

House Bill 1111
Testimony of Jessica Bell
House Energy and Natural Resources Committee
January 16, 2025

Chairman Porter and members of the Committee, my name is Jessica Bell, and I am appearing on behalf of Rainbow Energy Center today to speak in favor of a proposed amendment to House Bill 1111. A copy of the proposed amendment has been provided with my testimony. As currently drafted, House Bill 1111 allows the North Dakota Public Service Commission to exempt certain electric public utilities from regulation if the Commission finds an exemption is in the public interest. The proposed amendment to HB 1111 is intended to codify a public interest, an interest that is vital to the State of North Dakota and its residents and one that must be preserved.

On May 7, 2020, Great River Energy announced its plans to shut down Coal Creek Station, North Dakota's largest coal-fired electrical generation plant. The announcement to close Coal Creek Station elicited a wave of responses from stakeholders across the State, including the Governor, North Dakota's congressional delegation and the North Dakota State Legislature, who all recognized the importance of keeping Coal Creek Station in operation. Most notably, the retirement of Coal Creek Station would have resulted in the loss of nearly 1,000 jobs at Coal Creek Station and the adjoining Falkirk Mine which supplies Coal Creek Station with lignite coal. The elimination of these jobs would have been devastating to the vibrant local communities of Underwood and Washburn, North Dakota, where over half of the workforce is employed at the plant or mine. The imminent closure of Coal Creek Station made the search for a potential buyer of Coal Creek Station of the utmost importance.

At the time, the President of Great River Energy said it was open to a sale of Coal Creek Station, but that it was “not holding out a lot of hope.”¹ It is no secret that the federal government and other nongovernmental organizations have and continue to wage a war on coal and other fossil fuels at the expense of careers and reliable and affordable energy. Any future operator of Coal Creek Station could not be complacent in the face of this opposition and would be forced to innovate and adapt to the mounting regulations and market influences intended to eliminate the nation’s coal-fired power plants. With many headwinds, a unique vision by a risk-taker was necessary to preserve Coal Creek Station for decades to come. Enter Bismarek natives and long-time residents, the owners of Rainbow Energy.

On June 30, 2021, Rainbow Energy Center and its affiliate, Nexus Line, entered into definitive agreements with Great River Energy for the acquisition of Coal Creek Station and the 400-mile high-voltage direct current (HVDC) transmission line that transmits power produced from Coal Creek Station to a converter station located near Buffalo, Minnesota. On May 2, 2022, nearly two years after Great River Energy announced its plans to close Coal Creek Station, the purchase and sale to Rainbow was complete. The process of Rainbow acquiring Coal Creek Station began with the vision of the team at Rainbow Energy. It is a vision that continues to be implemented today and will preserve Coal Creek Station and the many jobs at the plant and mine for generations.

Rainbow has taken an innovative approach when it comes to securing and providing reliable and affordable power. Working toward carbon capture and waste reduction technologies, Rainbow is also seeking opportunities to add incremental power generation to its HVDC line and has already entered into agreements to provide power to data centers which are co-located with the

¹ See <https://www.minotdailynews.com/news/local-news/2020/05/great-river-energy-to-retire-coal-creek-in-2022/>

plant. Rainbow is also exploring the opportunity to add gas-fired generation to support and augment the energy already produced at Coal Creek Station, the pillar of Rainbow Energy Center. As you are all too aware, capital flows with regulatory certainty. All of these projects are necessary to keep Coal Creek Station viable, but each are potentially at risk due to unnecessary regulatory hurdles, including, without limitation, the ambiguity of the requirements under Title 49 of the North Dakota Century Code and the regulations applicable to public utilities. With the introduction of this new and unique approach to power generation, clarity could be added to this title, as intended by the introduction of this bill by our Public Service Commission. Rainbow commends them for their forward-looking policies and supports clarity in the North Dakota Century Code.

The North Dakota Public Service Commission has expressed concern regarding the ambiguity of what constitutes a “public utility” and “electric public utility” under Title 49 of the North Dakota Century Code. Rainbow’s current business structure does not qualify them as a public utility under the long-standing and commonly recognized definition thereof.

To provide additional clarity, the amendment as drafted eliminates any uncertainty. First, the proposed amendment creates a new defined term “independent power producer”. While the term “independent power producer” is narrowly defined, it undoubtedly includes Rainbow and its current and planned operations at Coal Creek Station. Second, the proposed amendment specifically exempts independent power producers from certain requirements of Title 49 of the North Dakota Century Code, as is current practice of the Public Service Commission today. These amendments merely confirm that Rainbow and other similarly situated independent power producers do not qualify as a “public utility” or “electric public utility” as such terms have been historically interpreted and applied.

In closing, I urge you to adopt the amendment to HB 1111 as proposed. The proposed amendment will clear the path for Rainbow and its dedicated employees to continue the important work at Coal Creek Station. Consistent with the original language HB 1111, this amendment is in the greatest public interest of North Dakota and its citizens.

I would be happy to answer any questions you may have.

Chapter 49-01 – Public Service Commission

49-01-01. Definitions.

In this title, unless the context or subject matter otherwise requires:

1. “Commission” means the public service commission.
2. “Commissioner” means one of the members of the public service commission.

3. “Independent power producer” means a private entity organized as a sole proprietorship, corporation, limited liability company, trust, or other legal structure that is closely held. For purposes of this definition, the term “closely held” shall mean an entity in which more than fifty percent of the value of the entity’s ownership interests are directly or indirectly owned by five or fewer individuals or trusts at any time during the taxable year. For purposes of measuring the number of direct or indirect owners under the fifty percent ownership test, individual owners shall be attributed the ownership of siblings, spouses, and lineal descendants. For purposes of measuring the number of direct or indirect owners that are trusts, a trust shall be attributed ownership of its trustee and all other trusts with a common trustee that have ownership of the entity.

3.4. “Public utility” includes any association, person, firm, corporation, limited liability company, or agency engaged or employed in any business enumerated in this title. **The term does not include an independent power producer.**

4.5. “Rate” means and includes every compensation, charge, fare, toll, rental, and classification, or any of them, demanded, observed, charged, or collected by any public utility for any service, product, or commodity, offered by it to the public, and any rules, regulations, practices, or contracts affecting any such compensation, charge, fare, toll, rental, or classification.

Chapter 49-02 – Powers of the Commission Generally

49-02-01. General jurisdiction of the public service commission over public utilities.

The general jurisdiction of the commission shall extend to and include:

1. Contract and common carriers engaged in the transportation of persons and property, excluding air carriers.
2. Telecommunications companies engaged in the furnishing of telecommunications services as provided for in chapter 49-21.
3. Pipeline utilities engaged in the transportation of gas, oil, coal, and water.
4. Electric utilities engaged in the generation and distribution of light, heat, or power **but who are not independent power producers.**
5. Gas utilities engaged in the distribution of natural, synthetic, or artificial gas.
6. All heating utilities engaged in the distribution of heat.
7. All other public utilities engaged in business in this state or in any county, city, township, or other political subdivision of the state.

Chapter 49-03 – Electric Utility Franchise

N.D.C.C. § 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 supplying electricity to the general public. The term does not include [an independent power producer](#) **or** a person that uses an electric vehicle charging station to resell electricity to the public if the reseller has procured electricity from an electric service provider that is authorized to engage in the retail sale of electricity within the service area in which the electric vehicle charging service is provided, and the resale is for the charging of electric vehicles exclusively.
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 [1.61 kilometers] long.
4. “Electric transmission provider” 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.
5. “Person” includes an individual, an electric public utility, a corporation, a limited liability company, an association, or a rural electric cooperative.
6. “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. The term does not include a person that uses an electric vehicle charging station to resell electricity to the public if the reseller has procured electricity from an electric service provider that is authorized to engage in the retail sale of electricity within the service area in which the electric vehicle charging service is provided, and the resale is for the charging of electric vehicles exclusively.
7. “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.
8. “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.
9. “Service location” means the structures, facilities, or improvements on a parcel of real property to which electric service may be provided.