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Urban Affairs Committee
February 12, 2008

[LB1072 LB1095 LB1102]

The Committee on Urban Affairs met at 1:30 p.m. on Tuesday, February 12, 2008, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1072, LB1095, and LB1102. Senator presents: Mike Friend, Chairperson; Amanda McGill, Vice Chairperson; Abbie Cornett; Ray Janssen; Steve Lathrop; Kent Rogert; and Tom White. Senators absent: None. []

SENATOR FRIEND: Good afternoon everyone. My name is Mike Friend and this is the Urban Affairs Committee. If you're looking for the Agriculture Committee, you are in the wrong room, thank goodness. That is...we switched rooms. They are downstairs in Room 1710. Again, my name is Mike Friend. I'm from northwest Omaha. I represent District 10 in the Legislature. And if I could introduce the senators. Senators come and go, don't be offended by that; they have bills in other committees, so if they're not here yet or they have to get up and leave, don't take offense to that. To my right, Senator Ray Janssen. Ray is from Nickerson; and the Vice Chair of the Committee, Senator Amanda McGill, she's from Lincoln. To my right is Bill Stadtwald, he is the legal counsel for the Urban Affairs Committee. And to my left is Beth Dinneen, and Beth is the committee clerk for the Urban Affairs Committee. To my left is Senator Kent Rogert, Kent is from Tekamah. And I will introduce the other senators as they appear. The page today is Molly Keenan; Molly is a marketing student at the University of Nebraska at Lincoln. And I would ask right out of the gate, if we could, if you could silence or turn off the pagers or cell phones, we would appreciate that. Everything in the hearing room is transcribed and it gets a little bit muffled if we have cell phones going off. Those wishing to testify on a bill...we'll take them in order: LB1072, LB1095, and LB1102. Those wishing to testify on any of those bills, please make your way to the front of the room, prepare yourself, I guess, to be heard. As someone finishes testifying, the next person should kind of move in. We'll keep an on-deck circle, if you will, up in front if we can. If you want your name...if you want to...if you do not wish to testify, but you'd like your name entered into the official record, we can do that. There's a form by each...there's a form by the one door, we have two doors in the other hearing room, you can sign those and it will become part of the official record. We are, like I said, we are transcribing everything. It's very important to complete a green sign-in sheet. They're right there by the testifying table. And that would be prior to testifying, if you could do so. If you are testifying on more than one bill, you'll have to fill out more than one green sheet. Testifying for three bills, fill out three of those, if you will. And please print so we can transfer that appropriately. I would say that if our transcribers have questions about the testimony they're going to use that green sheet to fall back on. If you...when you begin your testimony, and this is important because I'll stop you, not to be rude, but I will stop you. Please state and spell your name for the record and even if it's an easy one. Please keep your testimony concise. We don't have red lights or anything like that, but there are a lot of folks wishing to testify either on all the bills or just one in particular. And what I would ask is that I have a rule of thumb, approximately five minutes.

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Anything over five minutes I tend to think, and I think the committee can vouch for this, and you probably all could too, a lot of that is going to be repeated and information that we just probably in the long run would end up not using. So I'll put a finger up or just kind of wink at you or something like that and let you know it's about time. If you have handout material, you can alert Molly and she will hand that out to the committee. If you don't, like I said, if you don't choose to testify you don't want to be entered in the official record, if you fill out a green sheet, you can submit some testimony in writing, if you want, and we'll have that inserted into the record. And no...obviously no displays of support or opposition, no chaos, if you will, in the room. We would appreciate that. The committee has been joined by Senator Lathrop. Senator Lathrop is from Omaha. And with that, I have the first bill and it is LB1072. Senator McGill, the Chair is yours. []

SENATOR MCGILL: We'll now open the hearing on LB1072. Senator Friend, to open. []

SENATOR FRIEND: Thank you, Senator McGill and members of the Urban Affairs Committee. My name is Mike Friend. It's F-r-i-e-n-d, for the record, and I am from District 10, northwest Omaha. The provisions of this bill reflect concerns and solutions proposed by formal action of the Public Service Commission and are introduced at their request. Prior to the enactment of the State Natural Gas Regulation Act, which was LB790 in 2003, natural gas regulation was a local function. Ultimate rates were set by municipalities through a process which involved the creation of rate area coalitions of municipalities that conducted the investigation. At the request of some municipalities, LB790 included a provision, found in Section 66-1838, which provided a mechanism for municipalities to continue to exercise some rate setting authority on a negotiated basis with the agreement of the affected natural gas utility and the cities, representing more than 50 percent of the ratepayers in the area. At the initial filing of the utility requesting a general rate review, the cities in the area have 60 days to file evidence of their intent to negotiate new rates. Under current law, if the filing is not certified for negotiations, the Public Service Commission has 210 days from the date of the initial filing to determine the new rates. The proposed amendment, page 7, lines 4 to 10, would provide that the 210-day period would begin to run, not from the initial filing, but from the end of the 60-day certification period, or the date that the commission receives notice or has accumulated documentary evidence of the rejection of negotiation from cities representing over 50 percent of the ratepayers, whichever is earlier. This change would help ensure that the commission and the public advocate had sufficient time to pursue proper investigations of rates if negotiations will not be proceeding, and would also minimize the impact of interim rates. The second issue in this bill, Section 2 of the bill, amends Section 75-130.01 dealing with the Public Service Commission. The amendment would provide that the general PSC rule prohibiting ex parte communications between the commission and its staff and employees with parties to a contested case before the commission would also apply to communications by a party in contested cases under the State Natural Gas Regulation Act, including general rate filing cases. That's what this bill is about. And I'd be happy to answer any questions that

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I could possibly answer at this moment. Thank you. [LB1072]

SENATOR MCGILL: Any questions from the committee? Seeing none, thank you, Senator Friend. We've been joined by Senator Cornett from Bellevue, and Senator White just walked in, he's from Omaha. We'll take proponents now. Can I see a show of hands of how many proponents are here to testify? All right. Thank you. [LB1072]

ANNE BOYLE: (Exhibit 1) Good afternoon, senators. Mr. Chairman or Ms...Madam Chair and members of the committee, my name is Anne Boyle. Anne A-n-n-e, Boyle B-o-y-l-e, and I am chair of the Nebraska Public Service Commission. Senator Friend, the commission appreciates and thanks you, as Chair of the commission, for introducing, chair of the committee, the bill on our behalf. LB1072 is an effort to clean up rate case procedures. Since the State Natural Gas Regulation Act took effect in 2003, there have been four cases filed at the commission--two settled, one was heard by the commission, and one was negotiated by the affected municipalities. Based on our experience with these cases, the commission has two recommendations for procedural changes to the act. First, the bill clarifies that the ex parte rule prohibits communications from parties in rate proceedings under the Natural Gas Regulation Act. Communications pertaining to rate making are not improper ex parte communications under the Administrative Procedure Act. However, because the law establishes the presence of a public advocate, rate proceedings under the act are adversarial and judicial in nature rather than legislative. The bill holds lawyers and litigants to standards that make the rate case process fair, open, and impartial. In all natural gas rate cases at the commission, parties have informally agreed to honor the ex parte prohibition. So this change would make the law consistent with the practice. This change would not extend to the public who would still have the right to contact their commissioners to express opinions about a rate proposal. The second is the extension of time. The second in the bill that effects the length of time to consider rate cases under certain circumstances. As Senator Friend mentioned, a judicial...a jurisdictional utility may choose between two avenues pursuing a rate case. They may file with the commission and the case may be litigated with a public advocate, or they may negotiate it themselves. This bill only affects municipally negotiated cases. In a rate case involving the public advocate the commission has 210 days to consider the case. Under the municipal option, cities have 60 days to consider whether to negotiate and, if they decline, the commission assumes the case with as few as 150 days left on the clock. This leaves insufficient time for the public advocate to review the application and prepare its case so that the commission may hear balanced arguments upon which to render its decision. This bill allows a full 210 days in this event. We understand that NorthWestern, the only gas utility that has used the municipal negotiation option has an amendment that would give the commission 180 days to handle a case if the cities decline. In an effort to get the bill passed we're willing to accept the amendment and believe we could get the job done in the time allotted. And I would like to underscore, in accepting this amendment, 180 days is all we can live with. We asked for 210 days in the beginning. They came back, they

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did not even want to do that, so if I don't want it to be misunderstood at all we would not want to do anything less than 180 days. So we originally asked for 210, if you are inclined to give 180 we will work with that, but we would...we would be challenged, and I think the public advocate and the consumers would be unfairly treated if we had less time than that to take a case under those circumstances. And with that, that concludes my testimony. If you have questions, I'll be happy to answer them. [LB1072]

SENATOR MCGILL: Thank you. Are there any questions from the committee? [LB1072]

ANNE BOYLE: Thank you. [LB1072]

SENATOR MCGILL: Thank you. Any other proponents? [LB1072]

ROGER COX: Good afternoon. Madam Chair, members of the committee, my name is Roger Cox. I'm a private lawyer in private practice here in Lincoln. But since 2003, when the State Natural Gas Regulation Act was passed, I have served by appointment of the Public Service Commission as the public advocate provided for in what we used to call LB790, which became the state act. And my charge is to represent the citizens and ratepayers, the jurisdictional ratepayers here in the state of Nebraska. I believe that Senator Friend and commissioner Boyle have done an excellent job of pointing out the reasons why the changes set forth in this bill are necessary. I certainly have no objection to that in Section 2, but I'm here today to speak primarily as to Section 1. With regard to Section 1, my office and I are the ones that if a case was certified for negotiations with cities, as was the case with the recent NorthWestern Energy case, and if it did not settle, that case would essentially come to me to be started at whatever point those negotiations were not successful. There are, as you know, some time deadlines under the act if a case does not go through negotiations, that's the 210 days that commissioner Boyle was talking about. Certainly, my preference would be if you go with a time limit on this that you do stick with the 210 days. The 180 days, if I had to live with it I could. It's a poor compromise, but it's better than the current situation where the clock would start running from the day of filing. I would make one further comment. In the event a case is not settled after the negotiations, I think it's important for the members of the committee and the full Legislature to understand the public advocate is screened from whatever the discussions and negotiations are in that negotiation process. So unlike a rate case that goes the regular route through the commission, where I and my office are involved throughout the process, we don't have the advantage of all those communications, so we would not be hitting the ground running. We'd be starting from a dead stop when it was finally determined those negotiations did not go forward. So I would speak in favor of Section 1 of the bill. And if you have any questions, I'd be more than happy to respond. [LB1072]

SENATOR MCGILL: Any questions for Mr. Cox? Seeing none, thank you. [LB1072]

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ROGER COX: Thank you. [LB1072]

SENATOR MCGILL: Any other proponents? Any opponents to the bill? Anyone here to speak neutral? [LB1072]

ANDY POLLOCK: (Exhibit 2) Madam Chair, members of the committee, my name is Andy Pollock, that's A-n-d-y P-o-l-l-o-c-k. I'm here on behalf of NorthWestern Energy as their registered lobbyist. While NorthWestern Energy opposes the green copy of the bill, we have worked out a compromise agreement with the commission. And we thank them for working with us on that compromise. The amendment is being circulated as I speak. As has been explained to you, the law right now allows utilities to offer to negotiate with the cities that they serve. NorthWestern, as has been pointed out, has been the only utility that has availed itself of that option. And just to briefly tell you what happened last year, we filed an application, we offered to negotiate. The cities accepted that offer. We negotiated, we reached a settlement agreement, and that settlement agreement was tendered to and approved by the Public Service Commission. The current law provides that if the cities would have declined, it would have been a contested case with the public advocate, Mr. Cox, on the opposite side. As Chair Boyle said, the Public Service Commission would then have 210 days to decide the case after the application is filed if settlement negotiations were not undertaken by the cities, if they didn't accept our offer to negotiate. I would point out one additional thing that the commission does have within its discretion the option to extend that 210 days by another 60 days, by another 6 months, which leaves them 270 days from the filing of the application to make a final decision on our rate application. The bill, LB1072, the green copy would provide that if the cities decline, that 270-day period goes up to 330 days after NorthWestern files its application, that's 11 months, that's 2 months longer than it would be if the utility had chosen not to offer to negotiate it, if it had been a regular contested case, like you heard about. In our opinion, that's just too long. There would be obvious cost to our company and subsequently the ratepayers in that regard, and interim rates might help to diminish that hit. But those interim rates also have to be adjusted to the permanent rates. And true up or true down period would be substantially longer with the change the commission is attempting to make. I think most importantly we believe the bill in its green form provides a disincentive to negotiations. And I would just say that that would be very unfortunate. Negotiations worked last year with NorthWestern and the cities that it serves. It obviously helps maintain goodwill between the companies and the cities that you serve. And I think if you ask any of the cities that NorthWestern serves, which are Grand Island, Alda, Kearney, and North Platte, they'd give you very favorable opinions about the company. Negotiations cost less money and they take a lot less time. So we hate to see that disincentive. The amendment that we've offered, which you have, would just cut that period down from 210 days to 180 days, as chairman Boyle said. It still would be possible under that scenario for the commission to extend that decision out, the final decision, to 300 days, that's a month shorter than it would be with LB1072, the green copy; it's a month longer than it would be under the current law. We think it

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softens the impact, it maintains that incentive to negotiate and it just seems more fair to the company in recovering its cost, and we also think it allows the commission, I think they've agreed, to have adequate time to consider the case. With that amendment we don't oppose the bill. And I would just comment briefly on the ex parte rule. NorthWestern supports the commission's change in that regard. The way that they have described it has been the established practice of the commission for the last five years, since LB790 was passed by this body. It works, it's fair, it offers due process to all parties and it should be made part of the law. With that, I'd be happy to answer any questions. [LB1072]

SENATOR MCGILL: Any questions? Seeing none, thank you. [LB1072]

ANDY POLLOCK: Thank you. [LB1072]

SENATOR MCGILL: Any last neutral testimony? Senator Friend, to close. Senator Friend waives closing. That ends of the hearing on LB1072. [LB1072]

SENATOR FRIEND: Thank you, Senator McGill. Before we start with Senator Aguilar's legislative gem here (laugh), Senator Aguilar usually calls everybody else's bills legislative gems. So there's nothing to do with LB1095 in general. Can I see a show of hands of the proponents for this next bill? How about opponents? Okay. Quite a few people that wish to testify. Like I said from the outset, if you could keep it as concise as possible, kind of a five minute max, we can move through this. Senator Aguilar, LB1095. [LB1072]

SENATOR AGUILAR: Thank you, Chairman Friend, members of the committee. My name is Ray Aguilar, A-g-u-i-l-a-r. I represent District 35, the city of Grand Island. The genesis of this bill was NorthWestern Energy and the city of Grand Island. Grand Island sees a danger in not being able to access enough natural gas for future years, expansion of industry and ultimately jobs. They would like NorthWestern, their natural gas distributor/provider, to be able to build a supply line to service Grand Island in addition to the current line, because the current supply line is fully allocated. The rub for this bill comes in the recent Public Service Commission ruling that building such a supply line is prohibited as double-piping. The double-piping prohibition is appropriate for a retail distribution system, but should it apply to getting the natural gas from a wholesale supply line to a local distribution system? Federal law that regulates interstate supply lines doesn't think double-piping is an issue for supply lines, so why should an intrastate supply line or supply lines that are within the boundaries of our state be prohibited? Grand Island sees a need for such a supply line. Other testifiers will address the issue more technically for you. I can tell you that not every gas company is in the state agrees on this issue, but in the competitive environment of natural gas that's no surprise, hence gas wars 2008. (Laugh) To me and to my district this is simply a question of having the opportunity for future economic growth. However, this is not just

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a Grand Island issue. Other cities in the state see the same problem. Norfolk, in particular, lost a processing plant last year over this issue. Grand Island does not want that to happen to them. You as committee members know better...know this issue better than even I do. If you find the language that better reaches our goal, I'd be happy to support it. Thank you and I'll take any questions at this time, but remind you the experts are behind me. [LB1095]

SENATOR FRIEND: Thank you, Senator Aguilar. Questions from the committee members? Senator Janssen. [LB1095]

SENATOR JANSSEN: Senator Aguilar, which company has your pipeline? [LB1095]

SENATOR AGUILAR: Say that again? [LB1095]

SENATOR JANSSEN: Who services you, what pipeline services you, Grand Island? [LB1095]

SENATOR AGUILAR: I couldn't answer that. [LB1095]

SENATOR JANSSEN: Is it Northern Natural? Well, somebody else probably could tell me. Okay. [LB1095]

SENATOR FRIEND: Senator Cornett. [LB1095]

SENATOR CORNETT: Ray, I believe there's a copy or an amendment that's going to be offered to this bill. Do you know if that's correct and do you have a copy of that? [LB1095]

SENATOR AGUILAR: I've heard there are some amendments. I'm pretty supportive of the green copy of the bill as well as Grand Island is. [LB1095]

SENATOR CORNETT: The green copy. Okay. Thank you. [LB1095]

SENATOR FRIEND: Thank you. Further questions for Senator Aguilar? I don't see any. [LB1095]

SENATOR AGUILAR: I need to get back to committee, so I'm going to waive closing, Senator. Thank you. [LB1095]

SENATOR FRIEND: Will do. Thank you, Senator. Can we start with proponents? Those in favor of LB1095 first. [LB1095]

GARY MADER: Good afternoon, Senator Friend, members of the committee. My name

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is Gary Mader, G-a-r-y M-a-d-e-r. I'm a utilities director for the city of Grand Island. We are in favor of this bill primarily because of the extensive history we've had with difficulties in natural gas supply. But I think probably recounting the last few years of history will probably illustrate the case better than any particular philosophical argument. The last time Grand Island built a conventional steam generating plant, gas fired, that was the norm a number of years ago, before coal came to the fore. Grand Island received a letter of service that service was guaranteed for the life of that plant, which was 30 to 40 years at that time. Within five years we received a similar letter from the same gas company telling us that that supply was no longer available. And not only that, the gas company also advised us that they were going to cap the lines to that industrial supply, the power plant. And the city of Grand Island initiated action with the federal Energy Regulatory Commission, and by that action we were able to sustain the installation of the infrastructure and also get enough gas, what's called igniter gas to make the boiler operate to get it started. We ran then for an extended period of time where there was no gas available for commercial, industrial, and power uses. And during that time, the state's electric utilities primarily went to coal, and that's when we saw the big building boom in coal across the state of Nebraska to meet the future electric load growth. The volatility continued. You know, we went from...we go from feast to famine, it seems, in this business over ten year cycles or something in that neighborhood. So in the late...later then, after the coal-fired plants had been built, all at once gas was available again. And Grand Island operated its gas-fired generation, again because of that availability, primarily for peaking at that time because we had gas base load...or coal-fired base load. And we were able to secure a number of contracts from various marketers that took advantage of, at that time, Kansas-Nebraska opening their pipeline. And we'd monthly solicit pricing. It was competitive. We got good gas prices and that worked for a number of years. And again then capacity again became short and we found the situation where those marketers with whom we'd trusted our electric supply would not have the gas available when we really needed it, in the hot summer days when we intended to use that natural gas for peaking, to meet electric demand. With that, we moved to a more secure contract, one that was a multiyear contract with one of the stronger marketers. And that contract has served us pretty well now until just about a little over a year ago. A little over a year ago, we solicited bids for extending that contract which would essentially guarantee us gas capacity on the pipeline. Given the variability of electric demand with weather, we never know quite when we're going to need the gas, at least months ahead of time. So it included a reservation fee to maintain capacity on the system, and then if we happen...needed to flow the commodity for electric generation then that price was based on the price at some market hub. And it worked well. We solicited bids a little over a year ago. And the price for that commodity reservation went from \$176,000 a year, approximately, to \$1.2 million. And our immediate response was, why? And the answer was, well, the gas capacity is now used up. And I contacted a number of other potential marketers, asked them why they did not bid to our gas supply needs, and they said because the capacity is used up and we no longer have the capacity. So it seems to me that this bill is

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certainly a step in the right direction and it would allow those that are responsible for public safety, economic development, and the other essential public services dependent on natural gas supply to make arrangements ahead of time without having to be driven by these market situations that go in cycles, feast to famine and back again. So we would definitely support this bill because it would allow those entities that are responsible for securing gas supply for the public in this state for economic development, for heat, for electric production, all those necessary things that natural gas is so essential for, would allow those public entities and private entities the ability to secure capacity by constructing their own pipelines in order to avoid the situations that we've seen occur in the past. We understand there will be an amendment to this bill proposed at some point later. And, I guess, I would have to say we'd oppose that because it's important, I think, that all entities that have the responsibility for securing natural gas supply have the ability to do what they need to do to maintain that public supply. So with that, I would end my comments and certainly field any questions the committee might have. [LB1095]

SENATOR FRIEND: Thank you, Mr. Mader. Questions from committee members? For the record, you are...the transmission pipes are Kinder Morgan pipes in Grand Island, I believe. [LB1095]

GARY MADER: They are, yes, we are in the Kinder Morgan pipeline area. [LB1095]

SENATOR FRIEND: Okay. No questions? Thank you for the testimony. Thanks for coming in. Next proponent. Yeah, proponent. Next person in favor of this legislation. (Laughter) [LB1095]

BLEAU LA FAVE: (Exhibit 3) Mr. Chairman and members of the committee, thank you for this opportunity to appear on behalf of NorthWestern Energy to testify in support of LB1095. My name is Bleau La Fave. First name B-l-e-a-u, last name La Fave, L-a F-a-v-e, and I'm the director of large project development for NorthWestern Energy in Sioux Falls, South Dakota. I would first like to thank Senator Aguilar for introducing LB1095 at the request of NorthWestern Energy. LB1095 is important to the infrastructure needs and economic progress of all Nebraska communities. I would also like to offer an amendment that is the result of discussions with a large number of parties that have interest in LB1095. Not all of these parties may agree with the language that is in the amendment, but we appreciate the input they have given and the cooperative spirit with which they have given it. We will continue to work with them to address the basic infrastructure needs that the amendment bill addresses. Essentially, the amendment requires that any company that double-pipes transmission must be regulated by the Public Service Commission, at least with the regard for the transmission lines themselves. The amendment also limits the double-piping exemption to transmission lines running into cities or local distribution systems, which I will explain a little later. It will allow...it will not allow double-piping to high volume customers. For

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background information, NorthWestern Energy is a combined electric and natural gas utility that serves 640,000 customers in Nebraska, South Dakota, and Montana. Specific to Nebraska, NorthWestern is a jurisdictional natural gas utility that serves customers in Grand Island, Kearney, North Platte, and all of them. From NorthWestern's perspective, LB1095 is intended to provide clarification to what is commonly referred to as the double-piping law. That law prohibits two companies from having two pipelines in the same place. It is NorthWestern's understanding that the Nebraska Legislature passed the double-piping prohibition in order to prevent natural gas utilities from overbuilding each other within the cities. It was not meant to apply and should not apply to transmission lines which provide supply to the cities. This is an important distinction and one that I will explain further. One way to visualize a local distribution system is to think of it resembling a spider web or a maze of pipelines traveling throughout a community to multiple points of connections for your homes, businesses, and industrial users. In other words, these are the retail pipelines. In comparison, transmission pipelines are high pressure transportation highways for natural gas running outside of cities. These pipelines serve natural gas in bulk or in wholesale to LDCs, municipalities or, in some instances, large volume customers. If we compare them to roads, then the distribution lines would be the main streets and side streets of the cities, and the transmission lines would be the county roads, highways, and interstate systems. While we believe the double-piping prohibition was never intended to apply to transmission lines, a recent ruling by the Nebraska Public Service Commission leaves some doubt to that interpretation. We recognize that the decision the PSC reached was a reasonable conclusion based on the strict language of the current statute. Unfortunately, the commission's decision stands in the way of economic development in this state and I'm not being overly dramatic when I say that. Just look at what happened in Norfolk. I believe that almost everyone in this room acknowledges the need for additional natural gas capacity through the entire state. They understand the importance of satisfying that need. It is absolutely critical to the economic development of the communities in this state. Attached to my testimony is a summary of the comments that many, many parties made to the Public Service Commission last fall in its NG-0051 proceeding. Several of those parties are in this room. All of those comments, which were made by parties with widely diverse interests, acknowledge the need for transmission competition. They acknowledge the need for additional suppliers of natural gas. They acknowledge the support...and support the basic premise and principle of LB1095. It must be understood that LB1095 will not take any authority or rights away from any of the natural gas utilities in Nebraska. No utility, public or private, will have any less authority than it has now. LB1095 will, however, allow future opportunities for economic development and industrial growth. It will do so by allowing jurisdictional utilities, utilities operating under the authority of the PSC, to meet future capacity needs of the cities they serve. That will be true whether a private utility serves the city or whether the city distributes its own gas, like Hastings or MUD. LB1095 also presents a fairness issue that needs to be addressed. Double-piping prohibition now does not apply to interstate pipelines because the federal law preempts it. Why should it prohibit only intrastate transmission

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pipelines? In our opinion, LB1095 provides equity and fairness for intrastate transmission delivery of natural gas in Nebraska. It opens opportunities for additional supply for cities like Grand Island that otherwise would not occur. LB1095 does not pose safety concerns. Safety is a serious issue when we're talking about natural gas pipelines. It is of particular concern when we're talking about the maze of pipelines within a city. Not knowing whose pipeline is whose, in the event of an emergency such as a leak or a fire, can be extremely dangerous and cause loss of valuable time. Transmission pipelines, unlike many distribution lines, are constantly monitored and clearly identified. Regulated by federal law and enforced by the Nebraska State Fire Marshall, interstate and intrastate transmission pipelines are constructed, operated, and monitored to ensure safe delivery of natural gas. If competition is allowed in the transmission pipeline arena, it will not create a new safety risk. LB1095 does not force competition. It does not force anyone to build another transmission pipeline. It just gives a natural gas LDC, public or private, a choice. The LDC will no longer be locked into only one transmission company. If an LDC determines that it is more cost-effective to build its own intrastate transmission pipeline to meet the future capacity needs of the community it serves, it should have the option to do so. Otherwise, we are left with no option. There is one more point I would like to make. While NorthWestern believes that the barrier to competition should be removed and that LB1095 will do so, NorthWestern does not want this to sound like some sort of indictment against any of the existing interstate transmission pipeline companies in Nebraska. NorthWestern has a good working relationship with our current transmission providers and expects to continue that in the future. What led us to draw up LB1095 was simply that NorthWestern recognized as communities and industries in Nebraska continue to grow, especially those related to ag value ventures such as ethanol, we want to be able to meet the capacity needs of the communities we serve. We need to be sure that we can promptly meet those demands in the most cost-effective manner. LB1095 allows us to do that. I will conclude by respectfully asking the committee to support LB1095 as amended. I thank you for your attention and my remarks. And I'm available to answer any questions you may have. Thank you. [LB1095]

SENATOR FRIEND: Thank you, Mr. LaFave. Four minutes and 30 seconds, good job. Senator Cornett had a question. [LB1095]

SENATOR CORNETT: Yes. Under the bill that you introduced wouldn't all...not the amended one, wouldn't all gas providers, jurisdictional utilities, and municipally-owned be treated pretty much the same? [LB1095]

BLEAU LA FAVE: They would be, I'm sorry. They would be treated the same, Senator. The one question that we would have would be that...would be the question of the regulatory authority oversight of those pipelines. [LB1095]

SENATOR CORNETT: Now I read the amendment and I got some questions together.

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But with this amendment, what you're talking about doing is basically the jurisdictional utilities would have benefit to the exception, correct? [LB1095]

BLEAU LA FAVE: Correct. [LB1095]

SENATOR CORNETT: Why are you excluding municipal-owned utilities and MUD? [LB1095]

BLEAU LA FAVE: Municipal utilities and MUD would not have the oversight of the state jurisdiction...that the state jurisdictional utilities have. In my opinion, the municipalities and MUD would have the ability, if they want, to build pipelines to this nature of transmission. They would have the ability to become a...or to file for a state jurisdictional permit and be under the regulation of the state is the thought. [LB1095]

SENATOR CORNETT: But basically under the amendment that you have, you're not treating the utility companies the same, is that correct? [LB1095]

BLEAU LA FAVE: I believe that would be correct, yes. [LB1095]

SENATOR FRIEND: Thank you. Any further questions? Senator White. [LB1095]

SENATOR WHITE: If the purpose of the bill is to enhance competition, why wouldn't you want them to be able to enter this business? [LB1095]

BLEAU LA FAVE: The only difference that we are trying to identify with the amendment, and I do want to clarify for the purposes of NorthWestern either version will work. The first version will also work. But under the second version, we are identifying a concern of having one that would be a regulated entity on the transmission portion. And in the other piece would not be a regulated entity building the transmission line. [LB1095]

SENATOR WHITE: Does that concern (inaudible) by a lack of safety by the metropolitan MUD or is it... [LB1095]

BLEAU LA FAVE: Fair competition. If we have to go through the regulatory processes in order to put the lines in place, we feel that that should be shared. Again, from NorthWestern's point of view either will work. [LB1095]

SENATOR WHITE: Okay, thank you. [LB1095]

SENATOR FRIEND: Further questions? Senator Cornett, again. [LB1095]

SENATOR CORNETT: I spoke with MUD earlier today, the representative, and I had also spoke with your lobbyist last week and said that, I'll make myself very clear. I'm not

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willing to open the door to the gas wars again. I'm going to state that right here and now. But what you're doing under this amendment basically is you would have the jurisdictional...you'd be the jurisdictional authority, but MUD wouldn't...they've have to purchase the transmission lines from you, correct? Or purchase gas from a...not from you specifically, but from a jurisdictional... [LB1095]

BLEAU LA FAVE: Not necessarily. With the...they will always have the option to talk to any fork pipeline and have the ability to build those resources to their specific locations too. They could also have, under this, have the adoption...option to not only contact a fork line, but they could also contact a jurisdictional utility to provide that service from another supplier also. So what this does actually opens up their options a little bit from what they currently have. [LB1095]

SENATOR CORNETT: Okay. [LB1095]

SENATOR FRIEND: Further questions from committee members? Mr. La Fave, and I wanted for the benefit of everybody in the room, too, I wanted to point something out. And make a clarification in regard to testimony structure relating to this measure. What I don't want...this was totally appropriate because Mr. La Fave dropped this amendment here. What Senator Aguilar did is he dropped the green copy in, and at that point that's all we had. What Mr. La Fave is saying is obviously this amendment has been part of discussion and negotiation. My point is this, when we come up and testify either in a proponent or an opponent fashion we speak to that green copy or qualify it by speaking to the amendment. I mean all of this was appropriate. But qualify it by speaking to the particular amendment that you either know something about or don't know anything about, you know, raise those points. What I'm saying is this could get confusing real quick if we start talking about four amendments out and your opposition to a particular measure hinges on that particular amendment or so forth. So, I mean, (laugh) enough said. I just...we're speaking to the green copy, and then we can qualify the amendments as we come up and speak to those with your testimony. Does that make sense? Mr. La Fave, I just had a couple of quick things, unless there are other committee members that wanted to jump in. Let's say, and for the sake of my making it as simple as possible, let's say the green copy of this measure was successful and became law. Can you speak specifically to what you think NorthWestern is going to do immediately after something like this occurs. I mean, because we're going to have person after person coming up and talking about economic development. But I...we hear that all the time and, you know, then sometimes need, you know, proof or evidence. What would you do if a bill like this passed? Would you start going into communities working on economic development and promoting the idea that you could create infrastructure for them that would be cheaper than, you know, dealing with existing transmission lines? [LB1095]

BLEAU LA FAVE: The existing...the background behind why we submitted this particular bill was surrounding particularly the city of Grand Island. Right now we have

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two large industrial customers that have approached us for service in that location, in and around that location. NorthWestern also has capacity requirements very similar to what Mr. Mader provided earlier, that we renew with the fork pipelines on a regular basis. Currently, the way we're structured is we would seek to our current provider the capacity we would need to cover, that we'd need to roll over with our existing capacity, plus whatever new growth we'd have in that community. And we'd go to that one provider and ask them how much it's going to cost in order to get that to us, and then that gets passed along to the customers. With this bill, what that would allow us to do is also evaluate another pipeline that's in a close vicinity to us and making a connection to that pipeline and looking at the best option for us to serve not only our existing customers, but also those that are looking for additional growth. [LB1095]

SENATOR FRIEND: And according to Mr. Mader's testimony, he's saying that even if they wanted more natural gas, they can't get it right now. It's impossible, right? [LB1095]

BLEAU LA FAVE: They can... [LB1095]

SENATOR FRIEND: Or I don't want to put words in your mouth, but more or less they're tapped out and the transmission line will not accommodate anymore. [LB1095]

BLEAU LA FAVE: The transmission line as it currently exists would not be able to accommodate anymore, but they could go through an upgrade process which costs considerable amount of money,... [LB1095]

SENATOR FRIEND: All right. [LB1095]

BLEAU LA FAVE: ...millions and millions of dollars. [LB1095]

SENATOR FRIEND: Okay good point. So finally, without creating any new infrastructure, that upgrade would be...let me step back. Their options, if this bill passes are, they can go for new infrastructure or they can work with Kinder to try to enhance the pipelines that they currently have in place. [LB1095]

BLEAU LA FAVE: That could be correct. [LB1095]

SENATOR FRIEND: What's cheaper? What is cheaper? [LB1095]

BLEAU LA FAVE: That would be all dependent on the individual circumstances and what they're looking for. If for our analysis we...I'm trying to be... [LB1095]

SENATOR FRIEND: You missed...Mr. La Fave, you creating new infrastructure for Grand Island, I hope we have some engineers and some people that can speak to this because I would think that that would be extremely costly. And I've talked to other folks

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about this before this hearing started. Are there...you're saying you're creating options for them. You're not necessarily creating options that are economically...that they can economically justify. [LB1095]

BLEAU LA FAVE: Our initial analysis on our current evaluation would say that our building the infrastructure would be more cost-effective than having our current provider upgrade their infrastructure. [LB1095]

SENATOR FRIEND: Okay, fair enough. Are there any further questions from the committee members? And we can talk off line. [LB1095]

BLEAU LA FAVE: Okay. [LB1095]

SENATOR FRIEND: It's not like I'm totally satisfied. But we can move on. I don't see any. Thanks for the testimony. [LB1095]

BLEAU LA FAVE: Thank you. [LB1095]

SENATOR FRIEND: Next proponent. [LB1095]

MICHAEL NOLAN: (Exhibit 4) Senator Friend and members of the committee, my name is Michael Nolan. I'll spell the last name, N-o-l-a-n. I'm the city administrator of Norfolk, testifying as a supporter of LB1095. I do want to add that I don't think Norfolk has a dog in the fight on the double-piping issue. But in fact if that amendment is put on this bill, we will have no choice but to join others who I think are potential opponents of it. I think we're the poster child for this discussion. And throughout the entire interval of time that we've been trying to solve the problem, I've done everything I can to try to look at the context of this systemically, and at the same time tried to avoid becoming cynical. The reality is that we have probably more than any other industry in the history of the state of Nebraska incentivised ethanol, and we've actually seen the fruits of that. And one of the facilities that has sited, it's right outside of Norfolk is being victimized by this problem as well as the company that we were potentially able to recruit about a year ago, which was indeed a victim of this situation. Let me just give you a little overview of that, because if you'll recall prior to that Norfolk had a meat processing facility that had about 1,200 jobs. And that facility, which was owned by the Tyson Corporation, closed and displaced a whole lot of people, created an enormous amount of economic melee for us. And so we were in the process of trying to respond to that by recruiting a company called Specialty Protein, which had a new diffusion of soy extraction. It was going to create about 135 jobs. The initial phase of it was going to involve \$20 million to \$35 million worth of capital investment. The city had poised to put about a \$3 million tax increment financing infrastructure defrayal into the mix. They had gone out into the community. Mr. Baker was in charge of this segment of it, he is here to testify as well, and done like a \$17 million subscription and had raised an enormous amount of

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momentum to make this project happen. It was going to bring 135 jobs, initially, to the community, with the promise of maybe a couple hundred more once the concept moved forward and the customers were lined up. What essentially happened was with the recruitment occurred some time in January or February of 2007, and everything...we inked the deal and thought everything was going well. I happened to be on personal leave in St. Louis, at the end of May. Got a phone call from them frantically indicating that they had discovered, in conversations that they'd had with Aquila, that getting the gas supply to the site was going to be quite problematic. And it wasn't because Aquila wasn't able to find gas to supply them. It was because on the infrastructure that provided the gas there was a huge embolism between Norfolk and Grand Island that could not be overcome easily. And that was the first that we were aware that that was not...that that was a problem for this. So between the end of May and July, Specialty Protein conducted direct negotiations with Kinder Morgan on trying to solve the problem. Were informed sometime around the first week of July that Kinder doubted that the problem was going to be solved until July 2009. So there we are having put thousands of staff hours, both RJ's and our staff, into getting the industry aligned to be a new partner in the community, only to find out that there was very little we could do. We immediately began to conduct negotiations directly with Kinder on how we could solve the problem with a possible gap financing mechanism with an LB840 program. Senator Flood participated in most of those discussions throughout. They were quite intense. Hours and hours and hours of time on the phone trying to make that work. And all I can tell you is that we gave it our best shot. But because of the whole regulatory context of how pipelines under FERC are capitalized, we were not able to get to yes. It was a target that kept expanding. It went from about \$3 million until we suddenly just came to the conclusion it was going to cost us about a \$20 million capitalization, with us having to sign letters of credit and be essentially the underwriter of the project. We just could not do it. We would have taken up all of our debt capacity indefinitely if we would have tried to do it. Now what has happened since then is that we've been having discussions with Kinder that have been cordial. Discussions with Northern, discussions with Seminole about how we solve this problem, because we still have one industry we're trying to take care, which is the Dreyfus Corporation and its ethanol facility. Dreyfus, in our total mix of gas, which is about 21,000 decatherms. Dreyfus is right now about a 4,000 decatherm customer. They want to double their capacity. Huge economic impact on Nebraska, possible \$50 million project. Now they're going to go somewhere. They're either going to go to Norfolk or go to Iowa. I got permission today on the way down, talking to their general manager, to tell you that it would be a lot easier decision for them to make if the capacity was already available. Now this newspaper clipping, which is recent, shows you how frustrating this has been. And for us we've had cordial discussions with everybody. We got numbers from Northern that are numbers that we can try to build into some kind of pro forma assumptions. We got numbers from Seminole. We don't have numbers yet from Kinder, I don't know why that is, but we don't have them. And the big concern that I have with this double-piping thing is we got a sidebar discussion happening here that doesn't have anything to do with the main

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issue of us creating growth in that part of Nebraska. I remember reading something which was a cynical comment that Canes (phonetic) made one time. And they said that capitalism is the extraordinary belief that the nastiest of people for the nastiest of motives will somehow work together for the benefit of us all. This discussion should not have anything to do but facilitating the growth of the state. I encourage the folks from NorthWestern, anybody else who happens to subscribe to their view that that's an important issue to deal with it in some other venue but this one. I'll answer any questions, if you have them. [LB1095]

SENATOR FRIEND: Thank you, Mike. I was trying to be subtle. Senator Cornett. [LB1095]

SENATOR CORNETT: Mike, it's apparent that you support the bill. [LB1095]

MICHAEL NOLAN: I do. [LB1095]

SENATOR CORNETT: And I don't necessarily have any problems with the green copy. But you opened your testimony with that you would probably, regardless of how important this is to you, have to not support the bill. Could you please explain why to us, why the amendment? [LB1095]

MICHAEL NOLAN: I don't think that amendment has anything to do with the real issue here, Senator. The real issue is taking care of the customer at the other end who needs gas. And we have to have the infrastructure in place to be able to do that. That's an entirely separate discussion. That's a discussion that has some real sensitivity in it. We're not in the gas regulatory business any longer. We used to be in that business and I had a position. I don't have a position on it now, but I don't want anything to slow this bill down. And I think if you put that amendment on this bill, this bill is going to have a lot of inertia to it that it doesn't need to have. [LB1095]

SENATOR FRIEND: Further questions from committee members? I don't see any. Thanks, Mr. Nolan. Next proponent. Next person in favor of LB1095. [LB1095]

CHRIS DIBBERN: Good afternoon, members of the committee. My name is Chris Dibbern, that's C-h-r-i-s D-i-b-b-e-r-n, and I'm the general counsel and a registered lobbyist for the Nebraska Municipal Power Pool. The power pool is 196 communities in the Midwest. LB1095, as drafted, the green copy is supported by the power pool. And we want to thank Senator Aguilar and NorthWestern for bringing the bill. As you've heard already, LB1095 is consistent with federal law. This is what FERC, the Federal Energy Regulatory Commission, would do on interstate pipelines. It said you could bring in natural gas supply. The PSC, the Nebraska Public Service Commission has also acknowledged the need for additional pipelines and the problems and have recognized some of those problems in the Norfolk case, recognizing that there's something called a

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Henshaw exemption that would bring in more supply to communities. Without LB1095 communities, and we're talking about Nebraskans, are caught in a Catch-22. Those first there, so if you've laid a pipeline and you don't have any extra capacity and you have no obligation to build it out, build it bigger, build it to the future customers, you're stymied, you're stopped. So the needs may be for a new power plant, like Grand Island talked about, might be for new economic development, like Norfolk talked about, or it might be a new system, which some of our communities still don't have natural gas. LB1095 clearly exempts, and it states, it's a really simple bill, two pages, and it states on the second page that it shall not apply to gathering lines...to gather in-lines or transmission lines. I think it's always clearer to exempt...to state what is exempted instead of saying who is exempted. And I've not seen this amendment that has been passed around this afternoon. But the way I understand it, it looks like it's who is exempted and not what is exempted. We, too, want to avoid...Senator Cornett stepped out of the room, but we, too, want to avoid gas wars. And one of the things we thought would have been simpler was to strike this whole section, which would make some people on this committee smile, because Section 66-1852 talks about extending duplicate or redundant gas pipelines. Striking that whole section would be what we would have preferred, had we drafted this bill. But LB1095 as drafted is a compromise. It helps communities and we support the bill. [LB1095]

SENATOR FRIEND: Thank you, Ms. Dibbern. Questions from committee members? Chris, one of the things, just a quick one. One of the things that happened in LB790, in 2003, is that that particular piece was put in for a variety of reasons, one being that LB790, in some ways, was modeled after another states, you know, regulatory efforts. So in other words, there are communities in other states, one in particular that does not allow for duplicative piping. But transmission lines were not included. So somebody somewhere down the line put a definition in. I guess my question for you is, why...one of the amendments or one of the ideas, and this is my understanding, is that we are defining those. Not only are we defining transmission lines and gathering lines, because that's defined in federal law, but also we're giving potential descriptions of what duplicative piping is because that other state, the one I'm talking about, gives a description of what duplicative piping is and what it means to them in that state. So they get away from the idea of having to fight this battle that you and Mike were talking about all over again. [LB1095]

CHRIS DIBBERN: That's right. [LB1095]

SENATOR FRIEND: They don't have to do it again. My question for you is, why...if the green copy passes, her concerns are legitimate. How do you know that somebody in some particular area is going to say, well, you didn't get real specific and our local distribution line, we've got some issues here, so we're going to go ahead and dup pipe. I mean that's the concern. We can sit here and wring our hands and... [LB1095]

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CHRIS DIBBERN: All right. [LB1095]

SENATOR FRIEND: ...complain that we don't want to deal with that again, but she has a legitimate concern, I think. [LB1095]

CHRIS DIBBERN: Hypothetically, if that happens, you could still bring a complaint to the Public Service Commission, which is what has happened in the past, and said that's duplicative. And they never use the word dual-piping in our statute, extend duplicative or redundant gas pipes. So you could still bring a complaint and say that that one is particularly duplicative or redundant. [LB1095]

SENATOR FRIEND: But there's nothing in state law that defines the difference right now. That's my point. And the green copy itself isn't going to define that difference. [LB1095]

CHRIS DIBBERN: No, but it wouldn't stop it today. It's what has happened today, except that you're on the other side and you don't get the service. So this is a much better world to be in. [LB1095]

SENATOR FRIEND: Okay, okay. Other questions from committee members? I don't see any. Thank you, Chris. [LB1095]

CHRIS DIBBERN: Thank you. [LB1095]

SENATOR FRIEND: Are there any other proponents, those in favor? [LB1095]

DOUG CLARK: Good afternoon, Chairman Friend, members of the committee. My name is Doug Clark, D-o-u-g C-l-a-r-k. I am vice president of government affairs and marketing for the Metropolitan Utilities District. And we are here in support of the bill today. Last Wednesday, the board of directors of the Metropolitan Utilities District took a vote in support of LB1095. The reasoning behind that was LB1095 allows all cities, all customers to receive the benefits of the opportunity, not necessarily the right, but the opportunity to receive a second feed for supply for their cities. The Metropolitan Utilities District is currently served by a single supplier. We're very happy with our single supplier. We have had no transmission problems with our single supplier. But as you see a community of roughly 450,000 people grow and the economic demands that that puts upon us and our supplier, there may come a time in the future when a second feed into the city of Omaha would be needed. Currently the Metropolitan Utilities District has a statutory authority to build a pipeline. In the event we felt that was necessary to bring appropriate supplies to our city we would rely upon that statutory authority to get that second feed into the city of Omaha to make sure we had adequate gas supplies. And I want to reiterate, to 450,000 people, roughly a third of the state's population rests upon us to make sure we have appropriate gas supplies. It is our responsibility to make sure

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those supplies are adequate. It is not the responsibility of the Public Service Commission to decide for the Metropolitan Utilities District what's appropriate for our customers. We have a locally elected board. That board has served roughly 97 years and created the lowest water rates and gas rates in the state and I would have to argue some of the best service in the state. We are not interested in making application to become a jurisdictional utility. I'm going to clarify now, I'm speaking to the amendment because that's what the amendment is requiring us to do. If we were to build a pipeline, that pipeline would fall under the National Pipeline Act and we would be governed, for safety, on the national level, not on the state level. The Public Service Commission does not regulate safety in the state, that belongs to the Nebraska Fire Marshall's Office. So they would be inspecting our line. There is no distinct advantage to us to be allowed the same opportunities to expand our system that the jurisdictional utilities are trying to carve out for themselves in this amendment. We also are available at any given time to answer any questions to the Legislature as we are a creature of the Legislature. You have full authority to do with us as you please, which we're always fully aware of. So with that, I'd open it up to any questions. [LB1095]

SENATOR FRIEND: Are there questions for Mr. Clark from the committee? Doug, just a real quick one. [LB1095]

DOUG CLARK: Sure. [LB1095]

SENATOR FRIEND: If you have a border station set up in a particular area of Omaha, and you have another border station ten miles away,... [LB1095]

DOUG CLARK: Yes. [LB1095]

SENATOR FRIEND: Can you not...you can build transmission pipes... [LB1095]

DOUG CLARK: Statutorily we can. [LB1095]

SENATOR FRIEND: ...into those border stations. [LB1095]

DOUG CLARK: We've had one border station ruled as double-piping, and therefore we were unable to utilize it. [LB1095]

SENATOR FRIEND: Okay. But my question for you, really quickly, because we can move on, why can't...why could you not...that was into one border station. Why couldn't you create three border stations and run pipes into each one of them? That's not duplicative piping, is it, according... [LB1095]

DOUG CLARK: We didn't think so. [LB1095]

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SENATOR FRIEND: But that's not what you did. What you did was you ran two pipes into one border station. [LB1095]

DOUG CLARK: No, sir. We did not. [LB1095]

SENATOR FRIEND: You didn't? [LB1095]

DOUG CLARK: We had a border station built at 174th and Fairview Road. We proposed a transmission line from that to south central Sarpy County. A complaint... [LB1095]

SENATOR FRIEND: Was...were those pipes bisecting local distribution lines? [LB1095]

DOUG CLARK: It bisected an Aquila line at Highway 370, I believe, and forgive me, this has been years ago now, so if I'm slightly off, I apologize. We bisected an Aquila line, roughly, at Highway 370 and crossed it in one spot, and it was ruled duplicative and not in the public interest. [LB1095]

SENATOR FRIEND: Okay. [LB1095]

DOUG CLARK: So we do see this as a critical issue for us. [LB1095]

SENATOR FRIEND: Okay, understood. Any other questions? I don't see any. Thank you, Mr. Clark. [LB1095]

DOUG CLARK: Thank you. [LB1095]

SENATOR FRIEND: Are there any other proponents? Those in favor? How many more wish to testify in favor? Can I see a show of hands? Okay. A couple. [LB1095]

R.J. BAKER: (Exhibit 5) Good afternoon, Mr. Chairman. I am R.J. Baker, R-period, J-period, B-a-k-e-r, and I reside at Norfolk, Nebraska. I'm the executive director of Elkhorn Valley Economic Development Council, serving communities in Antelope, Madison, Pierce, and Stanton Counties, providing business attraction and other economic development services. Part of what you have in front of you Mr. Nolan has covered, and so I will not cover that. But suffice it to say that we worked for 18 months on the soy protein project and in the end were not able to keep them in Norfolk because of a construction in the Kinder-Morgan pipeline, and also the fact that that pipeline is at full capacity both south of and north of Albion. The communities of Wayne and Laurel have had similar experiences with Kinder-Morgan and Northern Natural Gas. It is our belief that other rural hub communities have transportation...or transmission capacity issues, but have not yet been faced with losing a business because of it. Economic growth is dependent upon capacity of utilities to provide services. The current regulatory situation for interstate pipelines has created monopolies, effectively borrowing

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retail...rural retail and job centers from growth potential and rewards, irresponsible business practice. It is time for more competition in the transportation of natural gas in Nebraska. This revision to Section 66-1852 clearly defined double-piping, will provide an avenue for more competition in the transmission of natural gas to Nebraska communities. One change that I would recommend to the bill is that it be amended to provide authority to urban communities, as was just stated, and to cities of the first and second class to build their own pipelines regardless of whether they're municipal utilities or not. Additionally, I would recommend the Legislature consider adding incentives to the Nebraska advantage package for natural gas companies to build additional transmission lines. On behalf of the board of directors of Elkhorn Valley Economic Development Council, I urge this committee to support LB1095 and recommend an amendment that actually add clarification to the bill. Questions? [LB1095]

SENATOR FRIEND: Thank you, Mr. Baker. Are there questions from the committee members? I don't see any. Thanks for the testimony. [LB1095]

R.J. BAKER: Okay, thank you. [LB1095]

SENATOR FRIEND: Next proponent. [LB1095]

MARY CAMPBELL: Chairman Friend, members of the committee, I'm Mary Campbell, C-a-m-p-b-e-l-l. In the interest of time, I'm testifying on behalf of two entities: the Industrial Energy Users of Nebraska and the Nebraska Resources Company. In both cases, both groups have a preference for the green copy of the bill. It's simple, it's clean, it's inclusive. Just briefly, IEUN is a consortium of industrial producers. Some are ag producers, some produce finished goods. And some of those goods are consumed here in the state, others are exported all over the world. The plants use enormous amounts of energy and so their need for additional capacity and competitively priced alternative sources of fuel is really paramount to their operations. Often the very most expensive input that they have is the energy to fuel their operations. Eliminating the double-piping exclusion is a chief, a primary objective of the group. And we urge that the bill be advanced promptly with language that does not preclude large industrial users from being directly served by intrastate pipelines. The members need expanded capacity, they need energy options in order to continue operations, and also to support the state's goals of expanded job creation and economic development. My testimony is also being offered, as I said, on behalf of Nebraska Resources Company. And following me and I think probably completing the proponent testimony is Alex Goldberg, and he's general counsel for NRC. He will expand on LB1095 as it relates to the objectives and the state of NRC and also be able to address technical questions. I appreciate the time to give support to the green copy. [LB1095]

SENATOR FRIEND: Thank you, Ms. Campbell. Are there questions for Ms. Campbell? I don't see any. Thanks, Mary. [LB1095]

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MARY CAMPBELL: Thank you. [LB1095]

SENATOR FRIEND: Next person in favor of LB1095. [LB1095]

ALEX GOLDBERG: (Exhibit 6) Good afternoon. My name is Alex Goldberg, A-l-e-x G-o-l-d-b-e-r-g. I am vice president and general counsel of Nebraska Resources Company. I have some prepared remarks which are being passed out. But in the interest of time and your sanity, I will make it a little bit more brief here with my oral comments and simply make two points. One is there are companies, and we are one of them, who want to invest in Nebraska and build the infrastructure. We are at a couple million dollars and counting in what we hope will be \$100 "millionish" project to build a pipeline, north/south, through central Nebraska. We believe, and this brings us to the second point, that the bill in the green sheet, also as amended, our preference would be the green sheet. But we believe this bill will clarify the legislation in a way that we will have a better opportunity to compete for business in central Nebraska, and actually go past the proposal stage and build that pipeline. Competition is very important. The double-piping legislation, as it currently stands, is an impediment to competition. And you have an opportunity through this bill to remove the impediment and allow competition. Competition does not mean our pipeline will be built. We hope it does, we hope we will be able to provide the best service and win over those customers and build that line. But the main thing is to have the opportunity. With that, I'll close. [LB1095]

SENATOR FRIEND: Thank you, Mr. Goldberg. Questions from committee members? Thanks for your patience and thanks for the testimony. Are there any more proponents? Anyone else in favor? We will start with opponent testimony, those opposed to LB1095. [LB1095]

BUD BECKER: (Exhibit 7) Chairman Friend, members of the committee, good afternoon. My name is Bud Becker. Last name spelled B-e-c-k-e-r. I'm the vice president for Regulatory Law for SourceGas Distribution. SourceGas opposes LB1095 in its original form, the green bill. SourceGas is a jurisdictional utility in Nebraska that serves approximately 180 towns in greater Nebraska. A key part of the State Natural Gas Regulation Act is the language which states, in 1852(1), "no person, public or private, shall extend duplicative or redundant natural gas mains or other natural gas services into any area which has existing natural gas utility infrastructure." This blanket prohibition is a cornerstone of the act. It applies to all entities, not just jurisdictional entities, not just governmental owned entities. And it is sound legislative policy. It avoids wasteful and duplicative utility investment and addresses safety considerations inherent in the installation, maintenance, and repair of parallel pipelines. This same policy applies to electric utilities in Nebraska under Chapter 70, Article X. LB1095 would undermine this wise policy by creating an exception for all natural gas gathering and transmission lines. Now you've heard testimony this afternoon from NorthWestern with

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respect to a proposed amendment to the green copy. We support that amendment. We do not support the green copy. The amendment further refines the language in the green copy so that its application of the exception, exemption from the double-piping, is more limited. We serve about 94,000 customers in Nebraska, and we serve some significant ethanol plants and other large users that we've invested considerable facilities to serve. You only recover the cost of those facilities over a long period of time by serving those customers. And that's our...primary...our primary concern is that the green copy, LB1095 as proposed, has no...opens the door so that customers, such as NRC, as they stated in their testimony, could come and connect our existing high volume customers. That will have an exact and expected and dramatic adverse impact on our existing customers. In our last general rate case in Nebraska, we took all the revenue from that type of customer and credited it against our costs of service to our residential and commercial customers, and therefore reduced their rates by about 11 million bucks, compared with what it otherwise would be. And we are very concerned that LB1095, the green copy, can be used to go out and bypass those customers. We will then be forced to seek that revenue, that foregone revenue and investment from our existing customers. We don't believe that's appropriate. And the Legislature recognized that wasn't appropriate in adopting 1852 and the no double-piping prohibition. We are agreeable to language which allows new transmission pipelines to be built in Nebraska that connect to local distribution companies, whether owned by jurisdictional utilities, or governmental entities. That's fine with us. That does not threaten the bypass to the end-users which has the adverse economic impact. That allows us, as an LDC, to look around for alternative pipeline suppliers. And that's good for the customers in Nebraska. But allowing connection to those end-users is not good. And the amendment, as proposed by NorthWestern, would preserve that exemption in the law. And we want to thank NorthWestern and Mr. Pollock for listening to our concerns and proposing the amendment accordingly. There's also a safety issue, as I mentioned. Having duplicative pipeline is a safety issue. Location of the pipe is a significant challenge. And that's an important consideration. So SourceGas urges the committee to reject any bill that would undermine the double-piping ban in the State Natural Gas Regulation Act. This sound policy has served this state well by preventing wasteful duplication of infrastructure by natural gas providers. We respectfully request the commission indefinitely postpone LB1095, unless it contains the amendment as proposed by NorthWestern Energy. And as to the concerns expressed by the proponents of the bill, we believe that our...the amendment, NorthWestern's amendment accomplishes essentially everything they wanted done, except the bypass of our existing end use customers or where we have infrastructure to serve them. Thank you. I'm available for any questions. [LB1095]

SENATOR FRIEND: Thank you, Mr. Becker. Senator Rogert. [LB1095]

SENATOR ROBERT: Mr. Becker, I just have a hypothetical. It seemed as if that one of the problems with Norfolk's situation they were in was the provider was not willing to invest into their supply system. Under your suggestion, if the supplier does not wish to

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do that the local municipality can't grow. Correct me? Am I speaking correct? [LB1095]

BUD BECKER: Under existing law? [LB1095]

SENATOR ROBERT: No, if you...if you...under the amendment... [LB1095]

BUD BECKER: Under the amendment? Oh, no, the amendment would allow, for instance, NRC has proposed a pipeline...it had an investigatory docket before the Public Service Commission and now has filed an application. NRC would be a jurisdictional utility and would be building a transmission line to local distribution companies and to any muni's along the way that want hooked up. So it would facilitate and accomplish the bringing of additional capacity to the city of Norfolk and other communities in the area. So... [LB1095]

SENATOR ROBERT: If they so chose to build. [LB1095]

BUD BECKER: Yes. [LB1095]

SENATOR ROBERT: It would leave the economic growth to the mercy of the builder...of the supplier at that point. [LB1095]

BUD BECKER: I believe that's true under either choice. Under the green copy that's the case as well. Somebody has to choose to make the economic investment in a very expensive piece of pipe. I mean, it looks expensive; when you pay for it over time it doesn't look as expensive. But under either choice, the green bill or the amendment, the situation is the same with respect to bringing capacity to Norfolk. Somebody has to be willing to put the money up front and have sufficient commitments from other customers to build the pipe. [LB1095]

SENATOR ROBERT: Okay. [LB1095]

BUD BECKER: Does that answer your question? [LB1095]

SENATOR ROBERT: I think so. [LB1095]

SENATOR FRIEND: Thank you. Any other questions for Mr. Becker? Mr. Becker, real quickly, I was talking to Mr. Clark earlier about different border stations scenarios. Let's say Grand Island, and this is just a hypothetical, let's say you have a transmission line going into a border station in Grand Island, on the outskirts of Grand Island. Let's say this bill became law and somebody else ran a transmission line to a different border station outside of Grand Island to feed an ethanol plant. Why is that a safety issue? [LB1095]

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BUD BECKER: If they're sufficiently removed from other facilities, then it's not a safety issue. [LB1095]

SENATOR FRIEND: Well, it's...it... [LB1095]

BUD BECKER: It depends on the facts and circumstances of the case as to whether it is. [LB1095]

SENATOR FRIEND: Right. So I think we need to clarify that, Bud. I mean, if you're ten miles apart with transmission lines, that's not a safety issue. I mean, there are safety issues with local distribution lines because they're crossing lines and it gets crazy in places like Sarpy and Douglas County. But I mean, I'm not saying you're being disingenuous, but I think I have an issue...I take issue a little bit with transmission lines having the same...they're different than local distribution lines. And the safety issue wouldn't apply based on the discussions we used to have on LB790. Would you agree with that? [LB1095]

BUD BECKER: It depends upon the location of the customer. I would agree if the...if in your example the town border station is removed from a populated area and there is a clean shot for the transmission line to get in, that's fine. If the...if they're trying to get to an end use customer located in the middle of Grand Island, and they're going right down the middle of the street, that's a different circumstance. [LB1095]

SENATOR FRIEND: Agreed. But you're also not skirting transmission lines through the middle of downtown Grand Island. I mean you've got some distribution lines in there. I mean the only thing I'm pointing out is I think that the reason that a committee like this gets, you know, jumpy is because for three years we heard nothing but there were safety issues in regard to duplicative piping. Now we're talking about it in regards to transmission lines. And it is a different breed of cat. [LB1095]

BUD BECKER: I... [LB1095]

SENATOR FRIEND: Fair enough? [LB1095]

BUD BECKER: I agree with that point. [LB1095]

SENATOR FRIEND: Thanks. Any other questions? Thanks for the testimony, Mr. Becker. [LB1095]

BUD BECKER: Okay, thank you. [LB1095]

SENATOR FRIEND: Next opponent. [LB1095]

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JILL BECKER: Thank you, Senator Friend and members of the Urban Affairs Committee. My name is Jill Becker, representing Aquila in opposition to LB1095. Aquila would support the amended version that is being offered today, but is not in support of the green copy. I'd just like to point out a few reasons why. First, as has been mentioned, this is a very simple, short bill. But I think you can gauge from the testifiers today it is certainly not a simple, short, easy issue. There are many questions raised by the green copy of the bill that need to be answered, and that in part is why Aquila is not in support of the green copy of the bill. One of the things that the green bill does not address is how current investment made into our communities is protected by the green copy of the bill. There is no mention of service areas, current customers, how a bypass would be avoided. And as an investor owned utility, we have significant investments in the communities that we serve. Furthermore, we are regulated by the Public Service Commission. And any decrease in the amount of customers that we would be allowed to serve, by losing that customer to another source and I'm speaking as an LDC, would be detrimental to us. And our current ratepayers would be forced to withstand that loss of revenue. The green copy of the bill doesn't deal with the issue of regulatory oversight. When a company would want to come in where there is already a company serving an area, we recognize that there are needs in the state of Nebraska for additional supply. And we are supportive of the concept of bringing in a second supply on a transmission level. We are not in support of allowing secondary, duplicative pipes within our LDCs. Overall, we just think this green copy is not sufficiently dealing with all of the issues that it raised. And we look forward to the committee working through this issue. We recognize that it is not a simple issue. There are many concerns that we would have with the green copy coming out. And would urge you not to advance the green copy of the bill. I'd be happy to answer any questions. [LB1095]

SENATOR FRIEND: Thank you, Ms. Becker. Questions from committee members? I don't see any. [LB1095]

JILL BECKER: Thank you. [LB1095]

SENATOR FRIEND: Thanks for the testimony. Next opponent. [LB1095]

MARY KAY MILLER: (Exhibit 8) Thank you, Chairman Friend, and members of the committee. I have some brief comments and I do have the copies here. My name is Mary Kay Miller, M-a-r-y it's one of those simpler ones, K-a-y M-i-l-l-e-r and I am vice president of regulatory and government affairs for Northern Natural Gas Company. We're headquartered in Omaha, Nebraska. Northern is an interstate natural gas pipeline. We have about 1,600 miles of pipe in the state of Nebraska, with over \$400 million of investment. We also have around 400 employees in the state, with a payroll of over \$30 million. LB1095, as introduced, would eliminate the statutory prohibition on duplicative and redundant natural gas pipeline facilities used for transmission and gathering. Northern believes that passage of the bill in its present form would have

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significant and unintended impacts. LB1095 would undermine the state's policy articulated through the passage of the State Natural Gas Regulation Act and LB790, from 2003, that established a prohibition on duplicative and redundant natural gas facilities. The prohibition on double-piping serves substantive public policy objectives, including the avoidance of negative impacts caused by the construction of expensive overlapping facilities, higher costs that burden utility ratepayers, increased environmental impacts caused by overconstruction of facilities, and needless interruption of land use for property owners. LB1095, as proposed, exempts gathering and transmission lines from the state's double-piping prohibition; however, neither LB1095 nor the state statutes define what is meant by gathering or transmission. This leaves the application of these provisions of the bill ripe for dispute and misapplication of the terminology. There is no need to rush into a hasty passage of LB1095, a bill for which the impacts are not well thought out or discussed by all the affected parties in the name of economic development. Economic development in the state has not been harmed in any way by the law in its present form. There are many participants in the natural gas industry willing and able to meet the infrastructure growth needs in the state under the current statute without any modifications. In addition, the committee should be aware that there is currently an application pending before the Nebraska Public Service Commission by Nebraska Resource Company to construct an intrastate pipeline which has further complicated the issue. This would be the first intrastate pipeline in Nebraska requesting authority from the PSC. The applicant has told the commission that after approval of this initial application future pipeline construction by state law will no longer be subject to state review. State law specifically states that a jurisdictional utility is not required to obtain prior approval from the PSC in order to construct, regardless of the economic necessity, use, or public benefit. Northern believes that Nebraska Resources Company application at the PSC has highlighted a previously unrecognized void in state law, namely that there is no appropriate oversight of construction of intrastate pipelines. Current law allows parties to bring a protest to the PSC to allege that the proposed construction of pipeline facilities violates state law if the construction results in duplicative facilities. The current law prohibiting double-piping is the only mechanism for the PSC to continue jurisdictional oversight for the construction of facilities by a jurisdictional utility. Passage of LB1095 would eliminate the means for the PSC to scrutinize construction of facilities by intrastate pipelines, leaving affected stakeholders, the landowners, the ratepayers, end-users with no regulatory protection. The proponents of LB1095, intending to seek a limited exception to the state's prohibition on double-piping, instead have over-reached, potentially eliminating the prohibition. If there were to be any exception to the state's prohibition on double-piping it should be narrowly construed and its language narrowly crafted to avoid unintended consequences. The lack of definition of gathering and transmission in LB1095 leaves vague the scope of the intended exception. The lack of discussion and study of this bill is very problematic. The current statute was put in place after extensive discussion and study. Changes to the statute should have the same scrutiny to avoid unintended impacts. Northern is not afraid of competing with other pipelines, and we compete

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constantly in the federal arena. However, unintended consequences that may harm consumers, landowners and damage the reputation of the natural gas industry are a major concern to us. These types of issues cause increased costs for the ultimate consumer. The amendments offered today and all of the diverse opinions expressed today underscore the need for the Urban Affairs Committee to defer action on LB1095 until a more comprehensive review of the State Natural Gas Regulation Act can be undertaken. Northern urges the Urban Affairs Committee, along with the PSC and the public advocate to undertake such a review during an interim study in 2008. I'd be happy to answer any questions. [LB1095]

SENATOR FRIEND: Thank you, Ms. Miller. I think Senator Rogert was first. [LB1095]

SENATOR ROGERT: Ms. Miller, if we were able to narrowly define what is meant by gathering transmission lines in an attempt to try and create a way to get some of these communities more supply, how far away would we be from what you want? [LB1095]

MARY KAY MILLER: Northern is certainly willing to work on that and to work on those kind of definitions. The way we see it right now, it's just too undefined in that. We understand the need for added infrastructure. We're not opposed to that, and we're not opposed to competing for that. We just think it's very vague right now. [LB1095]

SENATOR ROGERT: So if we look just at the green copy and we're able to narrowly, more carefully define those two terms, you might be on... [LB1095]

MARY KAY MILLER: And who it applies to... [LB1095]

SENATOR ROGERT: Right. [LB1095]

MARY KAY MILLER: ...as to how that would apply. I think there's a lot more to it than just the definition. That's an extremely vague written green copy. [LB1095]

SENATOR ROGERT: Thank you. [LB1095]

SENATOR FRIEND: I think Senator White was next. [LB1095]

SENATOR WHITE: Thank you. Did I hear you testify to the effect that existing law has not caused adverse economic consequences? [LB1095]

MARY KAY MILLER: That is our opinion, yes. [LB1095]

SENATOR WHITE: I think the folks in Norfolk have a pretty good reason not to agree with your opinion, don't you think? [LB1095]

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MARY KAY MILLER: That's probably true from what they say, but I think there's a lot more details and facts behind that situation. [LB1095]

SENATOR WHITE: So we're not... [LB1095]

MARY KAY MILLER: And as they stated, Northern has been participating and making offers to them as well. [LB1095]

SENATOR WHITE: So...well, I mean this is what's driving the bus, from my point of view. We lost, I am told by credible people, we lost a very important investment in our state because an existing supplier didn't want to or wouldn't make a competitive offer to supply natural gas. Is that accurate or inaccurate? [LB1095]

MARY KAY MILLER: We were not specifically involved in the details of that transaction. [LB1095]

SENATOR WHITE: So you don't know. [LB1095]

MARY KAY MILLER: Not specifically, but from our dialogue I would say that there is additional facts behind that. [LB1095]

SENATOR WHITE: What are they? [LB1095]

MARY KAY MILLER: I don't...I'm not going to go through those, because we weren't involved directly. [LB1095]

SENATOR WHITE: Okay, then I...if you don't want to talk about them publicly then I think we should... [LB1095]

MARY KAY MILLER: Yeah. [LB1095]

SENATOR WHITE: ...feel free to think you don't have any facts to back that up. Fair? [LB1095]

MARY KAY MILLER: Ah...well, I wouldn't agree with that. [LB1095]

SENATOR WHITE: Because if in America you don't bring it out and you won't talk about it, it doesn't exist. Don't you think that's reasonable? [LB1095]

MARY KAY MILLER: (Laugh) [LB1095]

SENATOR FRIEND: Senator Janssen, I think, had some questions. [LB1095]

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SENATOR JANSSEN: I...listening to this, and I understand it's the capacity, that you don't have the capacity to serve these communities. Is that correct? [LB1095]

MARY KAY MILLER: When you say we don't have the capacity... [LB1095]

SENATOR JANSSEN: Well, whoever the supplier is in Norfolk, or Grand Island, or who, I don't care, but it's... [LB1095]

MARY KAY MILLER: It's building of new infrastructure, yes,... [LB1095]

SENATOR JANSSEN: Okay. [LB1095]

MARY KAY MILLER: ...the capacity, the pipe. [LB1095]

SENATOR JANSSEN: So you got a pipeline going into Norfolk that's like this. You have a greater need for more of your product. What you need is a pipeline like this. [LB1095]

MARY KAY MILLER: Correct. [LB1095]

SENATOR JANSSEN: Now I'm in business also, you know. And I make a lot of hot dogs and sausages, and the demand by my customers is for 400 pounds of hot dogs a day. And my machine will only put out 150, by God, I'm going to get a bigger stuffer. (Laughter) Right? [LB1095]

MARY KAY MILLER: I'd agree. [LB1095]

SENATOR JANSSEN: If you've got...you have got customers that want more of your service, why the heck don't you provide it? I know it's going to cost you money to put the infrastructure in, but that's not the way we operate. If you've got customers, by George, you better take care of them,... [LB1095]

MARY KAY MILLER: Well, and I think what's... [LB1095]

SENATOR JANSSEN: ...or somebody else is going to come along with a bigger sausage machine. So that's all I have to say to you. [LB1095]

MARY KAY MILLER: Okay. [LB1095]

SENATOR JANSSEN: It's just...it's pretty damn simple if you'd just sit down and figure it out. [LB1095]

MARY KAY MILLER: And if you're going to make those investments, those investments have to be looked at from an economic point of view,... [LB1095]

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SENATOR JANSSEN: You darn right. [LB1095]

MARY KAY MILLER: because we're in business as well. [LB1095]

SENATOR JANSSEN: You've got to...you're going to sell more gas and I'm going to sell more hot dogs. [LB1095]

MARY KAY MILLER: And you've got to get recovery of the pipeline investment that you're going to make. And that's part of the issue that was involved. [LB1095]

SENATOR JANSSEN: If I sell twice as many sausages, I'm going to pay for my supper. [LB1095]

SENATOR FRIEND: Are there further questions from committee members? Ms. Miller, I don't know if this is an apples and oranges type of hypothetical. But let me...and I've been trying to work down this way during this whole hearing, and I wanted to get your take on it. You have a city administrator sitting out there saying, I've got to make some serious decisions here and we need to get some natural gas into the...to corporation...or to industry A, and industry B, and industry C, and then also just for our retail customers, our homes, our single family units. We've got a problem when we've got that four...the four little aspects. We need...there's got to be better capacity. I don't really have many options here, except to go to this particular entity and say expand your pipeline. They say, here's what it's going to cost to expand that pipeline. My question for you is, if there was no such thing as duplicative piping, that...me as the city administrator, I go to that person and say, okay, I can have company A expand that pipeline that they already have in existence, or I can have company B come in and put a whole new...an intrastate transmission pipe; not only that, they got to go FERC and they've got to go through the PSC in order to do it. So you've got the bureaucracy up in front. What's going to be cheaper for me as a city administrator? I've never been a city administrator, but I want to know what I'm up against. If I have the choice, is it going to be cheaper for me to go to company A and say I want the expansion? Or is it going to be cheaper for me and more cost...time effective to go to company B and get that new infrastructure created? Because I think that that's pertinent to this whole discussion. [LB1095]

MARY KAY MILLER: I don't... [LB1095]

SENATOR FRIEND: But nobody seems to be bringing it up. [LB1095]

MARY KAY MILLER: I think that's totally relevant, and that's what we think all of those elements and how you go through all of that is what is needed to go through in this interim study to evaluate. The green copy as it exists today is so vague, it's so open-ended on that, that's what we're saying. We are not opposed to working with

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parties on an amendment. We have been participating. But you would want to look at the economic choices between those two options. [LB1095]

SENATOR FRIEND: And there are...for the city administrator there are economic choices. But here...maybe...let me rephrase the question and then we can move on. I come to you as a city administrator. I say, Mary Kay, I need...I've got...I either need a new transmission pipe, or I need to expand...you need to expand the one you have. What's going to be cheaper for me? For you to expand the transmission pipe that you have going into the facility...into the border station that I am in charge of, I guess? Is that going to be cheaper? I'm oversimplifying this... [LB1095]

MARY KAY MILLER: Not...not...I think that's, and it was pointed out by some of the other parties...speakers today, you have to look at the specific facts. You're going to have to know what the location of that is, you're going to have to know what the size of it is that you want to expand. You're going to have to look at the new size pipe compared to where you're going in that. There's so many detailed facts related to that, you know, there isn't a simple answer to it. And every situation, I think, could potentially, one could be that the expansion is better, and the other could be the new infrastructure would be better. [LB1095]

SENATOR FRIEND: What...and what some are saying, though, is they don't even have that choice. Right? And I mean you're not saying you don't understand that. What you're saying is you don't really know what's going to happen if this green copy passes. I mean is that fair enough? [LB1095]

MARY KAY MILLER: And I would say, yes, we don't understand what's going to happen because it's very vague, there's no definition of gathering, there's no definition of transmission. We're certainly not opposed to competing for any of those and coming up with the best economic choice for the participant in that. But there's a lot of elements behind that. [LB1095]

SENATOR FRIEND: Okay. I think Senator White had another question. [LB1095]

SENATOR WHITE: One of the concerns I have after listening to this is if you have a pipeline that's at full capacity, which is what we've been told, unless you have somebody not doing their job very well, you've already recovered those costs. That pipeline gets to full capacity and it's operating at that point, and then it's throttling growth, which is what we're told is the case, are you really here to tell us that you haven't, as a company or whoever, already recaptured that cost and are well past that onto profitability? [LB1095]

MARY KAY MILLER: I would say no, it's probably highly unlikely that you've recovered those costs. For Northern Natural, for example, when we build new infrastructure it

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takes us about 67 years to recover the cost of that pipe facility, that's through our rate structure. And... [LB1095]

SENATOR WHITE: What's the natural life of that pipe? Are you saying the pipelines are 70 years? [LB1095]

MARY KAY MILLER: Northern's pipe, we have some pipe that's over 70 years old right now. [LB1095]

SENATOR WHITE: And it took you that long... [LB1095]

MARY KAY MILLER: But our contracts... [LB1095]

SENATOR WHITE: And it took that long to just catch up to the cost of building it? [LB1095]

MARY KAY MILLER: Well, (laugh) it's a FERC process that we go through, you know, there's obviously replacement as you go along. But the contract supporting the recovery of that pipe are not 70 years long, or 50 years long, they may be 5 to 10 years long. So during that 5 to 10 year period, you're getting recovery of that cost. But after that it's going to be subject to the rest of your ratepayers to pay that. So you don't want to make an infrastructure investment that has the potential of being left stranded for the other consumers. [LB1095]

SENATOR FRIEND: Further questions from committee members? I don't see any. Thanks, Ms. Miller. [LB1095]

MARY KAY MILLER: Thank you. [LB1095]

SENATOR FRIEND: Any other opponents? Anymore opposition to LB1095? We will move to neutral testimony. Anyone wishing to testify in a neutral capacity? Neutral, is that correct? [LB1095]

MARVIN SCHULTES: I am neutral. [LB1095]

SENATOR FRIEND: Gotcha. [LB1095]

MARVIN SCHULTES: My name is Marv Schultes, M-a-r-v-i-n, Marvin Schultes. Schultes is S-c-h-u-l-t-e-s. I'm the manager of Hastings Utilities, city of Hastings, Nebraska. And I am testifying here on behalf of the city of Hastings and its municipally-owned natural gas system. The city of Hastings has owned and operated the natural gas system for more than 60 years. I want to thank you for the opportunity to testify. As currently drafted, the green copy, Hastings would support the bill. I am totally

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unfamiliar with any amendments that have been drafted. I've heard about them. What I've heard about them we would have to oppose those, I believe. Hastings supports the elimination of the entire Section 66-1852 in its entirety as the best public policy. Section 66-1852, we believe, is poorly written and essentially is being used against the best interests of natural gas consumers by avoiding competition of natural gas suppliers. Natural gas supply is federally deregulated and consumers need the option of municipal utilities and publicly owned districts to provide the most economical rates and avoid any artificial roadblocks. So we would be neutral, supportive actually of the green bill and, based on what we've heard, opposed to any amendments that would eliminate the best interests of the consumers. I would be glad to answer any questions that the committee has either for the city of Hastings or any questions you have. [LB1095]

SENATOR FRIEND: Thank you, Mr. Schultes. Any questions from committee members? Senator Janssen. [LB1095]

SENATOR JANSSEN: In Hastings isn't there double-piping up there? [LB1095]

MARVIN SCHULTES: No, Hastings has always had...the city of Hastings, Hastings City Council has authorized the issue, and there has only been one supplier, one authorized supplier in the city of Hastings for 60 years that I'm aware of. There has never been... [LB1095]

SENATOR JANSSEN: Well, I thought...isn't there another pipe that runs in, up there by Lockland or something? I can remember sitting on this committee years ago, years ago when there was some more piping up there. But what's the deal with that? [LB1095]

MARVIN SCHULTES: I have no idea what they're talking about. I can tell you in the case of Lockland... [LB1095]

SENATOR JANSSEN: Okay. All right. [LB1095]

MARVIN SCHULTES: Okay. [LB1095]

SENATOR JANSSEN: No. If you don't know, you don't know. [LB1095]

SENATOR FRIEND: Thank you. Any other questions from committee members? Mr. Schultes, thanks for coming in. Is there any other...anybody else wishing to testify in a neutral capacity? [LB1095]

LYNN REX: (Exhibit 9) Senator Friend, members of the committee, my name is Lynn Rex, representing the League of Nebraska Municipalities. I'm also handing out a letter from Fremont, Nebraska, which also underscores our testimony in that as much as we support the green bill in its current form, we simply felt it was important to testify neutral

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and not in a support capacity because of the amendment. We have not seen the actual amendment. But what we heard about the actual amendment we simply cannot support it. It is a double standard. And I think what this underscores is, frankly, the old issue about the drafting of double-piping and what that really means. And from a municipal standpoint, double-piping has meant that when it's the investor-owned utility doing it, it's not considered double-piping. But when a municipal utility or MUD wants to look at extending and adding their capacity then it's viewed sometimes as double-piping. Let me tell you what I'm talking about. In the Norfolk example, I know something about that. I was on a conference call with Speaker Flood, and the city administrator, and the mayor, and some others as they were trying to struggle through this. And as one of those elected officials told me, are we really to the point in the state of Nebraska where natural gas companies, investor-owned utilities get to decide which cities get to grow and which cities don't and when they get to grow and when they don't? Because it seems that some cities are forced to put up a sign saying, we are no longer open for business. And I'm taking that from an elected official who actually made that comment as they were trying to struggle through this issue in Norfolk. Norfolk is not unique. As R.J. Baker testified, this has happened in city after city. Let me just briefly tell you the drill. The first drill is we can't get enough natural gas, there's not enough natural gas to serve this particular industry. The second drill is, well, okay, we can find it now, but there's not enough capacity. And in Norfolk's position, and the city administrator can give you the actual details of this and R.J. Baker as well, the issue was, as it was in Central City, as has been in other communities, okay, we'll build another line. Kinder-Morgan will build it. The city can pay for it. Kinder-Morgan would own it. Kinder-Morgan would have the exclusive contract to serve, and that would be extensive. So even when the city offered to do an LB840 program to help do this so that they could have some industry and growth, the answer was, no, we can't wait for that. So when you're at full capacity, then what do you do? It seems to me Senator Janssen has a solution. You figure out a way to make it happen, otherwise Nebraska communities in this state are in jeopardy. There have been, obviously, economic impacts, not just in Norfolk, all over the state. And Senator Flood is uniquely qualified to talk about this issue, and I encourage each member to talk to him. I would also submit to you that as much as we support the green copy of the bill and oppose the amendments, based on what we've been told, I would also underscore that I think there's another issue. Can you even imagine if the Nebraska Public Power District, MUD, any municipal-owned system, electric or gas, told the elected officials, sorry, we can't, not now or in the near future ever deliver service to point X so that you can have 300 more jobs, 3 jobs, or 30 jobs, we can't do it. Senator Flood asked me the question, is there no need or requirement for capacity building? So when they're full capacity that's it? You stop at go, you don't get to collect \$200 and you may even get to go directly to jail. But that's about it, that's it for you. Economic development is over for you. This is not unique. We support this bill in its current capacity. I will tell you that double-piping alone, when it's press reports or whatever it may be, I think there's been a lot of misunderstanding because in city after city again the investor-owned utilities, when there are times to

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replace the pipes, you do that. In Central City they have pipes there that are from World War II, and those are the kinds of pipes and military types of piping that was used, I guess, just to recycle the metal. But at the end of the day, you have to replace systems. When Wahoo bought its system and had to replace well over 50 percent of the system, was that double-piping because you have to replace it? Is it double-piping because you're at full capacity? But now, as Kinder-Morgan was prepared to do in Norfolk, they're prepared to build another line right along side of that. Is that double-piping? Apparently, they didn't think so. But it is if MUD does it, it is if the city of Hastings does it. So at some point as senators, we implore you to look at this issue because, basically, where we are in this state is unless you are a municipally-owned system and sometimes even when you are, the investor-owned utilities get to decide which cities grow and which cities do not. And you can be...rest assured that because of the high profile nature, what happened in Norfolk, Nebraska, there are other industries across the state that even if they were thinking, and across the country, even if they were thinking of locating in Norfolk or some of our other communities would have to say, well, you know, they couldn't get gas for the XYZ company, and in fact during the negotiations found out their firm contract for gas may not even apply to one of their major economic development entities up there, which is New Core Steel. So at the end of the day, what do we really have? We have cities held captive. I just think it's time for the Legislature to address this. I'd be happy to respond to any questions you might have. [LB1095]

SENATOR FRIEND: Thank you, Ms. Rex. Questions from committee members? I don't see any. Thanks for the testimony. [LB1095]

LYNN REX: Thank you very much. [LB1095]

SENATOR FRIEND: Anyone else in a neutral capacity on LB1095? Senator Aguilar waives closing, and that will close the hearing on LB1095. Senator McGill, we...yeah, let's take about a minute and let everybody clear out. Senator McGill has the Chair. We're going to continue with the hearing in a minute with... [LB1095]

SENATOR MCGILL: All right, we're ready to get started. We're now going to open the hearing on LB1102. Senator Friend. []

SENATOR FRIEND: Thank you, thank you, Madam Chairman. My name is Mike Friend, F-r-i-e-n-d. I'm from...again, I'm from District 10, northwest Omaha and here to introduce LB1102. The intent of this bill is to create a process to finance the replacement of infrastructure by a natural gas utility without the necessity of pursuing a full-scale rate review. A natural gas public utility providing natural gas service would be allowed to file a petition and a proposed rate schedules with the Public Service System to establish or change its infrastructure system, replacement mechanisms rate schedule and thus allow for adjustment of the natural gas public utility rates and charges to provide for the recovery of costs for eligible infrastructure replacements. Eligible infrastructure system

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replacements are defined as natural gas utility plant projects that, first, do not increase revenues by directly connecting the infrastructure replacements to new customers; secondly, are in service and are required to be used; and thirdly, were not included in the utility's rate base in the most recent general rate case. The natural gas utility plant projects eligible for the program would include such items as new mains, valves, service lines, regulator stations, vaults and other pipeline system projects, service lines insertion projects, joint encapsulation projects and other similar projects extending the useful life or enhancing the integrity of pipeline system components undertaken and comply with state or federal safety requirements. The commission cannot approve infrastructure system replacement mechanisms, rate mechanisms, revenue below the lesser of \$1 million or one half of the utility's base revenue level nor could the revenue exceed 10 percent of the base revenue. A utility company requesting such a proposed rate schedule must have pursued a full-scale rate case within the past 60 months and a company could not collect the special revenue for any period exceeding 60 months. The infrastructure system replacement mechanism rate would be charged as a monthly fixed charge and cannot increase more than 50 cents per residential customer over the base rates in effect for the initial filing of the infrastructure system replacement mechanism rate schedule. Subsequent filing shall not increase the monthly charge more than 50 cents per residential customer. The adoption of the legislation would facilitate costly but necessary infrastructure improvements, while minimizing regulatory costs by eliminating the need for more frequent and expensive general rate reviews. That's what this bill does, and I'd be happy...I know some folks behind me are willing to testify on this legislation. But I'd be happy to answer any questions. [LB1102]

SENATOR MCGILL: Are there any questions for Senator Friend? Seeing none, thank you. We'll have the first proponent. And can I see a show of hands for how many are here to testify on this bill? All right, first proponent then. [LB1102]

DAN MECHTENBERG: (Exhibit 10) Good afternoon, Chairman McGill and members of the Urban Affairs Committee. My name is Dan Mechtenberg, and that's M-e-c-h-t-e-n-b-e-r-g, and I'm the director of business operations for Aquila in Nebraska. My responsibilities include business planning and asset management for gas system expansion and replacement. I'm appearing on behalf of Aquila in support of LB1102. Aquila provides natural gas distribution service to 197,000 Nebraska customers in more than 110 communities in the eastern third of the state, and employs about 450 people in the state. Aquila has provided natural gas service for more than 75 years in Nebraska. And I'd like to thank Senator Friend for introducing the bill. LB1102 creates an infrastructure system replacement mechanism which allows investor-owned gas utilities to recover the cost of utility infrastructure investments incurred between rate cases. The reason for such cost recovery is that while investments are necessary, to maintain system reliability and safety, typical rate-making mechanisms do not allow for cost recovery until the utility files for a new rate case, which in many cases could be several years after the costs were incurred. Under this proposal, no regulatory oversight is

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removed as all costs and investment recovery are subject to a prudence and review at rate case. Money can be saved by lessening the need for expensive rate case proceedings. These projects are defined primarily as those that do not increase revenues by directly connecting new customers to the system, and projects that weren't included in the last rate case. Some examples of projects that would be eligible would be street and highway projects where a gas utility would be required to relocate a gas line because a city or the state is widening a road or something like that. Investments made to serve new customers or deliver additional volumes of gas generate new sources of revenue, but on the other hand expenditures to relocate, upgrade, or replace aging infrastructure do not generate incremental income. An investor-owned utility cannot raise its rates without PSC approval, requiring a new rate case to be filed. For example, Aquila filed a rate case with the PSC in 2003. When Aquila filed, in November of '06, there was no recognition of the more than \$42 million invested in the Nebraska systems by Aquila since the previous rate case. LB1102 authorizes the PSC to use a shorter, less cumbersome process to approve rate adjustments to maintain existing systems and for costs incurred when required to move or replace the distribution system to accommodate growth in the communities. The bill protects ratepayers by requiring the utility to meet several thresholds and requires a thorough review by the PSC. And Senator Friend pointed out many of those thresholds in his opening comments. Eligible projects include mains and services and other pipeline components to extend the useful life. And these typically can be to comply with state and federal requirements or accommodate growth in the communities. Also included are facility requirements due to construction or improvement of highway and street projects, and that's if these costs aren't reimbursed back to the utility. So it's if the utility is paying for those, those projects would be eligible. In determining the appropriate recovery, the commission shall complete a complete review to assure all these requirements are met. The bill has the potential to actually save ratepayers money and ensure a more modern natural gas system. First, by potentially deferring general rate cases and saving resources of the utilities and the commission; and secondly, maintenance projects tend to increase in cost with time. So when projects are done more appropriately and timely, the investment cost can be less. Since our last rate case was filed in 2006, with a test year ending in June of '06, Aquila has invested over \$24 million more in capital expenditures, of which over \$16 million was for integrity work. And currently, Aquila is not earning a return on that investment. So we would encourage the Urban Affairs Committee to send LB1102 to the floor for consideration. It has the potential to ensure that natural gas infrastructure in Nebraska stays current, and service remains safe and reliable. We are aware of some suggested changes from subsequent testifiers. And we'd be happy to work with them and the committee to discuss those. So I'd be happy to answer any questions the committee has. [LB1102]

SENATOR MCGILL: Are there any questions? Seeing none, thank you for your testimony. [LB1102]

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DAN MECHTENBERG: Thank you. [LB1102]

SENATOR MCGILL: Next proponent? [LB1102]

BUD BECKER: (Exhibit 11) Madam Chairman, members of the committee, good afternoon. My name is Bud Becker. Last name spelled B-e-c-k-e-r. I am vice president for regulatory law for SourceGas Distribution. SourceGas supports LB1102. I won't go through my written testimony in that it tracks in close regard Mr. Mechtenberg's as well as Senator Friends. I would make two points. One is it probably would strike you as, well, is this an unusual concept to have these type of costs tracked? In the regulatory world we call this tracking, a tracker. This sort of mechanism is kind of the magic term. And the fact is, no, it's not unusual. Other states have had this--Missouri and Kansas for instance. And a key driver here for when you consider, well, is a tracker appropriate for costs incurred by a public utility are two key factors. Are the costs of material significant in scope? And does the utility have any real control over the quality and quantity amount of costs? Here the costs are significant. We estimate that in Nebraska, on these type of costs, we spend about \$3 million a year of safety related type costs and moving our facilities to get out of the way of public highways and things like that. We don't really control the costs. We go forward very rigorously when we're spending money with requests for proposals and things. We don't just go out to the highest bidder. We solicit bids and that sort of thing. So we very aggressively go forward trying to make sure that our costs incurred are prudent. And the bill preserves the commission's ability to look at whether the cost incurrence was prudent. So that's not waste. You're able to track on pretty much a current basis, but the commission in a general rate case then has the ability to look at the cost incurrence and make sure that the cost levels were appropriate. So this is not a blank check. But these are costs that we don't control. The federal government imposes requirements on us through the Department of Transportation, new safety requirements that require, for instance, there are things called high consequence areas where it has to do with the number of people that are near a piece of pipe. And the concern is if that piece of pipe that's near a lot of people ruptures, you got a serious problem. And as you're aware, nationally, there have been some very serious issues, both on the east coast and down in the southwest, where large diameter high-pressure pipelines ruptured and it was a very serious problem. And as Senator Janssen is aware, the city of Fremont had a very, very serious issue in the early eighties with the Pathfinder Hotel. So the federal government, with those type of events before it through the Department of Transportation said, there are some enhanced requirements. So if you're near an area where there's a lot of people, for instance we have a piece of pipe near Axtell, Nebraska. And when we put in the piece of pipe it was just an open field. And the school district appropriately decided they wanted to put a football field near our piece of pipe. They didn't put it on the piece of pipe, but near the piece of pipe. Well, a football field brings people. And so it might be only (laugh) eight to ten nights a year tops when there's a lot of people there, but that makes it a high consequence area. And as a result you have to look at that piece of

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pipe in that area much more rigorously than you used to. In order to do that you have to put in facilities in the pipe so you can put this magic little device called a smart pig in the pipe, and then a device downstream. The pressure pushes it through the pipe, and then you need...so you need a pig launcher and a pig receiver. The smart pig is (laugh)...the smart pig is this sophisticated contraption that has all these sensors, and it senses anomalies in the pipe. As it goes along it sees, basically, if there's rust, or dings, or weaknesses in the pipe. And when it comes out they're able to read it and determine where that occurred in the pipe. And then you get that information, you dig down in the pipe and see if the pipe is sound or not. But that's the type of additional requirement that's being placed on pipelines and distribution companies like ours. And so that's the type of costs that are at issue here. We also have the situation where we're near a state highway, up near Polk we had this issue last year where we moved a piece of pipe and it cost us about 1 million bucks to get out of the highway...of a state highway project. They needed us to move, we moved. Unfortunately, we're now hearing that perhaps they're reconsidering where the highway is, and they might want us to move again. And those are the sort of issues that this bill would then say, okay, those are our costs. We're not triggering that cost incurrence, it's these safety requirements, or municipal and governmental projects. And so those are the type of costs that classically are covered by trackers, by regulatory bodies. For instance, in Nebraska Aquila provides natural gas supplied to customers. They're allowed a gas supply cost adjustment that tracks those costs. We have in our rates what is called a bad debt tracker, where we don't really control whether people pay us or not. We vigorously try to get them to pay us, but we don't control whether they have money or not. So that's another type of cost and example of where a tracker is appropriate. So there are trackers in Nebraska. And we believe that this is an appropriate additional cost that should be tracked. And we support the committee moving this bill to General File. Thank you. I'm available for any questions. [LB1102]

SENATOR MCGILL: Any questions for Mr. Becker? Senator Janssen. [LB1102]

SENATOR JANSSEN: Mr. Becker, you mentioned Fremont and that disaster that happened there. And that was a cause of neglect of the infrastructure. It was being bought and sold, bought and sold, and everybody made a few bucks, and nobody took care of the infrastructure. And then it cost a lot of lives in that explosion of that hotel. And now since the city has taken it over they enjoy very good service and rates. So thank you for bringing that to my attention. [LB1102]

BUD BECKER: Sure. [LB1102]

SENATOR MCGILL: Any other questions? Seeing none, thank you for your testimony. [LB1102]

BUD BECKER: Thank you. [LB1102]

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SENATOR MCGILL: Any other proponents? [LB1102]

ANDY POLLOCK: (Exhibit 12) Senator McGill and members of the committee, I thank you for your time and attention this afternoon to all of the issues that have been before you. My name is Andy Pollock, that's A-n-d-y, Pollock is P-o-l-l-o-c-k. As I mentioned before, I'm a registered lobbyist for NorthWestern Energy. We're here in support of the bill. But I would limit my comments to an amendment that I've asked the page to circulate. And I would just say on the amendment current law, as I mentioned in testimony earlier today, allows companies like NorthWestern to negotiate with the cities that it serves. NorthWestern has taken advantage of that. And I think it's served us and the cities well. That current law requires that information that is exchanged between the cities and the utility be confidential, it's not a public record by operation of Nebraska law. And in fact, we are prohibited from disclosing it to the commission. Our only concern with the green copy of LB1102 is that if we wanted to avail ourselves of this option, we would have to...we would be required to disclose that same information. We're not opposed to doing that to the commission, but we'd like to have it maintained as a document that's not a public record by definition. And the change that we've offered would simply treat it as...continue to treat it as not a public record, but allow us to disclose to the commission subject to a nondisclosure agreement. It's a pretty simple change and I think it doesn't effect the substance of the bill. And with that, I'd conclude and I'd answer any questions. [LB1102]

SENATOR MCGILL: Any questions from the committee? Seeing none, thank you for your testimony. Anymore proponents? Anyone here to speak in opposition? [LB1102]

ROGER COX: (Exhibit 13) Senator McGill, Senator Friend, members of the committee, as you know, I'm Roger Cox. I forgot to spell it the first time and Senator Friend didn't yell at me. R-o-g-e-r C-o-x. As you know from my earlier testimony, I serve as the public advocate under the State Natural Gas Regulation Act, and I'm here today to speak in opposition to LB1102 for several reasons. Because you've been here for a long time today and because it's simply not feasible to cover all of the points with regard to this legislation in a three or four minute presentation, I have two handouts. One is a one-page list of some bullet points which, hopefully, will capture your attention on some things. And then there's a much longer set of testimony, in written, that I'd ask be made part of the record. The reason for that is this, ratepayers of this state, and that's who I'm charged to represent, do not have a lobby as such. They don't have other folks here in the room today. They don't have folks who are on the payroll. It's a matter of what is in their best interest. And one of the few protections those ratepayers have, under existing law for rates, is the comfort of knowing that when rates are set, now by the Public Service Commission under the state act, all the costs and all the revenues of the utility will be looked at, at the same time. It doesn't do any good for me to tell you if I'm a business person that my rent expense went up last month, or that my utility bill went up,

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or my cost of raw ingredients that go into my product, that doesn't tell you anything as to whether I'm making money or losing money. What utilities are entitled to in this state is the opportunity to recover their prudently incurred costs that are necessary to provide service and of direct benefit to provide service, and the opportunity, not the guarantee, but the opportunity to earn a fair and reasonable rate of return. What this bill does is carve out a very substantial amount of costs that utilities incur. It happens to be a type that they know are going to go up over time, and it says the utility, by filing one of these petitions, can get that put into their rate base, that's what they get to earn rate of return on, so it's being paid by the ratepayers in their base rates. And they get to do that without anybody looking at what are their other expenses, what other revenues do they have. You've had a couple of statements made to you earlier today. Mr. Mechtenberg, from Aquila, made a couple of references that if we're doing just an integrity project, we're not generating any real revenue. I would suggest to you that the line between an integrity project and a project that will serve additional customer load is not that clear and it is foggy for the following reason--we all understand that, if a new pipe is being put in to serve a new subdivision, that we're going to have new revenues coming in from that. But what if we replace an existing main, but we know that eventually we'll have further subdivisions on the end of that. So instead of having a pipe this big, we put in a pipe this big. That oversizing will create additional revenue in the future. Yet under this bill, the utilities want the existing ratepayers to pay all the costs of that oversizing and call it an integrity project. It may not be that simple. I think if you look at the shorter list here of bullet points, my position to you is that the system is not broken. The act has worked just fine. We've had only one fully litigated rate case, the other three have resulted in settlements, two through my office, and one, as you know from earlier testimony, directly with NorthWestern. In the last Aquila case, as Mr. Mechtenberg mentioned that, let's talk about that. If you take that testimony at face value, there was substantial infrastructure replacements and improvements that the utility was unreasonably denied the opportunity to recover any costs for. And that's simply not true. What happened in that case was the utility failed to make an adequate showing to the commission. The commission is charged in arriving at just and reasonable rates with balancing the interest of ratepayers and the utility. And the utility has the burden of proof to show that it's entitled to recover these costs. They didn't do it. The commission said, no, you don't get it. The utility has that on appeal right now under the existing act to the district court of Lancaster County. We don't even know how that's going to come out yet. But certainly no utility should be able to come before you and having failed to make the showing they're required to show and say, by golly, you've got to change the law to protect us. Infrastructure replacements costs are already included in our existing rates. It's always been the case. This isn't anything new. The act allows for those costs to be included and provides the commission with suitable and appropriate discretion so that it can balance the interest of ratepayers and the utilities. There's been some comment that LB1102 may avoid the costly rate cases or space them out. And I would suggest to you exactly the contrary is going to happen, and here's why. I have no way, if the utility files one of these petitions, to know anything about what the rest of their cost structure

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is or what their revenue structure is. In fact, the act as drafted...the bill as drafted would say the commission can't consider those other things. So anytime a utility comes in and says, we want this special break; we want to get this segment of our costs right, right away, I have a statute that says I'm obligated to protect the ratepayers and citizens of this state. How can I do that, unless I ask the commission, commissioners, we need to initiate a general rate filing so that the commission...the ratepayers can have the protection of having all of the costs and all of the revenues considered at the same time, because the goal here is not to deprive the utility of the opportunity to make a profit, but it's to be sure that that utility doesn't over-earn. This bill would permit a utility that was earning twice the rate of return provided by the commission in its last rate case to come in and still recover on top of that additional costs for this infrastructure improvement. I think that what it would do is result in more litigation rather than less. I think there is a serious question whether this would be subject to a constitutional challenge on behalf of ratepayers. And in my written comments I have outlined a number of problems with specific aspects of the language that are too extensive to talk about here in detail. But I'll mention one, just for example. There are several places on cost of capital issues, cost of debt issues, or cost allocation issues where this bill says if the last rate case doesn't have a clear cut answer to tell you what those numbers are, you'll take an average. And what it says is they'll take an average of the testimony of the utility, an average of the testimony of the utility, and what? Do they get to put in three different numbers--one that's too high, one that's ridiculously too high, and you take an average? It doesn't say anything about the testimony of someone else. But I'd make this last comment to you. When we have a commission that's entrusted for its rate-making expertise, what sense does it make for the Legislature to direct and dictate and say, here's what you do, instead of doing the job we gave you back in 2003, just take an average of these numbers from the last rate case and that will be good enough to help us limp along for five years. Ratepayers have a huge prospect of being overcharged here. And here's the point, a utility has, as it has always had, an ability to file that general rate case any time that it believes that the overall picture of its earnings is too low. The fact that they aren't coming in to file those rate cases more frequently should tell us all something. It would be unjust to ratepayers to give this special break to the utilities. I would ask you not to advance the bill and I'd be happy to address any questions. [LB1102]

SENATOR MCGILL: Thank you. Any questions from the committee? Seeing none, thank you for your testimony. [LB1102]

ROGER COX: Okay, thank you very much. [LB1102]

SENATOR MCGILL: Anyone else in opposition? [LB1102]

LYNN REX: Senator McGill, this will be brief. The League is in opposition to this measure for the reasons outlined by Roger Cox. We think that the commission does

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need to have the authority to look at the entire picture in order to make a judgment. Otherwise, it seems to us, all you're going to have is a process here by which the rates just keep getting ratcheted up, because obviously they're only going to be approaching the commission to do this when they think that they can substantiate that on the piece of the puzzle that allows them to ratchet it up, but not the piece of the puzzle that may let the commission balance all the interests, so the ratepayers interests are protected. I'd be happy to respond to any questions you might have. [LB1102]

SENATOR MCGILL: Any questions from the committee? Seeing none, thank you. [LB1102]

LYNN REX: Thank you. [LB1102]

SENATOR MCGILL: Any other opponents? Anyone here to testify neutral on the bill? [LB1102]

ANNE BOYLE: (Exhibit 14) Good afternoon, Senator and committee members. My name is Anne Boyle, A-n-n-e B-o-y-l-e. I am chair of the Nebraska Public Service Commission. In the interest of time, I'm going to abbreviate my brief comments. I'm here this afternoon because the commission, while we are taking a neutral position on this, we do have some concerns about, I think, some practical aspects of the bill if it is advanced. And so we ask you to consider these things. Some of them Mr. Cox has addressed. First, in terms of the broader public policy, the costs that would be assessed if the bill was advanced would be shouldered by consumers. And right now those are the costs that the utility has to bear, waiting for the next rate case. And so we are looking at, I would call it a rate increase without having to be ever looked at until we do the next rate case. Turning to other specifics of concern that we have is we are concerned about the role of the lack of a public advocate. Any surcharge that is passed onto the consumers or ratepayers without a rate case and no oversight is not ever going to be looked at until the next rate case. And as the bill is today, that is a five-year period of time. Later on in this testimony, as you read through it, we are asking you to look at perhaps a three-year period of time. We think that five years may be too long to wait to relook. Another concern that we have is the amount of the cap. The Kansas law has a 40-cent cap. We are...this bill is asking for a 50-cent cap, that's a 25 percent increase or 25 percent over what the Kansas cap is. I am trying to be very quick because you've been here a long day. A technical aspect of this is in setting the rate, and Mr. Cox addressed this already, is the average that...by which they set this surcharge is provided by the utilities based on their figures. The public advocate is not a part of that. And the Kansas law itself allows the public advocate to be a part of that process. And then the public advocate figure is part of the averaging of the rate that is finally allowed. And finally, we are not...is it not clear to us that in the case of the municipalities if they do the rate case that they have looked at going back and looking at that surcharge to see if the costs were prudent, and that they are being considered when they look at the

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new rate case. And the way the law is, if they send that to us and ask us simply to approve it, which is all we can do, we just look at its face value. Then we are not allowed to open that up and look back at it as well. So if it is not looked at, at the municipal level, it will never be looked at. And with that, I close my testimony. And I'll answer any questions, if you have them. [LB1102]

SENATOR MCGILL: Any questions from the committee? Seeing none, thank you, commissioner. [LB1102]

ANNE BOYLE: Thank you. [LB1102]

SENATOR MCGILL: Any other neutral testimony? Senator Friend, to close. Senator Friend waives closing. That closes the hearing on LB1102 and that's an end to our day. [LB1102]

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Disposition of Bills:

LB1072 - Advanced to General File, as amended.

LB1095 - Advanced to General File, as amended.

LB1102 - Indefinitely postponed.

Chairperson

Committee Clerk