouri and the Canadian province of Manitoba. By joining the Midwest ISO, Montana-Dakota, Otter Tail and Xcel gave up operational control of their transmission lines, and participate in regional transmission operation and planning. Cost allocations for regional planning and transmission projects built by members of the Midwest ISO are now shared across a broader regional landscape.

As part of the FERC approved contractual agreements between the utilities and the Midwest ISO, the incumbent utilities are guaranteed the first right to construct transmission lines that interconnect with our existing transmission lines. These new lines are approved through the Midwest ISO regional planning process as needed lines.

In a notice of proposed rulemaking issued last June, the FERC proposed to eliminate this contractual language, saying that the opportunity to build transmission should be available through a competitive process to anybody who is able and interested. This new competitive process creates a new right of first refusal to the entity who first proposes a particular transmission line. The outcome of throwing open interconnecting transmission construction to all comers could be a network of transmission lines

interconnected with existing lines serving North Dakota customers, built by entities who may not be under state PSC jurisdiction, but who will be able pass their cost to build and maintain the lines onto the customers of the incumbent utility through the Midwest ISO transmission charges.

This FERC proposal also vacates a fundamental premise under which Montana-Dakota, Otter Tail and Xcel joined the Midwest ISO, and which gave us confidence that we would continue to have some control over transmission interconnecting to our lines the costs of which we would expect to see included in Midwest ISO charges to us.

In its proposed rulemaking, FERC acknowledged that the states have a strong interest in regulating transmission and costs within their borders. Clearly stated in the FERC proposal is language that indicates FERC will recognize state law if that law favors the incumbent utility's first right to build. It is that state law we wish to solidify by proposing the language in Senate Bill 2322.

SB 2322 provides that a transmission provider, which could be another utility as well as an independent transmission builder, could not begin construction of a high voltage transmission line which interconnects with lines owned or operated by an electric public utility such as Montana-Dakota, Otter Tail or Xcel, without obtaining a certificate of public convenience and necessity from the PSC. This is no different than the requirement that applies to the existing utilities. The bill further provides that the PSC may not issue this certificate to a transmission provider if the interconnecting public utility is willing and able to construct and operate a similar transmission line. The language provides that any transmission project that is approved by the Midwest ISO, for instance to convey renewable or other energy to out of state markets, and which an incumbent does not wish to, or is unable to, construct, is available for another entity who would successfully advance a certificate of public convenience and necessity to the Commission.

Testimony of John Olson
Senate Bill 2322
On behalf of Otter Tail Power Company
Before the Senate Industry, Business & Labor Committee
January 31, 2011

Mr. Chairman and members of the Committee, for the record, my name is John Olson. On behalf of Otter Tail Power Company, I am testifying in favor of Senate Bill 2322.

SB 2322 would foreclose an "electric transmission provider" from constructing and operating electric transmission lines of 115 kilovolts or greater and exceeding one mile, and which interconnect to an electric public utility's existing transmission system - - without first obtaining a certificate of public convenience and necessity from the Public Service Commission. "Electric transmission provider" is a newly-defined term that means an owner or operator, other than a rural electric cooperative, of a transmission line the costs of which are recovered directly or indirectly through transmission charges to an electric public utility.

Further, SB 2322 would foreclose the Commission from issuing a certificate of public convenience and necessity to an "electric transmission provider" - - if an electric public utility to whose electric transmission line the proposed electric transmission line would interconnect is willing and able to construct and operate a similar electric transmission line.

Recent action by the Federal Energy Regulatory Commission, or FERC, led North Dakota's electric public utilities who are members of the Midwest Independent Transmission System Operator, or MISO, to advance this legislation. These electric public utilities are Otter Tail Power Company, Xcel Energy, and Montana-Dakota Utilities Co.

In June, FERC issued a notice of proposed rulemaking that would strike from any FERC-approved tariff certain provisions that give transmission owners or public utilities the right of first refusal, or first choice, in deciding whether to construct and operate transmission projects approved for construction by regional transmission organizations like MISO. The right of first refusal is a long-standing policy, a necessary trade-off public utilities received in exchange for maintaining the transmission grid's efficiency and reliability. FERC commissioners have made it clear, however, that they cannot and will not preempt state policy on the right of first refusal issue.

A group of public utilities, including Otter Tail Power Company, recently filed comments in opposition to FERC's proposal to rollback the right of first refusal policy. So, too, have the North Dakota Public Service Commission and the South Dakota Public Utilities Commission.

A brief review of federal transmission policy is necessary to understand the inequity of FERC's proposal. In 1992, Congress passed the Energy Policy Act - - which required

that public utilities provide access on their transmission systems to others on the same terms and conditions they provide to themselves. This policy is referred to as open-access transmission.

A series of FERC rulemakings followed passage of the Energy Policy Act, including a landmark order by FERC. Order 888 required public utilities to file open-access transmission tariffs, and created rules ensuring that companies owning both generation and transmission do not have an unfair advantage over independent generators in seeking access to the transmission grid. Over time, FERC encouraged utilities to join regional transmission organizations like MISO to ensure the evolution of a robust wholesale electricity marketplace.

Otter Tail Power Company and several other regional public utilities, including Xcel Energy and Montana-Dakota Utilities Co., joined MISO. MISO controls access to MISO member-owned transmission facilities, and facilitates a thorough transmission planning process that identifies new transmission projects. In joining MISO, the public utilities turned over operational control of their transmission facilities to MISO in 2002. As part of the FERC-approved contractual agreements between the utilities and MISO, the utilities were guaranteed a right of first refusal to construct and operate transmission lines that interconnect with their existing transmission lines.

Public utilities like Otter Tail Power Company have an obligation to serve the public. In light of this obligation, and because of their good faith relinquishment of operational control of their transmission systems, public utilities should have the right of first refusal to construct and operate transmission projects approved for construction by MISO and interconnecting with their transmission systems. FERC's proposal to rescind the right is, in a word, troubling.

Senate Bill 2322 would ensure this right within the State of North Dakota, preserving the right of first refusal as a matter of state law - - regardless of what FERC does in its final rule. Final passage will ensure public utilities providing retail electric service to North Dakota customers will continue to have the first opportunity to construct and operate transmission in the efficient manner our customers have come to expect. If public utilities choose not to exercise this right or are financially unable to do so, the opportunity to construct and operate transmission will reside with others.

Otter Tail Power Company urges a DO PASS on Senate Bill 2322. The public utility representatives in attendance and I stand ready to answer any questions you may have.

Senate Bill 2322

Presented by: **Illona A. Jeffcoat-Sacco**
General Counsel
Public Service Commission

Before: **Senate Industry, Business and Labor Committee**
Honorable Jerry Klein, Chairman

Date: **January 31, 2011**

TESTIMONY

Mister Chairman and committee members, I am Illona Jeffcoat-Sacco, General Counsel with the Public Service Commission. The Commission asked me to appear today to request an amendment to Senate Bill 2322. With the amendment, the Commission can support Senate Bill 2322.

The Commission recognizes the importance of the issue the bill is intended to address. The transmission facilities for which Senate Bill 2322 would require a certificate of public and convenience and necessity have the potential to impose significant rate impacts on North Dakota customers. Consequently, the Commission believes that it is appropriate to require those who build such transmission facilities to show that public convenience and necessity require the building of the projects they propose. This is what state policy requires of investor owned utilities before permitting them to invest in utility plant that will ultimately be paid for by North Dakota ratepayers. It is reasonable and appropriate to require other providers to meet the same standards when North Dakota ratepayers will be paying the bill.

The Commission requests an amendment to the bill to allow the Commission to impose a fee on an application for a certificate of public convenience and necessity under this chapter when the Commission anticipates the costs of processing the application warrant a fee. We request an opportunity to work with the sponsors of this bill to draft an amendment authorizing the Commission to impose a fee up to 125,000 dollars as circumstances warrant. Such application fees are similar to how state law provides the Commission the resources to process other critical utility applications sush as advance determination of prudence cases, siting cases and rate increases.

Mister Chairman, this concludes our testimony. I will be happy to answer any questions you may have.

Testimony on SB 2322
Senate Industry Business & Labor Committee
January 31, 2011

Good morning, Chairman Klein, Members of the Senate Industry Business & Labor Committee, my name is Deb Birgen. I serve as the Manager of State Legislative Relations for Missouri River Energy Services (Missouri River). I am speaking to you on behalf of Missouri River which is a municipal power agency that provides wholesale electricity to six member communities in this state, including Cavalier, Hillsboro, Lakota, Northwood, Riverdale and Valley City. Missouri River appears before you today to offer an amendment to SB 2322.

Why do we want this amendment? First, some background information: The Federal Energy Regulatory Commission (FERC) opened a docket for a Notice of Proposed Rulemaking, namely, RM 10-23-000, "Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities." In the docket FERC considered several items, one of which was limiting the right of first refusal. FERC indicated that:

> Based on the comments submitted in response to the October 2009 Notice, there appear to be opportunities for undue discrimination and preferential treatment against nonincumbent transmission developers within existing regional transmission planning processes. (131 FERC ¶ 61,25, Federal Energy Regulatory Commission, 18 CFR Part 35; Docket No. RM10-23-000; Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities (Issued June 17, 2010), p. 51)

FERC then opened the docket for comments including limiting the right of first refusal. In response, Missouri River, as a member of the Transmission Access Policy Study Group (TAPS), filed comments September 29, 2010, agreeing that FERC should follow through on limiting the right of first refusal. Specifically, TAPS recommended a middle of the road approach by having right of first refusal dependent upon prerequisite action by the incumbent transmission owner. That action would be that the incumbent owner: (1) foregoes any rate of equity rate incentives for the transmission upgrade; and (2) offers meaningful (e.g. load ratio share) joint ownership, on reasonable commercial terms, to transmission dependent utilities in the area. TAPS specifically cited CAPX 2020 as confirming the value of joint ownership. The

FERC docket is still pending, however, FERC indicated that upon final rulemaking it would not pre-empt state law. Thus, putting a right of first refusal in state law could avoid any changes at the behest of FERC.

So now we ask that the right of first refusal be incumbent upon offering joint ownership to utilities in the state. Why do we want an opportunity for joint ownership? Without the ability to participate in joint ownership, the incumbent owners have a huge advantage. They can shape any and all transmission projects to their own needs and use right of first refusal to discourage others from proposing transmission projects that may be more cost-effective. They could also monopolize the transmission rate benefits. On the other hand, customers would benefit when their transmission dependent utility, like a municipal power agency, is able to invest on their behalf in a new line rather than be dependent on the plans of others. This gives transmission dependent utilities a way to manage financial risk of transmission rate increases that are usually associated with new line construction. By being at the table, they can invest on behalf of their customers. If a transmission dependent utility is serving load in North Dakota and is shut out by incumbent providers invoking the right of first refusal, their customers will continue to be denied opportunities for investment on their behalf.

We also ask for some affirmative deadline to take action on invoking the right. Why do we want some deadline for action? If you invoke the right of first refusal, you should be required to take some action in a reasonable amount of time. If not, we risk an invoking of the right and then no action—a hoarding of the rights if you will. If you claim the benefit, you have to undertake the action in a reasonable amount of time or forfeit the right.

Thank you for taking the time to consider this amendment, a copy of which is attached. I am also providing a copy of SB 2322 with the amendment inserted and shown with the yellow highlighted material. We hope that you will recognize the need to allow transmission dependent utilities to have opportunities to invest on behalf of the customers.

PROPOSED AMENDMENT TO
SENATE BILL NO. 2322

Page 2, line 1, after "utility" insert ",electric cooperative corporation, municipal power agency, or municipal utility"

Page 3, after line 5, insert:

"6. "Power supplier" means any electric public utility, electric cooperative corporation, or municipal power agency making wholesale sales in the state."

Page 3, line 6, replace "6" with "7"

Page 3, line 9, replace "7" with "8"

Page 3, line 12, replace "8" with "9"

Page 3, line 15, replace "9" with "10"

Page 4, after line 16, insert: "This right is only available where the incumbent transmission owner offers to power suppliers in the state commercially reasonable terms and conditions of joint ownership in the project. The commission shall not approve the project unless the incumbent transmission owner receives a written release from the power suppliers in the state that the power suppliers do not desire to invest in the project. If an electric transmission provider has not given notice of intended construction to interconnect to a line owned or operated by an electric public utility, a person other than the electric public utility may inquire in writing whether the electric transmission provider intends to construct, own and maintain the electric transmission line or lines and shall provide a copy of the inquiry to the commission. Within sixty days of receipt of such an inquiry, the electric public utility or electric transmission provider must provide notice, in writing of its intent regarding the electric transmission line to the person and the commission, including an offer of joint ownership to any power suppliers in the pricing area. Upon declaring such intent, the electric transmission provider or electric public utility must file an application for certificate of public convenience and necessity within 180 days of the date the notice was filed in response to the inquiry."

Renumber accordingly.

A BILL for an Act to amend and reenact section 49-03-01, 49-03-1.4, 49-03-1.5, 49-30-02, 49-03-03, 49-03-04, and 49-03-05 of the North Dakota Century Code, relating to electric transmission providers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-03-01 of the North Dakota Century Code is amended and reenacted as follows:

49-03-01. Certificate of public convenience and necessity—Secured by electric public utility.

1. An electric public utility ~~henceforth shall~~ may not begin construction or operation of a public utility plant or system, or of an extension of a plant or system, ~~except as provided below,~~ without first obtaining from the commission a certificate that public convenience and necessity require or will require ~~such~~ the construction and operation. This section does not require an electric public utility to secure a certificate for an extension within any municipality within which ~~it~~ the electric public utility has lawfully commenced operations. If any electric public utility in construction or extending its line, plant, or system, unreasonably interferes with or is about to interfere unreasonably with the service or system of any other electric public utility, or any electric cooperative corporation, the commission, on complaint of the electric public utility or the electric cooperative corporation claiming to be injuriously affected, after notice and hearing as provided in this title, may order enforcement of this section with respect to the offending electric public utility and prescribe just and reasonable terms and conditions.
2. An electric transmission provider may not begin construction or operation of an electric transmission line interconnecting with an existing electric transmission line owned or operated by an electric public utility, electric cooperative corporation, municipal power agency, or municipal utility without first obtaining a certificate that public convenience and necessity require or will require the construction or operation.

SECTION 2. AMENDMENT. Section 49-03-01.4 of the North Dakota Century Code is amended and reenacted as follows:

49-03-01.4 Enforcement of act.

1. If any electric public utility or electric transmission provider violates or threatens to violate any of the provisions of sections 49-03-01 through 49-03-01.5 or interferes with or threatens to interfere with the service or system of any other electric public utility or rural electric cooperative, the commission, after complaint, notice and hearing as provided in chapter 58-32, shall make its order restraining and enjoining ~~said~~ the electric public utility or electric transmission provider from constructing or extending its interfering lines, plant, or system. In

addition to the restraint imposed, the commission shall prescribe such any terms and conditions as ~~it shall deem~~ the commission deems reasonable and proper.

2. This section does not prohibit or limit any person, who has been injured in the person's business or property by reason of a violation of sections 49-30-01 through 49-03-01.5 by any electric public utility, electric transmission provider, or electric cooperative corporation, from bringing an action for damages in any district court of this state to recover such damages.

SECTION 3. AMENDMENT. Section 49-03-01.5 of the North Dakota Century Code is amended and reenacted as follows:

49-03-01.5 Definitions.

As used in sections 49-03-01 through 49-03-01.5:

1. "Electric provider" means either an electric public utility or a rural electric cooperative.
2. "Electric public utility" means a privately owned supplier of electricity offering to supply or supply electricity to the general public.
3. "Electric transmission line" means facilities for conducting electric energy at a design voltage of one hundred fifteen kilovolts or greater phase to phase and more than one mile long.
4. "Electric transmission provider" means an owner or operator, other than a rural electric cooperative, of a transmission linethe costs of which are recovered directly or indirectly through transmission charges to an electric public utility.
5. "Person" includes an individual, an electric public utility, a corporation, a limited liability company, an association, or a rural electric cooperative.
6. "Power Supplier" means any electric public utility, electric cooperative corporation, or municipal power agency making wholesale sales in the state.
7. "Rural electric cooperative" includes any electric cooperative organized under chapter 10-13. An electric cooperative, composed of members as prescribed by law, shall not be deemed to be an electric public utility.
8. "Service area" means a defined geographic area containing existing or future service locations established by an agreement among electric providers and approved by the commission.
9. "Service area agreement" means an agreement between electric providers establishing service areas and designating service locations to be served by each provider under section 49-03-06.
10. "Service location" means the structures, facilities, or improvements on a parcel of real property to which electric service may be provided.

SECTION 4. AMENDMENT. Section 49-03-02 of the North Dakota Century Code is amended as follows:

49-03-02 Prerequisites to issuance of certificate of public convenience and necessity.

1. Before any certificate may issue under this chapter, a certified copy of the articles of incorporation or charter of the utility, if the applicant is a corporation, or a certified copy of the articles of organization of the utility, if the applicant is a limited liability company, ~~shall~~ must be filed with the commission. At the hearing ~~of said~~ on the application ~~upon~~ after notice as provided in this title, the utility shall submit evidence showing that ~~such~~ the applicant has received the consent, franchise, permit, ordinance, or other authority of the proper municipality or other public authority, if required, or has or is about to make application ~~therefore~~ for authority. The commission shall have the power, after notice and hearing, to
   a. Issue the certificate prayed for;
   b. Refuse to issue ~~such~~ the certificate;
   c. Issue ~~it~~ the certificate for the construction or operation of a portion only of the contemplated facility, line, plant, system, or extension ~~thereof~~ of the same; or
   d. Issue ~~it~~ the certificate for the partial exercise of the right or privilege sought, conditioned upon the applicant's having secured or upon the applicant's securing the consent, franchise, permit, ordinance, or other authority of the proper municipality or other public authority, and may attach to the exercise of the rights granted by any certificate ~~such~~ terms and conditions as in ~~it's~~ the judgment of the commission the public convenience and necessity may require.
2. Notwithstanding any ~~of the foregoing provisions~~ other provision of this section, the commission may grant a certificate if ~~no~~ an interested party, including any local electric cooperative, has not requested a hearing on ~~said~~ an application after receiving at least twenty days' notice of opportunity to request such hearing. In addition, the commission may not issue a certificate to an electric transmission provider for construction or operation of an electric transmission line that will interconnect with an electric transmission line owned or operated by an electric public utility if the electric public utility is willing and able to construct and operate a similar electric transmission line. This right is only available where the incumbent transmission owner offers to power suppliers in the state commercially reasonable terms and conditions of joint ownership in the project. The commission shall not approve the project unless the incumbent transmission owner receives a written release from the power suppliers in the state that the power suppliers do not desire to invest in the project. If an electric transmission provider has not given notice of intended construction to interconnect to a line

owned or operated by an electric public utility, a person other than the electric public utility may inquire in writing whether the electric transmission provider intends to construct, own and maintain the electric transmission line or lines and shall provide a copy of the inquiry to the commission. Within sixty days of receipt of such an inquiry, the electric public utility or electric transmission provider must provide notice in writing of its intent regarding the electric transmission line to the person and the commission, including an offer of joint ownership to any power suppliers in the pricing area. Upon declaring such intent, the electric transmission provider or electric public utility must file an application for certificate of public convenience and necessity within 180 days of the date the notice was filed in response to the inquiry.

SECTION 5. AMENDMENT. Section 49-03-03 of the North Dakota Century code is amended and reenacted as follows:

49-03-03. Franchise not to be exercised without certificate.

~~No~~ A public utility ~~henceforth shall~~ or electric transmission provider may not exercise any right or privilege under any franchise or certificate ~~hereafter granted, or under any franchise of certificate heretofore granted~~, the exercise of which has been suspended or discontinued for more than one year, without first obtaining from the commission a certificate that public convenience and necessity require the exercise of ~~such~~ the right or privilege.

SECTION 6. AMENDMENT. Section 49-03-04 of the North Dakota Century cod is amended and reenacted as follows:

49-03-04. Replacement or renewable of franchise. Certificate of public convenience and necessity not necessary.

~~No~~ A public utility or electric transmission provider does not need to secure a renewal of the certificate of public convenience and necessity under this chapter in order to exercise rights under an ordinance ~~hereafter granted where it~~ if either has not suspended operation of its plant and where ~~such~~ the franchise merely replaces or renews an expiring or expired franchise.

SECTION 7. AMENDMENT. Section 49-03-05 of the North Dakota Century cod is amended and reenacted as follows:

49-03-05. Complaint upon violation of chapter.

~~Whenever~~ If a public utility or electric transmission provider engages or is about to engage in construction or operation as described in this chapter without having secured a certificate of public convenience and necessity as required by the provisions of this chapter, or ~~whenever~~ if a public utility or

electric transmission provider constructs or extends its line, plant, or system, or supplies, or offers to supply electric service in violation of this chapter, any interested municipality, public authority, utility, electric cooperative corporation, or person, may file a complaint with the commission. The commission ~~thereupon~~ acting on the complaint, or upon its own motion without complaint, with or without notice, may make its order requiring the public utility complained of to cease and desist from ~~such~~ the construction or operation or other prohibited activity until the further order of the commission. Upon hearing had after due notice given, the commission shall make ~~such~~ an order with respect to ~~such~~ the public utility or electric transmission provider and prescribe ~~such~~ terms and conditions as are just and reasonable.

Testimony 1

Testimony of Andrea Stomberg

Vice-President Electric Supply

Montana-Dakota Utilities Co.

Before the House Industry, Business and Labor Committee

March 9, 2011

SB 2322

Montana-Dakota, and the other investor owned utilities that serve electric customers in this State, have done so reliably for many years- Montana-Dakota for over 80. With the oversight of the North Dakota Public Service Commission, we have an obligation to serve our customers, and also the obligation and opportunity to invest in needed infrastructure for our customers. The changes to the Century Code proposed in this bill clarify that the first right to own new lines interconnecting with existing transmission built by regulated utilities within the State, the cost of which will be borne by those utilities, belongs to the regulated utilities.

In recent years, all of the investor owned utilities serving customers in North Dakota have joined a regional transmission organization, or RTO. Recognized by the Federal Energy Regulatory Commission. RTOs were formed in part because of concerns that utility-specific transmission planning was inadequate to address broader regional transmission needs, such as we see in North Dakota, for the export of fossil or renewable energy to markets outside the state boundaries.

The regional RTO to which North Dakota utilities belong is the Midwest Independent System Operator, or Midwest ISO. The Midwest ISO encompasses 13 states from Montana to Ohio, to Kentucky and Missouri and the Canadian province of Manitoba. By joining the Midwest ISO, Montana-Dakota, Otter Tail and Xcel gave up operational control of their transmission lines, and participate in regional transmission operation and planning. Cost for regional planning and transmission projects built by members of the Midwest ISO are now shared across this broader regional landscape.

As part of the FERC approved agreements between the utilities and the Midwest ISO, the incumbent utilities are guaranteed the first right to construct transmission lines that interconnect with their existing transmission lines. These new lines are identified by the Midwest ISO as needed lines.

FERC has proposed to eliminate this guarantee, saying that the opportunity to build transmission should be available through some other as yet undefined process to anybody who is able and interested. The outcome of throwing open interconnecting transmission construction to all comers could be a network of interconnected transmission lines serving North Dakota customers, built by entities who may not be under state PSC jurisdiction, but who will be able pass their costs onto the customers of the native utility through the Midwest ISO transmission charges. Without this first right to build for incumbent utilities, our customers may bear the costs of out of state developers who wish to cherry pick the projects they want to build, but have no obligation to serve.

In its proposed rulemaking, FERC acknowledged that the states have a strong interest in regulating transmission and costs within their borders. Clearly stated in the FERC proposal is language that

indicates FERC will recognize state law if that law favors the incumbent utility's first right to build. It is that state law we wish to solidify by proposing the language in Senate Bill 2322.

SB 2322 provides that a transmission provider, which could be another utility or an independent transmission builder, could not begin construction of a high voltage transmission line which interconnects with lines owned or operated by an electric public utility, without obtaining a certificate of public convenience and necessity from the PSC. This is no different than the requirement that applies to the existing utilities. The bill further provides that the PSC may not issue this certificate to a transmission provider if the interconnecting public utility is willing and able to construct and operate a similar transmission line. The language provides that any transmission project that is approved by the Midwest ISO, for instance to convey renewable or other energy to out of state markets, and which an incumbent does not wish to construct, is available for another entity who would successfully propose a certificate of public convenience and necessity to the Commission.

We are aware that amendments may be offered which effectively sever the right to build from the obligation to serve, and which propose that additional administrative processes be introduced. We believe that these amendments are unnecessary, that the protections sought by these amendments exist within the proposed language, and that new administrative processes will complicate what is a very simple idea to maintain the status quo.

We urge a DO PASS on SB2322, without amendment.

Testimony 2

Testimony of John Olson
Senate Bill 2322
On behalf of Otter Tail Power Company
Before the House Industry, Business & Labor Committee
March 9, 2011

Mr. Chairman and members of the Committee, for the record, my name is John Olson. On behalf of Otter Tail Power Company, I am testifying in favor of Senate Bill 2322.

Electric utilities that are members of the Midwest Independent Transmission System Operator, or MISO, presently have a first right to construct and operate new electric transmission lines that interconnect with their existing transmission systems. Recent action by the Federal Energy Regulatory Commission, or FERC, threatens to eliminate this right.

The customers and shareholders of Otter Tail Power Company would be adversely affected by FERC's elimination of this first right. FERC's action could require our customers to bear the transmission development costs of out-of-state transmission developers. These developers do not have the obligation, as we do, to serve the public reliably and economically.

SB 2322 would foreclose the Public Service Commission from issuing a certificate of public convenience and necessity for new electric transmission to other than the public utility, if the new electric transmission would interconnect with our existing transmission system, and if we are willing and able to construct and operate the proposed facilities. Because FERC may finalize its proposal to eliminate the first right to construct and operate before August 1, 2011, SB 2322 contains an emergency clause.

Otter Tail Power Company's original decision to join MISO was premised on the first right to construct and operate new transmission interconnecting to our existing transmission, and our customers and shareholders share in the benefits of this right. Passage of SB 2322 will ensure the first right continues to exist in North Dakota.

On February 7, the Senate IBL Committee by a vote of 7-0 recommended a DO PASS on Senate Bill 2322. The Senate unanimously passed the legislation on February 10.

Otter Tail Power Company urges a DO PASS on Senate Bill 2322, without amendment. The public utility representatives in attendance and I stand ready to answer any questions you may have.

Testimony 3

Senate Bill 2322

Presented by: **Illona A. Jeffcoat-Sacco**
General Counsel
Public Service Commission

Before: **House Industry, Business and Labor Committee**
Honorable George J. Keiser, Chairman

Date: **March 9, 2011**

TESTIMONY

Mister Chairman and committee members, I am Illona Jeffcoat-Sacco, General Counsel with the Public Service Commission. The Commission asked me to testify today in support of Senate Bill 2322.

The Commission recognizes the importance of the issue the bill is intended to address. The transmission facilities for which Senate Bill 2322 would require a certificate of public and convenience and necessity have the potential to impose significant rate impacts on North Dakota customers. Consequently, the Commission believes that it is appropriate to require those who build such transmission facilities to show that public convenience and necessity require the building of the projects they propose. This is what state policy requires of investor owned utilities before permitting them to invest in utility plant that will ultimately be paid for by North Dakota ratepayers. It is reasonable and appropriate to require other providers to meet the same standards when North Dakota ratepayers will be paying the bill.

Mister Chairman, this concludes my testimony. I will be happy to answer any questions you may have.

Testimony 4

North Dakota
House Industry, Business and Labor Committee
Senate Bill 2322
Comments of ITC Holdings Corp.

Good morning Chairman Keiser and members of the House Industry, Business and Labor Committee. Thank you for the opportunity to appear before you today to provide comments on Senate Bill 2322.

My name is Francie Brown and I'm the Director of State Governmental Affairs for ITC Holdings Corp. Joining me this morning is Dave Grover, Manager of Regulatory Strategy for ITC Midwest, a subsidiary of ITC Holdings. ITC is the largest independent transmission company in the U.S. We own, operate, construct and maintain high voltage electric transmission assets in Michigan, Iowa, Minnesota, Illinois, Missouri, Kansas and soon Oklahoma. Between the two of us we hope to address any questions you have concerning our suggested changes to Senate Bill 2322.

ITC believes minor clarifying changes to the bill will enhance the process for building necessary transmission facilities in North Dakota. We have shared our thoughts with MDU, Otter Tail, and Xcel Energy as well as staff at the North Dakota Public Service Commission.

Specifically, the new Section 1 (2) now requires an "electric transmission provider" to obtain a CPCN before construction or operation of an electric transmission line" however the requirements in Section 4 (1) as currently drafted do not require an electric transmission provider to provide certified copies of articles of incorporation or organization prior to the issuance of a CPCN. We believe the amendment extends the same requirements to an electric transmission provider.

The next amendment is to Section 4 (2). The suggested language is intended to add the concept of "assigning" a right and also provides that an electric utility or its assignee surrenders its rights if it does not tell the commission within 90 days of receiving the planning authority's approval for a transmission line of the intent to build. The language also establishes additional milestones so an electric transmission provider will know if an incumbent utility has declined their right to build identified transmission facilities. ITC is in the business of building transmission facilities, but not by challenging incumbent utilities on their right to build. However, from a process standpoint, establishing a timeline for a utility to indicate whether they will build or assigning that right to another entity, would ensure facilities are constructed. From our standpoint, we don't understand the downside of putting a process in place that includes a timeframe for making important decisions on building needed transmission facilities. We are certainly open to different milestones than those we've suggested, such as modifying the requirements to file a CPCN within 365 days for instance, because we understand one timeline may not fit all projects.

The final amendment to Section 4 would add a new subsection (4) requiring the Commission to promulgate rules for selecting who can apply for the certificate identified in Section 4 (1) should a public utility or its assignee surrender its right to build facilities. After consultation with the PSC this timeline may need to be changed to 365 days instead of the proposed 180 days.

While ITC is not a utility in North Dakota, we do have a good track record and a great deal of experience building and maintaining high voltage transmission facilities in Michigan

Iowa, Minnesota and now Kansas and Oklahoma. Our purpose today is to offer friendly suggestions to enhance Senate Bill 2322 to ensure needed transmission is built when required. We also hope to have the opportunity to do business in North Dakota if there is role for us, either through partnering with the existing utilities or by stepping up to build facilities that might not otherwise get built, as we have done in other states. We would be happy to answer any questions. Thank you for the opportunity to offer comments.

3-9-2011

SECTION 4 AMENDMENT, 49-03-02 "Prerequisites to issuance of certificate of public convenience and necessity," subsection "1." needs to have the term "electric transmission provider" added in 3 different places: (1) after the word "utility" on line 22; (2) after the word "utility" on line 23; and, (3) after the word "utility" on page 25.

Explanation: This clarifies that electric transmission providers can apply for a certificate.

SECTION 4 AMENDMENT, 49-03-02 "Prerequisites to issuance of certificate of public convenience and necessity," subsection "2." should be re-written starting with "in addition" on line 12 and running through line 16. In other words, strike that entire sentence. Replace with the following:

Unless an electric public utility assigns or surrenders its right to request a certificate to construct and operate an electric transmission line that will interconnect with an electric transmission line owned or operated by the electric public utility, the commission may not issue a certificate to an electric transmission provider for construction or operation of an electric transmission line that will interconnect with an electric transmission line owned or operated by the electric public utility. An electric public utility or its assignee surrenders its rights to request a certificate under this subsection if either of the following occur:

a. The electric public utility or its assignee does not, within 90 days of a federally registered planning authority's approval of the electric transmission line, give written notice to the commission of its intent to request a certificate; or,

b. The electric public utility or its assignee fails to apply for a certificate within 365 days after providing notice to the commission of its intent to request a certificate.

Explanation: This adds the concept of "assigning" a right, and also provides that an electric utility or its assignee surrenders its rights if it does not tell the commission within 90 days of receiving the planning authority's approval for a line.

SECTION 4 AMENDMENT, 49-03-02 "Prerequisites to issuance of certificate of public convenience and necessity," add a new subsection "4."

4. Within 180 days of the effective date of this Act, after notice and hearing, the Commission shall adopt rules and regulations to prescribe the methods and procedures for determining the selection of an electric public utility or electric transmission provider to apply for a certificate to construct and operate an electric transmission line that will interconnect with an electric transmission line owned or operated by an electric public utility in the event that an electric public utility or its assignee surrenders its right to request a certificate under § 49-03-02.2 of this Act.

Explanation: This directs the Commission to promulgate rules for selecting who can apply for a certificate once a utility surrenders its rights to apply for a certificate.

Public Service Commission
State of North Dakota

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9 March 2011

Honorable George J. Keiser, Chairman
Industry, Business and Labor Committee
North Dakota House of Representatives
600 East Boulevard Avenue
Bismarck, ND 58505

Re: Requested Amendment to Engrossed Senate Bill 2322

Dear Chairman Keiser:

As requested, enclosed is a draft amendment to incorporate the three "technical" corrections discussed earlier today at the hearing on SB 2322.

Please note that I also included a fourth revision to the bill, adding a sentence to the end of the fee section on page 4 that I should have included in the original amendment we requested in the Senate.

The Commission intended to pattern the fee authority in this bill after those for rate cases and other applications in N.D.C.C. Chapter 49-05, in which any portion not used to pay expenses is refunded to the applicant. This is why line 21 of SB 2322 refers to N.D.C.C. § 49-02-02. However, N.D.C.C. § 49-02-02 refers specifically to the fees in N.D.C.C. Chapter 49-05. Consequently, I recommend the amendment include adding a refund sentence to SB 2322.

Thank you for the opportunity to provide this draft amendment, and for your consideration of my request.

Best regards,

Illona A. Jeffcoat-Sacco

Illona A. Jeffcoat-Sacco
General Counsel

c w/encl: Rep. Jim Kasper, Vice Chairman
Rep. Bill Amerman
Rep. Tracy Boe
Rep. Donald L. Clark
Rep. Robert Frantsvog
Rep. Edmund Gruchalla
Rep. Nancy Johnson
Rep. Curtiss Kreun
Rep. Mike Nathe
Rep. Marvin E. Nelson
Rep. Dan Ruby
Rep. Gary R. Sukut
Rep. Don Vigesaa

Prepared by Illona A. Jeffcoat-Sacco, General Counsel, PSC
at the request of Chairman Keiser
March 9, 2011

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2322

Page 3, line 22, overstrike "utility" and insert immediately thereafter "applicant"

Page 3, line 23, overstrike "utility" and insert immediately thereafter "applicant"

Page 3, line 25, overstrike "utility" and insert immediately thereafter "applicant"

Page 4, after line 21, insert: "The commission shall refund the portion of the fee which exceeds the expenses incurred for processing the case for which the fee was paid."

Renumber accordingly

11.0748.02001
Title.

Prepared by the Legislative Council staff for
Representative Keiser
March 7, 2011

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2322

Page 3, line 22, after "utility" insert "or electric transmission provider"

Page 3, line 23, after "utility" insert "or electric transmission provider"

Page 3, line 25, after "utility" insert "or electric transmission provider"

Page 4, line 12, remove "In addition, the commission"

Page 4, replace lines 13 through 16 with "Unless an electric public utility assigns or surrenders its right to request a certificate to construct and operate an electric transmission line that will interconnect with an electric transmission line owned or operated by the electric public utility, the commission may not issue a certificate to an electric transmission provider for construction or operation of an electric transmission line that will interconnect with an electric transmission line owned or operated by the electric public utility. An electric public utility or its assignee surrenders its rights to request a certificate under this subsection if either of the following occur:

a. The electric public utility or its assignee does not give, within ninety days of a federally registered planning authority's approval of the electric transmission line, written notice to the commission of its intent to request a certificate; or

b. The electric public utility or its assignee fails to apply for a certificate within one year after providing notice to the commission of its intent to request a certificate."

Page 4, after line 21, insert:

"4. Within one year of the effective date of this Act, after notice and a hearing, the commission shall adopt rules to prescribe the methods and procedures for determining the selection of an electric public utility or electric transmission provider to apply for a certificate to construct and operate an electric transmission line that will interconnect with an electric transmission line owned or operated by an electric public utility in the event that an electric public utility or its assignee surrenders its right to request a certificate under section 49-03-02."

Renumber accordingly