

# NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

## ELECTRIC INDUSTRY COMPETITION COMMITTEE

Friday, March 3, 2000  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Al Carlson, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Al Carlson, Robert Huether, Matthew M. Klein; Senators Randel Christmann, Pete Naaden, Larry J. Robinson

**Others present:** See Appendix A

**It was moved by Senator Robinson, seconded by Representative Huether, and carried on a voice vote that the minutes of the December 1, 1999, committee meeting be approved as distributed.**

At the request of Chairman Carlson, committee counsel distributed a letter from Mr. Richard B. Bulman, General Manager and CEO, MAPPOR, St. Paul, Minnesota, concerning energy facilities planned for North Dakota and licensing periods for nuclear facilities, and a memorandum from Mr. Alan H. Richardson, Executive Director, APPA, to officials of public power systems concerning 1998 data on revenue per kilowatt-hour. Copies of these documents are attached as Appendices B and C, respectively.

At the request of Chairman Carlson, committee counsel reviewed a memorandum entitled *Summary of Electric Utility Industry Taxation Proposals Submitted to the Electric Industry Competition Committee* which discusses the electric utility industry taxation proposals that have been submitted by the Association of Rural Electric Cooperatives and the state's investor-owned utilities to the committee.

Chairman Carlson called on Mr. Harlan Fuglesten, Director, Communications and Government Relations, North Dakota Association of Rural Electric Cooperatives, who addressed the committee. Mr. Fuglesten reviewed the activities of the Electric Industry Taxation Task Force and noted that in 1996 the state's rural electric cooperatives paid approximately \$37 million in taxes while the state's investor-owned utilities paid approximately \$13 million in taxes. He said the state's rural electric cooperatives have shown that, based upon either a kilowatt per hour basis or revenue basis, the cooperatives paid approximately 50 percent more in transmission and distribution taxes than the state's investor-owned utilities. He said any revised tax system should be fair and equitable, easy to administer, revenue neutral, and should minimize tax burden shifts.

Concerning the Association of Rural Electric Cooperatives Proposal A, he said, it retains the current coal

conversion and coal severance taxes and extends the coal conversion tax to the Montana-Dakota Utilities Company Heskett station in Mandan. He said the proposal contains uniform graduated transmission line mile taxes by kilovoltage. He said the association's Proposal A would raise approximately \$2 million in transmission line taxes. On the distribution component, he said, Proposal A calls for a distribution tax using a two-part formula. He said the distribution tax includes a flat tax of 62 cents per megawatt-hour of delivered power and a tax of one percent of revenue collected on the retail sale of kilowatt-hours of electricity.

Mr. Fuglesten noted there are a number of similarities between the tax proposals submitted by the Association of Rural Electric Cooperatives and the state's investor-owned utilities. However, he said, the investor-owned utility proposal calls for an income tax credit of approximately \$2.5 million against transmission and distribution taxes paid by the state's investor-owned utilities. Thus, he said, the investor-owned utility proposal calls for raising \$5 million in tax revenue from the transmission component. He said most of the transmission facilities in the state are owned by the state's rural electric cooperatives, which in essence shifts the income taxes paid by the state's investor-owned utilities to the state's rural electric cooperatives.

Following the submission of the investor-owned utility proposal to the committee, Mr. Fuglesten said, the association looked for areas of agreement and where adjustments could be made in the association's proposal. He said the association developed a revised plan that was submitted to the committee at its December 1, 1999, meeting. He said this plan retains the state's coal conversion and coal severance taxes but extends the coal conversion tax to all generation facilities of five megawatts or greater regardless of fuel source. He said the coal conversion tax on peaking facilities should be based on production rather than capacity. He said the association's second proposal increases transmission taxes \$400,000 or twenty percent over the initial proposal. Because of the increase in the transmission component, he said, the association was able to reduce the distribution tax component to fifty-nine cents per megawatt-hour of delivered power and a tax of

.95 percent of revenue collected on the retail sale of kilowatt-hours of electricity.

Finally, Mr. Fuglesten said, concerning the state's municipal utilities, it has never been the intent of the Association of Rural Electric Cooperatives to negatively impact the municipal power systems in the state or restrict their ability to collect payments in lieu of taxes.

In response to a question from Senator Naaden, Mr. Fuglesten said the new arrangement whereby several rural electric cooperatives are purchasing their electricity directly from Basin Electric Power Cooperative rather than a generation and transmission cooperative will save the cooperatives approximately \$800,000 in taxes. However, he said, as the association's taxation proposals are revenue neutral, the \$800,000 is still included in the proposals put forward by the association, and the change in purchasing will not result in any revenue loss to the state or its political subdivisions.

Chairman Carlson called on Mr. Dennis Boyd, Montana-Dakota Utilities Company, who addressed the committee. A copy of Mr. Boyd's comments is attached as Appendix D. He reviewed the investor-owned utility's taxation proposal which was presented at the December 1, 1999, committee meeting.

In response to a question from Representative Huether, Mr. Boyd said the power marketer tax proposed by the state's investor-owned utilities would apply to any energy brought into the state regardless of source. He said the intent is to apply the power marketer tax to any electricity not subject to the state's coal conversion tax.

In response to a question from Representative Klein, Mr. Boyd said the power marketer tax is intended to protect the state's domestic generators from electricity imported into the state which may be cheaper because it is not subject to the coal conversion tax.

Chairman Carlson recognized Mr. Tom Trenbeath, North Dakota Association of Municipal Power Systems, Cavalier. Mr. Trenbeath said the association welcomed the comments of Mr. Fuglesten that the Association of Rural Electric Cooperatives proposal was not intended to harm the municipal power systems in any way. He then introduced Mr. Fred Stark, Mayor, Grafton, and representative of the North Dakota Association of Municipal Power Systems.

Chairman Carlson recognized Mr. Stark. A copy of Mr. Stark's written comments is attached as Appendix E. He said any taxes applicable to the state's municipal power systems should be returned to the municipalities that generated them.

In response to Mr. Stark's comments, Senator Christmann said the rate of taxes paid to municipal power systems should be reviewed by the committee. He said if taxes charged by municipal power systems are less than those imposed on the customers of rural

electric cooperatives and investor-owned utilities, then power consumers are being treated disparately. Also, he said, if municipal power system cities are using their power systems to subsidize city government and keep property taxes low, then the city may be designated a "poor" city or school district and thus receive more state aid.

At the request of Chairman Carlson, Ms. Marcy Dickerson, Utility Tax Appraiser, State Tax Department, addressed the committee. A copy of her written comments is attached as Appendix F. She noted the committee has been using a three-year average of taxes paid in 1995, 1996, and 1997 in reviewing electric utility industry taxation. However, she said, total 1998 electric property, gross receipts, and transmission line taxes were \$12,590,790.73 or almost \$1 million more than the \$11.5 million average for 1995 through 1997. She also noted that if a new electric utility tax scheme taxes property in a different way and only the gas operations remain subject to ad valorem assessment and taxation, it is likely future assessments of the gas operations will produce less tax revenue than in the past.

In response to a question from Senator Christmann, Ms. Dickerson said property taxes paid by electricity producers are distributed to all political subdivisions in the taxing district including counties, cities, school districts, townships, water resource districts, park districts, and fire protection districts as well as any other special districts that may exist in the county. She said gross receipts taxes are distributed to all political subdivisions in the same way as property taxes, but transmission line taxes are remitted to the counties in which the transmission line is located and placed in the county general fund. She said transmission line taxes are not distributed to local taxing districts within the county.

Ms. Dickerson said options of distributing a new tax on electrical production include political subdivisions receiving the same amount they received in a previous year from taxes on electric property, which is similar to the telecommunications gross receipts tax distribution formula under North Dakota Century Code Chapter 57-34; the entire tax amount collected being distributed on the same basis as taxes the political subdivisions received from electric property in a base year; the entire tax amount collected being distributed on miles of transmission line, by capacity; the entire tax collected being distributed on retail consumption of kilowatt-hours; the entire tax collected being distributed according to the formula by which the state aid distribution fund is distributed; the tax paid by each company being distributed on the same basis as the taxes each political subdivision received from that company's electric property in a base year; the proposed transmission tax being distributed based upon miles of transmission line, by capacity; and the proposed distribution tax being distributed based on retail consumption of kilowatt-hours.

In response to the options presented by Ms. Dickerson, Representative Klein commented that enacting a distribution formula whereby political subdivisions receive the same amount as they received in a previous year from taxes on electric property does not account for any growth in electricity consumption.

In response to Ms. Dickerson's comments, Representative Huether said any proposal adopted by the committee should be revenue neutral to the state's political subdivisions.

Chairman Carlson called on Ms. Connie Sprynczynatyk, Executive Director, North Dakota League of Cities, who addressed the committee. One option, she said, would be for the committee to designate a base year and include a growth factor on top of the base year or a fixed point in time plus a floating percentage. She said the issue of growth must be addressed in any formula developed by the committee.

In response to a question from Senator Naaden, Ms. Sprynczynatyk said the League of Cities would support changing the growth factor each legislative session if the change would be based on the change in tax revenue during the previous biennium. She said the political subdivisions would not mind participating in any growth or absorbing any decline along with the state but would not want to address this issue each session. She said political subdivisions have learned from experience that having to come before the Legislative Assembly each session in order to get certain legislation enacted is not always in their best interest.

Concerning the generation function of any tax proposal, Representative Klein said, the proposal should include the current coal conversion and severance taxes and apply the coal conversion tax to peaking plants when they are in use or be based upon actual production rather than capacity. Thus, he said, the coal conversion tax would apply to all plants regardless of size and all plants regardless of fuel source including wind, biomass, coal, gas, or any new fuel source.

Representative Huether said any proposal on generation taxes should include cogeneration facilities.

Concerning taxation of the transmission function, Representative Klein proposed transmission lines under 50 kilovolts be taxed at a rate of \$125 per mile; transmission lines from 50 to 90 kilovolts be taxed at a rate of \$300 per mile; transmission lines from 100 to 199 kilovolts be taxed at a rate of \$500 per mile; transmission lines from 200 to 299 kilovolts be taxed at a rate of \$700 per mile; transmission lines from 300 to 399 kilovolts be taxed at a rate of \$900 per mile; and transmission lines of 400 kilovolts or more be taxed at a rate of \$1,200 per mile.

Senator Christmann suggested the tax on large lines should be lower and an exemption should be provided for new transmission lines.

Chairman Carlson recognized Mr. Fuglesten, who reviewed the Association of Rural Electric Cooperatives distribution tax proposal. Mr. Fuglesten said the proposal is the result of a compromise between rural electric cooperatives that sell a low volume of high-cost energy and cooperatives that sell a high volume of low-cost electricity. For the former, he said, a kilowatt per hour tax is more favorable and for the latter a percentage of revenue tax is favored.

Chairman Carlson recognized Mr. Boyd, who clarified that the power marketer tax proposed by the state's investor-owned utilities would only become effective once the state reached open access and out-of-state generators were allowed to freely compete with intrastate electricity providers.

Chairman Carlson recognized Mr. Bruce Kopp, Northern States Power Company. Mr. Kopp reviewed the distribution component of the investor-owned utility tax proposal. He said the proposal separates residential from commercial and industrial users because if a uniform rate is used, commercial and industrial users would find their energy costs increasing significantly, which would harm economic development in North Dakota.

In response to a question from Representative Carlson, Mr. Fuglesten said the Association of Rural Electric Cooperatives proposal accounts for both the low-cost and high-cost energy user and the high-volume and low-volume energy user. He said the effect of the distribution component of the two plans on an individual energy user is minimal and would not hurt the economic development of the state.

Concerning the issue of whether state income taxes paid by the investor-owned utilities should be allowed as a credit or deduction against income, Senator Christmann said if this proposal were to be included in the committee's recommendation, then every other industry that competes against cooperatives would ask for similar tax relief and it would cause revenue problems for the state.

## **TERRITORIAL INTEGRITY ACT STUDY**

At the request of Chairman Carlson, committee counsel reviewed a memorandum entitled *Territorial Integrity Act Study - Background Memorandum*. The memorandum discusses the state's Territorial Integrity Act, previous studies conducted by the Legislative Council, proposed legislation considered by the 1999 Legislative Assembly, and the exclusive electric service area laws of surrounding states, and also included a possible study approach.

In response to a question from Representative Carlson, committee counsel said a customer must request service from an investor-owned utility before the utility may seek a certificate of public convenience and necessity from the Public Service Commission to

serve a customer outside the corporate limits of a municipality.

In response to a question from Representative Carlson, Mr. Jerry Lein, Public Utility Analyst, Public Service Commission, said his office could provide a list of criteria used by the commission in addressing territorial disputes between rural electric cooperatives and investor-owned utilities.

In response to a question from Representative Huether, Mr. Lein said the primary interest of the Public Service Commission is the avoidance of wasteful duplication in electrical services.

Chairman Carlson called on Ms. Barb Shaw, Mohall, who addressed the committee. She said if it were not for the state's rural electric cooperatives, many rural areas would not have electric service. Concerning economic development, she said, many small towns will not be able to pursue economic development if rural electric cooperatives are not allowed to continue to serve smaller communities.

### **STAFF DIRECTIVES**

Senator Robinson requested that the Legislative Council staff ask the Superintendent of Public Instruction to provide a list of property-poor school districts in the state to the committee.

Senator Christmann requested that the Legislative Council staff provide a history of why small power plants, such as the Heskett plant, are subject to property taxes rather than the coal conversion tax.

Representative Huether requested that the Legislative Council staff request the Association of Rural Electric Cooperatives and the state's investor-owned utilities to provide a schedule of power plants by capacity to the committee.

Senator Robinson requested that representatives of the state's lignite industry be requested to appear at the next committee meeting to address the proposed changes in the transmission line mile tax.

Representative Huether requested that the Legislative Council staff ask the Tax Department to provide electric utility industry taxation information for 1999 as well as 1995 through 1998, when available.

Senator Christmann requested that the Legislative Council staff prepare a schedule of the number of miles of each type of transmission line by kilovolts, including the different proposed transmission line mile tax rates, for the committee's next meeting.

Senator Christmann requested that the Legislative Council staff request the Association of Rural Electric Cooperatives and the state's investor-owned utilities to provide information on the impact of each proposal on their electric utility operations in the state.

Representative Huether requested that the Legislative Council staff request the Public Service Commission to provide information on the number of Territorial Integrity Act cases, the determination of those cases, and the result of any appeals, as well as the guidelines used by the commission in determining Territorial Integrity Act disputes.

No further business appearing, Chairman Carlson adjourned the meeting at 2:20 p.m.

---

Jeffrey N. Nelson  
Committee Counsel

ATTACH:6