

**BRANDT:** Welcome to the Natural Resources Committee. I'm Senator Tom Brandt from Plymouth, representing the 32nd Legislative District, and I serve as the chair of the committee. The committee will take up the bills in the order posted. This public hearing is your opportunity to be part of the legislative process and express your position on the proposed legislation before us. If you are planning to testify today, please fill out one of the green testifier sheets that are on the table at the back of the room. Be sure to print clearly and fill it out completely. When it is your turn to come forward to testify, give the testifier sheet to the page or to the committee clerk. If you do not wish to testify but would like to indicate your position on a bill, there are also yellow sign-in sheets back on the table for each bill. These sheets will be included as an exhibit in the official hearing record. When you come up to testify, please speak clearly into the microphone. Tell us your name, and spell your first and last name and ensure we get an accurate record. We will begin the bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally by anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer, if they wish to give one. We will be using a five-minute light system for all testifiers. When you begin your testimony, the light on the table will be green. When the yellow light comes on, you have one minute remaining, and the red light indicates you need to wrap up your final thought and stop. Questions from the committee may follow. Also, committee members may come and go during the hearing. This has nothing to do with the importance of the bills being heard; it is just part of the process, as senators may have bills to introduce in other committees. A few final items to facilitate today's hearing. If you have handouts or copies of your testimony, please bring up at least 12 copies and give them to the page. Please silence or turn off your cell phones. Verbal outbursts or applause are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave the hearing. Finally, committee procedures for all committees state that written position comments on a bill to be included in the record must be submitted by 8:00 a.m. the day of the hearing. The only acceptable method of submission is via the Legislature's website at [nebraskalegislature.gov](http://nebraskalegislature.gov). Written position letters will be included in the official hearing record, but only those testifying in person before the committee will be included on the committee statement. I will now have the committee members with us today introduce themselves, starting on my left.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Natural Resources Committee February 11, 2026  
Rough Draft

**CLOUSE:** Good afternoon, Stan Clouse, District 37: Shelton, Gibbon, Kearney, and Buffalo County.

**DeKAY:** Hello. Barry DeKay representing District 40, which consists of Holt, Knox, Cedar, Antelope, northern part of Dixon, northern part Pierce counties.

**MOSER:** Mike Moser, District 22: Platte County and most of Stanton County.

**RAYBOULD:** Jane Raybould, Legislative District 28, which is central Lincoln.

**HUGHES:** Jana Hughes, District 24: Seward, York, Polk, and a little bit of Butler.

**JUAREZ:** Senator Margo Juarez, south Omaha, District 5.

**BRANDT:** OK. Also assisting the committee today, to my right is our legal counsel, Cyndi Lamm, and on my far left is our committee clerk, Sally Schultz. Our pages will introduce themselves.

**MADDIE BANKS:** Hi everyone. My name is Maddie. I'm a sophomore at the University of Nebraska-Lincoln, and I'm studying legal science on the pre-law track, and I am from [INAUDIBLE].

**GRACE HARPER:** Hello, my name is Grace [INAUDIBLE]. I'm a junior advertising and public relations major at the University of Nebraska-Lincoln, and I'm from Lincoln, Nebraska.

**BRANDT:** OK. Great. And with that, we will have our first nominee come forward, Mr. Bradley Bird. And while he is coming forward-- I guess this is it right here-- he is a reappointment to the Environmental Quality Council, length of term June 2025 to June of 2029, a four-year term, occupying the position on the council of labor. Mr. Bird is from Blair, Nebraska and is currently employed with United Association as a union representative. Online comments: 0 proponents, 0 opponents, 0 neutral, and no ADA testimony. Welcome to the committee.

**BRADLEY BIRD:** Thank you. Thanks for having me today, Senators.

**BRANDT:** And if you could open with saying and spelling your name.

**BRADLEY BIRD:** Yep. I'm Brad Bird, B-r-a-d B-i-r-d. Actually, I live in Elkhorn, Nebraska now.

**BRANDT:** Well, we'll fix that.

**BRADLEY BIRD:** Just recently moved, and my updated address I think somebody has there, so. I served on the Elk-- the ethanol board for a long time, had the opportunity to step down off of that and join the Environmental Quality Council as the labor representative on there kind of midstream of a term, so this will be my first reappointment. I did serve the remainder of somebody else's term. It's, it's a real pleasure, it's a good fit. I represent labor in Missouri, Iowa, Nebraska, and Kansas. I have 17,500 workers that I work with to represent, and also the Mechanical Contractors Association. We do everything; power, air, water, cooling, data, everything. So, it's just a really good fit, it's very interesting. I'm very happy to have the opportunity to do it and bring labor's perspective-- not just labor's perspective, but our industry perspective to the board.

**BRANDT:** OK. Let's see if we have any questions.

**BRADLEY BIRD:** Thank you.

**BRANDT:** Oh, Senator Raybould.

**RAYBOULD:** Yes. Thank you, Mr. Bird, for your previous service and your willingness to serve again. So, what do you think is one of the most pressing issues concerning environmental quality that you have to deal with?

**BRADLEY BIRD:** On the board, or just in general?

**RAYBOULD:** How about on the board?

**BRADLEY BIRD:** So, on the board, we've just had a few meetings. We have a-- actually, a meeting tomorrow. Water. I mean, water has been the thing on the Board. And in general, water, with our AI boom, the data center boom, that's been the topic of a number of conversations I've been in. Power generation and water, so, to answer your question.

**RAYBOULD:** So, I, I mean, I-- I'm pretty passionate about our water issues and water quality issues in Nebraska. So, when it comes with the data centers, is it just water consumption? Do

they discharge? Do they do water reclamation? Or what are, what are some of the things you're hearing and talking about?

**BRADLEY BIRD:** I'm kind of all of the above. It, it depends on the style, the type, the end user, who it is, the size of it, a lot of different things. But yeah, consumption's been the big topic lately, and water quality always is. And that's where-- you know, I am a proponent for doing them safely, building them in the right way. You know, one, one of the things I did in the past, I was, I was a trustee of an apprenticeship training fund for 12 years, so we teach our people the right skills, procedures, whatever, to do things safely, do them right, have environmental concerns in mind. But yeah. There's-- I mean, there's just a lot of issues. The technology's changing, the world's changing, and we need to figure out good ways to change with it here.

**RAYBOULD:** OK, thank you.

**BRADLEY BIRD:** You bet.

**BRANDT:** Other questions? I see none. Thank you.

**BRADLEY BIRD:** Thank you.

**BRANDT:** If you could return to your seat, and we'll finish the hearing. Are there any proponents on this nomination? Proponents? Opponents? Anybody oppose? Opponents? Anyone in the neutral capacity? Neutral? With that, we're going to close the hearing on Mr. Bird. Thank you. And we'll go to Kristen Gottschalk. She is a reappointment to the Nebraska Power Review Board from-- the length of the term, January 2026 to January of 2030, a four-year term. The position on that council would be at-large or an independent. She's from Colon, Nebraska. Ms. Gottschalk has a degree from UNL in agriculture, natural resources, and wildlife management. She was formerly employed by the Nebraska Rural Electrical Association. Online comments: proponents, 0; opponents, 0; neutral, 0; and no ADA testimony. Welcome.

**KRISTEN GOTTSCHALK:** Thank you. I'm excited to be here. I've enjoyed my time on the Power Review Board, and I currently serve as vice chair of the Power Review Board right now. As Senator Brandt mentioned, I worked for NREA. I did that for 22 years, first as their magazine editor. That's what a wildlife biologist

would do, right? First as their magazines editor, and then as their government relations director. And so, I worked for them for 22 years. And so, then, I retired, kind of, decided that as we look at the energy needs in Nebraska, there was a need to educate people about nuclear energy, so along with Jan Bostelman, we created the Advanced Nuclear Coalition, which is an education 501(c)(3) organization to just talk about what nuclear energy is and what the life cycle is for nuclear energy. I-- like I said, I do enjoy my time on the board. I feel like I'm qualified in having worked in the industry for a number of years, understanding the needs of generation, transmission, and distribution in the state of Nebraska.

**BRANDT:** Oh, if you could spell your name.

**KRISTEN GOTTSCHALK:** Oh, I'm sorry.

**BRANDT:** Say, say and spell it. I'm sorry.

**KRISTEN GOTTSCHALK:** See, and I didn't know that, as a former person.

**BRANDT:** That's my fault.

**KRISTEN GOTTSCHALK:** Yes, Kristin Gottschalk, K-r-i-s-t-e-n G-o-t-t-s-c-h-a-l-k.

**BRANDT:** All right. Now, let's see what we've got for questions.

**KRISTEN GOTTSCHALK:** OK.

**BRANDT:** Senator Raybould.

**RAYBOULD:** I don't have a question for you, but I just wanted to say thank you, because the Advanced Nuclear Symposium that you put on was really outstanding, and it was such a great, great educational opportunity for people on the Natural Resources Committee, but other people out in Nebraska too. So, thanks for doing that.

**KRISTEN GOTTSCHALK:** All right. Thank you. I appreciate hearing that.

**BRANDT:** OK. Other questions? And so, you have served on the Power Review Board for how long?

**KRISTEN GOTTSCHALK:** Three years.

**BRANDT:** And what's your opinion of the Power Review Board?

**KRISTEN GOTTSCHALK:** Well, I think it serves a very important role. You know, as a long-time advocate for public power, the Power Review Board was essentially created to protect the consumers of public power. So, I, I believe that its role is important in looking at generation resources, looking at service territory boundaries, and being there as a resource for the Legislature.

**BRANDT:** So, typically, in a year's time, how many applications or complaints or hearings-- how many events does the Power Review Board oversee?

**KRISTEN GOTTSCHALK:** You know, I couldn't give you an exact number. Complaints, we get very few. Some hearings will be multiple-day hearings, such as when there was the proposed merger between Central Public Power and Irrigation and Dawson Public Power. That is one of those situations where the, the Power Review Board plays a critical role in looking at both the legal aspects and the, the, the public benefit aspects of those types of, of applications. I would have to look to Tim to get the act-- exact number, but I would say more than two-thirds of our board meetings, we have the review of at least one application for territory change or generation upgrades, those sorts of things, so. And if we have months where there aren't any, then the board does not, does not meet.

**BRANDT:** OK. Oh, Senator DeKay.

**DeKAY:** Thank you. So, you're talking about reviewing upgrades and stuff like that. You also have to-- you also approve new generation sources coming into the state.

**KRISTEN GOTTSCHALK:** New generation, yes. Most of the time, unless upgrades change the, the, the generation features or amount of energy they generate, those don't need to come before the board, but anything that would require an upgrade, increasing generation output, if you're upgrading transmission, and as long as it's above a certain level. Sub-transmission and distribution don't come before the Power Review Board.

**DeKAY:** All right.

**BRANDT:** OK, I see no other questions. Thank you.

**KRISTEN GOTTSCHALK:** Thank you.

**BRANDT:** Are there any proponents for this nominee? Proponents? Opponents? Any opponents? Anybody that would like to testify in the neutral capacity? Neutral? Seeing none, we will close the hearing on Ms. Gottschalk, and we will have our next nominee come forward, David Liegl, and he is a reappointment to the Nebraska Power Review Board. The length of term would be January 2026 to January of 2030, a four-year term. The position on the board that he occupies is that of "accountant dash Republican," is what it says on my sheet. Mr. Liegl lives in Lincoln, is an attorney and a CPA, and works for his own company. Online comments for this candidate: 0 proponents, 0 opponents, 0 neutral, and no ADA testimony, and welcome to the committee.

**DAVID LIEGL:** Thank you, Senator. My name is David Liegl, D-a-v-i-d L-i-e-g-l. And as you indicated, I've been serving-- I served an empty, empty spot two or three years ago, I forget now, but I filled that, that out, and I consider it an honor to be nominated, and I look forward to serving our great state and doing what I can to make the Power Review Board fulfill its obligations.

**BRANDT:** OK. Let's see what we've got for questions. Senator Clouse.

**CLOUSE:** Thank you, Senator Brandt. Mr. Liegl, tell me the advantage or the skill set that, that you bring to the board, what's important for a CPA. Are you-- basically, what your role, and things you work on.

**DAVID LIEGL:** Well, in fact, we-- executive director Tim Texel and I met right before this meeting, talking about our budget and where we're at, and what-- where do we need to be, so I think I, I bring a little expertise to that. Also, I think my law background helps when we have disagreements between the power companies. Have very few of those, but when we do, I think I can help there.

**CLOUSE:** OK, thank you.

**BRANDT:** Senator Juarez.

**JUAREZ:** Thank you, Senator Brandt. Thank you for being here today. I would just like to know-- I'm from Omaha, so I am concerned about our OPPD coal plant, and I wondered if there was any advice that you could give me on some key issues that you think I should look at with the coal plant for the future, and their potential conversion. Do you have any opinions about that?

**DAVID LIEGL:** I, I, I don't have any, any solid opinions, I guess. I, I think that in order to keep electricity, power affordable, our plants that we have probably should continue to work. I do think that we should work towards being green, if you will, but I think the affordability issue should probably override that. I don't know if that helps you or not, but--

**JUAREZ:** Thank you.

**DAVID LIEGL:** Sure.

**BRANDT:** Other questions? So, that brings up a great point. So, Power Review Board, you have applications of multiple things come before you. Affordability, is that the number one priority? Is it reliability? Is it consistency?

**DAVID LIEGL:** Yes.

**BRANDT:** That's what I thought.

**DAVID LIEGL:** The stated mission, as I, as I understand it, is, first of all, reliability, and then affordability.

**BRANDT:** OK. And you think Nebraska's on the right track?

**DAVID LIEGL:** I think so.

**BRANDT:** OK. I see no other questions. Thank you. Let's see if we have any other testifiers. So, you can go back to your seat. Are there any proponents? Proponents for this nominee? Opponents? Anyone opposed? Neutral? Anybody to testify in the neutral capacity. Seeing none, we will close the hearing for Mr. Liegl and move on to our first bill. Vice Chairman DeKay will now run the meeting. We probably should have done the shell bill first.

**DeKAY:** Senator Brandt, you can go ahead and open.

**BRANDT:** Good afternoon, Vice Chair DeKay and members of the Natural Resources Committee. My name is Tom Brandt, T-o-m B-r-a-n-d-t. I represent District 32, which is Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster counties. Today, I'm introducing LB1010. LB1010 deals with the treatment of energy storage resources commonly referred to as battery storage under Nebraska law. As energy storage technology continues to develop, questions have arisen about how these facilities fit within our existing statutory framework, particularly when they are developed as private standalone projects rather than as part of a generation facility. LB1010 first defines the terms "energy storage resource" and "associated energy storage resource" to provide clarity and consistency in statute. The bill also explicitly provides private entities with the authority to construct energy storage resources in Nebraska, and requires those private entities to file an application with the Power Review Board prior to construction. LB1010 grants the Power Review Board clear statutory authority to review those applications, hold an evidentiary hearing, and either approve or deny the proposed energy storage resource. While the Power Review Board has determined through its own guidance that it already possesses this authority under existing law, this bill would codify that interpretation in statute and remove any ambiguity going forward. In addition, the bill requires a private electric supplier to enter into a joint transmission development agreement with a public power entity, and to maintain a contractual agreement with a public power entity for the output of the privately-owned energy storage resource. I would also note for the committee that the language in LB1010 was developed and worked through the members of Power-- the Nebraska Power Association to ensure it aligns with Nebraska's public power structure and existing regulatory framework. At the same time, I want to be transparent with the committee that the private developers of standalone battery storage resources are not currently in agreement with this legislation. Over the past several weeks, we have had productive and ongoing discussions with all interested stakeholders, including private developers, and those conversations have been constructive; we made meaningful progress toward a potential compromise. However, despite those efforts, we have reached an impasse, in particular on the requirements related to the power purchase agreement, and specifically what that agreement would look like. I want to emphasize that the goal of LB1010 is not to restrict or prohibit the development of battery storage in Nebraska. Rather, the intent of this legislation is to ensure that, as these resources are developed, they are done so in a way that protects

Nebraska's public power system and ultimately the ratepayers who rely on it. I look forward to hearing from the testifiers today, and to continuing discussions with all stakeholders with hope of finding common ground moving forward. With that, I thank you for your, your consideration, and am happy to answer any questions.

**DeKAY:** Thank you. Senator Raybould.

**RAYBOULD:** Thank you, Senator DeKay. Senator Brandt, I was just going through some of the opponents' online comments, and one of the concerns that was raised by NACO-- and I don't know if NACO is here to speak or not, but they said, you know, if the county approves it, then that, that company that is going to be building a data storage has already invested a lot of money in that project. And then, can you imagine or tell me, or what you're visioning-- what are some grounds that the Power Review Board would deny a project?

**BRANDT:** I can't speak specifically to how the Power Review Board operates, but currently, they would have to go to-- to appear before the Power Review Board, they would have to partner with an entity of public power, whether that's a generator or a local distributor like, let's say, Norris Public Power. Without that, they probably wouldn't get approved at the Power Review Board. So, there has to be some kind of a joint agreement, and that's been kind of the sticking point on this, what that agreement would look like, this power purchase agreement between public power and the private entity. I think the intent of the bill is to give guardrails to the Power Review Board to, to make sure that public power, the, the intent of public power is still there.

**RAYBOULD:** OK. Thank you.

**DeKAY:** Any other questions? Quickly, with the storage units, would this be-- do you see this as a long-term, or as battery storage becomes more efficient and longer-lasting, or do you see this as to work with the distribution companies to level off peak loads?

**BRANDT:** Both. I think just in the short time that, that I've looked at this that the batteries are getting more efficient, able to go longer, and I know there will be people from those industries able to address the technology. But like so many things we do in the Legislature, the technology is ahead of the

legislation. The technology is moving forward at a pretty fast clip. So, in a nutshell, how these batteries work is they try and buy power at the low point of the day, let's say at, like, 2:00 or 3:00 in the morning when there's not much power use, and then they release it at when there is a higher demand for the power. Think, like, 3:00 in the afternoon on a hot day when all the pivots and air conditioners and data centers and crypto and everybody's calling for energy. I think there's a, a place in our system for these, but the purpose of the bill, though, is to make sure that our rate-- ratepayers are protected.

**DeKAY:** Now, that energy stored in these batteries, would they need to be sold through a purchase power agreement within the state of Nebraska, or could they go outside the state, across the river or something?

**BRANDT:** The way it is written out would be a power purchase agreement with a Nebraska utility.

**DeKAY:** OK.

**BRANDT:** But we-- like I said, we'll see where the hearing goes.

**DeKAY:** All right. Thank you. Senator Hughes.

**HUGHES:** Thank you, Vice Chair DeKay. Thanks for bringing this, Senator Brandt. And I'm guessing this is kind of a-- we had a bill doing something, I don't know, last year or whatever, and now, I think you're trying to bridge that gap. What happens if we don't pass LB1010?

**BRANDT:** Battery storage probably doesn't get built in Nebraska. This is good for both sides so they know what the rules are. I know the-- a lot of this would be private industry building this, although I do know public power is building a 50-meg, I think, up in Senator DeKay's district on one of the wind farms up there, or northern Nebraska. I think that's all your district, isn't it? But a, a battery can be 500-megawatt. It can be a very large-- but-- and I don't know what the limits of what that could be; maybe it could be bigger than that or smaller than that. And then, you've got SPP involved with this, and so you've got very large loads coming on and offline at certain times, so we have to make sure there's not congestion in the system. So, let's say that 500-meg battery is, is dumping a lot of power into transmission, that it doesn't compete with what

our existing generation is doing. So, it's-- that's where your Power Review Board comes in, that's your power purchase agreement comes in, so that before we build anything, everybody knows what the rules are.

**HUGHES:** Thank you.

**DeKAY:** Real quick, off of that. So, you're saying they would work within the entities, one of the utility companies, so that, that energy released wouldn't affect an ongoing generation that would cause negative pricing going out at a certain time of day; they would have to be within the--

**BRANDT:** That, that would be my understanding, and people behind me will probably clarify that point when they come forward. I'm sure you'll hear from public power and the privates of-- on how this would operate.

**DeKAY:** OK. Thank you.

**JUAREZ:** Excuse me.

**DeKAY:** Senator Juarez.

**JUAREZ:** Senator Brandt, I just have a quick question. I don't-- wasn't sure, I was trying to read here, if I missed it in your introduction, but who brought you this bill?

**BRANDT:** Public power brought me the bill.

**JUAREZ:** OK.

**BRANDT:** Yeah. Because they're looking for clarity on this, and we had several bills on this last year. And there's also some in other committees this year.

**DeKAY:** Senator Conrad.

**CONRAD:** Thank you, Senator. Thank you, Senator. I read this in the paper, I think today, that there was a battery storage project in Lancaster County that was working through the processes.

**BRANDT:** That was what? Excuse me.

**CONRAD:** That was working through existing processes.

**BRANDT:** I'm aware that LES maybe has a small one. I'm also aware that the solar project that's getting built down around Hallam probably has some battery storage involved with that. So, I'm, I'm not sure, outside of those two things, I'm not aware of anything else.

**CONRAD:** OK. I'll send it around the article, just in case folks-

**BRANDT:** OK. Yeah. Please.

**CONRAD:** --didn't subscribe to the Journal Star, but it just kind of begs the question about what's permissible now and why this measure is necessary. Thank you.

**BRANDT:** Right. Yep.

**DeKAY:** Any other questions? Seeing none, are you going to be here to close?

**BRANDT:** Yes.

**DeKAY:** With that, we'll have our first proponent. Good afternoon. Go ahead, the floor is yours.

**BRUCE VITOSH:** Ready? OK. Well, good afternoon, Senator DeKay, and members of the Natural Resources Committee. My name is Bruce Vitosh, B-r-u-c-e V-i-t-o-s-h. I, I am the general manager and CEO of Norris Public Power District. I'm here today to testify in support of LB1010 on behalf of Norris Public Power District and the Nebraska Rural Electric Association. Nebraska consumer-owned electric suppliers and private electric suppliers see an opportunity to capitalize on battery storage technology. Private companies see an opportunity to locate their battery storage facilities in Nebraska to purchase Nebraska's low-cost power for auxiliary services, to charge their batteries, and to sell the electricity into the market. Nebraska is open to the private development of large-scale battery resources and any economic development benefits that they may provide. These resources work best when both public and private companies work together for their deployment. Electricity discharged from a large-scale battery is not a standard source of electricity, and could have a dramatic impact on public power. A close contractual

partnership can ensure these resources are best utilized to benefit both private companies and all Nebraskans. There are provisions in state statutes that already addresses the generation, transmission, and distribution of energy. With battery storage being a relatively new technology, it is appropriate that LB1010 addresses the storage of energy and the approval in state statutes as well. LB1010 includes language that requires private electric suppliers to file an application with Nebraska Power Review Board for approval. The application is to be done jointly with a Nebraska consumer-owned electric supplier. Requiring both private and public power suppliers to seek board approval establishes a consistent standard and supports a collaborative approach towards shared goals for Nebraska's electric systems. Along the same lines, LB1010 requires that a private electric supplier enter into a power purchase agreement with a Nebraska consumer-owned electric supplier for the purchase of all electric energy capacity throughout the operational life of the resource. This provision is of the utmost-- I'm sorry, this provision is the of utmost importance. A unified approach between private and public power suppliers on the deployment of these battery facilities, it protects our electric grid, ensures Nebraska's consumers share the benefits of these facilities, and aligns with the core principles of Nebraska's public power systems. LB1010 states that nothing in the bill shall be construed to authorize a private electric supplier to sell or deliver electricity at retail in Nebraska. This is a basic tenet that cannot be compromised due to extraordinary benefits that public power has provided to Nebraskans for nearly a century. For the reasons provided in my testimony today, and other provisions that I did not mention today, Norris Public Power District and the Nebraska Rural Electric Association support LB1010. Thank you for allowing me to speak today, and I would entertain any questions at this time.

**DeKAY:** Thank you. Are there any-- Senator Raybould.

**RAYBOULD:** Yes. Thank you, Mr. Vitosh, for testifying. Can you help us understand what you think that process will be to apply for a permit or approval from the Power Review Board? How long will it take? I, I know that one letter of opposition felt like it was another layer of bureaucracy impeding the private-public relationship already, but what are you-- what have you talked about the timeline for the permits?

**BRUCE VITOSH:** Yeah, good question. So, regarding the process with the Nebraska Power Review Board, I'm not sure how long it would take to go through that process. I'm not, I'm not really sure how they would do that, on their side of things. But I would tell you that from Norris Public Power District's perspective is there's multiple reasons that we have to go to the Nebraska Power Review Board for approval for different things that we're doing in our territory. And from my perspective is, on those particular things that we go to them with, it's very timely and it does not delay any, any of our projects.

**RAYBOULD:** OK. Thank you.

**DeKAY:** Senator Juarez.

**JUAREZ:** Thank you, and thank you for being here. My question is, does your company currently have a, a project planned in the future in regards to this?

**BRUCE VITOSH:** OK. So, we currently do not have any battery energy storage facilities in our territory today. We serve six counties in southeast Nebraska. But we are actually working with our power supplier, which is Nebraska Public Power District, and also a private energy developer on a project, a battery energy resource project. So, we're having discussions right now, and we're working together, the three parties are, to make this project happen for the private developer.

**JUAREZ:** OK, thank you.

**DeKAY:** Any other questions?

**CLOUSE:** Yeah, I have one.

**DeKAY:** Senator Clouse.

**CLOUSE:** Thank you, Senator Brandt [SIC]. Mr. Vitosh, thank you for being here. Would not having a battery cause a problem with that, that project, or not?

**BRUCE VITOSH:** By not having a-- you know, it would not.

**CLOUSE:** OK.

**BRUCE VITOSH:** This project that I'm referring to is-- it would be connected to a, a wind farm that's already been in operation for many years.

**CLOUSE:** OK. Thank you.

**DeKAY:** Any other questions? Thank you.

**BRUCE VITOSH:** Thank you, Senator.

**DeKAY:** Next proponent.

**BRAD UNDERWOOD:** Good afternoon, Senators. My name is Brad Underwood, B-r-a-d U-n-d-e-r-w-o-o-d. I'm the Chief Financial Officer at OPPD, and I'm testifying on behalf of the Nebraska Power Association as well as OPPD. As many of us know, Nebraska is a unique model focused on public power. That public power system has delivered very high scores perennially on reliability and cost. We are one of the only states to do both consistently. Day in and day out, public power works to prioritize these outcomes on behalf of our customer-owners. A lot of this prioritization is done during resource planning. OPPD approaches our resource planning much like you would a 401K: diversification, careful planning, and a reliable policy structure really enable us to do this. As we've advanced our resource planning, we have a 420-megawatt solar facility, and 170-megawatt battery facility going into service here shortly at the end of this year, possibly early next year. My testimony today is not about the importance of batteries or the role they play; my testimony is focused on how they are done. Some of the parties that are currently operating in and around the state are taking advantage of Nebraska's alleged lack of clarity when it comes to ESR policy by exploiting some of the statutory definitions to circumvent the proper regulatory channels. As the senator who introduced the bill noted, LB1010 clarifies the definitional uncertainty and addresses the concerns held by public power on how the state would expect storage to be deployed. SPP recently finalized its rules for charging and discharging study methodologies, and those rules received FERC acceptance in November of '25. However, the new rules, albeit immature, created three primary areas of concern for OPPD in particular. The study model used to charge a battery that simulates the transmission system uses the least-stressed model it can. We are always in an environment where some aspect of the system is not working properly, and we don't feel like the

charging studies properly reflect the reality of how the system is operated. Second, the SPP tariff, which is our governing documents when it comes to the RTO, are very unclear on which firm load is cut during a system event, and the primary concern there becomes-- if a battery device has firm load and customers are a firm load, what gives? We would like clarity to those questions. Third, the SPP studies for the winter reliability season for 2025 and 2026-- SPP does a prospective study on the next season and how the system looks-- they concluded that 98.5 percent chance of being able to serve load, 98.5. And that's if no new load is added this winter from last winter. 98.5 seems very high, but when you're talking about the reliability expectation of a customer, it is not; it is 99.999 percent. And so, even in the study methodologies that we do, there are imperfections in studies that sometimes don't show up in real-- that show up in real-time operations that don't necessarily show up in the study, and the 98.5 percent, from my perspective, should indicate to operators of the system and policymakers how stressed the system is. It used to be 99.999. We all know that; we all had reliable service, and now it's harder to come by. While SPP and some battery developers may continue to say that this is all figured out and my concerns are not relevant, we don't agree. And so, specifically, there's one large-scale operating storage device in SPP; it's in Oklahoma, it is very large. And there's none in Nebraska, even though some of the testifiers noted that there's a couple of large ones coming online, including OPPD's large one. Definitional clarity and the requirement to work with public power entities through a PPA will ensure the best outcomes for all parties that are relevant. So, I'm happy to answer any questions, if there are any.

**DeKAY:** Are there any-- Senator Clouse.

**CLOUSE:** Yes, thank you, Vice Chair. A couple of questions to clarify. Now, we need-- you said you do have projects presently?

**BRAD UNDERWOOD:** Yes sir. We have one 170-megawatt battery coming online.

**CLOUSE:** OK. And then, clarify on the, the-- talking about the firm load between-- are you saying that, that you have a choice between charging up the battery or the firm supp-- for a supply? How-- tell me how that works, or what you're thinking is a--

**BRAD UNDERWOOD:** Yes, thank you for the question. So, there's two types of service within SPP. There's non-firm service on the transmission system, which means if, if things start hitting the fan, if stuff gets tough, the non-firm is not going to be served. If it's a challenged environment, the non-firm's not going to get service. The firm remains priority. And so, load is firm for, for I think reasons we would all conclude that people need reliable electricity, especially during these extreme weather events. If a storage device is firm and the load is firm, and we have to navigate a hard decision on the system, which one of those gets service and which one doesn't? It's, it's unclear to us. And so, we would like, and are advocating for, more clarity in that regard. I, I hope that helps.

**CLOUSE:** Yeah, that-- I mean, that's what I was thinking you were talking about. I just wanted to confirm that.

**BRAD UNDERWOOD:** Yes, sir.

**CLOUSE:** Thank you.

**BRAD UNDERWOOD:** Sure.

**DeKAY:** Any questions? Senator Hughes?

**HUGHES:** Thank you, Vice Chair DeKay. Thanks for coming in, Mr. Underwood. Sorry. I'm struggling today to stay awake, so this might be partly because my brain isn't working all the way. But what you're saying on you don't trust the SPPP-- SPP's guidelines, or what do you call them, whatever you--

**BRAD UNDERWOOD:** Studies or framework.

**HUGHES:** Studies or whatever.

**BRAD UNDERWOOD:** Yep, yep.

**HUGHES:** Is that why you support this and having it go to the Power Review Board, so it's, like-- it's kind of like an extra layer of security and-- I don't know. Yeah, not security, that's the wrong word.

**RAYBOULD:** Oversight.

**HUGHES:** Yeah, oversight, to make sure that, for us, we're staying tight in what we need for Nebraska, and then SPP's will set extra territory. Is that--

**BRAD UNDERWOOD:** I think that's a great way to characterize it. I think SPP and the Power Review Board both play very important roles--

**HUGHES:** Both play roles, for-- and, and Power Review Board's a little closer to us, so it's a little bit-- yeah.

**BRAD UNDERWOOD:** Yes, Senator. And my, my--

**HUGHES:** OK. Thank you.

**BRAD UNDERWOOD:** You're very welcome. My commentary on the studies and the tariff framework is more how much caution and prudence are we, are we approaching this subject with. And we believe the subject warrants prudence and warrants caution, and at times, we don't always necessarily see that.

**HUGHES:** Thank you.

**BRAD UNDERWOOD:** You're welcome.

**DeKAY:** Senator Juarez.

**JUAREZ:** So, I have a quick question, I hope. I just want to make sure I understand. Does OPPD support the eminent domain for the battery storage?

**BRAD UNDERWOOD:** I am not as sharp as our legislative folks. Can you clari-- is there a-- do we support the use of eminent domain for unapproved projects? Is that the question?

**JUAREZ:** Because it says here, we're talking about eminent domain of electrical energy storage property. And I was taking notes on the points you were reflecting, and it wasn't clear to me where OPPD sides with that.

**BRAD UNDERWOOD:** Thank you for the clarification. My understanding, and it is a bit limited, is if you don't go through the process channels in Nebraska to get your generation or your storage or your transmission authorized properly that

you are subject to that consequence potential. That's my understanding.

**JUAREZ:** The consequence of eminent domain.

**BRAD UNDERWOOD:** Yes, that's correct. That's my understanding.

**JUAREZ:** OK, thank you.

**DeKAY:** Thank you. Any other questions? Back to firm and unfirm load, would that be a contractual deal between battery storage and the utility that's going to be using it, basically laying out wants versus needs? So, if you need a generation, wouldn't that take precedent over any backup generation?

**BRAD UNDERWOOD:** Sure. Acknowledging there may be other perspectives in the room, my perspective would be the firm service is a greater degree of reliability for the system operator. And so, for the battery assets that we're contracting with, we would always desire to have firm service so that the battery is available for our customers in the event it is needed. I, I think there are other entities or individuals that pursue transmission service with SPP through the non-firm, and it would not be appropriate for system operators to rely-- to assume that asset will operate in a non-firm role. It would be less likely to be cleared to operate.

**DeKAY:** All right. Thank you. Any questions? Seeing none, thank you. Next proponent.

**BRAD UNDERWOOD:** Thank you.

**JOHN HANSEN:** Mr. Vice Chairman, members of the committee, good afternoon. For the record, my name is John Hansen-- J-o-h-n, Hansen, H-a-n-s-e-n-- and I'm the president of Nebraska Farmers Union and also its lobbyist. So today, I think what is not in question, because it is a generally recognized benefit to the reliability of the entire system, is those kinds of wind or solar projects, primarily, that have battery storage connected to them. So, that's going forward today. So, there's a small project that LES has done here in Lincoln; there's an NPPD medium-sized project that's already as part of an upgrade of the project down in Gage County that is-- part of that upgrade is including additional battery storage. And so, the, the new project up in Pierce County, which is the 170-megawatt battery

storage, is a part of a large solar project, would be one of the larger projects, solar projects and storage projects in the Midwest. So, that's a very large-scale, that's under construction. So, is, is that a good idea or not? We pretty much all agree, for system needs, all things considered, that that's an additional asset because it increases the dispatch ability of the renewable energy. So, what is in question is what is the, the most appropriate and proper way to move forward relative to standalone projects, battery storage projects that are not tied to an existing renewable energy project of one kind or another. So then, how do they fit into our system and is-- how do we treat them, and how we think about them as a part of the public power system? How do think about them as a part of the grid? And so, there are, I think, needs to try to figure out kind of the rules of the road for those kinds of independent entities, because depending on whether or not these projects are able to just harvest low-cost energy at, at different times of the day off of the grid that's not being used, and then resell them later at some point, the terms under which they sell them, I think, is to me the, the question that needs clarification. So, is that going to be sold to a public power entity that then uses it as a part of their, their total energy needs of-- and capacity of their system in order to be able to meet the needs of their customers in the system? Or, is this a stand-alone project that, that is selling into the Southwest Power Pool either on the, the, the five-minute market or the next-day market? So, you've got a couple different markets to pick from there. And so, to me, it gets a bit murky if you're not tied to an existing project that's a part of a PPA tied to a public power entity. If you're a stand-alone entity and you're selling into the Southwest Power Pool market, you're, you're really, in a way, competing with public power to a certain extent. And so, does that pose a threat to the public power system? Well, you've certainly got an additional source of energy that can be released into the system that's not under the management of public power. And so, that creates some, some congestion issues and creates some, some-- also some safety issues. And so, how much of that, I think, that is actually covered by the Southwest Power Pool. And so, from the Southwest Power Pool perspective, you know, it-- public power pretty much hands over the keys to its fleet of energy vehicles to Southwest Power Pool and then ranks the need and said, OK, when the ranking comes, here's the order in which we want you to use it. And so, there's a lot of coordination between the Southwest Power Pool and what units are on and what units are off. But, to my way of thinking, this particular bill provides some clarity as to being able to make

sure that this particular energy source gets included in a ranking system somewhere as a part of the public power system. And so, of the two-- or, at least two or more different kind of competing ways of looking at this issue from a regulatory standpoint, I give the lean in favor of public power. And if you followed any or all of that, I applaud you. But that is the basis for my thinking, and I'd be glad to end my testimony and answer any questions if I could.

**DeKAY:** Are there any questions? Thank you.

**JOHN HANSEN:** You bet. Thank you.

**DeKAY:** Next, next proponent. Any other proponents? First opponent.

**DAVID LEVY:** Mr. Vice Chair, members of the committee, good afternoon. David Levy, D-a-v-i-d L-e-v-y, Baird Holm Law Firm, here today as registered lobbyist on behalf of the Eolian L.P. and Sofos Power in opposition to LB1010 as introduced. We appreciate Senator Brandt bringing this bill, and we look forward to working with him on it after the hearing. My clients are opposed to LB1010 as introduced for the following reasons. LB1010 as introduced would deny our state the benefits of private investment in the critical electrical grid infrastructure that is stand-alone energy storage. The bill sends a clear signal that the state is closed for business to resources that can be developed with private capital to address our growing electrical demand and make our electric grid more reliable. States we compete against for economic growth, such as Kansas, Oklahoma, and Missouri, do not erect barriers to business models that add valuable capacity to the system. We believe we should not either. As of February 9, SPP's published queue shows over a gigawatt of energy storage projects with generator interconnections-- interconnection agreements in Nebraska; that's billions of dollars of private property tax paying investment. We should not send that investment to other states, in our view. Specifically, our first point of opposition is to the requirements to have a power purchase agreement with a Nebraska utility, to have a Nebraska utility as a co-applicant at the Power Review Board, and to have consent from other Nebraska utilities. These veto powers, before my clients could even apply to the Power Review Board, are unprecedented, unnecessary, and are harmful to our state's growth and development. To be very clear, my clients have no objection to

having to go to the Power Review Board, have a hearing, and obtain approval from the Power Review Board before they could build one of these projects. This is a new, new technology, this is new to the state. Just like when wind and solar were new, the Legislature passed LB1048 and required that we go to the Power Review Board. We are, we are not objecting to that. We want the freedom to be able to go to Power Review Board without effective veto power of having to have an agreement with public power first before we do that, have them as a co-applicant, essentially have them say yes, OK, "Mother, may I?" You may go to the Power Review Board and apply. The Power Review Board has sufficient authority and competence to evaluate any proposed project from the perspective of protecting our rate payers and providing public benefit. As you heard from other testifiers, that's one of the big jobs, that's one the reasons the Power Review Board exists. The utilities know how to intervene and participate in those proceedings. That case-by-case evaluation is the proper forum to deal with this. A blanket veto right, like LB1010 as, as introduced proposes, forecloses that option and forecloses development. Again, we just want the freedom to apply. Mandating a commercial agreement before a private entity can even apply for state approval also completely skews the negotiating leverage. If I have to have an agreement with you before I can even go apply and explain myself to the Power Review Board, that's not an arm's-length negotiation, that's not going to allow for the-- or encourage the private investment in this industry in our state. The second major issue is eminent domain. LB1010 confirms unfettered eminent domain authority for the utilities over a private battery energy storage facility. These projects are unfinanceable under that scenario, because they're long-term investments of hundreds of millions of dollars. Lenders and investors will not participate in that with eminent domain looming. My clients seek eminent domain protection through a statutory waiver. We've negotiated with the utilities, and have made no fewer than four proposals to compromise on LB1010. We have yet to receive a concrete response. I have passed out our latest proposed amendment. It is simple: it says a private standalone battery storage facility must obtain Power Review Board approval; it says prior to applying for such approval, the applicant must offer to the utilities, public utilities in our state, the right to contract for the capacity from the project, the right to dispatch the project, and the right buy the project outright. If no utility responds in 60 days, then we can proceed. It also-- our amendment also says private standalone storage is exempt from eminent domain. We're grateful to Senator Brandt for his work on

this issue, and we appreciate the meetings that we've had and the utilities' participation in this so far that Senator Brandt - Senator Brandt and Senator Prokop have been instrumental in arranging those meetings. I respectfully urge the committee to hold LB1010 until a good faith compromise can be achieved, and we remain committed to working hard to achieve that. Thank you for your time, and I am happy to answer any questions that you may have.

**DeKAY:** Any questions? Senator Moser.

**MOSER:** Thank you, Mr. Vice Chair. So, this is eminent domain in a little bit different direction. I mean, quite often, when we talk about eminent domain, the utility is trying to buy a property from a private farmer or a developer to put a project together where they don't necessarily have everybody's permission. But in your case, the utility, after you build the storage, they could come and buy it?

**DAVID LEVY:** They could come and, and take it by eminent domain, correct. And that's what we-- that's what we need protection from, because without that protection, the people who--

**MOSER:** If it's a really good deal, they're going to buy it from you.

**DAVID LEVY:** Well, and, and, you know, you have a lender or investor who puts forth hundreds of millions of dollars in, in expectation of a long-term return. Suddenly, a utility shows up after, let's say, three years and acquires the project by eminent domain. Yes, it's not free, right? The utility has to pay fair market value for it. But there's risk in what is fair market value at that point; a court decides that, the parties don't decide that at arm's length. And now, your long-term expected return is gone because the project is gone after only three years. And so, lenders and investors will not, will not lend or invest in projects with that eminent domain threat in place.

**MOSER:** So, some of the appeal to the project is the long-term depreciation in tax credits or whatever that the project might generate, and if you got bought out, those go away?

**DAVID LEVY:** Long-term revenue stream depreciation, yes. All of those things, Senator, exactly.

**MOSER:** What are you going to do with this power, though, if you don't have a purchase agreement with a utility? I mean, you'd be kind of an orphan project there without connection, right?

**DAVID LEVY:** Well, sure. So, the, the first goal, absolutely, for my clients, is to have some kind of an agreement with a Nebraska utility. That's great, if we can achieve that. Our concern is not that, that we would go and, and try and do that; it's that we can't even go to the Power Review Board without that. But to your question of what would happen-- would you build the project, for example, if you didn't have that? You might, because the Southwest Power Pool is an, is an open market. That's, that's the point of the Southwest Power Pool, right? It's a, a regional market. So, you could sell your energy into that market, you could have a contract for the capacity with, with somebody who needs the capacity. Battery energy storage really has three attributes. One is the energy, one is the capacity that it provides, and one is the ancillary benefits, voltage support, frequency regulations, things that help make the grid more reliable. The ancillary services can benefit utilities, those benefit SPP; the capacity can benefit the utilities, it can also benefit other parties; the energy can benefit the utilities, it can benefit other parties, it can benefit SPP. So, there are markets greater, beyond just Nebraska utilities. Nebraska utilities, sure, are the ideal market. Again, we just want to be able to go to the Power Review Board. One of the things we have to prove to the Power Review Board is that the project serves the public convenience and necessity. If we didn't have a place to sell, or my clients didn't have a place to sell that output, or they were going to sell that output in a way that we couldn't demonstrate to the Power Review Board-- we-- that the Power Review Board thought was harmful to the public or to the utilities, to the ratepayers, then we would lose at the Power Review Board, and, and we couldn't build the project. So, the Power Review Board provides those safeguards, that review to what's going to happen to that power, that capacity, those ancillary services in the market. That's the place we think that this ought to be determined.

**MOSER:** So, do you think that utilities consider these-- I don't want to say "unsolicited projects," but independent projects as kind of wild cards that they can't control?

**DAVID LEVY:** I, I, I can't speak for the utilities. My sense is that control is something that's very important to them. My

clients see these as an opportunity. You've got private capital coming to the market, saying to the utilities, "we would like to build this, and, and we would like to have you as a customer for this." Again, all we're asking in our opposition and our amendment is to be able to go to the Power Review Board and, and make our case at the Power Review Board. If we go there with a utility as a contracting partner, that's great. That's probably an easier hearing at the Power Review Board. We just want to be able to get to the Power Review Board.

**MOSER:** Well, there's some big forces at play here, and I'm just trying to understand the dynamics of it all.

**DAVID LEVY:** Yeah. They're, they're great questions. I thank you for the opportunity to continue the dialogue.

**MOSER:** OK. Thank you.

**DeKAY:** Senator Clouse.

**CLOUSE:** Thank you, Senator DeKay. Mr. Levy, I want to talk about the, the priority. You know, if, if you are not-- don't have the PPA with the utilities and you have a peak load, you know, a call for demand, would your agreement supersede that with the power district? In other words, I can see it as a competition for who's going to get on the transmission because you could have transmission congestion. So, who determines whether it's your power or generated by the power districts? How, how-- tell me how that-- you think that process-- I think that's what I heard, was that, that you would be equal, you'd be competing with them for that transmission congestion.

**DAVID LEVY:** So, a couple things, and Senator Moser said, there's, there's a lot here. One of the things batteries do is they actually help relieve congestion because they're putting energy on the system at congested, congested locations. That's why those locations where my clients seek to build these projects are desirable and sought-after. So, the, the batteries actually help the congestion on the system. I know that wasn't your question, but you mentioned congestion; I wanted to make that point. Our clients respectfully disagree with OPPD, at least as the testifiers stated, in that our clients believe that SPP's processes and the rules that they've set forth last November are robust and, and do work. But again, and I know I keep repeating myself, but it's really a pretty simple message.

That question of, of who has priority, or would that battery cause a utility to have a challenge serving its other loads-- to me, those are questions for the Power Review Board. We have put language in our amendments-- I honestly can't remember if it's the one I handed out, we tried to simplify it, but in our earlier proposals-- that that showing, the same showing as you would make to the Southwest Power Pool, would have to be showings that we would have make to the, to the Power Review Board as well, and we would have to work with the interconnecting utility before we went to the Power Review Board to try and reach some agreement on those questions, those technical questions of dispatch and load and priority, and all of those things. So, we're, we're not trying to ignore those. We just think that the Power Review Board is the place to deal with those, and LB1010 as introduced basically says if the utilities don't want to contract with you, you can't even go to the Power Review Board. That-- that's our issue, in addition to eminent domain.

**CLOUSE:** OK. Thank you.

**DAVID LEVY:** Thank you.

**DeKAY:** Senator Hughes.

**HUGHES:** Thank you, Vice Chair DeKay. Thank you for coming in, Mr. Levy. So, about the eminent domain concern, we-- I don't know if you were privy, we had a bill, LB1261, about private generation that there would be an except-- there-- I think. I don't-- I didn't pull up the bill, but there is an eminent-domain piece in there that kind of protects that private-- is-- are you looking for wording similar to that for this?

**DAVID LEVY:** So-- thank you. So, LB1261, you're right, it was, it was a complicated bill. It was a good hearing, long hearing. Easy for me to say it was a good hearing, I didn't have to sit here for the whole thing, but it's a very interesting bill. I'm very familiar with it. It is fundamentally about eminent domain. It has in it what I would term a contractual eminent domain waiver provision,--

**HUGHES:** Yes.

**DAVID LEVY:** --where if I have a contract with a utility, we, we can contract away, or the utility can contract away that eminent

domain authority that the Constitution and the Legislature have given them. What we're seeking in our amendments to LB1010 is a statutory eminent domain waiver, so whether you have a contract or not, you're protected from eminent domain and you're also protected from eminent domain from any party who might have eminent domain authority, not just that utility that you're contracting with. Now, would another utility come and use eminent domain on a project in another utility service territory? I don't know.

**HUGHES:** I don't think so.

**DAVID LEVY:** But when, when I've talked to the, the New York lawyers who represent the entities who lend and invest hundreds of millions of dollars for these projects, they seek that broad statutory eminent domain waiver. So, that's what we're seeking here, and that's a little-- that's the difference between this and LB1261. They are similar, but that's, that's the difference.

**HUGHES:** OK. Thank you.

**DAVID LEVY:** Thank you.

**DeKAY:** Thank you. Senator Juarez.

**JUAREZ:** Thank you. I just have a quick question. Is battery development really ticking off in our country? Is it happening everywhere? Do you have any knowledge of that?

**DAVID LEVY:** I do have some knowledge of that, and the short answer is yes. As I mentioned in my testimony, there's a gigawatt of projects in the Southwest Power Pool process just in Nebraska. So, there's multiple gigawatts in Southwest Power Pool. There are standalone battery energy storage projects being developed across the country.

**JUAREZ:** OK.

**DAVID LEVY:** I know our clients are working in Kansas and Missouri and California and Texas, including with public power entities; the city of San Antonio is the biggest public power entity in the country and our client Eolian has an agreement with them on a stand-alone battery energy system. So yes, these, these are happening all over the country. It's the fastest and cheapest capacity to market right now, and Nebraska's not the

only place that needs electrical capacity yesterday to continue growing economically. Lots of states are, are facing these challenges. You know, we all carry these things around and want to charge them and search on them and do all of those things. So it, it is a rapidly-evolving and developing technology, and we certainly don't want Nebraska to be left behind.

**JUAREZ:** Thank you.

**DeKAY:** One question follow-up on how you come into a purchase power agreement with a utility. We-- I don't know if there's a standard formula that they use to have, have purchase power agreements. But my question is, if-- what happens if you enter into that and you don't like what they are bidding to pay you for your genera-- for your battery storage electricity? Does that force their hand to give you a, a better pricing? Or does that also force the hand that you could go someplace else, which might be preemptive to open up investor-owned sales, like circumventing around public power in that aspect or not?

**DAVID LEVY:** So, it-- that was-- thank you for the question. I'm glad you allowed me to clarify. If, if I have a product that I think is worth \$30 a megawatt hour, and under LB1010 as introduced, I have to have a project-- a contract to sell that product to a Nebraska utility, and they know that, they're not going to potentially offer me \$30 a megawatt hour. If they offer me \$5 a megawatt hour, I, I can't make money doing that. I'm not going to invest if I can make money; I'm going to go to another state and, and build there. Under our amendment to LB1010, I-- I'd still-- I'd love to contract with them. But now, I can go to the Power Review Board and seek approval for my project without having that-- those handcuffs of that forced contract where I have no negotiating leverage. I, I, I use the word circumvention and, and with all respect, I-- it's not circumventing, it's making an economic decision. Right now, with legislation that would force a, a contract, I have no negotiating leverage, it is not an arms'-length contract, and that-- that's not good, in my view, for anybody, because that means that private tax paying investment is-- property tax paying investment is not going to come to Nebraska, it will go to a neighboring state where, in that neighboring state, it could still affect our electric prices. But we wouldn't get any of the benefits of it.

**DeKAY:** So, say a public utility company has other contracts in place. And using the \$30 megawatt, \$5 a megawatt, and so, for

consistency, if everybody else is being offered and being paid for, say, \$20 a megawatt, and you're still not happy with the 20-megavolt [SIC], what's that do to the process, and how-- where do you go from there, and what, what options does the public power have in that, that aspect of--

**DAVID LEVY:** So, we can-- I think the options are continue to try and negotiate with, with public power and see if we can negotiate an arm's-length commercial transaction. That's my client's preferred option. If we can't do that, then my clients have a couple of choices. They can go deploy their capital elsewhere, or they can go-- under our amendment, not under LB1010 as introduced, but under our amendment, they could go to the Power Review Board and make their case to the Power Review Board that their project meets the standards in the statute, that it's the most economical, that it's not duplicative, and that it satisfies the public convenience and necessity, or furthers the public convenience and necessity. If we couldn't make that showing, we would not get authority to construct from the Power Review Board. If we could, we would get authority to construct, and then we would have a-- still a choice to make. You can go back and try and negotiate with the utilities, or you could go try and sell any or all of the attributes of that project or the entire project itself to somebody else in just a private, free-market transaction. And, and again, just take the liberty here, if I might, that's where we believe the Power Review Board part of this is so important. It's not just complete freedom, wild west; it's if we can make the showing to the Power Review Board that we can sell it not to a utility but still meet those standards, we can do that. If not selling it to a utility, we can't make that showing, then, then we can't build the project in Nebraska. The Power Review Board provides that safeguard.

**DeKAY:** OK. Thank you.

**DAVID LEVY:** Thank you.

**DeKAY:** Any other-- Senator Clouse.

**CLOUSE:** Thank you. Just a, a kind of a quick question with your relationship with the Power Review Board. You've got lots of projects you've been working on. Do you go through them all the time? Are there other projects you don't, or? How, how, how do

you channel? Do you channel all of it through them, or some of them you do on your own?

**DAVID LEVY:** So, we-- so, battery energy storage projects, as we sit here today, would have to go-- standalone battery energy storage projects, as we sit here today, would have go through the Power Review Board under their guidance document 14, which we worked on with the Power Review Board and the utilities. We work on other projects, wind and solar, for example, that, that go to the Power Review Board only a certification-type context. Prior to 2016, those had to go to the Power Review Board for a, a hearing like what we're talking about here, and, and we took those projects through that process as well. But--

**CLOUSE:** But now you don't have to do that anymore.

**DAVID LEVY:** Correct. And, and we haven't done it yet with a, with a utility-scale standalone battery project because of this regulatory uncertainty. OPPD's board has adopted a resolution that says that they believe that private standalone storage is illegal in Nebraska, full stop. Talk about regulatory uncertainty, right? We apply and put our case together and go to the Power Review Board, and they show up and they say, well, you can't even be here because this is illegal. That doesn't do anybody any good. Then, we're in court for a couple of years. This is what we're trying to avoid, and, and I appreciate Senator Brandt bringing this and, and Senator Prokop in particular working on this issue as well, to get the Legislature to give us, as John Hansen said, those rules of the road so that we know what those rules are. Capital investment likes certainty, and, and that's what we are looking for here, at least as to the process. We don't know whether we'll win or lose at the Power Review Board, we just want the chance to go try.

**CLOUSE:** Thank you.

**DeKAY:** If I could follow up one more time.

**DAVID LEVY:** Yeah.

**DeKAY:** Real quick. So, obviously, there's cost analysis studies done on what you're, what you're going to need per megawatt to make it work. And you probably have an idea of what public power would be, standard contracts that you have for what they're paying per megawatts from standalone companies like this. You

know you need \$30, they're offering \$20, and you might have an idea that Southwest Power Pool would be offering \$25 to \$30. Does that curtail your chances of working in good faith to work with the power, knowing that you have something in your back pocket somewhere else?

**DAVID LEVY:** No, because when you're selling into a market, you're not guaranteed that \$25 using those numbers. [INAUDIBLE] the market goes up and down. Southwest Power Pool picks energy every five minutes based on the lowest cost energy. So, we don't know-- so playing the market is, is risky, but it is an option. We'd much rather-- my clients would much rather have a contract where they know what that price is going be, and that's locked in for a long time. So, I'm, I'm not in any way saying my clients don't want a contract with public power; they just don't want to have that legislated, because that skews-- that takes away any negotiating, any arm's-length negotiation. The market does provide another opportunity, but it's, it's a risky one in its own right.

**DeKAY:** OK. I appreciate your time. Thank you. Any other questions? Next opponent.

**DAVID LEVY:** Thank you.

**DAVID CARY:** Good afternoon, Chair Brandt, Senator DeKay, members of the national-- Natural Resources Committee. My name is David Cary, D-a-v-i-d C-a-r-y. I am appearing before the committee in my capacity as Director of the Lincoln-Lancaster County Planning and Development Services Department. I'm here to testify on behalf of the Lancaster County Board in opposition to LB1010, and it's-- I have-- there's some very familiar faces here. It's good to see you. Lancaster County has a long-standing commitment to serving as responsible stewards of taxpayer dollars, working to reduce the property tax burden on our residents to the greatest extent possible while providing exceptional county services. One way to achieve this balance is to promote economic development which expands the tax base while creating jobs and economic opportunities. Battery storage energy development is one industry that provides these benefits and which presents opportunities and benefits for Lancaster County. Providing a local perspective on this conversation today, we have several in-development battery energy storage, or BES, projects in Lancaster County that highlight the scale of this economic impact on our county alone. For the Panama Energy Center

project, a 120-megawatt BES component of the project is estimated to provide \$6.2 million in personal property tax revenue. For the Pawnee Lake Resilient Power Project, a 200-megawatt BES personal property tax revenue of approximately \$7.3 million, and sales tax revenue of approximately \$13.2 million are estimated, for a total estimated total tax revenue of approximately \$20.5 million over an estimated 20-year operational life. Likewise, for the Cornhusker Resilient Power Project, a 170-megawatt BES project, personal property tax revenue of approximately \$6.1 million, and sales tax revenue of approximately \$4.5 million are estimated, of total tax revenue approximately \$20.6 million over an estimated 20-year operational life. The tax revenue these energy projects and potential future projects will generate for the county and other political subdivisions is significant, allowing us to the reduce future tax burden on our residents. LB1010 removes local control from counties by putting final approval of these projects in the, in the hands of the state under the proposed regulations. A county could approve a project only to have the state deny it. Moreover, LB1010 instates regulatory barriers to battery storage development that are so onerous the industry would effectively be barred from developing in the state of Nebraska, eliminating the opportunity for counties to benefit from the tax revenues and the economic development opportunities that arise from these private energy development projects. The financial implications of this to a county like Lancaster are substantial. Respectfully, we opposed state overreach into local decision-making and a limitation on economic development opportunities that LB1010 represents. Thank you for the opportunity to testify and for your service to our great state, and I would be happy to answer any questions that you may have.

**MOSER:** Questions? Senator--

**RAYBOULD:** Raybould.

**MOSER:** Raybould, thank you. [INAUDIBLE].

**RAYBOULD:** Good to, good to see you, Mr. Cary. Thanks for being here. So, can you tell us a little bit about the process that you have gone through with these projects so that we get a better idea that you're really not bypassing the, you know, the power board, but you're doing all the necessary regulatory work with probably LES, or another public power district.

**DAVID CARY:** Certainly, yes. Thank you for the question. So, here locally, in Lancaster County, we have created our own local regulations, basically created in the last year a special permit process for these operations, these BES, battery energy storage systems operations, to be able to be approved locally. And so, from our perspective, we've had a conversation, we have talked to our county board members to-- who have approved the, the process and the regulations to make sure that we're considering the needs of the local community when these projects are being proposed. And we are in the process now of-- the city of Lincoln, likewise, has done that; they have approved recently a standalone BES project very recently, and we're in the process of going through the potential approval of another one out in the county. And like I said in my testimony, we have these other aspects of other power projects that have been approved and are being built now that include a portion of it for BES operations. So, we feel that we, locally, have made a determination that this is important to us. Besides the fact that we have that local generation of property taxes that really takes a burden off of local residents over time, we also perceive this as an opportunity for private businesses to have, to have an operation and to, and to have that opportunity here locally and also in our state. So, that's our perspective on this. It's not that we have no regulations, it's that we do have those regulations and we've determined that those are appropriate for this type of operation.

**RAYBOULD:** So, can I follow up? Did any of these projects have a stipulation about being guaranteed, you know, freedom from an eminent domain take by any of the local jurisdiction there?

**DAVID CARY:** That's a good question, given what, what is in the, in the proposed bill. So, that is not an issue that came up, up locally, as far as that being part of any agreement at the local level. So, we haven't taken that into consideration up until this point.

**RAYBOULD:** OK, but I guess the question is, it hasn't deterred investment from moving forward on these projects, with or without that eminent domain discussion being held.

**DAVID CARY:** I, I think that's fair to say that.

**RAYBOULD:** OK. All right, thank you.

**MOSER:** Other questions from committee members? Senator Juarez.

**JUAREZ:** Hi. Thank you for coming in, and I appreciate your, you know, interest in local control. But I'm wondering-- if we approve this bill, I'm trying to understand what the ramifications are for your projects.

**DAVID CARY:** I think the, the, the concern is-- there's a basic concern about local control. I think, that's a typical conversation that we have between local entities as well as the state Legislature. But beyond that, I, I do think that there-- I know there is concern that there may be decisions made at the state level that, as Mr. Levy was testifying, stated, that would preempt from the projects from happening. And if that is the case that starts to happen, the benefits that we're seeing now here locally for that tax base revenue and then investment in our county, we're concerned that those would be diminished or if not go away. That is, that is the local concern in addition to the basic premise of loss of local control.

**JUAREZ:** OK, thank you. I would just-- I just wanted to close by saying with great bias that, you know, if this gets-- if it goes your way and you get this wonderful revenue for Lancaster County, don't forget about the great passenger rail project. Thank you.

**DAVID CARY:** Noted.

**MOSER:** Do you have another question?

**RAYBOULD:** I do.

**HUGHES:** Yeah.

**MOSER:** Let's take Senator Hughes.

**HUGHES:** OK. Thanks for coming in, Mr. Cary. These BES projects that you guys are doing in Lancaster then, are-- do, do those storage systems have-- are they, they-- I mean, clearly they're tied into LES. Do they have a public-- private-- public--

**DAVID CARY:** Not necessarily.

**HUGHES:** OK.

**DAVID CARY:** And I'm not privy to all the negotiations  
[INAUDIBLE]

**HUGHES:** I'm just trying to wrap my head how this is different, maybe, than what the big ones were talking about. And I think the overall concern is-- this is what we saw from last year's bill-- these big companies come in, build these huge storage units, they buy our power cheap at midnight or 2:00 a.m., they store it, and then they sell it back at a profit, and it goes to California or whatever. And we are 100 percent public power state, and it's, like, if you're going to come in and do that, we're going get it, because we're 100 percent public power. And my bill is going to go down, her bill is going to go down-- you know what I'm saying? That's-- I mean, I think that's the whole thing here. So, I'm just kind of trying to wrap my head around that. I mean, yours are a little smaller projects, and I-- like, how that works. But I'll dig into it after, so. Thank you.

**MOSER:** Senator Raybould.

**RAYBOULD:** I guess a sort of a follow-up to Senator Hughes' question. Does-- are these different energy storage projects? Are they dealing directly with the Southwest Power Pool in determining, like, hey, we'll, we'll dump this load whenever you have a demand for it? Or, you know, is that what they're doing?

**DAVID CARY:** So, so, our discussions with the applicants for these projects, as well as our own research-- the Southwest Power Pool certainly is-- I mean, this-- that is the entity where our power in this region is, is, is, is bought and sold and, and is provided. We've also had good conversations that, yes, certainly, LES here for Lincoln and Lancaster County is, is, is the provider of, of, of that energy here locally. That-- all of that is on the table, that is our understanding. And then, that-- that's what those negoti-- but again, for our purposes, that's a private discussion, private negotiation.

**RAYBOULD:** Between the energy company and LES, right?

**DAVID CARY:** Correct.

**RAYBOULD:** Got it. OK. Thank you.

**MOSER:** Senator Clouse.

**CLOUSE:** Yes, thank you, "Vice-Vice-Vice Chair." I got a question on, on-- when talking about this, you-- have you zoned out renewable energy in Lancaster County like turbines and solar and all those things?

**DAVID CARY:** No, not at all.

**CLOUSE:** Not at all? OK.

**HUGHES:** I can't hear. What was the--

**CLOUSE:** I said-- asked if they zoned out and prevent wind and solar and those other renewable energy.

**MOSER:** Zoning regulations.

**DAVID CARY:** No, we have not zoned them out. I-- in fact, we have two significant-sized solar projects that are approved.

**CLOUSE:** OK. Thank you.

**MOSER:** OK. Well, I think you can tell from listening to us that you guys are way ahead of the curve on this-- these issues from, you know, where we're coming from. You're against LB1010 for a different reason than the attorney for the developers, and you don't like the loss of local control, and he doesn't like the limits on his marketability of his project, what he can-- what he can use it for. So, are those opposing interests, or are they just two negative interests that are not, not in conflict?

**DAVID CARY:** I don't think they're opposing interests. I, I think from, from our perspective at the local level, and then from my perspective from a planning and zoning way of thinking about how these projects have come through and get the approval that they need, I think our interest is that the projects have the opportunity to be successful, however that would happen. And--

**MOSER:** When you say that this-- you could approve it locally and then the state would say no, who is the state? The Power Review Board?

**DAVID CARY:** That's our understanding, yes. That the potential is there of that. And, in not precluding it from--

**MOSER:** So, you, you'd want to develop these projects without going to the Power Review Board?

**HUGHES:** They are, already.

**DAVID CARY:** I would say that, that-- I would say that that right now is, is a kind of the condition that we're dealing with right now. Now, if, if that's something that gets worked out as part of this bill, we certainly will, will track that, and we'll maybe have a comment on that. But our interest is making sure that projects can still happen in our county and in other counties throughout the state to have-- to be successful. That's really the point.

**MOSER:** OK. Thank you. Anybody else? Thank you much--

**DAVID CARY:** Thank you very much.

**MOSER:** --very much for your testimony. Any other opposition to LB1010? Opposition to LB1010? Welcome.

**KEN WINSTON:** Thank you, Senator. Good afternoon, Senator Moser. I guess I'm not sure what your title is at this point.

**RAYBOULD:** "Vice-Vice Chair."

**MOSER:** Don't, don't worry about the salutation. Just get on with it.

**KEN WINSTON:** Thank you, thank you, Senator, and members of the committee. My name is Ken Winston, K-e-n W-i-n-s-t-o-n, and similar to Mr. Levy's comments, the Nebraska Sierra Club is appearing in opposition to LB1010 in its current form, and we do support the creation of a regulatory framework for the development of battery energy storage systems. And we also have a long record of supporting public power in this state, as witnessed by my testimony last week before this committee. But we-- we're concerned that the current provisions of LB1010 would hinder development of battery storage systems, and battery storage is-- it's an important part of, of a 21st century energy portfolio; they can improve reliability and resilience, and provide-- make renewable energy more effective by filling gaps when the-- when, when they're not generating electricity. And I just came across a study this afternoon-- and I didn't have a chance to make copies for everybody-- but this study indicates

that, that-- the authors of this study believe that energy storage deployment in the Southwest Power Pool between now and 2035 can save our, our customers \$2.2 billion over the next 10 years, and that would be a big deal. So, so it also could be a way of saving money for our, for our customers.

**MOSER:** And what's the reference of the evidence you're offering?

**KEN WINSTON:** This is done by the American Clean Power Association. I will make a copy and I will send it--

**MOSER:** Give it to the clerk.

**KEN WINSTON:** Yeah, I can--

**MOSER:** Yeah, we'd like to have that.

**KEN WINSTON:** Yeah, if you guys want to make copies of it. And I've not had a chance to read the report, but I just thought I'd share that information because I thought that's something relevant to our conversation today.

**MOSER:** OK, thank you.

**KEN WINSTON:** And then, as I was trying to research things and looking things up on Google, and, and-- but based, based upon what I could find this afternoon, Nebraska has very little battery energy storage at this-- at the present time. Now, there's some projects that are in development; Mr. Cary talked about some, Mr. Levy talked about some, Mr. Underwood talked about some. So, there's a bunch of them that are in development. Right now, I think we may be under 10 megawatts in the whole state of battery energy storage that's currently operational, if I can believe the information that I read. In contrast, Texas has 11,000 megawatts, 11 gigawatts, and California has 17 gigawatts of battery energy storage. So, we're kind of behind in the, in the curve on this. So, I'm, I'm not saying we should rush headlong into it, but, but it appears that other people are doing it and doing it successfully. And the Southwest Power Pool currently is projected to have 10 gigawatts within the next 10 years-- [INAUDIBLE] excuse me, within the next five years, by 2030. So-- and we're concerned that, that the provisions of LB1010 would hinder the development. And I know there's been a lot of talk about what happened in, in 2016. I was a staff person in the Legislature at that time, so I remember vividly

the conversations about that. And, and at that time, we had-- there were lots of barriers to renewable, renewable energy development. I think there might have been maybe 300 megawatts in the whole state, at that time, of renewable energy development. Somebody can correct me if I'm wrong, but it, it was in the hundreds of megawatts. Now, we have 3,500 megawatts. The passage of LB824 in 2016 really opened up the, the market for, for renewable energy development, and we'd like to see the same kind of thing happen with battery and energy storage. And I guess, I guess just to close-- and there's already been talk about the taxes that these generate and, and the economic benefits that, that can be provided with renewable energy. But I guess it's my understanding there's some negotiations that are going on, and what we'd like to see would be that those negotiations bear fruit, that between the folks that [INAUDIBLE] public power and the folks who are representing developers, that they are able to work out an agreement so that, that we can have a regulatory framework for better, better energy storage that will spur development of battery and energy storage in the state of Nebraska. Thank you.

**MOSER:** All right. Questions for the testifier? Senator Hughes.

**HUGHES:** Thank you, Vice Chair-- Vice-Vice-Vice Moser. Thanks for coming in, Mr. Winston. Can you verbalize exactly what provisions in this that you feel are onerous, or? Because what I see this bill doing is that it is making it clear to outside industry that you can come in, and that's-- I mean, we've seen nothing because we are the only state that is 100 percent public power, and we do have in statute that if-- and you could-- I think battery is a type-- it's not generating power but it's storing-- it's kind of like generation, different, but--

**KEN WINSTON:** Sure.

**HUGHES:** --potentially, if you build something, our public power can just take it; that's the eminent domain piece. So, that's-- so to me, this is paving the way to make it clear for everyone that they can come. So, I guess what in it are you saying is not good and-- if that makes sense.

**KEN WINSTON:** Well, I think that-- well, obviously, Mr. Levy's already testified, but I think he's more--

**HUGHES:** Well, I think-- and everybody has their angle. So, Mr. Levy has an angle too, so.

**KEN WINSTON:** Right, right. Well, well, I guess, I guess I'm just going, going to say, Mr. Levy is more of an expert in this area than I am.

**HUGHES:** You just want it clear for people that it works for businesses to do that, and get more batteries.

**KEN WINSTON:** Right, but, but there are some barriers that I think that having a, a lifetime of, of entity contract-- that-- to my, to my understanding, that is a barrier, that, that if they have to sign a contract that says for the entire lifetime of this project, we're going to sell you this power, and I believe that's what it says.

**HUGHES:** I don't recall that, but yes, keep going. So, that's one that you're concerned with. Uh-huh

**KEN WINSTON:** So, so that, that's one, and, and I think there's some, some-- I don't know how onerous the, the aspect of going to the Power Review Board. Mr. Levy appeared to believe that, that that would not be a problem. So-- but, but definitely having, having to have a contract before you go to the Power Review Board, I think that is also an, an issue. But having the, the length of the, of the contract or the length of the-- of time of, of the project, I, I, I know that's, that's an obstacle to developers. And as I said, I, I do not represent developers, and I don't want to act as, as though I'm an expert on it.

**HUGHES:** I just think it's a, it's a balancing act between protecting our state and a good thing going here. Right? I mean, that's what we're trying to [INAUDIBLE]

**KEN WINSTON:** Absolutely. And, and, and I completely agree with that statement, so.

**HUGHES:** OK. Thank you.

**KEN WINSTON:** Thank you.

**MOSER:** Any other questions? Thank you for your testimony.

**KEN WINSTON:** Thank you.

**MOSER:** Any other opponents for LB1010? Are there any to testify in the neutral on LB1010? Welcome.

**SHELLEY SAHLING-ZART:** Good afternoon, Acting Chair Moser, members of the Natural Resources Committee. For the record, my name is Shelly, S-h-e-l-l-e-y, Sahling-Zart, S-a-h-l-i-n-g-Z-a-r-t. I'm Vice President and General Counsel for Lincoln Electric System, the municipal electric utility serving Lincoln and the surrounding area. We are here today testifying neutral on LB1010. The first thing I'd like to do is thank Senator Brandt and Senator Prokop for the efforts they have made over the last few weeks to try to bring everybody together and find a reasonable compromise on this bill. I think there might be still room for that. We're coming at this from maybe a little bit different perspective. I testified, I think, on the bill last year, and I told you that there was a lot we didn't know, and there were a lot of answers we were trying to get from SPP as to how they were going to treat these very large battery storage systems. And we have all been working with SPP trying to get answers to that. So, I'm going to speak today on behalf of Lincoln Electric System and the discussions we have had with SPP, and others might be asking other questions, and there might be some things that we haven't thought about yet, but based on the discussions we have had with them, we have a better comfort level than we did when I was sitting here a year ago. They have made pretty clear to us that they are going to treat these at the wholesale level as a wholesale transaction. What does that mean for us? It means that we don't have to go out and find the capacity and the resources to cover that load when they're charging; SPP will handle that. Yes, there are concerns. Senator Hughes, you mentioned about when they charge. It's our understanding with SPP dispatching that, that's going to alleviate some, maybe not all of that concern. There's a market monitoring unit at SPP that our expectation will be looking at those things. But this is all pretty new, these really large battery storage things are pretty new. There's a lot for us to learn. I will tell you, the one thing we want that isn't in the bill and isn't the amendment is a sunset provision, because this is going to change a lot, and a sunset simply means it gives us comfort that we're proactively going to come back in a few years and have the opportunity, if we have discovered that, oh, there are major impacts to our system or there are major cost shifts to our customers, there's more of a proactive thing that we are going to come back and, and have that discussion. So, we'd really like to see a sunset. Beyond that, I think we've got a better comfort level. Developers, the battery storage

developers, are willing to go to the Power Review Board. That's pretty significant. There's a process at the Power Review Board, we can intervene, we can protest, we can bring concerns if there are impacts to our, our systems. But at the end of the day, yeah, there's a lot we don't know about these, but it's a new tool in the toolbox. When we look back at "Winter Storm Urie" or even a couple of weeks ago at "Winter Storm Fern," sometimes, even if you don't use it, kind of nice to know you might have that to rely on. But yes, this is different. It's going to change the way we operate and look at things, but, you know, so are other things like nuclear power and other stuff we've looked at. So, from our standpoint, we're trying to embrace a new tool in our toolbox and figure out how to do that. But there's that caveat I told you about. This is based on, you know, our understanding, and there's that fear of the unknown. We don't know what we don't know yet, so, you know, we want to kind of keep our powder dry a little bit and know that we're going to be able to keep having a discussion if some of those impacts make themselves known. With that, that's kind of the primary thing I wanted to do. Again, thanks to Senator Brandt and Senator Prokop for continuing this discussion, and I hope we can keep this going after the hearing. I would be happy to answer any questions.

**MOSER:** Sure. Senator Raybould.

**RAYBOULD:** Yes. Thank you, Ms. Stolling-Zart [SIC]. Can you tell us, with the projects in Lancaster County, are they dealing directly with SPP, or are they-- do they have a power purchase agreement with LES? And you, you mentioned selling wholesale--

**SHELLEY SAHLING-ZART:** I, I can sort of address that Senator Raybould.

**RAYBOULD:** OK.

**SHELLEY SAHLING-ZART:** I can tell you a little-- what I know and what I don't know. So let's start. Somebody had referenced an LES project. LES has a very small, 3-megawatt battery storage project which is connected to our microgrid. It's down here in the Haymarket. The microgrid simply-- it's connected to our total grid all the time, but if we get in a situation where we need to isolate and just be able to power the downtown area, we can sort of isolate that and do that, and the battery storage is behind the meter; it allows us to back up just that microgrid.

It's not connected to the SPP. So-- and, it's very small. These large ones, what I can tell you is we do not have a power purchase agreement with any of the large battery storage projects in the area. We have talked with three developers. We have two generation interconnection agreements-- which I'll describe in a second-- with two of them, and we're working on a third one. So, a GIA, a generation interconnection agreement, is required through our tariff with SPP. It's a three-way agreement between whoever the energy developer is, the local utility, and SPP, and it's designed to-- it's a study and it is an analysis to take a look at impacts, how you physically interconnect to the grid, any upgrades that are necessary, any impacts-- we get compensated for that, so there's a whole analysis that goes on. We do those studies, we enter into those agreements. But we get compensated if there are any upgrades that need to be done. That is literally just governing the physical interconnection to the grid; that doesn't have to do with purchasing the output of the battery storage. And no, we don't have any of-- any PPAs with any of those developers, we, we aren't in any discussions with any of them. I'm sure they would like that, but we aren't currently in any discussions for that.

**MOSER:** OK. Senator Raybould.

**RAYBOULD:** So, during the-- these discussions you've, you've never had to have the Power Review Board engaged with any of the approval process, or oversight?

**SHELLEY SAHLING-ZART:** Not for the generation interconnection agreement, because they aren't generating anything yet.

**RAYBOULD:** OK.

**SHELLEY SAHLING-ZART:** Before they can construct and build the storage, they would have to go to the Power Review Board, for these standalone, what we call merchant battery systems that are going to connect directly into the Southwest Power Pool. There are others-- I can't remember who mentioned it, but there are others that would be associated under this bill that are connected to privately-developed renewable generation resources, and there's a provision for that in statute.

**RAYBOULD:** So, I know Mr. Cary raised a concern that, you know, they have worked out all these negotiations and agreements, the Lancaster County Board has already approved the zoning, and then

it goes to the Power Review Board. And what if the Power Review Board says no?

**SHELLEY SAHLING-ZART:** Yeah, and they could. So, it's no different than if we were going to construct a new generation facility. You know, we're going to go through and we're going to get our permitting, we're going to talk to Game and Parks, we're going to through all the things we have to go through before we get there, because we need to go through the criteria with the Power Review Board which are public convenience and necessity, most economically feasible project for the need, and no duplication of facilities. So, we're going to do all of those things and get all those things in place to present to the Power Review Board, but we can't construct that plant until they say yes. And, and if they say no, then you can either appeal that decision or go back and figure out how to rework your application.

**RAYBOULD:** OK, so help me understand why we even need LB1010.

**SHELLEY SAHLING-ZART:** Well, that's a great question. I should have hit that on my direct. So, right now, you heard somebody mention the-- a guidance document. The Power Review Board currently has a guidance document that governs energy storage, because energy storage is not clearly addressed in statute. You also heard that there's at least one utility in the state that believes they're illegal under the statute. I don't subscribe to that position, but I think the statute is sort of silent. Energy storage is kind of an interesting one, because it can both generate, and then it discharges. So, it's, it's unique in its characteristics, and we just-- we've never had it in the state. But now, we're in a situation where the Power Review Board has issued their guidance document which does talk about how that can move forward. There's a question as to the legal status of that. So, you could either end up fighting that court, or we could put it-- we could codify it. We think it's best to codify it and get it in statute, and let's be clear about what the rules are going to be on how it's approved and how it moves forward. So, that's the primary reason that we're doing that rather than continuing under a guidance document. Did that answer your question?

**RAYBOULD:** Yes, it did. So, thank you.

**MOSER:** Any other questions? Thank you for your testimony.

**SHELLEY SAHLING-ZART:** You bet.

**MOSER:** Appreciate it. Others to testify in the neutral? While he's preparing, we had 1 online proponent, 3 online opponents, 0 neutral, and no ADA testimony. Welcome.

**TIM TEXEL:** Senator Moser, members of the committee, my name is Tim Texel-- T-i-m, last name T-e-x-e-l, and I am the executive director and general counsel for the Nebraska Power Review Board. Again, I think I'm batting clean up here, so I will get all the questions that nobody else answered fully. As you know, the Power Review Board is a state agency with primary jurisdiction over electric suppliers in Nebraska, and the board's responsible for approving generation and, and most transmission facilities, certainly outside of a utility service territory. There is some uncertainty, as you heard, with where ESRs or BESSs fall into that. The Power Review Board is neutral, and the board normally doesn't take a position, as you've heard me before say, on policy issues. But the board currently believes under the guidance document 14 you've heard about that the board can accept applications from private developers to build generation transmission facilities and energy storage resource facilities. The board determined that in that guidance document 14, but it's only a guidance document. So, where does that stand legally, as Mrs. Shelley Sahling-Zart said, where do we stand on that? I think one issue with the private developers is nobody wants to be the canary in the coal mine and be the first one in and see, you know, do they have to take it to the Court of Appeals and the Supreme Court after our decision or something like that. Nobody really wants to put the money and time and effort into being first to break that ground, so the legislation would address that. I think that LB1010 is largely an attempt to mirror what's in the guidance document, so it does, I think, do what we already believe we can currently do, at least in our interpretation. You've heard a lot of other issues, but I do have two that are more technical issues that I wanted to bring up. One is on page 10, lines 17-18. It says that "Such application shall include a written notice that demonstrates to the board that," and then it lists out, I think, four criteria that have to be met. As written, it only makes the applicant provide a written notice, and I'm not sure why the board would make specific findings based on what notice was provided as opposed to make a finding based on the evidence. So, what I would think makes more sense is put on the evidence before us, and then we make a finding on it, not just give us a

notice and we make a finding that the notice was provided to us. That seems a very, very odd process to me. The sentence currently reads such application shall demonstrate the following as part of the application; I think it makes more sense to put it that way. I mean, it currently-- it, it does not say that. "Such application shall demonstrate the following as part of the application," and that's what I would recommend; more, more closely matches the current standard of review that we use where an entity can come to us, file an application, and, and go through that process, and then we can go from there. It makes more sense for an applicant to prove to the board the existence of factors A through D like I mentioned, and they can provide documents. I don't think it would make it a whole lot more onerous or difficult, but providing just a notice, notice is very simple, but it's very odd why we would do that in a hearing type of procedure. Then, on page 11, lines 1-9, which is subsection (c). As it's written, this subsection gives the local public power utility holding the serviced area [INAUDIBLE] rights or the one to which they own the, the transmission system that'll-- the project, project will interconnect with. Those two entities-- I do agree with Mr. Levy's characterization that it would give them a veto power to stop any project, because if they don't have those entities giving a consent to us, then the project can't come to us, because that's one of the criteria that they-- we have a consent from those two public power entities. That seems like a pretty onerous procedure to me. Our normal procedure is an entity like that, if they don't consent, we can still get the application, and then the other entity can intervene and show us why we should disapprove it; the applicant can show why they should. Here, it just gives a veto power to one side. It seems a little one-sided to me. As, as always, the policy is up to the Legislature, but that seems to give all control and no due process to one side, so that's why I bring it up. Ultimately, of course, it is your decision, but I, I wanted to bring that up as an issue in this particular bill as it's, as it's currently written. So, I would like to say that I do appreciate Senator Brandt addressing this issue. I think there's a lot of uncertainty. Senator Raybould, you asked one question very early on about what grounds the Power Review Board can disapprove a project on. I think-- ah, my time is up, can I finish?

**RAYBOULD:** Yes.

**MOSER:** Please, go ahead.

**TIM TEXEL:** But the criteria we have is it meets the public convenience necessity, that the applicant can most economically and feasibly supply the power resulting from the project, and it doesn't duplicate existing facilities. So, that would be the easy answer, is we find one of those things isn't met. You know, the public convenience, necessity, we don't need this, there's not enough load growth, things like that. Well, that's not true right now, but that would be the type of thing. Or, we could say it duplicates the current project. We've done that on at least one transmission line where we said to build this one would duplicate it; there's excess capacity on another one, and you can use that and pay a wheeling fee to the other utilities. So, that would be a couple of examples. There's probably a myriad of examples I could come up with, but those are the types of things we could approve-- or disapprove a project based on in one of those criteria.

**MOSER:** OK. Let's see if there are other questions. Senator Hughes.

**HUGHES:** Thank you, Vice-Vice-Chair Moser. Thanks for coming in, Mr. Texel. So then, go back to-- we had someone from Lancaster County Board here that is concerned, you know, believes in local control; they've locally approved some of these smaller, smaller storage projects. But I look at what-- the Power Review Board, you're looking at the whole of Nebraska. If we just let every county do whatever and go right into the Southwest Power Pool-- but they'd still have to come to you, don't they, before they go into them?

**TIM TEXEL:** Yeah, I, I don't completely agree--

**HUGHES:** I don't know.

**TIM TEXEL:** --with the characterization Lancaster County had said,--

**HUGHES:** Yeah.

**TIM TEXEL:** --because I think their view is this changes a lot.

**HUGHES:** It shouldn't. It doesn't, because they're still coming to you.

**TIM TEXEL:** To me-- well, this is what we believe we currently have the authority to do.

**HUGHES:** Yeah.

**TIM TEXEL:** So, I don't think it's changing anything,--

**HUGHES:** I don't think so either.

**TIM TEXEL:** --but it does ensconce in statute what we believe we have the power to do, and the private entities know the answer, which I think, as Mr. Levy said, is important for developers who have institutional money saying, now we know where we stand. That leaves the eminent domain issue out there, but this doesn't actually change unless you think that it's illegal. Like, you know, one utility believes you can't build in Nebraska as a private entity. I guess according to that, Lancaster County could point to that and say, it's illegal and this is a major change.

**HUGHES:** Yeah.

**TIM TEXEL:** So, I guess it depends on your perspective a little bit. To me, it's not.

**HUGHES:** Right. OK. Yeah, I agree. OK, thank you.

**MOSER:** Senator Raybould.

**RAYBOULD:** Thank you. Thank you very much. I know that Mr. Levy brought up eminent domain protection is sought. What does this bill do? It doesn't address it, or does it?

**TIM TEXEL:** Well, it, it does mention-- at the beginning of the bill, it does mention that ESRs are included in what I believe public utilities have the power of eminent domain over, to exercise it. Because I think on-- in 70-670-- it's on page 2, they-- specifically on line 8, they add storage to what they can use eminent domain on. So, as I read that, this would clarify that the utilities could use it on a PSR project. I think, arguably, they could now, but this would clarify that, and my understanding is the private entities have a concern over that.

**RAYBOULD:** That's right. That, that would be a deterrent to investors to not have that protection.

**TIM TEXEL:** I think it would be hard to say it wouldn't. The institution-- my understanding is the institutional investors don't-- they might be able to win, but they don't want to put the money into something that might get taken away. They don't-- that's not what they do is get into a fight over that; they want to know they can get it built and make the money. It might be a risk to come to us, but that's always true for every permit. Lancaster County Board, us, anywhere else. But the eminent domain, they could have it taken away after they build it, so that's not something they want to put a lot of money into. So, that's my understanding. That's not my side of things, but that it's a-- usually a deterrent, yes.

**RAYBOULD:** OK. Thank you.

**DeKAY:** Any other questions? Seeing none, thank you.

**TIM TEXEL:** Thank you.

**DeKAY:** Anyone else to testify in a neutral position? Seeing none, Senator Brandt, you are welcome to close.

**BRANDT:** First of all, I'd like to thank all the testifiers. There was value in all the testimony to make this a better bill. On the proponents, Mr. Underwood from OPPD stated that probably the largest battery so far being built by public power would be 170-megawatt next year in Pierce County. And then, I forgot to mention that down where I live, just south of where I live, I think NPPD is putting in a 50-meg or NextEra is putting a 50-meg battery down there on the wind farm. But he did state that the SPP rules would govern. On the opponents, Mr. Levy, you know, he wants to encourage private investment. I think we want to encourage private investment; we don't want to discourage private investment, but we just want to set a guidelines to do that correctly. The discussion of eminent domain kind of went all over the place. My opinion on how this is written, and they may agree or they may disagree, is when public power was created in Nebraska in the '30s and, and finally implemented in the '40s-- prior to that, it was private power, and so we had to convert private to public. And maybe you didn't want to sell your private power company, so they gave public power the right to take your private-power company by the right of eminent domain. That's why Nebraska is a 100 percent public power state, and that's the card that our public power holds in the state of Nebraska, bar none. So, they've got eminent domain on a lot of

stuff. This is not unusual. What's unusual is when they let the renewables-- I believe in 2010 was mentioned-- sell some of their power outside of the state of Nebraska that they didn't have to produce just for a Nebraska utility, and that allowed a great expansion on solar and wind in the state of Nebraska. And like it, hate it, but that was a driver on that. It seems like the private investment would like to use that model, and power would like to use the existing model, and we've had several meetings on this. The private investment hates eminent domain, let's just be honest here. We are willing to modify that to the point that that is out, providing there is an adequate power purchase agreement, and that's kind of our sticking point at the moment, along with some things like a sunset provision and things like that. We are not that far apart, if, if everybody wants to get together on this. If this bill ultimately doesn't go forward, what we've got in statute's what we've got in statute, but it isn't going to allow for an explosion of private investment in the state of Nebraska. Why do they want to come here? Because we've got reliable, low-cost power. It would be a money-maker for them, and it should be a benefit for the ratepayers of the state, and I believe that's what this bill is trying to protect. When Mr. Cary from Lincoln-Lancaster Planning and Zoning came up, I can see the advantage for a county. Look at those numbers. Man, there's a lot of taxation here. This is, this is really a good thing for that. But a county planning and zoning should not dictate electrical power in the state of Nebraska; the Power Review Board and our public power should be the last say on whether a battery is getting built out there, working with our planning and zoning out there. OK. And then, Mr. Texel had some recommended changes that we're certainly open to looking at, and that's about all the notes I've got, so if you've got any questions, I would be happy to answer.

**DeKAY:** OK, see-- are there any questions? Seeing none, that will close the hearing on LB1010. We'll wait just a second.

**BRANDT:** Sure. You don't have to wait. It's just a shell bill.

**DeKAY:** It makes my head hurt. But your openings are always so riveting.

**BRANDT:** This one's from the hip, buddy.

**HUGHES:** Wait, nobody's staying for this bill?

**BRANDT:** Oh, I can be better than this. You know, you know me.

**RAYBOULD:** You have an endless capacity for stirring up trouble. Kudos to you.

**DeKAY:** OK, Senator Brandt, you're welcome to open on LB1220.

**BRANDT:** LB1220 is the shell bill for the Natural Resources Committee. The purpose of a shell bill is, if something would happen after bill introduction and we need a vehicle, this baby is in. What it actually is, is Travis pulled some obsolete statue out, and we changed a "may" to a "shall." That is it.

**HUGHES:** Yay.

**MOSER:** It's a safety belt.

**BRANDT:** Yeah.

**RAYBOULD:** The commission shall--

**DeKAY:** Any questions from the--

**HUGHES:** No, you ain't closing.

**DeKAY:** Any--

**RAYBOULD:** OK.

**DeKAY:** Are you going to be here to close?

**BRANDT:** [INAUDIBLE] I'll stay to close. You better ask them if there's any testifiers.

**DeKAY:** Are there any proponents? Any opponents? Anyone in the neutral [INAUDIBLE]? Senator Brandt waives closing. And that closes the hearing on LB1220. Oh, for the record, for the record on--

**HUGHES:** Oh no, how many? Online?

**DeKAY:** I'm going back to LB1010. I should have mentioned this earlier.

**BRANDT:** He did read that.

**DeKAY:** He did do that? OK. On this one, there were 0 proponents,  
0 opponents, no one in the neutral, and no ADA testimony.

**BRANDT:** OK, now we're going to go into the exec, so--