

2021 SENATE ENERGY AND NATURAL RESOURCES

SB 2091

2021 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2091
1/8/2021

Standing Committee

A BILL for an Act to amend and reenact section 49-03-01.5 of the North Dakota Century Code, relating to an exclusion from the definition of public utility and rural electric cooperative.

Chairman Kreun called the meeting to order at 10:46am

Roll Call Senators	
Senator Curt Kreun	Y
Senator Jim Roers	Y
Senator Merrill Piepkorn	Y
Senator Dale Patten	Y
Senator Jessica Bell	Y
Senator Don Schaible	Y

All Senators were present.

Discussion Topics:

- Definition of "Electric Provider"
- Definition of "Electric Public Utility"
- EV Charging Stations

Brian Kroshus, Public Service Commission, Commissioner provided written testimony #278 in favor of SB 2091

Zac Smith, NDAREC, provided written testimony #307 in favor of SB 2091

Carlee McLeod, Utility Shareholders, provided written testimony #252 in favor of SB 2091

Steve Salwei, North Dakota Department of Transportation, provided written testimony #193 which was neutral on SB 2091

Senator Patten moves DO PASS on SB 2091

Senator Roers seconds the motion

Motion: DO PASS	
Senators	Vote
Senator Curt Kreun	Y
Senator Jim Roers	Y
Senator Merrill Piepkorn	Y
Senator Dale Patten	Y
Senator Jessica Bell	Y
Senator Don Schaible	Y

DO PASS 6-0-0
Senator Roers Carries

Additional written testimony:

Todd Kranda, Missouri River Energy Services, Lobbyist provides written testimony #48 in support of SB 2091

Chairman Kreun closed the meeting at 11:20am

David Owen, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2091: Energy and Natural Resources Committee (Sen. Kreun, Chairman)
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB
2091 was placed on the Eleventh order on the calendar.

Senate Bill 2091

Presented by: **Brian Kroshus, Commissioner
Public Service Commission**

Before: **Senate Energy and Natural Resources Committee
The Honorable Curt Kreun, Chairman**

Date: **January 8, 2021**

TESTIMONY

Mr. Chairman and committee members, I am Commissioner Brian Kroshus of the Public Service Commission. I am here to provide testimony regarding SB 2091 that was prefiled by the Commission after discussion with and cooperation with industry stakeholders.

Chapter 49-03 sets forth the requirements to obtain and the enforcement of certificates of public convenience and necessity for electric providers. SB 2091 clarifies that the terms electric public utility and rural electrical cooperative do not include a person that uses an electric vehicle charging station to resell electricity to the public if the reseller has procured electricity from an authorized electric service provider within the service area and resells solely for the charging of electric vehicles.

Mr. Chairman, this concludes my testimony. Thank you for the opportunity to present this information. I will be happy to answer any questions.



North Dakota Association of Rural Electric Cooperatives
3201 Nygren Drive NW • P.O. Box 727 • Mandan, ND 58554-0727

January 8, 2021

To: Senate Energy and Natural Resources Committee

RE: Support of Senate Bill 2091

From: Zac Smith, communications and government relations director, NDAREC

Chairman Kreun and members of the Senate Energy and Natural Resources committee, my name is Zac Smith, and I am testifying on behalf of the North Dakota Association of Rural Electric Cooperatives in support of Senate Bill 2091. The North Dakota Association of Rural Electric Cooperatives (NDAREC) represents sixteen electric distribution cooperatives and five generation and transmission cooperatives that generate, transmit, and distribute electricity across the state of North Dakota. NDAREC and its members support policies to allow further development of charging infrastructure across North Dakota.

Because EV charging infrastructure was not contemplated when Section 49-03-01.5 of the North Dakota Century Code was drafted, one could argue that, currently, by selling or reselling electricity, the owner or operator of an EV charging station could be considered an "electric public utility" subject to Public Service Commission jurisdiction under North Dakota law. Senate Bill 2091 clarifies the language in Century Code to allow the resale of electricity for charging electric vehicles specifically. Senate Bill 2091 makes clear that the reselling of electricity is permitted if "the reseller has procured electricity from an electric service provider that is authorized to engage in the retail sale of electricity within the service area." This change will benefit the operators of electric vehicle charging stations, and the owners of electric

vehicles who want to buy electricity rather than an amount of time at a charging station. Senate Bill 2091 removes a barrier to electric vehicle charging stations selling electricity (as opposed to time or a parking space) with a narrowly crafted exemption.

Early iterations of EV chargers in North Dakota appear to be charging for time parked rather than kilowatt hours sold because of current language in Century Code. However, electric vehicle models have different battery sizes and charging stations charge at different levels. Thus, electric vehicle owners prefer the ability for some portion of the rate charged to relate to the kilowatt hours charged. It is important to note that Senate Bill 2091 does not allow reselling of electricity in any circumstance other than for the charging of an electric vehicle. So, for example, a landlord could not submeter to tenants. Senate Bill 2091 also respects the service territory laws of ND. All utilities invest in capital-intensive generation, transmission, and distribution systems to serve all of their customers, including EV charging stations, in their service territory. Senate Bill 2091 makes clear that the reselling of electricity is permitted if “the reseller has procured electricity from an electric service provider that is authorized to engage in the retail sale of electricity within the service area.”

Cooperative utilities see great promise in the electrification of the transportation sector and improvement of our nation’s energy sector, including electric vehicle adoption and deployment. Cooperative utilities are ideally positioned to partner with our members, the auto industry, electric vehicle owners, municipal and private vehicle fleets, car sharing companies, and communities to offer products and services that encourage EV adoption and provide convenient and grid friendly vehicle charging options. Many North Dakota cooperative utilities

are exploring investments in charging infrastructure, consumer and member education, and even designed rates and incentives to encourage EV adoption. NDAREC is very appreciative of the North Dakota Public Service Commission's efforts to clarify ND Century Code to remove a potential barrier to allowing charging stations to resell electricity. If Senate Bill 2091 is adopted, there should be clarity under which the state's rural electric cooperatives, electric public utilities, and existing and potential charging station owners can all operate.

That concludes my testimony. I would be happy to try to answer any questions you may have.

Senate Bill 2091—Testimony in Support

Senate Energy and Natural Resources, Chairman Kreun

January 8, 2021

Chairman Kreun, members of the committee, I am Carlee McLeod, President of the Utility Shareholders of North Dakota (USND), and I come before you to testify in support of SB 2091 on behalf of my members, including ALLETE, Montana Dakota Utilities, Otter Tail Power Company, and Xcel Energy.

This bill comes before you to clarify the definitions of “public electric utility” and “rural electric cooperative”, namely, to clarify that a person would not be considered a utility:

- 1) by reselling electricity;
- 2) if that electricity comes from the utility serving that area; and
- 3) if the resale of electricity is for charging electric vehicles exclusively.

This bill neither adds nor detracts from existing Public Service Commission jurisdiction or utility rights and obligations.

As the electric vehicle industry grows within the state, there have been concerns regarding the existing definitions and whether they preclude charging stations from offering electricity by the unit. To bypass any concern to date, charging stations have offered fees based on time of charging, which is less exact than kilowatt hour. This clarification would allow the more exact offer of kilowatt hour while respecting North Dakota’s electric territorial integrity.

As my colleagues will or have stated, serving electric customers requires significant capital investments for generation, transmission, and distribution systems, and this bill would not disrupt those efficiencies. Rather, it would allow the electric vehicle industry to blend seamlessly with existing utility regulations.

We ask for your support for this clarification.

Thank you.



SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
January 8, 2021 10:45 a.m. – Peace Garden Room

North Dakota Department of Transportation
Steve Salwei, P.E., Director of Transportation Programs

SB 2091

Mr. Chairman and members of the committee, I'm Steve Salwei, Director of Transportation Programs for the North Dakota Department of Transportation (DOT). I'm here today to provide some information relating to SB 2091.

The 2019-2020 Legislative Assembly passed SB 2061 which required the Department of Transportation to take the lead and work with the Electric Vehicle Infrastructure Coalition to prepare an Electric Vehicle Study to make recommendations and to report their findings and recommendations to the sixty-seventh Legislative assembly. That report was submitted to Legislative Management in September of 2020 and identified three recommendations.

1. EV Charging stations should be privately owned and publicly available. Similar to how gas stations operate in the state.
2. Century Code that may affect EV charging station infrastructure should be reviewed by state legislators.
3.
 - a. Adopt the most recent federal spacing requirements for the Interstate System.
 - b. Adopt a 75-mile spacing or the most recent federal spacing requirements (whichever is greater) for the remainder of the state.

SB 2091 as we understand it, would address recommendation #1 by allowing private individuals or businesses to resell electricity to Electric Vehicle owners for the purpose of recharging their electric vehicles. This would be like a gas station selling gas to vehicle owners.

There was one question in the study that is not currently addressed in SB 2091:

“Should the state develop a mechanism to capture lost gas tax revenue from out-of-state EV Drivers?”

While the question from the EV Study was specific to the lost revenue from out-of-state EV Drivers, there is a broader challenge every state in the nation is currently facing and that is addressing the lost revenue from the ever increasing more fuel-efficient vehicles on the road today. This challenge is inclusive of Electric Vehicles.

While there are currently studies underway to try to find a mechanism that moves away from the Gas Tax to more of a per mile fee, those studies are only in their infancy stage of figuring out what will or will not work concerning this issue.

So, while this bill doesn't address this broader challenge, we wanted to bring it to your attention so that you can start to think about how to address this challenge in the future.

This concludes my testimony, and I am available to answer questions the committee may have. Thank You.

**Testimony in Support of
SENATE BILL No 2091
Senate Energy & Natural Resources Committee
January 8, 2021**

Good morning, Chairman Kreun, Members of the Senate Energy & Natural Resources Committee, my name is Deb Birgen. Unfortunately, I am unable to attend today's hearing, so I have asked Todd D. Kranda, an attorney at Kelsch Ruff Kranda Nagle & Ludwig law firm in Mandan and a lobbyist for Missouri River Energy Services, to appear on my behalf and provide this testimony in support of SB 2091.

I serve as the Vice-President of Legislative & Governmental Relations for Missouri River Energy Services (Missouri River). I am speaking to you on behalf of Missouri River which is a municipal power agency that provides wholesale electricity to six member communities in North Dakota, including Cavalier, Hillsboro, Lakota, Northwood, Riverdale and Valley City. Missouri River appears before you today to support SB 2091.

As I understand the purpose of SB 2091 is to clarify that electric vehicle (EV) charging stations and their owners are not utilities for the purposes of ND statutory and regulatory law governing the way that utilities operate in ND—provided that if, and only if, the EV charging station buys all of its power from the incumbent utility, whether that utility is a cooperative electric utility, an investor-owned utility, or a municipal electric utility. We support this protection of and respect for the service territory laws of ND. All utilities invest in capital-intensive generation, transmission, and distribution systems to serve all of their customers, including EV charging stations, in their service territory. This language prevents circumstances that would create stranded investment in these generation resources and infrastructure, which other customers would then need to pay for. Therefore, we are supportive of this language that protects utilities and their customers.

Thank you for taking the time to consider these comments. Missouri River and its members support the passage of SB 2091.

2021 HOUSE ENERGY AND NATURAL RESOURCES

SB 2091

2021 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Coteau AB Room, State Capitol

SB 2091

3/4/2021

Relating to an exclusion from the definition of public utility and rural electric cooperative

9:48 AM

Present: Representatives Porter, Damschen, Bosch, Anderson, Devlin, Heinert, Keiser, Lefor, Marschall, M Ruby, Zubke, Guggisberg, and Ista.

Discussion Topics:

- Electric vehicle study
- EV charging stations
- Capturing lost gas
- Definition of electric
- Test projects
- Tracking station charges/vehicles
- ND tax issues
- Registration fees in state at home
- Out of state users

#7352	Brian Johnson, ND Public Utilities
#7291	Steve Salwei, Director of Transportation, NDDOT
#7380	Zac Smith, communications and government relations director, NDAREC
Oral	Mike Rude, ND Marketing and Retailers Association
#7297	Carlee McLeod, president, USND

10:18 AM

Kathleen Davis, Committee Clerk

Senate Bill 2091

Presented by: **Brian Johnson, Staff Attorney**
 Public Service Commission

Before: **House Energy and Natural Resources Committee**
 The Honorable Todd Porter, Chairman

Date: **March 4, 2021**

TESTIMONY

Mr. Chairman and committee members, I am Brian Johnson, appearing on behalf of the Public Service Commission. I am here to provide testimony regarding SB 2091 that was prefiled by the Commission after discussion with and cooperation with industry stakeholders.

Chapter 49-03 sets forth the requirements to obtain and the enforcement of certificates of public convenience and necessity for electric providers. SB 2091 clarifies that the terms electric public utility and rural electrical cooperative do not include a person that uses an electric vehicle charging station to resell electricity to the public if the reseller has procured electricity from an authorized electric service provider within the service area and resells solely for the charging of electric vehicles.

Mr. Chairman, this concludes my testimony. Thank you for the opportunity to present this information. I will be happy to answer any questions.

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE**March 4, 2021 9:00 a.m. – Coteau AB****North Dakota Department of Transportation
Steve Salwei, P.E., Director of Transportation Programs****SB 2091**

Mr. Chairman and members of the committee, I'm Steve Salwei, Director of Transportation Programs for the North Dakota Department of Transportation (DOT). I'm here today to provide some information relating to SB 2091.

The 2019-2020 Legislative Assembly passed SB 2061 which required the Department of Transportation to take the lead and work with the Electric Vehicle Infrastructure Coalition to prepare an Electric Vehicle Study to make recommendations and to report their findings and recommendations to the sixty-seventh Legislative assembly. That report was submitted to Legislative Management in September of 2020 and identified three recommendations.

1. EV Charging stations should be privately owned and publicly available. Similar to how gas stations operate in the state.
2. Century Code that may affect EV charging station infrastructure should be reviewed by state legislators.
3.
 - a. Adopt the most recent federal spacing requirements for the Interstate System.
 - b. Adopt a 75-mile spacing or the most recent federal spacing requirements (whichever is greater) for the remainder of the state.

SB 2091 as we understand it, would address recommendation #1 by allowing private individuals or businesses to resell electricity to Electric Vehicle owners for the purpose of recharging their electric vehicles. This would be like a gas station selling gas to vehicle owners.

There was one question in the study that is not currently addressed in SB 2091:

“Should the state develop a mechanism to capture lost gas tax revenue from out-of-state EV Drivers?”

While the question from the EV Study was specific to the lost revenue from out-of-state EV Drivers, there is a broader challenge every state in the nation is currently facing and that is addressing the lost revenue from the ever increasing more fuel-efficient vehicles on the road today. This challenge is inclusive of Electric Vehicles.

While there are currently studies underway to try to find a mechanism that moves away from the Gas Tax to more of a per mile fee, those studies are only in their infancy stage of figuring out what will or will not work concerning this issue.

So, while this bill doesn't address this broader challenge, we wanted to bring it to your attention so that you can start to think about how to address this challenge in the future.

This concludes my testimony, and I am available to answer questions the committee may have. Thank You.

March 4, 2021

To: House Energy and Natural Resources Committee

RE: Support of Senate Bill 2091

From: Zac Smith, communications and government relations director, NDAREC

Chairman Porter and members of the House Energy and Natural Resources committee, my name is Zac Smith, and I am testifying on behalf of the North Dakota Association of Rural Electric Cooperatives in support of Senate Bill 2091. The North Dakota Association of Rural Electric Cooperatives (NDAREC) represents sixteen electric distribution cooperatives and five generation and transmission cooperatives that generate, transmit, and distribute electricity across the state of North Dakota. NDAREC and its members support policies to allow further development of charging infrastructure across North Dakota. Simply put, this bill will allow convenience stores, gas stations, or whomever else wishes to sell electricity for electric vehicle charging the clarity in law to do so.

Because EV charging infrastructure was not contemplated when Section 49-03-01.5 of the North Dakota Century Code was drafted, one could argue that, currently, by selling or reselling electricity, the owner or operator of an EV charging station could be considered an “electric public utility” subject to Public Service Commission jurisdiction under North Dakota law. Senate Bill 2091 clarifies the language in Century Code to allow the resale of electricity for charging electric vehicles specifically. Senate Bill 2091 makes clear that the reselling of electricity is permitted if “ the reseller has procured electricity from an electric service provider

that is authorized to engage in the retail sale of electricity within the service area.” This change will benefit the operators of electric vehicle charging stations, and the owners of electric vehicles who want to buy electricity rather than an amount of time at a charging station. Senate Bill 2091 removes a barrier to electric vehicle charging stations selling electricity (as opposed to time or a parking space) with a narrowly crafted exemption.

Early iterations of EV chargers in North Dakota appear to be charging for time parked rather than kilowatt hours sold because of current language in Century Code. However, electric vehicle models have different battery sizes and charging stations charge at different levels. Thus, electric vehicle owners prefer the ability for some portion of the rate charged to relate to the kilowatt hours charged. As a gas station sells by gallons of gasoline rather than time spent pumping, this bill allows for selling units of electricity rather than time spent charging.

It is important to note that Senate Bill 2091 does not allow reselling of electricity in any circumstance other than for the charging of an electric vehicle. So, for example, a landlord could not submeter to tenants. Senate Bill 2091 also respects the service territory laws of ND. All utilities invest in capital-intensive generation, transmission, and distribution systems to serve all of their customers, including EV charging stations, in their service territory. Senate Bill 2091 makes clear that the reselling of electricity is permitted if “the reseller has procured electricity from an electric service provider that is authorized to engage in the retail sale of electricity within the service area.”

Cooperative utilities see great promise in the electrification of the transportation sector and improvement of our nation’s energy sector, including electric vehicle adoption and

deployment. Cooperative utilities are ideally positioned to partner with our members, the auto industry, electric vehicle owners, municipal and private vehicle fleets, car sharing companies, and communities to offer products and services that encourage EV adoption and provide convenient and grid friendly vehicle charging options. Many North Dakota cooperative utilities are exploring investments in charging infrastructure, consumer and member education, and even designed rates and incentives to encourage EV adoption. NDAREC is very appreciative of the North Dakota Public Service Commission's efforts to clarify ND Century Code to remove a potential barrier to allowing charging stations to resell electricity. If Senate Bill 2091 is adopted, there should be clarity under which the state's rural electric cooperatives, electric public utilities, and existing and potential future charging station owners can all operate.

That concludes my testimony. I would be happy to try to answer any questions you may have.

Senate Bill 2091—Testimony in Support

House Energy and Natural Resources, Chairman Porter

March 4, 2021

Chairman Porter, members of the committee, I am Carlee McLeod, President of the Utility Shareholders of North Dakota (USND), and I come before you to testify in support of SB 2091 on behalf of my members, including ALLETE, Montana Dakota Utilities, Otter Tail Power Company, and Xcel Energy.

This bill comes before you to clarify the definitions of “public electric utility” and “rural electric cooperative”, namely, to clarify that a person would not be considered a utility:

- 1) by reselling electricity;
- 2) if that electricity comes from the utility serving that area; and
- 3) if the resale of electricity is for charging electric vehicles exclusively.

This bill neither adds nor detracts from existing Public Service Commission jurisdiction or utility rights and obligations.

As the electric vehicle industry grows within the state, there have been concerns regarding the existing definitions and whether they preclude charging stations from offering electricity by the unit. To bypass any concern to date, charging stations have offered fees based on time of charging, which is less exact than kilowatt hour. This clarification would allow the more exact offer of kilowatt hour while respecting North Dakota’s electric territorial integrity.

As my colleagues will or have stated, serving electric customers requires significant capital investments for generation, transmission, and distribution systems, and this bill would not disrupt those efficiencies. Rather, it would allow the electric vehicle industry to blend seamlessly with existing utility regulations.

We ask for your support for this clarification.

Thank you.

