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Natural Resources Committee
February 01, 2012

[LB1043 LB1092]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, February 1, 2012, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1043 and LB1092. Senators present: Chris Langemeier, Chairperson; Ken Schilz, Vice Chairperson; Tom Carlson; Mark Christensen; Annette Dubas; Ken Haar; and Jim Smith. Senators absent: Beau McCoy.

SENATOR LANGEMEIER: Good afternoon and welcome to the Natural Resources Committee. My name is Chris Langemeier. I'm the Chairman of the Natural Resources Committee. I'd like to welcome everybody that's here to testify and observe both within our hearing room and those that are watching on closed caption as well as those that are watching it on the Internet. We appreciate your participation. I'd like to introduce the committee. I'd like to start to my far left or your far right with Senator Jim Smith from Papillion; then Senator Ken Haar I believe has a bill in another committee and will be joining us in a little bit from Malcolm; we have Senator Mark Christensen from Imperial, Nebraska; and then we have the Vice Chair of the committee, Senator Ken Schilz from Ogallala. Laurie Lage is the legal counsel for the Natural Resources Committee. And to my immediate right or your left we have Senator Dubas from Fullerton; and then we have Senator Tom Carlson from Holdrege; and then Senator McCoy will not be with us today to a previous commitment. At the end of the table we have Barb Koehlmoos who is the committee clerk. As you come forward today to testify, in the corners of the room you're going to see a green sheet that looks kind of like this. We ask that you fill that out in its entirety. And when you come up to testify, if you'd give that to Barb first thing and then come and have a seat, it helps us keep a more accurate record of today's hearings. If you're in the crowd and you want to be on the record of having an opinion on this bill but yet you're not planning to testify, there's a little kind of a spreadsheet-looking form in the corner that you can sign in on and give us whether you support or oppose and that you are here if you don't care to testify. You don't have to do both. As you come forward, we ask that you, first thing you do is spell your name, say it and spell your first and last name. That helps us keep a more accurate record as we put it in for the permanent record. We do have two pages that are going to be helping us today maybe. First we have Brian Eulie who is from Omaha, is a student at UNL is here, and then Alex Wunrow who's from Los Angeles, California, and is a student at Southeast Community College will be helping us at some point throughout our hearing. If you have anything you'd like to give to the committee for our review we do remind you we'd like to have 12 copies of it; that way everybody gets one. And also, we remind you that if it's something you want back but you want us to see it, please just show it from the table. If you do give it to us to look at, we are going to keep it for the permanent record. So if you have a family photo of the home operation or your operation, we ask that you show it there and allow yourself available after the hearing if a senator would like to look at that in more detail. In the Natural Resources Committee, we do at the front of the table you'll see there's lights, we do allow five minutes of testimony. The

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green light will come on when you start; the yellow light will come on when you have one minute left; and when the red light comes on we ask that you stop your testimony. In history past, if you're caught in the middle of a thought, a senator will ask you a question and you'll get it out. We've never had a problem with that. So with that, we'd like everybody to look at your cell phones right now and make sure they're turned off so we don't disrupt the individual that is here to testify. It is their opportunity and their five minutes and the committee is very willing and wanting to hearing that testimony. So with that, we're going to take the bills in the order they were listed on the wall, which is LB1043 and then LB1092. With that, Senator Schilz. [LB1043]

SENATOR SCHILZ: Thank you, Senator Langemeier. Welcome, and the floor is yours to open up on LB1043. [LB1043]

SENATOR LANGEMEIER: Senator...first of all, my name is Chris Langemeier, it's C-h-r-i-s, Langemeier is L-a-n-g-e-m-e-i-e-r. I am from Schuyler and I represent the 23rd District in the Nebraska Legislature. I'm here to open on LB1043. As we look to natural resources and as we have on many occasions talked about whether it's within this committee or it's on the floor of the Legislature, we talk about economic development. And each of our goals is to have economic development in our state, and more so in our district if you ask us personally, at least like to have it in your hometown, you know. This...with the introduction with LB1043 allows us an opportunity to put a tool on the table that would allow electric rates to be used as economic development. As a business looks to Nebraska and we continue to become a very friendly state towards business, we continually want to look at things that we can do that don't cost our citizens money, but allow a tool to help new businesses come to Nebraska. And I think LB1043 does that. What it allows Nebraska Public Power to look at excess power that they produce that they're selling out on the open market, as we've talked about that on many occasions through our wind discussion as we talk about just selling it on the grid within the Southwest Power Pool or the whole eastern grid. That power goes out of the state. We get some money for it but at the end of whatever contract that is, it's over. With the passage of LB1043, it allows us to look at those rates and say, how can we set an even rate for five years and give us an opportunity to bring business here and give them one consistent thing in their business portfolio? As they go to try to get financing and look at your state, they kind of can project well we think our revenues are going to grow by so much a year. Well, if I was a lender I'd sit there and say, what are your expenses going to be? So anytime we can add a consistent product in and get that company here by saying your payment is going to be equal, at a consistent rate for five years, it allows them to take some of that uncertainty out of growing a business, expanding a business, or locating. And I think at the end of the day it makes Nebraska a much more positive place to be. So with that, there is a technical amendment that is coming. Nebraska Public Power will present that. I won't speak to it unless we need to in my closing. I think they'll do a great job. Are there any questions? [LB1043]

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SENATOR SCHILZ: Thank you, Senator Langemeier. Senator Christensen. [LB1043]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Senator. What do you say to the people that are saying you're chipping away at the statute that is public power that's basically been sacred in this state and that we could set up an opportunity to cause more openings and eroding of public policy in this state? [LB1043]

SENATOR LANGEMEIER: Well, I don't think...and, first of all, I'm a strong supporter of public power and I'm not overly a big supporter of incentives as my legislative career will explain. I've always thought that we need to do incentives in Nebraska that make sense to Nebraskans, that we don't give away the farm to do it. And I think with the passage of LB1043, it allows us to project an average rate for five years so we're not in a shortfall, we're not making excess profit, but allows us to use some tools and use an excess supply of power in Nebraska and add a consistent component to a business's operation. I don't think at the end of the day that harms anyone in Nebraska nor does it harm public power. The reality is, is we sell excess power out of Nebraska on a regular basis, some more today than another day. I would say today we have with nearly 60-degree weather in January, we were planning for a few more furnaces to be running than are probably running. And so then we have that excess power to deal with. And so it also adds if we can get high-use electric companies to come to Nebraska, anytime we can add more of a consistent load, it helps everyone's rates. As we look to build new facilities, if needed, and plan for new facilities, I think it only strengthens public power's ability to plan for the future. [LB1043]

SENATOR CHRISTENSEN: One more question, and by throwing them out at you, that allows other people to think about the answer. [LB1043]

SENATOR LANGEMEIER: I've done the same thing. [LB1043]

SENATOR CHRISTENSEN: (Laugh). Okay. We're public power in the state of Nebraska, allows us a cheaper rate than any states around us. So we have an advantage in this state on electrical rates, so why do we need an incentive to bring somebody here based on electricity? [LB1043]

SENATOR LANGEMEIER: Well, we're not incentivizing that rate, let's be clear of that. We are making a consistent rate for five years. Okay. So we are not out there to subsidize a company in electric rates. That goes back to my incentive issue is, is why make Nebraskans pay for that. This is a tool that we can make a consistent rate for five years, which is enough of an incentive to entice people to come. [LB1043]

SENATOR CHRISTENSEN: Thank you. [LB1043]

SENATOR SCHILZ: Thank you, Senator Christensen. Any other questions for Senator

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Langemeier? Senator Carlson. [LB1043]

SENATOR CARLSON: Thank you, Senator Schilz. To follow up a little bit on this, I see the section that's crossed out, but in the...on page 2 it talks about that in no instance can a charge be less than the actual cost of the power that's sold. And if it's a five-year contract, I assume that there would be some kind of figuring in that over that five-year period they're going to have an average cost. It's going to be probably less the first year than it is the fifth year in terms of the public power. But if the overall price charged is not less than cost, then to me that's a better way to go about things than to give some kind of a tax incentive that is really taking it out of the pockets of the citizens of the state. And I don't...I'm not seeing this as taking money out of anybody's pocket. Am I not seeing something? [LB1043]

SENATOR LANGEMEIER: I would agree with you. We are not incentivizing a rate. We are incentivizing a level playing field for five years so you have a consistent number. [LB1043]

SENATOR CARLSON: Okay. Thank you. [LB1043]

SENATOR SCHILZ: Thank you, Senator Carlson. Any other questions? Seeing none, thank you, Senator Langemeier. [LB1043]

SENATOR LANGEMEIER: Thanks. Thank you. [LB1043]

SENATOR SCHILZ: At this time, we will take proponents for LB1043. Welcome to the Natural Resources Committee. [LB1043]

JOHN McCLURE: Thank you, Chairman Schilz, members of the committee. My name is John McClure, J-o-h-n M-c-C-l-u-r-e. I'm vice president and general counsel for Nebraska Public Power District. I'm here today on behalf of both Nebraska Public Power District and the Nebraska Power Association in support of LB1043. And let me begin by explaining some fundamental facts about the law today and how we'd like to see it changed both as is provided in LB1043, and with an additional amendment that we believe is important. It's certainly essential to understand that today public power districts and electric cooperatives have the right under 70-655(2) to offer an economic development rate. And the law provides and acknowledges there can be a discount in that rate. One of the questions that comes up as we've started looking at that law is, how do you interpret certain language such as Senator Carlson referenced on page 2 saying that you cannot have it below the cost of supplying the service? So let me talk about this existing law and the change. First of all, subsection (1) of 70-655 is a bedrock of public power. It says our rates have to be fair, reasonable, and nondiscriminatory. Subsection (2) in the law today is a very narrow exception to that. Most rates that are going to be set by public power districts are going to have to fit that fair, reasonable, and

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nondiscriminatory. Subsection (2) says you can have an exception and that exception can be for an economic development rate. And the current law puts some very specific limits on what a public power district can offer in providing such a rate: (1) It must be limited to five years. Now we think that is very important and we would not support anything that would extend that and we're not changing that with LB1043; (2) It cannot be for a load that's smaller than 500 kilowatts; (3) It cannot be for a load that is less than a 60 percent load factor; (4) It has to be either a new load or an expanded load that is part of a project that qualifies under a state or local economic development program, such as the Nebraska Advantage Act. So that's what the law provides today. And then the fifth piece in the law today talks about adding general retail rate increases, which is the provision that Chairman Langemeier has referred to that is coming out in this proposed bill. And I'll get to the other piece, which is the notion on page 2 of this referenced by Senator Carlson, that this cannot be below the cost of supplying it. We'd like to clarify that with an amendment. The biggest piece of one of the electric bills for a very large load customer is the electricity production component. And we'd like to make it clear in the law that like these other limits that are set forth, a utility could not set that price below the incremental...the production component below the incremental production cost of providing that electricity. And there will be subsequent witnesses that will explain that further or I may have an opportunity under questions. But that is a key provision. I think it's also important to distinguish between what the law establishes as a framework and how a particular utility may then set up the rate. For example, the law says you cannot do this for more than five years. A utility might choose to do it for three years. That would be consistent with the law. It just says you can't have more than five. You may...in the law it says you have to have at least a 60 percent load factor. You could set it higher if you chose to do so. And so there is that flexibility. The bottom line is we've worked very closely with our customers, with the state, in order to try to make this statute work better as we're dealing with a significant prospect for the state of Nebraska. We appreciate the input we've had from our customers in working on how we might tweak this legislation. Ultimately, we have to establish a rate under our rate making consistent with the parameters of the legislation. In summary, we've had great discussions within the industry. We think this would be good for the state, and we encourage your support, and be happy to answer more details about the proposed amendment. [LB1043]

SENATOR SCHILZ: Thank you, Mr. McClure. Senator Christensen. [LB1043]

SENATOR CHRISTENSEN: Thank you, Chairman. On the section you just talked about on the cost, what happens if you sign the five-year deal, you're one year into it and let's say for simplicity they sign a 10-cent-per-kilowatt rate, and federal government shoves regulation down you can't sell any under 13 cents now. Do you automatically just bump 3 cents or are you selling under cost? [LB1043]

JOHN McCLURE: The way we envision this is that in establishing the rate, again, if

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there were an additional clarification on what cost means, that we would not be able to set this below our incremental production cost. And let me give you a further example along the lines of your question. Each year, NPPD looks at its entire generation mix, and we look at the year and we say, what will our cost be for producing electricity? And we run a very comprehensive model in doing it. We look at, there's 8,760 hours in a year and there's 8,784 in a leap year like 2012. For every hour, we have a model that looks at our generation and it looks at what is the expected load in every hour, and we base it on historic data, differences in a day, differences in seasons. We then look at what of our...which of our generation units will we run to serve that load. You base load units like nuclear, then you add coal in, you have hydro, you have wind that comes in. So you look at what will your fuel mix look like in every hour? We also look at what will we be buying and selling in the marketplace. And all of that goes into running that model. That's the cost of serving a load from a production standpoint. Now the way we envision this working is if a new customer comes along, we can take that base model and say, what is our additional cost of serving another load? We know what it costs to serve our existing load. We know all of these variable costs that come in. What is the additional cost to serve an additional load? And that is how we would like to be able to price the production component of this because it's over and above and it's covering the cost. And in our rate, we would actually build a margin in that to assure that. In the rate we're proposing to put in place, we would have it subject to an annual adjustment to see if that cost has changed to serve it. Now that cost doesn't include the capital component. It does not include that. I want to make that clear. That capital component is already fixed. Adding an additional load of five megawatts when you have surplus generation, as many utilities do, you're going to incur that other regardless of whether you add that new load. So, again, the concept here is you're able to attract a load to Nebraska that's not here today. You use a rate that will in fact be lower than the regular rate that you would serve other customers with, but within the period of that economic development rate expiring. Then that customer is here and they're on at the full price of power. [LB1043]

SENATOR CHRISTENSEN: But I think you missed the question. What if some outside force, I used the government here, bumps that rate up, can you do that annual adjustment? [LB1043]

JOHN McCLURE: We would have, again, the ability to do an annual adjustment. But let me explain further how that would come in, in effect. Let's say the federal government says you have to put on a particular type of equipment. A lot of that would happen several years out. And so it wouldn't be in in the first several years of this rate being in place. But there might be consequences of that. You might do fuel switching. You might burn more gas than use coal. And so those kind of incremental...those cost differences would be reflected in what is the incremental cost. You might be selling less power in the market and buying more. So a portion of the impact of that would, yes, be reflected in the pricing here and would be subject to an annual adjustment. But, again, the way

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we see this happening, there would never be an additional cost to our incumbent customers. We would make sufficient revenue to cover the additional cost of serving this new load for the period of the economic development rate. And I will offer, I do have our rates manager here, and if we get into some technical questions that I can't answer, I would ask him to come up subsequently and respond further. [LB1043]

SENATOR CHRISTENSEN: Thank you. [LB1043]

SENATOR SCHILZ: Thank you, Senator Christensen. Senator Carlson. [LB1043]

SENATOR CARLSON: Thank you, Senator Schilz. John, we produce in public power more electricity each year than we use, correct? [LB1043]

JOHN McCLURE: Correct. [LB1043]

SENATOR CARLSON: So we're selling it off someplace. [LB1043]

JOHN McCLURE: Yes. [LB1043]

SENATOR CARLSON: And there's certainly been numerous times in the past where the excess that we sell we get more money back for than if we were selling that to our own customers. [LB1043]

JOHN McCLURE: There have been times when the market price was so high that selling it out in the market was a higher price than what our wholesale power cost was. [LB1043]

SENATOR CARLSON: And I've heard you talk before, because when that happens, that is to enable us to...in Nebraska, to experience lower rates because somebody else helped...helping us. Are there times when that excess power is sold below the rate that our customers are paying? [LB1043]

JOHN McCLURE: Yes. And we're in a period like that today. [LB1043]

SENATOR CARLSON: Because you have no market for it. [LB1043]

JOHN McCLURE: Well, it's market, it's effects of things. Natural gas prices are extremely low right now. Natural gas prices set the market price for electricity. And, again, our incremental production costs are below that market price. But the market price is right now about half what it was about four years ago for those off-system sales to sell your surpluses into. [LB1043]

SENATOR CARLSON: Okay. And so theoretically, we're talking about a new business

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coming in, possibility of a new business. So we need a certain amount of production just to satisfy existing customers. Then conceptually, a new business comes in and we're going to sell power to them at a reduced rate, which I'm fine with. But if...then we're going to have to pull back some of the power that we've been selling outside because now we're going to supply it to this new customer. So there could be a time we're going to supply it to them at a lower rate than what we would have gotten selling it outside. [LB1043]

JOHN McCLURE: That is correct. [LB1043]

SENATOR CARLSON: And that's okay because after five years or whatever it is, they're going to be paying full rate year after year after year and we're not hoping for some kind of a market outside the state that would be beneficial. [LB1043]

JOHN McCLURE: That is correct. And in addition, in the way we would intend to put the rate in place, assuming that the committee would adopt the change in the clarification on what cost of service is, we would always be...we would be looking annually to adjust that additional cost to serve this customer to make sure it was in excess of what our additional production cost is to serve that customer. [LB1043]

SENATOR CARLSON: Okay. [LB1043]

JOHN McCLURE: So that would protect our incumbent customers. [LB1043]

SENATOR CARLSON: Okay. Thank you. [LB1043]

SENATOR SCHILZ: Thank you, Senator Carlson. Senator Smith. [LB1043]

SENATOR SMITH: Thank you, Senator Schilz. Mr. McClure, I like the idea of, you know, this amendment discussion about adding language such as the incremental production cost because the language that's in the statute now is fairly ambiguous as to what cost of supplying means. Cost can mean a lot of different things for a utility. Can you give some kind of high-level examples as to the types of items that would be included in incremental production cost? And then also, what types of costs are excluded from that definition of incremental production cost? [LB1043]

JOHN McCLURE: Again, I'm going to keep it simple because that's the limit of my expertise and I'll bring our rates manager up if you would request additional information. But I think in the simplest of terms, it's back to this notion that here's...we identify what our production cost is to serve our customers today on the generation site. Then the incremental cost to us is that additional cost that's required in production to serve that next load. It's... [LB1043]

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SENATOR SMITH: Generation-related costs like fuel. [LB1043]

JOHN McCLURE: Yes, yes, yes. [LB1043]

SENATOR SMITH: Okay. [LB1043]

JOHN McCLURE: What is our...you know, fuel, it could be some emission fees associated with the fuels you're using. It's...as you appreciate, we're constantly buying and selling in the open market, so how that affects the transactions. Those are the components that affect what that production cost is and that would be taken into consideration in calculating what is the additional cost to serve this additional load if we didn't have it there to begin with. We know what our cost is without it. What's our cost with it? And that's on the generation component. For NPPD, there are three parts of electric service: there's the production cost, there's the transmission, and the distribution for everyone. For us as we're looking at this rate, we would have the incremental component in the production cost. It couldn't be less than that. We would add something to it. We would charge the full regular transmission cost to this customer. And then we would have a small distribution cost because this basically would come off of high-voltage transmission because of the contemplated size of the load. [LB1043]

SENATOR SMITH: Great. Thank you. [LB1043]

SENATOR SCHILZ: Thank you, Senator Smith. Any other questions for Mr. McClure? Seeing none, thank you very much. [LB1043]

JOHN McCLURE: Thank you. [LB1043]

SENATOR SCHILZ: We'll have the next proponent for LB1043. [LB1043]

TIM BURKE: Good afternoon. Tim Burke, T-i-m B-u-r-k-e. Thank you, Senator Schilz and members of the Natural Resources Committee, and thank you for allowing me the opportunity to speak in favor of LB1043 and the associated amendment that was presented to you today. As I said before, my name is Timothy J. Burke. I'm the vice president of customer service and public affairs with Omaha Public Power District. And, again, I'm testifying in support of LB1043. I've been active in economic development since I came to the state of Nebraska in 1989. I've served at local agencies, regional agencies, and I currently volunteer at the state level as well. I've served on the Bellevue Chamber of Commerce board of directors, the Sarpy County Economic Development Corporation. I currently serve on the Greater Omaha Chamber of Commerce board of directors, and I am also on the Governor's Commission for Economic Development as well. There are several reasons why OPPD supports this legislation and the associated amendment presented today. I'll give you a couple of those reasons why. There's been many changes that have occurred in the electric industry. Some of those specifically

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impact this bill that's been presented today. And that has to do primarily with natural gas prices currently have been at their lowest they've been in many years which have driven down the wholesale market prices that you just talked a little bit ago about with Mr. McClure. OPPD has been a very active participant in the wholesale market in selling our excess generation since the markets opened in the late 1990s. Selling into the open market has been a win-win for OPPD's customer-owners. One hundred percent of these revenues have been credited back to the OPPD's customer rates in the form of lower rates. As wholesale prices and margins shrink due to a number of factors, one, the downturn in the economy that has created a lot of excess generation in the Midwest; the low clearing prices primarily due to natural gas prices today. So these revenues and margins have also reduced, limiting some of the benefits to our customer-owners for selling into the wholesale market. The average prices in the wholesale market have historically or, excuse me, significantly reduced over the past several years. An example of this is not too many years ago, the average wholesale price was around \$50 to \$60 per megawatt. That equates to about 5 to 6 cents per kilowatt hour, certainly higher than the production cost of what we provide to our customers today. Today some of those sales in the wholesale market are nearing \$21 a megawatt hour or more like 2.1 cents per kilowatt hour. Senator Schilz, you asked the question about us selling into the wholesale market and how this may impact public power. We certainly want to create value for our customer-owners. That's important for us to do that. And so we sell into the wholesale market to really support our mission and strengthen our public power advantage. When you need to buy in the wholesale market, these low prices are a really good thing. With one of our generating plants having been impacted by the Missouri flooding, we certainly know that and certainly have had good partners behind me here that will testify today as well that have supported us with low prices of generation to keep our system up and operating in light of our generation not being available throughout the whole course of the summer last year. But if you want to sell your excess generation into that low-price market, it's really a tough market to do that to create that value for your customer-owners. So the minor changes to the economic development rate really allows us to create greater value for our customer-owners. That will allow us to attract businesses and jobs, increase construction and expansion activities, increase local and state sales tax. These changes in this bill will provide utilities with flexibility to match the growing customer needs that we see in this competitive marketplace that we're in and the competitive market demands that we see from large customers competing with other states and regions in the United States. So these tweaks that we're talking about really allow us to match the competitive environment in other states that we compete with at the state of Nebraska with every single day with every single project. This will allow us to offer economic development rates that can be matched to new businesses or, for that matter, even expanding businesses and to meet their needs and allow the state of Nebraska to be more marketable and more competitive. One of the questions that I've been asked about this, how can we be assured that this rate will not be misused. I think as most of you know, each one of our publicly elected officials either at the public power, a municipality, or at the REA level, have been publicly

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elected and they'll make sure that they govern the appropriate use of this economic development rate and to make sure that it meets not only the current needs of customers, but certainly makes the communities and the service areas that they serve more competitive and more marketable in the future. Just a couple points on some questions that have been raised. I think, Senator Christensen, you asked does this erode public power. And I would contend it actually strengthens our public power advantage, because rather than taking some of the excess generation and selling it into the marketplace, we're able to bring it back into Nebraska and create opportunity and jobs and investment. Thank you for allowing me the opportunity to support and testify here today in support of LB1043. [LB1043]

SENATOR SCHILZ: Thank you, Mr. Burke. Any questions for...Senator Dubas. [LB1043]

SENATOR DUBAS: Thank you, Senator Schilz. Thank you, Mr. Burke, for being here today. And I know and understand the benefits of what this bill would provide while I may not fully grasp all of the ins and outs of how our power system works. Just the average Joe on the street who looks at their electric bill and, you know, I know one of the driving forces on public power is safe, reliable, and inexpensive power. How do we tell the average Joe on the street that this will benefit them? [LB1043]

TIM BURKE: I think there's kind of two components to that, in my opinion. One is it'll create that economic development incentive in the communities in which it will be utilized, increase jobs, increase taxes for the local community, increase sales taxes, increase investment and retail opportunities within the cities and the communities, increase opportunity for new construction and new development and certainly that's needed in this economy. I think the longer-term perspective is that after that five-year term, all costs will then be kind of supplied throughout all the economic development rates that expand beyond that five-year period. And that's a benefit to all of our customer-owners. So it's really a win-win. There's no negative impact to the existing customers today. As Mr. McClure talked about, it's about incremental pricing, not eroding our current base price. So I'm not selling at a loss; I'm still selling at a benefit. Senator Carlson asked a little bit about the wholesale market. We do exactly what this bill is asking us to do in the wholesale market today but we do it probably outside the state. And so this is the opportunity to bring that inside the state and to create that value. [LB1043]

SENATOR DUBAS: I'm glad that you mentioned that there's no negative impact because that's really the answer I was looking for. I want to make sure that our customers, you customers, understand that this does provide us a lot of opportunity, but that they should see no negative or adverse impact to their bill because that's the thing they understand the most when they have to pull it out of their pockets. [LB1043]

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TIM BURKE: Absolutely. [LB1043]

SENATOR DUBAS: So I think that this is a win-win for the state, as you've said, and affords us a lot of opportunities. And also I think the size and scope of the projects that will probably qualify for this, I mean they aren't just...they will bring significant economic activity into the state. Would that be correct? [LB1043]

TIM BURKE: Absolutely. If we'd look back over the opportunities that this rate could have been used potentially, it would, one, it would be significant. And I think as Mr. McClure talked, the bill talks about a load factor of something greater than 60. Any load factor that's better than the current load factor that we have on our system is a direct benefit to our customer-owners today because we can more effectively and optimize the assets that we currently have. [LB1043]

SENATOR DUBAS: All right. Thank you very much. [LB1043]

TIM BURKE: Great. Thank you. [LB1043]

SENATOR SCHILZ: Thank you, Senator Dubas. Any other questions for Mr. Burke? Seeing none, thank you, sir. [LB1043]

TIM BURKE: Thank you very much. [LB1043]

SENATOR SCHILZ: Welcome. [LB1043]

GARY STAUFFER: Good afternoon. Good afternoon, Mr. Chairman, committee members, my name is Gary, that's G-a-r-y, Stauffer, S-t-a-u-f-f-e-r. I'm the executive director, chief executive officer of NMPP Energy. We serve wholesale electricity, wholesale and retail natural gas, and utility-related services to 200 communities in Nebraska and five adjacent states. I'm here in support of LB1043. And I appreciate that my colleagues who came before me explained the technicalities and the impact to the state of Nebraska. I want to expand that discussion. I've had the absolute privilege to work in this industry for over four decades. I currently serve as the vice chairman of the board of directors of American Public Power Association, and so I am exposed to industry issues on a national basis. During my career, I've worked for companies in Canada, in North America, Europe, and Africa, so I've been exposed to global competition. And what I want to point out is that there is a vast difference between the tool kits of multinational corporations today, the tool kits of invest your own utilities, and the tool kits available in competition for economic development for public entities. Let me expand that. If you were in the United States today and wished to consume electricity as a large entity, there are 3,150 ways to do that: 220 investor-owned utilities; 930 REAs and co-ops; and 2,000 public power entities. Then you add on top of that 50 states. And if you're a multinational corporation, i.e., a Microsoft, an SAP, a large

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cloud-computing-type company, you also can throw in aspects of competition from Malaysia, Micronesia, from places that have...from Finland, from Iceland, places that have very low-cost power, educated work forces, and the ability to attract you with a very large tool kit. Unfortunately, public power does not have the capability within its war chest routinely to compete at that kind of level. So I very much support the very incremental approach that's being presented in LB1043 that ensures that end users in the state of Nebraska will continue to receive very low cost of electricity and also will level the playing field just a bit for the 3,150 other choices that are available. I thank you for your attention. It's always a pleasure to come here. I'd be happy to answer any question. [LB1043]

SENATOR SCHILZ: Thank you, Mr. Stauffer. Any questions? Seeing none, thank you very much for your testimony. [LB1043]

GARY STAUFFER: Thank you. [LB1043]

SENATOR SCHILZ: Next proponent for LB1043. [LB1043]

JANE BERRY: (Exhibit 1) Good afternoon. My name is Jane, J-a-n-e, Berry, B-e-r-r-y. Good afternoon, Senator Langemeier, Senator Schilz, and other distinguished committee members. I want to thank you for the opportunity to address LB1043. Again, my name is Jane Berry and I'm the city administrator for the city of Aurora, Nebraska. I'm presenting my testimony today in support of LB1043 on behalf of Nebraska Public Power District, the city of Aurora, and other municipalities in this great state of Nebraska. A few years ago, the state decided to target power parks and data centers as industries it would seek to attract for location in specially designated communities. The Nebraska Department of Economic Development set about a cooperative, excuse me, competitive process to select a few communities that could accommodate such facilities. The city of Aurora is one of those communities selected by DED as a preferred site for a data center or mission critical facility. Funds totaling over \$750,000 and CDBG grants is assisting Aurora to position ourselves as a future data center site. Sites with the best power infrastructure and lower pricing are where mission critical facilities will commit to locate. Data centers rely on local utilities, particularly power companies, for their essential services. This is the reason why these legislative revisions are before you today: to provide public power in Nebraska with the tools and flexibility to offer incentive energy rates, attracting new or expanding customers, whether they are data centers or other industries, where power can account for as much as 80 percent of their operating costs making utility rates one of the most important and critical factors in their site selection decision making process. With the leadership, technical expertise, and analytic assistance of NPPD, we have an opportunity to build a team comprised of the state, public power, and local communities that will elevate Nebraska's sophistication in the economic development game to a new level to be a major competitor for projects that demand abundant power availability, reliability, and lower costs. With the provisions

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proposed in LB1043, flexible development tools will be in position to recruit new as well as to expand and retain existing industries requiring large volumes of power. The improved tools authorized by LB1043 will create investment, jobs, and a positive enhanced image of Nebraska as the place to grow business. Nebraska has been unrivaled in our capacity to feed the nation and the world with corn and beef. Now we have the same unrivaled opportunity as the only total public power state to provide industries with healthy appetites for electricity to grow their businesses here. Just as the Homestead Act and the Railway Act encouraged the settlement and expansion of our state in the last decades of the 19th century, legislation of the twenty-first century needs to be aimed at economic development programs coupled with low-energy costs that would be the catalyst to propel new and expanding industries to locate in Nebraska communities creating millions if not billions of dollars of new investment. Pioneers on the prairie burning buffalo chips for energy for basic survival could not have imagined a world where microchips and clouds would power the world in which we live and work today. This bill is not only right for Nebraska's future, but it's also the right thing at the right time for public power, one of Nebraska's greatest natural resources. I urge the committee to support and pass this important legislation contained in LB1043. Thank you for your attention to this important issue, your commitment to growing business in new and diverse ways, and to providing a course of critical and lasting competitiveness for Nebraska in a global economy. I'll be happy to answer any questions. [LB1043]

SENATOR SCHILZ: Thank you, Ms. Berry. Any questions for Ms. Berry? Seeing none, thank you very much. [LB1043]

JANE BERRY: Thank you. [LB1043]

RON SEDLACEK: Good afternoon members of the Natural Resources Committee. For the record, my name is Ron Sedlacek, that's spelled, S-e-d-l-a-c-e-k. I'm here today on behalf of the Nebraska Chamber of Commerce in support of Senator Langemeier's LB1043. We do believe and will echo sentiments previously expressed to the committee and try not to be repetitive. Rather, we would echo those sentiments and say that we do see this as a valuable additional tool to Nebraska's economic development toolbox, that we are supportive of the legislation. We had a number of questions in regard to how it might work. I can't pretend to be an expert in this particular area, but it seems like those questions were addressed and that it was a win-win for all parties involved. And in that regard, we would continue to support the legislation and urge it to be advanced to the full Legislature for consideration. [LB1043]

SENATOR SCHILZ: Thank you, Mr. Sedlacek. Any questions for Mr. Sedlacek? Seeing none, thank you very much for your testimony. [LB1043]

RON SEDLACEK: Thank you. [LB1043]

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SENATOR SCHILZ: Next proponent. Welcome to the Natural Resources Committee.
[LB1043]

DAN MAUK: (Exhibit 2) Thank you, neighbor. Senator Schilz, members of the Natural Resources Committee, my name is Dan Mauk, that's spelled D-a-n M-a-u-k. I'm the president and CEO of the North Platte Area Chamber and Development Corporation. I have both the chamber of commerce and economic development duties there. I speak on behalf of our board, our membership, and our 624-member firms, as well, as the city of North Platte in support of LB1043. Our organization's mission is to grow business in the North Platte region. In planning just how we do that, we look at a number of factors: What do we have that we can sell? What active markets are there out there in which we can recruit? And one of those markets right now happens to be large data centers. In fact, an industry expert indicated there would be as many as a thousand new or expanded data centers needed in the next decade as computing moves into the cloud. Several Nebraska communities have invested in specific infrastructure to accommodate the needs of data centers. Data centers need high-capacity, redundant, diverse, fiber optic connections, large quantities of water and electricity. Of these three items, electricity, as availability and cost, is the number one driving factor on where these centers are going to be located. North Platte is well suited for data centers and we're actively recruiting in this area, going to trade shows and doing other marketing. One of the items we don't have and one that LB1043 would resolve is the ability to set short-term, specific power rates. In other words, an economic development rate to accommodate this particular industry. Previous legislation, as was referred to, allows our public power partners to set a special rate for economic development, but there's a clause in there that would essentially limit it to a year-by-year rate. When a company is going to invest hundreds of millions of dollars in a new project and power is their number one cost driver, they want some predictability. And a five-year rate is about what we think a reasonable length of time and it will make us competitive with our neighboring states. As an aside, if we're selling excess power now, as was stated as low as 2.1 cents per kilowatt hour, we could be in theory selling power to Iowa so that they can then resell our power to Microsoft and Google for 4 cents. How do our ratepayers win in that situation? Let's have the jobs here. Let's have Google and Microsoft or whoever else in Nebraska to pay the 4 cents or whatever it ends up might be. This is necessarily just a data center bill. Before I was in North Platte, I've been out there three years, in about 2007 there was a project that North Platte was a finalist for that used a lot of electricity. It was in a different industry but it used a lot of electricity. And the deciding factor, the reason that North Platte lost that deal was the cost of power and its predictability, how long you could have a rate. That particular investment was...had nine zeros in it. The city of North Platte's entire valuation is \$1.1 billion. Being close to a deal that big is kind of exciting but it doesn't really pay any bills. Help us help our Nebraska communities be competitive with our neighboring communities so we can seize this opportunity as is now presented before us so we can meet our mission for growth. I'm available for questions. [LB1043]

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SENATOR SCHILZ: Thank you, Mr. Mauk, for making the trip. Any questions for...Senator Haar. [LB1043]

SENATOR HAAR: Yes, thank you. I'm supportive of this proposal. Now when you talk to some of these data centers and so on, does the whole thing of renewable energy come in? Is that a draw point as well? [LB1043]

DAN MAUK: In some companies it's a high...there's a high importance, but not universally. Renewable in Nebraska is more expensive than the current mix we have now. But we are moving forward in that area. And that was one of the things that favored North Platte. We have a 20 megawatt hydro plant in town; we're close to McConaughy; and we are close to the coal plants. We were close to generation. There's a wind farm going up in Broken Bow. There's a potential wind farm south of town. So we think we're kind of fit in a good place for renewable when that really comes into play. But cost right now is the bottom line for data industries. [LB1043]

SENATOR SCHILZ: Thank you, Senator Haar. Any...Senator Carlson. [LB1043]

SENATOR CARLSON: Thank you, Senator Schilz. In your opening, you talked about these businesses in North Platte being active in recruiting. One of the things intrigued me. Why would they require a lot of water? I can understand you've got plenty of it if that's necessary. [LB1043]

DAN MAUK: I was in Norfolk when Google came around and we didn't know what it was. Nobody knew what it was. But I'm kind of a nerdy guy and I'm interested in computers. And when we saw their specs, I said, they're using huge amounts of water. I said, well, what are they...it's got to be for cooling. What are they...is it food manufacturing or something? We saw what their sewer output was and it was virtually clean water. And we were able to figure out that it was Google. It's cooling. They use the water for cooling. Each one of those computers, if you feel your computer monitor (sic) under your desk, it's warm and it's...that's the reason for the water. [LB1043]

SENATOR CARLSON: They can recycle it then. [LB1043]

DAN MAUK: They do. [LB1043]

SENATOR CARLSON: Okay. Yeah. Thank you. [LB1043]

SENATOR SCHILZ: Thank you, Senator Carlson. Any other questions for Mr. Mauk? Mr. Mauk, thank you for making the trip. [LB1043]

DAN MAUK: Thank you very much. [LB1043]

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LANCE HEDQUIST: (Exhibits 3-4) Senator Schilz, members of the Natural Resources Committee, my name is Lance, L-a-n-c-e, Hedquist, H-e-d-q-u-i-s-t. I'm the city administrator of the city of South Sioux City, Nebraska. I'm passing out today two memorandums. One is from the Nebraska Economic Developer's Association signed by Mike Feeken. Mike is a board member and the legislative committee cochair in support of LB1043 and has asked me to have that placed into the record today. In addition, you have a copy of a letter from the city of South Sioux City. South Sioux City is located in the corner of Nebraska right by Iowa and South Dakota. We clearly know the issue of competitiveness when electric rates are being considered and the competitiveness for getting industry located in your state. The state of Nebraska has done a fine job in terms of passing the Nebraska Advantage Act and making changes of that so we can become even more competitive as we deal with companies looking at our particular area. Today we have a unique opportunity in that we have excess electricity and we can build upon the public power assets that we have in the state of Nebraska. Our competition and the people that are looking to come into the state of Nebraska are not just local firms. We have firms from Peru, Korea, Germany, China, Denmark looking at our particular area, and they can really physically locate anyplace in the United States. And so I think it's very important for us to look at the electric rates and look at the ability for us to fix or keep some of those electric rates down over the first few years of those companies. We dealt with a firm and it ended up going to Texas. We came in second out of about 120 firms before the company went to Texas. The driving factor in that particular case wasn't electricity. It was they had a building down there that suited this company, and so we lost out on that. However, we just had a company that just located over in an adjacent state because their electric rates were lower. Not their general rates which ties in with Senator Christensen's comments, it was the fixed rate that was given to them by their investor-owned utility. Something we don't know what that rate is, but we do know they gave a rate that's lower than what the state of Nebraska had to offer and what we could offer in our particular situation. So we do think the idea of five years, of having a transition makes a lot of sense for us to be able to offer those industries that are looking to come into our communities. We also dealt with a dairy industry that had a major project come into the area, electric rates significant difference between our state and other states, what they were offering. We also had a meat by-product company look into the area, still looking at the area, out of Denmark, and the electric rates are a key component as to what decision they'll be making in the future. So it's not just data centers. Clearly we're interested in data centers with our data park, but we're also interested in heavy industries that are looking to locate in the Roth Industrial Park, one of the prime industrial sites in the state of Nebraska. So we encourage the passage of this bill and appreciate your time here today. [LB1043]

SENATOR SCHILZ: Thank you, Mr. Hedquist. Any questions for Mr. Hedquist? Seeing none, thank you for your testimony today. [LB1043]

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LANCE HEDQUIST: Thank you. [LB1043]

SENATOR SCHILZ: Further testimony, proponents for LB1043. [LB1043]

LORAN SCHMIT: (Exhibit 5) Good afternoon, Senator Schilz, members of the Natural Resources Committee, and Senator Langemeier. My name is Loran Schmit, L-o-r-a-n S-c-h-m-i-t. I appear here today on behalf of the Association of Nebraska Ethanol Producers in support of LB1043 with the proposed amendment. Given the uncertainty which faces the electrical generation industry today of huge increased costs to comply with federal regulations, we believe it is appropriate that any economic development rate negotiated between the customer and NPPD be subject to amendment if the electrical generating industry incurs substantial increased costs. We would also suggest that the qualifying criteria established by NPPD of ten megawatts, which is considerably greater than the statutory requirement, could be reduced. A reduction in this amount might also be appropriate since NPPD presently has surplus generation capacity which would be increased if additional generation capacity is developed. I had the opportunity to yesterday to listen on a conversation, this conference call, with Ms. Lisa Jackson (phonetic). And I was amazed to find out that she believes very strongly that regulation creates additional jobs and it's an economic development product. It wasn't a two-way conversation because I would have liked to have reminded her that the jobs created by her 17,000 employees for the most part develop into increased costs for those of us back here who are in business. But with those comments, Mr. Chairman, we support the bill. If you have any questions, I'd be glad to answer them. [LB1043]

SENATOR SCHILZ: Thank you, Mr. Schmit. Any questions? Seeing none, thank you, sir, very much. [LB1043]

LORAN SCHMIT: Thank you. [LB1043]

SENATOR SCHILZ: (Exhibits 6-16) Any other supporters or proponents for LB1043? Seeing none, we do have a few letters here if I have them...here they are. I have some letters in support from: Jack Vavra from the city of York; Chris Anderson from the city of Central City; Bruce Clymer from Gothenburg; Michael Morgan from Kearney; Ervin Portis from Plattsmouth; Brett Baker from Seward; Lowell Johnson from Wayne; Deb Cottier from Nebraska Northwest Development Corporation; Karen Anderson from the Gering/Scottsbluff United Chamber of Commerce; Terry Rajewich with Gering; Darren Robinson with the Economic Development Council of Buffalo County. And with that, we would move to the opponents for LB1043. Mr. Winston. [LB1043]

KEN WINSTON: (Exhibit 17) Good afternoon, Senator Schilz, members of the Natural Resources Committee. I'm not used to looking in that direction, so. My name is Ken Winston. I'm appearing on behalf of the Nebraska Chapter of the Sierra Club. And I think rather...although I'm appearing in opposition, my intention is more to offer an

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alternate perspective on the issue rather than just saying we think this is a bad idea, but rather just say let's think about some other things as well. I guess probably the main point is that we do think that energy policies are an appropriate way of supporting economic development in the state. We just think that this is not the way to go. And we have another...a number of concerns. One is, is this consistent with public power's legal responsibility to provide electricity to all of its customers at the lowest feasible cost? Secondly, we have some concerns about the idea that incentives are the way to produce economic benefits or to bring jobs into a state or into a community. And my experience with that is that there's often a lot of other factors. And one of the factors is the one that Senator Haar mentioned, which is there are some companies that will go specifically to a community that provides green energy that will say, okay, we're going to support solar panels, we're going to support energy efficiency, and we're going to provide you incentives to be more green. And so there are some places that do that. And actually, education and recreational opportunities are often at the top of companies lists, particularly the kinds of companies like Google and some of those companies that everybody wants to attract that have good wage scales and provide lots of good jobs for people. And so I guess...and one of the other things that I have a concern about is just the idea that if you're going to create...if you're going to use incentives and locking in a rate, the thought occurred to me, if a rate is a good rate and you need to lock it in in order to incentivize someone to come here, then perhaps the district should guarantee a locked-in rate to all their customers so that the widow who's on a fixed income also has a locked-in rate so that she doesn't have the rate increase. And so that's something that might be examined as well. And then I guess one of the other things that I wanted to talk about just a little bit is some of our other resources. We have abundant wind resources. We're rated by a number of folks as being the third best wind resource in the United States, but we're not developing it at the same rate as our neighbors. And we think that's an opportunity that we'd like to see developed, and public policies have a lot to do with that. And I know there's some legislation that's being discussed across the hall that's related to that issue. Also, there's opportunities in economic...in energy efficiency. And the council on...I can't even remember what the acronym stands for, but ACEEE estimates that 17 jobs are created for every \$1 million invested. So we would encourage some examination of that. And I guess the final thing that I'd like to suggest is that we'd like to see more examination. We'd like to see study of how energy policies can be used to support economic development. I'd be glad to answer questions.
[LB1043]

SENATOR SCHILZ: Thank you, Mr. Winston. Any questions for Mr. Winston? Senator Carlson. [LB1043]

SENATOR CARLSON: Thank you, Senator Schilz. Ken, in your first paragraph, we think it "goes the wrong direction by using rate increases on all other consumers to benefit special groups of ratepayers." But the section of law says that they can't be charged under what the cost of production is. So how does that cause a rate increase

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on all other consumers? [LB1043]

KEN WINSTON: Well, as the bill was drafted, and I understand there's an amendment that's going to address the incremental cost, but I haven't seen that yet. But as the bill was drafted, if I'm, well, just a typical ratepayer--which I am--and I end up paying a penny more a kilowatt--kilowatt hour I guess is the way that it's termed--if I end up paying 9 cents and the other ratepayer is locked into a rate of, I don't know, 3 or 4 cents--I don't know what the rate is going to be--then that means that my rate has gone up and, according to the bill, their rate would not go up. And now I may be able to adjust to deal with that, but somebody...like I said, somebody on a fixed income who's dealing with things like medication and what have you that they have to pay for, they may not be able to adjust to deal with that. [LB1043]

SENATOR CARLSON: Well, I think it's an unfair criticism because I asked specifically if over a five-year period, if it's a five-year lock-in, whether or not those costs would be considered because we might expect them to be a little bit lower in the first year than they are in the fifth year, so was all that considered in terms of setting the five-year rate, and I believe it is. And if that's set at cost and not below cost, then the inference that it's going to make the rates go up on other people I think is not correct. And so I just disagree with that statement in your letter because I think it's an unfair statement. [LB1043]

KEN WINSTON: And, Senator Carlson, the last thing I would do is to get into a disagreement with you in public. So I'd be glad to have a conversation with you. But I guess here's my perspective on it. And I'm wondering how you can guarantee that you're not going to go over cost over a five-year period when we've seen...and someone can correct me if I'm wrong, but it's my recollection we've seen almost 40 percent rate increases in the last five years. And how can you guarantee that you're not going to go over cost? And I understand that it may be a good-faith effort to do that, but I just don't understand how that could be...how you can guarantee it. [LB1043]

SENATOR CARLSON: Well, I understand you're not really asking me a question because you can't. [LB1043]

KEN WINSTON: No, I'm not asking you a question, definitely not. [LB1043]

SENATOR CARLSON: But that's maybe a poor rule. But all I'm saying is I think that is an unfair statement and that if, now if, if, if they charge a rate in that first year knowing that that rate is going to escalate over the five and, in fact, they're not charging something that's at cost for that five years, I'd be against it too. I don't see that in here. But you bring out a good point and somebody will probably reemphasize it. They're going to figure the costs appropriately so that doesn't happen. [LB1043]

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KEN WINSTON: And I understand there's been some discussion about that. Like I said, I have not seen that amendment and as my understanding of the way the bill was drafted, the rates that we have in 2011 I'm not sure were anticipated in 2006. I guess it was 2012. I'm a year behind already. But I'm not sure that the rates that were...that existed five years ago were necessarily anticipated at that time. And I guess that's my concern. [LB1043]

SENATOR CARLSON: Well, it's okay that you brought it forward because it will probably cause people to focus a little bit more to make sure that the proper rate is charged, but I believe it will and then I think it's good for economic development. So thank you. [LB1043]

KEN WINSTON: Well, and as I said, my main focus is just to try and bring a little bit different perspective to this issue. [LB1043]

SENATOR CARLSON: Okay. [LB1043]

KEN WINSTON: Thank you. [LB1043]

SENATOR SCHILZ: Thank you, Senator Carlson. Senator Smith. [LB1043]

SENATOR SMITH: Thank you, Senator Schilz. Mr. Winston, in going along with what Senator Carlson was talking about, in your first paragraph you talked about that you oppose rate increases that would be imposed on other consumers that would benefit special interest. And I know you being consistent in your train of thought, how does that translate into the, you know, burdensome cost that would be related to sustainable energy mandates and environmental regulations that would be imposed on consumers if we were going after the sustainable energy market? [LB1043]

KEN WINSTON: And, of course, as I said to Senator Carlson I've been around long enough to know that it's a bad idea to disagree with a senator while in public, but here's my perspective on this. I guess I would probably disagree with some of the characteristics and the characterizations that you've made about renewable energy. And, frankly, I think...and I wish I'd brought some of the charts and things related to renewable energy with me, but the cost of generating wind energy right now is very low. And so and one of the benefits of wind energy, for example, is the fact that the fuel cost does not escalate. And so...and that's one of the biggest reasons why rates have gone up. So that's one of the things that we'd like to encourage is rather than going this direction and focus on incentives like this, let's focus on incentives for things that have benefits for what I believe are a wider variety of consumers and a wider variety, a larger spectrum than the state of Nebraska. [LB1043]

SENATOR SMITH: But there are things that are said about figures and data and we

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know that that can always, you know, what you present I think the other side can present as well to demonstrate that there is not necessarily an advantage of the sustainable energy when it comes to cost per kilowatt hour. But let's just say all of the above. We've heard that mentioned quite a bit, all of the above. So what's wrong with if there is excess generation at a generating facility, to be able to sell that at margin to incentivize companies to come in and to create jobs? And those jobs in turn create additional jobs in the service industries. Those folks will go and they will purchase energy. And the more people you have purchasing energy, it reduces the overall cost per consumer. And then through prosperity, you have your sustainable measures. [LB1043]

KEN WINSTON: Well, I guess I would phrase it differently. I would say that we can create prosperity through sustainability and that part of sustainability is the idea that we're going to be able to sustain something into the future. But let me just address a little bit of a couple of things. And I'm sorry if I'm...I'm getting old, Senator, I'm starting to lose my train of thought more easily. But so if I...the idea that we're going to use renewable energy, for example, to create economic benefit. Okay. I remember the point I was going to try and make. We currently can use the lower rates. There's an economic development incentive rate that's in statute. And that's this statute that we're amending that LB1043 would amend. So that provision is already in statute. That's already in law. So we can do that right now. We can offer an incentive rate for a business to come to the state of Nebraska right now. My concern is that the cost as the bill was drafted is that the cost of energy is going to be passed onto other consumers and that as rates increase and that the folks that are getting the special rate are not sharing in those costs. That was my concern. But I guess...and I'd be glad to elaborate more about how I think renewable energy provides economic benefit to the state. [LB1043]

SENATOR SMITH: I'll pass on that. Thanks. [LB1043]

KEN WINSTON: Sure. [LB1043]

KEN WINSTON: Okay. [LB1043]

SENATOR SCHILZ: Thank you, Senator Smith. Any other questions for Mr. Winston? Mr. Winston, thank you for your testimony today. [LB1043]

KEN WINSTON: Thank you. [LB1043]

SENATOR SCHILZ: Further opposition testimony to LB1043. Welcome to the Natural Resources Committee. [LB1043]

MARK VASINA: Thank you, Senator. My name is Mark Vasina, M-a-r-k V-a-s-i-n-a. I'm president of Nebraskans for Peace, and I'm here to register in opposition to LB1043. In

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addition to peace issues, Nebraskans for Peace has a long history of looking at civil rights, human rights, and economic justice issues, including tax policy. And I think it's important that we give a close examination to this bill. You know, I think that Nebraskans for Peace fundamentally agrees with the positions that Ken Winston expressed with the Sierra Club. I want to focus on a hopefully brief response to the last series of questions, starting with Senator Carlson, about questioning whether other ratepayers are disadvantaged by this bill. I think it's...I have enough economics training to accept the argument that the incremental cost is a reasonable price to charge for a large, new consumer of electricity, of power. And the amendment that was proposed by the NPPD person at the beginning sounds like a good amendment to clarify that. I think the question of...well, and given that a public power district has set this special discounted rate at a comfortable level with respect to their incremental cost of generation, I can accept the argument that that doesn't harm other ratepayers. The question, though, does arise over a five-year horizon. What happens when that cost structure which is built into the models and modeled, you know, incredibly well by the public power districts, what happens when that cost structure shifts which requires them to look at new rates? I suggest that in most of those instances that incremental cost is going to shift as well. And clearly, they're modeling variability in that, volatility in that, and looking down the road five years with a reasonable expectation. But given current volatilities in power costs and the fact that even historical volatilities can't capture all the possible future volatilities that another oil shock or peak oil or some fundamental change in natural gas generation in this country, all of these things even over a five-year window can produce a shock to Nebraska Public Power District. And when that happens and that incremental cost shifts far enough that a fixed-in, discounted rate now falls below that cost, at that point in time all of the other ratepayers are then subsidizing these discounted rate receivers. And I think it's important that if you're going to move forward with this bill that you not only adopt the amendment suggested by the first proponent, but that you also build in a safeguard that should the power districts' model show that the incremental costs have increased beyond the locked-in rate, that at that point in time even within that five-year period the cost could be adjusted. That, only that, protects all the ratepayers. Only that gives you, Senator Dubas, the ability to say to the ratepayers in your district or in the state that there's no way this is going to negatively impact the other ratepayers. You have to build in that safeguard. Right now the way it's written with a percentage increase that matches the general rate increase, you know, there's that protection built in. If they have to raise it 20 percent to all other ratepayers, that may require an adjustment to the discounted ratepayers. I hope that sounded clear as an explanation as to how this bill left unamended could in fact harm general ratepayers. Thank you. [LB1043]

SENATOR SCHILZ: Thank you, Mr. Vasina. Any questions for Mr. Vasina? Seeing none, thank you for your testimony. [LB1043]

MARK VASINA: You're welcome. [LB1043]

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SENATOR SCHILZ: Any other opposition testimony to LB1043? Okay. Any neutral testimony on LB1043? Neutral testimony? Seeing none, Senator Langemeier, you're welcome to close on LB1043. [LB1043]

SENATOR LANGEMEIER: One should always leave on a good note. I want to talk a little bit about the idea of the incremental costs. I think Nebraska Public Power is smart enough to put that in their contracts that if those incremental costs get out of whack that they're going to be able to adjust those. So I think that's important. I think the amendment that you've all heard kind of took care of some of Mr. Winston's concerns. I think we've wrapped those up in that amendment. And the third thing I do want to talk about, and it's a little off subject but I want to do it publicly, is there is some undertow or discussion out there that this bill was introduced on behalf of TransCanada because of their large load requirements. And I wanted people to know that that is not the case nor would TransCanada qualify under the other components that make this an economic tool. They don't qualify nor have they applied. And so I want to dispel that little rumor that's going on out there that this is all for them, because it's not. They've got their own issues to worry about and they can address those. So with that, I thank the committee for their time. I thank everybody that came and testified. I think it's a very important part of this process. And if there's any further questions, I'd be more than happy to answer them. [LB1043]

SENATOR SCHILZ: Any questions for Senator Langemeier? Senator Smith. [LB1043]

SENATOR SMITH: Thank you, Senator Schilz. Senator Langemeier, thanks for bringing this bill. And, you know, just energy is the lifeblood of economic growth and prosperity and I think it's...whatever tool we can provide to our public power companies to remain competitive and to attract new businesses I think is a great thing. So thanks for bringing this. [LB1043]

SENATOR SCHILZ: I'm not sure that was a question but thank you, Senator Smith. Senator Carlson. [LB1043]

SENATOR CARLSON: Thank you, Senator Schilz. This really isn't a question aimed at you. I brought this up before, and some get uncomfortable when I do but I'll do it again. We've seen that our position on power rates in our state has deteriorated in our position from fifth to ninth or tenth. And so as long as I'm in the Legislature and we have these bills come forward, I'll keep bringing this up because we want that competitive position to return so that our people in fact are amongst the lowest ratepayers in the nation. And hopefully in some time we'll be headed back in the direction of a better position than we are today. I have confidence that we're going to try. [LB1043]

SENATOR LANGEMEIER: Can I address that? [LB1043]

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SENATOR CARLSON: Yes. [LB1043]

SENATOR LANGEMEIER: Well, I think as you look...there's so many factors in why our rates have made that adjustment. Number one, we need the economy of the US to improve. As that economy improves and we have the opportunity to sell that excess power outside of Nebraska, as the economy improves, the demand improves, the ability to sell it improves, and that helps us to get back to that lower rate. And so...and also you have just a lot of federal impact on the industry right now that I think over time will settle out and will continue...will stop the increased regulation that just continues to exponentially expand I think will settle out and I think that will help. [LB1043]

SENATOR CARLSON: Well, I hope you're right. I think that other states face the same thing that we do in terms of the economy. And so...but we may have slipped because of some investments that we've made in our system and hopefully that will iron itself out over the next few years. Thank you. [LB1043]

SENATOR SCHILZ: Thank you, Senator Carlson. Any other questions for Senator Langemeier? Senator Langemeier, thank you very much. [LB1043]

SENATOR LANGEMEIER: Thank you. [LB1043]

SENATOR SCHILZ: And with that, we will end the hearing on LB1043. And I will turn the hearing back over to Senator Langemeier. [LB1043]

SENATOR LANGEMEIER: We'll now open the hearing on LB1092. Senator Fulton, welcome to the Natural Resources Committee. [LB1092]

SENATOR FULTON: (Exhibit 18) Thank you, Mr. Chairman. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I represent District 29 here in the Legislature. I bring to you LB1092. I think you should have all received a handout. Okay. Very good. LB1092 provides specific authority to the Department of Environmental Quality to disseminate information and conduct public education regarding the proper disposal of light bulbs that contain mercury. I've introduced this bill due to the implementation of federal law, specifically the Energy Independence and Security Act of 2007, that effectively phases out what we regard as the common incandescent light bulb and replaces that market with compact fluorescent light bulbs. According to the US Environmental Protection Agency, over 290 million CFLs were sold in the United States five years ago. This number has and will continue to rise annually, especially as one will soon be unable to purchase the standard incandescent bulb at any commonly used wattage within a matter of a few years under federal law. According to the EPA, many CFLs currently being produced contain a hazardous amount of mercury vapor. Any amount greater than 0.2 milligrams per liter is considered under both federal and

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Nebraska regulation to be hazardous waste. As such, these CFLs are subject to the federal universal waste rule which is mirrored under Nebraska DEQ regulations and requires recycling of these universal waste lamps. Although it has certainly been argued that due to the efficiency of CFLs, the aggregate amount of mercury in the environment is diminished as a result of burning less coal, the influx of CFLs on the domestic market localizes the problem of mercury handling and disposal to the home of every Nebraskans and every landfill in our state, as the Association of Lighting and Mercury Recyclers estimates that fewer than 2 percent of CFLs are actually recycled. One need only review the EPA's publication entitled "What to Do if a Compact Fluorescent Light Bulb or a Fluorescent Tube Light Bulb Breaks in Your Home" to discover the seriousness of the potential for exposure to mercury vapor within your home, and that's the handout that you have. Assuming the Association of Lighting and Mercury Recyclers estimates are accurate, it is safe to say that the majority of Nebraskans are unaware of the potential hazards of CFLs. Since there is little we can do to reverse the trajectory of the lighting industry and federal regulation, I think it is incumbent on us as a state to at least ensure that there is adequate public education to minimize the risk of mercury vapor exposure in the homes of Nebraskans and diminish mercury emissions in our soil through leaching and landfills. I, therefore, respectfully request the committee's advancement of LB1092 and I'll... [LB1092]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB1092]

SENATOR HAAR: The description of the bill...thank you for bringing this bill forward, the description of the bill says "require information and training," and your description more just as NDEQ can disseminate this kind of information. Am I understanding this wrong? [LB1092]

SENATOR FULTON: Say again. Am I...maybe I'm misunderstanding. You're saying that the description of the...you mean the summary? [LB1092]

SENATOR HAAR: Yeah. It says...well, no the bill itself, LB109...require information and training regarding...so the require, is that a mandate then to NDEQ to provide this information or... [LB1092]

SENATOR FULTON: The short answer is yes and I'll just... [LB1092]

SENATOR HAAR: Okay. [LB1092]

SENATOR FULTON: We can go to the bill, "The department shall have and may exercise the following powers and duties." And what I'm proposing to do is to add to (6), which is page 3 of your bill, simply "including the proper disposal of mercury-containing light bulbs." [LB1092]

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SENATOR HAAR: Okay. Thanks. [LB1092]

SENATOR FULTON: So how they choose to do that, that still would be up to them. [LB1092]

SENATOR HAAR: That's up to them. [LB1092]

SENATOR FULTON: But they...and there would be a mandate in that they shall have this responsibility. [LB1092]

SENATOR HAAR: Gotcha. Thanks. [LB1092]

SENATOR FULTON: And also for the record and toward that question, I think the...you should have received the fiscal note. We received it this morning and indeed there is no fiscal impact which I'm pleased to hear the department thinks they could accomplish this without expenditure of money or more money. [LB1092]

SENATOR LANGEMEIER: Senator Carlson. [LB1092]

SENATOR CARLSON: On the fiscal note there really isn't one because DEQ indicated they could do this with their current...within their current budget. So why is a bill necessary? [LB1092]

SENATOR FULTON: Well, it's a fair question. There's nothing specific to...well, I...there's nothing specific to what I'm adding. That which I'm adding to the law is not addressed. And it will become more prevalent, in fact, it will become universal. These CFLs are going to be used I won't say absolutely, because I think there will be the potential that, you know, incandescents could be used going into the future, but eventually they will be phased out. And so I think that it's important that this is spelled out within the statutes because of the prevalent use of...or the impending prevalence of use of these light bulbs. [LB1092]

SENATOR CARLSON: Thank you. [LB1092]

SENATOR LANGEMEIER: Senator Christensen. [LB1092]

SENATOR CHRISTENSEN: Thank you, Chairman. Senator, you're saying it doesn't matter even the new style fluorescent bulb has small amounts of mercury in it. It's not just the old tubular ones. It's even the current compact ones have? [LB1092]

SENATOR FULTON: I can't say they all do. They all have a certain amount of mercury. These new curly light bulbs, the CFLs, they have a certain amount of mercury. It's

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possible that some of them will have less than .2 milligrams per liter of mercury vapor. It's possible. But I've gone and checked; I've not found any that do. Suffice to say that there are those which you can go and buy at the retail stores now have enough mercury so as to be considered hazardous waste. And I'll tell you where this even came on my radar screen is as I recognized...I saw something on TV about how to dispose of these things and I've done research. And, you know, we have them around our house. And I have kids at my house and I don't like the idea of them being exposed to mercury vapor. And I tried to find out what it is that we in the state are suggesting and it's just different for different locals. And so here in Lincoln there's a place that we can go to recycle them but most people don't know about it. Indeed, there's nothing consistent across the state and that's what prompted this idea. Outside the...regardless of the fact I don't like the fact that we're getting forced to purchase these bulbs--that's for another bill--but at least we should have some mechanism to apprehend data such that we know how to dispose of these things safely, and that's what prompts this bill. [LB1092]

SENATOR CHRISTENSEN: And you're saying incandescent bulbs don't have this but they're being phased out so we got to deal with it. [LB1092]

SENATOR FULTON: Yeah. Right. [LB1092]

SENATOR CHRISTENSEN: Okay. Thank you. [LB1092]

SENATOR LANGEMEIER: Senator Haar. [LB1092]

SENATOR HAAR: Where in Lincoln do you dispose of CFLs? [LB1092]

SENATOR FULTON: Ace Hardware. [LB1092]

SENATOR HAAR: Okay. The one downtown or... [LB1092]

SENATOR FULTON: I think it's any Ace Hardware. [LB1092]

SENATOR HAAR: Okay. Any Ace Hardware. And there's really two things to this. One is if one just breaks; the other is if it burns out, and eventually they will burn out, to not just throw them in the garbage. [LB1092]

SENATOR FULTON: That's a good point. Yeah. The handout that you have received is what to do in the event one breaks. And...anyway, three pages. Then what to do when they burn out. How do you dispose of them? Yeah. I mean, this is...it's not just a safety issue for the people in one's home. It's a safety issue for the trash collector who comes by to get them, and how are these going to be implemented into our landfills. And I'll be frank in saying I don't think the federal government thought through this. In fact, I can point out logical inconsistencies in that document which exhibits they clearly didn't think

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through this. So at a minimum, this seems to be something the Department of Environmental Quality could do. I anticipated there might be a fiscal note. That there isn't a fiscal note tells me they've probably already planned a way to get this done and I'm hopeful that we can because this is...this presents a danger to every Nebraskan. And I don't want to overblow that, but it is a danger. There's a reason why a certain amount of mercury is considered hazardous waste, and we have these in these bulbs that will be prevalent in every household and I don't think Nebraskans know it. [LB1092]

SENATOR LANGEMEIER: Go ahead. [LB1092]

SENATOR HAAR: Well, again, just the way of a statement, not really a question. But the theory at least is that since he's used less electricity that the hazard from mercury is less than burning the coal to produce the electricity from incandescent because when you burn coal, mercury goes in the air. [LB1092]

SENATOR FULTON: Right. Mercury is a by-product of that combustion process and in aggregate...I think I touched on this, in aggregate there is...there would be less mercury put into our atmosphere. It's just that the way that the mercury will enter our atmosphere is...it relegates every household to being a type of EPA, which again I'm positive, and if you read through that document, and we can talk about it maybe afterward, this was not something the federal government thought about, and now our families are put at risk as a result. So we can't enact statute here that changes federal law as much as we'd like to, but we can at least be prepared and inform our citizens about this impending requirement. [LB1092]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much. [LB1092]

SENATOR FULTON: Thank you. [LB1092]

SENATOR LANGEMEIER: (Exhibit 19) You've heard the opening on LB1092. Is there anyone that would like to testify as a proponent? I have a letter from Gene Hanlon with the city of Lincoln in support. Is there anyone that would like to testify as an opponent in opposition? Seeing none, is there anyone that would like to testify in a neutral capacity? Seeing none, Senator Fulton, would you like to close? Waives closing. That concludes the hearing for the day on LB1092. (See also Exhibits 20-21.) [LB1092]