

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

[LB388]

The Committee on Natural Resources met at 1:30 p.m. on Friday, February 1, 2013, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB388. Senators present: Lydia Brasch, Vice Chairperson; Annette Dubas; Ken Haar; Jerry Johnson; Rick Kolowski; Ken Schilz; and Jim Smith. Senators absent: Tom Carlson, Chairperson. [LB388]

SENATOR BRASCH: Good afternoon and welcome to the Natural Resources Committee. I am Senator Lydia Brasch from District 16, Vice Chair of the committee. And I will serve as Chair in for Senator Carlson who is at another committee this afternoon presenting legislation. Thank you for coming here today. Committee members present: to my far left is...to be seated here, Senator Rick Kolowski from Omaha, District 31. Next to him is Senator Ken Haar from Malcolm, District 21. And Senator Jim Smith from Papillion, District 14. Soon to come here, I believe, will be Ken Schilz from Ogallala, District 47. Laurie Lage, the legal counsel; and then to my far right is Barb Koehlmoos, the committee clerk. Jerry Johnson is the next from Wahoo, District 23. And Senator Annette Dubas from Fullerton, represents District 34. Our pages today are Tobias Grant from Lincoln and he is a senior at Doane College. Next to him is David Postier from York who is a sophomore at UNL. Today we will discuss LB388 on our agenda. If you are planning on testifying, please pick up a green sign-in sheet that is on the table at the back of the room. If you do not wish to testify, but would like your name entered into official record as being present at the hearing, there is a form on the table that you can sign. This will be a part of the official record of the hearing. Please fill out the sign-in sheet before you testify. Please print; it is important to completely fill out the form in its entirety. When it is your turn to testify, please give the sign-in sheet to our committee clerk. This will help us make a more accurate public record. If you do not choose to testify, you may submit your comments in writing and have them read into the official record. If you have handouts, please make sure that you have 12 copies for the pages to hand out to the committee. When you come up to testify, please speak clearly into the microphone. Tell us your name and spell your first and last name, even if it is an easy name. And this is Senator Ken Schilz from Ogallala, District 47. I would like to remind everyone to please turn off your cell phones, pagers, or anything else that may beep or make noise. Please remember to keep your conversations to a minimum or take them into the hallway. No displays of support or opposition to a bill, vocal or otherwise, is allowed during a public hearing. We do have a light system here. We may not need it today seeing the...there is not that many people in the room, but should we need it, that...when necessary, you'll be given a total of five minutes to make your point to the committee. The light will start out green; and when you have spoken for four minutes, it will change to orange. At that point please conclude your remarks. When the five minutes are up, the light will change to red and you'll be asked to stop. We will now proceed to the agenda, LB388. And presenting for Senator Carlson today is Laurie Lage. [LB388]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

LAURIE LAGE: (Exhibit 1) Thank you, Senator Brasch, members of the committee. My name is Laurie Lage. Oh, I wasn't suppose to touch it. (Laughter) Laurie Lage, L-a-u-r-i-e, last name is L-a-g-e, legal counsel for the committee, here to introduce LB388. The committee introduced this bill on behalf of the Nebraska Public Power District. LB388 would provide incumbent electric transmission owners, who belong to a regional transmission organization, the right of first refusal to complete transmission projects in Nebraska that have been approved. The purpose is to clarify that public power entities in Nebraska have the first right to construct, own, and maintain an approved transmission line. The bill also standardizes the definition of "electric supplier" in several statutes. I'm not going to explain much more from there. There are people here who are going to explain the details and the technical aspects. There is a committee amendment that has been suggested and it should be in your books. And with that, I'll close. [LB388]

SENATOR BRASCH: Thank you, Laurie. Are there any questions from the committee for Laurie? [LB388]

SENATOR JOHNSON: I'd like to try and stump you, but no, I can't. [LB388]

SENATOR BRASCH: Seeing there are none, thank you, Laurie. We will now hear from the proponents of LB388. Will the first proponent please come forward and state your name and spell it for the committee. [LB388]

PAUL MALONE: Good afternoon. My name is Paul Malone, that's P-a-u-l M-a-l-o-n-e. I am the transmission compliance and planning manager for Nebraska Public Power District. I am here today to testify in support of LB388 on behalf of NPPD and the Nebraska Power Association, which is comprised of all electric utilities in Nebraska. I have worked for...at NPPD for 35 years and am involved in all areas of transmission planning, operations, and engineering. I have a bachelor of science in civil engineering from the University of Nebraska-Lincoln, and I am a registered professional engineer in Nebraska. I currently represent NPPD on a number of Southwest Power Pool committees and I've been involved in regional transmission organization issues for the last 17 years or so. SPP is a regional transmission organization subject to the jurisdiction of the Federal Energy Regulatory Commission, or FERC. NPPD, OPPD and LES voluntarily joined SPP in 2009 and we placed our transmission facilities under the SPP Tariff. The SPP Tariff is used to provide transmission service to customers who want to purchase or sell wholesale energy in the marketplace. SPP is headquartered in Little Rock, Arkansas, and provides services to its members in nine states which includes Nebraska, Arkansas, Kansas, Missouri, Oklahoma, Texas, Louisiana, Mississippi, and New Mexico. Now the services they provide include reliability coordination, reserve sharing, studies for generator interconnections, and transmission delivery, as well as providing market services, energy in-balance services and they're in

Natural Resources Committee  
February 01, 2013

---

the process of instituting a new integrated market to start up in 2014. Among other things, SPP is responsible to conduct regional transmission planning studies to determine what transmission line substation additions are needed for the regional transmission system. SPP will then issue a notice to construct to the incumbent utility member. The SPP governing documents have always contained what is referred to as a right of first refusal for the incumbent transmission-owning member to construct any transmission project in their service area territory that SPP determines is needed. However, in July of 2011, FERC issued Order 1000. One of the major requirements of that order is that the right of first refusal must be removed from FERC-approved tariffs and agreements like those of SPP. In addition, FERC requires that qualification criteria be developed that would allow a nonincumbent transmission developer to be selected to build transmission facilities. SPP has determined that it will use a competitive bidding process to select a transmission owner. FERC did provide certain exceptions to the removal of that first right of refusal: (1) it does not apply to projects in the regional transmission plan where there is no regional cost allocation, or regional cost sharing; (2) it does not apply to upgrades to existing transmission facilities such as changing out transmission towers or replacing the wires with larger ones; and (3) and this is a quote from the FERC Order 1000: nothing in the order is intended to limit, preempt or otherwise affect state or local laws or regulations with respect to construction of transmission facilities including, but not limited to authority over siting or permitting of transmission facilities. It's this last item that is the primary focus of LB388 for Nebraska utility members of SPP or a regional transmission organization to retain the right of first refusal to construct transmission line projects in Nebraska that SPP approves as part of the regional transmission plan. Enacting LB388 will preserve state authority over transmission lines to incumbent public power utilities. Some other states have passed or are considering legislation to likewise preserve the right of first refusal for incumbent utilities. It also will ensure that transmission in Nebraska continues to be built by the known utilities with a history for reliability and cost-based rates. It will avoid the need to develop a new regulatory regime such as ratemaking authority, should nonincumbent transmission developers be allowed to construct transmission in Nebraska. It does avoid the potential of creating a patchwork of transmission ownership which could affect reliability of the Nebraska transmission system if nonincumbent transmission developers don't have a proven track record of operating and maintaining transmission facilities. Now the Nebraska transmission system is a interconnected network where the reliability of the entire system can be affected by poor construction or maintenance performance by any line or given facility. This also will avoid the potential that nonincumbent transmission developers might only be interested in flipping the transmission facility to earn a profit by constructing, then selling the transmission facility shortly after completion. This legislation will only apply to the incumbent utilities that are members of a regional transmission organization which currently only includes NPPD, OPPD, and LES. The secondary purpose of the bill is to standardize the definition of electric supplier. Currently there are...your multiple and varying descriptions of which entities would qualify as electric supplier. A consistent definition would clean up the decades of

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

statutory evolution of that definition. Thank you for the opportunity to speak today on this legislation that is important to the transmission reliability of Nebraska. And I'd be glad to answer any questions I can. [LB388]

SENATOR BRASCH: Thank you, Mr. Malone. Are there any questions from the committee? I'll start with Senator Schilz here. [LB388]

SENATOR SCHILZ: Thank you, Senator Brasch. Good afternoon and thanks for coming in. Just a couple of questions to start out. And I'm trying to remember, is the whole state of Nebraska under the SPP? [LB388]

PAUL MALONE: Not the entire state, no, just those three utilities, although we cover the vast majority of the state between NPPD, OPPD, and LES. But there are certain parts of the state that are not members. Municipalities within our areas and some of the far western parts of the state are not members of SPP. [LB388]

SENATOR SCHILZ: Right. So then...so then as...and then we butt up against other regional transmission organizations as well. [LB388]

PAUL MALONE: That's correct. We are interconnected to utilities in North Dakota and Iowa that are different...parts of different organizations. [LB388]

SENATOR SCHILZ: Right. Then, and then the question is...I guess the next question that I have is then as we look at this and see that that's there, it would seem to me that there could be some opportunities to have transmission that wouldn't affect what anything that's going on in the state of Nebraska that if we would export power or something like that could go to other transmission organizations which wouldn't affect how you do things. Would this bill preclude that? [LB388]

PAUL MALONE: Well, I don't believe so. The separate legislation that was already previously approved for wind for export allows for the development of wind projects and transmission that would export that power outside of the state. [LB388]

SENATOR SCHILZ: But this bill would cover the whole state, correct? [LB388]

PAUL MALONE: This bill would cover utilities that are members of a regional transmission organization. [LB388]

SENATOR SCHILZ: Okay. [LB388]

PAUL MALONE: So not the entire state, but a vast bulk of the state, yes. [LB388]

SENATOR SCHILZ: Okay. Thank you. [LB388]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

SENATOR BRASCH: Senator Smith. [LB388]

SENATOR SMITH: Thank you, Madam Chair. Thank you for being here and for testifying. Can you provide a little perspective and background and explain why did FERC issue Order 1000? [LB388]

PAUL MALONE: Well, as FERC stated in Order 1000, they believed that there was this potential that there could be discriminatory practices by incumbent utilities that would result in unfair and unreasonable rates. That was their reasoning. It is under review by the courts now as to whether that will stand up or not. But that was their rationale for issuing it. I should also mention that Order 1000 covered a great deal more than just the right for first refusal. If you'd like, I'll expound on that, but it's not pertinent to this bill. [LB388]

SENATOR SMITH: If it's not pertinent, that's fine. [LB388]

PAUL MALONE: Okay. [LB388]

SENATOR SMITH: Thank you. [LB388]

SENATOR BRASCH: Senator Haar. [LB388]

SENATOR HAAR: Thank you. Would you clarify...and I'm not using the same right terms here... [LB388]

PAUL MALONE: Sure. [LB388]

SENATOR HAAR: ...but this only applies if the transmission is part of a SPP master plan. Does that...or not? [LB388]

PAUL MALONE: That's right. This would only apply to those transmission facilities that are in the SPP regional transmission plan. And SPP is the responsible entity to develop those plans now because we're a member of them and turned over our facilities to their study. They'll do the studies and determine what transmission additions are needed. [LB388]

SENATOR HAAR: Okay. So,... [LB388]

PAUL MALONE: And any...I'm sorry, it's only those facilities that would receive some kind of regional cost allocation. So projects that are needed for reliability would receive cost allocations. There are some projects that might be sponsored by a utility for various reasons. That wouldn't receive cost allocation and they would still have the right of first

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

refusal. Other projects needed for the various generator interconnection studies, they don't receive regional cost allocations so they're not subject to that. But this would be the regional plan that SPP develops and approves at least once a year. [LB388]

SENATOR HAAR: Okay. So if for some reason...well, I know...an area where we didn't have successes having Clean Line Energy come into Nebraska; it ended in Iowa instead. So if you had a company like Clean Line Energy coming across and they wanted to develop transmission, it wasn't part of SPP's regional plans, does this still apply the right of first refusal, or not? [LB388]

PAUL MALONE: Well, in that case, now the Clean Line Energy projects, even the ones that are proposed in the Southwest Power Pool, will not receive any regional cost allocation. Those are referred to as "merchant" projects. Clean Line Energy is going to fund that entirely themselves through their investors. [LB388]

SENATOR HAAR: Right. [LB388]

PAUL MALONE: So that project would not have a right of first refusal issue. [LB388]

SENATOR HAAR: Okay. [LB388]

PAUL MALONE: So it would be whatever the existing statutory framework is that would govern who can build that project. [LB388]

SENATOR HAAR: Okay, gotcha. Okay, and then one of the reasons you stated for doing this was so that you wouldn't have to promulgate new rules and regulations and so on. But that almost implies, then, that although the public power has the right of first refusal, they will indeed take that right of first refusal, or not necessarily. I mean, would there be a situation in which the right of first refusal is there but let's say NPPD or LES, whatever, decided not to take it? [LB388]

PAUL MALONE: That could... [LB388]

SENATOR HAAR: Or is that unlikely? [LB388]

PAUL MALONE: That could happen. I see it as very, very unlikely. But even the bill does provide that the other incumbent utilities could step forward and say I will build it. For example, if NPPD declined to build a project, the way my understanding of the bill is that OPPD or LES could then step forward and say, well, they would be willing to build the project as an incumbent utility in Nebraska. [LB388]

SENATOR HAAR: Okay. So let's say that the line was going to go through OPPD, since they're vertically integrated. They decided not to do it, then NPPD or LES could step into

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

that. [LB388]

PAUL MALONE: Right, per the bill. Now I'm not trying to speak to any service territory... [LB388]

SENATOR HAAR: No, no, it's theoretical, but I'm just... [LB388]

PAUL MALONE: Theoretically, yes. [LB388]

SENATOR HAAR: ...trying to understand what the parameters of the bill are. [LB388]

PAUL MALONE: That's correct, right. [LB388]

SENATOR HAAR: So if nobody decided to exercise the right of first refusal, then you would still have to go through that other process of setting up...or the...who would do that? Who would set up the rules, then, that this transmission... [LB388]

PAUL MALONE: Well, SPP has gone forward to set up that very rule for the other states that don't have right of first refusal to solicit proposals from qualified transmission developers, along with incumbent utilities to submit proposals to SPP to be evaluated and select the best...I'll say the best bidder. [LB388]

SENATOR HAAR: So if someone came in and they wanted to do this, nobody took up the right of first refusal, it would still have to go through SPP to make sure it was quality, it's sufficient and all those kinds of things. [LB388]

PAUL MALONE: Well, I think this bill, as my understanding, precludes any private developer from coming forward to build one of these projects. It rests...that responsibility rests with the incumbent members, incumbent utilities in Nebraska to take up that responsibility as members of SPP. [LB388]

SENATOR HAAR: Okay, so they're required to take that up. It's not a matter of...it's not really right of first refusal; it's that they're required to take that up. [LB388]

PAUL MALONE: Well, that's right, part of our membership agreement: We're required to build these projects unless there are, for some regulatory reason or financing reason or something like that, would say that we're not in a position to accept that responsibility, then one of the other incumbents could step forward and take on that responsibility. [LB388]

SENATOR HAAR: Or in the end, a private developer could take that on. [LB388]

PAUL MALONE: To the extent that's permissible under the Nebraska statutory

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

framework. [LB388]

SENATOR HAAR: Okay. Okay, and if...under LB1048 though, isn't it true that if a private developer builds transmission, you know, after the right of first refusal and all that, that they can't use eminent domain, is that correct? [LB388]

PAUL MALONE: Okay, I think the issue of LB1048, as I understand it... [LB388]

SENATOR HAAR: Yeah. [LB388]

PAUL MALONE: ...is really a separate issue than right of first refusal. The transmission associated with LB1048 is for a wind for export project... [LB388]

SENATOR HAAR: Right, exactly. [LB388]

PAUL MALONE: ...is to build the transmission to get from the windfarm to the existing transmission network. That may be a short line; it may be, you know, a number of miles of transmission line. But it's only to build that connector line, what we sometimes refer to as a generator lead line to get from the generator, the windfarm, to the existing line. That's what LB1048 covers. And this is really to build the kinds of projects that are needed for reliability, to resolve congestion, that are part of the network. [LB388]

SENATOR HAAR: Um-hum. I'm just trying to understand this. I think LB1048 would also apply, though, to something like the Clean Line Energy, had they decided to come into Nebraska. [LB388]

PAUL MALONE: I believe so, yes. [LB388]

SENATOR HAAR: So it's not just... [LB388]

PAUL MALONE: May be a wind-for-export project, yes. [LB388]

SENATOR HAAR: Yeah, yeah, okay. So let's say in western Nebraska, kind of on the map, which part is not included in one of the LES, OPPD, or NPPD? [LB388]

PAUL MALONE: Well, really two parts to the answer, not to take up too much time. But NPPD has transmission lines that do extend all the way to western Nebraska... [LB388]

SENATOR HAAR: Sure. [LB388]

PAUL MALONE: ...into the Chadron area, to Scottsbluff. But there...we don't serve all of the customers out in western Nebraska, I'll just say west of the Ogallala area. Tri-State Generation and Transmission... [LB388]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

SENATOR HAAR: Um-hum. [LB388]

PAUL MALONE: ...Cooperative, headquartered out of Denver, Colorado, is really the responsible entity to serve some of the other cooperative and public power districts out in western Nebraska as the wholesale supplier, and they operate the distribution network. [LB388]

SENATOR HAAR: Um-hum. [LB388]

PAUL MALONE: Now extreme western Nebraska, in Banner County and a couple other counties there, are really part of what we refer to as the western interconnection. [LB388]

SENATOR HAAR: Right, yeah. [LB388]

PAUL MALONE: Not the eastern interconnection. [LB388]

SENATOR HAAR: Right. [LB388]

PAUL MALONE: So electrically they're not connected. We cannot transfer power across that. So those areas we don't...NPPD does not serve. But that's not to say wind can't be developed in there; that projects couldn't be brought back into the eastern interconnection. So I don't want to get too far... [LB388]

SENATOR HAAR: Right. There is some great...yeah, some great wind potential out there, obviously. [LB388]

PAUL MALONE: Yes, there is. [LB388]

SENATOR HAAR: So if a private developer wanted to build out there, then this law really doesn't apply because there is no one operating in that area? [LB388]

PAUL MALONE: Well, there are other entities like Tri-State would be operating in that area. [LB388]

SENATOR HAAR: Right. Yeah, but they're private so. [LB388]

PAUL MALONE: Well, they're a cooperative, yes. Right, private cooperative. [LB388]

SENATOR HAAR: Okay, a cooperative. [LB388]

PAUL MALONE: Well, I guess what I haven't said, if a wind development wanted to be

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

developed in Banner County it could...they could have a couple of options. It could be connected to the eastern interconnect and brought into, say, the Scottsbluff area, in which case, NPPD could get involved and say we'll tie that to the eastern interconnection. Or, if they had a customer in Colorado and wanted to deliver that wind power into Colorado, then that would be on the western interconnection... [LB388]

SENATOR HAAR: Right. [LB388]

PAUL MALONE: ...and NPPD has no facilities on the western interconnection so it would be the utilities, I believe it would be just Tri-State would be the entity to go for...go towards and say, well, we'd like to interconnect and deliver it over into the Colorado area. [LB388]

SENATOR HAAR: But what if there were a private developer? Would Tri-State get the right of first refusal or not in that area, according this law? [LB388]

PAUL MALONE: Well, in my view, the wind development under that scenario would come under LB1048. And the wind developer could be the entity responsible to develop the wind project and the transmission for that project. And the right of first refusal would not come into play for a wind project. [LB388]

SENATOR HAAR: Okay, okay, well, that helps me better understand. And then in the area covered by NPPD, OPPD, or LES, if someone did come in, I mean, basically you've said that...that one of those entities would take over the right of first refusal, I mean, so it's almost a...not an issue of trying to...let's say I'm a private developer that wanted to come into that area. Because of the right of first refusal and that we have the public power districts already there, it's really a nonissue for me. [LB388]

PAUL MALONE: And again, I...the right of first refusal only comes into play to projects that SPP is going to provide regional cost-sharing on. [LB388]

SENATOR HAAR: Okay, right, got that. [LB388]

PAUL MALONE: All of these wind projects have no regional cost-sharing whatsoever so there's no right of first refusal associated with those projects. So they're really separate and distinct. [LB388]

SENATOR HAAR: Okay, so for a merchant projects, those are kind of the two...merchant projects versus regional SPP. Okay. [LB388]

PAUL MALONE: Right, right. And to the extent, you know, that the last part of this bill was to clarify the definition of electric supplier, to the extent that that, you know, hasn't sufficiently been resolved to distinguish between these LB1048 projects and the right of

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

first refusal, I guess that would be something that needs to be examined further.  
[LB388]

SENATOR HAAR: Okay. Well, thanks, appreciate it. [LB388]

SENATOR BRASCH: Senator Kolowski. [LB388]

SENATOR KOLOWSKI: Madam Chair, thank you. Mr. Malone, just from the comments made with the senator before me, just from Senator Haar's comments, I wanted just to make sure that there are no concerns about the bill interfering with the private development of windfarms. In general, is that a correct statement? [LB388]

PAUL MALONE: That was certainly the intent, that there was to be no interference between the right of first refusal legislation and the LB1048 wind for export. If there is a need, if there are concerns about that definition that need to be addressed, I guess that will be something we would want to get resolved. [LB388]

SENATOR KOLOWSKI: That was the intent, and you're comfortable that that is correct?  
[LB388]

PAUL MALONE: We felt coming in that there wasn't a conflict. I understand others maybe had that concern, so we're willing to sit down and discuss that. [LB388]

SENATOR KOLOWSKI: Okay. Thank you. [LB388]

PAUL MALONE: I'm not fully aware of all the...it's more of in a legal arena than a technical matter at this point. [LB388]

SENATOR KOLOWSKI: Sure. Thank you. [LB388]

PAUL MALONE: Yep. [LB388]

SENATOR BRASCH: Senator Johnson. [LB388]

SENATOR JOHNSON: Thank you, Senator Brasch. Thank you, Mr. Malone. You talked about some regulations, the SPP would still have the full control...you would have to submit back to them if you took the bid on yourself or got somebody for the building codes and they would have to sign on that it's up to their codes, is that...who has the final oversight that the bid is right and from the standpoint of quality construction and code? [LB388]

PAUL MALONE: Okay. There's a couple parts to that. When SPP does a transmission plan, and they'll come up and propose various projects to go from point A to point B and

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

certain voltage classifications, certain electrical ratings, and they'll ask us as transmission owners to provide them a cost estimate for that kind of a facility, because we have the expertise. That's what we do. The SPP staff doesn't. So we'll provide that cost estimate and it will be folded into the plan; you know, benefits will be determined and cost to determine which projects. But once that project is approved in the plan and that cost would be established as the, you know, baseline cost. And the...whoever, I mean if it's the incumbent utility, meaning NPPD, then we would be expected to stay within that cost. [LB388]

SENATOR JOHNSON: Okay. [LB388]

PAUL MALONE: There's actually a more detailed process. We design the project to our own specifications to meet various codes. We do have to follow the National Electric Safety Code; the state of Nebraska has adopted that. That's, I guess, maybe a minimum threshold. We actually exceed that in a number of areas designing the structure for various wind loading, ice loading, things like that, and capacity ratings. So that design is our own design and we fold that into our cost estimate and are expected to stay within that. If we...there is a process at SPP, if the costs are exceeded by various amounts, the projects can get reevaluated. [LB388]

SENATOR JOHNSON: Okay. Which answers part of my next question, one of the advantages of being able to bid it yourself is you know what you're getting... [LB388]

PAUL MALONE: Right. [LB388]

SENATOR JOHNSON: ...because it's your code and there's that. What other advantages are there for you to be able to be the first right to bid or refuse, based on the scenario that the bigger the field of competition out there in order to get better pricing? [LB388]

PAUL MALONE: Sure. [LB388]

SENATOR JOHNSON: I'll just stop there. I think you're maybe getting the drift. [LB388]

PAUL MALONE: Yeah, I am, I am. Well, a couple of things, public power utilities do have access to taxes at financing, which is an advantage. The other part is that we have cost-based rates. We don't have investors so we don't have to pay a return on investment for those facilities that we're building. Those are the two main aspects of it. And we have a lot of experience. We have the...I guess what I would call "feet on the ground" in that we have crews stationed around the state. We're able to...we generally contract out the actual construction to other entities, probably the same kind of entities a private developer would use, same kind of construction companies. And we'll bid out for the materials as well under the statutory bidding provisions. The "feet on the ground" or

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

our maintenance crews can respond to, you know, restore service when the transmission line is out for any reason and material is on hand. A private developer may or may not have people in the state, and may, if a line is out of service, have to send people a hundred miles away. So that's sort of one of the down sides of responding to reliability issues. Does that answer your question? [LB388]

SENATOR JOHNSON: Yeah. [LB388]

PAUL MALONE: Okay. [LB388]

SENATOR JOHNSON: Yeah. We're fine; thank you. That's all I have. [LB388]

SENATOR BRASCH: Senator Smith. [LB388]

SENATOR SMITH: Thank you, Madam Chair. Kind of a follow-up to a question from before, I think, due to the lack of competitive bidding on these projects by SPP, in your opinion, could there or is there potential for this legislation to cause higher cost of construction for these projects? Is there that potential? [LB388]

PAUL MALONE: Well, I guess higher costs than we currently experience or just higher costs than we might if we had private developers? Is that what you're... [LB388]

SENATOR SMITH: No, I'm sorry, right, if there were no private developers. So, by giving a right of first refusal and blocking out the competitive bidding process by SPP, is there potential for there to be higher costs on these projects? [LB388]

PAUL MALONE: Well, I don't believe so; and a couple reasons, no one, as I was trying to explain, if I didn't do a good job I want to repeat it, NPPD on larger projects bids out a great deal of the projects. For example, we start with engineering and we hire an engineering firm that assists with all of the environmental assessments, line routing, etcetera. They will also assist with construction management. We go out and get competitive bids to build the project; that's the construction crews and all those labor. We do competitive biddings for the structural steel, the conductor, the insulators, etcetera. That's really the same process that any private developer would go through. Now I don't know how I could maybe answer whether they would be in a better position to get a more competitive bid than we were. I don't think so. I think we're pretty well positioned and have had quite a history of working with other, you know, and have successfully built a number of projects in recent years. So in that way, I see it as pretty much an even keel comparison. [LB388]

SENATOR SMITH: Okay, let me...let me see if I can kind of... [LB388]

PAUL MALONE: Okay. [LB388]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

SENATOR SMITH: ...pin that down. That sounds like possible but not probable. I mean, there's still the potential for higher costs on the project. [LB388]

PAUL MALONE: Well, I guess, maybe I'll answer it differently then. There's a potential that we'd be lower cost than the private developer. [LB388]

SENATOR SMITH: Could be, but there's no guarantee. [LB388]

PAUL MALONE: No, until we would, I guess, put it up side by side, I couldn't. Other than the two issues I would say we have definite advantage on, we're going to be looking at using tax exempt financing and we don't have to pay a return on investment to an investor that they're going to have to figure into the cost of building a transmission line. One of the issues I alluded to earlier was it's always a bit difficult to get an apples to apples comparison on building a project unless you make sure that your specifications are exactly the same. You wouldn't want a private developer to come in and say, well, I can build this project. I'll give you more of an example of like in you're building a house and I say I want to build a house that's 2,000 square feet. And you say I'll put that out for bids. Well, you certainly want to have a lot more specifications to that than just 2,000 square feet. You would want to know how much insulation, thickness of the walls, on and on and on. And the same holds true of a transmission line, you'd want to have detailed specifications. If you don't, you're not going to compare apples to apples. And that's one of the difficulties for SPP to come up with those specifications. [LB388]

SENATOR SMITH: So, just for...make certain I understand this, so if SPP went out for competitive bid... [LB388]

PAUL MALONE: Right. [LB388]

SENATOR SMITH: ...NPPD or OPPD would be able to bid on that project... [LB388]

PAUL MALONE: Correct. [LB388]

SENATOR SMITH: ...as well. And if they came in low bid, then they would be awarded the bid. If someone else came in lower than them, then that would be a lower bid. [LB388]

PAUL MALONE: That's correct, yes. [LB388]

SENATOR SMITH: So it's possible for others to bid lower. [LB388]

PAUL MALONE: That's correct, yes. It would be possible, certainly. [LB388]

SENATOR SMITH: Okay. All right. [LB388]

PAUL MALONE: And that's why I emphasize it's important to make sure you're comparing apples to apples on all those bids, that you're bidding on exactly the same type of project. Right now that's one of the difficulties. SPP is proposing that they won't have those kind of detail specifications, which I personally have raised some issues with them that they need to do that to make sure they have the same bid. If we designed our structures to withstand a hundred mile an hour wind and an inch and a half of ice, I sure don't want a private developer coming in and say, well, I'm going to design it for 80 miles an hour wind and one inch of ice because that's not a comparable bid whatsoever. So that's step one. And if you get there, then yes, you could pursue bids and see who is lower. There are other factors they're going to consider besides cost, that is operating experience, whether they have a qualified control center and operating staff, a number of those more qualitative figures too. [LB388]

SENATOR BRASCH: Senator Schilz. [LB388]

SENATOR SCHILZ: Thank you, Senator Brasch. I think just one more question I had. As we look at the definition of electrical supplier and what that brings into that, does that definition, when you put it together with some of the other language in the bill, basically preclude a private developer from even having any way to apply to do this? [LB388]

PAUL MALONE: Well, the intent was, and again, I'm maybe going to have to defer as it's more of a legal question... [LB388]

SENATOR SCHILZ: Sure, I understand, and that's why if there's somebody that can answer it. [LB388]

PAUL MALONE: ...than a technical person, but the intent was that...to clean that up such that electrical supplier would be just the public power utilities with respect to this right of first refusal. And that it would not permit a private developer to participate in these kinds of reliability projects that, you know, were a part of this cost allocation issue. [LB388]

SENATOR SCHILZ: Okay. And then...and then to go beyond that, you know, and I know we've talked about wind and that stuff, and I know we've talked about... [LB388]

PAUL MALONE: Right. [LB388]

SENATOR SCHILZ: ...you know, about those projects that are...you know, that has money coming from the SPP to help do that, I think. What happens if there would be other generation in those areas that are outside the SPP footprint? Let's say it's another

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

generating facility that's not renewable, say it's nuclear or coal? [LB388]

PAUL MALONE: Okay. [LB388]

SENATOR SCHILZ: How would that apply if it's outside the area then? [LB388]

PAUL MALONE: Would that be a generating project that one of the utilities was building? [LB388]

SENATOR SCHILZ: Who knows, it could be, or it could be a private developer that says...goes to Banner County and says, well, I think this is a great place to put it. [LB388]

PAUL MALONE: You know, I'm really not probably qualified to answer that question, I mean, I knew this...we had the wind for export legislation was specifically for wind. [LB388]

SENATOR SCHILZ: Right. [LB388]

PAUL MALONE: And this was just to address the regional transmission organization projects and I'm probably just not qualified to answer how it would apply. [LB388]

SENATOR SCHILZ: Okay. Well, I'll wait and see if somebody else can answer that for me. Thank you. [LB388]

PAUL MALONE: Okay. [LB388]

SENATOR BRASCH: Senator Haar. [LB388]

SENATOR HAAR: Yes. I have no problem with the bill at all, I'm just trying to understand the details. If SPP designates a line or let's say OPPD wants one, it has to go to SPPD...SP...Southwest Power...SPP. [LB388]

PAUL MALONE: Yes, SPP. [LB388]

SENATOR HAAR: Okay, does the Power Review Board still get involved in the process? I mean, aren't they part of that? [LB388]

PAUL MALONE: Yes, they are. I mean, the process, as it works currently, SPP gets the plan approved, and they would issue a written notice to construct to the incumbent utility whether...let's say, NPPD. Then NPPD's normal process would be, you know, pursue the public process of landowner contacts and public officials and etcetera and etcetera, but yes, we would come before the Power Review Board in a normal permitting process

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

to get approval from the Power Review Board to build that project. That doesn't...that still stays in place, yes. [LB388]

SENATOR HAAR: That doesn't change. And then part of the...I think I understand what you're saying about western Nebraska, but there were some people in Banner County that were...had some concerns, and, obviously, you would be willing to meet with them to talk about their concerns. [LB388]

PAUL MALONE: Oh, sure. Yeah. [LB388]

SENATOR HAAR: Yeah. [LB388]

PAUL MALONE: I mean, we're aware that there's a good potential for wind development out there. And there's limit...I would say this about our transmission capacity on the network, western Nebraska is much more transmission limited to put additional generation out there without significant transmission additions. [LB388]

SENATOR HAAR: And so private developers could function in that capacity. [LB388]

PAUL MALONE: Well, they're going to have to meet the same studies... [LB388]

SENATOR HAAR: I understand that. [LB388]

PAUL MALONE: ...if it's going to be delivered into the eastern interconnect. We have far more generation in western Nebraska and Wyoming than we do have load. And most of that generation is moving across the state to serve load in the eastern part. So the difficulty is adding any more generation out west; it means we need a lot more transmission to make that happen. So that's always a difficulty. And we are building more. We recently just been authorized by SPP to construct some major new transmission that will be from Sutherland, Nebraska, where Gentleman Station is up through Cherry County and then east over into the Neligh area, and then on over clear to Norfolk. So that will be a big enhancement to the network to allow future generation to be added in western Nebraska. [LB388]

SENATOR HAAR: Good. Well, thank you. [LB388]

PAUL MALONE: You're welcome. [LB388]

SENATOR BRASCH: Seeing there's no more questions here, I want to thank you for your testimony. You have answered your...all these questions very thoroughly and we're very interested in learning more. Thank you very much, Mr. Malone. [LB388]

PAUL MALONE: All right, thank you. [LB388]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

SENATOR BRASCH: Next proponent. How many other proponents do we have in the room wanting to testify today, if you'd raise your hands. Very good. Any opponents, I'm just...thank you very much. Would you please state your name and spell it. [LB388]

SHELLEY SAHLING-ZART: Absolutely. Senator Brasch, members of the committee, for the record my name is Shelley, S-h-e-l-l-e-y, Sahling-Zart, S-a-h-l-i-n-g, hyphen, Z-a-r-t. I'm vice president and general counsel for Lincoln Electric System. And I'm just going to follow up on a couple of things that came up. Mr. Malone did an excellent job of describing the bill and he is really the SPP expert, so you can defer those questions to him. But I wanted to hit a little bit on the discussion about the wind for export because I was heavily involved in the development of that legislation. First of all let's be clear, this bill was only designed to address the right of first refusal for RTO-ordered transmission projects. Okay? So basically in the SPP. We really weren't intending to impact anything beyond that. With regard to the changes in the definition of electric supplier, we did have some discussions just this morning about maybe some possible unintended consequences; we're going to look at that. And if they are, we'll fix that, because that certainly wasn't our intention to address or to impact anything other than SPP-ordered projects. That was really our sole focus of the bill. However, with regard to the wind for export, taking you back a couple of years to when we did that, this was...the whole idea of transmission to support wind for export was a fairly significant discussion. To the extent that you have a private entity building transmission in the state, it raises a couple of concerns. First of all if they're interconnecting with us, we want to make sure we've got people, reputable companies that know how to own and operate transmission. The whole routing issue comes into play; the public power entities have the power of eminent domain. We have very public, very open processes for routing transmission lines, which I think in light of the discussions we've been having in the last couple years on eminent domain, I think that's incredibly important. I think we've done a really good job of that. The issue came up with regard to private entities. If they don't have the power of eminent domain, and LB1048 clearly says they do not... [LB388]

SENATOR HAAR: That's correct. [LB388]

SHELLEY SAHLING-ZART: ...so then how do we get transmission built to support those? And what we did in LB1048 was to establish a procedure where you would develop a joint transmission development agreement between, basically, the wind developer and whoever the public power entity was in that area to help build it. Thereby, the result of which is you could use the public power entity's power of eminent domain to help get the line built; but you'd have the wind developer footing the cost. Okay? And then we would be owning and operating, per that development agreement, we would be owning and operating the transmission as a result of that because that's what we do and we have the expertise to do that. So by history, that's kind of what we looked at in LB1048. We're certainly not trying to get in the way of wind for export with this bill; let

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

me be absolutely clear about that. And if we are in any way, we'll fix it. Okay? I just wanted to clarify those couple of points. I'd be happy to answer any questions. [LB388]

SENATOR BRASCH: Any questions? Senator Haar. [LB388]

SENATOR HAAR: Thank you. Yeah, we had quite a bit of discussion a few years ago. So let's say that there was a place that power...the transmission is built by a privately owned company. Who would regulate the charges on that line? Do you know that? [LB388]

SHELLEY SAHLING-ZART: Charges in terms of... [LB388]

SENATOR HAAR: Transmission charges. [LB388]

SHELLEY SAHLING-ZART: Oh, Paul would probably be a better person to address that. If they're not a member of an RTO, I imagine they would. But... [LB388]

SENATOR HAAR: I'm thinking again of that western part of Nebraska where it may go into the western part of the grid, so. Okay, I'll wait... [LB388]

SHELLEY SAHLING-ZART: Typically, I would think you're going to have...well, I don't know. I mean, they'd probably, in that case, work out something with Tri-State where Tri-State was managing the transmission for them, but I could be wrong about that. [LB388]

SENATOR HAAR: Okay. Thank you. [LB388]

SENATOR BRASCH: Senator Kolowski. [LB388]

SENATOR KOLOWSKI: Thank you, Madam Chair. Just a general question to try to get an answer to something. Are there any privately owned transmission lines that pass through the state that are not connected to the grid in Nebraska? [LB388]

SHELLEY SAHLING-ZART: I believe, and again Paul would probably be better, I think there's one segment that kind of crosses the state, but I don't think it terminates in the state. [LB388]

PAUL MALONE: No, it does not. [LB388]

SENATOR KOLOWSKI: It starts somewhere else and ends somewhere else and just crosses our territory. [LB388]

SHELLEY SAHLING-ZART: Yeah, I think it traverses a part of the state, but it doesn't

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

have a terminus here. [LB388]

SENATOR KOLOWSKI: And no agency in Nebraska regulates that particular line that crosses the state? [LB388]

SHELLEY SAHLING-ZART: Not that I'm aware of. I'm sure they... [LB388]

SENATOR KOLOWSKI: Doesn't it impact our grid or anything like that? [LB388]

SHELLEY SAHLING-ZART: No. [LB388]

SENATOR KOLOWSKI: Thank you. Thank you. [LB388]

SHELLEY SAHLING-ZART: To the extent that they would interconnection with us, we would all have interconnection requirements for that. [LB388]

SENATOR KOLOWSKI: Thank you. [LB388]

SHELLEY SAHLING-ZART: Um-hum. [LB388]

SENATOR BRASCH: Senator Schilz. [LB388]

SENATOR SCHILZ: Thank you, Senator Brasch. Thanks for coming in today. [LB388]

SHELLEY SAHLING-ZART: You bet. [LB388]

SENATOR SCHILZ: Hey, as we talk here and I, you know, I keep hearing right of first refusal, can you...is there a scenario, if this bill is passed, where a private developer could end up building a project in the state of Nebraska? [LB388]

SHELLEY SAHLING-ZART: Is it possible, yes, if we would waive our right of first refusal, sure. But as Mr. Malone said, I don't see that happening. [LB388]

SENATOR SCHILZ: Right. [LB388]

SHELLEY SAHLING-ZART: For a lot of those reasons. I mean we own and operate transmission. We're good at it, and to the extent that they're interfacing with our customers, we want to be in control of the relationship with our customers and make sure they're protected. [LB388]

SENATOR SCHILZ: Right. So, is it possible for a private developer to put a bid in? [LB388]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

SHELLEY SAHLING-ZART: Is it... [LB388]

SENATOR SCHILZ: Under this bill, if it goes forward. What's the process for a private developer to... [LB388]

SHELLEY SAHLING-ZART: You mean outside of this...let's say in that sliver of western Nebraska that's outside or... [LB388]

SENATOR SCHILZ: No, no, in the state of Nebraska? [LB388]

SHELLEY SAHLING-ZART: Anywhere in the state of Nebraska? [LB388]

SENATOR SCHILZ: Let's just say anywhere at this point. [LB388]

SHELLEY SAHLING-ZART: Well, right now I think it would be incredibly difficult under the thing. But they'd have to...if they could do it, statutorily do it, they would have to comply with the same requirements that we do with the Power Review Board. [LB388]

SENATOR SCHILZ: And what happens if they...what happens if that comes in cheaper and they stay with all your standards? This right of first refusal would then require you to take that cost, is that right? [LB388]

SHELLEY SAHLING-ZART: Likely. [LB388]

SENATOR SCHILZ: So then you could get yourself, maybe, in a pickle. [LB388]

SHELLEY SAHLING-ZART: Well, the way the cost allocation works within the SPP is that there is a cost allocation methodology and that is relatively predetermined by formula and there are other states sharing in that cost as well. [LB388]

SENATOR SCHILZ: Then...then I guess my next question is is that does the Southwest Power Pool then have any say on who builds transmission for their rules in any of the states that they have, where they have money going into it? [LB388]

SHELLEY SAHLING-ZART: Well, no, relatively...yes and no. I mean part of it is the FERC Order 1000, as Mr. Malone indicated, they used to in the SPP tariffs. All that's been removed and FERC Order 1000 sort of controls, and so to the extent that we have a right of first refusal, we come into play, we say we want to build it in Nebraska, we work with the Power Review Board. So I'm not sure I'm getting your question. [LB388]

SENATOR SCHILZ: What I'm asking is, what I'm asking is, is that...is that if a private developer comes in, right? [LB388]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

SHELLEY SAHLING-ZART: Um-hum. [LB388]

SENATOR SCHILZ: And they stick with all the standards and they say they can build it for millions of dollars less than what you guys think it can be done for, do you have to take that price? [LB388]

SHELLEY SAHLING-ZART: No, we would...well... [LB388]

SENATOR SCHILZ: Are you sure? [LB388]

SHELLEY SAHLING-ZART: ...it depends. [LB388]

SENATOR SCHILZ: Right. [LB388]

SHELLEY SAHLING-ZART: I mean, I'm still not sure I'm sure what you're asking. [LB388]

SENATOR SCHILZ: Well, when you ask it...when you ask for a right of first refusal, what that means is that you have the ability to come back when it's all said and done and people have applied for this and say, yes, we'll do it at that cost; or no, we can't do it at that, so you go ahead. [LB388]

SHELLEY SAHLING-ZART: No, I think what it's...what the right of first refusal I think it says, is that we want the right to build it. So we're going to go out and bid it. [LB388]

SENATOR SCHILZ: So this is a prohibition more than a right of first refusal then. [LB388]

SHELLEY SAHLING-ZART: More or less. It gives us the first opportunity to build. [LB388]

SENATOR SCHILZ: Regardless of whoever else...well, of course, if a private entity can't step up and even apply in the first place, then, yeah, that would work out for you. [LB388]

SHELLEY SAHLING-ZART: Correct. [LB388]

SENATOR SCHILZ: How does that work within the rules of the SPP? Well, here's the thing, in their rules that are saying that private developers have to have the opportunity to apply for these projects, correct? [LB388]

SHELLEY SAHLING-ZART: Except where there's a right of first refusal. [LB388]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

SENATOR SCHILZ: Okay. That's what I was...thank you. [LB388]

SENATOR BRASCH: Senator Haar. [LB388]

SENATOR HAAR: Yes, thank you. Just out of curiosity, who trumps whom? Like if SPP puts out a...they order some transmission and the Power Review Board says we don't really need it. I mean...or is that...it just won't happen. [LB388]

SHELLEY SAHLING-ZART: Paul would probably be a better one to answer that, but I don't see...I...if they order it, we have to build it. [LB388]

SENATOR HAAR: Okay. Gotcha. [LB388]

SHELLEY SAHLING-ZART: Now what we have to do is build it and still...according to the standards of the Power Review Board for the approval process, but... [LB388]

SENATOR HAAR: As long as we want to belong to the Power Review Board, I mean that's part of our agreement, then, that we will go along with... [LB388]

SHELLEY SAHLING-ZART: That's part of our requirement for belonging to a federal regional transmission organization. [LB388]

SENATOR HAAR: Gotcha. Thank you. [LB388]

SENATOR BRASCH: Senator Kolowski. [LB388]

SENATOR KOLOWSKI: Thank you. Just for my own clarification, the right of first refusal means your choice is the first choice to participate or not participate in the building of an additional line or something like that. [LB388]

SHELLEY SAHLING-ZART: Yeah. It could probably be rephrased as a first right to construct. [LB388]

SENATOR KOLOWSKI: Thank you. That's flip side, but correct. But you don't stop someone else...you don't have the right to stop someone else. If you refuse to participate yourself, you don't block anyone else's potential for participation, do you? [LB388]

SHELLEY SAHLING-ZART: Well, okay, let's say it's in NPPD's area and NPPD has that first right to construct. If they choose not to exercise that, then their...OPPD and LES would have an opportunity. If neither one of us do, then yes, the private entity could come forward. [LB388]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

SENATOR KOLOWSKI: And you have no blockage of that? [LB388]

SHELLEY SAHLING-ZART: No, but that's what we're saying is we think that's unlikely that one of the three of us, or a combination of the three of us wouldn't step up and do that. I think that's highly unlikely. [LB388]

SENATOR KOLOWSKI: You have the right to do that, or it's unlikely that you do that? [LB388]

SHELLEY SAHLING-ZART: It's unlikely we would waive our right. It's most likely that we would step up and build the transmission. [LB388]

SENATOR KOLOWSKI: One of the three of you. [LB388]

SHELLEY SAHLING-ZART: One of the three of us, or some combination of the three of us. [LB388]

SENATOR KOLOWSKI: And that's the only blockage ability you have. [LB388]

SHELLEY SAHLING-ZART: Yes. [LB388]

SENATOR KOLOWSKI: By saying yes. [LB388]

SHELLEY SAHLING-ZART: Yes. [LB388]

SENATOR KOLOWSKI: Either A, B, or C, one of the three. Thank you. Just to clarify. Thank you. [LB388]

SENATOR BRASCH: Thank you, Senator Kolowski. Seeing there are no other questions from the committee, and Ms. Sahling-Zart, thank you so much for your testimony. [LB388]

SHELLEY SAHLING-ZART: You bet. [LB388]

SENATOR BRASCH: You've answered several questions for today. [LB388]

SHELLEY SAHLING-ZART: Thank you. [LB388]

SENATOR BRASCH: Thank you. Next proponent, please. Please spell your name. [LB388]

MICHAEL SIEDSCHLAG: Good afternoon, Madam Chairman and Senators. My name is Michael Siedschlag, spelled M-i-c-h-a-e-l, Siedschlag is S-i-e-d-s-c-h-l-a-g. I am

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

currently chairman of the Nebraska Power Review Board and also in that role I serve on the regional state committee of the Southwest Power Pool. And I'd like to start off to say that typically from our board's position, we typically would not come to you to address policy-type issues. And in this bill there are some policy clean-up things that are there and that's okay. What I would really like to share with you is some thoughts on the real purpose of the bill, and that is the right of first refusal that we've been talking about. And I'd like to express our board's strong support for that portion of this bill. As you may know, in 2009 when our utilities joined the Southwest Power Pool, since that time we've been involved with the approval of these highway-type transmissions, the shared-cost allocated types of transmission lines, and we have approved since 2009 over \$7 billion worth of transmission lines in the Southwest Power Pool since 2009. To date we have about \$3 billion of those lines are under...either completed or under construction. And we have \$4 billion with notices to construct, of which there's about a billion dollars worth of projects that are in this cost-sharing arena that we are doing for Nebraska. Extremely significant projects and it has become extremely valuable and what it's doing to opening our state for the potential for future low-cost energy, renewables and things, it's a very exciting opportunity. However, when we are talking about these large projects, you know, projects that are hundreds of millions to half a billion dollar-types of projects, the financing, construction, the return on investment of those projects brings a lot of interested parties to that process. And so understanding that this bill really represents the right of first refusal for those cost-shared projects in this RTO environment that we're in, to allow us to have control over that part of the transmission system we feel is very important for us to have that control. And that is a separate issue from some of the other wind development, the interconnection, things like that that are out there. So, from our perspective, the Power Review Board, we'd like to encourage the support of this bill as we move forward. I'd be happy to take any questions you might have. [LB388]

SENATOR BRASCH: Thank you, Mr. Siedschlag. Are there any questions from the committee? I see none. [LB388]

MICHAEL SIEDSCHLAG: You're too easy. (Laughter) Thank you very much. [LB388]

SENATOR BRASCH: Thank you so much. Next proponent, please. [LB388]

JOHN HANSEN: Madam 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. I'm the president of Nebraska Farmers Union, am also their lobbyist. I am also the co-chair of the Nebraska Wind Working Group. And you've heard from several of our wind conference presenters down through the past several years as we've talked about transmission issues. There is a lot of expertise in the room today, excluding myself. Our organization has a multiple set of interests in this issue. One is that at the beginning we had a lot to do with the creation of the public power system. And we're very proud of that history. And that public power system that serves our state has done an excellent job of providing

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

dependable, low cost, quality electrical connection for all of the people in the state of Nebraska, not just the folks in cities; not to say that cities aren't important, we're a farm organization. And so public power has done an excellent job. And as we look at where we've been in recent years, we're extremely appreciative of the fact that we became a member of the Southwest Power Pool. We think that while there's some challenges that come with that, there's also from our state's perspective a lot of really important strategic interests. So this question that's really before us is we're now to the point where we're going forward with regionally subsidized transmission. We're paying in, but they're also paying in. When it's time to build it in our place, the question is who do we want building these kinds of projects in Nebraska. And it is our judgment that our state would be well served to have Nebraska electric utilities build those transmission systems because they have a proven record of building quality transmission. They are Nebraska utilities, these are Nebraska jobs, and there are Nebraska benefits that come with building these lines with our own folks. It's important that they be built right. It's important that they fit into the rest of our system. It's important that the routes be appropriate. No one knows the appropriateness of routes in our state better than our own utilities. So being sensitive to the needs of all of the different various competing concerns, we salute the power utilities in our state for having done, we feel, a very good job of really doing their homework and doing a good job of doing appropriate routes. And we think it's done in an extremely cost-effective manner. And we are, indirectly, the owners of that system and any profits to be made from it, indirectly come back to us, either through lower rates or better service. And from a farm organization perspective, we have, obviously, a direct interest in pipes and poles that go into the soil and how all of that works out. And I've, unfortunately, become a bit of a connoisseur of the different kinds of conflicts that happen when either of those things happen. And I must tell you that our public utilities do a bang up good job of working with our landowners. The amount of effort that is made to let our folks know what is going on to routinely disseminate information to our landowners, to be cognizant of their concerns, to make sure that those kinds of adjustments that need to be made in order to protect agricultural farming practices are done, they've done an excellent job. And so while we have...we certainly have phone calls every time power lines are built. We feel that the way to do it, all things considered, top to bottom in the best manner, especially from the point of view of our landowners is to give the right of first refusal to our Nebraska utilities based on their track record, our strategic interests as a public power state, and our interest as in wanting to move forward with more regional transmission to help our state realize our wind resource potential and our potential generally in order to provide services to our people. So with that I would close and be glad to answer any questions if I could. [LB388]

SENATOR BRASCH: Thank you, Mr. Hansen. Are there...yes there are. Senator Smith. [LB388]

SENATOR SMITH: Thank you, Madam Chair. And thank you, Mr. Hansen, for your

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

testimony today. I'm a former public power guy and I've worked for investor-owned utilities and for public utilities. And I'm a strong advocate for public power. And I enjoyed hearing you say a couple of things that makes public power good and that's affordability and reliability. And so I'm kind of...I feel a bit that I'm talking amongst family here today, public power to public power. We cannot lose sight of the affordability issue. And the legislation that I've heard here today, I'm sorry to say, is very protective. It's protective of public power before it's considering the cost to the citizens of Nebraska. And that's a concern to me. Right out of the gate, there's no competitive bidding on these projects. And I'm here to tell you, and again, this is public power to public power, public power does not have the market cornered on building things right. They do a fantastic job. And I love public power. But they are not the only ones that can build an outstanding system or an outstanding transmission line or an outstanding power plant. So we have to be careful here that we're doing what's right for the citizens of Nebraska. I would much rather see legislation that came forward to us that says something to the effect that if there is a 10 percent variance in price, then we give it to public power, but allow there to be some control over the cost, because I see no control being given here to the cost of these projects coming in. And so I'm saying that...I don't know if that's necessarily you to address an answer to my concerns, and maybe someone following you can address those. But that's my concern with this legislation. I want to keep public power strong in this state. I want it to continue to be affordable and be cost competitive. It's responsive to its customers; it's reliable; it's a great system. But we owe it to our citizens to hold down the cost. So, thank you. [LB388]

SENATOR BRASCH: Thank you, Senator Smith. Senator Kolowski. [LB388]

SENATOR KOLOWSKI: Thank you very much, ma'am. Mr. Hansen, just a couple of questions to fill in some gaps if you could with your extensive background. What percent of our electricity comes from wind in the state at the current time, could you tell us that? [LB388]

JOHN HANSEN: We've just added 80 megawatts at Broken Bow and another 40 megawatts at Crofton, and so I'm just ballparking it, but I would guess that we're somewhere in the, oh, 3, 3.5 percent, somewhere in there. [LB388]

SENATOR KOLOWSKI: Okay. [LB388]

JOHN HANSEN: We've made considerable progress... [LB388]

SENATOR KOLOWSKI: Sure. [LB388]

JOHN HANSEN: ...in recent years. But I think we're somewhere in there. [LB388]

SENATOR KOLOWSKI: And is there...within the organization, is there a very direct

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

strategic plan to try to get to X percent by certain dates? Could you fill us in on some of that? [LB388]

JOHN HANSEN: There is a voluntary goal on the part of OPPD and NPPD to get to 10 percent of their electrical generation from renewable energy sources by the year 2020. [LB388]

SENATOR KOLOWSKI: Okay. And that would mean wind, solar, any variety of whatever we can... [LB388]

JOHN HANSEN: Yeah, hydro, etcetera. [LB388]

SENATOR KOLOWSKI: All right. I'm just leaping off of some reading I did, but the materials by Thomas Friedman on Hot, Flat and Crowded, thinking of his book and talking about smart grids and the need that we have in our country to have interlocking connectivity to move power and efficient, effective and cost-efficient ways, could you fill us in on some of your thinking or any relation...reaction to those kind of discussions that you might have had in your own organizations at this time. [LB388]

JOHN HANSEN: Well, my organization very strongly supports developing a balanced portfolio in Nebraska. And we think that's in our economic interest, it's in our environmental interest, and it's certainly from an agricultural perspective in our landowners' interest to develop a more balanced portfolio and we're, depending on the rankings, we're either third or fourth in the nation in wind resources in our state. And so it behooves our state to try to take advantage of the natural resources that we have as our neighbors have already done in order to try to create a more balanced portfolio. And as we go forward in the future and we look at more and more conflicts with water use, more conflicts with carbon emissions, wind, in particular, solar is coming up fast as things go, having enormous potential because of those issues. And so our state has been working on how to move forward in a cost-effective way. And, you know, we always want to go faster and we want to realize that those benefits and that potential. So regional transmission gets to be an important part of the discussion because you can't, you know, the old saying is, if you love wind, you have to at least like transmission. And within my organization, everybody wants a wind turbine; nobody wants a power pole. (Laughter) This is not hard to figure out. And so we've become very sensitive to how we build transmission. And I would just share this with you that right now we are working with landowners with a private sector building electrical generation in my home area and we're having...we're having many times more phone calls and concerns on the part of landowners in discussions with how things are going forward than we ever get when public power does this. And so when we have a public power line that's being built, we also get phone calls, but I also know who to call. And we got a problem and let's try to find out what the deal is and we're going to get somebody answers and we do and problems are identified and they're resolved. And so the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

goodwill of landowners is an essential part of how we look at it also because we don't want to get to where other states are, which is where we're struggling with not in my backyard issues. Nebraska is still hungry as a state for more renewable energy development, in particular, wind. We're still hungry, especially in Senator Schilz's area. When I travel out to his end of the state, you know, people want to be included in this opportunity. And so I think that the most appropriate way to interface with Southwest Power Pool is to let our public utilities play lead. And I think that if we had a history of problems with public power building transmission, my testimony today would be significantly different. And so in our view based on our experience and our history, we believe they've earned the right to play lead. [LB388]

SENATOR KOLOWSKI: What percent would be nuclear used right now when everything is on line, let's put it that way? [LB388]

JOHN HANSEN: Where is Paul Malone when you need him? And I would just defer those technical...you know, and there's a difference between...I see different data sometimes from LES to NPPD to OPPD and so I seldom see state data and I'm just uncomfortable answering a question that... [LB388]

SENATOR KOLOWSKI: That's fine. [LB388]

JOHN HANSEN: ...might not be accurate. [LB388]

SENATOR KOLOWSKI: Appreciate it, thank you very much. [LB388]

JOHN HANSEN: Thank you, Senator. [LB388]

SENATOR BRASCH: Very good. Thank you, Mr. Hansen, I see no other questions. Thank you for your testimony. [LB388]

JOHN HANSEN: And thank you. [LB388]

SENATOR BRASCH: Any other proponents? [LB388]

KEN WINSTON: Good afternoon, Senator Brasch, members of the Natural Resources Committee. My name is Ken Winston, K-e-n W-i-n-s-t-o-n. I'm appearing on behalf of the Nebraska Sierra Club in support of LB388. This is one of these hearings where I felt more confused as the hearing went on, but hopefully the senators understood it better as the hearing went on. But in any event, the reason that we're supporting...and actually I did...I learned a lot listening to what was said this afternoon, and...but I still do have some questions about exactly how the bill operates and so I guess that's my plea for you to not ask me any technical questions because I wouldn't be able to answer them. (Laughter) But I guess, I would echo what John Hansen said about supporting public

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

power. The Sierra Club does support public power in the state of Nebraska. And we believe that having a right of first refusal appears to be consistent with that philosophy of having an all public power state. But the primary reason that we're supporting this is that we support the development of transmission in order to get Nebraska energy to the market. And it appears that LB388 is intended to clarify the process for developing transmission and that that would be...would help facilitate getting wind or electricity generated through wind to the people who will use it. And we believe that that would be a step in the right direction. Thank you. [LB388]

SENATOR BRASCH: Very good. Thank you, Mr. Winston. Are there any questions?  
Senator Haar. [LB388]

SENATOR HAAR: Oh, no, I'll just...I'll wait. (Laugh) [LB388]

SENATOR BRASCH: Now you're just waving. [LB388]

SENATOR HAAR: Just trying to make him nervous. [LB388]

KEN WINSTON: He was. Oh, no. (Laughter) [LB388]

SENATOR BRASCH: Any other...anybody else? Thank you so much. Thank you. Are there any other proponents? Are there any opponents today? Is there anyone who would like to testify in the neutral? [LB388]

ANDY POLLOCK: Good afternoon, Senator Brasch, members of the Natural Resources Committee. My name is Andy Pollock, A-n-d-y, Pollock, P-o-l-l-o-c-k. I'm here as a registered lobbyist on behalf of the Nebraska Energy Export Association. For the senators new to this group, welcome. The Export Association is primarily formed for purposes of trying to advance the economic development opportunities of wind and maybe not coming at it from the same perspective as the Sierra Club looking at the environment, but rather the economic and business development opportunities it provides for our state, both rural Nebraska and potentially, if this industry ever takes off, for manufacturing opportunities in all areas of the state. We are very much pro wind. We are very much pro public power. I take no issue with the portions of the bill that are intended to integrate our work and our public power's work with the Southwest Power Pool. And I would just take this opportunity, as I've taken in the past, to commend in particular NPPD for their leadership and really being proactive and forward looking in making sure that the Southwest Power Pool works for the state of Nebraska. Their proactiveness on the r-plan a couple of years ago, or last year was praised by the Southwest Power Pool as being the best proposal that they'd seen, or the best presentation on a proposal that they'd seen. NPPD has really turned the corner in terms of promoting wind development and in Nebraska they see the opportunity for all Nebraskans and we applaud that. My concern about the bill, and I kind of went back

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

and forth between opposing the bill and being neutral on the bill, but I'm here neutral because the bulk of the bill we take no issue with. And, frankly, for probably 95 percent of the state I think this bill is probably a good idea. But we cannot forget a portion of the state that is actually in our good friend Senator Schilz's district. It's the very...not just the Panhandle, but the very western edge of the Panhandle and in many instances, the very edge of western counties in the Panhandle. You're looking at Kimball County, Banner County, maybe most of those counties, Scotts Bluff County, west of Scottsbluff the city, and Sioux County as well. But those, if you look at a footprint of the SPP, and unfortunately when I went into Laurie Lage's office over the lunch hour to steal it, her map of the SPP, she was there working over lunch, so I couldn't steal the map, but if you look at that map, you will see that not all of Nebraska is in the Southwest Power Pool, that there's a segment that I just mentioned that's outside of the Southwest Power Pool. And it just so happens that that segment of Nebraska is one of the windiest parts of the country, not just Nebraska, but the country. In fact, Banner County has been rated like the fifth best site in the U.S. for wind energy. And these people, I've been out there several times, at least once each year, I was just out there this fall, they are dying to see economic development in their country. It's wheat farm area. And they've not done particularly well in the last few years. And the towns are shriveling and the economy is shriveling. And they see this as an enormous opportunity and one that they regret that Nebraska hasn't been more on top of. The concern that we have, just to cut right to the chase, is, as I read it, and I had an excellent conversation with NPPD, they've been very accommodating, but as I read the law as written, and in particular the new definition of electrical supplier which I think is good to clean up, but it also excludes any private legal entities and I think that may create problems when read with other portions of the statute. In particular, Section 14, I'd ask you to take a careful look at. I think the net effect of those sections if you look at them as a whole would absolutely prohibit private entities from building transmission lines in the state anywhere, anytime. I've heard Shelley Sahling-Zart and Paul Malone say that that's not their intent. And I believe that. I believe they mean that. Their intent is not to, basically, put Banner County or Kimball County on more of an island than they already are. And I think that can be solved and I appreciate what they've told me earlier in the day, and OPPD as well, that they're committed to trying to work to a solution, hopefully, that our collaborative efforts could put a committee amendment before you. And I commit to do that too. I would point out that there was a statement, I can't remember who, that there is a transmission line in the state that does not connect with our grid. And I understand that from a conversation with Mr. McClure of NPPD to be true. I think it's in the northeast corner of the state. It's proof that private transmission can be built. It is true, as Shelley said, that a private transmission company does not have the power of eminent domain. And we supported that proposition in LB1048 and I think that's a good thing. But I think if you listened to the hearing in Judiciary on LB152 the other day, it's a bill that Senator Dubas introduced that...it's clear that not very many utilities actually exercise that power of eminent domain to acquire right-of-way. It can be done, it is being done today, and it could be. So let's think hypothetically of a windfarm being built in Banner County. It is

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

outside of the NPPD service territory. It's outside of the Southwest Power Pool footprint. It's within Tri-State's wholesale area. But I can tell you based on what I've heard from the people in Banner County, Tri-State has been very reluctant to talk about building transmission for export. Is that true? You'd have to ask them. But if Tri-State doesn't want to build a line and a private developer wants to build a line and it goes into the western grid and not into Nebraska's system, and I agree, if it goes into Nebraska's system, this is a different story. But if it goes west, does not connect with Nebraska, does not affect Nebraska rates, does not affect Nebraska service reliability, which is paramount, why should that private developer not be able to build that line? More importantly, why should those residents of Banner County not be able to be the beneficiaries of a windfarm, perhaps a very large windfarm, built in their land? And I think that's what my concern boils down to. And I would ask the committee to seriously consider that issue and give us a little bit of time to try to work out a solution to that. Again, I don't want to in any way by my testimony suggest any bad faith on the part of the public power districts. That's not the case here. They're not trying to shut out Banner County. But I think this bill, unfortunately, might have the unintended consequence of just doing that. With that, I would conclude and I'd be more than happy to answer any questions. [LB388]

SENATOR BRASCH: Thank you, Mr. Pollock. Are there...Senator Johnson. [LB388]

SENATOR JOHNSON: Thank you, Senator Brasch. You might be the last one to testify, so I'll have to unload on you. [LB388]

ANDY POLLOCK: Uh-oh. [LB388]

SENATOR JOHNSON: No, again, new on the committee, but I've been involved with a municipality that had their own power and their own transmission, everything. I know what is involved in order...when we annex somebody in in order to buy that line and that power. Why is not western...those western counties not part of it or why...is it a cost factor or is it their desire to stay out of it? Because it sounds like you maybe talked about that there could be at a disadvantage because of this. [LB388]

ANDY POLLOCK: To start with your last comment, I think it certainly is a disadvantage that they're not part of the Southwest Power Pool. Mr. Malone, I think he's been deferred a lot of questions here today, could probably answer that question better than I. I would suspect, and this is just conjecture on my part, that the Southwest Power Pool footprint covers the service territory of its three Nebraska members, LES, OPPD, NPPD. And NPPD's service territory stops at that line that I described in those four counties on the western edge of the Panhandle. And I would suspect that has something to do with it, but I'm not certain of that fact. [LB388]

SENATOR JOHNSON: Okay. I can get an answer from him later, why did it stop there?

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

And that's a naiveness on my part. [LB388]

ANDY POLLOCK: And I...I don't have an answer for that. [LB388]

SENATOR JOHNSON: Okay. I'm fine. [LB388]

ANDY POLLOCK: It might have to do with back in time divvying up areas and Tri-State said this is our corner of the world and you stay out of it. I don't know, honestly, Senator. [LB388]

SENATOR JOHNSON: Okay. Thank you. [LB388]

ANDY POLLOCK: You bet. [LB388]

SENATOR BRASCH: Senator Haar. [LB388]

SENATOR HAAR: Thank you. So you will follow through and get us some amendments perhaps that have been negotiated before we get this out of committee and send it to the floor? [LB388]

ANDY POLLOCK: Insofar as it affects the concern that I've raised. [LB388]

SENATOR HAAR: Right. [LB388]

ANDY POLLOCK: I really don't want to get in the middle of something that's not an issue. I think...I feel pretty comfortable with what public power has done with transmission throughout the state. It's that small exception. And, yes, I'd commit to working with the utilities that have brought this bill to you through the committee and trying to figure out some language on that. [LB388]

SENATOR HAAR: Yeah, and I don't know right...have no problem with the first right to construct. It's just that we have to be able to use it...use our wind energy all over this state. So, thank you very much. [LB388]

ANDY POLLOCK: Thank you. [LB388]

SENATOR BRASCH: Senator Kolowski. [LB388]

SENATOR KOLOWSKI: Thank you. Andy, just to thank you for your zealously for wind. And I know going in any direction from the Omaha area as I do, 29 North, 80 west or east, south or whatever we're doing, all I see is windfarms. I mean there's so much construction of windfarms in different places. If we have that potential of the fifth best in the country, we're missing an opportunity that is right in our own laps. And that's a...that

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Natural Resources Committee  
February 01, 2013

---

would be foolish for the state, for that region, for the connectivity we could gain out of that into our grid to miss that opportunity. So I hope we can plug into that and I hope we don't miss or get behind further than we are right now. [LB388]

ANDY POLLOCK: I agree entirely with your comments and I appreciate them. And I think we are behind and I think we're at risk of falling further behind. I know there are some bills that will be coming, actually, before this committee and Revenue that deal with that; that's for another day. But they have to do with sales taxes. But I can tell you, in the part of the state that I'm talking about in particular, and it's different from what the issue would be in the eastern part of the state. While sales taxes might be an issue, while there may be other policy issues, just the absolute lack of transmission. I mean it's beautiful country; I grew up out that way. It's beautiful country and we love it for its desolation, but because there's not a lot of people, there's not a lot of transmission and there's also not a load. And I don't think we have any pipe dreams that the energy produced out there really needs to come to serve the North Platte area. I think our opportunity, and our group has always been a champion of this, is exporting that energy. We're not naive and we don't think that it's the coal of the next century or the coal of Nebraska, but it's a natural resource that we have the ability to export and make some money on. And I think we need to make sure that...I think through LB1048 a few years ago we broke down some barriers and I would hate to inadvertently create a barrier in this legislation that would stand in the way of further...further development of wind out west. [LB388]

SENATOR KOLOWSKI: Thank you. [LB388]

SENATOR BRASCH: Thank you, Mr. Pollock. [LB388]

ANDY POLLOCK: You're welcome. [LB388]

SENATOR BRASCH: I see no other questions from the committee. And is there anyone else that would like to testify in the neutral today? Seeing there are no other testifiers, this concludes the hearing on LB388. Thank you. [LB388]