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Transportation and Telecommunications Committee  
February 23, 2016

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[LB688 LB964 LB1068 LB1077 CONFIRMATION]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Tuesday, February 23, 2016, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB688, LB964, LB1077, LB1068, and a gubernatorial appointment. Senators present: Jim Smith, Chairperson; Lydia Brasch, Vice Chairperson; Al Davis; Curt Friesen; Tommy Garrett; Beau McCoy; John Murante; and Les Seiler. Senators absent: None.

SENATOR SMITH: Good afternoon and welcome to the Transportation and Telecommunications Committee hearing. We do have an interpreter with us today, to my right, to your left, and if I could just see a show of hands of someone who may have need of the interpreter today. Okay. All right, thank you. I am Jim Smith and I am the Chair of the committee. And again, welcome to the Transportation and Telecommunications Committee. We do have a number of bills today and we're going to start out with a confirmation. Let me make some quick introductions to you. To my left, your right, is...beginning with Senator Tommy Garrett. Senator Garrett is from Bellevue, Nebraska. Next to Senator Garrett is Les Seiler, he's currently not here; Senator Seiler is from Hastings and he will be joining us here shortly. Next we have Senator Beau McCoy of Omaha. To your far left, my right, is Senator Curt Friesen from Henderson. Next to Senator Friesen is Senator Al Davis from Hyannis. Next we have Senator John Murante from Gretna. And Vice Chair of the Committee is Senator Lydia Brasch from Bancroft. On my immediate right is Mike Hybl; Mike is our legal counsel for the committee. And to my left is Paul Henderson; Paul is committee clerk. We have two pages with us today, and the pages will be assisting you. If you're testify today and you bring your green sheet and anything to hand out, the pages will take that from you and process it. The pages with us today are Toni Caudillo from North Platte, Nebraska; Toni is a freshman at UNL. And we have Alex Brechbill from Aurora, Nebraska; Alex is a junior at Nebraska Wesleyan. We will be hearing the bills in the order listed on the agenda. If you're testifying, please complete the sign-in sheet and hand it to one of the pages as you approach the table. If you do not wish to testify, but you do want to voice your support or opposition to a bill, you can indicate so on the sheet that's provided. This will become part of the official record. At the beginning of your testimony, please both state and spell your name for the record. We will be using the light system today. So what that means is when you...other than the person introducing the bill, if you're testifying on the bill, whether it's in support or opposition, the green light will come on. You have four minutes to present your testimony, at which time the amber light will come on, then you'll have a minute to wrap up. So you'll have a total of five minutes. Then when the red light comes on, if you have not concluded your testimony, we'd ask you to try to wrap it up at that point. Please turn off any cell phones so we don't have distractions during the hearing. We do use electronics around the committee table, so many of the senators up here will be referencing information on their electronic devices, so please be understanding of that. That's just the age we live in. Some people

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like to use paper and others like to use electronic devices. And with that we're going to start with a confirmation of Mary Gerdes of the State Highway Commission. And we would invite Ms. Gerdes to come to the front. Welcome.

MARY GERDES: (Exhibits 1 and 2) Thank you; it's good to be here. [CONFIRMATION]

SENATOR SMITH: We appreciate your interest in continuing to serve in the state of Nebraska. And please share with us a little bit about yourself. [CONFIRMATION]

MARY GERDES: Thank you, Senator Smith. Good afternoon, Senators. My name is Mary, the initial K, Gerdes, spelled M-a-r-y K G-e-r-d-e-s. And I'm here today to request your approval to serve on the State Highway Commission as the commissioner for District 1 which encompasses southeast Nebraska, including all of Butler, Gage, Jefferson, Johnson, Lancaster, Nemaha, Otoe, Pawnee, Richardson, Saline, Saunders, and Seward Counties, and part of Cass County. My husband, Dan, and I have been in the agriculture industry since 1959, producing pork, raising corn, soybeans, and wheat, and bringing up our family on the farm. We own and operate an 800-acre grain production farm in southeast Nebraska near the town of Johnson in Nemaha County. We retired from pork production in 2006. I've previously served on a number of boards. I served on the board of directors for the Nebraska Farm Bureau Federation from 1978 to 1984, and again in 1991 to 1997. I was appointed to the state committee for Nebraska Farm Service Agency by President George W. Bush in 2000 and served until 2008. I also served on the board of directors of the Nebraska Pork Producers Association in 2000, and the board of directors for the Nebraska Ag Builders from 2001 to 2006. Through this appointment I intend to serve, along with the other seven commission members, to make wise decisions that benefit Nebraskans. I think it is important to emphasize the funding of roads in Nebraska for the best use of tax dollars, and to provide and preserve a network of highways and bridges that are safe and reliable, because that is so vital to our state's welfare and the quality of life for its citizens. Also of importance are planning and funding new projects to improve the transportation system here in Nebraska. As commissioner, I will do the best of my ability to see that the 12 counties in southeast Nebraska are adequately represented, including both rural and urban interests. It is an honor to have been appointed for this position by Governor Ricketts, and I ask that you would consider approving my appointment as District 1 Commissioner. Thank you for your time. Would you have questions? [CONFIRMATION]

SENATOR SMITH: Thank you, Ms. Gerdes. Do we have any questions from the committee? I see none. I know that...and congratulations on being appointed by the Governor to the position. [CONFIRMATION]

MARY GERDES: Thank you. [CONFIRMATION]

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SENATOR SMITH: You probably have had a chance to visit with some of your soon-to-be colleagues on the commission. [CONFIRMATION]

MARY GERDES: Yes, I have. [CONFIRMATION]

SENATOR SMITH: Anything that they mentioned to you that you're going to need to prepare for or be mindful of as you come on that commission? Or were they able to provide you any insights? [CONFIRMATION]

MARY GERDES: They have. As you know, Nebraska is a big state and we vary from one end of the state to the other. There's lot of roads, about 10,000 miles of highways, 3,500 bridges. Each of us in our districts...each district is maybe a little bit different. From my district, I have both rural and urban interests. And I have the city of Lincoln within my district. So that will keep me on my toes to be mindful of both the urban and the rural interests within the district. As far as what other members have told me, they just tell me that there's a lot to learn because we do have a large transportation system in the state. And that...just do a lot of reading and observe and spend time with your fellow citizens out in your district. [CONFIRMATION]

SENATOR SMITH: Great. Well, again, thank you for your willingness to serve in Nebraska. We certainly depend upon citizens like yourself to fill these needs that we have in our state. And so thank you very much for your willingness to serve. [CONFIRMATION]

MARY GERDES: Thank you. Thank you for the opportunity. [CONFIRMATION]

SENATOR SMITH: Thank you. We will now open it up to proponents, those wishing to testify in support of this confirmation. Thank you, we're going to let you...let the next person come up. Anyone wishing to testify in support of this confirmation? Anyone choosing to testify in opposition to this confirmation? Anyone wishing to testify in a neutral capacity to this confirmation? That closes our hearing on the confirmation of Mary Gerdes to the State Highway Commission. And thank you again, Ms. Gerdes, for your service. We now move to the next bill, LB688, to be introduced by Senator Bloomfield. It relates to the requirement of all examinations...require all examinations and tests of applicants under the Motor Vehicle Operator's License Act to be in English. Welcome, Senator Bloomfield. [CONFIRMATION]

SENATOR BLOOMFIELD: (Exhibits 1 and 2) Thank you, Senator Smith, and good afternoon, members of the Transportation and Telecommunications Committee. For the record, my name is Senator Dave Bloomfield, D-a-v-e B-l-o-o-m-f-i-e-l-d, and I represent the 17th Legislative District, in particular, but as well the whole state of Nebraska. I'm here today to introduce LB688

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to the committee for your consideration. LB688 is a simple bill that requires a driver's license exam to be administered in English. This bill, as written, did have unintended consequences that the DMV brought to our attention that we have addressed with AM2059, which is being passed around to you. As written, the bill would possibly prevent individuals who are deaf or hard of hearing from being able to use sign language interpreters which would go against ADA laws. We have worked with the Commission for Deaf and Hard of Hearing, as well as the DMV to address these concerns. AM2059 requires examinations administered under the Motor Vehicle Operator's License Act to be conducted in the English language. For persons who are deaf or hard of hearing, the assistance of a licensed sign language interpreter may be permitted. But an interpreter shall not be permitted during a driver skill examination. LB688 is about the safety of everyone on our roads. If you cannot read English, how do you read the signs going down the road? How can you read the warning message on the Amber Alert boards going 75 miles an hour down the interstate? I've been accused of bringing this bill for political reasons. That's ridiculous; I'm done here in 20-some-odd days. Anyone that knows me knows how ridiculous that is. I've also been accused of being a racist. I'm passing out a picture to the committee of my son, daughter-in-law, and grandson as evidence that I'm not a racist. As you can see, my daughter-in-law and grandson are Hispanic and I certainly harbor no ill will to individuals of another race. For me, this is all about safety. While I will concede that the shape of some of the signs are easy to understand, you should be able to read what is on the street sign and warning signs or messages. Most of you are aware that I made my living as a truck driver. I have numerous safe-driving awards for the, roughly, 4 million miles I drove. If you can't read or tell what you're doing going down our roads and in our streets...or in our cities, you're a hazard. If you're looking for the corner of Elizabeth and Henry Street and you can't read English, you're going to have trouble seeing that street sign when you get to it. Thank you for the time. I'd be willing to entertain any questions and I will waive closing when we get done because we've got a heavy bill in Agriculture. [LB688]

SENATOR SMITH: Thank you, Senator Bloomfield, for your opening on LB688. We now open up to any questions for Senator Bloomfield. Senator Seiler. [LB688]

SENATOR SEILER: I just have one. On your amendment, you allow an interpreter for the test, but when you...and it's been a while since I've taken the driver's exam, but when they...when you drive for them, don't they talk to you and tell you where to turn, when to turn, where to park? Shouldn't that be (inaudible). [LB688]

SENATOR BLOOMFIELD: In our conversations with DMV and the hard-of-hearing group, they said that was the way it should be. And that was the way we put it. [LB688]

SENATOR SEILER: Really? Okay. [LB688]

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SENATOR SMITH: Other questions for Senator Bloomfield? Seeing none, thank you. [LB688]

SENATOR BLOOMFIELD: Thank you. [LB688]

SENATOR SMITH: We now move to proponents, those wishing to testify in support of LB688. Proponents? Seeing none, anyone wishing to testify in opposition to LB688? Opposition to LB688? Welcome. [LB688]

LAZARO SPINDOLA: (Exhibits 3, 4, and 5) Thank you. Good afternoon, Chairman Smith, and members of the Transportation and Telecommunications Committee. Thank you for receiving me today. For the record, my name is Lazaro Spindola, that is spelled L-a-z-a-r-o S-p-i-n-d-o-l-a, and I am the executive director of the Latino American Commission. I am here in opposition of LB688, basically for three reasons. We have found no evidence linking English-only driving tests to a reduction in the number of motor vehicle accidents. In the same token, we have found no evidence that giving the driving tests in non-English languages increases the number of accidents. There is no correlation between giving the test in English and increasing our safety. In fact, the opposite may be true. Last year, Missouri had a bill to make the test English only and it did not advance; the concerns presented included those of the auto insurance industry, since people would resort to driving illegally if they do not receive help by their local DMV. In second place, preparing for a driving test is an educational tool for all future drivers, both English and non-English speakers. This has been acknowledged by the seven states that have English-only testing. Out of the 50 states in the country and the District of Columbia, those...only seven are giving the test in English only. And you find it highlighted in your handout. And they allow the use of interpreters and of translator while taking the test. Some of them like Arkansas offer the manual and study guide in Spanish. Louisiana offers special accommodations and materials in Spanish. Kansas welcomes interpreters and translators, and Oklahoma offers tests for motorcycles and D-type license in Spanish. In the case of Pennsylvania, they will provide a waiver to people that come from Korea, Germany, or Mexico, or they will be automatically granted a driving license without taking the test. So I wonder...if these other states are willing to provide a license for their visitors who do not know how to speak English, why would Nebraska refuse to do so? In the third place, even more worrisome for me is the fact that this bill will open the door for Department of Justice's Office of Civil Rights to eliminate funding for the Nebraska Department of Roads based on Executive Order 13166. This was, in fact, an argument used by Hawaii to eliminate the English-only driver examination. In 2016, Nebraska will receive \$685 million from the federal government for roads and highways, as you can see, broken down in this sheet that I handed out to you. It is due to these reasons that we strongly suggest that this bill never advances from the committee. Thank you, Chairman Smith, and I am willing to answer any questions now if I can. [LB688]

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SENATOR SMITH: Thank you for your testimony today. We have a question up here from Senator Murante. [LB688]

SENATOR MURANTE: Yes. Thank you very much for coming down today. I'd like to read to you Article I, Section 27 of the Nebraska State Constitution. [LB688]

LAZARO SPINDOLA: Yes. [LB688]

SENATOR MURANTE: Stating in relevant part: the English language is hereby declared to be the official language of this state and all official proceedings, records, and publications shall be in such language. Given that constitutional provision, do you think that we kind of have no choice on this one; that we're bound to... [LB688]

LAZARO SPINDOLA: Absolutely. The only issue that I see is that English is not the official language of the United States in the eyes of the federal government; and federal law trumps state law. So if they decide to cut off funding from a federal...from a program that receives federal funding, there is nothing Nebraska can do about it. [LB688]

SENATOR MURANTE: Are you aware of federal funding that's attached to this particular... [LB688]

LAZARO SPINDOLA: According to Executive Order 13166, any state agency that received direct or indirect federal funding would fall under the possibility of having that funding cut back or eliminated or lowered. In this case, it will be the Nebraska Department of Roads. [LB688]

SENATOR MURANTE: Okay, thank you. [LB688]

LAZARO SPINDOLA: You're welcome. [LB688]

SENATOR SMITH: Additional questions from the committee? I see none. Thank you. [LB688]

LAZARO SPINDOLA: Thank you very much and have a good afternoon. [LB688]

SENATOR SMITH: All right, you too. Next opponent to LB688. Welcome. [LB688]

ADRIAN SANCHEZ: (Exhibit 6) Good afternoon, Chair Smith, and members of the Transportation and Telecommunications Committee. My name is Adrian Sanchez, spelled A-d-r-

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i-a-n S-a-n-c-h-e-z, and I currently serve at chairman of the Nebraska Latino-American Commission. And I'm here to testify in opposition to LB688 which would require all driver's license exams and tests to be conducted in English only. As chair, I would like to remind the committee the part of the commission charged includes translating government documents and assisting the efforts of state departments and agencies to serve the needs of Latino Americans. And going back to Senator Murante's question for our executive director, while all documents will still be available in English, we just are supplementing that with providing additional documentation for those who may not be proficient in English, but who are legally residing in our state. The bill introduced by Senator Bloomfield, I contend, will establish a unnecessary barrier for those who have difficulties reading or speaking English. I also contend adoption of this bill would have an adverse effect on public safety. The bill would establish a hurdle that disproportionately affects citizens, refugees, and other residents with legal status who may not be proficient in English. English competency is not required to drive safely as road signs are designed to be simple symbols easily recognized at high rates of speed. Sometimes I'm driving and I can't read some of those signs, the Amber Alert signs, because they have so many words on them and I'm traveling at 80 miles an hour. So multi-lingual tests and exams, they're already available; we're not asking you to introduce them. They were already created as tools to educate a more diverse range of drivers about safely and responsibly navigating our roads. So these alternate language versions are like Rosetta Stones for drivers, helping them to understand our rules and laws for traffic safety. Without these tools, it may place other drivers on the road at risk because now these people who are not proficient in English, they may be navigating our roads and...legally or illegally, I don't know. We can't restrict people's mobility. Should they be doing it illegally, they should face the justice of the law. But the commission is unaware of any data linking vehicle accidents or injuries to English proficiency or the lack of ability. Aside from the lack of correlation, the latest traffic figures indicate that vehicle accidents and fatalities have declined since 2010. So there really is no indication that English only...providing English only or having alternative versions are having an adverse effect on traffic safety. So by limiting tests and exams to English only divides our state and demeans hundreds, if not thousands, of citizens and legal residents with limited English proficiency. And as our executive director indicated, it could also open us up to potential loss of federal funding. So with that, I respectfully request the Transportation and Telecommunications Committee oppose LB688. Thank you and I'm available if you have any questions. [LB688]

SENATOR SMITH: Thank you, Mr. Sanchez. Do we have questions from the committee? I see none. Thank you for your testimony. [LB688]

ADRIAN SANCHEZ: Thanks. [LB688]

SENATOR SMITH: Next opponent of LB688. Welcome. [LB688]

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DARCY TROMANHAUSER: (Exhibit 7) Thank you. Good afternoon, committee members. My name is Darcy Tromanhauser, D-a-r-c-y T-r-o-m-a-n-h-a-u-s-e-r, and I'm the program director for the Immigrants and Communities Program at Nebraska Appleseed. We're a nonprofit, nonpartisan organization dedicated to justice and opportunity for all Nebraskans. And I'm testifying today to express respectfully our opposition to LB688. The bill affects immigrant Nebraskans who have a strong desire to integrate and contribute to their communities. A driver's license, obviously, maximizes educational and work opportunities and allows people to use the most realistic method of travel in a place like Nebraska. If the concern behind the bill is integration and learning English, there was just recently a major two-year study done by the National Academies of Science, Engineering, and Medicine that found that the newest generation of immigrants are assimilating as fast as previous generations across all measurable outcomes. The 400-page report conducted by 18 scholars covering English language learning, education, employment, residential integration, and other factors covered all of those factors and more. On language in particular, the report found that today's immigrants are learning English at the same rate and maybe even faster than earlier immigrants. And the scholar who oversaw the study noted that the desire on the part of the immigrant to learn English is indeed very high. That said, it takes some time for English language learners to become fully proficient enough to take a test in English which is why having multiple language materials and options is so important. On a personal note, I've been studying Spanish for 30 years, and I would still rather take a driver's test in my first language in order to show my knowledge of the rules of the road in driving rather than my imperfect knowledge of grammar, sentence structure, and verb tenses. If the concern behind the bill is safety, then unfortunately LB688 would undermine public safety. There's, as was just previously mentioned, no data to suggest that drivers who take the test in other languages are less safe on the road than those who take it in English. The road signs on all driver's exams are in English and many of our road signs use symbols in order to produce instant recognition and communication with drivers. So then offering the test in other languages actually ensures that a greater number of people will simply go through the process of studying those symbols and the Rules of the Road. So restricting testing to one language places Nebraskans who have not yet fully learned English in the untenable position of either having to delay or entirely forgo obtaining their license. We want as many people as possible to have access to studying for safe driving and taking that test rather than creating barriers to that process. One of our community organizers wanted to be here today to testify, she's taken her driver's test more recently than I have, and she said, you know, I learned so much going through the process of taking that test. So we want more people to go through that process. And in fact, a 2012 study from the California Department of Motor Vehicles backs that up showing that unlicensed drivers were nearly three times more likely to cause a fatal accident than were licensed drivers over a 23-year period of study. LB688 would also have an adverse effects on insurance rates for all of us, having more licensed drivers on the road means more insured drivers which causes everyone's premium rates to decrease. So for all of the following reasons we strongly urge the committee to reject LB688. Thank you and I'll take any questions. [LB688]

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SENATOR SMITH: Thank you, Ms. Tromanhauser. Senator Davis. [LB688]

SENATOR DAVIS: Do you have...and you may not know the answer to this, but thank you anyway, do you happen to know how many...what the immigrant population of Nebraska is? [LB688]

DARCY TROMANHAUSER: The total population...I'd be happy...I'd rather get you the right numbers than give you off the top of my head. [LB688]

SENATOR DAVIS: Over 10 percent, I would speculate. [LB688]

DARCY TROMANHAUSER: It's 7 or 11, I want to say, but I would like to check. [LB688]

SENATOR DAVIS: Thank you. [LB688]

SENATOR SMITH: Other questions from the committee? I see none. Thank you for your testimony. [LB688]

DARCY TROMANHAUSER: Okay, thank you. [LB688]

SENATOR SMITH: Next opponent of LB688? Welcome. [LB688]

IAN FALLON: (Exhibit 8) Good afternoon, Chairman Smith, members of the committee. My name is Ian Fallon, that's I-a-n F-a-l-l-o-n and I'm a community organizer with the Heartland Workers Center in south Omaha. We provide you with this letter of opposition to LB688 this afternoon for the following reasons. We're a nonprofit, like I said, nonpartisan organization located in south Omaha and we work mainly with the Latino community in south Omaha. As an organization, we work to increase civic participation, develop community leaders, and educate workers on their fundamental labor rights. In 2012, we began the Health and Safety Training Institute to provide work place, health, and safety training in both Spanish and in English. We believe that by offering trainings in Spanish, workers are able to more fully understand their rights and responsibilities on the job when they learn in their native tongues. Throughout the trainings, we also provide key safety terms in English because those will be the words that they see on the job site. However, we know that when workers learn and process these trainings in their native tongues, they are more likely to implement what they've learned on the job. Most research around public policy and multilingualism is focused upon children who are entering public elementary schools, while simultaneously learning a new language. But lessons documented from this research can be applied to the question at hand in this committee hearing.

According to research done in Los Angeles analyzing comprehension and retention among foreign-born youth participating in U.S. public schools, one teacher noted that children were picking up social English, not academic English and that new concept still had to be presented in the primary language for children to fully comprehend information. Native foreign language speakers in many cases have learned conversational English and can interact with others on a daily basis. But when it comes to learning technical knowledge such as what is required on a formal driving test, it is helpful to have testing materials available in one's native language. Another 2012 study conducted with Latino construction workers in Omaha in collaboration with the HWC and UNMC's College of Public Health found participants who reported being uncomfortable speaking English were significantly less likely to have had safety training, even though they reported being exposed to a variety of hazards in the work place. When Sergio came to Omaha from Guatemala, he knew transportation was critical to obtaining a job. Unlike in his home country, the Nebraska DMV then took and continues to take safety very seriously and requires mastery of information as a condition of passing a driving test. He feared that he would never be able to drive until he learned that public offices in South Sioux City had bilingual driving test materials for individuals in his situation. Sergio took mock driving exams in Spanish and passed. And he simply did not know how to speak enough English to pass the exam. It is important to have a driving test that is adapted to our state's changing population to ensure that all our residents are safe in their neighborhoods and roadways. The Heartland Workers Center respectfully opposes LB688 because of our expertise in providing bilingual occupational safety and health trainings to workers in high-risk industries in south Omaha. Preventing foreign-born drivers from taking driving exams in their native tongue will keep them from learning important driver safety information and will make our roads less safe. Thank you for your attention and I'm open to any questions. [LB688]

SENATOR SMITH: Thank you, Mr. Fallon, for your testimony. Senator Brasch. [LB688]

SENATOR BRASCH: Thank you, Chairman Smith. And thank you, Mr. Fallon. I find your testimony very interesting. How old or new is your organization? [LB688]

IAN FALLON: Our organization was incorporated in...I believe we started in 2009. We were officially incorporated in 2010. So we've been working for the past seven years, if my math skills are still up to date. [LB688]

SENATOR BRASCH: And then I'm also curious because of the previous testifier, Darcy Tromanhauser. She is indicating that the individuals who took the tests, they're just as well today as they did, I believe, ten years ago; and your organization is stating that there's been a significant improvement in safety. And I'm wondering if the improvement is because of safety standards by companies compared to other years, that every company and business has safety

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practices that for English or non-English individuals is a priority. And I've seen that be an industry standard. Your thoughts on that. [LB688]

IAN FALLON: Yeah, I mean that is certainly a possibility and I'm sure it's not an either/or, but a both/and kind of solution to the problem that we were seeing when we started up. But we do know that the bilingual approach that we take to our OSHA trainings and our occupational safety and health trainings, we do know that that helps increase that occupational safety literacy. And so whether or not one factor increases safety more than the other I don't know, but I'm sure that it's both. [LB688]

SENATOR BRASCH: And so your organization helps immigrants transition to an occupation. [LB688]

IAN FALLON: Um-hum. [LB688]

SENATOR BRASCH: And so are they also taught English-speaking skills, is that part of their training is learning the translation of...are you helping them under...do they have a job picked out and then you're helping them? Or do you have to have just a broad, generic...I'd like to know more about your company. [LB688]

IAN FALLON: Yeah, yeah, no, and so we don't provide any formal English lessons as part of our safety trainings, but like I said in my testimony, what we do is we offer the trainings primarily in Spanish and then we also assist, again, high-risk workers identify what are some of those key words in English that they need to be able to recognize in the workplace. And so it's...so I call it...we call them bilingual trainings and not Spanish-only trainings because we are helping them transition to U.S. workplaces. I mean, we do help them recognize those key safety terms in the work place so that they're not looking for Spanish safety terms like "please put your goggles on in this area" or something like that. [LB688]

SENATOR BRASCH: Can you give me an example of an occupation that you are preparing them for? [LB688]

IAN FALLON: Yeah, so we offer OSHA trainings in general industry, construction, and I forget what the formal name for it is, but also for house cleaning services and office cleaning services. And so the occupational safety trainings that we offer cover heavy industry, workers who work in meat packing plants in south Omaha, and also people who work with chemicals all day as they clean homes and offices. [LB688]

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SENATOR BRASCH: Very good. I have no other questions. Thank you. [LB688]

SENATOR SMITH: Other questions from the committee for Mr. Fallon? I see none. Thank you. [LB688]

IAN FALLON: Thank you, Chairman. [LB688]

SENATOR SMITH: (Exhibits 9, 10, and 11) Next opponent of LB688? Opponents. Seeing none, anyone wishing to testify in the neutral capacity? We do have letters for the record in a neutral capacity regarding LB688: Rhonda Lahm on behalf of the Department of Motor Vehicles; Jonathan Scherling on behalf of the Nebraska Association of the Deaf; and John Wyvill on behalf of the Nebraska Commission for the Deaf and Hard of Hearing. Senator Bloomfield waived his closing, so that closes the hearing for LB688. We now move to the next bill on the agenda, LB964. LB964 to be introduced by Senator Hilkemann. I do not see Senator Hilkemann. He's on his way. Welcome, Senator Hilkemann. We're going to give you a pass if you were looking for some roads funding for us in Appropriations. (Laughter) [LB688]

SENATOR HILKEMANN: Can't promise that one. [LB964]

SENATOR SMITH: Welcome. [LB964]

SENATOR HILKEMANN: Thank you. [LB964]

SENATOR SMITH: And you're here to open on LB964. [LB964]

SENATOR HILKEMANN: Okay. Thank you, Chairman Smith and members of the committee. I'm Robert Hilkemann, R-o-b-e-r-t H-i-l-k-e-m-a-n-n; I represent District 4 and I'm here to introduce LB964. This bill, which was brought to me by a constituent, would allow veterans who are considered to be on active duty for training purposes only to apply to have the designation of veteran on their state driver's license or ID card once they meet other requirements. Present law prevents those who are on active duty for training from applying. We have depended on our Reserve Armed Forces for more than 25 years now to serve, often more than once, in remote desert areas. I believe that any former member of the Armed Services should be allowed to have that notation on the Nebraska photo ID. My constituent is Dennis Murphy and he will come to testify following me. I would be happy to answer any questions you may have. [LB964]

SENATOR SMITH: Thank you, Senator Hilkemann. Do we have questions from the committee? Senator Hilkemann, I know there were a couple of other bills that touched on this earlier in the

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session and I think the timing was such that your bill was introduced after we had scheduled hearings on those or maybe already had our hearings on them, but I'm trying to remember, there is one from Senator Watermeier...or Senator McCollister, I think. [LB964]

SENATOR HILKEMANN: Senator McCollister. [LB964]

SENATOR SMITH: Senator McCollister had a component of your bill. Is it similar to what his bill, other than the license plate? [LB964]

SENATOR HILKEMANN: As I understand it, it's similar, yes. [LB964]

SENATOR SMITH: Okay. Very good. Thank you. Are you going to remain for closing? [LB964]

SENATOR HILKEMANN: I will remain for closing. [LB964]

SENATOR SMITH: Okay. Thank you, Senator Hilkemann. We now open the hearing for those wishing to testify in support as a proponent of LB964. Welcome. [LB964]

DENNIS MURPHY: (Exhibit 1) Thank you, Senator Smith and fellow committee members. My name is Dennis, D-e-n-n-i-s, Murphy, M-u-r-p-h-y. The issue that I have is I was denied veterans designation on my driver's license due to military service classified as active duty for training, as was explained. I was a United States Coast Guard Reservist for six years; did quite a bit of duty. I did five months initial service and then two days a month for five and a half years, plus five different two-week service duties. And I was classified when I was honorably discharged with my DD214 as a veteran. I do not qualify for all veterans benefits because you have to be on active duty for 180 consecutive days to qualify, but I am a veteran. What happened was, in...I passed that all out to you, I was approved by the state of Nebraska Department of Veteran Affairs and so I heard about the veterans designation for driver's license and I sent my DD214 to the department and was approved on 7/29/14 to be able to go in and get my driver's license with the veterans designation. My renewal was in July of last year, so in June...June 23, '15, I went into the DMV and renewed my driver's license and was denied the veterans' status. Per the DMV, the status was added on 7/28/14 and removed on 5/27/15. They advised me to call the department...the Nebraska Department of Veterans' Affairs. So I contacted them and they advised that the state of Nebraska did not recognize the classification of active duty for training. I then contacted Senator Hilkemann's office, and after some discussion, he agreed to try to amend the current bill. I did ask the Department of Veterans' Affairs if they kept track of the people that had been denied. And he said there had been a number of people that were denied, but he didn't have

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a specific number because they didn't track it. But he did say that probably about 60 percent of the Guard and Reserve would be for active duty for training. So there should be a lot of people out there that have had this issue. There were probably 35 to 40 people in my unit that were probably going to...as goes along and renews every year, because I think the bill just went into effect last year, so it would be the next four years, as they renew their licenses they'd get denied. My reasoning for doing this is to honor and respect my service and also those others who might be involved in a situation. And that's what I'm trying to do. I'd appreciate you... [LB964]

SENATOR SMITH: Thank you, Mr. Murphy. And thank you for your service to our country. [LB964]

DENNIS MURPHY: Thank you. [LB964]

SENATOR SMITH: Do we have questions from the committee? I see none. Thank you. [LB964]

DENNIS MURPHY: Thank you. [LB964]

SENATOR SMITH: Next proponent of LB964? Proponent? Do we have anyone wishing to testify in opposition to LB964? Opponent? Welcome. [LB964]

GREG HOLLOWAY: Good afternoon, Senator Smith, members of the committee. My name is Greg Holloway, G-r-e-g H-o-l-l-o-w-a-y. I am the chairman of the Nebraska Veterans Council, which is made up of the seven recognized veterans organizations within the state of Nebraska, and probably a total of 60,000 veterans under their leadership. And I am here to oppose LB964 for the same reason I opposed LB880...we opposed LB880...is we do not like the fact that you're scratching out for purposes other than training. As a matter of fact, on February 23, 1968, I was sitting at Fort Lewis Washington, waiting to get on the plane to go to Vietnam to start my eligibility for veteran's status. Five months, 17 days in Vietnam and wounded twice, I felt I earned my veteran's status. I have nothing against National Guard, Coast Guard, Army Reserves, Marine Reserves, nothing against their military service. We just, in the Nebraska Veterans Council, we feel that we do not like scratching the language which will conflict with other statutes within the state of Nebraska on the veterans. Some people say it will not conflict because it's just designated for the driver's license or license plates. But I do always believe that there is somebody going to be out there like me that's going to say you're going to call me a veteran here, why can't I not be a veteran when it comes to Nebraska Veterans Aid County, veterans aid, or eligibility for the Nebraska Veterans' Home, which I do serve as the vice president of that board. That's my reasoning to oppose this bill, only that. So thank you for your indulgence. If you have any questions, I'd be more than glad to answer them. [LB964]

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SENATOR SMITH: Thank you, Mr. Holloway. It's good to have you in front of the committee again. Good to see you again and to thank you for your service to our country, we appreciate that very much. [LB964]

GREG HOLLOWAY: You're more than welcome. [LB964]

SENATOR SMITH: Do we have questions from the committee? Senator Brasch. [LB964]

SENATOR BRASCH: Thank you, Chairman Smith; and thank you, Mr. Holloway, for your service and willingness to come testify once more in opposition of the proposal to include those who...is it that you don't consider them veterans because it was training? Were they issued uniforms? Were they...what is... [LB964]

GREG HOLLOWAY: It is for the purposes of other than training purposes. There are...the state statutes do indicate that for other programs that you're eligible for, like Nebraska veterans aid and county veterans aid, and I don't see them scratching...lining out those on those bills. That's going to be a lengthy process. And I do worry about that. And... [LB964]

SENATOR BRASCH: So are the individuals... [LB964]

GREG HOLLOWAY: We still...there's a lot of Vietnam vets, I represent the Vietnam Veterans of America too, and there's a lot of Vietnam veterans out there do have a lot of animosity against National Guard and American Legion that went into those military branches to avoid the draft. And I'm 69 and I know there's a lot of them out there. It was not too long ago that the...they said that the 18-year-old was not...didn't have enough, we'll say, couldn't be elected for office...couldn't run for office. But at 18 years old if you joined the National Guard, according to this, just as soon as you get out of basic training and in your AIT, your advanced training, you're eligible. And they dropped it from 180 days to 90 days because of the Iraq war. It used to be 180 days but they dropped it back to 90. So... [LB964]

SENATOR BRASCH: So you believe active duty only? [LB964]

GREG HOLLOWAY: Active duty for purposes other than training. Now, there are...you could join the National Guard just for a drill, from what I understand, and three years. There still...they don't promote when you join the National Guard that you're going to go to Iraq or to Afghanistan. They promoted to join the National Guard and the Reserve to get to a better education and a part-time job. They don't say join the National Guard because you're going to go

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to war. Nowadays, odds are if your unit is deployed, you're going to be over there. Then you do have federalized active duty for purposes other than training. [LB964]

SENATOR BRASCH: So help me out here because, all right, so you want everyone to be included in this...everyone...or you want exclusions for those who are on active training. You want...is that correct? I don't know. I'm reading the bill and I'm seeing...because I don't...from your testimony... [LB964]

GREG HOLLOWAY: My belief and the belief of the Nebraska Veterans Council right now...if you have federalized active duty for purposes other than training for at least 90 days now, you're considered a veteran. If you have active duty for training purposes only, then you're not eligible for veteran status. That is the belief of the Nebraska Veterans Council right now. [LB964]

SENATOR BRASCH: And are they...those for training only, are they excluded from activities of the VFW and... [LB964]

GREG HOLLOWAY: In order to be a member of the Veterans of Foreign Wars, you have to serve overseas in a combat role, in a war zone. [LB964]

SENATOR BRASCH: So all of the organizations... [LB964]

GREG HOLLOWAY: The Disabled American Veterans, the American Legion; I'm not positive about the AMVETS, but they also...the AMVETS voted at our meeting to oppose this bill, the representatives of the Nebraska AMVETS, not national. I'm not sure about their eligibility criteria for their organization, as I am a member, but I'm not an active member. Military Order of the Purple Hearts, you're going to have to be on combat zone to have a Purple Heart, which I have two. So... [LB964]

SENATOR BRASCH: So there's a standard that... [LB964]

GREG HOLLOWAY: There is a standard...set standard... [LB964]

SENATOR BRASCH: And you want that standard respected. [LB964]

GREG HOLLOWAY: Yes, we do. [LB964]

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SENATOR BRASCH: I understand clearly now. So, again, thank you for your service. I have no other questions. [LB964]

SENATOR SMITH: We have a question from Senator Garrett. [LB964]

GREG HOLLOWAY: Senator Garrett. [LB964]

SENATOR GARRETT: Thank you, Greg, for coming again. I got to tell you, in my heart of hearts as a veteran, anyone who takes a step forward, raises their right hand and swears an oath to support and defend the Constitution of the United States against all enemies, foreign and domestic, whether they be Coast Guard, NOAA, Guard or Reserve, there's no guarantee that, you know, the Coast Guard served in Vietnam quite extensively. [LB964]

GREG HOLLOWAY: Oh, yeah. [LB964]

SENATOR GARRETT: There's no guarantee in the Guard or Reserve that your unit is not going to get called up and you're going...so I don't see these guys shirking, going into the Guard or Reserve to escape the draft or escape having to go to Vietnam or Iraq or wherever; they're serving. And in my heart they're veterans, and because, again, there's no guarantee that they wouldn't get activated and get deployed. As a matter of fact, the Guard and Reserve are playing a huge role in Iraq and Afghanistan, so we just differ here. And brothers... [LB964]

GREG HOLLOWAY: Yes, we do. [LB964]

SENATOR GARRETT: ...and brothers and sisters in arms, and not everyone is a combat vet, I know that, but veterans all...and brothers in arms...brothers and sisters in arms. [LB964]

GREG HOLLOWAY: You and I worked together on a lot of things and I respect your opinion. But we do differ on this. And unless the Nebraska Veterans Council...here's what I suggest: that if by chance this does not make it to the floor, that...come to the Nebraska Veterans Council and I'd be more than willing to work with them, with the Nebraska Veterans Council, and see if we could come to some understanding through the Nebraska Veterans Council and either say here's why we really don't want it or, yes, we will help you accomplish this goal. And I'm more than willing. And I have talked with some high-ranking officers in the National Guard and high ranking NCOs in the National Guard that agree with me. And everybody knows...the ones that know me on this committee know me that I'm a veterans advocate and I work very hard for the veterans of the state of Nebraska and have been doing it for many years. And my first concern is the integrity of the veterans within our...in Nebraska and in the United States. And I have nothing

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against the National Guard or Coast Guard or any other organization. And I believe, yes, they have served their country and served it honorably and do the job that they're supposed to do. But we still have that question within the statutes of the state of Nebraska...consistency within the statutes. And I think there will be a problem some day. And we need to figure that out before we go forward with anything else and change the veteran status. My personal opinion, and I've been told that it's not going to affect, but I don't believe that because I know it's going to happen sooner or later. [LB964]

SENATOR SMITH: All right. Thank you, Mr. Holloway, for your testimony today. [LB964]

GREG HOLLOWAY: Thank you. [LB964]

SENATOR SMITH: Next opponent of LB964. Seeing none, anyone wishing to testify in a neutral capacity on LB964? Seeing none, Senator Hilkemann, would you like to close? Senator Hilkemann waives closing. And that concludes our hearing on LB964. We now move to LB1077...LB1077 to be introduced by Senator Pansing Brooks that relates to changing the provisions under the Motor Vehicle Operator's License Act relating to operator's license revocation. Welcome, Senator Pansing Brooks. [LB964]

SENATOR PANSING BROOKS: Thank you, Chairman Smith. Welcome back since you were sick yesterday, I think. [LB1077]

SENATOR SMITH: Yeah. [LB1077]

SENATOR PANSING BROOKS: So anyway, good afternoon, members of the Transportation and Telecommunications Committee. For the record my name is Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, and I represent Legislative District 28, right here in the heart of Lincoln. And I'm here today to introduce to you LB1077. LB1077 would allow a court, when imposing sentence for a person convicted of driving under a court order revoking his or her operator's license, the discretion to not revoke a person's operator's license if the court places the person on probation. If the court does not place the person on probation, then the court would revoke the person's operator's license for an additional one-year period of time for a first offense and an additional two years for a subsequent offense. This bill is intended to correct an interpretation by the Nebraska Supreme Court in State v. Frederick, which was a 2015 case in which the Supreme Court determined that a court was required to revoke a defendant's operator's license for a violation of Section 60-4,108 regardless of whether or not the sentencing court places the defendant on probation. Prior to this decision, it was common practice for courts to place defendants on probation for driving during revocation so that defendants would not have their operator's license further revoked. While such defendants would be subject to the additional

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consequences of punishment such as fines or jail sentences, the hope by placing these defendants on probation was to encourage them to obtain their operator's licenses as soon as practicable so that they could be productive members of our community. If the courts believe that certain defendants should have their license revoked for an additional period of time, the court would simply not place these defendants on probation and their licenses would be revoked automatically. The Frederick decision held that sentencing courts had no option and instead were required to revoke a person's operator's license. And this bill provides the courts with the option. And with that I'll take any questions. [LB1077]

SENATOR SMITH: Thank you for your opening on LB1077. Do we have any questions from the committee? Senator Garrett. [LB1077]

SENATOR PANSING BROOKS: Yes, Senator. [LB1077]

SENATOR GARRETT: Thank you, Senator. Thank you, Senator Pansing Brooks. I've always been under the impression that the judges are almost omnipotent, nothing is going to force them to say that they're going to actually have to invoke this penalty for, you know... [LB1077]

SENATOR PANSING BROOKS: Well, that's not quite right. There are a number of cases where judges do not have discretion to be able to place the order that they choose. I don't know if you saw just recently, and I don't know where you are on this issue, but mandatory minimums is another issue where some judges do not believe that they have the discretion to impose the sentence that they believe is truly fits the crime. And this is another case where...of course in Nebraska we have issues with people being able to get to their jobs and to be productive members of our communities, especially in places in the western part of the state where there may be a great distance between a person's home and their employment or within the cities as well. It's just important to be able to have the ability for the judges to determine, if they want to, that they can put somebody on probation. The case that I'm talking about, the Frederick case was a case where a person was driving in a parking lot. And then had...the court determined that there was no other options, the Supreme Court determined that, pursuant to law, there was no other option than to revoke the license rather than just putting the person on probation for driving within a parking lot. So, just to clarify... [LB1077]

SENATOR GARRETT: So this would give the judge judicial discretion. [LB1077]

SENATOR PANSING BROOKS: Yeah. They can either...they can either...they can go ahead and revoke the license, especially, you know, if it were something like speeding on a public highway or something like that, but if it's sort of a de minimis crime, it puts a big stress on both the family and the people involved in that issue and it lets the judge determine what's best. [LB1077]

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SENATOR GARRETT: Thank you. [LB1077]

SENATOR SMITH: Senator Brasch. [LB1077]

SENATOR BRASCH: Thank you Chairman Smith; and thank you, Senator Pansing Brooks. What I'm...a question I do have is I believe Senator Karpisek may have introduced this a couple of years ago if it pertained to...and I don't know the technical name of it...if a person is driving with one of the mechanisms for a DUI...the breath machine? [LB1077]

SENATOR PANSING BROOKS: Yes. [LB1077]

SENATOR BRASCH: Okay, that they were asking...and I'm...my question is, does this affect that person with one of those that may have backed another vehicle out of a driveway or something that...because right now if you are driving in a vehicle without one of those mechanisms, then it's automatic back to incarceration for something like that. So will it be all the way...all violations of driving suspension? Do you understand where I'm... [LB1077]

SENATOR PANSING BROOKS: Um. [LB1077]

SENATOR BRASCH: Is it anything? Like, they are on restricted driving and they must be in a vehicle with the breath... [LB1077]

SENATOR PANSING BROOKS: I don't think this relates to it, but you may...but there are people behind me that would know that better. [LB1077]

SENATOR BRASCH: That might know. [LB1077]

SENATOR PANSING BROOKS: And so I'm sorry not to be able to answer that. [LB1077]

SENATOR BRASCH: Or is this just sentencing? [LB1077]

SENATOR PANSING BROOKS: I don't think this has...I don't know if this is the same as something that Senator Karpisek brought forward. It's actually based on this 2015 law that the Supreme Court... [LB1077]

SENATOR BRASCH: Oh, okay. [LB1077]

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SENATOR PANSING BROOKS: So, in that regard, there was a feeling that there needed to be a change. So I, again, I'm not sure what Senator Karpisek brought. [LB1077]

SENATOR BRASCH: And someone may remember that. [LB1077]

SENATOR PANSING BROOKS: Yeah, sorry; too new. [LB1077]

SENATOR BRASCH: Thank you. [LB1077]

SENATOR PANSING BROOKS: Thank you for your question. [LB1077]

SENATOR SMITH: Other questions from the committee? I see none. Thank you, Senator Pansing Brooks. Are you going to remain for closing? [LB1077]

SENATOR PANSING BROOKS: Thank you. I'll remain, but I don't know if I'm going to waive or not. Thank you. [LB1077]

SENATOR SMITH: We now open the hearing on LB1077 to proponents, those wishing to testify in support of LB1077. Welcome. [LB1077]

JOE NIGRO: Good afternoon. I'm Joe Nigro, that's spelled J-o-e N-i-g-r-o. I'm the Lancaster County Public Defender and I appear as Lancaster County Public Defender and also on behalf of the Nebraska Criminal Defense Attorneys Association. I want to thank Senator Pansing Brooks for introducing this bill. It is intended to remedy this problem that came about from the Frederick decision last summer. Prior to that, when someone was charged with driving on a revoked license and they were cited prior to the date of eligibility for reinstatement, upon sentencing if they received a straight court sentence it was mandatory that their license was revoked for a year on the first offense and two years on a subsequent offense. If they received probation, the courts would allow people to keep their license. And what we had judges do was they would...if the eligibility date was close in time, they would delay sentencing as an incentive for the person to get reinstated. They recognized that people are going to drive out of necessity. It's a problem here in Lincoln because mass transit just won't get you where you need to go and in the rural parts of the state it's an absolute...I mean, people have to be able to drive to get to work, to take care of their kids sometimes. And so the courts saw that as an opportunity. And I would tell you that with our office, we had, in 2014, we had 240 misdemeanor driving on suspended cases, 67 of those, so about 28 percent, received probation. Well now the Supreme Court and Frederick, basically, said that the license revocation is mandatory whether you get probation or a straight court sentence. So there's going to be an impact on a significant number of people. All this bill

does is gives the court more discretion. It doesn't mandate probation and it doesn't mandate that if a person is placed on probation that they have to...they get to keep their...automatically get to keep their license. And the court could put limitations; it could say if you get your license on probation you can only drive to work or for certain specified purposes. But this had been the practice for many years for courts across the state. The Frederick case came out of Buffalo County to sometimes allow people to get reinstated and then be placed on probation. And they were using that as an incentive. One of the problems we have is if people are operating a motor vehicle without a license it's likely that they're not insured. And we all have an incentive to have people licensed and insured who are operating motor vehicles. This bill is supported by the Bar Association. Regarding your question earlier, this would not impact interlock violations. [LB1077]

SENATOR BRASCH: Interlock. Okay. [LB1077]

JOE NIGRO: But it just corrects this interpretation from the Supreme Court on the Frederick case which I think is, you know, based on the numbers just from our office it's going to impact hundreds of people a year and thousands over time. Some nice people get caught in this cycle where their license is revoked and then they may get another one and the eligibility date just keeps getting pushed back another year, another year; and again, if you don't have a license, you're not going to be able to get insurance. But people sometimes find themselves forced to drive. And it's not a situation where people can...at least my clients, you know, as a public defender they're not going to be able to hire somebody to drive for them. And as I said, I think allowing the courts that discretion to hold this out as an incentive for people to get reinstated when they become eligible is a good thing; and giving the courts more discretion at sentencing is a good thing. So I would urge you to advance the bill. Thank you. Any questions? [LB1077]

SENATOR SMITH: Thank you, Mr. Nigro. Senator Brasch. [LB1077]

SENATOR BRASCH: Thank you for your explanation. And, yes, interlock is what the hearing was about. And what I believe I'm hearing is that this...on driving violations of some type that it does give the courts discretion...or the judge discretion. [LB1077]

JOE NIGRO: That's correct, that's correct. [LB1077]

SENATOR BRASCH: And what makes interlock any different? Because there were...testimony, very compelling. A vehicle was broken, they have to get to their job; only one of their vehicles has an interlock. Why wouldn't that discretion overflow to the other? [LB1077]

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JOE NIGRO: Well, what you're proposing might be a good idea, but I think that that goes beyond what the bill is intended to do. [LB1077]

SENATOR BRASCH: Is it different? Is it germane to the same that the court would have discretion if it's a driving violation and it's a condition that they broke? I... [LB1077]

JOE NIGRO: I don't think that this bill is going to address an interlock violation. [LB1077]

SENATOR BRASCH: So it is specific as to what kind of violation. [LB1077]

JOE NIGRO: Yeah, it's specifically violations of this particular statute or the ordinances...a lot of these happen under municipal ordinances that are corresponding. But my understanding is, yeah, the interlock violations, that's completely different (inaudible). [LB1077]

SENATOR BRASCH: Entirely different statute. [LB1077]

JOE NIGRO: Yeah. I mean what you're saying makes sense, but this bill wouldn't address that situation. [LB1077]

SENATOR BRASCH: All right, I have no other questions. Thank you. [LB1077]

SENATOR SMITH: Further questions from the committee? I see none. Move on to the next proponent of LB1077. [LB1077]

JOE NIGRO: Thank you. [LB1077]

SENATOR SMITH: Thank you again for your testimony. Welcome. [LB1077]

BUB WINDLE: Chairman Smith, members of the committee, my name is Bub Windle, that's B-u-b W-i-n-d-l-e. I'm here on behalf of the Nebraska State Bar Association in support of LB1077. I'll keep it short and highlight two points raised by Mr. Nigro. One, the bill actually just simply aligns the statute with historical practice. Courts have been doing this; they have been ordering probation allowing these people still to drive. It's just with the Supreme Court case that practice now will change to this...simply aligns the statute with historical practice. Second, additionally because they would still be subject to probation, the court can limit the use of the driver's license. So they may be able to say...order probation, the court can limit the use of the driver's license. So they may be able to say...order probation, allow them to keep their license, but say that the

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license can only be used, for example, to go to or from work or other necessary things in life. So it's not giving these people a pass, but allowing them to, as the senator said, be productive members of the community and work themselves out of these situations. [LB1077]

SENATOR SMITH: Thank you, Mr. Windle, for your testimony. Do we have questions from the committee? I see none. Thank you. [LB1077]

BUB WINDLE: Thank you. [LB1077]

SENATOR SMITH: Next proponent of LB1077. Seeing none, do we have anyone in opposition to LB1077, opponents? Anyone wishing to testify in a neutral capacity on LB1077? Seeing none, Senator Pansing Brooks? Senator Pansing Brooks waives closing, and that concludes our hearing on LB1077. We now move to LB1068 that will be introduced by Senator Haar, that relates to adopting the Electric Customer Protection Act and providing duties for the Public Service Commission. Welcome. [LB1077]

SENATOR HAAR: (Exhibit 1) Yes, thank you very much. First time I've ever testified before the Transportation Committee. [LB1068]

SENATOR SMITH: I'm glad we got you here before you left. [LB1068]

SENATOR HAAR: Well, thank you...me, too. I'm leaving? [LB1068]

SENATOR SMITH: Well, after, after this year, right? [LB1068]

SENATOR HAAR: You're right. Yeah, thank you very much. I have some handouts. (Inaudible). Yeah, yeah. "Whoop," that's mine. Okay. Well, Chairman Smith and members of the committee, thank you very much. Priorities have been assigned, and time is running out, so I know that this bill is going nowhere this year. However, I'm asking the committee to hear LB1068 and engage in a study of the issues that led me to introduce the bill. LB1068 is based on input from the Public Service Commission about the way they review natural gas rates. This includes two important elements which are missing in current electric rate setting. One is an independent, expert evaluation and review. And the second is a public advocate to speak on behalf of customers, providing a balance in the process, which is otherwise heavily weighted on the side of the utility. I'm a strong supporter of public power; it has served us well for many years, providing us with low rates and reliable service. I also support having an electric power system that's governed by elected representatives. However, recent events have shown a need for oversight of the rate-making process. And then I have to add the fact that some public power

representatives have equated oversight with a threat to their existence, and that's misguided. None of this is personal; it's about policy. Our public power districts are political subdivisions of the state, and the Legislature has an obligation to provide direction for the entities it creates. The Legislature has established oversight provisions for almost all of our other political subdivisions, including levy and spending limitations for public schools, levy and spending limitations for cities and counties, and levy and spending limitations on natural resource districts. Yet there is no limitation on the amount that a public power district can increase its rates. And there is no state rate review process for electric rates. Although it seems that a customer-owner can seek court review over rates, the process would be difficult and expensive. So now that, to the issues that led me to introduce this bill...first of all, the amount of rate increases has been a matter of major concern. According to an April 5, 2015, article in the Omaha World-Herald, Nebraska electric rates have risen faster since 2008 than in all but four states. Part of the rate increase is due to the investment of more than \$1.8 billion in new infrastructure, including \$700 million for a coal-fired power plant near Nebraska City. Several hundred million more has been spent on upgrading nuclear plants. None of these major expenditures were voted on by the people the power district represent. And I've included that, the first graph from the handout, showing the rising rates, and this comes from an Omaha World-Herald article of April 5, 2015. The second issue is one of fixed charges, starting with OPPD. The way that rates have been charged is also a major concern. In November 2015, OPPD proposed increasing its fixed charge from \$10.00 to \$35.00 per month, while lowering its energy usage charge. According to a November 19, 2015, article in the World-Herald, this would increase the electric rates of 60 percent of its low-income customers. It would also increase the rates of people who have made investment in efficiency or solar energy. The World-Herald article told the story of a 71-year-old woman who had taken significant steps to reduce their electric bill, her electric bill, by being more efficient in order to survive on a fixed income. The article indicated the new rate would increase her electric bill by 35 percent. In December, Senators Mello and Chambers joined me in sending a letter to OPPD, asking that the power district investigate other options, rather than making this huge leap in their fixed charges. Although there was an e-mail responding to my legislative aide, there was no official response to the three senators: myself, Senator Mello and Senator Chambers. And I've also included a copy of the letter that we sent; it's dated December 1, 2015. Despite the fact that more than a dozen people testified against OPPD's rate proposal, despite no testimony in support at the hearing, despite nearly 500 comments on OPPD's Web site in opposition, despite more than 2,000 signatures on petitions in opposition, despite numerous comments against it at their open houses and at public forums, OPPD adopted a modified form of their fixed-rates proposal, which will be phased in over a period of four years. And there seems to be no effective process, at this point, for customers to change the rate increase that they will have to pay. And even though there may be an argument that OPPD's fixed charge increase violates the law, most customers, particularly low-income and fixed-income individuals, cannot afford to hire an attorney and go through the legal process to challenge the rate increases. And then I want to talk briefly about my own power district, Norris Public Power, and I've had some good conversations

with representatives. But this, this whole issue of fixed charges made me ask questions about my own electric bill. So I included...it's the next exhibit here...an article that appeared in the Norris Public Power newsletter, "2016 Rate Schedules: Norris Customers See NO Rate Increase In 2016." But if you read the fine print, they're increasing their customer charge. And that surprised me. I looked at my bill; my customer charge went to...from \$25.00 to \$26.00 a month, but yet the headline says "no rate increase in 2016." And if you look at the next graph that I brought, it shows the monthly customer charge as it's developed from 2002. And it wasn't until 2013 that it started showing up on my, on my bills as a separate item. Now going from \$25.00 to \$26.00 a month may not seem like a lot of money, but that's a 4 percent increase in the customer charge. So again, I just wonder how many of my neighbors looked at this magazine and think they're having no rate increase. I've been assured that my total bill is not going to increase, but the customer charge is going from \$25.00 to \$26.00, a 4 percent increase. Also, if you look at the Norris rate schedule, there's some things that...excuse me, feel a little bit unfair to me. For example, I pay the same as a, as a farm would pay, if you look back at this page. A farm and rural residential pay the same thing, although I'm sure that my neighbor down the road who feeds cattle uses a lot more electricity and a lot more in the way of fixed charges. And then the fact that I live fairly close to Malcolm...their charge is \$20...\$17.50; mine is \$26.00. And all rural customers pay that same \$26.00. So no matter if I'm a mile from Malcolm or two miles, whatever it is, or five miles, seven miles as I am now, that fixed rate is the same. And so, really, I share those costs equally, no matter how far they are rurally. And there are alternatives. I'm aware of the issues related to fixed charges. However, several studies have shown there are alternatives in rate structure that can generate the amount of needed revenue without penalizing customers who are low-income or who have invested in efficiency or renewable energy. These include a combination of smart meters, time of use charges, and rates that increase with the amount of electricity used instead of the opposite. Another reason I think that this has to be looked at, of introducing the Public Service Commission, has to do with NPPD's contract negotiation process this last year. It provides another example which demonstrates the need of procedures for review. You may be aware of this or not, but NPPD offered a lower rate for customers who agreed to sign long-term wholesale contracts with a higher rate for customers who refused to re-up, to sign up for another contract. The end result of the process led to several of NPPD's larger wholesale customers, which amount to about 8 percent of their load, deciding to leave NPPD. Some of the customers who decided to leave are now suing NPPD over the difference in rates between customers who agreed to sign long-term contracts and those who didn't. A state oversight process, like I am proposing, could have provided an avenue for customers with concerns about their long-term contracts to continue to work with NPPD and avoid the court system. In this way, such a process could have benefited both NPPD and their wholesale customers. And finally, a reason I think this needs to be looked at has to do with the latest survey that Nebraska Municipal Power Pool conducted. First, the handout, and you may or may not be aware of this, but there are...it's maybe a little hard to count...either 165 or 166 separate public power entities, power entities in the state. And I've shown them on this first sheet that says "166 Silos." And then the

next sheets are from our planning database that we get every year. And this one is from 2008, and it's a listing of all, this alphabetical listing of all the various entities that are public power. And I just took this one from 2008, because I didn't have a later one. But as you can see, for example, Omaha Public Power, with the number of customers...on this one at least 331,657, and there's some like Elm Creek...Elk Creek with 61 customers, and so on, a great difference in size, a great difference in the way they charge their rates, and so on. The point I'd like to make then, is the difference between electric rates in different communities is worth considering. A 2015 rate survey by Nebraska Municipal Power Pool showed a rate of \$83 per month for residential customers in Chappell, Nebraska, and a rate of \$166 per month for residential customers in Arapahoe, Nebraska. I think the reasons...and I can't explain those differences, but I think perhaps the people in Arapahoe would like to be aware of that information and have an explanation for that. So the reasons for the differences in rates deserve examination and explanation. And again, I handed out this page, and this is right from the NMPP, typical bill survey results which were handed out in January of this year. And I've, I've shown Gothenburg, Nebraska; I've highlighted that \$91 for a typical bill. And then on the back side, there's Arapahoe, Nebraska...a typical bill \$166. And both of these get their power from Nebraska Public Power District. I'd like to say, too, I'm aware that Moody's has raised questions about LB1068 in relation to public power districts' ability to raise money through bonds. I'm also aware that utilities in other states that are subject to rate review procedures by public utility commissions are able to use bonding authority. I have no intention of impairing the power districts' bonding authority, but I believe this is another area that deserves study. So in conclusion, I believe it's vital, both to our state and our public power system that our electric rate review process be established. When rates rise faster than the national average, when fixed charges raise rates for low-income customers, when power district boards ignore public input, when the customer-owners of public power have very little recourse to rate increases except through the court system, our public power system is undermined. Although LB1068 may not be the vehicle for creating such an oversight process...it may not be perfect...hopefully the discussion today will lead to a study that will create such a process. In the long run, a robust review process can make public power stronger and more viable for the future of Nebraska. The final sheet I handed out to you concerns the A bill. And if you look at that, you know, the...at first the A bill looks like a lot of money, and it is...\$2,222,559. But then, if I look back at that 2008 sheet I handed out, it said the total revenue from public power was \$1.8 billion. So the cost of this A bill would be .001 percent of the total revenue of public power. I don't know if you've had time to look at the bill, but I would just really quickly point out some things in the bill. On page 3, Section 5...and this really gets to the heart of this bill of having the Public Service Commission review rate increases. Section 5, line 26...this would be a customer-initiated review, "A petition or petitions filed by two percent or more of the affected customers." And then on the next page, Section 7 talks about when there would be an automatic review by the Public Service Commission of a rate increase. If you look on page 5 at Section 7, this is really where I believe some of the benefit comes in, not, not simply the ability of customers to initiate a review or the

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automatic review, but if you look down at line 21 on page 5, "the electric utility shall notify each of its customers in writing of any change in rates." Line 30, "A statement of the number of affected subscribers served and the number and percentage of signatures required," and so on...so there's a lot, I believe, of, of that second look that would protect customers. On page 7 is a really important part of this bill, as well. On line 16 on page 7, and this kind of comes off the way the Public Service Commission does its business right now. But, "The commission may contract for professional services and expert assistance," and then Section 11 and following sections talk about a customer advocate. So what this would introduce into the process again, as I said in the beginning, independent, expert evaluation in review of rates and then a public advocate who would be there to speak and work on behalf of the customers. Again, this is my last year. I would suggest this is an area that's well worth the time of this committee to look at as a summer study. I think it would strengthen the public power system and give customers more confidence when they see rate increases. And that concludes my opening. [LB1068]

SENATOR SMITH: Thank you, Senator Haar, for your introduction of LB1068. It looks like we have a number of questions. We'll start with Senator Friesen. [LB1068]

SENATOR HAAR: Yes, thank you. [LB1068]

SENATOR FRIESEN: Thank you, Chairman Smith. Senator Haar, I will admit that, you know, I've only been here two years, but your bill is probably the first one that has generated more questions in me than I could possibly even ask. I will, I will start with just a couple. But when you talk about controlling the price of electricity to the customer, and since we're a member of the Southwest Power Pool, and they will choose whoever is bidding power into the system, and as we go down the road here, what, what...how do our utilities here control costs that they can...year after year? I mean they, they will not have much control over their costs, as far as having a hearing, and set those costs. Do you see a, a conflict there with the Southwest Power Pool and how we set our rates? [LB1068]

SENATOR HAAR: Well, first of all, the electric industry is really changing all over the country. I mean, some of the things I mentioned...it's a...for example, right now we have net metering in place because customers are beginning to generate their own electricity. And they're taking power from the grid and also putting power back on the grid. That's a big one. The whole thing of distributive generation of more and more places starting to generate their own electricity, turning methane, you know, using methane to drive generators. There's a lot of research going on right now on the mass storage devices so that you could take the energy from wind when the wind isn't blowing in this place, or the sun isn't shining right here, and store that for a peak. And then there...also a realization of the thing that I mentioned, as we begin to get smart meters that will tell what time of day you're using electricity and assigning prices based on that, so people

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can decide to use electricity at cheaper times during the day. All those are creating a lot of problems for not just public power, but also for IOUs. If I had the answer to all those questions, I probably would know exactly what I'm doing when I retire next year at this time. What my bill talks about primarily...it, it doesn't tell public power how they're going to solve their problems, but it adds, it adds to the rate-making process what I think is, as I said on the, the thing I handed out, it's a second set of eyes. It's a second expert opinion when setting rates. I don't know if that answers the question. [LB1068]

SENATOR FRIESEN: Not quite, but that's fine. [LB1068]

SENATOR HAAR: Yeah, okay. [LB1068]

SENATOR FRIESEN: When you talked about the fixed cost now, of your bill... [LB1068]

SENATOR HAAR: Yeah. [LB1068]

SENATOR FRIESEN: ...you know, and, and as the power companies look into more and more of the renewable that's coming, and they're going to have to (inaudible), they're going to have to start to unbundle their rates, I take it... [LB1068]

SENATOR HAAR: Exactly, yeah. [LB1068]

SENATOR FRIESEN: ...is that what you call it and figure out what, what it's going to cost to deliver that electricity, since they're the owners of the transmission system? So in the end, would you say that the rural customers like ag and us farmers are going to start to bear an even higher cost than the delivery, because they've only got one or two services per mile? So if we start to unbundle that, you're going to dump a tremendous cost on top of ag; is that what you're... [LB1068]

SENATOR HAAR: Well, we're already doing that. And I showed you, with my rates in Norris, that I, I pay the same fixed charge as my neighbor who's a farmer, who uses a lot more electricity. And, and my concern with...and there will be a fixed charge. I think that a fixed charge is going to be part of all bills. But I also think the fixed charge should depend on how much electricity I use. For example, I build a house that is very energy-efficient with the idea that my electric bill would go down. And I've been assured that it will go down, but again, when I see that headline, "No Rate Increase," but yet my fixed charge is increasing, I... [LB1068]

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SENATOR FRIESEN: I guess, from my standpoint though, when I deliver a product...and the higher the volume of product you deliver, the lower your fixed cost can be. You're saying it's just the opposite...the lower, the less you use, the lower you want your fixed cost. And, and that's... [LB1068]

SENATOR HAAR: Yeah, I would... [LB1068]

SENATOR FRIESEN: That doesn't quite jibe with... [LB1068]

SENATOR HAAR: Yeah. [LB1068]

SENATOR FRIESEN: ...the way I do business. But I, I'll just, I'll quit there. Thank you. [LB1068]

SENATOR HAAR: No, I think there are a lot of questions to be answered, and what my bill would do, and where I hope you'll study some is, so do we need a second set of eyes looking at rate increases? [LB1068]

SENATOR FRIESEN: Thank you. [LB1068]

SENATOR HAAR: Yep. [LB1068]

SENATOR SMITH: Do we have other questions from the committee members? Okay. I...Senator Seiler. [LB1068]

SENATOR SEILER: Ken, did you write this bill? [LB1068]

SENATOR HAAR: My office did it. Yeah, I worked with...we, and we consulted with Public Service Commission. [LB1068]

SENATOR SEILER: I'm just wondering about this customer advocate. If I've ever read anything that's putting the fox in a henhouse, this is it. [LB1068]

SENATOR HAAR: Okay. [LB1068]

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SENATOR SEILER: I mean, you, you've got them sharing the location together. There's supposed to be...then you've got them total access; they can walk through the Commission's office... [LB1068]

SENATOR HAAR: Um-hum. [LB1068]

SENATOR SEILER: ...and pick out any records or anything they want. Then, when they get all done hiring others to help them, legal experts and consultants and everything else, justifying this, then you got an assessment to take back to the producer to pay for it. [LB1068]

SENATOR HAAR: Um-hum, um-hum. [LB1068]

SENATOR SEILER: That's ridiculous. [LB1068]

SENATOR HAAR: Well, right now the Public Service Commission has a person, and they don't call it customer advocate. They call it a customer...there's another word for it. But this is the way it works right now. [LB1068]

SENATOR SEILER: I will tell you I tried cases in front of the Federal Power Commission for two years in Washington, D.C. They call them staff. [LB1068]

SENATOR HAAR: Um-hum. [LB1068]

SENATOR SEILER: They are nothing but prostitutes for the Federal Power Commission. [LB1068]

SENATOR HAAR: Um-hum. [LB1068]

SENATOR SEILER: That's all. And so, and so it's, it's...I just don't like your idea of customer advocate at all. [LB1068]

SENATOR HAAR: Um-hum. Well, maybe they need to moved somewhere else or whatever, but there needs to be somebody who's standing in for the customer. I believe that, and maybe... [LB1068]

SENATOR SEILER: Well, they can hire their own. [LB1068]

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SENATOR HAAR: ...maybe we disagree on that. Well, but if you take, you know...I'm an individual customer. I certainly don't have the kind of money that it would take to go to court or to hire an advocate. So I just, you know, I accept my bill. [LB1068]

SENATOR SEILER: The pipeline case is a perfect example of what customers can do. Like them or not, they still did band together and went to court all the time. [LB1068]

SENATOR HAAR: Um-hum. Well, I think that's a heavy burden to put on...that's my opinion...it's a heavy burden to put on individual customers. [LB1068]

SENATOR SEILER: But they're going to pay for it anyway in a rate increase, because you're going to assess back that to the, to the power company. And they're just going to increase their rates. [LB1068]

SENATOR HAAR: Right. [LB1068]

SENATOR SEILER: It's a vicious circle. [LB1068]

SENATOR HAAR: Yeah. Now what I showed you, if you looked at the A bill that came along with it, compared to the total revenue of public power, that would amount to .001 percent. And as an individual, I would not mind paying...again, my opinion...but I wouldn't mind paying .001 of my current bill. [LB1068]

SENATOR SEILER: Let me ask you. [LB1068]

SENATOR HAAR: Yeah. [LB1068]

SENATOR SEILER: Are you going to...if OPPD goes off the chart on their rates... [LB1068]

SENATOR HAAR: Um-hum. [LB1068]

SENATOR SEILER: ...and they get into big litigation with the customer advocate (inaudible), and huge bills are run up, who are you going to allocate that to...everybody that's on your list of 160-and-some people, pro-rated? [LB1068]

SENATOR HAAR: Well, in the...yeah. [LB1068]

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SENATOR SEILER: Well, they didn't have anything to do with OPPD's program? [LB1068]

SENATOR HAAR: Yeah, yeah. [LB1068]

SENATOR SEILER: I'm just raising these questions. [LB1068]

SENATOR HAAR: No, no, no, no. Well, I'm, I'm saying that what we did is we went to the Public Service Commission to see how they do things now. There may be a better way to, to pay for that cost, but I strongly believe that there needs to be a public advocate and a second set of eyes, in terms of an independent expert to come look at this. [LB1068]

SENATOR SEILER: Let me ask you this. You got a 2 percent increase in there. If it goes over 2 percent, then they can examine it and question it and... [LB1068]

SENATOR HAAR: Then it would be automatic. [LB1068]

SENATOR SEILER: ...(inaudible) automatic. Yeah, it would be automatic. [LB1068]

SENATOR HAAR: Yeah. [LB1068]

SENATOR SEILER: Okay. How long have you been in the Legislature? [LB1068]

SENATOR HAAR: Seven years...seven and a half. [LB1068]

SENATOR SEILER: The first, the first five of those we were at 6 percent increases under Heineman. [LB1068]

SENATOR HAAR: Um-hum. [LB1068]

SENATOR SEILER: Why wouldn't they, these people, be running over, at a minimum of 3 percent last year with Ricketts? [LB1068]

SENATOR HAAR: Okay. [LB1068]

SENATOR SEILER: So based on that of a, of a comparison of costs increasing, why wouldn't the utilities be in that same level? [LB1068]

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SENATOR HAAR: Um-hum. [LB1068]

SENATOR SEILER: And they'd be automatically audited every year. I think a 2 percent is way too low. [LB1068]

SENATOR HAAR: Right. And then, you know, there may be a better number for that. But again, the point is when there's a rate increase, that you have a second set of, of opinions that are expert, that are independent, to look at that rate increase. [LB1068]

SENATOR SEILER: My point is they're not independent. They won't be. But with that, thank you. You've answered my questions. [LB1068]

SENATOR HAAR: Sure, sure, yeah. [LB1068]

SENATOR SMITH: I...Senator Haar, let me, let me ask you something here. You know, public power is kind of the fabric of Nebraska, as much as the Unicameral system is. [LB1068]

SENATOR HAAR: Yep. [LB1068]

SENATOR SMITH: And one of the benefits of being public power is that we have, you know, the accountability component of this. Do we get government closer to the people so we have boards of directors that have the jurisdiction over... [LB1068]

SENATOR HAAR: Um-hum, um-hum. [LB1068]

SENATOR SMITH: ...the governance, if you would, of those utilities and the rate setting? [LB1068]

SENATOR HAAR: Um-hum. [LB1068]

SENATOR SMITH: I think we're the only state that does not have a centralized rate-setting authority. Isn't that a good thing, pushing it closer to the people? And what is the trade-off that we're going to have if we move down this path of centralizing this decision making? Do we take away, do we move away from the origins of public power? What are your thoughts on that? [LB1068]

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SENATOR HAAR: Um-hum. Well, what I see in this is a matter of oversight. And we do that in the Legislature all the time. For example, with...every time we talk about changing the tax code and so on, that's an oversight that we do as state government. We're not going out and telling Lincoln or Omaha or any other city what they, what they need to spend, but we also set limits on that. We look over their shoulder. And I think the benefit would be to, to myself, Number 1, some more transparency. And the second one, having...these are very complicated issues. We know that very often boards will...I mean, I've been on enough boards to know that on complex issues, we look at things, but we pretty much take the recommendations of our staffs. And this would be, again, another set of eyes, another expert look, to look at the decisions that the staffs are proposing. And again, it, it brings up the, the question I showed you from the NMPP survey. Why is it that in one city it's half the electric bill per month as another place? You know, I think we need answers to those questions. And those...when I...I, I know a lot about this stuff, but I don't know a lot of the technical details. And I don't even often know the questions to ask. So if you have a second, again a second expert opinion, someone who knows what questions to ask, I think that's a protection for me. And that would be my, just my opinion. [LB1068]

SENATOR SMITH: Okay. And I do appreciate the, you know, your thoughts on maybe looking, you know, not pursuing this particular bill. [LB1068]

SENATOR HAAR: Sure, sure. [LB1068]

SENATOR SMITH: But looking at a study...and kind of get some clarification on that direction. Your, it sounds like your concern is on the rate-setting process at the utilities... [LB1068]

SENATOR HAAR: Yes. [LB1068]

SENATOR SMITH: ...and if...not necessarily a PSC. I mean, you're not necessarily saying the PSC is the solution, but rather, how can we control the ever-increasing cost of rates? [LB1068]

SENATOR HAAR: Sure. [LB1068]

SENATOR SMITH: And what can the utilities be doing to help to control those costs? [LB1068]

SENATOR HAAR: Um-hum. Yeah, it's... [LB1068]

SENATOR SMITH: So it's a little bit more broad than just the PSC. [LB1068]

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SENATOR HAAR: Sure. The reason we chose the PSC is it's in place. It already does, it looks at rates for natural gas and those sorts of things. And PSCs all over the country have this function. They, you know, one PSC talks to another. So it's kind of a structure that's already in place. To totally create a brand new, second-eyes structure, I think would be much more difficult, much more expensive than to use, for example, the Public Service Commission. [LB1068]

SENATOR SMITH: Okay. Senator Brasch. [LB1068]

SENATOR BRASCH: Thank you, Chairman Smith. And thank you, Senator Haar. The questions exchanged raised a question for me. [LB1068]

SENATOR HAAR: Sure. [LB1068]

SENATOR BRASCH: So you're saying that there's tremendous variance, from what the reports are here, on electrical rates. [LB1068]

SENATOR HAAR: Um-hum. Yeah. [LB1068]

SENATOR BRASCH: So potentially the PSC could even raise some rates to make uniformity? Or... [LB1068]

SENATOR HAAR: The way the bill is written, that would not be a function... [LB1068]

SENATOR BRASCH: It would...okay, to adjust...okay. [LB1068]

SENATOR HAAR: ...to actually raise rates. No, it's just to review, either from customer-initiated or this automatic 2 percent, which can be adjusted either, you know, either way. [LB1068]

SENATOR BRASCH: But the PSC would be, look for oversight or... [LB1068]

SENATOR HAAR: Yes. Yeah, yeah, yeah. [LB1068]

SENATOR BRASCH: ...and some uniformity. Or is uniformity not a goal? [LB1068]

SENATOR HAAR: Exactly. I think the whole question of uniformity is probably one for the Legislature. The, as the bill is written right now, the Public Service Commission's goal would not

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be uniformity. It's simply to look at the rate increases that are proposed and to see if they're reasonable, to give some oversight. Yeah. [LB1068]

SENATOR BRASCH: Very good. I have no other questions, thank you. [LB1068]

SENATOR HAAR: Yeah, yeah, yeah. [LB1068]

SENATOR SMITH: I see no further questions, Senator Haar. Are you going to remain for closing? [LB1068]

SENATOR HAAR: Oh, I will. Yes. [LB1068]

SENATOR SMITH: All right. [LB1068]

SENATOR HAAR: Thank you very much. [LB1068]

SENATOR SMITH: Thank you. And we now move to proponents, those wishing to testify in support of LB1068. Welcome. [LB1068]

JAMES CAVANAUGH: (Exhibits 2-3) Thank you, Senator Smith and members of the Transportation and Telecommunications Committee. My name is James Cavanaugh. I'm attorney and registered lobbyist for the Nebraska chapter of the Sierra Club. I appear here today, on their behalf, in favor of LB1068. And we commend Senator Haar for bringing this forward-looking measure to your attention. Three main components of this are important to us. The current rate structure in OPPD, after the most recent rates were passed, are punitive to low-use customers and reward high-use customers. They are, operate as disincentives for customers using alternative energy sources, particularly renewable sources like solar. And they have a bad impact on low-income customers. All three of these, we think, could be addressed through the operation of LB1068, which is simply adding another level of oversight to the rate structure process. OPPD proved nonresponsive to thousands of petition signers and unanimous opposition public testimony to their most recent rate structure. This would allow those people who, obviously, were not heard by the Public Power District in Omaha to have another review of that decision at another level. This is administrative best practices and occurs in many other areas of state operation, from insurance to other areas of the energy industry, banking. We have traditionally used oversight on rates in many other areas of economic activity in the state. The fiscal note that you see in here may be, by the Fiscal Office's own estimation, overstated. I went back and did a little bit of research on the overall budget of the Public Service Commission, and this would be a substantial increase in their operating budget for what doesn't appear to be a substantial increase

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in the number of people necessary to perform this function. But be that as it may, it does operate as another level of oversight for the consumers to get the best rate possible. I think that we all want the same thing. We all cherish and admire the heritage of public power bequeathed to us here in Nebraska that's operated well since it was established by George Norris and our forefathers. And we want to keep that; we just want to make it a little better. And we're at a transition time in the energy economy of this state and this nation. Things are changing. We're not going to be generating energy ten years from now even like we generate energy now. We need to recognize that change, and we need to recognize that that's going to call, call for changes in how we regulate our energy economy. So encouraging people to seek renewable sources of energy is a good thing and something that we should explore. And this bill will help, in some small way, to encourage that transition from what we have now to what we are going to have in the very near future. I also have, and have been asked to submit, citizens' written testimony in support of LB1068, compiled by Bold Nebraska, of electric customer, of the Electric Customer Protection Act. These are 34 written testimony submissions collected by Bold Nebraska, which I would happily at this time read into the record, or I could submit these, whichever you prefer. [LB1068]

SENATOR SMITH: You can submit them. [LB1068]

JAMES CAVANAUGH: Thank you. I'd be happy to answer any questions you may have. [LB1068]

SENATOR SMITH: Thank you for your flexibility on that. [LB1068]

JAMES CAVANAUGH: Thank you. [LB1068]

SENATOR SMITH: Hang on just a second. Do we have any questions from the committee? I see none; thank you. Next proponent, next proponent of LB1068. And let me just see a show of hands of those that are wishing to testify on this bill. Okay, all right. Very good. Welcome. [LB1068]

CATHARINE CARNE: Welcome. Hello. Hello, Senator Smith and committee. My name is Catharine Carne, C-a-t-h-a-r-i-n-e. I'm here today to testify on behalf of Omaha Together One Community, OTOC. It's an organization that's existed in Omaha for more than 20 years, and it's made up of 30 congregations and similar organizations. I'm here to talk a little bit about what happened... [LB1068]

SENATOR SMITH: Let me have you spell your name, please, for the record. [LB1068]

CATHARINE CARNE: Sure. C-a-t-h-a-r-i-n-e, last name is Carne, C-a-r-n-e. [LB1068]

SENATOR SMITH: Thank you. [LB1068]

CATHARINE CARNE: So OTOC members were in opposition to OPPD's fixed fee increase that was discussed at the December and approved at the December board meeting. Senator Haar explained this increase from a fixed fee of \$10 a month to \$30 for residents. I just want to make you aware that \$30 a month fixed fee is the highest fixed fee that I found in the entire country for utilities of OPPD's size. So Nebraska is an outlier for this fixed fee on the high side. The Wall Street Journal reported in the fall of 2015 that customer fees are normally \$5 to \$10 per month, the fixed fee portion of the bill. So I find it unusual that, as a public power state, that we have such high fixed fees. Today I want to try and convey two points to you. And I want to talk about the process that happened in Omaha with the fixed fee and talk about two of the things that I see in the process that aren't working well that I think LB1068 is trying to address. The first is how the public is actually represented. So we're a public power state. And when I read the job description for an OPPD board of director, it says, in the first bullet point, they are to serve as representatives of OPPD's customer-owners. And then it goes on to also say that they should monitor shareholder processes and ensure the board hears strategic viewpoints and values of customer-owners and other interested stakeholders. I was quite troubled when one of the board members cited and was quoted in the Omaha World-Herald as he voted yes for this fixed fee increase, that, "Our first responsibility is our fiduciary responsibility to the company," or OPPD. So therein lies some confusion with the role of the board members for at least OPPD's board, possibly with other public power boards. Are they representatives of the public? Are they controlling the company once they're elected? Or are they regulators, because we don't have regulators like shareholder-owned utilities have in other parts of the country? So that's my first question for you to contemplate. I won't go through the hundreds of comments and the petitions others have talked about, all of the individuals and organizations that were opposed to this fixed fee increase. But I feel like none of that was heard, that there was nobody who was supporting this. My second point that I see with the process that happened in Omaha in late 2015 was that OPPD management really gave the board one choice, tell us yes or tell us no. When I took a look at all of the other ways that you can set rates for an electric utility, I found at least ten other options that could be considered and viable and are used by other utilities around the country to address the issue that OPPD saw coming in their future. All of these ten other options could be viable options, but none of them were presented, in any substance, to their board to consider. So therein lies another, another situation. So I'd, I'd like you to...to encourage you to think about how we might change the process. This bill may not be perfect, but the world is moving from fossil fuels to renewable energy to energy efficiency. And as the small community that we are in Nebraska, it would be better to do this together in a seamless manner, in a cost-effective way for all of our people and not push the cost on to our low-income people and, and ask our low-income people to bear the cost of this transition. So does anyone have any questions for me? [LB1068]

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SENATOR SMITH: Do we have questions from the committee for Ms. Carne? Let me ask you a quick question. You're...you seem to be quite familiar with the rate-setting process. What's...do you know the different types of rates for a utility? So this one that you're talking about that OPPD increased was the customer charge. [LB1068]

CATHARINE CARNE: Yes, so the... [LB1068]

SENATOR SMITH: What other rates are there? [LB1068]

CATHARINE CARNE: So right now I believe we only have a customer charge, which is a fixed fee. And then we charge per kilowatt-hour. So when you turn your lights on, for every hour that you're using, you...the electricity you use is measured, and you're charged for that. It gets a little bit more complicated, because that kilowatt-per-hour charge changes from summer to winter. And it can also change, depending on how much you use in a particular month. And it, and it gets even more complex from there. So this is a very complicated matter. And it's difficult for citizens to gather and understand, but the process is broken, from what I can see. [LB1068]

SENATOR SMITH: So there is yet another component of rates, and that's your demand charge. And that's actually the instantaneous. So that's what you need. That's, that's kind of like a fixed, if you would, a variable you have with the energy. The customer charge is really where you absorb the cost of your, your administrative activities for the utility. So why would you not want that to be reflective of such costs for all customers? [LB1068]

CATHARINE CARNE: So what OPPD is changing is they're changing from just charging their administrative cost in a fixed fee to including other types of costs in that fixed fee that includes the wires and the poles that deliver the electricity. And I believe they took the transmission out...not the transmission. So they're including a broader scope of costs and saying that these distribution lines, the electric, the electric lines that deliver your power, not the high-voltage, but everything else, should be divided equally among everyone. And that, that...I mean, my understanding...I wasn't here when public power was created back in the day, but my understanding was that we did it to try and "levelize" the cost of distributing power to very remote areas. Right? [LB1068]

SENATOR SMITH: Good. [LB1068]

CATHARINE CARNE: So they're, they're including things other than administrative, and I don't believe that other utilities are doing that at this level. [LB1068]

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SENATOR SMITH: Okay. And so you're just, you're saying that our...you do not believe that our board of directors at our local utilities provide the regulatory oversight that you think is, that existed in other states. [LB1068]

CATHARINE CARNE: Yes, very much so. [LB1068]

SENATOR SMITH: Okay. [LB1068]

CATHARINE CARNE: Other states have regulators who their job and profession is to be a regulator for electric utilities. As you can tell, it's complicated, and it's a full-time job for a regulator to understand this industry. And our board of directors are not full-time electric utility regulators. [LB1068]

SENATOR SMITH: So are you saying all states, the regulators in all states are full-time professionals? [LB1068]

CATHARINE CARNE: I'm not, I'm not, I'm not saying that. I'm just saying it's a complex industry, and it's going to become even more complex through the transition that we will be undertaking in the coming decades. [LB1068]

SENATOR SMITH: Okay. Thank you. Further questions from the committee? I see none. Thank you. [LB1068]

CATHARINE CARNE: Thank you. [LB1068]

SENATOR SMITH: Next proponent of LB1068. Welcome. [LB1068]

NANCY MEYER: (Exhibit 4) Hello. Hello, my name is Nancy Meyer. I'm a resident of Cedar Bluffs, Nebraska, and I'm here representing myself. I've got written testimony, if you would...I'm going to read. If you would like copies of it, I brought extra copies. In addition to the hundreds of people who oppose access fee increases on their listening line, more than 30 people like us, my husband and I, took time away from their jobs and lives to ask OPPD, in person, not to pass their discriminatory rate restructuring plan on December 17, 2015. OPPD got virtually no individual public support for their latest rate plan. And yet they passed it without any regard to significant public input against it. OPPD's new rate plan means they will have the highest access fee among all comparably-sized utilities in the U.S. You, the Nebraska State Legislature, should be asking what makes Nebraska, a Nebraska power company, so special that they need to lead the nation in high access charges. You should be questioning the judgment of utility managers

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who propose such practices. It is not Nebraska...what...it is not what Nebraska public power was intended to be. My family, my husband and I, borrowed against our rural home to install a variety of energy conservation measures that would reduce our usage and thus, our utility bills as we go into our retirement years and facing a fixed income. These measures, coupled with scrupulous personal practices, have reduced our electric bills dramatically. This was the right thing to do. The lowest bill we have had since our last conservation project was \$28. This was during a very mild weather month, but it is significant that our utility's discriminatory rate plan will mean we will never have a bill that low again. Our public utilities should not punish their customers for implementing conservation practices at their own expense. In fact, they should reward them for reducing demand and putting energy back into the grid. Conservation measures that help reduce peak demand and postpone costly generation facility expansion are good for us. They're good for the electric companies, and they're good for the state of Nebraska. But apparently, we can no longer trust our Nebraska public power districts to implement fair, logical, and sustainable rate plans. OPPD management told us, they told us, in the hearing, that they resent providing service to people like us, low-use people like us, because just maintaining a line to our rural home is too much for them to bear. They fear that too many of their mostly-urban customers might do what we have done, digging hundreds of feet of trenches on our property, purchasing a new furnace, installing three new pumps on our well, covering our roof with skylights and solar water-heating equipment, purchasing two new water heaters, and sacrificing part of our ground space to a five-kilowatt solar array...imagine. Even in the face of these unfounded fears, we must remember that Nebraska's original goal for rural electrification always acknowledged that power lines would be laid and maintained for everyone, regardless of their proximity to or distance from generation plants. Without the oversight that LB1068 provides, all Nebraska's public power utilities will be free to do what ours did to us, without any regard to input from a public that can get their electricity from no other source. I ask you to put the public back in public power. And please consider positively LB1068. Thank you. [LB1068]

SENATOR SMITH: Thank you, Ms. Meyer, for your testimony. Do we have questions for Ms. Meyer. I see none, thank you. [LB1068]

NANCY MEYER: I would like to add that our board of director representative completely ignored us. So I don't feel like I have any recourse with the board of directors as my, my representative for public power. He completely ignored our request to talk to him. Okay? Thank you. [LB1068]

SENATOR SMITH: Next proponent of LB1068, next proponent of LB1068. Looks like we have (inaudible). Welcome. [LB1068]

ALAN MEYER: (Exhibit 5) Hi, sorry. I am said husband. My name is Alan Meyer, A-l-a-n M-e-y-e-r. I live in northern Saunders County, about three and a half miles outside of Cedar Bluffs. I come here today to voice my support for LB1068. I want to tell you why I think this bill is necessary. I am a customer of OPPD and am affected by the recent decision to raise the fixed fees charged to every customer for electric service. At the board meeting where public comment was solicited on the proposed fee increases, I testified in opposition to the increases. But it was in listening to the other testimonies and the impact they had on the board members, that convinces me of the need for LB1068. You see, the testimonies seem to have had no real impact on the board members who had clearly already made up their minds before the testimonies were given. This was expected, but still disturbing to witness. It was obvious that most of the board members had no real understanding of how the fee increases would affect their low-income customers. It was always my understanding that the reason Nebraska is a completely public power state was to make sure that everyone, especially those who could least afford the cost of the necessary infrastructure, would have access to electric power. At the time this was established, it was a mostly toward rural families and small communities. But this also applies to low-income people in all of the towns and cities in the state. The OPPD management board seemed to have lost track of that goal. Instead of focusing on how to provide affordable public power to all of their customers, they come up, they came up with a semantic argument over what the word "equitable" means and how to justify it, apply, how to justify applying it within their own narrow definition. They argue that the fixed cost of power distribution should be charged to the customers in fixed fees. The exact same fixed fees would be applied to each customer, regardless of their ability to pay, for how much power they actually use. Charging a nominal fixed fee for basic access may make sense. But when that fee becomes burdensome, especially to low-income people, it ceases to be reasonable. Semantics aside, the way most businesses defray fixed costs is by building them into what they charge for their goods and services. In the case of an electric utility, this would be done by raising rates, not the access fees. In that way, the fixed costs are distributed equitably, based upon usage. As a side note, after the OPPD board meeting, one of the board members stopped to talk to several of us who gave testimonies, in an effort to justify their vote. During the discussion, the board member stated that one of the other board members, who voted before them, quote: took away my no vote. I found this disturbing, because it implied a political calculation instead of an objective evaluation, based on the merits of the proposal. I also wanted to say something that I didn't think I'd have time to say. But the board had come up with a proposal to defray, to help defray the cost to low-income people. And it seemed to me to also emphasize their, the not understanding, the impact of the fee increase on the low-income people, on their low-income customers. The proposal was to temporarily give some relief from the fees, so that they wouldn't go up as fast initially. The problem is, is at the end of the period, the people still had the full amount of the increase. And the last years of the period the fees would actually go up more for the low-income people than they would be going up for the other people. At the end, they would be the same. But those last couple years when, for instance, my fees might have gone up by \$5 per month, their fees would've gone up by

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something like \$7.50 per month. So it would have been more burdensome to them in those later years instead of in the earlier years. So again, it seemed to show a blindness to what the impact of the fees would have on low-income people. (Inaudible), thank you. [LB1068]

SENATOR SMITH: Thank you, Mr. Meyer, for your testimony. Questions? Senator Brasch. [LB1068]

SENATOR BRASCH: Thank you, Chairman Smith. And thank you, Mr. Meyer, for your testimony. And as I was listening to you, I was also accessing information on the Nebraska Ombudsman's office that...and, and that was in response to you and your wife have said that you attempted to reach your board member with no response. Is that correct? Or did I under... [LB1068]

ALAN MEYER: I believe she attempted to. I didn't personally. [LB1068]

SENATOR BRASCH: You did not try, but she did? [LB1068]

ALAN MEYER: I believe that's correct. [LB1068]

SENATOR BRASCH: Okay. And, and when you reach out, why are you contacting them, with the information you're giving us? Or was there a specific incident that was not... [LB1068]

ALAN MEYER: I'm sorry, I think you'll have to ask her. But I think was specifically to address the fee increases, though. [LB1068]

SENATOR BRASCH: Okay, all right. That was my only question, because part of the bill wants to create a advocacy place. [LB1068]

ALAN MEYER: Yeah. [LB1068]

SENATOR BRASCH: And I'm just wondering if one already exists in statute of...and I'll ask that of Senator Haar, perhaps. And that's a...all right. Interesting... [LB1068]

ALAN MEYER: Yeah, I think that probably would be better. But I would say that I think that his, that an advocate, a public advocate is necessary, because, as you pointed out, it's not something that us, we typically, though, wouldn't be able to afford the resources in order to do a decent job at that. [LB1068]

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SENATOR BRASCH: Very good. I have no other questions, thank you. [LB1068]

ALAN MEYER: Okay, thank you. [LB1068]

SENATOR SMITH: Senator...one more, one more question here. [LB1068]

ALAN MEYER: Oh. Oh, I'm sorry. Yes, sir, I'm sorry. [LB1068]

SENATOR SEILER: Did the OPPD give you any reason, like a disaster at their power plants or anything like that or extraordinary costs for this sudden rise? [LB1068]

ALAN MEYER: You know, I didn't really understand why they needed this sudden rise. [LB1068]

SENATOR SEILER: Okay. [LB1068]

ALAN MEYER: I do know that they, that they were looking into the future of what may happen, you know, the expected decreases in revenue, etcetera. Also I understand that the cost of decommissioning the Fort Calhoun nuclear power plant is something like four or five times what it cost to build it. So...and they are actually trying to defray costs there. But I think you would really need to ask them. [LB1068]

SENATOR SEILER: I know when Ken referred to, or Senator Haar referred to Arapahoe, it was about three years ago their whole system got wiped out in a storm, ice storm. And I wonder if OPPD had given you any reason like that. [LB1068]

ALAN MEYER: No, I think it was actually more that they were looking in the future of possible revenue decreases. [LB1068]

SENATOR SEILER: Okay, thank you. [LB1068]

SENATOR SMITH: Thank you, Mr. Meyer. Next proponent. Welcome. [LB1068]

GARY AKSAMIT: (Exhibit 6) Yeah. Good afternoon, Chairman Smith and members of the committee. I'm here today to talk about lowering electricity rates for Nebraskans. My name is Gary Aksamit; that's spelled G-a-r-y A-k-s-a-m-i-t. I'm CEO of Aksamit Resource Management, a Nebraska corporation. Aksamit is a developer of wind and natural gas generation with a

multibillion-dollar balance sheet supporting us. First Security Power, a subsidiary of Aksamit Resource Management, wants to offer Nebraskans electricity up to 30 percent cheaper than public power can. I'm here to testify in support of LB1068. Public power in Nebraska has had no outside oversight since it was created by the Legislature. Public power boards have the authority to raise rates without oversight by outside, without oversight by outside rate regulators or local cities in its serviced area. Electricity rates have skyrocketed in recent years from 2008 to 2014 and will continue to go up even more. The average electricity rate in Nebraska has gone up approximately 34 percent. LB1068 attempts to control electric, electricity rates, rate increases, by holding public power accountable for its actions. Currently, there is a large disparity of retail rates within Nebraska. Based on the latest data from EIA, Energy, Energy Information Administration, the 2013 retail rates in Nebraska ranged from 6.6 cents to 14.48 cents. The "average" price of electricity is commonly used when speaking about Nebraska having one of the lowest rates in the nation. I don't think the rate payer paying 14.48 cents per kilowatt hour really cares about average price of electricity. Without unbundled billing, it's almost impossible to determine what is the cause of the rate increases or the disparity of rates in Nebraska. State statute 70-1001.01 defines unbundled retail rates, but nowhere in the state statute are unbundled retail rates mandated. Without unbundled billing, customers do not know if they are subsidizing other ratepayers. This was demonstrated by Omaha Public Power District last month when they shifted their cost of energy to the cost of services, because they stated that it reflected the actual cost to provide service to the customer. Significant conversations took place about this among ratepayers at the public hearing and in the Omaha World Herald. The greatest benefit to unbundled billing is it will provide transparency to let ratepayers have conversations about our energy future, based on facts, and not lore, that Nebraska has cheap power. In 2000, LB901 was passed to issue a "condition certain" report that would tell the state when it would be appropriate for Nebraska to turn to retail competition for electricity. One of the conditions studied in that report was to what extent retail rates have been unbundled in Nebraska. It was determined that unbundled billing is an indicator and a significant process necessary for implementing retail competition. And, by the way, with retail competition, public power would still own and operate the lines and wires of the state. The electricity industry has changed dramatically in Nebraska since the Southwest Power Pool implemented its integrated energy market in 2014. With the new energy market, electricity price is only about 15 to 33 percent of the electric rate. So it's important for the customers to know what costs make up the remaining components of the electricity rate, since those costs can add up to an additional 67 percent of the electricity rate. It is time electric customers know what they're paying for when their bill arrives. Unbundled billing allows ratepayers to see the breakdown of electric rates, the different components that go into the rates. In 2015, the average market price of electricity was a little over 2.3 cents an hour, so using the 2013 data, the customer does not know how the remaining charges were broken down in the electric rate that range anywhere from 4.3 to 12.2 cents. In addition to providing ratepayers with information, unbundled electric bills also give lawmakers and regulators the

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information needed to make informed energy policy decisions that allow electric rates to become competitive. It is...oh, I got a red light; sorry. [LB1068]

SENATOR SMITH: Go ahead and finish up your thoughts there. [LB1068]

GARY AKSAMIT: Yeah. I've only got one more paragraph. I apologize. It is imperative that the definition of unbundled billing is consistent for everyone. The components must be defined, and every entity, public power or private, must all compile and present their data the same way. The elements of unbundled billing must include the cost of electricity generation, demand, transmission, distribution, taxes, and a decommissioning fee. Electric bills should be no different than phone bills when it comes to itemizing the charges on the bill. Now is the time for the Legislature to act and mandate unbundled billing so that customers know what they are paying for and to provide the information needed to make informed energy policy decisions. Thank you very much. [LB1068]

SENATOR SMITH: Thank you, Mr. Aksamit. Senator Davis. [LB1068]

SENATOR DAVIS: Thank you, Senator Smith. I just want a little clarification on what you mean by unbundled billing. So we have a utility that's got 25 miles of transmission lines. And we've got people at the very end of that line who are receiving service, and they're 5 miles from somewhere else. So that 5 miles to the next customer...how is that going to be managed? [LB1068]

GARY AKSAMIT: As I just pointed out in here, you break it out between energy charges, demand charges, distribution charges, and transmission charges. [LB1068]

SENATOR DAVIS: Okay, I understand that. But is that particular person's bill going to show that he is responsible for the cost from, for that last five miles? [LB1068]

GARY AKSAMIT: No. Public power, by the way it's formed, is a socialization of cost. Those charges are already socialized amongst the ratepayers within that distribution network already. [LB1068]

SENATOR DAVIS: So we're still working within that framework. [LB1068]

GARY AKSAMIT: Absolutely. [LB1068]

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SENATOR DAVIS: So that being the case, then how is this going to help anyone? [LB1068]

GARY AKSAMIT: Because Nebraskans are overpaying for electricity by about \$400 million to \$500 million a year. And if the ratepayers knew that... [LB1068]

SENATOR DAVIS: You claim that, but I'm not sure if I understand how a lengthy, detailed bill... [LB1068]

GARY AKSAMIT: If you had unbundled billing... [LB1068]

SENATOR DAVIS: ...is going to help them. [LB1068]

GARY AKSAMIT: If you had unbundled billing, and they saw the energy charge, they could compare that energy charge with, with what is available in the open and competitive marketplace by competitive power providers. [LB1068]

SENATOR DAVIS: And move somewhere else? Move to another person? [LB1068]

GARY AKSAMIT: Move to a different provider of electricity, not a different provider of services. Lines and wires are a service. Electricity is a commodity. I think public power tries to conflate those two topics into one; and they are not related. [LB1068]

SENATOR DAVIS: So then when they move to another provider because their costs are too high, the pool of subscribers is going to be reduced by one, which is going to increase the cost for everyone else, of everything else. Correct? [LB1068]

GARY AKSAMIT: It's not a mandate to switch; it's a choice. [LB1068]

SENATOR DAVIS: But I am correct in saying that you're going to reduce the pool of people who are buying electricity from that utility. And therefore, your costs are going to be going up for those (inaudible). [LB1068]

GARY AKSAMIT: And as rates go up, more ratepayers would leave. [LB1068]

SENATOR DAVIS: And so what happens to the last man on the line? [LB1068]

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GARY AKSAMIT: I've made public offers to figure out a way to mitigate that. And that's been aware to Senator Smith. [LB1068]

SENATOR DAVIS: Thank you. [LB1068]

SENATOR SMITH: Other questions from the committee? I see none. Thank you. [LB1068]

GARY AKSAMIT: Thank you. [LB1068]

SENATOR SMITH: Next proponent of LB1068. If we have additional proponents, you want to move on up to the front of the room? Welcome. [LB1068]

MARK LOSCUTOFF: Thank you, Mr. Chairman. My name is Mark Loscutoff, 63...well, do I need to give my address? [LB1068]

SENATOR SMITH: No, you just spell your name for us, though, please. [LB1068]

MARK LOSCUTOFF: Oh, okay. Mark, M-a-r-k L-o-s-c-u-t-o-f-f. I'm a RESNET certified energy rater with Omaha Home Energy Analysis and Testing Company. I certify homes for the Energy Star program. I also do energy audits to help people reduce their energy use at home. I do testing and consulting for that purpose. Homeowners who request an audit want to be more comfortable, save money on their utilities, and they also want to protect the environment by conserving energy. They often ask me to assess the cost effectiveness of energy efficiency improvements. An improvement is considered cost-effective if it pays for itself in energy saved over the lifetime of the improvement. OPPD proposes to reduce the residential charge for kilowatt hours in 2019, from 10.56 cents to 8.24 cents, according to their Web site, and offset the lost revenue with an increase in the fixed portion of the bill. This will increase the payback period for a given energy-efficient improvement by 28 percent. The cost of energy affects people's buying decisions. It will reduce people's incentive to invest in conservation. Energy conservation benefits everyone in the state through a cleaner environment and by helping people keep money at home. Having the Public Service Commission review utility rates changes may encourage utilities to be more responsive to the public interest. That's all I have. [LB1068]

SENATOR SMITH: Thank you. Do we have questions from the committee? I see none. Thank you for your testimony. Next proponent of LB1068. Welcome. [LB1068]

JANECE MOLLHOFF: (Exhibit 7) Good afternoon, Senator Smith. My name is Janece, J-a-n-e-c-e, last name Mollhoff, M-o-l-l-h-o-f-f. Thank you for hearing us today. As you've already

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heard, OPPD has made an unfair and unpopular decision to raise the fixed fees by 193 percent for their residential customers over the next four years. And this was not done to address budget deficits. By their own description, OPPD management says this is revenue neutral. As far as we can see, the soul purpose of this bill was to target household solar development. The CEO, along with some board members, made much ado about poor people in trailers subsidizing rich people in Regency who could afford to install solar. In fact, this restructure disproportionately will affect poor and elderly ratepayers who have taken sometimes drastic measures to keep their bills at a minimum. As a response to public outcry, OPPD did propose an assistance program for those low-income, low-use customers. But let me ask, why would our public-owned utility make a decision on rates that does not raise revenue and, at the same time, requires a new program that would cost \$1 million to \$2 million in aid over the next four years for the poorest citizens. Drastic increases in fixed rates and a corresponding decrease in usage rates directly counters the stated mission of OPPD. It deters renewable energy investment, it "disincentivizes" conservation, and it discourages energy efficiency. Households like mine will be the biggest losers as this fixed rate is put in place. We invested in solar photovoltaic for our home last year. OPPD staff now tells me that the new fixed fees will add over \$200 per year to our bill. Our retirement income will not go up that much, I'm sure. I do not live in Regency; ours is a modest home in Ashland. My bill will decrease...increase dramatically, while those who use the most electricity will pay less. In December, dozens of ratepayers, representing hundreds of members of local organizations, asked OPPD to delay the decision and research alternatives to the discriminatory and regressive new rate structure. Thousands more signed a petition opposing the rate change. In spite of that opposition, OPPD management convinced the board members to vote for this fixed rate increase. LB1086 would give some oversight for these excessive rate increases, such as this, to the Nebraska Public Service Commission. It also creates that alternative avenue for petition when unfair rates are levied by our public utilities. I'm hopeful that this committee, the Legislature, and the Public Service Commission will listen when OPPD did not. Have questions? [LB1068]

SENATOR SMITH: Thank you, Ms. Mollhoff, for your testimony. Do we have questions from the committee? I see none. Thank you. [LB1068]

JANECE MOLLHOFF: Thank you. [LB1068]

SENATOR SMITH: Next proponent? Welcome. [LB1068]

JOHN POLLACK: (Exhibit 8) Thank you. I am John Pollack, J-o-h-n P-o-l-l-a-c-k. I am here today to support the passage of LB1068, and I'd like to thank Senator Haar for bringing this bill. The recent actions of OPPD illustrate the need for this bill. The rate restructuring they approved at the end of 2015 will, in essence, raise the fixed fee for being a hookup to a residential electric

service from the current \$10.25 a month to \$30 by 2019. To keep this massive increase revenue-neutral for OPPD, they will lower kilowatt-hour usage charges by about 20 percent. I would like to note that when there is a, a, there's a discussion about rates, it's important to distinguish between that fixed fee and the kilowatt-hour charge, because if the kilowatt-hour charge is the rate, then you can get your rate arbitrarily low by raising the fixed fee. And it looks nice unless you start asking well, what's included in the rate? The result will be lower bills for high-usage customers who already pay considerably lower rates per kilowatt hour than frugal customers of OPPD. Those low-usage customers will face substantially higher bills. In my case, I'm living in an older home with no solar or other energy improvements, but my bill will rise by over 100 percent in some months. It's not chicken feed, as far as I'm concerned. People have many reasons for being frugal with electrical use; however, according to OPPD's Web site, about 60 percent of their low-energy usage customers are also low-income. OPPD conducted 14,549 shut-offs for insufficient payment in 2015. That number can only go up as the minimum bill is raised, since energy assistance is not even keeping up with current need. OPPD's rate restructuring attracted large public opposition, as you've heard, despite being rolled out during the busy holiday season last fall. But only minor changes were made to the original proposal. The unresponsiveness of OPPD's management and board of directors show why we need the additional oversight of large rate increases, which is contained in this bill. I agree that Nebraska has a fiduciary responsibility to its residents who are the customer-owners of its electric utility. Having an automatic review of significant rate increases by the Public Service Commission is very good, in my opinion. Creating a semi-independent consumer advocate position is even better. Now I did hear a legislative concern that this would be equivalent to putting a fox in a henhouse and then making the hens pay for it. I understand that concern. I have a mirror concern that I suspect that one of the opponents to this, although I'll be glad to be wrong, will be somebody who is sent here by OPPD. I will be paying that person's salary. I may not be able to find out how much that salary is. I may not be able to find out where, when, or how that person gets his or her instructions, but I'm still paying for it. Thank you. [LB1068]

SENATOR SMITH: Thank you, Mr. Pollack. Do we have any questions for Mr. Pollack?  
[LB1068]

JOHN POLLACK: Sorry. [LB1068]

SENATOR SMITH: I see none. Thank you. [LB1068]

JOHN POLLACK: Thanks. [LB1068]

SENATOR SMITH: Next proponent? Next proponent of LB1068. Welcome. [LB1068]

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TONYA WARD: (Exhibits 9-12) Thank you. Good afternoon, Senators. Thank you for allowing us to speak. My name is Tonya Ward, T-o-n-y-a W-a-r-d, and I am a member of the Douglas and Sarpy County Learning Community Council, District 5, and Omaha's Clean Energy Group. But I'm not here to speak to you as their representative. I will speak today to you as the founder and president of Energy Rescue, Inc., a Nebraska nonprofit enterprise. And it's been, since October, our principle activity has been advocating more, on behalf of those threatened with utility shut-offs, who have been disconnected by a utility district. Since 2007... [LB1068]

TONI CAUDILLO: Oh, sorry. [LB1068]

TONYA WARD: Since 2007, I have been an advocate for public utility customers being unfairly shut off. I'm providing a copy, as being passed out to you, that I sent to each of you in an e-mail, and other senators, on January 17, 2016, detailing my concerns arising from the decision of the Omaha Public Power District to raise rates for residential district customers. Those concerns have not lessened in the last month; if anything, they have been definitely confirmed. I'm also providing a letter from Mr. Pollack, who spoke before me. As the president of Energy Rescue, Inc., I'm frequently contacted by individuals who are threatened with utility shut-offs or have been shut off. Even on my way to this hearing today, my hotline rang, and I answered, and only to hear...on the other end of the call was a very upset OPPD customer, a mother on disability, with a minor child in her home. The demand for her restore for her utility shut-off, which was disconnected this morning, is \$679, due to a balloon payment she received when she wasn't able to keep up with her level payments. On policy, when you miss your level payments, OPPD gives a balloon of everything you owe. And that is the most calls that we get, is because people can't afford a \$679 payment for one month that is demanded of this customer today. I also received an e-mail from a customer today of an OPPD, of OPPD, who described her OPPD shut-off in the mail, and that is in one of the handouts I sent to you. Her e-mail shows why it is so critical to have rate increases monitored more than just by the OPPD board. To protect her from retaliation, I've not disclosed her identity in that file I handed to you. When OPPD disconnects, it means no lights in the house and generally no heat, since electricity is required to light the furnace and operate the furnace fan. And the fuel that MUD provides sits empty and unused unless we have electricity, also. In my experience, most people will do without Goodwill clothes, food, or even rent and medicine, just to pay their electric bill. Child Protective Services in Douglas County considers a utility shut-off to be a trigger to conduct a home investigation which, too often, leads to removal of children unnecessarily from a caring parent and placement into our broken foster care system. Two anonymous calls are sufficient to open a CPS file against any person and any family in Nebraska. The cost of an out-of-placement home for foster can exceed \$1,000 a month per child and is much higher than a simple payment of a residential utility bill. By the previous policies of OPPD, I was often able to negotiate fair and reasonable, attainable payments arrangement that called into our hotline. Those policies have now changed. They will now only allow a five-day extension, which is generally not even sufficient time to receive the next wage

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or benefit payment or to locate an agency pledge or to prevent a shut-off. I've been told by OPPD staff that there are no exceptions. Sometimes an exception has been made, when a senator's office calls. When OPPD disconnects a home, additional charges occur before electricity is even restored. In addition to all the unpaid charges OPPD insists on, a \$30 fee for the notice, a little yellow card they stick in, on bad winter days, on the doors and run away. Another is a \$75 fee for the shut-off and then two deposits, one of \$100 to over \$240, plus another deposit of \$100, in \$100 increments, up to twice the highest amount billed during the year. These new charges often double the original arrearage. Unlike other northern states, Nebraska does not have a form of a state law restricting winter shut-offs, establishing a moratorium for residents, as the families with minor children, the elderly or handicapped, illness, injury or sudden unemployment do not justify an extension of payment period under OPPD's new policies. OPPD shuts off electricity on the fourth day anytime the daytime high exceeds 23 degrees for three consecutive days in a row, even if a cold front is moving in the next day. Hypothermia begins to set in a human being with exposure to an ambient temperature of 50 degrees. Shut-offs mean rotting food. Being shut off means bursting water pipes. Homes have been flooded...rugs, furniture, wallboards ruined, leaving behind toxic mold. Winter shut-offs are wasteful, hardhearted, preying upon the poorest, even if it is just for profit. Without a moratorium in policies, allowing negotiating payments instead of shut-offs and extended customer service instead of shut-offs, even a, even a \$10 increase, excuse me, in monthly rates, especially fixed rates, can devastate those on fixed incomes. Any increase in rates deserves a potential review, by a neutral and informed body, and I urge you to please favorably consider LB1068 this year, and don't allow OPPD to turn Omaha into Detroit...unchecked. And I have an endnote that...I see I'm on a red light, so I won't read what...it is in your handout. And I thank you for letting me speak. [LB1068]

SENATOR SMITH: Thank you, Ms. Ward. Do we have questions from the committee? I see none. Thank you. [LB1068]

TONYA WARD: Thank you. [LB1068]

SENATOR SMITH: (Exhibit 13) Next proponent of LB1068, next proponent. We do have a letter for the record, in support of LB1068, from Paul Bodlak, on behalf of Northeast Nebraska Public Power District. We now move to opponents, those wishing to testify in opposition to LB1068. Welcome. [LB1068]

CHRIS DIBBERN: (Exhibits 14-15) Good afternoon, Senator...Chairman Smith, members of the committee. My name is Chris Dibbern, C-h-r-i-s D-i-b-b-e-r-n, and I am the general counsel for the Nebraska Municipal Power Pool. I'm a registered lobbyist. I..the Power Pool serves over 200 small municipalities in this region. We also have the Municipal Energy Agency of Nebraska, and we serve 68 communities at wholesale electric suppliers. And I am here, also, on behalf of the

Nebraska Power Association. And they serve over 160 entities of public power in the state. For MEAN and the NPA, our mission, in the past, has always been low-cost, reliable energy. The Legislature and its members have altered our mission to also include more renewable options for ratepayers and greater support for renewable projects and energy efficiency. We have made that part of our goals and our work in the past and in the present. We oppose LB1068 and ask the committee to kill the bill. I personally am a strong supporter of the Nebraska Public Service Commission. A great deal of my practice is before the commission, and I have a tremendous respect for the commission and the staff for the work they do with regulated, for-profit natural gas companies. However, the purpose of the state regulation and oversight by the PSC is totally wrong in a public power state or for publicly-owned utilities. It is also very rare, in the country, to have a public utility commission regulate a non-jurisdictional public utility. I've handed in a summary to the legal counsel of over 50 concerns that we have in the bill. This draft reflects a for-profit model that doesn't work in a not-for-profit organization. I also will hand in the NMPP energy rate study that was referred to by Senator Haar and talk a little bit about why the difference in rates. There are just...I won't talk about 50 points; I will talk about 4. LB1068 calls for regulation over rate of return, and public power is cost-based. We don't earn a rate of return on equity or capital or venture capital at risk. One of our prime reasons for regulation is to determine the appropriate rate of return a company should earn. That's what a public utility commission usually does. Public power is cost-based. Some of us may have had costs move up in this past decade. You've...we've heard testimony of that. We've had fuel increases, we've had regulation increases, we've had SPP, the RTO regulatory activities. MEAN has also installed a state-of-the-art coal plant in Hastings, Nebraska. And that increased our cost in the short term. Each system has its own costs. Each system is unique. Some of my members have local generation that backs up for emergency generators. Some communities don't have that kind of generation for back-up power. The petition and the application process makes little sense for Nebraska communities. You're going to hear it. Following me is Mr. Daniel Ortiz, a city administrator from the city of Kimball, who's going to talk about what it does to local control and what they do to set rates. Many of our communities use experts. This is not done without technical experts, without engineers, without cost-of-service studies, without analyzing, over months, what to do with their rates. NMPP does do a rate survey every year. And the rates vary between communities because of location, because of weather, because of storms, because of load factors, because of western hydro allocations, because of population density, because of commercial and industrial loads, and because of what investments you put in the community. That's why you see that difference in their rates. While some rates have risen, we are still in the lowest quartile in the nation. And somebody else is going to speak on rates to you in a little bit. When Senator Haar asked for those rate...that rate survey, it was on the front page of this month's Essent Magazine that we do the rate survey. I think it is transparent, it's open; he had those rates in front of him within minutes. So I think that's another beauty of public power. We do try to keep those rates as low as possible, consistent with the mission that the Legislature has given us, and still provide reliable power. So with that, I would answer any questions. [LB1068]

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SENATOR SMITH: Thank you, Ms. Dibbern. Do we have questions from the committee? I see none; thank you. [LB1068]

CHRIS DIBBERN: Thank you. [LB1068]

SENATOR SMITH: Next opponent of LB1068. Welcome. [LB1068]

DANIEL ORTIZ: Thank you for having me here. Good afternoon, members of the Transportation and Telecommunications Committee. My name is Daniel Ortiz, D-a-n-i-e-l O-r-t-i-z, and I am the city administrator for the city of Kimball, Nebraska. I appreciate the opportunity to testify in opposition of LB1068. Today I represent the League of Nebraska Municipalities and the Municipal Energy Agency of Nebraska, as well. Kimball has a population of approximately 2500 residents and is located nearly 400 miles away from Lincoln. Kimball's electric department is governed by the city's Board of Public Works and its City Council. Our electric rates are approved by the Board of Public Works after a lengthy public discussion and opportunity for public comment. Local residents and businesses are impacted by the decisions the City Council and Board of Public Works make every day. This is why it is important that the decisions and final authority rest with local residents, who make up our council and our appointed boards. They must make difficult decisions regarding the city's electric, water, sewer, landfill, and garbage collection utilities and have to interact with their neighbors, coworkers, and other members of the community. Decisions affecting our electric rates are not taken lightly and typically occur over multiple meetings and are enacted with significant time so as to allow notification to the community. In the past several years, Kimball has taken advantage of low interest rates in order to finance several capital projects and also refinance existing bonds in order to capture significant savings. Our ability to finance these capital projects is contingent on the city's ability to regulate and establish its own rates. Recent bonds the city issued are combined with projects and refinanced with other existing bonds for the city's utilities. Any limitation on the city's ability to establish appropriate electric rates will affect our ability to carry out future projects and result in the city having to raise rates in its other utilities to cover its bond requirements. Kimball cannot support legislation that diminishes local control, which is what this legislation does. Small electric utilities in Nebraska must contend with a variety of regulations that increase the cost of our operations. As city administrator, I am responsible for overseeing the city's utilities, not just the electric department. Administrators such as me must assure the reliability and the ever-growing regulatory compliance matters of the city utilities and rely on elected and appointed governing boards to make decisions and adapt to changes, as necessary, to guide our local community. We run a lean operation and focus on saving costs whenever we can. For the first time in recent memory, our city employees have had to endure a freeze on wage increases, and most of our utility crews have been forced to adapt to a 25 production...a 25 reduction in manpower. This legislation is just another regulation and layer of bureaucracy that adds considerable expenses to our operations without any meaningful benefit to

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us. In most cases, a local utility's reasonable electricity rate increases will be approved by the Public Service Commission. My staff does not have the luxury or the financial resources to halt our other city affairs in order to prepare and submit the necessary requests and documentation to the Public Service Commission. The vast majority of Kimball's residents will not be able to afford to travel 400 miles to attend the commission's hearings in Lincoln, let alone the added cost of experts and studies that will be required, in addition to the funding of newly-staffed office of customer advocate. These are the costs to my community, communities like me cannot afford to bear. I believe that LB1068 does exactly the opposite of what it proposes to do. The law claims to provide the lowest-possible cost for electrical service, yet this law would add an unnecessary layer of regulation and cost around Kimball's electricity rates. As I understand this regulation, a proposed rate increase could be held for at least six months with the Public Service Commission after the rate increase is already reviewed and approved by my local community. My community and utilities such as ours need the flexibility to respond to changes. We must be able to adjust our rates to cover our costs in a timely manner. Please recognize the realities of the majority of the communities in the state. We currently have a system for establishing rates that may not be perfect for some, but the system works for us. A system that you have to participate in from, from 400 miles away would only be a broken system. Please do not let communities like mine lose our local control over our public utilities and allow us the best possible option to govern our safe and reliable production of electrical services. Senator Haar mentioned, in the beginning, about the use of smart meters. In my community, we have what I would call a bare-bones system, where our electric meters cost about \$40. They're very basic; they're digital. We've explored the option of moving to an AMI or an AMR system that would utilize smart meters. The cost of the meters would double, as well as the system itself. For both our water and electric, it would be about at \$500,000. Thank you. [LB1068]

SENATOR SMITH: Thank you. Thank you, Mr. Ortiz, for your testimony. Do we have questions? Senator Friesen. [LB1068]

SENATOR FRIESEN: Thank you, Chairman Smith. So in your, in your utility, do you have a fixed-cost component in your billing? [LB1068]

DANIEL ORTIZ: We have a customer charge which is roughly about \$20. And there's a kilowatt charge associated after that. [LB1068]

SENATOR FRIESEN: Do you think that rate is reflective of the actual cost of delivery? [LB1068]

DANIEL ORTIZ: No, it's not. [LB1068]

SENATOR FRIESEN: Do you think it should be higher? [LB1068]

DANIEL ORTIZ: We're currently right now doing a rate study to try to get a better idea of what our actual fixed cost are be. I would anticipate that, if the results for that are as I expect they would be, it would be higher. Our system itself is roughly about 30 years old. We've just recently gone through the process of upgrading the major components to our primary substation, at a cost of \$750,000, which we financed through a bond. Most of our components are 30 years old. We have a primary substation that's our only feed into the city for power. We have a backup generation plant that can put out eight megawatts of power. And should we ever lose our primary feed into town, we have to rely on our power plant that has engines dating back to late forties and early fifties to be able to sustain the city. So if we had to look at just the fixed cost, that customer charge would probably be considerably higher, maybe along the lines of what OPPD has done. [LB1068]

SENATOR FRIESEN: So when you, when you look at cost of delivering electricity to customers. and you have a, you have large users, obviously, and you have some small users. What is the...does it cost that much more to deliver to the large user? [LB1068]

DANIEL ORTIZ: It...I would rationale that by, not by large user or small user, primarily mostly on single-phase or three-phase power. That's where the, the greater cost and variation of delivering that power would be. You obviously have much more components and much more technical in delivering three-phase power to your commercial and industrial residents than it would be to your residential residents. It's much more complicated, a little more timely, as well as some of your, your different parts of the town may have different systems of installation, as well as our overall system. I compare the city of Kimball...we have primarily overhead system where you look at some other cities that may have underground system. We, unfortunately, do not have the financial resources to put all of our electrical service in the ground as cities such as Sidney or other cities have done. [LB1068]

SENATOR FRIESEN: But you probably charge an extra charge on a three-phase delivery versus a single-phase. [LB1068]

DANIEL ORTIZ: Correct. And the price of the meter itself, as I mentioned, the price of a single-phase residential meter right now costs us about a \$40 price point. That just provides the resident with a digital meter that tells you kilowatt usage. A smart meter that Senator Haar eluded to would probably be double, at least, the cost of that. A commercial meter would be anywhere between roughly \$250 and up for a meter of that size. And so typically, for us to try to pass that on to the customers, we would, we would have to contend with a number of customers opposing that. [LB1068]

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SENATOR FRIESEN: So does your, does your utility generate what you'd call a profit or a revenue that could be used to run other city functions, or does it stay in the utility department? [LB1068]

DANIEL ORTIZ: It primarily stays in the, in the electric department, just because in the past few years we really looked at our infrastructure needs and maintenance needs. And we have areas in our electric department that really need to be upgraded and maintained properly in order to provide that reliable power. We've gone through the expense, a few years ago, of ensuring that our power plant is RICE-compliant. That essentially required us putting large catalytic converters on our exhaust for our engines. That was a...to a tune of \$330,000. That enabled us to be able to provide excess power onto the grid when the wholesale supplier needs additional power in our region. And in return, there's a, a payment that we receive for the amount of kilowatt we put out. But it was also essential for us to do that, primarily because we only have a single high-voltage feed into the city. And we need to make sure that we look and address the maintenance issues of our power plants for reliability purposes. We're looking at a \$330,000 payment versus a multimillion-dollar project to add an additional second feed into town for that reliability purpose. It was really a no-brainer for my board. You know, in terms of reviewing our rates, we have our board of public works, which is made up of five board members from the community, appointed by the council. So you have five eyes there. We have our council that oversees the board of public works; they have an additional five eyes. So you have, before it's all said and done, you probably have 15 and 20 people who have reviewed and offered input to staff, and our, our city attorney recommendations for setting these rates, which, as I mentioned...our multi-meeting process, usually a two-to-three month process before they're, they're finally established...and then, several months after that, one or two months before they go into effect. [LB1068]

SENATOR FRIESEN: Thank you. [LB1068]

SENATOR SMITH: Senator Davis. [LB1068]

SENATOR DAVIS: Thank you, Senator Smith. Just a couple questions. Your rates are not bad, according to this document Senator Haar submitted. [LB1068]

DANIEL ORTIZ: Thank you. [LB1068]

SENATOR DAVIS: So are you on...I mean, is, is Tri-State your wholesaler? [LB1068]

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DANIEL ORTIZ: Our wholesales are, are the Municipal Energy Agency of Nebraska and... [LB1068]

SENATOR DAVIS: Nebraska. [LB1068]

DANIEL ORTIZ: ...the Western Area Power Administration. So...and we are surrounded by High West Energy, and their wholesaler is Tri-State. [LB1068]

SENATOR DAVIS: So with WAPA and Tri-State then, when they set rates, how do you matriculate those down into your customers? [LB1068]

DANIEL ORTIZ: Usually, say for instance, we just...WAPA just increased their transmission rates. And so usually we will get notice, but we also get notice through the Municipal Energy Association. They are a third-party administrator for our WAPA agreements. And then MEAN would establish their rates, usually around January. And they typically go into effect in April. It's somewhat of a balancing act for us, because when WAPA and MEAN, MEAN especially, when they set their rates, they're on the April through March calendar year. Our fiscal year is October through September. And so we have to try to project, as best we can, based on past trends, what MEAN and WAPA are going to do for our fiscal year when we start our budget process. And so sometimes that's an educated guess on, based on what, just what we're seeing and what we're hearing, which is why it's important for my staff and myself to attend meetings quarterly, board meetings, to have a pulse on what's going on. But typically, once MEAN establishes their rates, we typically will look back at what the rate study had done in the past, what they projected, and see if that's within that, that calculation and make adjustments, if needed. You know, certainly a past two, three years, when, when things were very volatile with the transmission of energy, as well as the regional transmission organizations and just everything that was going on two, three years ago, we saw ourselves having to increase our rates. We had planned a rate increase in October of 2013, and that was a 6 percent rate increase. With what happened after MEAN set their rates and what was going on with the RTO market, we had to do another 6 percent rate increase in April of 2014. [LB1068]

SENATOR DAVIS: And is your customer base completely within the city limits of Kimball? [LB1068]

DANIEL ORTIZ: Primarily. We do have a few non-city customers who are just on the periphery of our city limits. [LB1068]

SENATOR DAVIS: Thank you. [LB1068]

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SENATOR SMITH: Do you have, do you use...who do you use for your rate design for your electric department? [LB1068]

DANIEL ORTIZ: This past time that we've done our rate study, we've done it, done an engineering firm. And we used, I believe it was JEO Engineering that partnered with Baker and Associates out of Scottsbluff. And, and this past time we actually looked at all our utilities simultaneously to get a more accurate picture of what our board of public works expects as it revenues...really look like. You know, our board of public works also, they meet once a month. It's typically the fourth week of the month. And they, we go in detail. They approve all our checks that have to be approved. They approve all our...they get a list of all the expenses and transactions that have occurred for that, that period, and they approve those, as well. And so we, we really strive to be transparent, in terms of what the cost of our operations and expenses are. [LB1068]

SENATOR SMITH: And so this outside consulting firm, I would call it, who helps you with your rate design, do they also...are they also available to your board members to respond to any kind of questions they may have as to how their rates are arrived at? [LB1068]

DANIEL ORTIZ: We just had an update on our rate study a few weeks ago. And we kind of convened a small group...two people from, two members of our council, two members from our board of public works to hear what, what essentially was a four-hour session on the update on what the findings were of the rate study. And that was a preliminary meeting. This wasn't setting the rates, but just providing an overview to those members of the board, to my staff of what the rates look like. They're based on what our capital improvement plans and future needs would be...and come back with some initial recommendations. The next step, thereafter, would be to formalize and, and have the board make a decision of what type of rate increases, if any, they'd like to see made. And then work back through that firm to develop a model for the next year or two. [LB1068]

SENATOR SMITH: Okay, great. Do I see any further questions from the committee? I see none. Thank you for your testimony today. Very good. [LB1068]

DANIEL ORTIZ: Thank you. [LB1068]

SENATOR SMITH: Next opponent of LB1068. Welcome. [LB1068]

SHELLEY SAHLING-ZART: (Exhibit 16) Welcome, thank you. Good afternoon, Senator Smith and members of the Transportation and Telecommunications Committee. For the record, my

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name is Shelley Sahling-Zart, S-h-e-l-l-e-y, Sahling-Zart is S-a-h-l-i-n-g, hyphen, Z-a-r-t. I am vice president and general counsel for Lincoln Electric System, the municipal electric utility here in Lincoln. And we serve Waverly and a little bit of the surrounding area around Lincoln, about 200 square miles. We are here today to oppose LB1068, primarily as in our, as an unnecessary erosion of local control. I'll start with the fact that the LES administrative board is appointed by the mayor of Lincoln and confirmed by the city council, but the city ordinances specifically provide that the final authority for budget, rates, and long-term financings rest with the city council. So we actually already have a dual level of review in Lincoln. So we go through...one of the handouts to my testimony is a process that we go through to review rates. It starts with budget developments in our divisions in about the May-June time frame all the way through city council consideration, which typically occurs in December. There are two public hearings. We do one before the LES board, and we do another one at the city council level. We have extensive reviews with business and community organizations. Essentially, anyone that calls and asks us, we will set one up with, as well. We provide our, our, our public meeting. We do an on-line open house, so the presentation of video is available on-line for those that can't make it to our hearing in the evening. I think we have a pretty extensive process. We meet a lot with our board members. We meet with city council members individually. There are no ex parte rules like there would be at the PSC; it allows us to have a really in-depth dialogue with those individuals and give them a thorough and solid education of the, the cost components in our budget. Rates are hard. You know, this has been a difficult discussion today. Rates is a tough issue. We don't like implementing them. None of us like paying them. We pay the same ones. Our board members pay the rate increases that they approve. And these are hard. I'm going to deviate a little bit from the testimony. I hope I don't run out of time to cover everything, because I want to talk about rate comparisons, as well. But the whole cost, what OPPD is doing with reallocating costs, I will tell you Lincoln Electric System is doing that, as well. Utilities across the country are doing that. And the, the, the attachment, the PowerPoint presentation...I'd like to draw your attention to that and have you turn to the slide that has the bar graphs on it, which is slide 13. You can see those tiny numbers. This is the problem that utilities are facing. On the left you will see where our costs come from, and you will see the bar, the blue bar graph are our fixed costs for Lincoln Electric System. About 74 percent of our total costs are fixed, and about 26 percent are variable, energy-related, if you will. On the right you will see how we're collecting it. We're collecting it primarily through the energy charge, which means your highest energy users are paying the bulk of the cost. So from an economic development standpoint, which we've also...in the last month or so, we've been criticized on our industrial rates. Well that, this isn't helping that. So this is a really difficult balancing act that we go through. So if you turn that page and go to what is slide...I don't know. It follows slide 15, so it must be 16, but I don't see a number...the boxes. On the left is what currently is in our customer charge. The right box are things that are in our energy charge that should be in our customer charge. So you'll see the little oval around distribution systems and substations; that was the first adjustment we did. It was effective in January. We are gradually starting to move those costs over. We did this first one very gradually

so that it was essentially neutral for most customers. They should not have really seen it. And this year we will be having an ongoing dialogue with our customers and customer groups about this very necessary reallocation of costs that we need to do. But how will we go about doing that? We understand there is an impact on those low-use customers. We're going to be having that dialogue and trying to address that question. But it is a problem that needs to be fixed; the allocation needs to be fixed. These are hard; these are hard discussions to have. I don't know that this process in LB1068 necessarily fixes that. The PSC would just be a different entity grappling with the same problem. And there's not going to be an easy fix to that. With regard to rates, we hear lots of things. There are lots of ways to slice and dice the rate data. I provided you some in my testimony that shows a lot of people like to talk about the percentage of increase. Senator Haar eluded to that. Yeah, rates between 2002 and 2014 for Nebraska have increased...what is it...59.3 percent. But if you look at this chart, you'd zero in on Iowa, if you were only looking at percentages, right? You'd look at Iowa, whose rates over that same time period, over that same 12 years, increased 35.6 percent. You'd think they're the lowest. But, when you actually look at the actual retail price, Wyoming is still lower than Iowa, despite the fact their rates have gone up 65.8 percent. So it's a problem. You can dissect the data in a lot of ways. The end of the day, we have rates that are ranked 14th. 36 states would like to be Nebraska; 36 states have higher rates. We are competitive, but as utilities, and I see I'm out of time, but utilities...we are facing major challenges. We are facing pressures on our rates. I think public power, over the long haul, has faced those challenges pretty well. We have provided pretty gradual increase in rates over time. We'll have challenges again. And our job is to try to work with our customers and address those challenges by keeping the lights on...reliability is important...but trying to keep rates as affordable as we can. But we only have one stream of revenue to cover our costs, and that's rates. And I see I'm out of time, and there's a lot more I would have liked to have said. But I'd take any questions. [LB1068]

SENATOR SMITH: Senator Davis. [LB1068]

SENATOR DAVIS: Thank you, Senator Smith. Good presentation, and I thank you. I am referring to the chart you... [LB1068]

SHELLEY SAHLING-ZART: Um-hum. [LB1068]

SENATOR DAVIS: ...gave us with the revenue costs and the total cost, which I think is number 13. [LB1068]

SHELLEY SAHLING-ZART: Um-hum. [LB1068]

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SENATOR DAVIS: So apparently the business model for years was, we'll just take it all out of the electricity charge. Is that correct? [LB1068]

SHELLEY SAHLING-ZART: Well, you know, that's the way it had been done for a number of years. And, Senator, I have to tell you that I don't think any of us noticed it for a while, till, you know...victim of our own circumstances, I guess...till the load started to flatten out after the recession. And we started to see lower loads and started looking at why our forecasts weren't coming out the way they were and started to really look into our rates, as a lot of utilities have done. We did have a rate consultant come in and started to look at some things and went, um-hum, we have an allocation problem. [LB1068]

SENATOR DAVIS: So I'm assuming that this is industry-wide; everyone is going to... [LB1068]

SHELLEY SAHLING-ZART: A lot of utilities are, yes. [LB1068]

SENATOR DAVIS: ...more of a solution like that, which I understand. But how do you deal with some of the issues we heard from Omaha Public Power people earlier, customers who are...have low incomes? How are...how is LES dealing... [LB1068]

SHELLEY SAHLING-ZART: It's tough. I'll tell you right now, one thing we already have in place and have had in place for a number of years is, we have an energy assistance fund. Every year we budget and we allocate a portion of money that goes to the Community Action Program here in Lincoln. And they use it to provide assistance to their clients, our customers, for electric bills. What I like about that is that it puts the responsibility for determining need and qualifications in the hands of more of the social service area, which is better-equipped to do that than we are. But it's a great partnership that we've had. And so we have that fund. The other thing that we are having a dialogue...we haven't made any decisions yet, but part of our dialogue we'll be having this year is maybe looking at dissecting a little bit more some of our customer classes. Maybe in that residential customer class, where right now everybody pays the same customer charge, maybe the fair, reasonable, nondiscriminatory dictates more to maybe splitting that into low use and high use customers. That's a possibility. I mean, we're just now starting to have those dialogues. I don't know what the ramifications of that might be. But are...we have to get creative. Will there be things that we can look at? I hope so. [LB1068]

SENATOR DAVIS: Thank you. [LB1068]

SENATOR SMITH: Senator Seiler. [LB1068]

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SENATOR SEILER: The city council of Lincoln doesn't have review powers over your organization, does it? [LB1068]

SHELLEY SAHLING-ZART: Yes, they do. [LB1068]

SENATOR SEILER: They do. Okay, so you make... [LB1068]

SHELLEY SAHLING-ZART: Yeah, they do. And they have the final authority, as I indicated... [LB1068]

SENATOR SEILER: Okay. [LB1068]

SHELLEY SAHLING-ZART: ...on budget rates and financing. Um-hum. [LB1068]

SENATOR SEILER: That's what my next question was going to be. So you're getting reviewed by your board. [LB1068]

SHELLEY SAHLING-ZART: Um-hum. [LB1068]

SENATOR SEILER: And then it goes to the city council review. [LB1068]

SHELLEY SAHLING-ZART: Um-hum. [LB1068]

SENATOR SEILER: But you get one more; you've got a debt service of bonds. [LB1068]

SHELLEY SAHLING-ZART: Yep. [LB1068]

SENATOR SEILER: They're pretty strict on your review of your budgets and everything, too, aren't they? [LB1068]

SHELLEY SAHLING-ZART: Yes, they are. Yeah. Well, and I, you know, I'll tell you... [LB1068]

SENATOR SEILER: So really have three agencies looking over your shoulder. [LB1068]

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SHELLEY SAHLING-ZART: As somebody responsible for a division, I tell you, I have one more, because it's no easy task to get past our CEO and CFO. We have these, and that's what we do. We go in as division vice presidents, we present our budgets individually. We go through a lot of detail. And at the end of that, the CEO and the CFO come back and say, you know, collectively, this budget would require this...too high of a rate increase. You all need to do this. Sometimes they dictate what we need to do. Sometimes they go back and say, cut, find room. And then we do that, and we take it the board. And, as a matter of fact, this year we took it to the board and it was going to require a small rate increase. And in our discussion then with our board's budget rates committee, because of all the other dialogues we're having on a lot of issues, we said, let's work to get this to zero. So we trimmed it, took some things out. And sometimes you have to defer projects. But we did that, and we took it to zero, and we had no rate increase for the second year in a row. Those are good things to be able to do, because, at the time, we were also looking at Clean Power Plan, which is now stayed, so we don't know when that will into play. But we were looking at other things coming down the road. I mean, you're always forecasting, and you're always looking ahead at what those cost challenges are going to be. And, you know, our job is to try to mitigate that and not have those all hit at once, if we can avoid it. [LB1068]

SENATOR SEILER: Hopefully. [LB1068]

SHELLEY SAHLING-ZART: Hopefully. [LB1068]

SENATOR SEILER: Thank you very much. [LB1068]

SHELLEY SAHLING-ZART: Yeah. [LB1068]

SENATOR SMITH: Additional questions? I see none. Thank you. [LB1068]

SHELLEY SAHLING-ZART: Thank you. I'd just like to thank Senator Haar for being open to the discussion. I think it is, obviously, an important discussion to have. And we look forward to it. [LB1068]

SENATOR SMITH: Yeah, and let me ask you the same question I asked the person that testified before you. You...who do you consult with on your rate design? [LB1068]

SHELLEY SAHLING-ZART: You know, we have a really good rate staff. We do a lot of work internally. We do a cost analysis pretty much internally. But we then do periodically, for prudence and due diligence...we will bring in a rate consultant, like we did a year or so ago, to

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sort of do a check-in and make sure we're state of the art with where rates seem to be in the industry and take this look to discover anything, maybe, we haven't noticed is happening within our rates. [LB1068]

SENATOR SMITH: And then your expert staff or the consultants from the outside, they're available to board members, city council members, to answer any questions. [LB1068]

SHELLEY SAHLING-ZART: Oh, sure. And you know, on different components, like power cost, we have a very sophisticated forecasting model that helps us, because we get our power cost from so many different resources with our partnerships and plants. So all that gets plugged in and helps you assimilate that. We have a pretty sophisticated financial model that we can run sensitivities on, as well. [LB1068]

SENATOR SMITH: And in terms of best practices, I assume that your rate consultants have been telling you, probably for a number of years, that this is a good direction to go in, in terms of, you know, applying more towards your fixed, you know, more of your costs that are stable or fixed to your fixed rate. [LB1068]

SHELLEY SAHLING-ZART: Yeah. Actually, they have number of benchmarks that they're always looking at--your debt to equity ratio, your cash on hand, your allocation of fixed versus variable costs. There are a lot of benchmarks that they look at; and frankly, we benchmark ourselves against others in the industry for lots of reasons to try and keep our rates and costs as low as possible. [LB1068]

SENATOR SMITH: So that's nothing new to the industry... [LB1068]

SHELLEY SAHLING-ZART: No. [LB1068]

SENATOR SMITH: ...that that's all best practice. [LB1068]

SHELLEY SAHLING-ZART: No, but as you've heard from this discussion, this, this is kind of a complex industry. [LB1068]

SENATOR SMITH: It's a...and it's a controversial decision to make, right... [LB1068]

SHELLEY SAHLING-ZART: Yes. [LB1068]

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SENATOR SMITH: ...to allocate those costs differently? [LB1068]

SHELLEY SAHLING-ZART: Yep. [LB1068]

SENATOR SMITH: Okay. [LB1068]

SHELLEY SAHLING-ZART: Not easy. [LB1068]

SENATOR SMITH: All right. Thank you. [LB1068]

SHELLEY SAHLING-ZART: Thank you. [LB1068]

SENATOR SMITH: Welcome. [LB1068]

PAUL NEIL: (Exhibit 17) Thank you, Senator Smith. Committee Chair, members, I am Paul Neil, P-a-u-l N-e-i-l. I'm president of the board of Dawson Public Power. The directors and I appreciate the opportunity to come before you today. And I'm here representing Dawson Public Power...also, on behalf of Nebraska Rural Electric Association and our 34 rural electric partners. Nebraska Senator George Norris was a strong supporter of the Rural Electric Administration and public power, created to bring electricity to rural areas. From the early 1930s, municipalities and rural, local consumers have organized, built, and managed their distribution systems to serve themselves at the lowest possible cost consistent with sound business practices. His belief was that consumers are best served and managed with local representation. Because of his belief and millions of hours of consumer involvement for 80 years, Nebraska has had some of the lowest rates in the nation. LB1068 proposes to take the rate-making authority, control, away from the local consumer and move it to the Public Service Commission, and then to include a bureaucracy process that will allow the insertion of outside personal and political agendas. It removes local control and responsibility and puts it in the hands of outside interests and influences. And the consumer will pay the additional bureaucracy costs to do what the consumer has been doing very satisfactorily for over 80 years. In September, Dawson begins the budget and rate-setting process for the next year. Depending on what kind of year we estimate we will end up with and the estimated numbers we receive from our power supplier for the next year, management brings to the board a recommendation for whether we need to have our rate consultant do a partial rate review, a full review, or we don't need one for that year. Because the industry is in a transition of bringing on more renewables, which is unfairly shifting costs, not only among consumers, but also among classes of customers, management's recommendation was to do a full review of all rate classes. A finance rate committee was formed in October of 2015. The finance committee met five or six times over the next four months, in addition to the discussions at our regular

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monthly board meetings for the 2016 budget. And then we also had Webinars with our rate consultant with the directors and management. At the least, it was going to require some adjustments in the allocation of costs of the system fixed cost component of the bill and a corresponding reduction in the energy component to counter shifts, cost shifting as much as possible, going forward. And that also keeps the district whole. After much discussion in the 2014-2015 budget rate-making process last year, it was decided to start the cost allocation change on the residential class last year, since it was the class that had the most potential for cost shifting. Management had articles in our magazine, explaining what we were doing and why and asked for comments from consumers, as it was an agenda item at almost every board meeting. The residential bill went from \$21 to \$28 on the system fixed cost component of the bill and was reduced that same amount on the energy component of the bill. For most consumers, there was little change one way or the other in the total that they owed, but it was a change from the past and there was pushback. We don't like change. We see increases, and we don't see decreases. Stock wells were by far the hardest hit, because they are far from anyplace and use very little energy. We had lots of phone calls; some, even though they were one of the few that actually reduced their bills, still didn't like it. It will take time and be hard for many to see, but a plus to the consumer, because now they will know their actual energy usage cost is, and they can make their own choices about what...when to use or not use and how much and whether or not some type of renewable will work for them. Nebraska's low power costs are one of the greatest assets we have, but it also makes it hard for the average consumer to see enough savings to offset the inconvenience of conservation beyond the easy stuff, which they are probably already doing. Overall, the consult review showed that the costs among the classes were very near where they should be. From a fiduciary view and good business practices, going forward, we will need to move all of the fixed cost to the system cost. And for the most part, the energy will be passed through to the consumer. In the end, all parties will know the exact cost of the system, the cost of the energy, and the cost of renewables and will be responsible for their share. Based on the board's knowledge of the local economy and the specific impacts to their system, the district's focus is and has always been safe, low rates coupled with reliability. We live in an era where things are changing rapidly. It is necessary to prepare for an energy future that has far more flexibility than it ever has. The hurdles faced can be handled best locally...Dawson...locally. Dawson Power is preparing to embrace these changes without burdening ratepayers who are not interested in these changes. We've corrected our rate methodology to put more obligation on accountability, in line with actual cost practices. We're positioning ourselves to be better local partners with our consumers who are interested in renewable energy. LB1068 is nothing but a piece of legislation trying to make or find a problem where there is none. If passed, it would compromise a system that has worked well for everyone. In the end, it would cost the consumer more and, most importantly, remove the best and most important benefit of public power...local control. We take care of the customer; we are the customer. On behalf of the board of directors of Dawson Public Power, I thank you for your time. [LB1068]

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SENATOR SMITH: Thank you, Mr. Neil, for your testimony. Do we have questions from the committee? So 43 years in public power. [LB1068]

PAUL NEIL: Pardon? [LB1068]

SENATOR SMITH: Forty-three years in public power. All of that time at Dawson? [LB1068]

PAUL NEIL: Yes. I'm a farmer in Dawson County. [LB1068]

SENATOR SMITH: All right. Well, thanks for working for our public power industry. [LB1068]

PAUL NEIL: Thank you. [LB1068]

SENATOR SMITH: Next opponent? Welcome. [LB1068]

BERNIE FEHRINGER: (Exhibit 18) Thank you. Chairman Smith and members of the committee, my name is Bernie Fehringer, B-e-r-n-i-e F-e-h-r-i-n-g-e-r. I am a chemist, a patent attorney, and a farmer, in that order. And I decided to run for the board and was elected 35 years ago. I am the elected director, president of the board of directors of Wheat Belt Public Power District, headquartered in Sidney, Nebraska. Wheat Belt supplies electrical needs for approximately 3,600 square miles in parts of 5 counties in western Nebraska. Thank you for giving me the opportunity to oppose bill LB1068. I will highlight a few reasons for this. The board of directors of Wheat Belt utilizes an ongoing, robust process when developing and evaluating our rates, to meet the revenue requirements to operate the district in a financially responsible manner within the guidelines of the state of Nebraska's laws. We start with three long-term planning goals. The first long-term goal is the strategic plan developed every three years. We just finished the last one last month...haven't even seen the results of, of all of it yet. And we do that with the board of directors and collaboration with key staff members. This plan determines where we're going to go over the next five years, even though we renew it every three years. The second tool is derived from the strategic plan's four-year construction work plan. And Senator Smith, that's done with Electrical System Consultants out of Fort Collins. We've been using them for years...very good consulting firm. It's developed with, with that firm, with the input of the employees and directors. It works from our safety and reliability standards. It takes into account our financial constraints, and it looks at things like system overloading...where it is occurring, where it might occur, where we project load growth, and where we need to replace obsolete plant, like poles, wires, transformers and that kind of thing...take a look at all that. We get quarterly updates from, from the staff on how we're following that work plan. And oftentimes the board or the staff come around and ask us to shift things around in the plant. The third long-

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term goal is a ten-year financial forecast. this one developed by our general manager who is a real whiz kid at that. It uses a lot of our financial information in general, and in particular, it uses a rolling average of five years on all of our costs, expenses, and so forth. So it kind of levels out weather effect and some other things. And we could have a, a good guess at what our costs, and so forth, are going to be. We know we're always going to be wrong at the end of the year, but we have to have a guess in there somewhere. Our rate development is then based on the...using these tools and, and our cost-of-service study, which is also prepared by an outside firm. Now we don't do that every year; it costs \$20,000 and up. So we, we get one. We, we figure, unless we have dramatic changes, we can, we can do that for maybe five years. The outside firm also suggests rate design to us. And then we tweak that from year to year as we go. We are...our meetings are always open to the public, and we hold meetings with the customers. If we have any dramatic rate changes, we'll go around to different locations without our five counties and, and try to get together. And, unfortunately, we have very poor attendance at these meetings. I guess they feel like we're doing the best we can; they don't need to come and listen to us. But it happens. Our rates are very stable. It...we went for 16 years without a rate increase, because of the...our power supplier, Tri-State, was able to, to pass, pass along no rate increase for that time period. So we did a real good job of managing and controlling our costs during that time. But we always make...discuss this with the public, make our information available, and go on. So we're very transparent. Our current rates and any changes in them are posted on the Web site for the public to view. You look up wheatbelt.com; you can find them. And we also publish them in the centerfold in the Rural Electric Nebraskan Magazine. It comes out every month at no cost to our customers. If...we have a key accounts staff member that visits with our big accounts several times a year to see if they've got any problems. And we've particularly let them know if we're going have any rate changes that are going to affect them in any kind of dramatic way. LB1068 contemplates requiring a rate case. If we have a rate case, that means we got to go through all this cost every year. The, the PSC is going to have to take a look at, at that. And they're going to incur the same cost...another rate study, maybe a cost-of-service study. And then, as Senator Seiler mentioned, we're going to get billed for it. And I...so that's, that's going to be extra cost. By judicial financial planning, we have achieved then, gone from a 25 percent equity to 80 percent equity, which we greatly reduced our debt service. And that allows us to keep our rates low. We, we have very, very low cost there. And, and we fund most of our projects now out of cash flow. We don't have to borrow money to, to do that. But if we, if we had to forgo rate increases or had to defer them...let's say Tri-State raised our rate, and we had to defer that for six months while did a rate case. We'd be selling electricity at a loss for six months. Then we'd have to find some way to make that up. So maybe we would do defensive rate making and always raise our rates 1.9 percent every year, just to keep ahead of the possibilities. This way we get to make our decision every year. I am an elected official, along with six other elected officials that are accountable for the rates of the district. And we spend a lot of time becoming educated on that. Last...two weeks ago, I spent three days in day-long courses on, on training that our national organization puts forth. And I think I'm very well educated. I'd like to address one last

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issue, even though the red light is on. Section 1 (sic), paragraph 2 of LB1068 says the boards of directors have failed to support investments in efficiency, renewable energy, or other energy choices that could reduce the cost of electric service and provide other environmental and economic benefits to the customer. We recently, last month, engaged Bluestem Energy Solutions to look at putting up a wind generator within our system. We're moving ahead in this world. And also, we, we installed automatic metering five years ago, which allows us a lot of cost savings. Thank you. Questions? [LB1068]

SENATOR SMITH: Thank you, Mr. Fehringer. Appreciate your testimony. Do we have questions? I see none. [LB1068]

BERNIE FEHRINGER: Okay. [LB1068]

SENATOR SMITH: Thank you. Welcome. [LB1068]

JOHN McCLURE: (Exhibit 19) Good afternoon, Chairman Smith, members of the committee. My name is John McClure. I am vice president and general counsel for Nebraska Public Power District, J-o-h-n M-c-C-l-u-r-e. And I've handed out prepared testimony, but I am going to deviate from it. You've all been extremely patient and attentive this afternoon. I know it's been a long afternoon. And I'm just going to hit a couple, or a handful, of highlights for you. Number one, public power directors and city council members who have been elected by the people they serve have an obligation to set rates that are fair, reasonable, and nondiscriminatory. That doesn't mean that every customer is going to agree with them. As it's been pointed out, rate making is not an exact science. There's judgment that's required in the process in how you allocate certain costs. And, and I think the industry in the state is doing a good job. As it's been out, nationally electric utilities are looking, very fundamentally, at the way they charge their customers and how those rates are put together. Secondly, public power entities throughout the United States self-regulate, in terms of rates. We've heard things about Public Service Commissions should be used to do this. If you look throughout the United States, you will find very few examples in states where public power is being regulated by a public service commission. The rates of public power are self-set. And that goes to my third point. Public power utilities generally have a higher credit rating than investor-owned utilities. And one of the principal reasons for that is the ability of the governing bodies of those public power utilities to timely and adequately make rate adjustments. I would like to take just a moment, and I'll mention, when this bill came out, we were in the middle of refinancing some bonds. Over the last several years, NPPD has been able to replace higher-interest bonds with lower-interest bonds, and we've saved, cumulatively, \$100 million for our customers over the life of those new bonds. We were doing that in January, and LB1068 came in. We immediately were on the phone with all three rating agencies who rate our debt. They had lots of questions, lots of concerns, and we certainly believe, if this were to become the

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law, that there would be adverse impacts on the costs of raising capital in Nebraska. The cost would go up. And so that's one of the other reasons we are very much opposed to this. Finally, NPPD has a very open and deliberative process. And we're different than some of the utilities in here. We're primarily wholesale. In 2014, 2015, and 2016, we had no rate increases for our retail customers. In that same time frame, we had a less than 1 percent cumulative wholesale price increase over those three years for everyone except for a group, a smaller group of customers who are not continuing with us. We have a formal process for communicating with retail customers and with our wholesale customers, many of whom are sitting behind me. They come in with their expertise and ask questions as we're adjusting rates. And, for example, for this year, our board just set its, or talked about its budget for 2017. The 2017 budget will have an impact on what 2017 rates might be. We are obligated contractually to provide a cost service study to our wholesale customers. That has to be done 120 days before we can make any rate changes. I thought I'd cut things down. In closing, again, our board is committed to affordability, reliability, and accountability. We think public power district governing bodies are best equipped to set rates in Nebraska. And again, I appreciate all your attention to this important issue today. And I'd be happy to answer any questions. [LB1068]

SENATOR SMITH: Thank you, Mr. McClure. Questions from the committee. Senator Seiler. [LB1068]

SENATOR SEILER: Are you familiar with Iowa's public...private power system? [LB1068]

JOHN McCLURE: I have some familiarity with it. [LB1068]

SENATOR SEILER: Okay. Usually in their rate system years ago, they used to take their rate, and then they would put about a 4 percent to a 6 percent on top, for their profit. Are there rates still set that way? Do you know? [LB1068]

JOHN McCLURE: I do not know how they are set. But again, with an investor-owned utility, there is typically a component of those rates that allows a return to the shareholder, which we do not have with public power. [LB1068]

SENATOR SEILER: That's what I was going to ask. And we don't have that here. [LB1068]

JOHN McCLURE: Correct. [LB1068]

SENATOR SEILER: So we're saving that type of a rate for our customers. [LB1068]

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JOHN McCLURE: Correct. [LB1068]

SENATOR SEILER: Thank you. [LB1068]

SENATOR SMITH: And Senator Friesen. Go ahead. [LB1068]

SENATOR FRIESEN: Thank you, Chairman Smith. I just have a question, I guess, about the way you deliver electricity. Do you foresee down the road in your rates that you charge...will you have a delivery charge separated out from your actual electricity, because you own a major portion of transmission lines? Is that a separate component now of your rates? Or is that a... [LB1068]

JOHN McCLURE: Well, certainly we...NPPD has generation business. We have some customers who are getting generation and transmission from us. We have some customers who are getting generation, transmission, and distribution services from us in any retail communities. So we have to know what our costs are in each of those categories. And I think it's, as time goes on, it's more likely there will be even more unbundling for the customer, more information. But we do track those costs, because, for example, we have participants in certain power plants. And we have to be able to show what those costs are for them, as opposed to customers that may be getting a blend of all of our generation. So there's a lot of number crunching to detract those costs. And I think, over time, it's certainly likely we'll see more information on retail bills about components of the electric rate. [LB1068]

SENATOR FRIESEN: So when we were, we were talking, the question was, came up why some municipalities are so much higher than others, but in some municipalities you lease their, their distribution system from the municipality. And, for whatever rate they want to charge you, you will just pass that back along to them. But there are some municipalities, I guess...will they, are they using them as a revenue-generating source? [LB1068]

JOHN McCLURE: Again, we have to look case by case. But you're absolutely correct. We could have a, two wholesale communities that we serve with the same-priced, wholesale power supply. They are then the distributor and the retailer. They may have different policies in the community about how they use the electric system to raise dollars to fund other things in the community, and, and that's not uncommon, at all. And that may result then in lower property taxes. So we have to look at a lot of pieces of this, not just the electric rate...what's also, what's happening with transfer payments to the municipal government, what's happening with local taxes, to see the complete picture. [LB1068]

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SENATOR FRIESEN: It does reflect on rates that are published. And people compare that. [LB1068]

JOHN McCLURE: Yes. [LB1068]

SENATOR SEILER: They have to, we have to take that into account. [LB1068]

JOHN McCLURE: Yes. Yes, sir. [LB1068]

SENATOR SEILER: Thank you. [LB1068]

SENATOR SMITH: Thank you, Mr. McClure, for your testimony. [LB1068]

JOHN McCLURE: Thank you. [LB1068]

SENATOR SMITH: Next opponent of LB1068? Welcome. [LB1068]

TOM RICHARDS: Thank you. Chairman Smith, members of the...almost said Natural Resources Committee...members of the Telecommunications Committee. [LB1068]

SENATOR SMITH: I know (laughter). [LB1068]

TOM RICHARDS: Tom Richards, manager of governmental affairs for OPPD, R-i-c-h-a-r-d-s. I...a lot of discussion about OPPD and what we did with the rate restructuring. So I thought I'd make myself available for any questions. Before I do that, a couple things. We have a rate consultant. The Brattle Group is our rate consultant that works for the board of directors. And the board of directors has access to that rate consultant, does not work for management, works directly for the board of directors. There was a comment made about that the rate restructure would include decommissioning costs for Fort Calhoun Nuclear Station. That's not accurate. The rate restructuring does not include any decommissioning costs for Fort Calhoun Nuclear Station. Our board started this process over a year ago, started bringing up to date and up to speed about what needed to be done about the rate restructure and the fixed costs. I've worked for the utility for 28 years. This is the most intense community involvement that I've seen in the whole process of the 28 years that I've been there. There were eight community meetings across the district. North Omaha, south Omaha, Ralston, Papillion, Syracuse, UNO, Washington, Blair, and the Kroc Center. And on top of that, there were numerous places where the people could leave comments on-line. The information that was gathered, the board received probably somewhere

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between a 5 and a 6-inch notebook with all the different comments. They were aware that people were opposed to it. The market research for this started a year ago, where they get on-line interviews, they get focus groups. We knew that there was going to be a group that would be opposed to the rate restructuring possibility. One of the things that we did...you asked about how you can soften the blow for low-income. We put together a program where we try to soften it for a number of years. It starts off the first year, in 2017...it goes from \$10 to \$15. And the low-income, certain low-income members will get a \$2.50 credit on their bill. It progresses up to \$5 the next year, \$7.50 the year after that, \$7.50 after the year of that. So the total brunt is not felt by this rate restructure for about four years. And those that are low-income, that qualify through the LIHEAP program, can qualify for the credit. The question became, well, how come you don't do the credit for the whole process, because if you, if you continue this process, it starts to become a rate. And the rate-making authority, the rate-making consultants were afraid that that started to violate the fair, reasonable, and nondiscriminatory clause. This is a program. That's why it's phased in; that's why it's phased out. I'll stop now, but I can answer any questions that you might have. Board, board meetings are streamed. It's very transparent; it's very open in the process that that happens. Somebody mentioned our salaries. Our salaries are a matter of public record. The Omaha World Herald has an app that you could click on, and you can find anybody's salary that works in a public entity throughout the state. I'll stop at that point. [LB1068]

SENATOR SMITH: Thank you. Thank you, Mr. Richards. Senator Friesen. [LB1068]

SENATOR FRIESEN: Thank you, Chairman Smith. So with your rates currently set to where they're at, do you think you've covered, you've, you're recovering all your cost of delivery? [LB1068]

TOM RICHARDS: All the fixed costs? [LB1068]

SENATOR FRIESEN: The fixed costs. [LB1068]

TOM RICHARDS: No. It's about, it's not even half. It's probably closer to the seven...like, it think it was Shelley or John said it was like 74 percent, and it's probably closer to \$74 or \$75. [LB1068]

SENATOR FRIESEN: So if you get more and more residents who want to put in solar power...and so their, their, their actual use of electricity is \$20 a month. The neighbor, same square-foot house, doesn't have any solar power put in. Your fixed costs are the same between the two, but your selling him \$120 worth of electricity. Are you...where are you making more revenue? [LB1068]

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TOM RICHARDS: I do not know the answer to that question. I don't know. [LB1068]

SENATOR FRIESEN: Okay. Thank you. [LB1068]

SENATOR SMITH: Mr. Richards, let me ask, let me ask you a question. Maybe it'll, it'll help answer Senator Friesen's question. So if you have a, a consumer, two consumers side by side. And one has some form of renewable energy that they use frequently, when the sun is shining. And the system that you have in place to serve those two customers, is it the same system for those two customers that you have in place, aside from the amount of variable energy that you have to sell? [LB1068]

TOM RICHARDS: They have the same wires and infrastructure that...each customer basically has the same thing. [LB1068]

SENATOR SMITH: So if that piece of, if that device that they have on their home, that renewable device is not working or, for whatever reason, they're not generating energy, they're going to have to go to the grid to buy the energy from OPPD. [LB1068]

TOM RICHARDS: That's correct. [LB1068]

SENATOR SMITH: So that's why, I think that's why you're saying that that customer charge has to be in place. [LB1068]

TOM RICHARDS: Correct. Energy sales, you've heard it early in the testimony. Energy sales would flatten and, at some point, you have to recover those costs. And we've made the first step and phased it in over four years through our rate restructuring. That's what we're trying to do. [LB1068]

SENATOR SMITH: Yeah. [LB1068]

TOM RICHARDS: And even at that, it doesn't cover the whole cost. [LB1068]

SENATOR SMITH: I know. So on one hand, I know we, as a society, want to encourage demand-side management and development of renewable resources. But on the other hand, we want to be fair in the allocation of costs where, you know, they're entitled to be. So it's difficult. It's difficult. [LB1068]

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TOM RICHARDS: And Shelley, when her testimony said it quite clearly, it's a struggle. I mean, one man's fairness is another man's poke in the eyes. And it's a continuous struggle to try to reach that balance. [LB1068]

SENATOR SMITH: But coming back to what this bill does, is it takes the distributed authority away, if you would, distributed authority from the individual utilities. And it centralizes some level of authority on the rate side. [LB1068]

TOM RICHARDS: Correct. And if you want to talk about the merits of the bill, I'm happy to do that. But anytime you insert another regulatory body, you start to impede the ability for the utility to do its business. Or it makes it more difficult for the utility to do its business. [LB1068]

SENATOR SMITH: Yeah. So I think we're blessed to have public power in our state, but we have to find ways to improve upon the system that we have. And I think...I, I appreciate Senator Haar and, you know, his efforts in trying to address this through this bill. Do you think there's something we could do with the, the system that we have without taking away public power or taking away the distributive authority of the public power boards? Is there something we could do to try to control these ever-increasing costs? [LB1068]

TOM RICHARDS: I think you need to give it some time. It needs to have a little bit of time to sort through where the market is going to be. I think part of what we're doing with the rate restructuring is, you're starting to get some true price signals about what the cost of electricity really is. And I think it's difficult to be patient. But I think being patient and see how the market shakes out. We're, what...we're two and a half years, three years into the Southwest Power Pool, the clean power plant, all the things that are looming on the horizon. I think that we need to just give it some time. The people who have worked in public power for a number years and demonstrated good judgment, I would ask for some deference and some time to work through these processes and not to jump-start a regulatory process to enjoin them from doing what they're doing. [LB1068]

SENATOR SMITH: Okay. Senator Brasch. [LB1068]

SENATOR BRASCH: Thank you, Chairman Smith. And thank you, Mr. Richards. I just want a review, because I've been to some of your tours... [LB1068]

TOM RICHARDS: Yeah. [LB1068]

SENATOR BRASCH: ...and meetings. [LB1068]

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TOM RICHARDS: Um-hum. [LB1068]

SENATOR BRASCH: And when it comes to energy, and what I heard here today, is that some have \$20 and have \$30 of a customer connect, kind of like a... [LB1068]

TOM RICHARDS: Correct, fixed cost. [LB1068]

SENATOR BRASCH: Yep. And then when it comes to energy itself, that public power and OPPD, it is a buy...sometimes we buy power, sometimes we sell power. Is that correct, that... [LB1068]

TOM RICHARDSON: It's rare that we... [LB1068]

SENATOR BRASCH: ...sometimes we have more than we need and... [LB1068]

TOM RICHARDS: Excuse me, I didn't mean to interrupt you. [LB1068]

SENATOR BRASCH: Okay. No, is that...that's... [LB1068]

TOM RICHARDS: It's rare that we're buying power. We're primarily an exporting state. But occasionally that happens. But if you have an outage, like if you lose a power plant... [LB1068]

SENATOR BRASCH: Um-hum. [LB1068]

TOM RICHARDS: ...you can buy it on the market. Normally we are an exporter of power in the state of Nebraska. [LB1068]

SENATOR BRASCH: We do normally export, so that's one of our natural... [LB1068]

TOM RICHARDS: Benefits. [LB1068]

SENATOR BRASCH: ...benefits. So... [LB1068]

TOM RICHARDS: And that export has been used to offset the cost of your retail electric rates. And that is starting to diminish, as well. So part of what I'm talking about, giving it some time to see how the market shakes out, is imperative to making good, good decisions. [LB1068]

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SENATOR BRASCH: So we do not typically, because I thought I remembered on the tour that, like you were saying, when there is a power outage or something, we do buy, as energy flows across the country. [LB1068]

TOM RICHARDS: At times, you know, it's like, it's like a major fire or a major accident or a major problem. At times we do buy, if we've lost tripped plants, which primarily we're an exporting state of energy. [LB1068]

SENATOR BRASCH: So that has to offset the cost of... [LB1068]

TOM RICHARDS: It helps offset the fixed cost of those plants. [LB1068]

SENATOR BRASCH: Okay. Very good. I just wanted to review, after hearing the potential of what renewables may or may not do, that it's all in one entity at the end of the day. [LB1068]

TOM RICHARDS: It's all one grid. [LB1068]

SENATOR BRASCH: One grid, yes. [LB1068]

TOM RICHARDS: Or, you know, it's one, it's multiple grids trying to work towards one grid. [LB1068]

SENATOR BRASCH: Very good, thank you for your testimony. [LB1068]

TOM RICHARDS: You're welcome. [LB1068]

SENATOR SMITH: Thank you, Mr. Richards. Appreciate it. [LB1068]

TOM RICHARDS: Thank you. [LB1068]

SENATOR SMITH: (Exhibits 20-21) Next opponent to LB1068. All right. We do have a, a long list of letters for the record in opposition to LB1068. So I'm not going to read all these off, but they will be submitted into the record. We now move to neutral testimony, those wishing to testify in a neutral capacity to LB1068. We do have a letter for the record in a neutral capacity regarding LB1068, Jim Vokal on behalf of the Platte Institute. We now invite Senator Haar back to close on LB1068. [LB1068]

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SENATOR HAAR: I'll have a short, 20-minute (inaudible) now. Just a couple things. Yeah, it's been a good debate, and I will be offering a study to this committee. I know you take on hard issues, as you have with the roads. And, and I will be submitting a study for the summer. A couple things. One is, I sat on the Lincoln City Council. We approved rates, and frankly, we asked a few questions and took the...had to take the recommendations of the staff, because we simply didn't have the expert knowledge. And that's what this bill, again, is about, is that some way we need a second expert look. At one point it came up about, really, public power is the...we socialize the cost of these fixed charges. And I...Senator Davis has left now, but he had a good question about, well, what about somebody that lives five miles further down the road than I do? At least in Norris Public Power, I still pay the same socialized cost of everybody in the rural district, because there are two rates. One is for, for urban; the other is for rural. And it is good debate, I think. Now I...there's an article that I've been reading, and I can distribute this later. Maybe you could give it to the committee. But it talks about...here's, here's the title, "The Future of Rate Design: Why the Utility Industry May Shift Away from Fixed Charges, The Animosity over Fixed Charges is Giving Way to a Debate over Comprehensive Rate Reform." And they go on to talk about the history of fixed charges and that it has been a growing trend all of a sudden. And now utilities...but as quickly as fixed charges came into vogue, they now appear to be on the way out. So we'll see what happens in the future. I've raised a lot of questions. I've listened very carefully. And I thank you for your patience. It's been a good, good discussion. [LB1068]

SENATOR SMITH: Thank you, Senator Haar. Do we have questions for Senator Haar? I see none. And again, thank you for your interest in this topic. I know you bring it in the right spirit. And we look forward to having continued discussion with you on it. [LB1068]

SENATOR HAAR: Thank you very much. [LB1068]

SENATOR SEILER: Ken, is that before you started making charts when you were on the city council (laughter)? [LB1068]

SENATOR HAAR: Actually, I was a (inaudible). [LB1068]