

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 10, 2021
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

BOSTELMAN: Are we on? OK. Good morning, everybody. We'll do our COVID procedures first and then we'll get into the hearing process after that. For the safety of our committee members, staff, pages, and the public, we ask those attending our hearings to abide by the following procedures. Due to social distancing requirements, seating in the hearing room is limited. We ask that you only enter the hearing room when it is necessary for you to attend the bill hearing in progress. The bills will be taken up in the order posted outside the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. The committee will pause between each bill to allow time for the public to move in and out of the hearing room. And I would ask, please do that expeditiously for us so we can move on to the next hearing. We request that everyone utilize the identified entrance and exit doors to the hearing room. We request that you wear a face covering while in the hearing room. Testifiers may remove their face covering during testimony to assist committee members and Transcribers in clearly hearing and understanding the testimony. Pages will sanitize the front table and chair between testifiers. Public hearings for which attendance reaches seating capacity or near capacity, the entrance door will be monitored by a Sergeant at Arms who will allow people to enter the hearing room based upon seating and availability. Persons waiting to enter a hearing room are asked to observe social distancing and wear a face covering while waiting in the hallway or outside the building. The legisla-- Legislature does not have the availability of an overflow hearing room for hearings, which have several testifier-- testifiers and observers. For hearings with a large number of attendants, we request only testifiers enter the hearing room. We will ask that you please limit or eliminate your handouts. Welcome to the Natural Resources Committee. I am Senator Bruce Bostelman and I am from Brainard and represent Legislative District 23. I serve as the Chair of this committee. The committee will take up the bills in the order posted. Our hearing today is your public part of the legislative process. This is your opportunity-- opportunity to express your position on the proposed legislation before us today. The committee members might come and go during the hearing. This is just part of the process as we have bills to introduce in other committees. I ask that you abide by the following procedures to better facilitate today's proceedings. Please silence or turn off your cell phones. Introducers will-- will make

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 10, 2021
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

initial statements followed by proponents, opponents, and then neutral testimony. Closing remarks are reserved for the introducing senator only. If you are planning to testify, please pick up a green sheet-- sign-in sheet that is on the table at the back of the room. Please fill out the green sign-in sheet before you testify. Please print and-- print and it is important to complete the form in its entirety. Please print legibly as well. When it is your turn to testify, give the sign-in sheet to the page or the committee clerk. This will help us to make a more accurate public record. If you do not wish to testify today but would like to record your name as being present at the hearing, there is a separate white sheet on the tables that you can sign for that purpose. This will be part of the official record of the hearing. When you come up to testify, please speak clearly and loudly into the microphone. You may remove your face-- your face mask. Tell us your name and please spell your first and last name to ensure we get an accurate record. We will be using the light system for all testifiers. You will have five minutes to make your initial remarks to the committee. When you see the yellow light come on, that means you have one minute remaining, and the red light indicates that your time has ended. Questions from the committee may follow. No displays of support or opposition to a bill, vocal or otherwise, is allowed at a public hearing. The committee members with us today will introduce themselves starting on my far left.

GRAGERT: Good morning. Tim Gragert, District 40, northeast Nebraska.

HUGHES: Dan Hughes, District 44, ten counties in southwest Nebraska.

AGUILAR: Ray Aguilar, District 35, Grand Island and Hall County.

BOSTELMAN: My far right.

GROENE: Mike Groene representing the people of Lincoln County.

J. CAVANAUGH: John Cavanaugh, District 9, midtown Omaha.

MOSER: Mike Moser, District 22, Platte County and bits of Stanton and Colfax County.

BOSTELMAN: Senator Moser also is the Vice Chair of the committee. To my left is committee legal clerk, Cyndi Lamm, and to my far right is committee clerk, Katie Bohlmeier. I would like to thank both Lorenzo

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 10, 2021
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

and Brytany for being with us, be our pages this morning for-- help us out through the hearing process. With that, I would invite Senator Groene to come up to open on LB591.

GROENE: Thank you, Chairman Bostelman and committee, fellow committee members. My name is Mike Groene, M-i-k-e G-r-o-e-n-e. After observing the evolution of the groundwater to stream augmentation projects in Nebraska over the last decade of panic, from the Rock Creek in Dundy County, N-CORPE in my Lincoln County, and the Tri-Basin project in south-central Nebraska, I have come to the conclusion that these projects are not just local projects that affect only local citizens. These projects have an effect on the entire water ecosystem of our state. As our constitution states, the use of the water of every natural stream within the state of Nebraska is hereby dedicated to the people of the state for beneficial purposes. In Nebraska, our groundwater is part and parcel to our natural streams. Contrary to the constitution, we have separated it, too, by assigning the management of our surface water stream flows to the Nebraska Department of Natural Resources and by legislative action created local natural resource districts, which, among many other things, other duties we have assigned to them groundwater management. I have no qualms with the present system. The NRDs have done a good job on soil conservation and flood control measures. And when groundwater was still considered an endless supply, they attempted to do a good job. But in hindsight, we now know that some groundwater decisions made by NRDs were not wise. And for the long term, the present use of groundwater in those districts are not sustainable. When it was necessary for the state to step in because the local NRDs were not looking after the best interests of the state, the Legislature has done so as they did when they created over and fully appropriated designations and forced those NRDs to create integrated management plans. I believe it is time again for the state to step in and have a seat at the table when augmentation projects are being considered. I got this idea for this bill from testimony Professor Anthony Schutz of the University of Nebraska Law College has given-- given on the three augmentation project legislations I presented in the past, most recently last year's five-- LB845. LB589 [SIC LB591] is the accumulation of all that testimony and all that honing of that bill that I believe, of course, that it's the answer now for that specific problem. I cannot purvey the need for this legislation any better than he did at last year's

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

hearing on LB845. And I'll read that to you, as he went on to introduce himself and to say: I specialize in water and agriculture law issues. The reason I came down here is to renew my third plea for a mechanism that would have accurate-- securely define the rights associated with augmentation projects. There is nothing that is clear about the legal rights that are being utilized on the N-CORPE project or the Rock Creek or any of the other augmentation projects. At best, we have a planning provision in the Integrated Management Act when combined with a provision that allows for burying pipe and building projects that have been utilized as the basis for this-- this particular right. When people draw this link between land ownership and the volume of water that can be pumped, that link-- that link is-- is tenuous at best. I actually don't see anything in the case law that would require that sort of land ownership. But at the end of the day, it's just not clear. And that's a strong argument in favor for legislation that would clearly define or create a process for clearly defining the rights that could be utilized in an augmentation project. It's important, maybe perhaps not for the N-CORPE and Rock Creek, but I think it's important for future drought mitigation planning in the eastern part of the state as we move forward with climate change, which is the subject of the next-- they had some bills following that last year-- of this time that you guys are going to spend. We're trying to come up with strategies for dealing with significantly changing flows in the Platte River. Some of that may involve pumping water and dumping it in the Platte. At least-- at least it's currently envisioned by a lot of the folks that come up here in order to do that, whoever wants to run those augmentation projects need to buy a very large chunk of land that stands as a barrier for augmentation projects and drought mitigation planning. I would encourage, I don't know if that's necessarily a barrier, but I would encourage you to remove those barriers, that barrier through some sort of permitting process that could be utilized for augmentation projects. And then he closes. The number one legal expert in our state at the University of Nebraska that focuses on studying water law thinks the permit process is necessary. We're going to have NRDs come up and farmers will tell you, let's live on the crisis. Let's keep walking the edge. Let's just push things down the road. And then when another drought comes, we're just going to panic again. And then the Supreme Court's going to agree with whatever we did because they're not going to be responsible for shutting off 500,000 acres of irrigation. It's politics. It is our

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

duty to clarify, to give guidance to NRDs, to the Supreme Court on these matters, to the Governor. We need to give guidance. We have some cowboys out there just deciding at the spur of the moment to buy a big chunk of land and punch holes in the ground and pump water in the creek. That got us by, pushed the problem down the road. When's the next time it happens? When does the city of Lincoln decide, we need groundwater, we need water. We're going to-- they control their NRD. It's a population base. Most of the members live in-- in the city of Lincoln are going to just-- they're not going to have to buy land because there's no restriction on, there's no tie into how much. I guess there is constitutionally if-- you can only use enough according to what these folks want to do. If you rely on the common law, which puts them in jeopardy to pump the water that's beneficial over the overlying land. They're going to pump it and dump it right by Lincoln and they're going to pull it out [INAUDIBLE] right by the wells and they're going to supply the city wells. That has been talked about. State isn't involved. People in Nebraska won't have a say. It's a local issue. It isn't a local issue. Groundwater in Nebraska does not follow arbitrary manmade lines when we created NRDs. Our natural streams don't follow any natural, any arbitrary lines. It don't even follow state lines. That's what this mess is all about. It comes from Colorado, goes into Kansas, comes back out of Kansas, the Republican does, into Nebraska, and back into Kansas. We have one more thing. As far as permit process, they're common. We, I had my staffs research and they came up with these so far: water permits you have to get from the NRD, Nebraska Department of Natural Resources. They all are in Chapter 46-636, 637 permit required to pump water from a well within 50 feet of the bank of a channel; 638, Director of Natural Resources may grant an administrative permit to public water suppliers; 252(.2), a permit must be obtained before a person can conduct water into or along any of the natural streams or channels of the state. That's right above. That's-- that's what we copy in our language; 653, a permit must be granted to drill or to change the intended use of a water well without regard to the spacing requirements of section; 46-21-- permit-- 435, a permit who inten-- who intends to construct a water well in a management area must get a permit. I mean it goes on and on. We have a permit process and there's a good reason for all of them and there's a very big reason for this one. The aquifer, Ogallala Aquifer belongs to all of us. The Republican River flow belongs to all of us. And all the people in the state of Nebraska should have a voice

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

in when we need to do these things, I'm not wanting to shut down augmentation. We've got to have irrigation, but we've got to be realistic, folks. Human history is littered with panicked decisions. Why did the NRDs ever get involved? Why do we have a federal natural resources? Because in the '30s, the dust blew all over the place. We created bodies to control it, to manage overuse and the individual blinders of the individual owner, what's good for him is not necessarily always good for all of us. We have an instance here with groundwater. It's not endless. We have to look long term and we need to get the state involved in the permit process. And some realities have to be faced. They drug their feet, fought, threw chairs, and everything else, some of the NRDs, when integrated management plans were created. Do you think that was a bad idea? Where we are today? They drag their feet every time we try, have to step in because they're not doing their job. This permit process puts the state of Nebraska in the room when an augmentation project is requested. That's what I'm asking. I'll wait for testimony and close it. Thank you, Senator Bostelman.

BOSTELMAN: Thank you, Senator Groene. Are there questions from committee members? Senator Gragert.

GRAGERT: Thank you, Chairman Bostelman. Thank you for your testimony. I just want to clarify for myself, because right now I understand it, it isn't about-- you got to get a permit whether the capacity of the well. Like an irrigation well, those guys got to be permitted, local guys or gals, for irrigation well over a certain capacity. So doesn't that follow, everybody has to get a permit to drill a well versus don't matter what kind of project it is?

GROENE: I believe a well is done by the city if you're trying to do it in the city. If you-- most cities don't allow you to put a well in, countywide, and then after that, it's the NRDs. You get a permit from the NRD.

GRAGERT: Right, for the NRDs, for irrigation wells, you know,

GROENE: Domestic wells.

GRAGERT: Domestic wells. But over a certain capacity of well, you got to get a permit. Like low capacity, I'm not sure, but--

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

GROENE: Well, the--

GRAGERT: [INAUDIBLE] well drillers got to get a permit for--

GROENE: Estermann should have used that in his case. But the Supreme Court said that they didn't need a permit. The NRDs didn't need a permit--

GRAGERT: OK, thank you.

GROENE: -- of any kind.

BOSTELMAN: Other questions? So I got a couple of questions for you. In the bill when we're talking about liability, "Permitholders shall be liable for any damages" could you-- what specific on-- do you see as their liable portion? That's on page 3--

GROENE: Yeah, it's a--

BOSTELMAN: --on line 3. I'm just kind of curious--

GROENE: What we did is--

BOSTELMAN: --as to what your thoughts are behind that.

GROENE: --took the above permit process that's already in statute for transfers, if you look just above the section, the language is all the same. The only thing I did was-- was substitute person, natural resource or person, because augmentation projects are only allowed by natural resources. And then we added stream-entry locations because that's unique to augmentation projects. And then we put the appropriated, defined it as streamflow enhancement because that's the only thing you can do according to the Supreme Court. The liability follows that permit process where if you harm somebody because you eroded their banks, if you harm somebody because it flooded their fields, or you harm somebody because you overuse the water, which is already in our constitution, you can't do that to a neighbor. This ideal that Mr. Fanning put-- tells you what testimony to the character-- in the-- in the fiscal note that an act of God implies here, it doesn't imply here at all. This is the actions of that NRD to make sure those individuals who run that NRD have the consideration of the individual, like where the streamflow entry point is, that causes

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

damage in that area because of an influx of a lot of water that person would have rights to-- and it follows basic law. It's just reiterating what's in law already and what our Supreme Court says but.

BOSTELMAN: So this is specific only to the outflow on an augmentation project, streamflow. It wouldn't be for existing dams, other types of things, as they're-- we're specifically talking on-- on an augmentation project is I guess--

GROENE: Well, it would be--

BOSTELMAN: --my question. I think [INAUDIBLE]

GROENE: It would be-- it would be-- it would be for any damage.

BOSTELMAN: So if-- so if the NRD has a dam for flood control and it floods downstream, then they would-- then there would be a liability to the NRD [INAUDIBLE].

GROENE: I would think so. If they're responsible for that dam, they would be-- they would be responsible. I would believe they are already responsible for that, because it's what the-- what our constitution says about who has rights first. Yeah.

BOSTELMAN: OK. I just want to make sure I understand what-- what your intent is.

GROENE: Government needs to be responsible too.

BOSTELMAN: So the current-- thanks. I appreciate that. My next question is, and you, I think, Senator Gragert, touched on this is a current process. So if there's going to be an augmentation process-- process-- project that's going to be done, is it just that NRD that makes a determination as to whether that augmentation project can go ahead or not? Or is there a specific, do you know, is there a specific process, are there public hearings or those type of things? Or does a board--

GROENE: It would follow exactly what they do, the process, what they do for the-- the because the language is the same-- the Nebraska, when I met with them the other day, Department of Natural Resources, they already have it in place. That application shall include plans and

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

specifications detailing intended times, amounts of streams. The department shall set up perent-- what is it? Let me read it again. Shall first obtain a permit from-- the application for permit shall be made on forms provided by the Department; applicant [INAUDIBLE] plan specification detailing and intended times, amounts and shall be deemed appropriate for the specific specified in the permit. I don't believe the department, if they-- if it's an augmentation project and if they-- and they detail all of it could turn it down for the permit.

BOSTELMAN: Right.

GROENE: But the state would be at the table.

BOSTELMAN: That's kind of where-- where I'm kind of going to. My question is if where, if there's public input at all, if it goes to the state, what you're-- what you're saying it goes to the state. How does it-- how does that--

GROENE: He can correct me. But when I met with the department head, Mr. Riley, and got his input, he said they have a public comment period where people can comment to them, I mean, they can send in their comment. I don't believe they actually have a physical hearing. They have a period on any of that where they can say, well, I don't think this is good. I think this is great. I need it to save my-- my-- my farm or whatever. But then other people could-- could put their inputs in too. That didn't-- there was a hearing on ours, but it was after the fact.

BOSTELMAN: OK.

GROENE: It was after the fact, a local hearing, and that was because a lot of pressure was put on them on the N-CORPE project.

BOSTELMAN: OK. All right. I'm just trying to understand the process. So that's where I'm at. Any other questions from committee members? Seeing none, thank you, Senator Groene.

GROENE: Thank you, Chair Bostelman.

BOSTELMAN: I'm sure you'll stay for closing.

GROENE: Yeah. I'm here, will be here today.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

BOSTELMAN: Ask anyone who would like to testify as a proponent for LB591 to please step forward. Any proponents for LB591? Seeing none, anyone like to testify in opposition to LB591, please step forward.

DON BLANKENAU: Good morning, Mr. Chairman, members of the committee. My name is Don Blankenau, D-o-n B-l-a-n-k-e-n-a-u. I'm appearing here before you today in opposition to this bill on behalf of the Nebraska Association of Resources Districts, or NARD. The NARD represents Nebraska's 23 natural resources districts and takes its positions on legislation based upon the consensus of its members. Nebraska's NRDs oppose this legislation for four reasons. First, the bill is both antiagriculture and antimunicipality. Under LB591, augmentation water discharged to a stream either by surface or groundwater sources would be appropriated and protected from being used by irrigators and municipalities. The word appropriation or appropriated has specific meaning under Nebraska law that gives the holder of the appropriation exclusive rights to the water subject to the prior appropriation doctrine. The point and goal of many augmentation projects is exactly the opposite. Those projects allow farmers and cities to withdraw and use water at times when they would otherwise be prohibited from so doing. In other words, augmentation projects help existing appropriators by providing water during times of need. For example, N-CORPE provides augmentation water during certain years to the Republican River Basin expressly to allow both surface and groundwater users to take water when they otherwise would be shut down. Had N-CORPE been required to operate under this bill, thousands of water users would have been shut off and the state of Nebraska may have been exposed to yet another suit by Kansas. So Kansas might have been happy with this bill, but the cost to Nebraska users and taxpayers would have been enormous. Second, to the extent NRDs develop augmentation projects to protect and deliver water from a point of discharge to a specific location using natural streams, the law already requires entities to obtain a permit from the Department of Natural Resources, or DNR. Under Nebraska Revised Statute Section 46-252, any person, including an NRD, who wishes to convey water from one point to another using a natural stream and have that water protected along the way for use needs a permit from DNR. Simply put, that permitting requirement is already in place and treats NRDs just like any other water user. Third, from a water management perspective, the permit required by LB591 is unnecessary. If the source of augmentation water is

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

groundwater, the regulatory body in charge is the NRD. And if an NRD develops an augmentation project, they would do so within the scope of their integrated management plans or IMPs, which, as we discussed last week at the hearing on LB589, is a planning document that is jointly developed with the Department of Natural Resources, the state authority in charge of administration of surface water rights. Under this bill, a permit would be required by the NRD to use groundwater it regulates within the scope of the state approved IMP. By contrast, if the NRD wish to develop an augmentation project using surface water as a source of water, the law already requires the NRD to obtain a permit from DNR just like any other surface water user. And in fact, there's a pending application before DNR right now for an augmentation project that uses excess surface water for its source. So whether the source of water is groundwater or surface water, the management implications have already been carefully vetted by the appropriate regulatory bodies that invariably includes the state. That takes me to my fourth reason that NARD opposes this legislation and that's pointless bureaucracy. This bill, without identifying any actual management reason for a permit or any criteria by which it may be granted or denied, simply requires the applicant to blindly jump through a permitting hoop. Projects that may cost many millions of dollars and years to plan could be trapped for many more years in an utterly undefined permitting labyrinth without any criteria as to what the state regulators are to review. It's truly a case of government for the sake of government at the expense of taxpayers. In sum, this bill represents a fatal misunderstanding of what augmentations are and what they seek to accomplish. It is antifarmer, antimunicipality, and wraps potentially urgent water augmentation projects in government red tape without any real purpose. As I testified to last week, NARD believes that any legislation impacting augmentation projects should be developed with all stakeholders, first agreeing that there is a problem that needs to be fixed; and next, but that fix needs to be. This legislation simply seeks to fix a nonexistent problem with a destructive nonsolution. For these reasons, NARD asks that this bill would be indefinitely postponed. Thank you, Mr. Chairman.

BOSTELMAN: Questions from committee members? Senator Gragert.

GRAGERT: Thank you, Chairman Bostelman. Thank you for your testimony. I'm just wondering and this is unique to our state and, you know, and obvious to me before I came here, heard quite a bit about it lately.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

I'm interested that, you know, this groundwater is being pumped from the Ogallala Aquifer. How is it that just four NRDs or were there four NRDs involved in the permit process and then to the-- to the Natural Resources Commission or whatever?

DON BLANKENAU: I assume you're referring to the N-CORPE project.

GRAGERT: Yeah, right.

DON BLANKENAU: So before that property was purchased, before this project even got off the ground, those NRDs, and particularly the Upper Republican NRD, worked with DNR to do some fairly intricate modeling to make sure that the groundwater pumped from that location wouldn't have long-term adverse consequences to either surrounding wells or actually rob Peter to pay Paul, in effect, taking water from the stream in the process of putting it back. That modeling extended, I want to say over 50 years of projecting forward. And only after it was concluded it would be beneficial did the parties go ahead to actually make the purchase and develop the project. And-- and because it was to satisfy largely a state concern through the Republican River Compact, the state was intimately involved in the examination of this process and a strong proponent of it as well.

GRAGERT: OK, so the wells-- the wells drilled in that area are only affecting 19,500 acres is what [INAUDIBLE]

DON BLANKENAU: There's probably impacts beyond that, but they are monitored. And the actual long-term consequences of streamflow have, I think, been proven to be very positive.

GRAGERT: OK, thank you.

DON BLANKENAU: Thank you, Senator.

BOSTELMAN: Other questions? I'll follow up a little bit on Senator Gragert's comment. I guess I have a different view on the, I guess, maybe the streamflow to meet the requirements of the compact maybe. But the streamflow on the Republican River, I grew up in Superior where the Republican River crosses into Kansas. And when I grew up, there was always water in that river. Cement plant was there. They drew the water off for cooling and that. Now there's no water in that river. Rarely is there ever water that runs down through that and goes

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

underneath Highway 14 bridge. So I think there are some challenges there. I think the other problem-- the other thing was when-- when the negotiations back in the day of I don't know if it was Joann's [PHONETIC] who--

DON BLANKENAU: For-- for--

BOSTELMAN: --who negotiated originally.

DON BLANKENAU: --the-- the LB962 legislation are you referring to or?

BOSTELMAN: The original compact language along with--

DON BLANKENAU: The original compact goes back to 1942.

BOSTELMAN: Well, since then, wasn't there a time when we were renegotiating the compact, but then there was no moratorium on new wells being put in and that kind of got us to the place we are now where we-- we've got perhaps, you know, over--overuse of overapplication of-- of wells in the area because we didn't do a moratorium when we renegotiated at the time? And I don't remember who it was at the time. Remember [INAUDIBLE]

DON BLANKENAU: So what happened? I do recall. What occurred was Kansas sued Nebraska in, what was it, '98, I believe, 1998. And then when the states decided to settle that-- that litigation, they had a fairly extensive settlement agreement which included the moratorium. I think the problem was, and you're absolutely correct, the flow of the Republican River has declined pretty dramatically over the decades. The compact actually allows for the complete dewatering of that river, which is incredible and I think speaks to the time in which it was developed in 1942. But-- but what has happened since, of course, is some significant management through the moratorium on wells, probably should have been much sooner. But it's probably helpful to remember that every governor, Republican or Democrat, encouraged farmers to put down wells. The federal government did as well. And the federal government actually subsidized a lot of the terracing, which is responsible for much of that streamflow decline as well. So it was a lack of appreciation as to how you could affect, I think, the hydrology of that stream.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

BOSTELMAN: Sure. Because just up the-- upstream from Superior to Grand Island, that's where the diversion goes. It goes into Lovewell Lake then and--

DON BLANKENAU: Yep.

BOSTELMAN: So anyway, but that's just a little history on-- on things. I do want to ask a couple of questions on-- on his bill. I'll go back to the liability question that he has. And how do you see that affecting? I mean, is it-- is it as-- as-- as what Senator Groene thinks it's on-- it's an addition to everything else? Or is this just really as he has in there just on the augmentation? And was Estermann, was that the case where there's flooding on a farmer's field at-- at some point? Is that really what this is getting at or is this getting at an in general any flooding from any NRD project?

DON BLANKENAU: As I read the language of the bill, it's very broadly written. So I think it can be interpreted to go beyond Senator Groene's intent. Senator Groene is correct, though, that the law presently requires NRDs to operate these projects to avoid harm to-- to landowners. And if they operated a project that was the proximate cause to harm, they could be held liable for that. But for that reason, most NRDs, when they develop an augmentation project, will also take what's called a flowage easement, which is the area within which the water is intended to flow. And they pay the landowners for that easement so that they can inundate it from time to time. Now, if they're negligent in the operation of the project, they would still be responsible and-- and have to pay for the damages.

BOSTELMAN: OK, I guess the other question I have and you've kind of talked through this, this isn't-- do you see the intent of the bill? I don't want you to speak to-- do you-- as you read the, as it is now, I mean, what process is that going to change or create with the state, with DNR? That doesn't-- to me, if it doesn't have a hearing, it doesn't have a public opportunity that isn't available now, how does this-- what does this create different than, I guess, the-- does it create that opportunity for public to have a bigger voice?

DON BLANKENAU: I think that goes to the concern of the pointless bureaucracy that there are no real sidebars on it, simply requires a permit, which I think opens the door to the state agency deciding, you

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

know, what do we feel like looking at today? And that's really the concern. You can walk down a path of endless bring me another rock scenarios by the regulatory agency, which I think goes back to NARD's concern that if we're going to go through a permitting process, then we really ought to bring all the stakeholders in the room, specify specifically what issues the state ought to look at before it grants or denies a permit and create that process.

BOSTELMAN: OK, thank you. Any other questions? Seeing none, thank you, Mr. Blankenau, for testifying today.

DON BLANKENAU: Thank you very much.

BOSTELMAN: Anyone else would like to testify in opposition, please come forward. Good morning, Director.

TOM RILEY: Good morning, Chairman Bostelman and Senators. My name is Tom Riley, T-o-m R-i-l-e-y. I'm the director of the Department of Natural Resources. I am appearing today in opposition to LB591. I would take a moment to say I appreciate the opportunity to meet with Senator Groene and his staff to discuss the bill and recognize his interest and passion for the state water resources that we have as they relate to augmentation projects. LB591 would require a permit pursuant to Section 46-252, that's the conduct water permit section, to be issued prior to any natural resources district creating a new water augmentation project. Once issued, water added to a stream channel would be deemed appropriated. This would limit the use of water downstream by downstream appropriators. The language in the bill requiring a permit for augmentation projects is vague and very different from our current process in conducting water permits. This creates a legal uncertainty for the department in administering such a permit. Perhaps it may be better to take time to study the issue over the interim and look at the potential costs and benefits for creating a state permit process for augmentation projects. With that, thank you for hearing me today, and I'd entertain any questions you might have.

BOSTELMAN: Thank you, Director Riley. Are there any questions? Seeing none, thank you for your testimony.

TOM RILEY: Thank you. Good morning.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

BOSTELMAN: Is there anyone else who would like to speak in opposition to LB591? Seeing none, anyone like to testify in the neutral capacity on LB591? Seeing none, Senator Groene, you're welcome to close.

GROENE: Thank you, Senator Bostelman. Correct Mr. Blankenau, he said the purpose of N-CORPE was to make sure that irrigators on thousands of acres could continue to irrigate. I agree with that. But that isn't what the court said. Supreme Court said no. The purpose of this was certain quantity-- is not attempting to guarantee that certain quantity of water is used for beneficial use or reaches a certain point downstream for a particular use, but rather to propose purpose of N-CORPE project is simply to add water to Republican River Basin in order to offset water depletion. The court also said when Estermann said, this was just for a bunch of irrigators, the court said no. The purpose of-- the evidence shows that the overriding purpose of N-CORPE project is to achieve compliance with the compact. Any use for private irrigators is incidental to this purpose. So it's either/or. In order to not have a permit, Mr. Blankenau went before the Supreme Court and said, no, we're not guaranteeing this water for anybody. We are just enhancing the natural streamflows. So anyway, he got around the permit process. Now he comes up here and tells you it was for irrigators. Which is it? All of those instances, he said, and that about for even the municipality, for the irrigation project, any time you divert water for a specific purpose, you have to have a transfer permit. You have to have it. This doesn't affect that at all. It doesn't affect municipalities. They already have to have a transfer permit if they are using it for a specific purpose, which is domestic use. What N-CORPE and the projects I'm talking about are those where they're just pumping water into the river. There's no permit process for that. How does it affect the aquifer in the long-- long term? How does it affect the river flows to long term? That's where the state has to have some input. That's what the state has to have some input. We need a permit process. Don't-- don't confuse transfers, which you have to have a permit, with a beneficial use for a specific purpose with the augmentation projects. And yes, I will agree, to define it maybe we take out "streamreach locations" because that goes across with a-- I mean, streamreach location on an augmentation project is just plainly the river, that's the location, I guess you can leave it in there. But if you're going to do an augmentation project to make sure the city of Lincoln gets water, you better have a permit process. We don't. Well,

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

that would be another court case because that isn't the Estermann case. If that was the case, the court would have probably ruled, no, Lincoln, you have to have a permit. I'm talking about when they just claim they're just pumping water into the creek and has nothing to do with Joe Blow's irrigation pivot. It's just we're just dumping water. They need a permit. They are changing the natural ecosystem and timing of how water spring and groundwater enters a natural stream. They are-- man is altering that natural system. We're taking water that's meant to go to the river 50 years from now and pumping it in now. We're skipping two generations of water of-- of groundwater users for domestic and livestock by pumping water into a creek, affecting the timing. If we want to do that for the present, live today, not worry about tomorrow, I'm with it because I made a good living off of irrigated farmers. But I have a little bit better conscience than that. We need to have a statewide plan on this. We need to have a statewide plan and the state needs to be involved in every step of it because it's our water. It's everybody's water. That water in-- in-- in Lincoln County is yours, Senator Bostelman and Senator Moser's. It's Senator Aguilar's. [INAUDIBLE] mine. We allow certain individuals to use it, but we manage it together. I agree with I threw this out as an ideal. It's a major step. It's got to start somewhere. I think if Don Quixote would have had a sequel to that novel, he would have got that damn windmill. But anyway, we got to start somewhere. And I agree with Mr. Riley. I'll be glad to work with you, Senator Bostelman and Mr. Riley, on an interim study on this issue if you would work with me. We'll get a proposal put together. Senator Gragert, you have expertise in the background. I'd surely work with you on-- on the language. But we need to do something and we need to start by getting LB589 [SIC LB591] out. So anyway, thank you, Senator Bostelman.

BOSTELMAN: OK. Thank you, Senator Groene. Are there final questions from committee members? Seeing none, that will close our hearing on LB591. Thank you.

_____ : No letters?

BOSTELMAN: There were-- there were two opposition letters but the hearing is closed already. There were two opposition letters, Senator Groene, and we will read those into the record from Nebraska Water Resource Association and the Upper Republican NRD, opposition letters.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 10, 2021
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

So those will be read in. You have them in your thing. Senator Wayne, you're welcome to open on LB683.

WAYNE: Good afternoon, Chairman Bostelman, and the members of the Natural Resources. My name is Justin Wayne, J-u-s-t-i-n W-a y-n-e, and I represent Legislative District 13, which is north Omaha and northeast Douglas County. I will say that not everybody was in Transportation yesterday, but after I left the Transportation hearing I-- it was a weird feeling. I had to drive five miles under the speed limit because I was getting praises by public power and it just didn't seem like it was a-- but today they're back in opposition, so things are normal. We will move forward. I feel a lot better today. I feel at home. My name is-- I already told you my name. LB723 would increase the amount of net metering allowed in Nebraska from 25 kilowatts to 100 kilowatts. Of the 47 states that offer net metering option, Nebraska's 25 cap is among the lowest in the country. This is not something to be proud of and something that I believe we should do something about. I'm certain-- I'm certain utilities will be here to testify in opposition about this bill, but what they won't tell you is how to improve the net metering options to a higher to maybe 100 kilowatts. I support public power in the sense that I recognize that this community, this body and the state of Nebraska has decided that public power is the best to go. But I do think as public power grows and evolves, so is the ability to provide net metering for the individual or the commercial or the industry to be able to do some things to make themselves better. Increasing the cap to 100 kilowatts is a step in the right direction, and it's completely in line with other states. Other states that offer it are Alabama, Georgia, Missouri, North Dakota, Oklahoma and South Carolina. Other states go farther. Virginia has a 500 kilowatt cap. North Carolina, Nevada and Indiana have a thousand kilowatt cap. Our utilities may argue against this, but higher net metering caps are pretty standard around the country and the lowest cap here is just another example of things that we need to change to help grow the economy and build renewable energy. While we have acknowledged the fact that in Nebraska is just-- isn't favorable for renewables, net metering or anything like that. We have to move beyond that and we have to try to fix that. I do not believe if net-- if a thousand kilowatts is the answer or 100 kilowatts is the answer, I'm not sure if the bill as written is the answer. The person who will testify as a proponent of this bill has some ideas currently

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

on an amendment. I look forward to working with public power and this committee on putting an amendment together and getting this bill to the floor, because I think it's important for us to have a conversation about net metering and overall public power. I think we haven't had a real debate about that on the floor in at least 20 or 30 years. So I think it's a good time this year, with all that's going on, to have that conversation. So with that, I am open to any questions. And like I said, I'm open to any amendments on this bill.

BOSTELMAN: Thank you, Senator Wayne. Are there questions from committee members? One question I would have, it seems what you're-- that you're creating a right and that right to do net metering, does that-- is that commercial private citizen who has-- you're creating a right and is that your intent and could you explain that?

WAYNE: I don't have a right in which that if-- if the parties operate in bad faith, they should be able to go to court. I wasn't creating a right in a sense of a constitutional right or a discriminatory right. I will acknowledge that is probably a little heavy-handed. But again, this is a step one, I think, in a negotiation process. So I would be open to figuring out how to make sure that negotiations at least happen in good faith.

BOSTELMAN: OK. Senator Gragert.

GRAGERT: I just have one quick question and maybe it would be for somebody that follows you, Senator Wayne. Are you familiar-- are you aware of the cost shift, that the cost shifting that may end up with the individual, that OK, the low-income or middle-income individual that can't afford generating their own power. Who maintains the lines? Who maintains, you know, the structure that, you know, for those individuals that are generating their own power up to a point that, OK, we generated too much, we're going to put it into your line and you buy it back or what, you know, are you familiar with that and are you concerned about the costs?

WAYNE: I'm not concerned about it as this bill and limited it to 1 percent of what's being generated from that entity anyway. And, no, I'm not worried about it at all in the sense that there's enough electricity or generation on the-- on the Southwest Power Pool and we're buying it. We're already buying it from other people anyway. I

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

mean, the fact of the matter is, is the lights that are powering us right now are most likely coming from wind. So we're already buying stuff from other people anyway, just the way that this SPP works. So, no, I'm not really concerned with the 1 percent limitation in this bill. I'm not concerned about that at all.

GRAGERT: OK. Thank you.

WAYNE: Now, I feel it was 50 or 60 percent, I would be concerned, but not with 1 percent.

BOSTELMAN: Senator Moser.

MOSER: Is there anything in your bill that dictates what the utility has to pay for the electricity that the project generates?

WAYNE: I don't believe so. I did not see that. It wasn't my intent. I think it should be a good faith negotiation, but I'll have to double-check and I'll have the answer for you by closing.

MOSER: So it-- so it changes the amount of the electricity that a customer can generate and put back into the system?

WAYNE: Correct.

MOSER: So it was 25 megawatts, now it's going to be 110 percent of their annual usage?

WAYNE: I believe so, yes. I'll double-check that, but there's somebody who can answer that a little bit more than I-- when I see the 110 percent that's how I read it, too, yes.

MOSER: OK. I just want to make sure I understand it all because I know you've been working this, so figured you'd have the answer, so.

WAYNE: If I don't have it, I'll get one too, but we have been working but it's been an ongoing-- it seems to be a moving target sometimes to get it-- what actually the industry always wants and what the consumer wants. I mean, this all started because when I was taking tours of manufacturing and distribution facilities, many of them complained that it wasn't feasible with the amount that OPPD was trying to charge them to do it in the Omaha area. And in fact, we talk about warehouses

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

that have to use a lot of energy to keep things cold. They were looking at solar and it was primed for solar with their-- with their long, big warehouses. And it became cost prohibitive due to OPPD, not because of the industry. And I continue to think as long as we're-- we believe in capitalism and free market, a government entity shouldn't hinder somebody from making themselves more cost efficient and that's what happened in many ones. And you can talk to the beer distributors. You can talk to high manufacturers in my district, like Loshere's. You can talk to Allai Plastic. All of these have big facilities who were looking to do something to drive their energy cost down, because for many people that's been their main cost going up. Now, while it's farmers in western Nebraska might be property tax, for many of these people, it's-- it's energy cost. So because relatively in Omaha, the property taxes have stayed relatively the same and for all, kind of the same. So it's been energy costs for these companies. And yet they don't have a solution because when they try to negotiate behind the meter themselves, it's not an easy negotiation. So that's how the idea started. It was the industry, not-- not me. And we still don't have an answer to that.

MOSER: OK. Thank you.

BOSTELMAN: Senator Groene.

GROENE: Thank you, Senator Bostelman. I'm not familiar with this. I know of one instance where a friend of mine back where I grew up had hogs and at that time he created a power plant and he runs a diesel engine with it and he runs a generator and he's got a deal. He's one of the pioneers of this of why net metering started. But a lot of people put solar panels on their house and stuff. They don't tie it into the system. They're tied into the system because when the sun don't shine, they need public power, right?

WAYNE: Correct.

GROENE: So who-- would that individual in the heat of the summer day in western Nebraska has got a lot of solar panels be able to reverse it and send it into the system?

WAYNE: Depending on how it's structured, yes.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

GROENE: And that's what you're talking about?

WAYNE: I'm talking-- yeah, I'm talking about those individuals who are trying to-- particularly corporations who are trying to reduce their energy costs by producing their own energy. Absolutely.

GROENE: So that would include municipalities, too, that have their own power system. They probably do have an agreement already, right?

WAYNE: Yes.

GROENE: --don't have their own power plant.

WAYNE: Correct. And, well, not many of them don't have their own power plant but they-- what you saw in the last, at least 5 years, you saw municipalities begin to break contracts with Nebraska Public Power and buy from the market. South Sioux City buys from an Ohio company. LES left NPPD and now do their own inside of Lincoln. So you are seeing municipalities look at the market. It's not quite the same as net metering. It's a different-- but there is a big issue that this community-- this committee still has to answer is if all the federal dollars and-- and tax credits and things are going to solar and wind is almost free and there's more wind coming online, nobody has still been able to answer, why does my power keep going up? My bill keep going up. If power is getting cheaper, why is it going up?

GROENE: So do you have a-- can you give me a specific example of a company or somebody that's been benefit or talking about this?

WAYNE: There's a testifier who will testify behind me, but I will tell you again, there were beverage distributors on the Nebraska side throughout the Omaha and Fremont area because of their warehouses were looking at solar because it works for their warehouses, but OPPD made it cost prohibitive for them to do so. And their counterparts in other states or across the river, they were able to do it.

GROENE: Thank you.

BOSTELMAN: Senator Gragert.

GRAGERT: Just one more thing. Just one last question on the states that you mentioned in your opening and I didn't get all of them, but

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

where do they rank as far as Nebraska in the-- you know, I think we're pretty good in the overall what we pay for electricity, right? You know, we rank pretty high.

WAYNE: We are-- we are hopping up into costing more than what other states are. We used to rank significantly lower. That has changed over the last 10 years. We are-- we are not-- we are-- we are increasing at a rate that's a little faster than the rest of the country. And so my question to the committee and to everybody else is, do we wait until we're 48th or do we try to stop it while we're still 25th or 30th? And so-- and it really isn't about that. That's a broader public power, I think, discussion. I'm just trying to find some solutions for industries in the area that I represent and others where they're trying to put net metering on their facilities, on their industry. And you'll see more bills this afternoon who are-- what are basically saying the same thing, that there is a demarcation line of 25 kilowatts where you'll hear the public power say, well, you can negotiate, you can negotiate. Well, you can't. And what got me started on public power and I didn't want to go there was when I was on the school board, we did a bond, the largest bond in the state of Nebraska's history of 421 million. And part of what I wanted to do was offset cost to put solar panels on all the schools. There were school district around the country doing that. And you had schools like Northwest High School where I graduated, they had enough area that could almost generate not enough to cover the school, but significantly reduced the cost of it. And it became cost prohibitive because of the unfair negotiations once you get past 25 kilowatts. That's-- those two things are the genesis of this bill.

GRAGERT: I was just interested in the other states that have net metering and to that extent or that high thousand kilowatt that if everybody went out on their own, I mean, it might be better for the big corporation or industrial and possibly even our public schools. I mean, I can see that even in maybe a different arena. But then what does that leave for the rest of the customers as far as what we're going to pay, you know, overall in kilowatt hours or whatever?

WAYNE: I will-- I'll get you that information and get that to you.

GRAGERT: Thanks.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

WAYNE: Depending on my Judiciary close and opening, I don't know if I'll be here for closing, so.

BOSTELMAN: Hold on, I've got one more question.

WAYNE: All right.

BOSTELMAN: You don't get away yet. And you may have the answer to this one or someone on either who's going to come behind you may have to answer this one. And I'm wondering if-- if the-- if a different question is, are we talking about net-- net metering or are we talking about power purchase agreements. In other words, where I'm going with this is, if you have a large facility and you're creating, you know, you have a large array, is this really a power purchase agreement that we're talking about or is this a net metering issue we're talking about? Because at what point are we producing enough-- generating enough power that net metering really doesn't solve it? It's really a power purchase agreement.

WAYNE: Well-- well, I think somebody will have a little bit more knowledge on that but what I-- what I would tell you is both of those require that you negotiate with the same person. And if the same person can increase their rates to where you would have to-- on your net metering where it's not feasible and keep their purchasing agreement the same, then you will go with that. Again, it's about balancing the equation of-- of the negotiation, in my opinion

BOSTELMAN: Right. I hear what you're saying but if we're at 25 or 100 or 500 or a 1,000, we're still negotiating with that same entity, right?

WAYNE: Correct.

BOSTELMAN: So is there something within your bill that provides a better leverage or negotiation position for that generator?

WAYNE: I will get back to you on that. I think so. And I think I have an answer, but the person behind me is a little bit more knowledgeable, and I don't want to disagree with what he's about to say.

BOSTELMAN: All right. Thank you. Senator Groene.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

GROENE: I've got-- beside my precious grandma, her out there which we have a lot-- well, and we've given away, we have the largest coal burning, fossil burning power plant in Nebraska. It's-- I think it's in the top 40 still operating in the nation. Are they going to be stuck in behind net here? I mean, wind gets in, you got to buy the wind. Now you got to buy the net metering. So who gets shut down? Can NPB tell those net metering people, no, we've got to keep our power plant in Lincoln County running at a certain efficiency and you tell them, nope, you've got to take this net metering and you have to take this wind and my guys are getting pink slips at the power plant.

WAYNE: Well-- first, I would say that's the definition of protectionism. I don't think-- I don't think me and you agree with that, I think. I understand we have to fight for our communities but at the same time, here's why I think it doesn't apply. The SPP is currently doing that. If you're-- the coal plant in your-- in your district is told to idle, NPP doesn't make that call. Arkansas-- SPP from Arkansas makes that call. So it's already something we live with. My point is, is why doesn't Nebraska get the benefit? Why doesn't the benefit for the industry and the individual happen here too, when it's happening everywhere else?

GROENE: You bring up a question. Why won't the people in Arkansas or whatever tell us now? No, you going to take that wind first and you're not going to take-- are you going to take our power so we run efficiently and no, you're not going to take that net metering. I mean, we lost. We gave away our control. I agree 100 percent with you. It's pride we have in the Nebraska Public Power. Is it-- it's gone. We've lost control. I agree 100 percent with you. Wouldn't you say that statement of truth, not that I agree with you, but that we lost our control?

WAYNE: Well, you know, yesterday, Senator Hughes backing me into a corner, you're backing me into a corner that we can agree, so I'm just going to leave that one alone. No, I mean, I understand-- I understand the situation. And the person behind me will probably give you a better real life scenario of how it works in other places than I can give because I only know what people tell me secondhand and he lives it every day.

GROENE: Thank you.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

BOSTELMAN: Senator Hughes.

HUGHES: Thank you, Senator Bostelman, and thank you, Senator Wayne, for coming today. So we have a current situation last night, the last few nights where it has been bitterly cold after dark and the wind has not been blowing. So the reliability of the Gerald Gentleman Stations in Senator Groene's district have been paramount for us as individuals and industry to keep the lights on, to keep the heat on, to keep the coolers from freezing solid. So if we allow you to change the percentage of net metering, that reduces the need for the General Gentlemen of the world and the transmission and the distribution lines, maintenance, how do we operate the last couple of nights when the wind doesn't blow after dark?

WAYNE: Well, first, I would-- there's an assumption there that I disagree with and that assumption is the wind doesn't blow after dark. Actually, the wind blows heavier at night, particularly in Kansas, and it has blown for the last three nights in which wind was one of the higher generations throughout the SPP, because I figured that question was coming. Two, yes, there has to be a baseline energy. But the question you're posing is the ultimate question to public power of what they're going to do when a battery becomes more efficient. The biggest threat to public power isn't this bill, and it sure isn't net metering. The biggest threat to public power is a battery, because once people can save that solar power generation, they have a baseline. All I'm asking this committee to do is open up the industry to be able to negotiate on a play-- a fair playing ground. Yes, does there have to be baseline? Absolutely. But that baseline now is being generated across the SPP, not just Gentleman. And in fact, Gentleman still runs only about 60 to 70 percent many times. We're losing money at Gentleman, not making money. And we're going to have to pay that to a tune of about \$1.7 billion in debt. So, yes, you're right, the wind doesn't always blow, but in the SPP, it's blowing somewhere. But there needs to be a baseline, yes, you are correct. I think we can solve that problem with an amendment.

HUGHES: I guess I would disagree with your assessment that Gerald Gentleman is losing money. But more to the point, do you have any idea of what percentage of power is generated by wind and solar in the SPP?

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

WAYNE: I used to know that number off top of my head. I don't, but I will by closing because I can just look it up on the SPP.

HUGHES: OK, very good. It's-- it's not much.

WAYNE: What wind and--

HUGHES: And-- yeah.

WAYNE: --but it also depends on the time and day, right, because it goes first and at first out.

HUGHES: Well, reliability after dark when it's below zero and the wind's not blowing, that's my concern, not whether-- I want my heater to be on and the last few nights were-- were pretty evident.

WAYNE: I agree with you. I don't think moving it to 75 kilowatts will make that big of a difference in the state of Nebraska, moving it up 75 kilowatts.

HUGHES: OK. Thank you.

BOSTELMAN: OK, thank you, Senator Wayne, and did you say, were you going to stay around?

WAYNE: I'm going to try to. I have to run to Judiciary to open, but John-- Senator Cavanaugh, you missed all the tough questions, so I would-- I would have reviewed this before your hearing this afternoon.

J. CAVANAUGH: Thanks, Senator Wayne.

BOSTELMAN: Will ask anyone who like to testify as a proponent for LB683 to please step forward. Welcome.

SHANE OSBORN: Good morning, Mr. Chairman. My name is Shane Osborn, S-h-a-n-e O-s-b-o-r-n, and I'm here in-- as a proponent of LB683. And I also represent my company, RWH Energy. RWH Energy, just for a little background, is a disabled veteran owned small business located here. I started it about seven years ago and we hire disabled vets and we do energy projects all over the country. Currently, we're doing a very large project of lighting, solar, potentially wind battery backup at the San Diego FBI headquarters for-- for example. The reason none of

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

you ever heard of RWH Energy around here is because it's really tough to do energy projects in Nebraska, hence me being here as a proponent, because I do see a lot of need. A few things, and I was here last year as well in front of the committee, that I'd like to address with this, along with amendments that I've discussed with Senator Wayne, that he's agreed to adapt. You know, many of the opponents of these bills say that the customers are going to get a paycheck. Currently, the bill reads 110 percent of production. What we'd like to do is reduce it to 90 percent. And what that means is that utilities will never owe the end user. They'll never had a credit by the end of the year. So in that case, it eliminates that issue and I see that as an issue. We also think that the end customer should have to pay for the meter. Currently, the bill says the utility does. And so we think the customer should bear that cost. They already are bearing the cost of the feasibility study. What that feasibility study, it determines the safety to the grid. Right. So you're not going to put up too big of a system. It limits it to 5 megawatts, which is big, but-- but not huge. The other limitation that-- that was discussed earlier is 1 percent of the utilities load. So you're not-- you're not going to take away a power plants' need with-- with less than 1 percent of that utilities load. If you're worried about big wind, things like that, those are utility scale projects that are currently be done-- being done by the utilities. If solar is so bad, then why are-- why are all these utilities doing these large solar farms. Right. And they're acquiring power from the SPP. So it's not like we're 100 percent in state generation. We haven't been for a long time. The utility is also expressly allowed to charge customers for all-- all--all costs with the service upgrade. So it's not putting a burden. The other thing is, is there is generation issues out there. This can-- this net metering at this level, at the small level, can actually help delay utility infrastructure costs because at some points it will go back into the grid, but it will be useful. However, you're not paying the customer. One question that was earlier is, it's kilowatt for kilowatt. So you're doing an exchange. So the customers never-- you know, the utility is never, quote unquote, paying for it. You're doing a swap. One other-- one other thing that works really well out in-- I hate to say it, but San Diego, but to help the utilities is to add a rate rider of maybe .25 cents per kilowatt produced by that system. So that way it helps offset some of the infrastructure cost utilities still has, even though they've lost some-- some of the clients. At the end

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

of the day, I'm a pro-business guy. Yes, I run a green energy company, but I only do things that make sense. And I think it makes sense for us as Nebraskans to allow both private and industrial clients to do what's best for either their-- their customers or themselves and produce power at it in a way that's safe to the grid, safe to the system, doesn't put a burden on others, but also, if they can do it-- if they can do it less expensive, why wouldn't we want them to do that? We know we're going to have growth issues. You talked about the coal plants. I'm telling you right now, this 1 percent or less is not the threat to the coal plants. It's the administration that's in office right now. There's going to be some very strict environmental laws and rules coming towards us. We're going this way one way or the other. What this gives us a chance is to-- is to get a step in the right direction with not doing anything radical. I understand the utilities positions, but-- but with these-- with these caps and these caveats in here, I think it's a safe and great way to-- to move forward and catch up. One last thing. We're 15th ranked, according to my information, and there are five of those states that were-- that had better pricing than us, that have higher net reading-- metering rates that were named earlier by Senator Wayne.

BOSTELMAN: OK. Thank you, Mr Osborn. Ask are there any questions?
Senator Hughes.

HUGHES: Thank you, Chairman Bostelman. Thank you, Mr Osborn, for coming to see you again. So you-- and I didn't quite catch it, a rate rider?

SHANE OSBORN: What it is, it's a fee for the production behind the meter. A small fee per kilowatt hour, and it-- and it could be as low as .25 cents per kilowatt that goes back to the utility to help with infrastructure costs.

HUGHES: So it's net metering at 97.5 percent then, if you're given two-- two and a half percent back for infrastructure cost. Am I-- am I my understanding that correctly?

SHANE OSBORN: The net metering limit is 90 percent capacity of what they use, so they always have to buy a minimum of 10 percent from the utility.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

HUGHES: OK.

SHANE OSBORN: And what this also does is pays a fee back for the-- for the-- for the energy produced by whatever system that-- that customer has, whether it's solar, wind, CHP. What they're doing is charging a small fee to help offset cost to the utilities.

HUGHES: So how is that-- is that just a negotiated number?

SHANE OSBORN: It's a-- it's a meter. You have to-- you have to pay for a meter to monitor the how much is being produced, etcetera. So that's-- that's-- that can be fully, openly monitored by the utility as well.

HUGHES: But who determines what that rate rider is?

SHANE OSBORN: Well, it would be in the bill.

HUGHES: So--

SHANE OSBORN: It'd be an amendment.

HUGHES: OK. Thank you.

SHANE OSBORN: Sure.

BOSTELMAN: Senator Moser.

MOSER: So this offset of the power that the customer generates so that they only have to pay 10 percent of their utility bill, it's offset at retail rates, though, right?

SHANE OSBORN: It's offset kilowatt hour per kilowatt hour. So--

MOSER: Yeah.

SHANE OSBORN: --whatever they're producing is what they get credited.

MOSER: Yeah. So you say these are just guesstimates, but utilities buy power for a couple cents a kilowatt on the open market and they sell it to customers for-- you know, I pay 9 cents. I'm sure the bigger customers pay less than that. But they marked that up to cover their overhead and their transmission lines from the grid to the customer

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

and all that, and so, you know, they-- they're making, you know, 75 percent on me. I don't know what they'd make on the bigger customers, 50 percent or something.

SHANE OSBORN: Sure.

MOSER: A quarter of a-- of a percent would, you know, be-- well, I was going to say inconsequential, but it's pretty small compared to what-- what their other expenses are, because they could wind up only getting 10 percent of the business that they otherwise would get and they still have to build a line there and they still have to guarantee to supply power when you can't generate or when you want it, I don't know.

SHANE OSBORN: Sure.

MOSER: But-- but now do they-- let me ask you a question about that. Can they still have demand charges?

SHANE OSBORN: Of course.

MOSER: To cover the costs of the--

SHANE OSBORN: There will be demand charges, especially if, you know, they have to take the system down or whatever they're using. And what we're seeing is the max is 90 percent. Most-- most aren't even going to be close to that. And this goes back to that 1 percent limit on complete-- on total net metering for that utility. So 1 percent of what that utility is producing today is the number of the limit that can be done behind the meter.

MOSER: So the first guys that get in on it, get in and then when it gets to 1 percent then the rest of them are locked out?

SHANE OSBORN: Yes.

MOSER: And how do you regulate that going forward?

SHANE OSBORN: Well, it's a baseline number.

MOSER: If somebody drops out, then they could take an application and--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 10, 2021
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

SHANE OSBORN: Sure.

MOSER: --find another.

SHANE OSBORN: Sure.

MOSER: OK, thank you.

SHANE OSBORN: Sure.

BOSTELMAN: Senator Groene.

GROENE: Thank you. So every Dawson County Public Power would be responsible for administrating in their area, every one of our power districts, not NPPD.

SHANE OSBORN: They would be. They-- the behind the meter, the user would help bear some of those costs.

GROENE: What do you mean the meter user?

SHANE OSBORN: The end user, the person that put up a solar farm, wind farm, whatever would-- would help pay some of the fees for-- for monitoring, because I know that was a concern last year as we have to put up more infrastructure.

GROENE: This additional fee-- this additional fee of whatever you said, two and a half percent goes-- that person, not every user-- not every user of power.

SHANE OSBORN: No, no, no. Just people with behind the meter energy production. So people with solar, people with-- it's in-- it's a small .25 cents per kilowatt. It's not a large number here, but it would help offset some of those costs.

GROENE: Yeah, but the paperwork for a little public power district, like Dawson Public Power staff would be more costly, and a computer network.

SHANE OSBORN: But it's fairly-- it's fairly automated. These meters, they're very simple, straightforward. They would get a-- you know, via the Internet they would know exactly the numbers for that month and

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

they have a carrying cost. It's not-- it's not as burdensome as it may seem. It's been around a long time so there's-- all the cases have been worked out, so to speak.

GROENE: You said you work in California?

SHANE OSBORN: Work all over.

GROENE: But you're working in California. They had some outages this--

SHANE OSBORN: Yep.

GROENE: --big time, and it's going to get worse. And then when I'm reading it because of this, I mean, not the net metering, but this-- this overreliance on-- on unreliable sources. And Senator Hughes is exactly right. I've been in agriculture all my life. When the sun goes down, the wind don't blow. It's just something with the-- lot of people spray at night. Because wind, when it hits dust, doesn't it, Senator Hughes, it dies. And then, so we're going to pump this stuff in there and it's minus zero and Gerald Gentleman has to-- they can't fire up and react that quick. And if there's additional cost, they're running wider open than they need to during the day so that they're ready for night. So I don't understand the efficiency here and what we're gaining here with this. I mean-- I mean, the future is the future and coal will run out just like our grandmother will. But anyway-- so what did they do in California? Did they have a base where them power plants run and have to use that much?

SHANE OSBORN: They do, but they don't have enough production, period. They have-- they have a lot of different problems than we do. What I was saying, what I'm referring to here is if-- those are valid questions, but those are questions for the utilities. We're building utility great, solar fields. If this is such a problem, then why am I reading all the articles about these, you know, solar and wind farms being put up in Nebraska? Right. They're currently doing it. So it must not be too huge of an issue. But we're talking about less than--

GROENE: Federal payment.

SHANE OSBORN: --less than one percent, right? And so what you're talking about is utility scale stuff. This is 100 kilowatts, not 5, 10 megawatts. Correct? And so that's a big difference and understand what

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

your concern, but clearly, they've-- they've been able to adjust and deal with-- with that-- with-- with all the solar farms going up and which is, I think is a good thing. And, but that's why I wanted this bill to be as conservative as I made it. I don't-- you know, I'm not trying to disrupt the system.

GROENE: Make sure that we don't rush into this.

SHANE OSBORN: Yeah, but 110 kilowatts, I mean, we need-- we need-- we need to make the next step. It's time.

GROENE: All right. Question. Are you the same Osborn I voted for Senator?

SHANE OSBORN: Yes.

GROENE: He approved-- I've been proven right lately. Thank you, sir.

SHANE OSBORN: No comment.

BOSTELMAN: So, I want to follow up on a question just for my own clarification. So that you said a 9 percent cap, would that apply to an individual customer generator, and would that then disincentivize smaller farms, smaller users? Would that-- would that create an issue for them, for as far as being able to-- it's kind of what Senator Wayne was saying before, it's not economically feasible for them to do it anymore because we've disincentivized it with that cap?

SHANE OSBORN: No, it would-- it would incentivize anybody of almost any size. This is really a small to medium size because that 100 kilowatt, you get into the large industrial, you're going to bump over that real quick. So that's what really this helps is the individual, the small business and the medium sized business.

BOSTELMAN: OK.

SHANE OSBORN: That's what it's geared towards.

BOSTELMAN: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. Thank you, Mr Osborn, for being here. So are you familiar with-- I live in Omaha. We have--OPPD

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

has a program where you get like a nest thermostat that can turn off my air conditioning in the summer. You familiar with that program?

SHANE OSBORN: Sure.

J. CAVANAUGH: So how is that different from this in terms.

SHANE OSBORN: Well, it's energy grid production reduction, right? It's use reduction. No, I mean, it's-- it's the same thing. It's just, you know, the grid. There's times where they're overwhelmed, right? The heat of the summer is a time when the electric grid gets overwhelmed, right? Well, that's when this, you know, if you're doing solar, that's when it shines, so to speak. No pun intended, but that's where you're actually helping a great deal. And if you're not home, they'll absolutely more than accept your push back into the grid through net metering because it's already safe. We've already done the studies and so, no, that's-- that's-- it's a very similar concept. It's just who-- who controls it, the end user, the individual, the business or public power? And that's really-- that's really the struggle that I see with this is-- is our public power needs to understand this is coming. This isn't radical. This isn't a huge, huge move. It's not going-- it's not going to disrupt the system, so to speak, but we do need to make-- make the move towards this direction.

J. CAVANAUGH: And I apologize, I got-- I had to go testify in the Government Committee, which apparently devolved into a conversation that was similar to this committee. But as-- I missed Senator Wayne presenting the bill, but you're-- what you're describing is not exactly comporting with what I remember reading in his bill. Is-- was there an amendment I missed?

SHANE OSBORN: We're talking about some amendments that would make it, I think-- I don't know that they'll find it acceptable, but it will make it more palatable. Before, it was 110 percent production, so you could be a net exporter of energy into the grid. You no longer can do that. We would take it down to 90.

J. CAVANAUGH: OK, and you're talking about 100 percent-- or 100 kilowatt limit.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

SHANE OSBORN: 100 kilowatt limit, but the production of whatever your baseload is at your location--

J. CAVANAUGH: 90 percent of your--

SHANE OSBORN: 90 percent of your baseload.

J. CAVANAUGH: Necessity--

SHANE OSBORN: Yeah, the customer would have to pay for the metering

J. CAVANAUGH: That's in addition to--

SHANE OSBORN: In addition, that's another-- that's another amendment. And that way the utilities are never in the negative at the end of the year. You know, they're not-- they don't owe anybody.

J. CAVANAUGH: And, sorry, go back to my kind of original line of questioning. So Senator Groene and Senator Hughes had those questions about the-- obviously solar only generates when the sun is shining, wind only blows when the wind's blowing. But kind of your efficiency question, I think you kind of hit it. Isn't that when the peak demand kind of solar, solar shines, when the demand is peaked, which normally would potentially cause a necessity to fire up a new generation as opposed to the baseload generation,

SHANE OSBORN: This helps defer some new increase in generation production, the capabilities. Overall it will help, but it won't be a huge impact. It's less than 1 percent. So it's going to help. But maybe-- maybe, you know, as we increase and have more of it, then-- then we can revisit that later down the road, but for right now, I think that's a good start.

J. CAVANAUGH: Might revisit amount this afternoon.

SHANE OSBORN: But let's get to-- let's get to here so we can actually build some decent sized systems instead of just, you know, small residential ones that we can-- that we can take care of the utility, take care of the grid, make sure everything works right. It's worked elsewhere. I mean, this isn't anything new. These systems aren't going anywhere. We need--we need to find, you know, creative ways to produce

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

more power. And I think this is a good step in the right direction. But it's also, you know, something that's more powerful.

J. CAVANAUGH: Thank you.

BOSTELMAN: OK. Senator Gragert.

GRAGERT: Thank you, Chairman Bostelman. Thank you for your testimony.

SHANE OSBORN: Sure.

GRAGERT: A couple of things I'd like-- the individual then doesn't need all the power that they generate, you sell back into the grid, what's that-- is that at wholesale or retail?

SHANE OSBORN: It's just a swap, kilowatt hour for kilowatt hour. There's no dollars exchanged. Does that make sense?

GRAGERT: Yeah.

SHANE OSBORN: You just get a credit.

GRAGERT: OK. At retail, I mean--

SHANE OSBORN: A credit for whatever your usage is, yes.

GRAGERT: OK. And then that is at peak levels, you say, well, this will help at peak levels, but isn't there times even when the power companies are selling unused power?

SHANE OSBORN: I'm sure there is. But like I said, this is-- this is not consequential enough to affect them one way or the other, because of size limits, let alone, you know, like I said, there's a lot of large 5, 10, there's talk of a couple of hundred megawatts solar. So if that works, how can this small system hurt?

GRAGERT: So at just this 1 percent and I know, I got it. We got to break into it somewhere. But what is that-- is that going to cost the state or is that going to cost the power company anything to crank up for just this 1 percent?

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

SHANE OSBORN: It won't be, there's-- there's a feasibility study that's done in connection into the grid and the metering. But that's-- that cost is borne by the customer.

GRAGERT: OK. Thank you.

SHANE OSBORN: Sure.

BOSTELMAN: Seeing no other questions, thank you, Mr. Osborn.

SHANE OSBORN: Thank you for having me, appreciate it.

BOSTELMAN: Welcome.

AL JUHNKE: Thank you, Mr. Chairman, and members of the committee. My name is Al Juhnke, A-l J-u-h-n-k-e. I'm the executive director of the Nebraska Pork Producers and I'm also speaking today on behalf of the Nebraska Dairy Association, and we are here to support Senator Wayne's bill on net metering. I'm here mainly speaking from an agriculture standpoint, although this is for small businesses in our towns also. You know, historically, I think you're hearing this is nothing new. This is nothing unique. We've had net metering laws on the books in Nebraska and other states for 10, 20, 25 years. When those laws first came in, however, most states were set at 25 kilowatts. Why? That was the average of a household use per month. And so it made sense at the time. Solar was new, solar was more expensive, not a lot of use at that time. You couldn't go out to Menards then and buy a panel like you can today. Twenty-five was the average household use. Now we have farms and those of you that live in the rural areas, more and more you're going to see and you're already seeing it, you're driving down the road, you've drove down 100 times, and all of a sudden there's a solar array by a machine shed or there's a new hog barn going up and it's engineered and they're putting panels right on top of the barn. Why are farmers doing it? Well, number one, it's become more affordable. Number two, they're able to produce energy that will offset what they use. That's what net metering is, to offset what you use. So I have-- we have a farmer, a pig farmer right behind me coming up to testify and you can ask him. He just put in a system. He can answer all your questions on how he had to go about it, what makes sense, why this bill makes sense. But we need to right size this again. Again, I don't care what the level is. If it's 100, if it's 110

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

percent, if it's 100 kilowatts, if it's 9, doesn't matter. We're just trying to offset what we're using. And-- and we can do that, I think, in good, efficient ways. Number two, this is a rural economic development. You were seeing a lot of companies starting out there. You're seeing installers come in here to testify. But I can tell you, there's a lot of companies out there and it's jobs. And-- and number three, we keep talking about property taxes, offsetting our farm property taxes, which is a problem, and our other costs and everything out there in agriculture that's troubling. This is a way to put money back into our producers pocket. If you pay a system off, which you can right now with-- with building it, pay it off and, I don't know, 8 years, 7 years, 9 years, and they'll guarantee these panels at 85 percent for up to 30 years. You're making that investment because you're going to get 20, 25 years of free electricity on your farm. That is an investment that makes sense for our farmers. So, Senator Moser, you're going to see a lot of these units on your pig farms up around Columbus. You're seeing them in the eastern part of the state. I know a lot of our pork producers are now negotiating because they're seeing them go up and they're understanding how they work. So, you know, right now, Senator Cavanaugh, you have a good bill this afternoon. He-- he wants to raise that 1 percent to 3 percent. We support that. That's still nothing in the overall grid and reliability. This bill actually says if there's reliability problems, the co-op or the-- the public power can ratchet down to 75 percent or you can make it some other level. So you can address reliability problems if they don't think they can move electrons as efficient at night or something else. You can address all that. The argument not go to 1 percent in the past if some counties don't have the reliability or the transmission for that. Well, that's fine. Put in Senator Cavanaugh, put in your bill, it goes to 3 percent unless there is a reliability problem out in western Nebraska where you only have a few people every few miles and you don't have the transmission, that's fine. But we want people, farmers in particular, but small businesses too to have the opportunity to generate their own electric use. I see this as an intermediate step. As Senator Wayne said, once we have battery technology, 3 years, 5 years, 10 years from now, we don't need that metering anymore. We all plug batteries in on our farm, generate our own power, stored in our own batteries, and that's it. So I would encourage public power and other people to work with us on this at this time so they're part of the discussion, part of the discussion

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

now and part of the discussion going into the battery world that we're going to see come very quickly. So with that, again, strong support for this, for our farmers, for our pork producers that are putting in systems, one of which you're going to hear from right after me, and happy to work to answer any questions or to make the bill better.

BOSTELMAN: Thank you, Mr. Juhnke. Are there any questions from committee members? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. Thank you, Mr. Juhnke, for being here, and a shout out for my bill for later.

AL JUHNKE: I won't be here, so I thought I'd get that in right now.

J. CAVANAUGH: Thank you. Are there members of your organization who would have installed had this been enacted already or are waiting to see what happens? How is it affecting people?

AL JUHNKE: Yeah, Mr. Chair, and Senator Cavanaugh, people can put them in now. That will probably be one of the arguments of public power, I'm guessing is, well wait a minute, you can do this already. Just call-- call your local rural power district and they'll-- they'll work with you, who will work with public power and we can maybe get, as you said, a power purchase agreement and put it in. But it's difficult. It's not as easy. Not every rural power district will work with you and do that. Some will. Some won't. And again, you can ask the farmer that just did it how that went. But it's not as easy a thing as it should be. This is-- these aren't big systems, you know. 25 kilowatts is my new. 100 kilowatts or 90 or 80. Again, set it-- set it for what your situation is. I mean, you all get bills, electric bills. You know what your monthly usage is not only this year, but last year and you can go back as many years as you want. So you're pretty close to the average. And that's what-- that's what you set your system for. So if I'm at my house, if I'm 25, I can set at 25. If I happen to be 30, I could set it at 30. But it's just the negotiation is not easy out there and installers and others will tell you that. Some-- some rural power districts, it's great. They have people that understand it. They work with you. They want to add that to the system. Other systems, not so much. I come-- you all know I probably come from Minnesota. I was on a co-op electric system there. Was a lot easier there because I was an owner. So if I wanted-- I would tell my board and I would tell my

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 10, 2021
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

managers out there, work with the farmers, work with me to put these systems in. You don't see that all across the state where that order is put forth, you work with them and figure it out and get these in, which is why a bill like this is needed to make sure it is easier and less stressful for those people wanting to install.

J. CAVANAUGH: Thank you.

BOSTELMAN: Senator Groene.

GROENE: Give me a kindergarten of net metering. So their solar panel on a road, at that moment in time, they're using 25 kilowatts, right?

AL JUHNKE: A month, yeah.

GROENE: But they're producing 100, all right? I mean, during that-- or 50 at that-- during the sun shining, the excess they're not using at that moment goes into the system.

AL JUHNKE: Correct.

GROENE: And then at night, they got no solar power and now they're pulling off the power company.

AL JUHNKE: Yep.

GROENE: And you can that-- what-- when I'm during the day can be credited against, but--

AL JUHNKE: Zak.

GROENE: --but it will be-- it says 110 percent. They would be sending them a check, but the previous guy said 90, but they would always retain 10 percent. That's what net metering is simple.

AL JUHNKE: Right.

GROENE: All right.

AL JUHNKE: Yeah, we don't need a check. We're just trying to offset what we do. So whatever the bill says, make it so it's neutral. We don't need a check from the power companies. And the classic example would be middle of summer, middle of July, long days, good sun out in

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 10, 2021
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

the sky, and those solar panels are generating to the nth degree, right? Way more than I'm using in my barn. OK, so--

GROENE: On the whole farm.

AL JUHNKE: On my whole farm. So that excess then is put back into the grid and runs down the road to my neighbor's house because they got their air conditioner on or runs down to the store down on the corner because they have their air conditioner, because it's a peak period. You can argue and they'll argue the other way, but you could argue that's actually a cost savings because it's a peak period or they're all buying expensive electricity across the country to come and cool our homes. And they're paying a premium for that at that point in time. They don't have to pay us anything. We don't want to get paid for that. We're just putting it back on the grid. They can use it and all we do is offset a future bill of ours--

GROENE: A future.

AL JUHNKE: --based on that credit, yeah.

GROENE: It's not within that billing period.

AL JUHNKE: Right.

GROENE: It's for the whole year.

AL JUHNKE: For the year, for the whole year. So at the end of the year, they do-- this bill would say at the end of the year they do the calculation. OK, I produce 5 percent more than I used, they would have to write me a check for that 5 percent of electricity. I'm saying most of the farmers I talk to, they don't want a check. They just want to offset what they use. Co-op or-- I keep saying co-op because where I'm from, public power does not have to write me a check. If I was writing this bill, I'd make sure you don't owe me anything as long as I can offset.

GROENE: Well, they paid their bill every month, so how do you offset it then without a refund?

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

AL JUHNKE: Well, you pay-- they do the calculation at the end, so yeah, you pay your bill or you get credits every month and then at the end of the month you do the accounting at the end of the year.

GROENE: At the end of the year and then you send a refund check.

AL JUHNKE: And by the way, all the fees that are on, if you look at your bill, there's the electricity costs, right, but then there's three, four or five other lines. Those costs all stay there are too.

GROENE: The tax and--

AL JUHNKE: The taxes and generation fees or whatever they do. None of this is saying that the co-op-- co-op --that the public power has to pay for the costs. Our users want it, we'll offset those costs too. That's-- that's-- that's the beauty of it.

GROENE: All right.

AL JUHNKE: It's not real--it's just kilowatt for kilowatt. We just want to pay-- generate enough to offset our costs annually.

GROENE: One last question. If you got a \$100 in your billfold, would you give me three of them because you said it's meaningless.

AL JUHNKE: Would I give you three of them? It depends what I'm getting-- what am I getting in return?

GROENE: Nothing. You said said 3 percent is meaningless,

AL JUHNKE: Three percent on-- doesn't matter on the energy.

GROENE: I'm just saying-- same way in the bill.

AL JUHNKE: Well, it is. It's meaningless in the entire system, Senator Groene. I think you understand that these are huge systems. If you've ever been and I have had the opportunity to tour a lot of the plants and a lot of the the control systems for our transmission systems, it's like being at NASA when you see what goes on nationally.

GROENE: What do you mean by huge systems?

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

AL JUHNKE: The control-- our transmission system is extremely efficient, extremely well run. There are control centers. You walk in, it looks like you're in a NASA control center. The walls are covered with screens. There are operators sitting all over. They are controlling electricity flow, electron flows from all over the country for-- and handing them off from district to district so that we can have reliability at night. The wind usually blows more at night on the prairie, but not every night. There are still cold nights on the prairie. There are. And when that happens, then these systems click into effect and we're grabbing power from other places around the country and even probably into Canada and other places. It's-- as a committee, Senator Bostelman, set up a tour this summer on the control centers here in Nebraska, you'll be impressed.

BOSTELMAN: We've had them before, yeah.

AL JUHNKE: Yeah.

BOSTELMAN: OK, thank you, Mr. Juhnke, for your testimony. Next proponent, please.

AL JUHNKE: I'll get my farmer up here, so he knows more than me.

BOSTELMAN: Welcome.

TIM CHANCELLOR: Thank you, Mr. Chairman, and committee members. My name is Tim Chancellor, T-i-m C-h-a-n-c-e-l-l-o-r, and I reside out in Broken Bow, Nebraska, and have swine operations in Dawson County, in Dawson Public Power District and Custer Public Power District. And I've been working the last two years on adding cost savings back into my operations in the swine operation looking at building another building. My son came back and joined me in the operation and looking at building more buildings and permitting processes and everything in solar made a lot of sense. As I got into it, it's been an interesting process. My son's been involved with the whole thing all the way through from grant writing to working with the public power districts and getting everything set up. We have our first one installed and it's been hooked up about for two weeks and we have three more that are being hooked up. Two of them are 25 kW units which don't provide the full power load of the swine operation. And two of them are 100 kW systems that will provide about 80 percent of the actual usage. And

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

I'll explain kind of how we went about doing all that and any of your questions you've been asking, I can probably answer with clarity because I've been through the process and understand it very well. So with the one power district, Custer Public Power, as some of you probably know, they are very efficient at their alternative energy. We've got a big wind farm up there. We've got several big solar arrays that individuals and Custer Public Power Board members built, large producers and sell back to the power company. Dawson County is much different. They have not reached their maximum limit. They're still on the low side of the 1 percent. And when I started dealing with them, they were actually working to join another public district, and through hydro energy, it would all be used up. And I posed the question to them to reserve a percentage of that for the bill payer, for the brick and mortar businesses in their public district that pay bills every day consistently. With the swine operation, it's 24/7, 365, our load usage runs the year round. It's not a peak in the summer during irrigation. And so working with them, they did set aside and I will say Nebraska Public Power and-- and local power districts, that's where you guys can really come into play and give direction to the state going forward to develop these systems. So there isn't a public power district being penalized for what they would like to do with their customers. And it's tough right now. If you go through the legal of-- legally, the way the law reads right now, I can go in, self generate, put up the 100 kW units on my side of the operation, produce 80 percent of my power and with the inverter, the technology that's available, it will never allow me to send back to the grid more than the 25 kW. So I can produce behind the meter and my inverter will only allow 25 kW to net meter back and forth into that grid. I can set that so it's only 2 percent or zero percent off of my phone. I can watch everything that's being produced. The meter that's there, that what you talked about, during the day it's running backWards. At night it starts running forward and it's just a net-net back-- back and forth. And I have a separate meter on my full production and then a meter with the power company that does the net metering. So I'm sure all of you have a lot of questions about it and I'll be glad to answer any of them. And I'll be glad to work with any of the Senators on this bill. The one thing I'll say is, it's probably going to happen no matter what, but what I'd like you to consider is make the bill work for the people paying the bill. There will be large companies come in and you see it right now with wind, with 5 megawatts that come in and produce

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 10, 2021
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

and sell power back. And the business owners in the state of Nebraska paying the property tax, I pay commercial rate on a hog barn, not aggregate. We-- we don't get the benefit. I don't need to sell energy back to the power company. I just want to offset my usage. My bill on my four sites is-- oh.

BOSTELMAN: That's all right. Just go ahead and just wrap up, I'll let you wrap up.

TIM CHANCELLOR: Over \$10,000 a month. I just want to offset some of that, so sorry.

BOSTELMAN: That's OK. Thank you, Mr. Chancellor.

TIM CHANCELLOR: You bet.

BOSTELMAN: Appreciate your testimony, coming in. Are there questions from the committee members? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman, and thank you, Mr. Chancellor, for being here. And so you're kind of getting at it. I guess the basic question, why do you want to install this program on your-- your--

TIM CHANCELLOR: One of my buildings?

J. CAVANAUGH: Yeah.

TIM CHANCELLOR: You bet. So what I looked at is the cost savings on my buildings. Like I said, it's-- with-- with everything that I've done, it'll be about a seven to-- six and a half to seven and a half year payout. And then after that, for the next 20 to 30 years, it will save me approximately \$7,000 a month on my operation. That allows for my son to come back and work with me. I've got another son that's leaving for college this year. It would provide opportunity, more income coming back, opportunity for family members to come back to Nebraska and work with me, so.

BOSTELMAN: Do you have another question?

J. CAVANAUGH: I'll wait.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

BOSTELMAN: Senator Groene.

GROENE: Thank you, Senator Bostelman. So right now you do, with the new setup you don't. You're just getting started.

TIM CHANCELLOR: Yes.

GROENE: You are getting credit, right? Twenty to the 25.

TIM CHANCELLOR: So it's the one that I have on right now is a 25 kW and it's on my oldest site of 4,000 head operation and it will produce about 90 to 95 percent on that site of what my needs are. OK, and currently it's set up to where it net meters by the month. In this bill, it says an annual accumulation. And that's important to have in the bill, because if you do it month by month, there's months I'm going to overproduce and there's months that I'm going to underproduce. And if you do it on an annual basis to reconcile it, it'll be a lot more constant.

GROENE: So on the system you got running, you said 95 percent. So you would-- they're talking about a minimum take of 90 at max. So you would actually on that one lose a little bit, right, on that system?

TIM CHANCELLOR: Sure. And there are several ways to look at this. And this is where my relationship with the public power district is very good. OK. The one in Custer County, he said, I know you can do the 100 kW, but please don't, because it puts us in an awkward position with Nebraska Public Power. OK. Dawson was willing to go forward and do the 100 kW's, but with that one that I've got running right now, I can set that inverter to not produce or to produce or however you need to, to 80 percent and then the cost-- right now it's set up, they buy it back. Anything I overproduce, they buy back at 3 cents. My cost for energy out there is 12 cents. Their cost, they're buying it from their supplier with all fees included is about five and a half cents, so it's actually making them some money if I overproduce, and I'd be fine with-- in the bill let me produce, according to your guidelines, if I overproduce, penny-- a penny a kilowatt, I mean, let them make money on it.

GROENE: Well, that makes-- makes a good point. Your neighbor isn't doing this.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

TIM CHANCELLOR: Yeah.

GROENE: So he's paying-- the power company paying 3 cents and charging him 12. There's a reason for that 9 cents.

TIM CHANCELLOR: Right. Sure.

GROENE: So the power line is come to you--

TIM CHANCELLOR: They've got to make money.

GROENE: --it's the linemen they pay.

TIM CHANCELLOR: Absolutely.

GROENE: You're asking us to say, you don't have to help pay for any of that.

TIM CHANCELLOR: So that-- you know and that's discussion and I've had that-- that asked to me and we've talked about it with the local public powers and will it increase my neighbor's rate? When I built that facility, my neighbor's rate didn't go down and I'm paying \$2,500 a month. So taking part of it away shouldn't raise my neighbor either. Hey, the line was already there. I paid for all the underground buried into there. There's no additional cost-- a meter.

GROENE: But there's facilities, there's linemen that come out when a storm hits.

TIM CHANCELLOR: Sure.

GROENE: And you're asking--

TIM CHANCELLOR: Had a line that run right by me, yeah.

GROENE: But you're asking that you get a net-- pay anything to the power company for the use of those lines when that's-- when you do use their-- when you're a 100 percent efficient, I'm with you. But when you're not--

TIM CHANCELLOR: That's why we designed them to run at 80 percent. OK. All of our facilities have backup generators that we could run and produce our own power.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

GROENE: You'd like to reach the 90 percent and then you pay for 10 percent and you only want to pay the cost of transmission lines and all of that, that share you've built on 10 percent of your bill, not 100 percent. Because your netting zero and the power company isn't making any money at all to pay that linemen or the--

TIM CHANCELLOR: True. Sure.

GROENE: One last question. You know Dan Kluthe, don't you?

TIM CHANCELLOR: Yes.

GROENE: And he did-- he did that process with the methane gas.

TIM CHANCELLOR: Yep.

GROENE: Did you look at that processers and pass.

TIM CHANCELLOR: I have the methane gas for energy production is-- it's-- it's not a money maker at this point. The-- the-- the life expectancy of the equipment runs out before the project's paid off.

GROENE: And you looked at all of that.

TIM CHANCELLOR: Yeah. I guess I did.

GROENE: You're a businessman. Anybody says a farmer isn't a businessman, doesn't know farming anymore.

TIM CHANCELLOR: Yeah.

GROENE: Thank you.

BOSTELMAN: So is the question, the amount of net metering or is it allowed from say, 25 to 100, or is it a bigger question for you the negotiating price of being-- I'm trying to understand which is the-- the bigger need. Is it-- is it lack of being able to go to the-- to a higher net metering number, say a 100 or is it a bigger challenge-- I understand it's limitation, don't get me wrong.

TIM CHANCELLOR: Sure.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

BOSTELMAN: But was there a bigger challenge with you as a negotiation for pricing or the installation with the local power district.

TIM CHANCELLOR: So the limitation-- the limiting factor has been the one that I've been dealing with the most right now is just because the laws with how they're set right now, I can, if I was not wanting to keep my good relationships with my local public power, I could just go in and put 100 on right now. An inverter would only allow 25 kW to be the net meter. I could put 200 on if I wanted to, if I was using that much. OK, but-- so I chose not to do that because I like my relationship with the public power. If I build another barn, I want to be able to work with them to--

BOSTELMAN: Yeah, sure. I appreciate what you're saying. I think though, that your-- the power from the barn goes through the inverter, goes to the-- goes to the transmission line. You don't go directly from your barn to the transmission line. So in a sense, your-- the public power district does control what you can put on there. You can't overload. You can't put more on there than what they'll allow, or if you do, they could come in and then disconnect.

TIM CHANCELLOR: Absolutely. You bet. Yeah.

BOSTELMAN: OK.

TIM CHANCELLOR: So the solar production, the way it's set up, it doesn't go back on to the line. In a power outage, it won't go back on the line. It's-- it's all-- everything's separate. So what I'm producing is being used first and then any overproduction would go back towards the net meter.

BOSTELMAN: Right. And that's not-- that's on your one inverter. It's not over that 25 kW. That would be--

TIM CHANCELLOR: Correct.

BOSTELMAN: --other one what you're trying-- if it'd be 100, you'd go 100, you'd never be able to put over whatever that inverter allows.

TIM CHANCELLOR: Yeah. If the-- if the local company said you can only sell back 1 percent, you can set it-- if you can sell nothing back you can set it to do that too and just use your own-- own usage.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

BOSTELMAN: OK.

TIM CHANCELLOR: The beauty of the net meter is with the solar you can overproduce during the day. And as we all know, out in ag world, that's when the peak load is. I mean, irrigation wells are running and everything. And Nebraska Public Power and the local power districts are all talking about the time of day billing, billing more for low usage. This fits into that category just perfectly. It produces when the loads there. In working with the local public districts, there are lines where we have facilities at the end of the line that they're glad to have some extra over there because they're so overloaded they couldn't add one more thing without doing a line upgrade. And so there are some benefits to-- out in rural Nebraska to these systems.

BOSTELMAN: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman. I just want to sort of go back. You mentioned something about your son was work on grant writing.

TIM CHANCELLOR: Yes.

J. CAVANAUGH: It-- where's-- what's the grant process you have to plan.

TIM CHANCELLOR: OK. So I'll just walk you through it. We put in grant writing. It was a 200-page grant for-- it's for agricultural small business and you can write a grant. It-- it-- if you are given the grant and we haven't heard that yet, it pays for 25 percent of the install of the cost of the system. On top of that, the federal government allows a 26 percent tax credit for your system off of your tax bill nationally, not state. And then on top of that, the depreciation is 75 percent of the project that you can depreciate up to 75 percent of that project.

J. CAVANAUGH: And all of that factored into your cost-- return investment.

TIM CHANCELLOR: Absolutely. So with those systems, it made it-- if the grants get granted and everything's done, it'll be about a six to six and a half year payoff. Without any of them, it's about a 12-year payoff. And then on top of that, the state of Nebraska with its energy loan, it's a two and-- right now it's at a two and a half percent

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

energy loan to finance the project. And the local lending institutes really like that because they-- my local bank writes the loan and then the Energy Department buys 75 percent of the loan, but the bank gets to keep the full interest, so in effect, they're at about 8, 9 percent interest on that loan. And through the Energy Department, they were very excited about it. They actually have a cap and I exceeded the cap. They waived their cap to fund the full project and they would like to do a press release on it when I get the systems all up, so.

J. CAVANAUGH: Is that a dollar amount cap or--

TIM CHANCELLOR: It's a-- it was a dollar amount cap, yes. Yeah.

J. CAVANAUGH: Thank you.

BOSTELMAN: Senator Gragert.

GRAGERT: Thank you, Chairman Bostelman. Thanks for your testimony.

TIM CHANCELLOR: You bet.

GRAGERT: What do you-- what are you allowing for maintenance fees? I know you're new into this. What kind of maintenance fees are you looking at?

TIM CHANCELLOR: So the solar panels, just a little history on them, have gone from 180 watt panel to the ones we're putting on are 425 watts. So they're very efficient and takes a third less space to put them on. Impact resistant softball sized hail or golf ball sized hail up to 60-mile an hour impact, so they're very durable. It's all aluminum tracking. It's a plug and play system. If the panel goes bad or loses the efficiency, you can unplug it, unbolt it, put a new one on and replace it. So maintenancewise, just like my hog buildings, I always figure in about a 3 percent of my cost per year for maintenance. I don't typically ever spend that much, but I like to be conservative and have those funds set aside if I do need to come in and replace a roof or repair something on the solar system. You bet.

GRAGERT: I don't know if you want to reveal this or not, you don't have to. But I'd be interested on-- on-- to maintain one of your hog confinements or what-- how much without any government subsidies or any kind of grant, how much would-- how much that system run?

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

TIM CHANCELLOR: For one of my hog facilities?

GRAGERT: Yes.

TIM CHANCELLOR: There's no government grants, no special loans. I don't do USDA loans. It's just-- just-- I'm the sole proprietor, my wife and me and my family. And for one of the quad buildings, which houses 6,250 finishing swine, is 2.4 million.

GRAGERT: For the panels?

TIM CHANCELLOR: Oh, no, I'm sorry. That's for the facility, for the--

GRAGERT: I'm talking about the four year system.

TIM CHANCELLOR: All right. Very good. So the-- the small 25 kW units are right around 70,000 for those panels. For the 100 kW we were at-- they're right at 190,000. The entire project for all four of the 200 kW and the two 25 kW were 540,000, is what I am investing.

GRAGERT: That could be paid off in 12 years without the grants and all?

TIM CHANCELLOR: Without the grants and all the different things, yes.

GRAGERT: Thank you.

TIM CHANCELLOR: Yep.

BOSTELMAN: OK, thank you, Mr. Chancellor, for being here today.

TIM CHANCELLOR: You bet. I will say if you have any future questions, I'll be available and I'd be glad to work with any of you, so.

BOSTELMAN: Thank you. Thanks for coming in today. Next proponent for LB683. Seeing none, I'd invite anyone who would like to testify as an opponent on LB683, please step forward. Any opponent?

ROBERT BEST: Good morning, everyone. My name is Robert Best, R-o-b-e-r-t B-e-s-t. In 2009, a net metering bill was passed to encourage customer-owned renewable energy resources. Within the bill it states to qualify for net metering, your system has to be 25 kilowatts or less. Your public power distribution, you technically

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

charge a customer generator if-- minimum monthly fee. That is the same as the noncustomer generators and the same rate class, but shall not be charged any additional fees or charges. In 2017, my wife and I made the investment on purchasing a \$80,000 solar system that outputs less than 25 kilowatts. With the average life of a solar system being 25 years, it becomes very difficult to break even at the end of 25 years with the current net metering bill. With this proposed bill, LB683, and what I read on LB683 is a little different than what Senator Wayne was talking about earlier today, so apparently there are some changes. There are many issues that cause more harm than good. Page 3, line 9 through 15, adding a monthly administrative fee to your system if your system is greater than 5 kilowatts. Your power distribution utility gets to decide on what to charge. Page 4, line 20 and 21 no longer have any defined value size to determine net metering is extremely damaging. Currently, our solar system does not generate enough energy every month for what we consume. July and August are the two best months for generating energy. December and January are the least. With LB683 to determine system size, it has a rate of capacity of up to 110 percent of customer generators average annual usage. This means nothing. There are so many variables that determine output of the system. What month of the year determines the amount of daylight time? Weather determines if it's sunny or cloudy and trees or buildings determine how much sun reaches the solar panels. Page 7, line 15 and 16 dispute may be resolved through complaint procedures developed by the utility. This needs to be an independent third party, not the utility. Page 7, line 17 through 20 require insurance for the customer generator. Your power distribution utility is not liable for the damage in your home when you receive voltage spikes from a malfunction substation, or someone with a welder or high torque electric motor that's introducing voltage spikes on to your power grid is not required to have insurance. Your power distribution utility has safety features built into the grid and substations for when they receive lightning strikes. Requiring insurance is just another expense for the customer and generator that is not needed. LB683 does not encourage customer-owned renewable energy resources because the bill would add administrative fees, limit your system size output to be less than the highest month's energy needs, add insurance expenses that are not needed for systems that are 25 kilowatts or less, when your power distribution utility already has safety features built into the power grid. If the main goal for this bill is to expand net metering to very

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

large systems, do so, but do not change the current law for the small systems that are 25 kilowatts or less. I welcome and encourage all questions.

BOSTELMAN: Thank you, Mr. Best. Are there any questions from committee members? Seeing none, thank you for your testimony.

ROBERT BEST: I was hoping there would be. All right, thank you.

BOSTELMAN: Thank you. Next opponent to LB683, please step forward. Welcome.

SCOTT BENSON: Thank you. Good morning, Chairman Bostelman, other members of the committee. My name is Scott Benson, S-c-o-t-t B-e-n-s-o-n. I'm the manager of resource and transmission planning at Lincoln Electric System, but today I'm here representing the Nebraska Power Association, the NPA. So the NPA is opposed to this bill. And, you know, part of that has been talked about a lot today. And net metering is inherently a cost subsidy from the participants that aren't doing it to the people who are doing net metering. You're putting-- people are putting solar on their homes and there's been a lot of about changing-- trading a kilowatt hour for a kilowatt hour. And that's true from an energy standpoint, but it's not true from a cost standpoint. It's not apples to apples. And that's been touched on today. You know, if you look at the actual cost of the energy that's in your rate, that might be around 2 cents, 2 to 3 cents per kilowatt hour. But it's been established, your rate, I know if you're in LES's territory, your average rate across the year for residential customer might be 7 cents. You know, Senator Moser talked about 9 cents. It's been raised. What's in there? Well, very little of that is the energy. The rest of the cost is the staff that goes into running the utility. It's the wires and transformers that actually allow you to export when you're net metering, gives you a system to tie to. And the biggest part of it is the generating capacity that is there to back feed that net metering customer when their net metering generation, which is typically solar, isn't producing, keeps your lights on. Essentially the utility becomes their battery. So when someone nets meters, it's not so much the cost difference of what they're excess producing, it's what they're offsetting because they're offsetting their full retail rate and all the utilities in Nebraska, public power, cost a service. So who has to pay that balance? The rest of the customers. So people

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

who are not-- not metering. Now, specifically to this bill, now the things we're concerned about is it raises the limit from 25 kW. I know there's been a lot talked about today with 100 kW, I'll just speak to what's in the bill. The bill says 110 percent of your load up to depending on how you want to interpret it, maybe 5 megawatts. That's 5,000 kW. Let me give you a frame of reference. The typical home is going to be like about 7 kW. So 25 kW is pretty big compared to a house. Five thousand kW or 5 megawatts. One megawatt is enough to power about 250 average homes in the City of Lincoln. So 5 megawatts is a very big amount of power. So when you do that, you allow people to put more net metering on the system. That just increases that cost of-- that cost subsidy. It's flowing from all the nonparticipants to people without net metering to the ones with it. But beyond that, the really important piece in this is the bill says that the utility is not able to charge most of their normal fees to the net metering customer. So if you take a residential customer who puts in less than 5 kW of solar, it says you can't charge them any fees. Well, so think of what your standard fees might be for. There's a customer charge that goes towards reading the meter, OK. Rendering a bill, and then actually processing the payment when it comes back. You can't charge for those. That's the fundamental piece of business. If you're a residential customer, you're over 5 kW, the bill says, OK, now you can charge for reading the meter, but you can't cover those other costs. And we already know, reading the meter is only one small piece of the business. That's at the residential level. It gets worse if you go up. So if you have large or commercial and industrial customers, most of those people are on demand rates. Demand rates you pay less for your energy, but you pay quite a bit in demand, which is we look at what your peak usage of the system is each period, and you pay a rate based on that because that's what we had to build the facilities to be able to supply. You may only hit that peak, you know, not routinely, but we have to build the system to meet that. Well, this bill says that you can't charge a net metering customer demand rate. So another complication is this bill says that any kind of generation can be considered net metering, not renewable generation like wind and solar which is usually talked about, but any kind of generation. So most of those larger commercial industrial customers, they have backup generators that run on fuel oil. And so with their backup generator, as soon as this became law, they would say, I'm now a net metering customer. You can no longer charge me for demand. So who's going to

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

pay those demand charges? All the other customers on the system. Actually gets worse. If you look at really, really large customers, large industrial or like the data centers that you've seen go in Omaha. When they go into a system and they want to get interconnected, connected to the system, they take such power at a single point on the system that can cost millions of dollars to do those upgrades. Well, this particular bill says if you're a net metered customer, you can't be charged interconnection fees and all of those large customers like that, they all have backup generation, which would be-- allow them to be considered net metered. So now if a large customer goes in, it's going to cost millions of dollars literally to hook them up. They don't have to pay it because they're a net metering customer. Who's going to pay that? All the rest of the customers. So because of the idea that it raises the cap and it doesn't allow us to charge the normal fees that all other customers charge, that's why we're opposed to the bill. Thank you very much. And I would appreciate any questions.

BOSTELMAN: Thank you, Mr. Benson. Are there questions from committee members? Senator Gragert.

GRAGERT: Thank you, Chairman Bostelman. You know, I've heard numerous times today that this is just 1 percent. This is just 1 percent of the energy. You know, what does that equate to a dollar?

SCOTT BENSON: You know, that's a good question. You think I'd have done the math before I came today. So when you look at 1 percent, what it really does is it says it's 1 percent of the utilities average monthly consumption, essentially. And so if you looked at that 1 percent for someone like LES, you're going to be in the handful of megawatts, few megawatts probably. I'm going to guess maybe we're 5 or 6 megawatts probably. Might be our average when you go across there for 1 percent. So you look at that, you know, depends on what your customer base is going to be, but you're talking quite a bit of dollars when you do the math on that.

GRAGERT: Thank you.

BOSTELMAN: So my question would be, one, is there-- and they're talking about a 90 percent cap applied to individual customer's

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

generators, do you think that would be a disincentive to smaller-- either a small farm's applications or a residence?

SCOTT BENSON: So right now it's at 110 percent. You know, they're talking about moving it down to 90 percent. Again, that's above your consumption across the entire year. So it's trying to balance it out. And that's a good point. But I don't know, that it would be-- to go to 90 percent is that big of a difference. Because remember, the big bang that you get here is not for the excess production, it's for offsetting what you're purchasing from the utility. So, yeah, would you like to offset 100 percent for those people? Probably, but 90 percent would be pretty close. So understand how they're moving in that direction, that's the right direction. I don't think that would be too much of a detriment or a deterrent to the customers who are pursuing it.

BOSTELMAN: Would there be a way to-- I don't know if we could do it or not, say if you're 25 kW or less or you take 25 kW greater than 25 if you put a number on, it doesn't matter, to have some of the things you're talking about, some of the pricing elements being put into this so that there isn't that loss to other customers, to whatever areas for billing, for keeping up transmission lines, connectivity, those type of things. Is there a possibility to have maybe had a two different types of net metering applications?

SCOTT BENSON: Well, absolutely. And you see that across the state today. So you have up to 25 kW as net metering. Right. The utility industry has embraced that. When you go over 25 kW, you know, one of the ways to do that is, as was talked about today is that you negotiate a rate for that energy and when you negotiate a rate you're getting paid the rate for the actual energy. Not all of the other costs that go into supporting the system because you're still using those. Now utilities have the option to offer different rates. I know LES, us particular, we have net metering up to 25 kW on your state statute. We have what we call renewable generation rate that goes from 25 kW to 100 kW and there is nothing to do with your load. You have the separate meter. We just pay you for everything you produce. Now it happens to be an incentivized rate, but you could pay more of a-- avoided cost rate, which would instill no incentive and there would be no impact on the rest of the customers. For LES, if you go above 100 kW, there is no incentive. Now we're looking to pay you what the

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

market rate is for that actual energy, because that's the only way to guarantee no cost shift from the other members of the community.

BOSTELMAN: Senator Moser.

MOSER: If the sentence was eliminated in the bill that said that no other fee shall be charged to a net metering customer, including but not limited to capacity demand, interconnection and other fee or charge, would that go a long way toward eliminating your opposition to the bill?

SCOTT BENSON: That would be a definite big step, yeah. Because remember, there's two things here. One, was that verbiage you just talked about, because that gets rid of all the fees that actually go towards the system and the system there, people are using. The other part of it was still the fact that it was looking at raising the limit from the 25 kW on up, because that does allow people to put in more, which increases that cost shift. There is no doubt when you're a customer and you put this in, if you can get a good price on your solar and if it's going to last long enough, there can be a savings there. But again, since the utilities cost the service, who's providing that savings to you? It's all the other customers. And granted, are they going to see it from-- you know, the comment was made, look, if I go net metering, is my neighbor going to see a rate increase? No, all these are going to get built over time and aggregate, right? One customer going in that meter doesn't make a difference, but if a bunch of them do, it starts to add up over time.

MOSER: Well, other customers are charged demand charges, correct?

SCOTT BENSON: Correct.

MOSER: Because you need to build the the size of conductors to get them the power they-- the maximum they need, because otherwise they'll have a brownout and they'll have some-- because they could burn out something or cause you problems, I assume.

SCOTT BENSON: Yes, for and that again you're talking about commercial and industrial customers are typically the ones in those demand rates.

MOSER: Well, I mean, that makes sense. It's like a water meter. If you need a bigger meter to supply your sprinkler system, the city is going

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

to charge more for that two-inch meter or whatever you require then, because you're only going to flush the toilet and wash your dishes and those things normally, but if you have a fire, you need to have all that water flow to put the fire out. Well, the same thing with the electric company. You know, a lot of the times they-- they may not be drawing that much electricity, you know, through the meter, but you need to be able to plan for it.

SCOTT BENSON: Exactly right.

MOSER: Thank you.

BOSTELMAN: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman, and thank you, Mr. Benson.

SCOTT BENSON: Yes.

J. CAVANAUGH: Thank you for being here. Just so I'm clear, I know it seems like everybody has asked this question. The current state of the law now does allow for LES to recoup those other costs from a net metering customer.

SCOTT BENSON: Correct. So currently what it says is you can't apply any additional costs to a net metering customer, but you still can charge all the fees that go to your normal customers.

J. CAVANAUGH: And do those cover-- those fees, do they cover the-- these problems you're talking about, the standard, the capacity, the lines, the staff?

SCOTT BENSON: No. So they're going to cover some parts like I talked about, the reading the meter, rendering a bill, parts that are in your customer charge because that's a separate fee. But if you're a residential customer, the cost to actually produce the energy, the cost of the generation that supplies that, the cost of the wires and the transformers, that's all bundled into that retail rate that you pay, so many cents per kilowatt hour. And so when you offset that, you're not offsetting just the cost of the energy you're producing, you're offsetting the entire system that goes into making everything work. That's the difficulty with net metering.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

J. CAVANAUGH: Did you hear Mr. Osborn testify earlier?

SCOTT BENSON: Yes.

J. CAVANAUGH: What did you think of his idea about the .25 cents?

SCOTT BENSON: Well, you know, so that gets back into that under current statute, when I say you can't charge an additional fee, that would be like one of those additional fees.

J. CAVANAUGH: Right, I'm just saying, would that help if we did that?

SCOTT BENSON: No, not really. You know, this is like having-- it's in the middle of night and the powers on and you're going to flick your BIC lighter and try to light up the town, you're not doing very much. You know, like I talked about, if you look at a retail rate of 7,8,9 cents per kilowatt hour, about 2 cents of that is the cost of the energy. The other 5,6,7 cents, that's the rest of the system costs that supposedly that .25 cents would be going towards. I don't know about you, but .25 cents doesn't take it very far towards offsetting 5,6,7 cents.

J. CAVANAUGH: As far as, I guess, a broader policy question about net metering and I asked about my program that I'm in in Omaha, which is the NEST, the-- the-- there is a value to foregoing having to produce, especially at peak times.

SCOTT BENSON: Absolutely. And there is no doubt when someone puts in solar, we'll say on their house and they net meter, OK, they are helping a little bit to defray the cost of that next generating unit. You know, one-- again, one person doesn't make much difference, but when you add a bunch of them up, you're hoping to say, well, maybe we were going to need a new generating unit in 10 years and if we have these net metering customers, maybe they nudge that to 11 years and there's a savings for everyone.

J. CAVANAUGH: So if we expand the program, you could nudge the need for that capital investment further down the road.

SCOTT BENSON: Right. But it's not justified by the rate that they're earning in offsetting the full retail rate. That's the issue. So they

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

do bring some benefit to the system, but it's not commensurate to the cost that they're putting on the rest of the customers.

J. CAVANAUGH: Thank you.

BOSTELMAN: Senator Groene.

GROENE: Thank you, Senator Bostelman. So this analogy which I-- it's like collecting cars on the highways. I mean, they're using the highways, but they're not paying any fuel tax and the guys in diesel pickups, we pay them higher fuel taxes because we got to maintain the highways with electric cars. That's the same thing you're talking about. I mean, basically the same. If you net meter, you're not paying, but you're using the transformers, you're using the lines. Lineman comes out after storm, somebody's got to pay his wages. These folks with net metering aren't paying any of that--

SCOTT BENSON: Correct.

GROENE: --but they're using the system.

SCOTT BENSON: Correct.

GROENE: So why don't we just say, if any-- we'll just credit you back. We put in the statute the credit can be less than the average cost to the utility and can be more that we credit you back the 2 to 3 cents. That seems the fairest method to me. Is any other states doing that?

SCOTT BENSON: Well, and that's what state statute currently has. Again, if you excess produce, that's what you're getting paid is the utilities avoided cost, the true cost to produce that energy. Is when you're offsetting your consumption, that you're really getting the most gain. You know, I can't tell you for sure if there are states that are doing that net metering.

GROENE: But--

SCOTT BENSON: Go ahead.

GROENE: --and even at that, it doesn't solve the problem where what we had-- Farm Bureau of whatever he represented said, well, you produce a lot of extra in the summer with solar panels, but in the winter you

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

have to buy. They're using the system. So if they offset it-- offset it and you're just talking the excess, even if it's a net zero offset, they use the system.

SCOTT BENSON: Exactly right.

GROENE: And they're not paying anything for that.

SCOTT BENSON: Exactly right. That's my point. You know, net metering is under state law, up to 25 kW. Again, utility industry has embraced it and we prefer to see it not in growth beyond that because of the cost shift.

GROENE: You mentioned Facebook. So they could put in a solar panel on out in their front yard and act real green and I know they buy wind. They claim they're buying wind and it's a 25-- it's 25 kilowatt or whatever system and they use millions of kilowatts or whatever they use. Because they've got that one small system and they're a net meter, you can't charge them for the-- for the-- any of those extra fees. You couldn't charge them for the demand fee or anything.

SCOTT BENSON: Yes. That is currently written, you couldn't charge them their demand rate, which would be significant. You couldn't charge them the dollars that would go into the facility.

GROENE: A billion dollar facility. They put in a \$20,000 solar panels on there and they could get around all of the cost.

SCOTT BENSON: Yeah. And under the way it's currently written, which I'm sure this is an unintended consequence, but the way it's currently written, you could put in one solar panel and say, now I have one solar panel, I might have 100 megawatt load, but I got one solar panel hanging outside my door and I'm net metered and under this bill, that would count.

GROENE: Thank you.

BOSTELMAN: Thanks, Senator. Senator Gragert.

GRAGERT: Thank you, Chairman. I just want to clarify real quickly. So that's why they don't really care to sell anything back to you, it's

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

what-- the money being made is what they're not using off your power company, you know, the grid initially.

SCOTT BENSON: Yes, that's exactly right. Here locally, I know when you are looking to put solar on your home or your business and you work with a local installer, they will typically coach you to only put in enough up to covering your load because that's where you get the best payback. If you put in excess solar to where you're exporting, now, you're not earning a very good rate of return on those panels.

GRAGERT: Thank you.

BOSTELMAN: Thank you, Mr. Benson. I'm sure you'll be around if members have more questions.

SCOTT BENSON: Yes.

BOSTELMAN: OK, thank you very much.

SCOTT BENSON: Thank you.

BOSTELMAN: So anyone else would like to testify in opposition to LB683? Seeing none, anyone like to testify in neutral capacity on LB683? Seeing none, Senator Wayne, you're welcome to close. There are position letters in opposition from KBR Rural Public Power District, Nebraska Electric Generation Transmission, Nebraska Public Power District, Norris Public Power, Southern Public Power District, and there's one written testimony by Mr. Seth Boyles of OPPD. Senator Wayne, you're welcome to close.

BOSTELMAN: Thank you. Thank you, Chairman, and Natural Resources Committee. You know, I think what's being lost in this conversation and from my perspective, from a bigger perspective, is, we're already net metering. We just do it with all the other states. We do it with Coca-Cola, who decides to put wind farms in somewhere in Nebraska. We do it with some billionaire who decides to put wind farms in Kansas and sells it to Nebraska. What's left out of the conversation, which I am going to ask during Senator Cavanaugh's, is, how much are they paying right now? That's what's left. We're talking about how much it cost for somebody to generate and sell, but how much are they paying right now? What's the real difference between the farmer and Coca-Cola? What's the real difference? That's been left out of the

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

conversation because what you find out is it's minimal. So maybe to clean up the language, we have a couple amendments where we talk about the actual costs. You can't exceed the actual cost. And the reason we can't exceed the actual cost, it's a government entity. Government shouldn't make money and profit off of people. So we can add into it an amendment, the actual cost. Your fees can exceed the actual cost because they should be breaking even every year. Senator Groene, I went back and looked at some interesting stats about coal production and where we're going. OPPD last year, 2020, had a 38.4 renewable non-carbon production. NPPD over the last two years were 61 percent carbon free. It isn't going to be your local farmer that's going to put out-- Gentleman out of business. They're already moving that way in the industry as they want to get away from coal. What I'm saying is, why not let the small farmer participate or the industry participate in the actual industry of producing and generating some small net metering. I do think we can clean up this language. I do think we can work with public power to come to some type of agreement. I will say when I started this process four years ago, we had nobody test in favor. We are moving in a different direction and we can wait until the negotiation hand and the strong hand is on the other side, or we can negotiate now and come up with a sensible solution that can last into the future. But we are moving. When I sat in my office and looked at who was testifying, I never would have thought that. People are demanding, not just Omaha, across the state, and with that, I'll answer any questions.

BOSTELMAN: Thank you, Senator Wayne. Are there any questions? Senator Hughes.

HUGHES: Not necessarily a question, but due to our previous conversation, as of about an hour and a half ago, the generation mix in Southwest Power Pool, which goes from Texas to North Dakota, 44.6 percent coal, hydro 4.2, natural gas 40.8, nuclear 5.5, solar .35. This is an hour and a half ago--

BOSTELMAN: Right.

HUGHES: --during the day and wind 4.5.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

BOSTELMAN: So to respond to that, I think you're making my point that even if we were to grow solar, it's only at .35, it's not going to disrupt the market at all.

BOSTELMAN: Senator Groene.

GROENE: Thank you. Your numbers there, when you said only 41 percent NPPD, you're talking coal, you weren't talking fossil fuel. You said fossil fuel [INAUDIBLE] --natural gas too, were you?

WAYNE: No, NPPD said that 2018, 2019, 61 percent of their production was carbon free.

GROENE: That doesn't sound right. That doesn't sound right, but anyway, is there a federal programs on this?

WAYNE: There's federal tax credits that are diminishing. Every year they decrease.

GROENE: For-- if I did my-- put a solar panels on, there's a tax credit for me to do it, no one else.

WAYNE: Correct,

GROENE: But not on my production, it's just the cost of the system.

WAYNE: I think there are some-- there are some federal leads for production too. But not-- not like wind, if that's what you're thinking.

GROENE: I notice that--

WAYNE: No, nothing like that.

GROENE: Wind, LPS, or whatever else, public power, they-- they have to buy wind because it's the cheapest version. It's cheaper than coal. They got to buy the cheapest version. It's a little bit different here than paying retail price for power from-- from this net metering versus as far as a cost to everybody. I mean, we all know it's subsidized by the federal government, wind is, that's actually a cheaper part-- purchase than producing it. There's a big, huge difference here, what we're doing.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

WAYNE: No, no. The reason they buy wind first or not really first, because nuclear is always constant, because it's too hard to ramp up and ramp down. But the reason you go wind, solar first is because that energy can be saved, whereas you can ramp down coal. So that's why coal is at a lower level. To Senator Hughes's point, it is coal right now and coal is up because the base loads are higher and coal-- coal is the steady baseline. Again, this bill doesn't disrupt that. I mean, you have to have a feasibility study. It isn't-- it isn't going to disrupt that market. But I do think to Senator Bostelman's point, and I will work with the committee and the industry on a two-step application process. I do think there should be 25 and below and something higher. We have to make sure the fees at the negotiating table is even when the industry and private sector or the public sector and private sector want to have a conversation.

GROENE: I'm going to-- I'm still-- I'm going to-- I'm going to wait till the next bill-- Senator Cavanaugh's, but I believe that the statute says they have to buy the lowest cost then put first. So if the coal plant gets lower, I think Senator Wayne, cost gets lower, windmills are shut off. I'll ask him later, but I believe that's correct.

WAYNE: OK.

BOSTELMAN: Thank you. Seeing no other questions, thank you, Senator Wayne. This will close our hearing on LB683. Committee members. I would like you to know there is Executive Board hearing in here now, so please clear off your desk. If you have any personal items, please take them with you now.

MOSER: Let's start our meeting. It's 1:30 p.m. I want to get started. We've got a number of testifiers. For the safety of our committee members, staff, pages, and the public, we ask those attending to abide by, by the following procedures. Due to social-distancing requirements, seating in the hearing room is limited. We ask that you only enter the hearing room when it is necessary for you to attend the bill hearing in progress. Bills will be taken up in the order posted outside the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. The committee will pause between each bill to allow time for the public to move in and out of the hearing room. We request that everyone utilize the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 10, 2021
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

identified entrance and exit to the hearing room. We request that you wear a face covering while in the hearing room. Testifiers may remove their face mask during testimony to assist committee members and transcribers in clearly hearing and understanding the testimony. Pages will sanitize the front table and chairs between testifiers. Public hearings for which attendance reaches seating capacity or near that, the entrance door will be monitored by a sergeant of arms who will allow people to enter the hearing room based on availability. Persons waiting to enter are asked to observe social distancing and wear face coverings while waiting in the hallway or outside the building. The Legislature does not have the ability, due to the HVAC project, of an overflow hearing room for hearings which attract many testifiers and observers. For hearings with large attendance, we request only testifiers enter the hearing room. We also ask you-- that you limit or eliminate handouts. Welcome to the Natural Resources Committee. I'm Senator Mike Moser from Columbus. I represent the 22nd District. I'm the Vice Chairman of this committee. The committee will take up the bills in the order posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on proposed legislation before us today. The committee members might come and go during the hearing. This is part of the process, as we have bills to introduce in other committees. I ask that you abide by the following procedures to better facilitate today's proceedings. Please silence or turn off your cell phones. I want to be a good example. Introducers will make initial statements followed by proponents, opponents, and then neutral testimony. Closing remarks are reserved for the introducing senator only. If you're planning to testify, pick up a green sheet at the table in the back room. Fill out the green sign-in sheet before you testify. Please print and it's important to complete the form in its entirety. When it's your turn, give the sign-in sheet to a page or the committee clerk. This will help us make a more accurate public record. If you do not wish to testify today, but would like to record your name as being present, there's a separate white sheet that you can sign up for that purpose. This will be part of the official record of the hearing. Please speak clearly into the microphone. You may remove your mask. Tell us your name and please spell your first and last name to ensure that we get an accurate record. We'll be using the light system today for all testifiers. OK, I think we'll go with a five-minute limit to make your initial remarks to the committee. When you see the yellow light come

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 10, 2021
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

on, that means you have one minute remaining. The red light indicates your time has ended. Questions from committee members may follow. No displays of support or opposition to a bill, vocal or otherwise, are allowed at this meeting. Committee members with us today will introduce themselves starting on my left.

GRAGERT: Good afternoon. Tim Gragert, District 40, northeast Nebraska.

AGUILAR: Hi. Ray Aguilar, Grand Island, District 35.

J. CAVANAUGH: John Cavanaugh, District 9, midtown Omaha.

MOSER: OK, other senators probably will be joining us as their other work gets taken care of. To my left is committee legal counsel, Cyndi Lamm, and to my far right is the committee clerk, Katie Bohlmeier. Our pages for this committee today are Noa and Savana. And with that, we'll start with the hearing for Stan Clouse as the reappointment to the Nebraska Natural Resources Commission. If that sounded like, like-- a lot like every other hearing, we have a script. I asked if I could leave it out and they said no.

STAN CLOUSE: Hey. Stan Clouse, S-t-a-n C-l-o-u-s-e, and good afternoon, senators. I'm from Kearney. I've been on the Natural Resources Commission for quite a while. Started out with the, the Water Funding Task Force [INAUDIBLE]-- and so now moved in from that to the Natural Resources Commission and this is a reappointment to a commission that I've served on for a couple of different appointments. Some of my background, I am the mayor-- present mayor of Kearney, been on the city council in Kearney for a number of years. And since 2003, I've been on the city council and I represent the municipal water users on the Natural Resources Commission. And my history is that I was-- grew up in North Platte/Brady area, lived right on the river. My father worked for Central Nebraska Public Power and Irrigation District and as such, as a kid, I've been in every hydro along the rivers from Lake McConaughy Kingsley Dam, all the way through the irrigation system in central Nebraska. And being on the Water Sustainability Task Force, I had the opportunity to tour the state and see the, the differences and the water challenges from the Panhandle, where they may-- maybe get 14, 15 inches of rain and they're dealing with drought issues and not enough water, to say, southeast Nebraska, Falls City, where they're getting 40, 40, 50 inches of rain and

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

they're dealing with flood issues. While on the Natural Resources Commission, I've had the opportunity to work on the Water Sustainability Fund, where we established the scoring criteria for applications that come in. And those scoring criteria, you've probably seen it or been aware of the criteria that we-- and that took a lot of time. We spent a lot of hours over the years trying to make sure that we had everything in place for good "criterias" for evaluating these projects. And the projects really run a wide range, for groundwater recharge, for flood control, for water quality-- for example, Hastings with the high nitrates-- some of the issues that municipalities face and then, of course, the Republican River Compact. So we deal with a lot of different issues on the Natural Resources Commission, primarily with the Water Sustainability Fund. And I've not only helped with the rules of that, but also I've served on the scoring committee in evaluating projects, so that's been, been a great experience. With that, I think you have my, my bio. We kind of have a rule at the Kearney City Council that if you take longer than the flag salute and the invocation, then you've spoke too long because we can read. So I'll, I'll turn it over to you, see if you have any questions for me.

MOSER: OK, questions from the committee? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chairman, and thank you, Mayor Clouse, for being here. You did a great job because you answered all the questions that I usually ask, so thank you. Kudos. In terms of just-- I guess the one overview is-- you made mention of it-- what's the, what does the, the Natural Resources Commission do?

STAN CLOUSE: The Natural Resources Commission?

J. CAVANAUGH: Right.

STAN CLOUSE: We look at the different funding classifications or, or dollars set aside for-- from the DNR and there's, there's about seven or eight different funds that they use. And primarily working with the NRDs when NRDs-- with their projects that we help fund that and a lot of work with the NRDs primarily.

J. CAVANAUGH: So basically kind of deciding-- handing out money is basically--

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

STAN CLOUSE: Handing out money, making sure that the projects meet what our criteria is, and that something just doesn't, doesn't slide in. It can be controversial at times, but generally we work through that. We want to make sure that we're stewards of the money that the Legislature has given us, primarily the Water Sustainability Fund, the \$6 million, that we manage that and we don't just spend it. There's-- if there's projects that don't qualify and we have extra money, we don't just hand it out. We make sure that it meets the criteria of whether it's recharge or water quality improvement or those types of things, so we, we take that pretty serious.

J. CAVANAUGH: And you're clearly proud of the process that the commission undergoes for its scoring and you talked about how you'd gone through kind of an iterative process for that. Whenever you kind of discover a flaw in your scoring process, do you guys revisit that and make corrections still going forward?

STAN CLOUSE: Absolutely. In fact, I, I just had a note from the DNR that our meeting is set up for a couple of weeks and one of the agenda item is there to look at a couple of rules and a couple sections. So we-- yeah, we're constantly looking at if something isn't right or it needs tweaked, then absolutely, we'll address that.

J. CAVANAUGH: And that's to make sure the process is fair?

STAN CLOUSE: Yes, absolutely.

J. CAVANAUGH: OK. One more question. Obviously, you're, you're very involved. You've got a lot-- how did you come to be on the Natural Resources Commission? Did you seek it out as an appointment? Did somebody ask you to apply?

STAN CLOUSE: The-- it was a gentleman that was over in Holdrege and he had been on there for a long time and then he had stepped off and they just asked me to apply. And with, with some-- like I said, some of the experience that I have, my real job is with the Nebraska Public Power District, NPPD, and so as such, I helped build the Gerald Gentleman Station and familiar with the, the water necessary for generation, Canaday Steam Plant to gen-- the hydros. So I've always had a vested interest in managing our water resources in the state from that background, from the background of growing up on the river and that,

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

and that-- systems and then obviously from the municipal with the city of Kearney, Wellfield being in the Platte River, making sure that, that is a viable, sustainable resource for our community.

J. CAVANAUGH: Thank you.

MOSER: Other questions? OK, go ahead, Senator Cavanaugh.

J. CAVANAUGH: I was going to give somebody else a chance to--

MOSER: We'll give you three tries.

J. CAVANAUGH: I apologize. I just-- one more question that I wanted to ask, but I was going to take a break. Being that you got this kind of other tie-- those other interests that potentially could be conflicts if they come up with these grants, what's the mechanism by which you would not be involved?

STAN CLOUSE: And I've had some that I've had to recuse myself from. And as I said, I've been wearing the mayor's hat and on city council for a long time, so you, you really become in tune of, OK, this is something that-- will it withstand the smell test? And so yeah, there are times when I've backed off and said you know what? I can't be a part of this. I have to abstain from that vote because there is a vested interest. And maybe not necessary for me because I'm not on the water side, I'm on the wire side now, but I understand and worked with those colleagues for a number of years. I've been 42 years with NPPD, so I know how that all operates. So when I see that, then, then I back off. And same way too, with some of the municipal issues. If it's another community and I'm, I'm really close to that community and it's something that if I have the ability to maybe influence something that's maybe not the right decision, I'll, I'll back off.

J. CAVANAUGH: Thank you.

MOSER: You fulfill a certain requirement on the board that one of the members be from a water producer, is that correct?

STAN CLOUSE: Well, municipal users and, and--

MOSER: Municipal user of water.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

STAN CLOUSE: Yeah, so we have-- I think we have a representative from MUD, from-- city if Lincoln, I think, has an appointment, and then mine is municipal users from cities of the first class and villages.

MOSER: OK, thank you. Senator Wayne has joined us. Thank you, Senator Wayne. OK, any other questions? Thank you.

STAN CLOUSE: OK, thank you.

MOSER: Anyone here to speak in support of Mayor Clouse being reappointed to the Natural Resources Commission? Anybody here to support this nomination? Anyone here to oppose this nomination? Anybody to oppose? Is there anyone in the neutral capacity? OK, that will close our hearing on the nomination of Mayor Clouse. You got to go?

J. CAVANAUGH: You guys ready to begin?

MOSER: And this will open the hearing on LB506 by Senator Cavanaugh. Senator Cavanaugh, would you give us a version of your bill and what it does?

J. CAVANAUGH: Good afternoon, Natural Resources Committee. Thank you, Vice Chairman Moser. My name is John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h. I represent the 9th District in midtown Omaha. I'm here today to introduce LB506, which is to raise the net metering cap for utilities from 1 percent to 3 percent of capacity. We know the least expensive kilowatt hour is the one you don't have to generate. We heard testimony earlier today that consumer-installed distributed generation decreases the peak production necessary for public utilities, as well as can push off by years the necessity for costly capital improvements. The Legislature adopted net metering in 2009 with a limit of 1 percent of the utility's capacity. At the time, the limit was set in response to concerns about reliability of the entire system. We now have a decade of examples showing that distributed generation in excess of 1 percent does not affect the reliability of the system. This bill seeks to take the next step and move that limit up to 3 percent. Under current law, local utilities-- a local utility is not required to provide net metering to additional customers after they reach the 1 percent capacity. Utilities can allow net metering over that amount, but the customer does not have the same

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

opportunities laid out in the statute and the utilities can in fact deny those projects after the 1 percent cap is reached. Under current net metering statute as well as this one as written, there's the ability of the utilities to charge for certain fixed costs incurred by the utility. The remaining fixed costs are incurred by the utility as a whole, but the value of net metering is not entirely economic. There are the savings that-- future capital expenditures that I mentioned, there are the savings in that peak energy production, and there are certainly economic benefits to the installers and the companies and the jobs created as well as to the individual, but there's the value-- increased value as a result of security to distributed generation. Others will testify today and add more detail about the effect of this cap is to the limited amount of customers on a system who use solar power. In researching this bill, I've learned the many inconsistencies in the way in which different local utilities measure the capacity standards in current law and there may be a need to provide uniform definition under statute. That is a conversation we need to have in the future, but the current 1 percent cap is insufficient to meet the demand of solar energy in many parts of the state. The 1 percent cap is set as a floor and many utilities treat it as a ceiling. Thank you for your time and I am happy to take any questions.

MOSER: OK, questions from committee members? I have one. Do you have an idea how close to 1 percent we are right now?

J. CAVANAUGH: Well, it's going to depend on the particular utility. Some, I think, are above it and some are well below it. I have-- I think one of the, the other presenters, folks, is going to give you a chart that shows basically the amount of capacity of net metering in certain-- each co-op or public power district, but it doesn't necessarily-- it's not going to give you the percentage.

MOSER: OK, thank you. Last chance. Yes, Senator Gragert.

GRAGERT: Thank you, Vice Chair. Senator Cavanaugh, thanks for testifying. Why-- from 1 percent, why are we going to 3 percent and why not 5 (percent)?

J. CAVANAUGH: Well, that's a great question, Senator Gragert. Well, I-- really I chose 3 percent as a modest step in the right direction. We have-- I mean this has been a program that has been around since

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

2009, I think he said. It's in-- and that's 11 years and it's growing quite exponentially. They-- I, I don't have the number handy here, but, you know, the, the in-- installed capacity is growing very quickly and so there-- I think there is an argument to go higher than 3 percent, but I'm I guess being cautious in terms of my proposal. I don't think-- I think the concern, as it pertains to reliability, would not be affected by going to 5 percent or higher, but just in terms of how I guess I approach issues like this, a step approach is how I, I took it.

GRAGERT: Thank you.

MOSER: OK, other questions? OK, seeing none, thank you. You going to stick around for the close, I assume?

J. CAVANAUGH: I will stick around as long as you want me here.

MOSER: Anyone else here to speak in support of Senator Cavanaugh's bill? Welcome.

EDISON McDONALD: Hello. My name is Edison McDonald. I'm representing GC ReVOLT, LLC, a local solar and alternative energy development company. Edison McDonald, E-d-i-s-o-n M-c-D-o-n-a-l-d. The primary purpose of GC ReVOLT is to work on moving forward alternative energy development at a more aggressive rate in the heartland by enabling more Nebraskans to be part of the zero-emission solution and to address the lack of new revenues in rural Nebraska. We are here today to testify in support of LB506 because it updates the net metering statute to allow clear policy for utilities exceeding 1 percent net-metered projects, which some utilities have already exceeded. As you'll see in the handout that I've given to you all, it does have both the 2010 and the 2020 net metering report by utility. So 2009, we passed the law that first allowed for a net-metered structure; 2010, we had 137,000 kilowatt hours online for net metering; 2017, LR455 did a deep dive into the issue of rate structure, reviewing the myriad of nonsensical limitations to our rate structure; 2018, we were at 4,087,000 kilowatt hours that were net metered, moving from 45 projects to 541 different projects. You'll see included in the numbers that I handed out, the 2020 numbers that I just was finally able to get from the energy office, we're now at 14,621,383 kilowatt hours. So as you can see, net metering is expanding explosively. A handful of

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

utilities have recently exceeded the 1 percent cap. We fear some rural utilities could use the 1 percent cap as a reason to restrict projects and we know some utilities are using the cap to lower the net metering credit payback potential. The initial intent of the 1 percent cap was to be a temporary cap and as our state gained more experience with net-metered systems, we would then adjust this cap upwards. Nebraska is past due for that adjustment. Therefore, GC ReVOLT supports updating state policy from the 1 percent to 3 percent or higher. GC ReVOLT would actually support up to 10 percent at this time, which we deemed safe and necessary for increasing more opportunities for alternative energy development. While GC ReVOLT has seen increased development over the last six years since we started our business, we're continuously frustrated with Nebraska's heavy-handed regulatory policy that restricts new business in Nebraska. As alternative, as alternative energy continues to grow across Nebraska and across the nation, we must together take action to clear up gray spot-- gray areas like this restrictive cap and we encourage your support of business partners like GC ReVOLT, who are working to increase safe private development. We also encourage you to honor and move towards net zero-carbon goals like what OPPD and LES have currently adopted that allow more distributed customer generators, including commercial businesses, to be part of the solution. We've seen in the past years, growing stagnant, especially in rural public utilities, around being part of economic development opportunities and alternatives. GC ReVOLT looks forward to having concrete conversations around ideas and solutions, rather than not doing anything, which has become the status quo. We continue to be open to conversations about how to best ensure that customer generators are not restricted by outdated state, state and utility policies while simultaneously protecting our proud public power tradition. Thank you for considering our concerns around this important issue and I'll open up to questions.

MOSER: OK, are there questions from the committee? Easy committee today.

EDISON McDONALD: I guess. Real quiet.

MOSER: Thank you very much.

EDISON McDONALD: Thank you.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

MOSER: Is there anyone else here to speak in support of LB506?
Welcome.

AL DAVIS: Good afternoon, Senator Moser. How are you this afternoon? Members of the committee, my name is Al Davis, A-l D-a-v-i-s. I am here testifying today as the registered lobbyist for the 3,000 members of the Nebraska Chapter of the Sierra Club to support LB506 brought by Senator John Cavanaugh. Senator-- LB506 will clarify language and establish uniformity when net metering is adopted by utility customers across Nebraska. The bill is a simple one, but will make a significant difference to customers across Nebraska who are eager to install solar generation on their rooftops or at their farms, but run into mandatory caps of 1 percent on total capacity of the public utility which services them. The price of solar energy continues to decline and more and more people are eager to adapt to the development-- developing technologies. At the same time, weatherization has resulted in total demand reaching a plateau across many parts of Nebraska, which further reduces the attractiveness of installing a solar plant when you can no longer recapture the costs associated with that plant through reduced fees from the public utility because the utility has exceeded the 1 percent limit on total net-metered capacity. The initial caps were set many years ago at a time when renewable energy was viewed with skepticism and distrust. We have seen tremendous achievements in the sector and solar energy is widely utilized in many of our cities, towns, and on farms. Now is the time to lift the artificial limits imposed by senators who were in your seats a decade ago and open the door to further renewable development across Nebraska. We urge you to advance this bill to the floor and appreciate your interest. I would like to just share a personal story with you, Senator Moser, because you asked the question. I, I have a ranch out in Hyannis, Nebraska, and I had looked into trying to do sort of a very extensive solar installation there, spending around \$250,000, which cash flows out using all the appropriate tools available. So my REA told me that I was-- they were so near the cap-- the three- the 1 percent cap that we would not be eligible for part of that. They had 100-- I think it was 164 is their total cap-- capacity and they're somewhere close to that now. So this is in the Panhandle, you know, in a very sparsely populated part of the state where there isn't a whole lot of solar, so I think this is an important development. I, I agree with Senator Gragert that there are other things that should be done. It should be

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

higher. This is a good first step, but I would agree with to 5 to 10 percent. And the other thing, if I were sitting on this committee today, I would look at trying to do something for aggregating so that people with multiple meters can aggregate their solar project; build one, but offset the cost to other facilities. I speak of that from my own selfish interest because that's one of the reasons I didn't go forward because my utility would not let me aggregate the bills and was wanting to require separate meters and separate billing for each one. So with that, I'll take any questions.

MOSER: OK, the committee have questions? I have one. You say they wouldn't let you aggregate meters. Do you have separate meters because some of your buildings are far enough apart that you can't supply power from one central point to all your buildings?

AL DAVIS: So we have a number of-- so it's a ranch and so we've got a number of camps that are around. I also-- the, the entire place is water via pipelines, so we have-- you know, wherever there was a line going across the ranch, we put a well down and then we would run our pipelines from that point. So with some of the small meters that are there, it, it wouldn't be cost effective to put a solar system in. You know, if these were all aggregated together, you could put a big enough solar system in to basically offset almost all of your costs. So I think it would be a win for the, for the utility and for, and for the ranchers and farmers who are out there. It's the coming thing and we need to be on top of it and prepared because I think it's coming a lot more quickly than anyone realizes.

MOSER: OK, thank you. One last chance.

AL DAVIS: Thank you.

MOSER: Thank you for coming to testify for us today. Anybody else to support LB506? Last call for supporters. Oh, here we come.

JOHN HANSEN: Mr. Vice Chairman, members of the Natural Resources Committee, good afternoon. My name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I'm the president of the Nebraska Farmers Union and I appear before you today as our organization's president and also our lobbyist. So the, the original bill that was passed in 2009 was the result of years of education and efforts and negotiation and

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

compromise in order for us to be able to finally get something on the books. And so we were the primary driver of that effort and so we were making the case with our organizational partners and also with public power saying that we needed to have clear, understandable rules of the road that were protecting public health and safety, but was also treating our owners of our public power system at least as friendly as private-sector companies and other states treat their customers and that there was a fair amount of demand and interest in this area and so everything that was in the original law that was passed was a hard-fought negotiation and compromise. But here's where we ended up as you, as you look at the-- several of the suggestions that are going to be made today. Here's the, the intent section up front, which is important, which I think we need to kind of remember that we're looking at this. And it says Section 1, the Legislature finds that it is in the public interest to encourage customer-owned renewable energy resources, (2) stimulate economic growth in the state, (3) encourage diversification of the energy resources used in the state, and (4) maintaining low-cost, reliable electric service. So that's the, the backdrop. That's kind of the challenge. And so how did we get to 1 percent? The argument was nobody is going to want to do this because it's stupid. That was the opposition. And I said well, we've got to come up with a number somewhere and so we landed on 1 percent knowing it was a baby step, but it was, in our view, a part of an ongoing process that should go forward. We'll start out with 1 percent and then as we get more experience with that, with an overabundance of caution at 1 percent to make sure that we're protecting the reliability of the system, we were assured that if we got to 1 percent and that became an issue, that two things would be the case. One is that REAs could use their discretionary authority to go ahead and waive the 1 percent, so that's why the language is as it is. And that-- two, that if that got to be an issue, we revisit the issue and we could raise it to a more appropriate level. So here we are. So I'm getting calls from folks that I represent in agriculture who are taking their plans for their solar facility for their, their farm, their shop, their grain bins, whatever it is, and saying that our REA is not willing to waive the 1 percent cap. So we have a lot more demand out there for folks doing small projects than we have the opportunity to be able to, to realize. And so the 1 percent cap-- and so what is the right, right number? If I were to just pick a number based on the years of experience that we've had with all of this, I

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

personally think 5 percent would be a more appropriate number, but 3 percent is, based on everything that we know right now with an abundance of caution, a very conservative number. But this is something that I think that is common sense, it's appropriate, and it certainly is in keeping with the original intent of the-- of this law and all of the efforts and all of the parties who are part of it. And so with that, I'll be glad to end my comments and answer any questions if I could.

MOSER: Senator Gragert.

GRAGERT: Thank you, Vice Chairman. Thank you, John, for your testimony. You mentioned the REAs-- that there were certain REAs out, out there that didn't want to waive the 1 percent. What-- do you have any, any reasons why they didn't want to do that?

JOHN HANSEN: All I-- Senator Gragert, thank you for the question. You know, it really varies, and in some cases, there's an explanation given for why they don't want to go over the 1 percent. In some cases, folks are just simply being told we don't have to, so we're not going to. And so it's kind of all over the map. You know, the calls I get are calls from-- who are folks that are saying, you know, is there anything that could be done about this 1 percent? And so if the REA says-- takes a hard no and says no, we're not going to be able to waive the 1 percent and go past that, then the only real remedy is to come back here and revisit what the-- what has amounted to be the, in a lot of cases, the hard cap.

GRAGERT: So and you haven't heard then that the reason that they wouldn't-- not-- and I haven't heard this either, but I'm building a scenario, I guess. The reason that they wouldn't is because the higher we go, the more it's going to cost other people to pay for their electricity that aren't in the net--

JOHN HANSEN: That's, that's one reason that I've heard and that, that's a longstanding claim of dispute, depending on who you talk to and what numbers you use and how you look at the whole system and who's out there in the line and where are they-- likely to have these projects and is that excess capacity, you know, helpful or hurtful at that particular part of the distribution system? Because the most likely person that's going to use that excess capacity once it goes

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

back on the line is their neighbor and so there's very little line lost that goes on there. It's a very efficient use of energy in the system, so there's lots of calculations and lots of ways to look at that. But generally, I would say a lot of folks are saying that, you know, distributed energy overall is fairly benign, if not a bit helpful. Some folks will make the case it's not helpful--

GRAGERT: Thank you.

JOHN HANSEN: --but it's an area of dispute--

MOSER: OK.

JOHN HANSEN: --like most things in life, I guess.

MOSER: All right, other questions from the committee? OK, thank you very much.

JOHN HANSEN: Thank you very much and I'd just like to take this opportunity to say hello to my old friend, Senator Aguilar, who-- we have not had the opportunity to meet yet this year, but we, we know each other from years gone by. Welcome back.

AGUILAR: Thank you.

MOSER: Senator Bostelman is back from presenting in another committee, so I'll yield the control of the committee back to the Chairman.

BOSTELMAN: Proponents, right?

MOSER: What?

BOSTELMAN: Proponents?

MOSER: Yeah, we're still on proponents.

BOSTELMAN: OK, next proponent for LB506, please step forward. Seeing none, would anyone like to testify in-- as an opponent, in opposition to LB506?

JON DOCKHORN: Thank you, Chairman and committee. My name is John Dockhorn, D-o-c-k-h-o-r-n. I'm the general manager of Burke County Public Power District and a licensed professional engineer in the

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

state of Nebraska. I'm here today on behalf of Burke County Public Power District, the Nebraska Rural Electric Association, and the Nebraska Power Association in opposition to LB506. LB506 removes local control, it unfairly shifts costs among customers, and it's not needed to expand renewable generation. At Burke County Public Power District, we already exceed the current state statute minimum of 1 percent net-metered renewable generation. However, we also have additional generation that is not net metered that would raise our total renewable generation interconnected to our system above the 3 percent. However, we still oppose LB506, as it places an undue financial burden on our customers that do not have interconnected generation. Net metering laws were first put in place to spur on the growth of renewable distributed generation. Since Nebraska's net metering law was adopted, the cost of renewable generation has dropped and the need for incentives has decreased. We believe that renewable distributed generation is good to have on our systems. However, we also believe that the amount of that generation should be left up to our local utilities. Each system is different and needs an ability to accommodate distributed generation and as, as such, the local board should be able to set their own standards that is best for their system. There's also a financial cost to utilities for providing net metering. In essence, net metering forces us to act like a battery for the generator and we're not allowed to collect for those services. This forces us to pass on those costs to other customers. From my experience, the customers that install renewable generation have the financial means to do so, so that means that we're passing on a cost associated with one customer to customers that may not have the financial means to support those costs. And lastly, this bill is not needed. The current statute mandates a minimum requirement of 1 percent. As I highlighted earlier, even though we no longer accept net metering installations, we're still receiving and approving additional generation interconnects. Once all of our approved applications are in service, we will exceed 3 percent renewable distributed generation on our system and we expect that to continue to grow yet this year even. Therefore, we have proved that renewable distributed generation will continue to be installed without increasing net metering and shifting costs to those that cannot afford these generators. LB506 removes local control, it unfairly shifts costs, and it's not necessary. Thank you, Senator Bostelman, for your time this afternoon. That's all I have unless there's any questions.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

BOSTELMAN: Thank you, Mr. Dockhorn. Are there questions from the committee members? Senator Moser.

MOSER: I just had a question about your comment here that you're still accepting interconnects, but you're not allowing them to net meter, is that correct?

JON DOCKHORN: That's correct.

MOSER: So even without net metering, it's still making sense for them to generate their own power for some of their uses?

JON DOCKHORN: Yes.

MOSER: And then you're still kind of the backstop in case they can't generate and they need power to pump water or--

JON DOCKHORN: Right.

MOSER: --run fans and dryers or whatever they need to do?

JON DOCKHORN: Yep. In those situations, we're acting as a standby service for them.

MOSER: And do you institute demand charges in cases where they require heavier lines than what you would normally have for a location?

JON DOCKHORN: All of our services have a demand charge component included.

MOSER: OK, thank you.

BOSTELMAN: Other questions? Senator Wayne.

WAYNE: What is your title at, at the-- what is your title?

JON DOCKHORN: I'm General Manager at Burke County Public Power.

WAYNE: What are you currently paying for wind energy or any renewables? We can go, we can go each renewable if you need to, but what are you currently paying?

JON DOCKHORN: As far as-- what do you mean what am I currently paying?

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

WAYNE: Well, do you pay anything? Are you paying for energy?

JON DOCKHORN: Yes.

WAYNE: What are you paying for your energy?

JON DOCKHORN: Yes, we pay them avoided cost of anything that they dump onto our system.

WAYNE: Generally on the market, not just for net metering, what are you paying?

JON DOCKHORN: We're paying our, our customers that are over generating our avoided cost of-- it, it varies, but in the neighborhood of 5 cents.

WAYNE: Five cents, you're paying them 5 cents? How much does it cost you to generate energy?

JON DOCKHORN: We don't generate. We purchase our energy.

WAYNE: So how much does it cost you to purchase energy? And let's break it down by carbon versus noncarbon versus wind versus solar.

JON DOCKHORN: It's all lumped in together and it's right at that 5 cents, the same cost.

WAYNE: Five cents, the same cost. And where are you buying that from?

JON DOCKHORN: We're buying it through Nebraska Electric Generation Transmission.

WAYNE: And you're paying 5 cents what, per--

JON DOCKHORN: --per kWh.

WAYNE: And you're paying the customer who is net metering the same amount?

JON DOCKHORN: Not net metering.

WAYNE: So what are you paying on the net metering side?

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

JON DOCKHORN: Essentially net metering, they are getting-- we're paying them retail costs, so we pay them basically the same cost that they pay us for that.

WAYNE: And what's that?

JON DOCKHORN: It averages around 11 cents.

WAYNE: So we're talking about a 6-cent differential, right?

JON DOCKHORN: Yes.

WAYNE: What is a standard practice that your utility uses to determine the percentage of net metering-- like, what's online? What, what, what do you-- how do you determine it?

JON DOCKHORN: We don't have any set minimums as far as-- minimums or maximums as far as how much we'll allow. We look at the system and make sure that our system is able to handle what-- where they want to install.

WAYNE: So can your system handle a 3 percent?

JON DOCKHORN: Yeah, we're at-- before the end of the year, we'll have 3 percent on our--

WAYNE: So the 3 percent doesn't affect you?

JON DOCKHORN: No, not for interconnected generation.

WAYNE: So you're testifying against this, so who is-- who does the 3 percent affect?

JON DOCKHORN: The-- I'm testifying against the net metering aspect of connecting this because that is shifting costs from those generators to our other customers.

WAYNE: And so we're talking about the 6 cents cost?

JON DOCKHORN: Yes.

WAYNE: So what does that 6 cent cost entail?

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

JON DOCKHORN: That's going to entail our services of, of getting the, the bills prepared and maintaining the system along with the infrastructure that is there to serve them. That's where the big chunk of that cost is, is to--

WAYNE: Now--

JON DOCKHORN: --install and maintain infrastructure, whether they use it or not.

WAYNE: Right, so whether they're net metering or not, you still got a 6 percent-- you got a 6 cent cost to repair bills anyway, right? Your regular customer still gets a bill, correct?

JON DOCKHORN: All of our customers will still get a bill.

WAYNE: So whether they're net metering or not, the 6 cents is a fixed cost no matter what?

JON DOCKHORN: No.

WAYNE: So break that down for me.

JON DOCKHORN: So the difference between that and that 6 cents is to maintain-- a big chunk of that is going to be to maintain our infrastructure.

WAYNE: So you charge your everyday customer the 11 cents or the 5 cents?

JON DOCKHORN: We charge them 11 cents per kWh.

WAYNE: To any customer? That's, that's-- exclude net metering because I'm trying to figure out this cost because I keep hearing about costs and I'm really trying to understand this. So if I don't have net metering, but Senator Aguilar does, what is the cost of that energy going to the house? Is it the 11 cents or is the 5 cents? What are you charging me versus Senator Aguilar? And I'm net metering, he's not.

JON DOCKHORN: You're net metering and he's not, so he is going to be picking up some of those additional facilities that are going to your place to serve you.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

WAYNE: That's not what I'm asking. I'm asking, I'm asking is mine 5 cents and his 11 cents or are we both 5 cents?

JON DOCKHORN: No, you're going to be-- you're both going to be 11 cents.

WAYNE: So I'm still paying that cost, whether I'm net metering or not, so it's a fixed cost. No matter what, everybody on this committee-- if I'm the only one net metering, we are-- we will all being charged 7 cents per cost-- per, per-- whatever, kilowatt or whatever we're charging. It's 11 cents, right?

JON DOCKHORN: No. There's different components involved in that rate structure. That 11 cents is an average of all the components to break it out into a kWh cost.

WAYNE: I understand what you're saying. This may be an unfair question, but you're the general manager, so you, you should be able to tell me. If I'm calling you and saying how much am I being charged per whatever, are you telling me 5 cents or 11 cents?

JON DOCKHORN: Five cent-- or 11 cents, but if you are generating back onto me, if you are net metered, we're paying you that 11 cents. If you are not net metered, we're paying you that 5 cents.

WAYNE: I'm confused. Why are you paying me if I'm not net metering?

JON DOCKHORN: Essentially, that's what we're doing, is buying the electricity from you when you generate onto our system and selling it back to you at that exact same cost when you're pulling it off.

WAYNE: I understand that, but I'm-- what I'm trying to figure out here-- I'm not net metering, I'm-- OK, Ag-- Senator Aguilar is not net metering, I am. When he, when he calls you, you're going to say you're paying 11 cents?

JON DOCKHORN: If you're pulling off my system, you're-- on average, yes.

WAYNE: I am net metering and I'm pulling off of your system. I'm getting-- I'm also being charged 11 cents?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 10, 2021
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

JON DOCKHORN: Yes, but you're also pushing--

WAYNE: I haven't got there yet.

JON DOCKHORN: --onto my system.

WAYNE: I haven't got there yet, so when I get there and now it's summer and it's hot and I'm pushing back to your system, you're crediting me 5 cents?

JON DOCKHORN: You're net metered, I'm crediting you that 11 cents.

WAYNE: The entire 11 cents?

JON DOCKHORN: If you're net metered.

WAYNE: Because that's not what you said. You said 5 cents.

JON DOCKHORN: If you're net metered, we're crediting you that full cost.

WAYNE: The full cost of 11 cents?

JON DOCKHORN: Yes.

WAYNE: So if there was a bill that would reduce that to your ave-- your actual cost to maintain lines-- so we're talking about a 6 cents differential. I'm still not clear. Based on previous testimony, energy is anywhere between 2 to 5 cents. What is the 6 cents? Is that a fixed cost or is that variable depending on anybody? Because all we're talking about a 6 cents, right? That's a-- that's what I see--

JON DOCKHORN: The, the energy component itself ranges in that 2 to 5 cents. However, we still have other services beyond just energy. We have to maintain facilities to serve you that energy.

WAYNE: Right, so let's talk about that for a second. So if I'm maintain-- so if I, if I have a house and I don't use any energy-- let's just say I like the windows open, I like cold, I don't use any lights, like-- but only thing I use is to cook, so I'm way down on the energy-use level. I'm still paying 11 cents, right?

JON DOCKHORN: Yes.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

WAYNE: On average, right? So regardless of how much energy I produce or use, I'm being charged 11 cents.

JON DOCKHORN: For anything you pull off the grid, essentially, yes.

WAYNE: I'm being charged 11 cents. So if it's 2 to 5 cents for energy cost, I'm still trying to figure out what the 6 cents is.

JON DOCKHORN: That's for facilities.

WAYNE: Regardless of whether I use them? So you're defraying that cost to me, whether I use it or not, which is the exact same argument you're using against net metering.

JON DOCKHORN: You are connected and using those facilities on an irregular basis.

WAYNE: So regardless of whether I use it, just like net metering, you are defraying the cost to everybody, correct?

JON DOCKHORN: That's what we're trying to avoid.

WAYNE: But you're doing that anyway today.

JON DOCKHORN: To some standpoint, yes.

WAYNE: OK, so now we got an agreement there. So LES and OPPD are approaching-- and NPPD approaching around 50 percent alternative energy. How do you, how do you satisfy or juxtapose that in your head when OPPD is doing RFPs and those kind of things for multi-million dollar wind and solar, but, but the industry is OK with that because you're also representing the industry, but are not OK with the farmer doing it. Explain the difference to me.

JON DOCKHORN: I am perfectly fine with anybody interconnecting generation onto my system. What I am not OK with is shifting those facility costs from them to somebody else.

WAYNE: So underneath the SPP regulations, you have to buy wind first, correct?

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

JON DOCKHORN: Why are we getting into SPP? That's outside of this bill.

WAYNE: I-- if you don't want to answer, just say you don't want to answer. I'm asking a question. But at the end of the day-- because you're talking about shifting costs and so if OPPD builds brand-- builds a brand new generation of wind in Norfolk that produces 100 megawatts, that is a new product going onto the system. That means that new energy is in the system and you're buying that. Is that not defraying the same cost to your people as if the farmer was and isn't doing so at 100 times the rate as the farmer?

JON DOCKHORN: No because we're buying that off the grid at that 5 cents.

WAYNE: So you do buy it off of SPP, so that's why they reg-- the question regarding SPP is right-- is, is, is relevant, right? So why is it OK for OPPD to shift your cost to your farmers, but the local farmer in the community is not OK to shift that same cost?

JON DOCKHORN: I'm not following that question, I apologize.

WAYNE: If we're putting a new wind farm, that OPPD is buying new energy-- we're adding new energy to the grid, which we all know the grid already has extra energy, but because it's wind, you have to buy it first. Would you agree with that part?

JON DOCKHORN: No, no.

WAYNE: OK, explain why.

JON DOCKHORN: Because the energy, the way that's put into the market, is based off of production costs. So if it is producing at a lower cost, then that's what's going to be generating and that's what's going to be purchased.

WAYNE: So what's that production cost for wind on average?

JON DOCKHORN: At-- that's outside of my realm of expertise.

WAYNE: So you don't know the cost of what your, what your company buys energy for?

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

JON DOCKHORN: I know what cost my company buys their energy for, but I don't know what other companies are generating that energy at.

WAYNE: So what do you buy, what do you buy wind for?

JON DOCKHORN: It's all lumped in at that-- approximately 5 cents.

WAYNE: So when you're saying you're-- what do you buy solar for?

JON DOCKHORN: It's all lumped in at that 5 cent average.

WAYNE: So you don't know if the farmer is selling it at a, at a, at a cheaper rate than 5 cents or do you know that? If I sell energy back to you am I selling at a 5 cent or 11 cent?

JON DOCKHORN: Are you net metered?

WAYNE: I'm net-- I'm net metered.

JON DOCKHORN: If you're net metered, your selling it back to me at 11.

WAYNE: If you buy it off the market, what are you buying it for-- that same solar power?

JON DOCKHORN: Five.

WAYNE: You're buying it at five. So if I'm selling it to you at five and you're buying it at five, how is it hurting everybody else cost wise when it's a wash?

JON DOCKHORN: If you're net metering it, you're selling it to me at 11 and I'm going and buying it off the grid in five.

WAYNE: So you never buy it at peak. So again, we're back to the 6 cents and I'm, and I'm just trying to figure out what the 6 cents is and I, and I haven't been able to get an answer.

JON DOCKHORN: It's, it's for facilities--

WAYNE: But--

JON DOCKHORN: --to maintain our facilities.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

WAYNE: But those facilities are being used regardless of whether I use it or not, right, as a farm?

JON DOCKHORN: They, they are being used regardless. However, they're not necessarily being paid for.

WAYNE: So--

JON DOCKHORN: If you're net metering, you are not necessarily paying for those facilities, even though you are connecting and expecting those facilities to be up in operation at all times.

WAYNE: My last two questions is so you don't have a problem with OPPD putting additional 100 megawatts into the system with wind?

JON DOCKHORN: I have nothing to do with OPPD, so--

WAYNE: But you have a problem with your local farmer putting 100 kilowatts in.

JON DOCKHORN: I have no problem with the local farmer interconnecting generation.

WAYNE: Last question is wouldn't net metering projects create a, a more resilient and stronger system throughout Nebraska?

JON DOCKHORN: Like I said, I think interconnected renewable generation is great and needed in our systems. I just don't think it needs to be net metered.

WAYNE: Thank you.

BOSTELMAN: Let me try to ask a question a different way than what Senator Wayne was asking and maybe I, maybe I, I've got a-- I'll ask the question this way and see, see, see if it works.

WAYNE: Chairman Bostelman, you know, this is not my bailiwick. I'm just trying to figure it out, so--

BOSTELMAN: I understand.

WAYNE: I appreciate it. I'm new to this committee.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

BOSTELMAN: I understand completely and as you're going through-- I think what you're trying to tell us is one, one-- if I net meter, I'm selling to you at X, X amount. But if I'm not at-- if I'm not net metering, if I'm just a customer, then I'm buying that. What you're doing is when I sell, you're losing the revenue, if you will. So it's, it's as if-- it's that time that you're losing that amount of, of revenue or that energy that's being produced and net metered onto the grid that you're buying. Now you don't have that same opportunity, if I wasn't net metering, to sell me that same energy, correct? Is that-- do you understand where I'm going with it? Does that-- is that what you're getting at?

JON DOCKHORN: Essentially, yes. If I completely lost the sale, that doesn't matter so much to me. I mean, we promote energy efficiency to reduce load all the time. However, what, what I have a problem with is essentially buying it from you at the same cost as I'm selling it to somebody else and I have no margins in there to maintain my system.

BOSTELMAN: Right, right. I mean, you're, you're, you're purchasing what you could sell at the same and so there is no, there is no-- you don't-- there's no gain for you. Like you said, there's no margins for you. So basically, when I sell when you're buying from someone else or, or for me, you know, it, it's, it's a wash for you, so you've lost that revenue coming in.

JON DOCKHORN: Well and it's actually a loss for me because those facilities that we are maintaining and installing, there's a cost because electricity is being transmitted across it--

BOSTELMAN: Right.

JON DOCKHORN: --that we, that we can't collect on because it's at that same buy versus sell without--

BOSTELMAN: Right. In, in a sense, I'm-- in a sense, I'm using that-- those facilities when I sell to you and so now you don't have any revenue generation because if you would-- if you-- if I was buying from you, you would, you would have that revenue gain, but you have that loss.

JON DOCKHORN: Correct.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

BOSTELMAN: Hope that makes sense.

JON DOCKHORN: Correct.

BOSTELMAN: And maybe we'll have a talk off-- afterwards and help with that. Senator Moser.

MOSER: Let me take a stab at it. So when you-- you don't generally buy power off the SPP system. You get it from somebody else who transmits it to you?

JON DOCKHORN: Correct.

MOSER: So the bottom rate, wholesale cost is 2 or 3 cents. Some group buys it off the big grid, transforms it down to some intermediate voltage, transmits it to his system, then he changes it to whatever voltage his customers need and he's got losses in the system. He has people that have to maintain it. He has money invested in all those towers and if the wind blows it over, they have to go fix it. So that's why he, he's paying 5 cents from some group you belong to, right?

JON DOCKHORN: Yes.

MOSER: OK and so they're, they're covering their costs by charging him 5 cents for what they're getting 2 cents for, so it's kind of like buying groceries from a distributor, is that it-- right from General Mills or somebody maybe. So he gets the electricity from his system, he marks it up from 5 cents to 11 cents, and when you net meter, he gives credit back at 11 cents. If they just have cogeneration, then they only get credit at his net cost, which is--

JON DOCKHORN: The 5 cents.

MOSER: --5 cents. So that's the difference. He wants to limit net metering because he has to give retail back. It would be kind of like buying an antenna, something on Amazon, and then taking them back to Wal-Mart and trying to get full retail. And even though Wal-Mart could turn around and sell it maybe, they didn't make any money on it so they don't like it. So I think that's maybe an explanation of where we're at.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

JON DOCKHORN: That sums it up pretty well, Senator Moser.

BOSTELMAN: Senator Groene.

GROENE: From the last bill, it's as simple as this, isn't it? You, you made it clear, but I don't think Senator Wayne or some of us caught it. There's a difference between net metering. When you net meter, you don't produce an excess, right? You-- I'm producing in the summertime an extra, extra amount of electricity and you're using it on the grid-- on, on your local grid. Winter time comes, he's not-- he's-- you're-- he's using all of your infrastructure to have electricity come in and heat his house at night, right?

JON DOCKHORN: Yes.

GROENE: And then at the end of the year, the amount he produced is, is looked at it-- at how much you use and you net meter back and you say you, you spent 100-- you got 100 kilowatts, you used 40 of your own, used 50 bars, and you had extra credit so now it sets off that 50. It's at-- but you're doing it at 11 cents. Meanwhile, when he was sending his excess to you, he was using your grid. When, when you-- when he needed your product, he was using your grid, but you're giving him 11 cents for 11 cents and he's not paying for any of that infrastructure. He's not paying your salary, he's not paying the lineman's salary when a transformer goes up, but now if you produce more than what he uses and you net excess, you're paying that guy 5 cents, just like you would your supplier, right?

JON DOCKHORN: Correct.

GROENE: That's what you're saying?

JON DOCKHORN: Correct.

GROENE: And you-- and Senator Wayne, excuse me, but he says well, that's-- infrastructure is already there. It has to be worked on, it has to be fixed, it has to be maintained--

JON DOCKHORN: Correct.

GROENE: --and that net metering guy isn't helping pay for any of that, is he?

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

JON DOCKHORN: Correct.

GROENE: But he's using it.

JON DOCKHORN: Yes, yep. There's an actual cost there that's associated with our system that is being utilized that we're not able to collect from. So like I said, I have no problem with generation being interconnected to our system if we can negotiate a rate that works for both parties.

GROENE: You're not-- you don't have a problem with net metering if, if we-- if you can buy all of their-- what they put into the system for 5 cents, just like you do your-- from your host statement, right?

JON DOCKHORN: Correct.

GROENE: And then at the end of year, you credit them back, same costs what your other cost would be. That would be a fair situation, wouldn't it?

JON DOCKHORN: Yeah, yep and we'd call that net billing on our end. And like I said, we're at the, at-- by the end of the year, we'll have more than 3 percent of renewable generation connected to our system, with some chunk of that-- most of that being--

GROENE: You're a--

JON DOCKHORN: --net billing.

GROENE: --co-op? Are you a public--

JON DOCKHORN: We're a public power district.

GROENE: What's that?

JON DOCKHORN: We're a public power district.

GROENE: So you don't give dividends or anything back. It's all invested back in the, in the infrastructure.

JON DOCKHORN: Correct.

GROENE: So you don't make a profit.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

JON DOCKHORN: No.

GROENE: That 6 cents is your cost of operation--

JON DOCKHORN: Yes.

GROENE: --to pay for that. Some net metering folks are helping pay for that. They're using-- but they're using all of the infrastructure.

JON DOCKHORN: Correct.

GROENE: All right, thank you.

BOSTELMAN: Senator Gragert.

GRAGERT: Thank you, Chairman Bostelman. Thanks for your testimony. So right now, it's 1 percent and you-- so you can exceed 1 percent if you elect to at the local level of net metering?

JON DOCKHORN: We have exceeded the 1 percent of renewable generation connected to our system.

GRAGERT: OK, so as you continue to increase that-- now you say you're going to be up to 3 percent. Is that even making the shift worse?

JON DOCKHORN: No because anything that they generate back onto our system, we're paying at our avoided cost, which is essentially the cost that we are paying our wholesale provider for that energy.

GRAGERT: 5 percent?

JON DOCKHORN: The 5 cents.

GRAGERT: Five cents. OK, thanks a lot.

BOSTELMAN: Senator Wayne.

WAYNE: So we have-- in energy, we have highways and we, we have interstates, highways, and, and streets. It's kind of how I look at the lines and keep it simpler in my head. So your generation is coming to your, your facilities in interstates or highways, whether the big, big towers, big lines, or medium size-- and I'm-- and I'll give you-- streets are--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 10, 2021
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

JON DOCKHORN: In--

WAYNE: --streets are from street to house is kind of how I'm looking at it, streets, correct?

JON DOCKHORN: In your scenario, we are operating the streets and we get our energy from the highways.

WAYNE: From the highways. Do you maintain the highways?

JON DOCKHORN: We maintain our system, which would be the streets.

WAYNE: So who, who pays for, who pays for the lines from your generation to where you get it?

JON DOCKHORN: That's the other entities involved.

WAYNE: And who are those? I'm, I'm-- who are those?

JON DOCKHORN: For us, it's going to be Nebraska Public Power District.

WAYNE: So NPPD pays for the interstates and the highways, so your 5 cents doesn't include a cost for them to maintain it or does it include? Are they--

JON DOCKHORN: The 5 cents that we're buying energy from them--

WAYNE: Yeah.

JON DOCKHORN: --would be the cost for them to generate and maintain.

WAYNE: So then it includes the maintaining of the lines. So as long as you-- in your scenario with the 5 and 6 cents, as long as we do net metering where you can take the 11 cents back in revenue, you're good with net metering.

JON DOCKHORN: It's not net metering, but yes, I'm OK with that.

WAYNE: So long as you can purchase back the-- for, for, for your actual costs--

JON DOCKHORN: If I--

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

WAYNE: --so--

JON DOCKHORN: --can purchase from them our-- for our avoided cost, yes.

WAYNE: No, not avoided cost, actual costs. You're not going to get avoided cost unless you go 33-- get 33 votes. Your avoided costs are different. Actual cost because there are a lot of avoided cost that you've already admitted to if the farmer doesn't use energy on an average basis. If they're, if they're below the average basis, you're-- you have avoided cost, so we can't move that together. We're talking about actual cost. So if we have in the bill, this bill right here, that the cost is not to exceed the actual cost, what it costs for you to maintain that line, then you're OK with the bill?

JON DOCKHORN: That's how our system is set up today.

WAYNE: So then why are you against the bill?

JON DOCKHORN: Because I'm not able to maintain my system.

WAYNE: Because we're not covering the actual costs, we're not covering the 6 cents. I'm saying if we put in the bill, like we do in Urban Affairs all the time, that the local jurisdiction can't oversee, cannot charge above the actual cost, then you'll break even.

JON DOCKHORN: As a public power district, that is how our costs are set up--

WAYNE: So then you--

JON DOCKHORN: --is on the actual cost of service.

WAYNE: So if the bill included actual cost language, you would be OK with the bill because we're covering your cost.

JON DOCKHORN: I am a little confused on your language for the actual cost versus avoided cost, but I-- if I understand you correctly, then yes, as long as we can get our avoided cost back out of it, I have no issue with it because that's what I'm doing today.

WAYNE: Well, you agree you have avoided cost already, correct, today?

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

JON DOCKHORN: Yes--

WAYNE: You have farmers who don't--

JON DOCKHORN: --but the, the, the cost-- my definition of the avoided cost in this scenario is what cost would I be avoiding by them generating, which is the cost of gen-- of electricity to me?

WAYNE: And you would agree that same cost is the cost if they didn't even take energy from your line. So if I don't use power, you still haven't avoided cost, correct?

JON DOCKHORN: Say that again.

WAYNE: OK, your avoided cost is the amount that I put back-- and I'm not paying for the line. I'm not paying to maintain the line. That avoided cost is the same if I use less energy per kilowatt. That avoided cost is the same.

JON DOCKHORN: No, my avoided cost is the cost of the energy that I'm buying it for.

WAYNE: No, your avoided cost is the 6, 6 cents. And if I don't use that energy--

JON DOCKHORN: Those are, those are fixed costs.

WAYNE: So that's your avoided cost. So I'm saying if we cover the avoided cost, then you're not losing anything.

JON DOCKHORN: If you cover my fixed costs, I'm not losing anything. If you cover my avoided costs--

WAYNE: But then you would agree you automatically have avoided costs right now. If I don't use energy, you have an avoided cost.

JON DOCKHORN: If you don't use any energy, then yes, there was a cost avoided for me.

WAYNE: So you have that now, so that's not changing under any bill that we have in this committee. You have avoided cost anyway, but if

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 10, 2021
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

we cover the cost of the actual cost to maintain the line, then there shouldn't be an objection to the bill.

JON DOCKHORN: If you cover the fixed cost of the line, there's no objection.

WAYNE: Thank you. I appreciate it,

BOSTELMAN: Senator Wayne, thank you. Senator Moser.

MOSER: Well, if he's going to give up there, maybe I will too. But I think the avoided cost is-- the cost you're avoiding is having to buy that electricity incrementally from your supplier.

JON DOCKHORN: Correct.

MOSER: You only buy the electricity you need.

JON DOCKHORN: Correct.

MOSER: And so if they generate more power than they need and put it back on his grid, he'll use the power. The fight is over what he pays for it.

JON DOCKHORN: Correct.

MOSER: If he has to pay net metering costs, he gives back full retail so he doesn't make the money he needs to keep his lines up in the air where they're supposed to be and your losses and vacation and benefits for all his employees. And they figure that, that they need a 6 cent spread on that. So if they're paying 5 cents and giving credit for 11 on a net-metered account, they're not making anything there. So they're not getting any money to put into their-- pay for their system.

JON DOCKHORN: If, if my fixed costs are covered, I don't care at that point, as it's not shifting costs to anybody else.

MOSER: I'd be careful about that.

GRAGERT: I got--

BOSTELMAN: Thank you, Senator Moser. Senator Gragert.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

GRAGERT: Quick question. Thank you, Chairman. This is kind of, this is kind of a different swing than we heard at the last testimony, you know, in the last bill, but let me-- I'm trying to clarify this for myself now because, you know, what we were told that if the energy coming in, you're charging 11 cents, OK, and that's for your 5 cents and your 6 cents to maintain the line, you got all that. But then when they don't use or they have extra energy to give back to you, you're, you're also paying them 11 cents instead of just the 5 cents.

JON DOCKHORN: That's what net metering does, yes.

GRAGERT: OK, well, that's, that's pretty good because now you're losing 6 cents.

JON DOCKHORN: Essentially, yes, and that cost is getting shifted to other customers.

GRAGERT: And that's what's--

JON DOCKHORN: And that's, that's where I'm--

GRAGERT: --that's what you had the problem with before-- you know, initially, so, so now you're saying well, this bill would be all right as long as I get my fixed cost, but it's still shifting, it's still shifting the cost to other customers, right?

JON DOCKHORN: No, not if I'm getting my fixed cost out of that.

GRAGERT: Then you get-- OK, OK, thank you.

MOSER: Where are we at?

BOSTELMAN: OK, thank you, Mr. Dockhorn, for your testimony--

JON DOCKHORN: Thank you.

BOSTELMAN: --appreciate it. Next opponent. Does-- anyone else like to testify in opposition to LB506? Please step forward.

JAMES DUKESHERER: Thank you, Chairman Bostelman, members of the Natural Resources Committee. My name is James Dukesherer, J-a-m-e-s D-u-k-e-s-h-e-r-e-r, and I'm testifying on behalf of the Nebraska

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

Rural Electric Association, so I, I might be able to provide just a little bit of clarity and I'll try not to, to be redundant about what's already been said. First off, I'd say, as we've discussed, in 2009, the Legislature passed our net metering laws. The NREA did support its passage. As was said earlier, it was a very hard-fought issue and we all did come together and pass the legislation. LB506 increases the cap in that current statute, which expands the subsidy that, that exists with net metering. I was there when we passed the law in 2009 and it was never intended to have a temporary cap in it. That cap was set, again, as, as part of a hard-fought process and there was-- it was never in-- intended to be temporary. At its most basic level-- I'll give you a scenario here. Net metering transfers the costs from one customer that owns the personal generator to those that are not. So you have this customer, has their own personal generator. They generate 1,000 kilowatts of electricity in a month. They use 1,000 kilowatts of electricity in the month. At the end of the month, even though they generated maybe at night when they weren't needing it and back and forth it went throughout the month, at the end of the month, their energy portion of their bill is zero dollars, OK? So they're, they're not fully-- and if the utility isn't fully covering their, their fixed costs within their fixed cost portion of their bill, then that portion-- those costs could transfer to other customers. The net metering customer, they use the, the, the grid as a battery backup. So just because they're generating at night and not using that electricity, that electricity goes on the grid at the speed of light, has to be used instantaneously. It doesn't get stored. We are hearing a lot about batteries, but, but that's not exactly how it works right now. So that, that energy has to be used and even though they didn't need it at that point, at the end of the month, it all gets, it all gets wrapped up into their bill and they get credited for it. The poles, the lines, and if there's an outage, the line will show up on a cold day like today and they'll repair their outage, but they're not fully covering those costs and those costs get transferred. One important thing that I have not heard come up yet in testimony is on the issue of federal law. I want to be clear on this. We have federal law, the Public Utilities Regulatory Policy Act, PURPA. This law requires that, requires that utilities interconnect up to 80 megawatts of generation, OK? This ensures that if anyone wants to self-generate, they're able to do so. The federal law requires us to interconnect up to 80 megawatts. Again, the issue is not that we

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

have to interconnect, it's that-- the self-generators, they want that net metering rate. They want to offset at retail, not pay at our avoided cost, OK? So with that, if there's any questions, I'd be, I'd be happy to take them.

BOSTELMAN: Thank you, Mr. Dukesherer. Is there any questions from committee? Seeing none, thank you for your testimony. Anyone else who like to testify in opposition to LB506? Seeing none, anyone like to testify in the neutral capacity on LB506? Seeing none, Senator Cavanaugh, you're welcome to close. I will say before he closes-- as you're coming up, we have position papers, proponents from the Nebraska Pork Producers Association, from Steve Larrick from Nebraska Renewable Energy Systems, from Sandy Black, from Nebraska Interfaith Power and Light. We have opposition for-- from Southern Public Power District, Nor-- Norris Public Power, Nebraska Public Power District, Nebraska Electric Generation and Transmission, KBR Rural Power District. We have written testimony from Mr. Seth Voyles of OPPD. With that, you're welcome to close.

J. CAVANAUGH: Thank you, Chairman Bostelman, and that was a, a wonderful discussion, very deep dive. I just want to point out for the record that some of the testifiers described me as too conservative in my approach, so I want everybody to take note of that. I think that the conversation here was great. And actually, Mr. Dunkshire [SIC]-- I'm sorry if I got that wrong-- his analogy there was helpful, I think the way he described it, and the, and the flow as it goes throughout the day. And the conversation we were having has to do about the price, as it's going back and forth is-- exactly what it's described as, net metering. So it is about a net situation and I would admit that there are costs associated with it, but I think the merit to this program is not so much the cost savings that are associated with it. There are those other associated benefits, which is-- I think that one of the testifiers addressed-- which is the resiliency to the, the network by creating distributed generation. I think the encouragement of the, the business incentives-- I think we had the gentleman this morning talk about the desire to place it on agricultural facilities, so I think that there are nonmonetary benefits. I would point out and I do think that's a fair conversation to have and Senator Wayne was trying to figure out exactly what cost we're talking about here and I think that's fair. But not-- I mean, it's not going to be revenue neutral necessarily, but it does have these other benefits and I think

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

that's the approach to take a look at and to see. And we've seen, as a result of this program that started ten years ago, a huge increase in interest in the development of an industry and a growth. And that's where we want to go and we want to continue to grow that. And I, I wasn't here 11 years ago and I think that there's two opinions about what the intent was at the time. My intent is to expand it. Whether that was the intent at the time was for me to show up and expand it now, I don't know if they pictured that I'd be here, but that's why we're here, to expand the program, and I think that if anybody has any questions, I'd be happy to take them.

BOSTELMAN: Thank you, Senator Cavanaugh. Are there any questions from committee members? Senator Groene.

GROENE: Thank you. So Senator, let's say your biggest plans are that down the road, nine out of ten people have their own solar panels, but none of them are prepared to take care of that stretch where it's minus zero and it's winter time and you got 14 hours of darkness and they're all net metering. Power lines are falling over. Transformers are burning out because they all still need it, but none of them are paying for it. What, what is the tip-over point where the last 10 percent are paying for all the infrastructure because the other 90 percent think they're saving the universe or the earth because it's green now? At what point does that-- is it 3 percent, 5, 10 at-- does the point reach where the, the infrastructure is not sustainable by the rest of them? Because that's what net metering does. You're expecting the rest of the people to pay for all the infrastructure that everybody uses.

J. CAVANAUGH: Well, Senator, Senator Groene, that's a, a good question. And what is that point? I mean, one, as I pointed out, that folks think that I'm too conservative in my approach here. This is a, a minor step in that direction of increasing the distribution of this program. The one thing that is-- was not necessarily captured here in the conversation is these individuals are not necessarily generating. And the example was 1,000 used and 1,000 generated. That's not how all of these programs are. A lot of these-- a lot of folks are generating some of their need and buying some, so they are still contributing to the market. There are other fees that we've talked about that are assessed in terms-- aside from the cost of the generation. There's also the cost captured that we didn't really drill down into, but

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

it's-- and I don't necessarily want to open up the numbers conversation again, but when solar is generated during the day, that's a peak generation period, which is a higher cost generation. So the numbers are going to be a little bit hazier than that one to one that we were talking about. But I do think if we're going to, if we're going to continue to grow the program, we're going to have to have that conversation about making sure that we're not shifting all of the cost of the infrastructure. I do think we need to make sure that we have-- we're taking care of that going into the future, especially if we're going to get to that point of 90 percent. I think we're probably a ways off from that wide of a, an adoption, but I hope you and I are still here when we're having that conversation.

GROENE: I'm term limited by more ways than one than you are.

BOSTELMAN: Seeing no other questions--

WAYNE: I have a question.

BOSTELMAN: Senator Wayne.

WAYNE: I genuinely have a question. Do you think if the private sector can do it more efficiently and effectively than government, we should allow that to happen? And I'm going to caveat that with except for critical infrastructures.

J. CAVANAUGH: So are you saying we should-- should we privatize anything that industry can do more efficiently?

WAYNE: I'm saying if the consumer can get it cheaper and better from the private industry, do you think we should go that way?

J. CAVANAUGH: Well--

WAYNE: And I'm giving you an out by saying except for critical infrastructures.

J. CAVANAUGH: I mean, I-- yeah, philosophically, I think that there are essential services that the government should provide. And I think we had-- there was a conversation in this room earlier today about where that went awry already once, where we tried to privatize essential service and we're ending up paying more money for it. So I

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

have real reservations about privatizing the things that we have done, that we do as a government. I'm a big fan of public power. I think it's one of the great things we have in Nebraska and I'd like to help preserve it, which is why I'm with Senator Groene about making sure that we are paying for our public power.

WAYNE: Thank you.

BOSTELMAN: OK, seeing no other questions. That will close our hearing on LB506. Thank you, Senator Cavanaugh.

J. CAVANAUGH: Thank you.

MOSER: Are we done for the day?

BOSTELMAN: Sorry?

MOSER: We done for the day or we got another?

_____ : We won't miss you.

BOSTELMAN: All right, we'll now open the hearing on LB573. Senator Bostar, you're welcome to open.

BOSTAR: Good afternoon, Chairman Bostelman, members of the Natural Resources Committee. I am Senator Eliot Bostar, that's E-l-i-o-t B-o-s-t-a-r, and I represent Legislative District 29. I'm here to present LB573, a bill to clarify state regulations governing net metering of qualified facilities and to harmonize statute language with LB76, introduced by Senator Williams and passed by this body in February of 2020. The premise of this legislation is quite simple. Currently, Nebraska state statute-- Nebraska statute states that utilities must offer customer generators the opportunity to offer a qualified facility at or below 25 kilowatts of nameplate, nameplate capacity. Unfortunately, the statute fails to clarify if it should be measured in alternating current or direct current. Solar resources, which are considered a qualified facility for net metering, generate direct current. That energy must then pass through an inverter to become alternating current, ready for our electrical grid. Energy loss occurs during inversion, making the distinction between measuring in direct current before that transition or alternating current after the energy inversion meaningful to our customer generators. This bill

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

simply clarifies that the rate capacity shall be 25 kilowatts, as measured in alternating current. This is how most public utilities already take the measurement and how other statutes specify it should be measured. The purpose here is to ensure consistent application across the state. An unfortunate outcome of this lack of clarity is that wind and other forms of generation end up being treated preferentially compared to solar resources. Wind generates alternating current and so never experiences the same energy loss during inversion that solar suffers before it enters the electrical grid. This legislation would level the playing field between customer generators, regardless of the type of energy generation. Last February, the Legislature passed LB76, introduced by Senator Matt Williams, that also clarified that alternating current should be used to measure nameplate capacity for renewable energy generation facilities. LB573 would harmonize our statute language with LB76 and create clear guidelines regarding capacity measurement in statute. This legislation makes a small but important change for any of our citizens who wish to participate in customer generation, harmonizes ratings of qualified facilities with that of electrical grid measurements, and would ensure consistent application across all utilities. So I just want to take a second to sort of tell you how we got here. And hopefully, I can have a page pass these out for me. So I was contacted by a gentleman that you will, you will hear from shortly who is a, a, a customer generator and he operates in the-- within the Norris Public Power District territory. And my understanding is that they, they rate the capacity requirement in direct current. Most of the, most of the utilities in the state, in my understanding, measure in alternating current and, and now this has, has created challenges for the individual, again, that you will hear from shortly. So one of the things that you just received in front of you is the customer generation agreement from Norris Public Power District. I looked through it and I couldn't see anywhere in there where they specify how the 25 kilowatts is to be measured. They say they measure in direct current and that's where the challenges for this individual have occurred. But again, within the documents, I don't see anything. So the idea of this bill is, is really straightforward. It's to establish one standard. It's not, it's not changing the, the limits or the caps or what's allowed or not allowed. It's just saying how we should all measure this one number. And I would encourage you to support LB573 and, and I would be happy to answer any questions you might have.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

BOSTELMAN: Thank you, Senator Bostar. Are there any questions? Senator Groene.

GROENE: Senator-- thank you, Chairman. I've never met you yet, but-- first time we've exchanged words, but anyway--

BOSTAR: Pleasure to meet you, Senator.

GROENE: Solar is direct current, you said?

BOSTAR: It's, it's generated within the panel as direct current, yes, sir.

GROENE: So the inversion-- the inverter is owned by the person who owns the solar panel, right?

BOSTAR: So-- yes.

GROENE: So I don't see a problem here. Before it is injected into the system, it is alternating current and that's what the public power district will measure. It doesn't even know what direct current was generated. It's gone through the inverter and it's into the line and measured as alternating, so I don't understand that-- where the problem is.

BOSTAR: Yeah, I, I think that's an excellent point and I, and I think what happens is-- and it can be clarified by anyone in the committee that would know and, and certainly can be clarified by an individual that's going to come and speak behind me, but I think that the rated nameplate capacity of the solar panels is what's used by the utility to evaluate whether or not the project is permissible within the guidelines of, of the net, the net metering generation agreement. So they'll just look at what the direct current capacity of the panels added up and so-- and that's where we have the, the problem.

GROENE: So that's where they reject the project or not--

BOSTAR: That's what I under--

GROENE: --even though it might not generate that much--

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

BOSTAR: That's-- and it won't generate that much and so that's my understanding, sir.

GROENE: All right.

BOSTELMAN: Other questions? Senator Moser.

MOSER: The nameplate capacity of the solar panel in DC, if you use that number, it limits the number of panels that you can use and you don't really get AC. The AC equivalent of that is going to be less because it has to be converted from DC to AC.

BOSTAR: Yes, sir.

MOSER: The DC goes into a variable frequency drive and they can control the frequency and, and the voltage and everything that comes out of it. And then they have to synchronize that to the power line so that they don't blow up, but otherwise they might not get as much. They might not be able to sell as much electricity from a solar panel because they're limited in the size based on nameplate, but they can't really produce that. It's like PTO horsepower. You didn't have that much horsepower when you got to the point-- the meter.

BOSTAR: That's my understanding, sir.

BOSTELMAN: Question for you. Did you say that a wind turbine produces AC?

BOSTAR: Yes, sir.

BOSTELMAN: Actually, they may sell the DC. It does get inverted. So wind turbines, they generate at a DC and then they do go through a number inverter to go-- so they-- so, so same, same thing, I guess you could say, the process they go through. They both go through an inverter because they're both generating DC. I think both do. Usually, I think the inverters, new inverters-- and, and I believe you're-- the gentlemen behind you will talk about it a little bit too, but generally, I think your inverters range about that 97 percent capacity-- you know, conversion, but over time, they will drop off, you know? That, that-- they're not as efficient over time, so I think that's what-- exactly what Senator Moser said. That's what you were getting at, so--

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

BOSTAR: Thank you, sir.

BOSTELMAN: Yep. All right, any other questions? Seeing none, thank you, Senator Bostar. Will you stay for closing?

BOSTAR: I will, absolutely.

BOSTELMAN: Thank you. I would ask whoever would like to come and testify as a proponent for LB573 to please step forward. Good afternoon, Mr. Best.

ROBERT BEST: Hello. Good afternoon. My name is Robert Best, R-o-b-e-r-t B-e-s-t. After I get done with this, I'd like-- also, I have some additional information for clarification on billing. In 2009, a net metering bill was passed to encourage customer-owned renewable energy resources. Within the bill, it states to qualify for net metering, your system has to be 25 kilowatts or less. In 2017, my wife and I made the investment on purchasing a solar system that outputs less than 25 kilowatt. To this day, our local power industry will not allow us to hook up all our solar panels, claiming we would be higher than 25 kilowatts to qualify for net metering because they use the sum of the DC voltage from the solar panels. A solar system has two major components, solar panels and an inverter. You need both components to tie the system to the power grid. Solar panels are DC, direct current, then it goes through the inverter and change to AC, alternating current, and then onto the power grid. You'll always have power loss through the conversion. If I was allowed to hook up all our solar panels, our total maximum output onto the power grid would be 22.8 kilowatt, well below 25 kilowatt max. Prior to our public power district's board meeting back in September of 2018, I met with our district's board member at our home about our issue. He agreed they should use alter-- or AC, alternating current. That's what's on the power grid. At the meeting, he said nothing, which I participated-- I went to a board meeting with Norris. All 13 board members agreed to follow the recommendation of the CEO. During last year's 2020 session, LB76 was passed for renewable energy generation facility name-- nameplate capacity shall be determined based on facilities' AC, alternating current, capacity. If we lived 1.5 miles north, we'd be in a different power district and would be allowed to hook up the remaining solar panels and retain net metering because we would still be below the 25 kilowatt max on the power grid. I'm asking to advance

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

LB573 and to eliminate double standards for net metering by rating 25 kilowatt alternating current. Since I am a customer that has a, a solar system and I do participate in the net metering-- and I can't answer for-- oh, I got to get a drink of water. I can't answer for all public power districts, but the one that I'm under, I can. My monthly bill-- and I-- sometimes, I do generate more than I consume and other months, I don't generate as much as I consume. And Norris told me this before I even invested in the system, that there would be a monthly fee and that was for maintaining and upkeep of the power grid. There's two bills on-- or two charges on my monthly bill; one is a \$28 charge and the other is a \$7 charge, which it's a total of \$35, and I was told that those expenses were for the upkeep of the power grid, you know, the cost for taking care of it, which I, I accept that, you know, and I don't believe that it-- you know, I, I should have to pay for it because I'm using their, their power grid. Another clarification with-- and I want to use an example. Say it-- one month if I use 10 kilowatt and my system generated 10 kilowatts, yes, for net metering, the, the first 10 kilowatt-- whatever I end up using, they buy it back at avoided cost-- or no, I got that wrong. They buy it back at retail, what I would normally have to pay or anybody else without our solar system. They-- I would end up selling it back to them at the same price as what I would be charged if I did not have a solar system. If I generated 12 kilowatt additional input onto the power grid, but I only use 10, the additional 2 kilowatt, they will end up buying it back at avoid cost, which is initially wholesale. But I, I'm still being charged \$35 a month for the upkeep of the system. Now that's what the power district that I'm under told me before I made the purchase. So I'm open for questions.

BOSTELMAN: Thank you, Mr. Best. Are there any questions? Senator Groene.

GROENE: Sat there patiently, somebody ought to ask you a question. Do you store your DC current in batteries?

ROBERT BEST: No.

GROENE: So you have no batteries yourself?

ROBERT BEST: No, it's-- as of right now-- and, you know, I testified earlier today and, and said-- told you what I paid for the system. In

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

my lifetime, I'm never going to recoup that. And buying batteries right now, they're still pretty pricey, so I don't see myself--

GROENE: So you're--

ROBERT BEST: --getting off the grid.

GROENE: --comes right off your solar panel and into the inverter--

ROBERT BEST: Yes.

GROENE: --converter and then it runs your-- and all your electricity on the farm. You have a farm?

ROBERT BEST: No, it's a home. It's-- I'm--

GROENE: Everything runs normal like AC?

ROBERT BEST: Pardon?

GROENE: Everything runs on AC like normal. Nothing runs on DC.

ROBERT BEST: Right, yeah.

GROENE: All right.

ROBERT BEST: Yeah, it's-- there's nothing-- you know, I don't know why Nor-- well, I know why Norris uses DC, because it's a smaller amount. Because if you really want to know the truth, they don't want net metering. They, they have told me and I've had emails-- and I can share you those. I'd have to go back in the years past. But they said that they're, they're more than welcome to have me hook up all of my panels, but I will not retain net metering. And if you don't retain net metering, anything that I put onto the power grid, they buy it at avoid cost, which is essentially the wholesale. So there's no advantage of anybody buying a solar system.

GROENE: But that would be foolish of them to pay you for DC when they're only getting 20 or 25 DC current when they're only getting usable 22.5. I mean, I can see their point there, but I can understand your point where they ought to pay up to 25. And if you want to put 27

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

kilowatts into the system, you max out, you pay 25 and get the extra 2. Why don't we do it that way?

ROBERT BEST: But they were not wanting to do that.

GROENE: Oh.

ROBERT BEST: They want, they want the smaller solar system possibly that-- if you're under a net metering,

GROENE: How old is your system?

ROBERT BEST: It's-- I put it in in 2017 and I don't have all the panels hooked up.

GROENE: Because you can't get paid for them?

ROBERT BEST: Under their law that they're-- you know, they-- and I got a string of emails going back and forth to the CEO stating will you allow me to put 25 kilowatts on the power grid and they said enter a retainer in and he replies back we're following the law. I said no you're not. The-- you're, you're determining that using DC, which you, as well as I do-- I have an electronic background, you know, so I know what I'm talking about. And when they end up saying that they're following the law because of-- they're using DC to--

GROENE: They're using the nameplate. Nameplate says 25.

ROBERT BEST: Of the solar panel, but that, that's not what's going on the power grid. And when I testified, one of the-- or when I went to the board meeting, one of the board members said that he had looked up the efficiency of inverters and he said they're almost to 100 percent. Well, that's absolutely incorrect. I know for a fact because I have it, you know?

GROENE: Thank you.

BOSTELMAN: Senator Wayne.

WAYNE: So on your billing-- and you heard earlier testimony as you waited here patiently and I appreciate that. Is there any additional

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

fees because you have net metering? You said \$35. What else is on there, if there is anything?

ROBERT BEST: It's-- I wrote it down. I-- it's-- I don't have the paper with me, but the, the two fees that I'm being charged-- and it doesn't make sense why-- and I'm pretty sure it says energy charge and that's what-- like I said, one's \$28 and one's \$7. I think the energy charge is \$28 and a surcharge of \$7.

WAYNE: So do you feel that \$35 is what's needed to maintain the grid? Is that-- was that the excuse they used?

ROBERT BEST: That's what they told me.

WAYNE: So then they can buy at 5 cents, if you heard the earlier testimony, because they're already charging you the additional 6 cents and a fee.

ROBERT BEST: Yeah, yeah.

WAYNE: Thank you.

ROBERT BEST: Well, you know-- and I understand that it's a company. They have to pay people's salaries and the, you know, maintenance and upkeep and, and power poles and whatever, but, you know, I, I, I think they are taking it to their advantage of how the laws are written.

WAYNE: I agree. Thank you.

BOSTELMAN: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman. Thank you for being here all day.

ROBERT BEST: Um-hum.

J. CAVANAUGH: When did you find out that you couldn't install all of the panels? Did they come out and tell you after you hooked it up or--

ROBERT BEST: No, I-- when I installed in 2017, it was actually a two-year process. I have three rows of solar panels and I live just south of Lincoln on 54th Street. I don't know if you-- any of you

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

folks drive by it, it's an earth-covered home. I went back to Norris because I wanted to take advantage of the federal tax credit and I knew that our energy, our energy needs were going to go up because we ended up-- we bought an electric car and down the road, we're probably going to get a second one. I love it. So I-- we went, went back to Norris to apply for adding additional panels to expand our system to three arrays and they said that by doing that, you're going to go over the 25 kilowatt max and I knew I wasn't. I knew-- you see why is I was still below the 25 kilowatt and the Norris said no, we use the DC value. And I knew that they were wrong and so I went ahead and made the purchase and added the third array, knowing that I would be able to get this changed. This is the third year I've been here testifying. I've-- I myself don't get in front of crowds and talk to people, but I am so set on trying to get this resolved because what they're doing is incorrect, you know? And, and other power districts are using alternating current, but Norris isn't and when I went and explained myself to the-- when Norris had a board meeting back in 2018, I called around all the other power districts surrounding the Norris' area and the majority of them were using alternating current, AC. There was one or two that were using DC and one said, well, it's kind of a gray matter because the bill doesn't state AC or DC. The, the actual net metering bill that was passed in 2009, it just says 25 kilowatts.

J. CAVANAUGH: OK, so this would clear that up?

ROBERT BEST: Yes.

J. CAVANAUGH: Thank you.

BOSTELMAN: Senator Groene.

GROENE: What is your bill? I mean, what was your bill prior? Your bill-- monthly bill had to be \$100, \$150 wasn't it, at least?

ROBERT BEST: Yeah, yeah, it's-- honestly, I don't remember, but it was over \$100, but I think, you know, with the very energy-efficient home that we have, obviously the winter is the most expensive. It never went to \$200.

GROENE: How long have you had the electric car?

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

ROBERT BEST: We bought it-- it's a 2019. We bought it in December of 2018.

GROENE: How much does it take you-- of your-- that you generate to keep that charge?

ROBERT BEST: Honestly, I don't know.

GROENE: You haven't, you haven't seen a difference, a big difference?

ROBERT BEST: No, it's-- well, and it's, it's-- you know, the, the output of the system fluctuates from year to year because of the weather and that, you know?

GROENE: So \$35 is not even close to-- if 6 cents out of 11, that's 55, 60-- 55 or so percent of the total bill, so \$35 isn't even close to the \$100--some, you pay as part of the, the fixed costs. I mean, if you were on-- if you were buying from Norris. So even at \$35, that's not even close to what your neighbor is paying as part of his bill for it, is it?

ROBERT BEST: Well, you know, I-- obviously, I haven't went and knocked on the neighbor's door to-- and looked at their electric bill, but they're telling me that it's the exact same charges as what a nongenerating customer gets charged.

GROENE: So that's on top of their regular 11 cents or 7 or 8 cents.

ROBERT BEST: Right.

GROENE: Yeah, what they're paying per--

ROBERT BEST: Right.

GROENE: --kilowatt. Just a curiosity question. How does an electric car work when it's minus zero and there's ten inches of snow on the ground?

ROBERT BEST: Well, my wife and I usually carpool and we take the, the vehicle with a gas engine. It's-- I know it cuts your, your mileage down considerably--

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

GROENE: It's cold.

ROBERT BEST: --because it's-- you know, and different brand of cars use different ways of heating in it. The, the vehicle we have I'm pretty sure has electric coils for heat. Another company uses kind of like a heat pump type setup--

GROENE: Just curious.

ROBERT BEST: --which is a lot more efficient.

GROENE: So it's wise to stay on the grid and it's wise to have a gas-burning car if you want to go.

ROBERT BEST: For right now, yeah.

GROENE: All right, thank you.

BOSTELMAN: Mr. Best, I have a question for you. And with your system, I'm sure you probably know on the inverter-- like we said before, your inverters are probably about 99 percent efficient when you, when you first install them, but then over time, they'll drop off on efficiency. Do you happen to know what that-- how-- what that rate would be over time?

ROBERT BEST: The company that sold, sold the system said per year is less than 1 percent. I've been keeping track, but I haven't really noticed a--

BOSTELMAN: That's fine.

ROBERT BEST: --a decrease.

BOSTELMAN: OK, thank you. Seeing no other questions, thank you, Mr. Best.

ROBERT BEST: Thank you

BOSTELMAN: Appreciate you for sticking around today.

ROBERT BEST: Thank you.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

BOSTELMAN: Anyone else proponent for LB573? I'd like to thank Senator Hughes for joining us after his bill introduction on another committee.

AL DAVIS: Good afternoon again. Al Davis, A-l D-a-v-i-s. So I'm just going to hand out the testimony that I wrote up, which is basically just-- it's a simple change that I think makes sense and makes it standard across the state. I think when you heard what Mr. Best had to say and how frustrating it would be to have a company just down the road using AC as the model and you're stuck using DC-- and the thing I think we need to think about these utilities is they seem to think that they are in a business where they make all the rules and you either accept that or not. That's just not the way it should be. It should be a partnership among both parties to do the best thing. So Mr. Best's situation is concerning. I can't imagine that it's going to disrupt Norris' situation or any other state-- any other utility in this state if they make this adjustment. It's the national standard and it absolutely makes perfect sense that Nebraska would go along with the national standard and we don't have different utilities trying to assess people in different ways and ding people in different ways when it's inappropriate, so thank you.

BOSTELMAN: Thank you, Mr. Davis. Are there any questions? Seeing none, thank you for your testimony. Next proponent.

JOHN HANSEN: Mr. Chairman, members of the committee, good afternoon. Again, for the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I'm the president of Nebraska Farmers Union. And as I said previously, I was very much a part of the efforts to get net metering established in our state. I, I remember the conversations. There was never any question at any point in the process about whether or not a local REA or a cooperative should be using either AC or DC. The assumption was AC. It was AC across the board, so that was the general understanding and that is the general practice. And so this particular issue is one that leaves somebody who is one of the state's longest-standing and most ardent supporters of public power scratching their head. There is no real, legitimate reason for Norris to take the tack that they have taken with this particular case that you've just heard about. I have, I have a very fat file of service work with this individual going back for years. I do have the email stream back and forth between the general manager and, and Nor-- one of Norris'

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

owners. I'm very disappointed that this bill is necessary. But doing the service work that I do, and since we have as much ownership as we do over this issue, it's logical for folks who have issues to call us and they do. And whether they're members or whether they're not, they call us. And I, I started out thinking that Mr. Best probably didn't quite understand what, what the issue was because it was so simple and straightforward. And the longer I dug, the worse it got, but-- so as someone who has made a good faith effort on behalf of my organization to work with this REA and say look, the law is pretty straightforward, it's pretty clear, I don't see how we get to, using DC, the amount that-- the kind of energy that hits the grid is AC. That's the clear understanding and there's no, there's no give there. So is this bill necessary? I'll tell you what I told you every time this bill has come up in previous iterations is unfortunately, yes. It absolutely is necessary and what we have is some REAs in the state who really don't like the net metering law that they signed off on. We, we, we all gave a lot of ground to get to the middle and we all agreed to it. And so we have some REAs in the state, unfortunately, that continue to fight a war that they already accepted a negotiated agreement on. And so that any time that they can do anything possible to make it more difficult for their own owners to benefit from programs like net metering, unfortunately they do. And that hurts me because as a former public official, you know, that's just no way to treat your public and it's no way to treat your owners. So I, I am amazed, I am amazed in, in all of the patience of Mr. Best, who is about as good faith and reasonable of a person as you could possibly hope to work with, but should he be able to hook up all of his panels? Yes. So I would also just, in a, in a, a matter of clarity, ask that you do go back and read the original language because the language relative to billing is pretty straightforward and the net between the total amount that a producer-- generator produces and the amount that is being paid for here, the net is not full retail. I mean, what, what the user himself uses should be credited at full retail because he produced his own electricity. They ought to be able to get credit for that and it is. But the net difference, if there's an excess, is that avoided cost and avoided cost is not wholesale. It's wholesale plus the fixed cost of the system together. That's avoided cost. So if I'm producing excess capacity, that's what I-- and I have a net gain that I'm putting back on the system, I'm not getting paid full, full retail. I'm getting

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 10, 2021
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

paid avoided cost. That's what the law says. So with that, I'd be glad to answer any questions if you have any.

BOSTELMAN: Thank you, Mr. Hansen. Any questions? Seeing none, thank you for your testimony.

JOHN HANSEN: Thank you very much.

BOSTELMAN: Next proponent for LB573.

WAYNE: I'm telling you. I'm confused.

SHELLEY SAHLING-ZART: Good afternoon, Senator Bostelman and members of the Natural Resources Committee. For the record, my name is Shelley Sahling-Zart, S-h-e-l-l-e-y, Sahling-Zart is S-a-h-l-i-n-g-Z-a-r-t, and I am here today on behalf of Lincoln Electric System, the League of Nebraska Municipalities, NMPP Energy, and the Nebraska Public Power District in support. Let me say that again, in support of LB573. I've been-- I'm vice president and general counsel of LES. I've been at LES for 32 and a half years. So like Mr. Hansen-- I'm not as old as Mr. Hansen, I don't think, but like Mr. Hansen, I've been involved in the negotiations for a lot of this legislation, including net metering and Lincoln Electric System had a net metering policy before there was a net metering statute, so we know quite a bit about this. And I am going to disagree a little bit with Mr. Hansen. I don't recall that this was contemplated and the reason I say that is because in our own net metering policy, we hadn't thought about it either and we didn't initially have it. And we found over time that we got some questions about it, so we actually revised our policy to clarify alternating current. I think the statutory clarification is necessary. Obviously, the statute isn't clear or we wouldn't be having the discussion, right? So I think the clarification would be helpful. I realize not all of us in the industry, as you're going to hear a little bit, agree on this point. Most of us have determined-- have done this on an alternating current basis for a couple of reasons. One, in order to be usable, it does have to go through the inverter and be inverted into an alternating current. Secondly, if we were connecting a customer-owned wind system or methane or something else, that would be on alternating current. So from our standpoint, it makes it more consistent. I would say that there are-- there's been a lot of discussion today. One thing I-- one point I'd really like to make is

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

that in terms of local control, local utility systems can agree to exceed the provisions of this statute. What we put in place when we did this was that was sort of the lowest common denominator in the things that we could all agree on with the idea that based on what your local community was willing to support, you could go further. Some of us have, others have not. And I understand that's frustrating and I understand we're going to continue to have discussions about that. The other thing I would tell you is that you've had a lot of discussions about SPP and with all due respect to Senator Wayne, I would set that aside and some day we can have a, have a discussion about that. They are different. It, it plays in in terms of determining that production cost and that avoided cost, but other than that, it's really a-- its own discussion. So with that, though, we think the clarification would be helpful. We would like to see it only be the clarification. As an industry, we're not in favor of expanding the program. We really would like those expansions to occur with the local utilities at the local level. With that, I would be happy to answer any questions, I think.

BOSTELMAN: Thank you--

WAYNE: I've waited for [INAUDIBLE].

BOSTELMAN: --for this historic moment.

SHELLEY SAHLING-ZART: I'll keep that in mind now.

BOSTELMAN: But I do have a question. So is Norris the only issue we have with-- out here?

SHELLEY SAHLING-ZART: I don't know that. I think you, you might hear about that later. I, I can't, I can't tell you for sure that it is.

BOSTELMAN: OK, thank you. Other questions? Senator Groene.

GROENE: Thank you. I heard the-- don't remember names, but the individual that has his own system and, and being aggrieved here, he said well, somebody told him that it's nine-- a convertor is 99 percent these days. Is there a standard conversion factor you use, that the industry uses?

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

SHELLEY SAHLING-ZART: Uh, no. We would have them-- on ours, they would put in an application for us and we would ask-- of course, ours is on an alternating current basis and for net metering, it is 25 kW. So if our application came in and they said it was going to be rated at 26 kW, we would reject it on a net metering basis. That was-- Mr. Benson [SIC] told you earlier--

GROENE: You--

SHELLEY SAHLING-ZART: Go ahead.

GROENE: You said earlier you can-- as a minimum. That's not a cap, 25.

SHELLEY SAHLING-ZART: No. Well, 25 is what's allowed on the statute. I'm talk-- on LES's policy, we allow net metering up to 25 kW and then as Mr. Benson [SIC] described earlier, we have a renewable generation rate from 25 kW to 100 kW. We'll roll purchase the output, but that's, but that's not an offset. That's not like in net metering.

GROENE: That person gets billed his 11 cents and he pays his bill.

SHELLEY SAHLING-ZART: Yes, but wouldn't buy all of the output.

GROENE: So he is not being able to go his full 25, but you want him to be able to do that for net metered?

SHELLEY SAHLING-ZART: Yes.

GROENE: I don't know how much you know about these things, but can you go buy a package of solar panels and say I want to do exactly 25 or you put up three rows and it might be 26.9 and then you throw them out--

SHELLEY SAHLING-ZART: I have no idea.

GROENE: --or do you have to take--

SHELLEY SAHLING-ZART: That's a great question. I have no idea. I honestly have no idea.

GROENE: If you want to panel out-- is this--

SHELLEY SAHLING-ZART: I honestly have no idea.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

GROENE: So you get a package of ten of them and it comes from, from Menards and then you get to sit there and say well, I'm going to I cut this one in half because this one puts me at 25.7.

SHELLEY SAHLING-ZART: If you were one of my customers, I would make it easier and tell you that you can buy a virtual panel from our solar farm and you won't have to worry about any of that.

GROENE: Like buying a brick in the memorial? All right, thank you.

BOSTELMAN: Senator Cavanaugh.

J. CAVANAUGH: Cutting them in half is probably a terrible idea. Thank you, Chairman Bostelman, and thank you for being here. And, and apparently I'm happy to be here for this historic moment. Just to clarify, you said--

SHELLEY SAHLING-ZART: Welcome to the committee.

J. CAVANAUGH: The limit is a minimum and, and you said it's LES's policy, but at least could-- you said you'd reject that application with 26. It would be within your power to accept--

SHELLEY SAHLING-ZART: Sure.

J. CAVANAUGH: OK.

SHELLEY SAHLING-ZART: Sure, we may reject it. I, I probably misspoke that. We may reject it, but we could also take a look at our policy and we could also waive that.

J. CAVANAUGH: So you would not be required to reject it under the statute. You would-- it's--

SHELLEY SAHLING-ZART: That would be correct.

J. CAVANAUGH: OK, thank you.

SHELLEY SAHLING-ZART: Yeah, I misspoke and now you're correct.

BOSTELMAN: The honorable Senator Justin Wayne.

SHELLEY SAHLING-ZART: Remember I'm here in support.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

WAYNE: Thank you, Chairman Bostelman. I have waited four years for this moment. I went through the River of Styx to get here through Judiciary. I'm finally on this committee, except for I can't find a list of questions on box.com, so-- no, I do appreciate you being here and I will not ask those questions, but-- primarily because Senator Hughes told me not to and I will need his, need his vote on a couple of bills, so--

SHELLEY SAHLING-ZART: Go ahead.

WAYNE: Thank you for being here. No, I have none today.

SHELLEY SAHLING-ZART: I do have a little-- we honestly have a little SPP workshop that I would love, but we tried to schedule it with Senator Hughes about a year ago and the holidays got in the way and then COVID happened. But it's a workshop I really believe, Senator Bostelman, would be really helpful on the SPP side to understanding how that energy market works and how we operate within SPP and I really hope we can get into an environment where we can do that. It is an interactive kind of thing and, and so we, we'd need everybody to show up and-- but it's fun and it's an engaging and I think it would be really, really helpful.

WAYNE: As much as you are triggering me to ask questions, I am, I am going to refrain in effence-- in essence of working with you on my bill.

SHELLEY SAHLING-ZART: Aw.

WAYNE: Thank you, Senator Bostelman.

BOSTELMAN: Thank you, Senator Wayne.

SHELLEY SAHLING-ZART: You have my phone number. Call me anytime.

BOSTELMAN: Any other questions from committee members? Seeing none, thank you for your testimony.

SHELLEY SAHLING-ZART: Thank you.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

BOSTELMAN: Appreciate it. Anyone else that would like to testify as a proponent for LB573? Seeing none, anyone like to testify in opposition to LB573? Good afternoon.

JERRY ENNS: Good afternoon. Chairman Bostelman and members of the Natural Resources Committee, I'm Jerry Enns, J-e-r-r-y E-n-n-s, and I'm the manager of engineering for the Norris Public Power District. I'm going to testify in opposition to LB573 on behalf of the rural-- of the-- excuse me, the Nebraska Rural Electric Association, the Norris Public Power District, and myself as a Norris Public Power District customer. The Norris Public Power District provides electric service to approximately 25,000 meters. Of the 25,000 meters served, we have approximately 100 net metering customers. One customer out of that 100 has claimed that using the DC rating of the solar array is unfair. The customer is metered by a single, bidirectional meter at his residence. This meter measures the kilowatt energy flowing into the customer's residence and measures the energy flow from the solar generation into the Norris electric system once the customer's load has been met, so he uses some, some of that energy on site there. We see the difference between what's generated and then what comes back through our meter. During the calendar year 2020, the district supplied this customer with the 11,000 kilowatt hours of energy and received, after the services load was satisfied, 32,822 kilowatt hours from this customer. This excess generation is nearly three times the kilowatt hours than what the district delivered. LB436, which passed in 2009, states this: it is intended to meet or offset the customer generation requirements for electricity. So we have a situation here where the customer has put on our system three times what we have put onto his. The solar industry rates solar panels in watts DC. Back in 2009, when LB436 was passed, really the only game in town was wind generation and wind generation, you know, that unit, as you bought that, was rated in AC watts. The solar panels that do the generation are rated in AC watts. A watt is a watt. We mentioned the, the Sunny Boy SMA is the typical inverter used in a solar array system. That's 90-- 98 percent efficient. So the district uses the DC rating to determine whether it [INAUDIBLE] qualifies for net metering by being within the 25 kW maximum limit. Allowing a solar array's DC capacity to exceed 25 kW and still fall within net metering limitations allows the opportunity to circumvent the spirit of LB436 by overproducing and further burdening the other ratepayers. The AC inverters using the

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

solar array do have losses. They're small and they tend to decrease as new, as new technology is introduced. The inverter's lifespan is typically shorter than the lifespan of a, of a connected solar array, so it will typically need to be replaced prior to the end of life of the array. The district has no way of knowing when an inverter is replaced with a larger inverter or an existing inverter is reconfigured to produce a larger output, which may result in AC generation being above the net metering limit of 25 kW. There's a graph of-- on the information, kind of a bell-shaped curve, and what the idea is here-- with the solar-- solar prices come down over the years and so we're seeing a trend where maybe solar panels are over purchased and then they'll put a, an AC inverter that keeps them under the 25 and what the idea is here is to pick up the extra kilowatt hours on each side of that bell-shaped curve. Now they, they do give up the peak. You'll see an area-- labeled area of energy loss to inverter clipping. They're willing to give that up for the gain on each side of that bell-shaped curve. The, the net kilowatt hours that are subsidized by the other district customers is increased on both sides of that power output graph at the expense of losing some kilowatt hours at the time of peak. The beneficiaries of this legislation are vendors and also the net metering customer to hope-- that hopes to expand the subsidy and ask the other 99.6 percent that the non net-metered customers contribute to. The district does not advertise this fact to our other customers. Additional residential solar arrays do not eliminate or lessen. The facilities must be owned, operated, and maintained by an electric utility due to the inter-- intermittency of solar generation. In conclusion, the Norris Public Power District is opposed because the solar industry typically rates solar arrays in watts DC. Inverters do not generate electricity and can be replaced or existing inverters can be reconfigured, which can result in AC generation, which is in excess of the 25 kW limit without the district being aware of that. Thank you for considering my opinion on this and I'll--

BOSTELMAN: Thanks for being here.

JERRY ENNS: --try to answer any questions.

BOSTELMAN: Questions? Senator Cavanaugh.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

J. CAVANAUGH: Thank you, Chairman Bostelman, and thank you, Mr. Enns, for being here. So-- and you heard-- I think you heard me ask the lady before you about whether the, the power district has the ability to waive the 25 kilowatt limit.

JERRY ENNS: Right, so if the district wanted to net meter past the 25 kW limit, we, we could do that. Right now, the district has if you want to exceed the 25 kW, we have a couple of different options. One is what they call a simultaneous buy-sell where that energy is sold into the SPP market at market price, so-- and then we also have a, a system where the customer can use all their energy that they generate themselves and then we buy it, at avoided cost, any excess, which is called a, a net-billing situation. So we have those options, like, if, if a customer wants to exceed the 25 kW, we would, we would point that customer in the direction of those two options.

J. CAVANAUGH: Would that be just whatever was the incremental difference over 25, or would that then negate--

JERRY ENNS: That would be-- the whole array then would either go to the simultaneous buy-sell or the net-billing scenario. They wouldn't be net metered at that point.

J. CAVANAUGH: And so if they went from 24.9 to 25.1, you would change the entire structure?

JERRY ENNS: Right, so they would have a choice to go to the simultaneous buy-sell or the net billing.

J. CAVANAUGH: And that's your choice to, to do that?

JERRY ENNS: That's, that's a choice by the district, right.

J. CAVANAUGH: OK, thank you.

BOSTELMAN: Senator Wayne.

WAYNE: What do you-- I asked the other person earlier. I don't know if you know this, but what do you, what do you buy energy at?

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

JERRY ENNS: Senator Wayne, I, I'm not involved in that side of the business. I'm in engineering. I'm the manager of engineering. I'm not involved in the billing or purchasing of the energy.

WAYNE: So from an engineering standpoint, you're against this or from a company standpoint?

JERRY ENNS: Well, I, I would, I would like to see-- instead of us talking about AC on a solar array, I'd like to see us rated in DC. I know the Omaha Public Power District rates it in, in DC and almost half of the rural public power districts in the state rate it on DC on the solar array.

WAYNE: So this would drastically change that?

JERRY ENNS: What?

WAYNE: Well, you said Omaha Public Power rates on--

JERRY ENNS: So Omaha Public Power rates solar arrays on DC wattage as well as we do.

WAYNE: As you do and that's the issue in this bill.

JERRY ENNS: I guess what I would like to see is, is this bill be advanced on the DC rating of the solar array rather than AC.

WAYNE: Interesting because Omaha Public Power has contacted me and I have a plant in there-- in my district and I'm often contacted about everything regarding Omaha Public Power. So I don't know if their silence speaks to it, but-- OK, thank you. I appreciate it.

JERRY ENNS: Sure.

BOSTELMAN: Senator Gragert.

GRAGERT: Thank you, Chairman Bostelman. Thank you for your testimony. Could you tell me why-- is that more advantage to the power company or more advantage to the customer to rate it DC versus AC?

JERRY ENNS: Well, the, the, the, the DC solar array is what generates the energy. So as I mentioned in my testimony, you know, you can vary,

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

you can vary the output of a inverter. You can buy a solar-- you could buy a, you could buy 50 kW of solar arrays. You could put a 50 kW inverter on that and then clip it down to 25. So if later that customer would-- you know, if, if they decide to raise that, they, they could bump that clipping area up to let's, let's say 40 kW if they wanted to. I would not be able to see that with my one meter there because I'm metering the difference between what's generated and what's used on site that comes back through me. So I, I may always see under 20 kW, but that customer may be generating 40 kW, over generating.

GRAGERT: So wouldn't it be ad-- more advantageous for your company if wind is, is generated or, or sold in AC that you know it couldn't convert solar to AC, to just keep it all on the same, same level?

JERRY ENNS: You know, the, the thing with the wind turbines is that is all one unit. That's, that's the nameplate rating that the manufacturer gets. With a solar array, the solar panels has a, has a rating, and that's what-- and so we're kind of doing the same thing, whether it's solar or the wind turbine, but the inverter is built into the wind turbine whereas in the solar array, it's not. The manufacturer gives a kW rating of their, of their array or each, each panel has a, has value.

GRAGERT: OK, thank you.

BOSTELMAN: So my question is it seems like your power district is the one that is the issue that we have available for us today. Is that correct?

JERRY ENNS: I think, I think the issue between one of the proponents and the Norris District is what brought this before you. Of the other, of the other 100 customers that we have in our net metering program, you know, we have maybe eight of them that are in the 24 to 25 range, but we've never heard from any of those in regard to this.

BOSTELMAN: So OPPD doesn't have any problem with the bill. I've got their letter.

JERRY ENNS: OK.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

BOSTELMAN: They don't, they don't have an issue with the bill, so I, I guess-- I'm kind of perplexed in the sense that we have a bill in front of us. And what was testified by-- earlier in a previous bill was the gentleman this morning with the, with the hog units said that he can-- they can adjust the net metering to whatever the public power district--

JERRY ENNS: Right.

BOSTELMAN: --wants them to do.

JERRY ENNS: Yeah, the--

BOSTELMAN: So then why can't anyone in your district do the same thing?

JERRY ENNS: They-- the, the board could go ahead and allow net metering past the 25 kW. That would be a board action.

BOSTELMAN: But they could do that, right?

JERRY ENNS: Yes, they could.

BOSTELMAN: But they chose not to?

JERRY ENNS: Right, they have stuck with LB436, which allows net metering up to 25 kW.

BOSTELMAN: Senator Moser.

MOSER: So you limit the number of panels based on their DC voltage and amperage or their wattage, if you figure that out, but you give them credit for what they generate in AC after the inverter, right?

JERRY ENNS: Yeah, so we, we sum up the panels because that's the manufacturer's kW rating.

MOSER: Yeah, but you don't give them-- you don't credit that to their bill. You actually measure the AC that they--

JERRY ENNS: We--

MOSER: --put into your system--

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

JERRY ENNS: Yeah, so--

MOSER: --and you give them credit for that.

JERRY ENNS: So, so our meter measures the kilowatt hours that are sold through the meter from, from our standpoint.

MOSER: At, at alternating current, though.

JERRY ENNS: To them, right, and then it measures the kilowatt hours that are sold back into our system.

MOSER: Right, right.

JERRY ENNS: Right.

MOSER: So you're, you're limiting them on their DC nameplate rating, but you're only giving them credit for what AC they actually generate?

JERRY ENNS: Well, you know, there is a difference between kW demand and kilowatt hours. You know, the, the solar panels are rated on kW, which is the capacity at which they can generate electricity hours. Kilowatt hours are energy units that are bought and sold, so, so there's a difference, you know, there.

MOSER: There's a difference between the nameplate of the solar panel and what?

JERRY ENNS: There, there's a difference between the kW demand or capacity that the solar panel is able to generate, but our, our meter doesn't measure kW demand. Our meter measures the kilowatt hours that flow through it both directions.

MOSER: Right.

JERRY ENNS: Right.

MOSER: Yeah, I agree with that. I mean, I understand that. I don't know if I agree with it, but I, I know what you're talking about.

BOSTELMAN: Yeah, so it's the inverter we're talking about.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 10, 2021
Rough Draft

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

JERRY ENNS: Yeah, so the inverter is not a part of the solar generation system. It's a separate unit, whereas a wind turbine, that's all built together. You don't have an option to put a 50 kW inverter there and clip it at 25 or-- you know, that, that, that option is not there. It's fixed.

BOSTELMAN: Senator Groene.

GROENE: Thank you, Senator Bostelman. So the example of the individual customer, you said they used 3,000 kilowatts but produced 11,000 or something like that?

JERRY ENNS: Oh, no, what-- so what flowed from the Norris system into this system that we're talking about here, Norris delivered 11,000 kilowatt hours through the meter to the customer. The customer delivered 32,822.

GROENE: 32,000.

JERRY ENNS: 32,000, so three times the difference.

GROENE: So you paid that customer the difference, that, what, 5 cents or something?

JERRY ENNS: Right, so anything in excess will get paid at 5, 5 cents.

GROENE: And he wasn't-- you didn't bill him, so really, you're-- who cares? I mean--

JERRY ENNS: Yeah, so it's a net, a net meter system-- net-metered system, so if we, if we put in 10,000 kilowatt hours and he puts 10,000 kilowatt hours onto us, you know, the only bill he sees is our customer service charge, which, you know, everybody would, would see in that [INAUDIBLE].

GROENE: At the end of the month or at the end of the week, you actually send your check?

JERRY ENNS: So we, we settle up at the end of the year. So each, each month we look at, you know, what's, what's flowed into his system from us and we've had to, to deduct what's flowed from his system onto ours

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

and we bill him for that net difference, OK, if, if, if, if we're in excess of what he used.

GROENE: So this customer, this example, this individual isn't trying to reach his max net metering so that he can get all his utilities. He's trying to increase his profit of selling you at more power.

JERRY ENNS: Right, right. He, he's, he's trying to raise money to pay off his solar system, right.

GROENE: So it's not trying to just reach zero--

JERRY ENNS: Right, he's--

GROENE: --on the balance sheet?

JERRY ENNS: --he's-- yeah, he's, he's generating past what the net metering bill was meant to do. That was an offset of what's--

GROENE: Looking at a business and he wants to sell you more, property.

JERRY ENNS: Right.

GROENE: All right, now on the wind energy tower, so they, they're rated at an AC--

JERRY ENNS: Yeah, yeah they're--

GROENE: --because it's built in.

JERRY ENNS: Yeah, they'll-- the wind systems--

GROENE: The systems--

JERRY ENNS: --the inverter is built into the unit. They have a nameplate rating of this--

GROENE: All right, so you're the first one to explain to me why--

JERRY ENNS: OK.

GROENE: --why a, a, a solar panel is, is, is a DC--

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

JERRY ENNS: Yeah, so the solar panels are--

GROENE: -- and why a windmill wouldn't be. All right.

JERRY ENNS: Right, a solar panel is given a kW value with each panel.

GROENE: All right. Why don't we just change the law that says I don't care what you produce, up to a max of 100, you can net meter 25-- 25, up to 25 and the rest of it, you-- we buy it from you at the-- our cost.

JERRY ENNS: Yeah, we have a, a-- the net-billing program, you know, does that, but they don't have any net on the net bill-- or on the, on the, the billing program, the net billing. So there's a net metering program, a net billing, and then a simultaneous buy-sell. Under the net billing, if a customer wanted to put in 100 kW of solar panels, OK, what we would do is we would pay him avoided cost on any, any, any-- all, all of the energy that comes back through our meter. He would be able to use all the energy on site for his own load and avoid retail purchase at his location, but then any excess that flows onto the grid would get paid at avoided cost.

GROENE: So Senator Wayne was, was honest about-- when he testified-- I didn't hear you, but this, this 25 is plenty for the average homeowner that wants to do it.

JERRY ENNS: Yeah, yeah, as you see here--

GROENE: If we go to 100, that-- we're talking about big-- pretty good-sized businesses.

JERRY ENNS: Right, as you see here, yeah, his generation, you know, minus his load was three times what we delivered.

GROENE: And but they-- we wanted-- all right, so if we go to 100 with net metering, you're, you're really going to get hit with--

JERRY ENNS: Right.

GROENE: --some costs--

JERRY ENNS: Right.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

GROENE: --that you're not going to recoup. All right, thank you.

BOSTELMAN: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Bostelman, and thank you, Mr. Enns. So I, I don't know if you have seen this that Senator Bostar handed out. It's kind of like a-- Norris Public Power Service Regulations Board approved December 10th, 2020, and it has these, you know-- I guess the monthly bill calculation and under one section, it says wind generation per kilowatt hour, summer, .0407. Does that ring any bells?

JERRY ENNS: Yeah, so what they're-- what, what you're speaking with here-- about there is the, the value of wind and solar is valued differently because we have what we call summer and winter rates. So summer rates are in effect from June, July, August, September. Winter rates are in effect for the other eight months of the year. And so, you know, solar generates, you know, more energy at certain times of year when maybe the energy is, you know, higher and then wind generates, you know, other times of the year. And so that energy is given a different value, the kilowatt hours that we are billed by. You know, our power supplier are different and so that's reflected in--

J. CAVANAUGH: So you-- this is what you are billed by your power supplier for that particular type of generation?

JERRY ENNS: So, so that avoided cost is what we avoid in purchasing from our power supplier.

J. CAVANAUGH: OK, so I guess my reading of the statute is that you're supposed to pay your avoided costs and not your avoided cost per that type of generation.

JERRY ENNS: Yes, our avoided cost changes because of the summer versus winter rates and so that's why that's--

J. CAVANAUGH: I see the two columns. I'm asking about the three categories. So you're paying a different rate for wind versus solar?

JERRY ENNS: There's, there's different values for the energy based on when that system generates, you know, most of its energy

J. CAVANAUGH: Different values based on when they generate.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

JERRY ENNS: Right.

J. CAVANAUGH: OK, so-- and just so-- for the record, I pulled up your, I guess, annual statement, and the average avoid cost is point-- is 5.66 cents per kilowatt hour. So I guess you guys are real sticklers for the statute here, but the statute says avoided cost. It doesn't say per type of energy generation at a particular time.

JERRY ENNS: I think, I think what it-- I think what you're looking at is, you know, our, our avoided cost varies in different times of the year.

J. CAVANAUGH: And-- yes, it avoid-- but when I flip the switch at my house, it-- I don't say I'm flipping the switch for solar or for wind or for bio gas, whatever this is-- baseload generation, right?

JERRY ENNS: Right.

J. CAVANAUGH: And so I, I guess this statute doesn't speak to-- doesn't say avoided cost per generation. And I guess my question is you're sticklers for one section of the statute, apparently, but not sticklers for another section and that affects how you're interacting with somebody.

JERRY ENNS: Yeah, I, I guess I can't help you more with that, you know, cost other than what I told you on that.

J. CAVANAUGH: Well, I guess my question is why are you so faithful to the statute when it's to your advantage, but not when it's to the customer's advantage?

JERRY ENNS: I don't know. I think we're following the, the, the letter of the law in LB436 by what we do with the 25 kW limit on net metering, you know?

J. CAVANAUGH: And my question is why are you not following the letter of the law as it pertains to avoided cost then?

JERRY ENNS: Well, I, I would think we are. I guess I, I can't answer, you know, any deeper than that. I, I would think that we're trying to, you know, show what our avoided costs are at different times of the year and different times of the day. You know, energy, energy varies

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

in the SPP, you know, based upon time of day and, and outside temperature and the whole, whole lot of factors that, you know, I can't answer for you. Those are average costs that are in that.

_____ : [INAUDIBLE]

J. CAVANAUGH: And yeah, I would concede that the cost changes by time of day and, and all of those things, but I guess this-- and the statute doesn't-- and my understanding is it just says-- I'm looking for it here, but-- the "avoided cost of electric supply over the billing period," so it doesn't say the hourly cost, doesn't say by type of generation. I, I guess we could go round and round on the same conversation, but that's, that was my question, why, why--

JERRY ENNS: OK, yeah, I, I don't know how those numbers are calculated. I don't, I don't do that.

J. CAVANAUGH: Thank you.

BOSTELMAN: Senator Groene.

GROENE: So maybe you answered my question that you can't answer it. Senator Bostar sent out-- it says the photovoltaic generation, that's the panel, right?

JERRY ENNS: That's the solar-- yeah, that would be solar.

GROENE: So if you're paying them that avoided cost, they're actually doing better than your average. You would, you would be shorting them if you did the average because you're paying in the summer five and a half cents.

JERRY ENNS: All right.

GROENE: If it was wind generated, it would-- you would only pay them 4 cents in baseload, which would probably mean your, your other means, whatever, 4 cents, so--

JERRY ENNS: Yeah, that would be ones that are, you know, fueled with--

GROENE: Yeah--

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

JERRY ENNS: -- you know, fossil fuel--

GROENE: --so you don't have any of those, right?

JERRY ENNS: Right, they're--

GROENE: They're all silver aren't they?

JERRY ENNS: Yeah, we don't have fossil generation typically. You know, we have to be, be, be prepared for it--

GROENE: I mean--

JERRY ENNS: --here, but we don't have any.

GROENE: The net metering, they're-- are they all solar or do you have a couple of wind?

JERRY ENNS: Oh, no. Back in 2009, almost everything was wind turbines.

GROENE: So those 100 customers you talked about, those were just the solar?

JERRY ENNS: No, those are, those are wind and solar. We have some that have solar and wind both.

GROENE: So the wind guy would get 4 cents, 4.07 cents. The electrical panel guy would get 5.57 cents.

JERRY ENNS: Yeah, depending on if it's a summer or winter month, right.

GROENE: Yeah.

JERRY ENNS: I, I don't know how those are calculated. That's, that's beyond the scope of what I do.

GROENE: Right, so the wind guy could come in and complain to you, why is the solar guy getting paid more than I am when, when the wholesale price is the same for both of us? I guess everybody could complain.

JERRY ENNS: Yeah.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

GROENE: All right, thank you.

JERRY ENNS: I think this is common in the industry. This is not a, not a Norris, you know, type thing, so--

BOSTELMAN: So I guess my-- the last question maybe we'll have here is you meter everything off of-- a net metering customer will say our person has it, so you meter everything--

JERRY ENNS: So--

BOSTELMAN: --during the day, during the month, you know exactly what they're putting out.

JERRY ENNS: No, we, we don't have a, a generation meter on the output of their array so--

BOSTELMAN: No, on the, on the inverter, on the--

JERRY ENNS: Yeah, we, we don't have a meter at their inverter, no. No so--

BOSTELMAN: So how do you know, so how do you know how to-- how do you know-- on the net metering side of it, how do you know then how much power came from that specific location?

JERRY ENNS: OK, well, their solar array system is tied into their, to-- in, into their residence, basically, OK?

BOSTELMAN: Right.

JERRY ENNS: There's a, there's a meter that we have where Norris stops their service and the customer takes service from, so that's the same meter that's, you know, at, at ever-- at everybody's-- every, every customer's place has that meter, OK? We don't have a what we call a generation meter that meters the output of his system. So what happens, that energy flows into his system, goes to his barns, his house, whatever loads he has and just what excess that he over generates comes back through our meter. So I have no idea how many kilowatt hours he's used in his facility. I have no idea, you know, what, what kW demand was generated by that solar array system. I, I don't.

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

BOSTELMAN: But you measure what is-- what comes that he doesn't use when it comes out of here?

JERRY ENNS: So yeah, so I-- what I measure is the excess generation that, that he generates after he uses-- after all his loads are satisfied.

BOSTELMAN: OK. All right, thank you. Seeing no other questions. That you, Mr. Enns--

JERRY ENNS: OK.

BOSTELMAN: --for being here today.

JERRY ENNS: OK. Thank you, senators.

BOSTELMAN: Anyone else like to testify in opposition to LB573? Seeing none, anyone like to testify in the neutral capacity? Please come forward.

EDISON McDONALD: Hello again. My name is Edison McDonald, E-d-i-s-o-n M-c-D-o-n-a-l-d. I'm appearing today on this bill in a neutral position. I just want to clear up a few things that I heard. We testified-- we're-- we weren't particularly interested in this bill because we don't really see any sort of issue. We develop across the state and typically they do allow for us to go ahead and develop on AC. So I think that the earlier testimony had indicated that that was not the case, so I think that needs to be cleared up and you should look into talking with a couple other utilities to clarify that. I also wanted to address Senator Groene's question about, you know, obviously you're not going to go and cut up a solar panel--

GROENE: It was a joke.

EDISON McDONALD: Yeah, no, no, no-- but typically how you're going to design these, you're going to go and you're going to look for what their total energy usage is and then you'll design based upon that because we don't want to overproduce and most of the time, you're at market rates. It doesn't make sense to go and significantly overproduce. So we're going to develop for what makes sense for you and for your, your family, your farm, your business. And really, you know, when we're talking 25 kilowatts, we're, we're not even getting

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

into a decent-sized farm here. We're really pretty much still stuck in small and maybe, depending upon your energy usage, starting to get into something that might be a little bit more midsize. It depends on what your, what your energy needs are. But yeah, I just wanted to real quick clarify that and I've been involved with different parts of solar projects, not the whole way through, but also were there any other questions that folks had in terms of how solar project was developed?

BOSTELMAN: OK, are there any questions from committee members? Seeing none, thank you for your testimony. Anyone else who would like to testify in the neutral capacity? Seeing none, Senator Bostar, you're welcome to close. As he comes up, I will-- we do have opposition letters: proponents from Center for Rural Affairs, from Nebraska Interfaith Power and Light, Nebraska Renewable Energy Systems. And I may have misspoke for the record, so we do have neutral testimony from OPPD on both LB506 and LB573. With that, Senator Bostar, you're welcome to close.

BOSTAR: Thank you, Chair Bostelman and members of the Natural Resources Committee and thank you to everyone who contribute, contributed to the discussion today. There were a couple of things that I wanted to just briefly talk about. I know that it's been a long, a long, a long afternoon on net metering, so I'll, I'll try to get through this. We heard that one of the reasons why it shouldn't be AC is because then you can get a large, a large generation project, a large inverter, and change it so that you're essentially-- you're, you're, you're tricking the system. You're going outside of, of what's permitted in statute. But in reality, AC or DC doesn't make this any easier or harder. That is exactly as easy as it is whether we measure a project in AC or in DC and that's, that's what a lot of this comes down to. This bill doesn't expand net metering. It doesn't have anything to do with-- you know, you may like renewable energy, you may not. You may like net metering, you may not. You may like SPP, you may not. All this does is say that we have one number and we should measure it in alternating current. You know, I, I looked at the OPPD net metering rider and, and I'll, I'll, I'll check with people on this, but there, it seems to indicate that it can be measured in either way. So it wasn't exactly clear, but I'm happy to come back to the committee, if, if that's helpful, with more clarification on what OPPD does since-- and perhaps it says it in their, in their neutral

Does not include written testimony submitted prior to the public hearing per our COVID-19 response protocol

letter. I'm not sure. You know, the other thing we heard is that this change-- what we heard-- we heard a couple of things. We heard that this change would have some kind of meaningful impact on the utility. We also heard that the inverters are so efficient that this is essentially not needed, that if the inverter is 99 percent efficient, we're talking about 1 percent. And, and I, I'm confused because it, it seems like, it seems like these things are, are, are opposed to each other. This is either a significant change or it's barely a change and it seems to me that the arguments being used in whichever way makes it easier for-- at the moment, from what I can tell, one utility to not let a customer just add his, his last remaining solar panel. So, you know, I would ask you to, to just remember that really what we're doing here is just adding alternating current to, to a single number. And, and the other thing I'll point out is I-- you know, just sitting over there, I looked up the-- I looked up Norris' annual report and their average cost per kilowatt hour of purchased electricity is \$0.0566, so 5.66 cents, and that number is higher than either of the solar figures. Summer, winter, doesn't matter. So what, what Norris is saying they pay-- they have to purchase electricity for is more money than they will give to a net metering customer. So, you know, we talk about good deal, bad deal. I would just encourage you to take that into consideration as well. That being said, I really want to thank all of you for your time and attention. I, I appreciate the opportunity to be here and, and to, to bring this issue forward and to try to solve this small but important issue and I would encourage you to advance LB573. Thank you.

BOSTELMAN: Thank you, Senator Bostar. Are there any questions from committee members? Seeing none, this will close the hearing on LB573. Thank you very much for being here today at--

BOSTAR: Thank you.

BOSTELMAN: --your Natural Resource--