

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ELECTRIC INDUSTRY COMPETITION COMMITTEE

Wednesday, June 7, 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 that the minutes of the April 24, 2000, committee meeting be approved as distributed.

ELECTRIC UTILITY INDUSTRY TAXATION

At the request of Chairman Carlson, committee counsel reviewed information compiled by the Edison Electric Institute concerning typical residential, commercial, and industrial electric bills for Iowa, Minnesota, North Dakota, South Dakota, Montana, and Wyoming. He reviewed market share data compiled by the Energy Information Administration for cooperatives, federal power agencies, investor-owned utilities, and publicly owned power systems showing revenue, sales, customers, revenue per kilowatt-hour, usage, and typical bills for each of these entities. He reviewed information compiled by the Energy Information Administration concerning revenue, sales, consumers, rates, and usage for each of the rural electric cooperatives in the United States. He also reviewed United States Senate Bill No. 2098 and a memorandum from Mr. Jerry Coleman, Assistant Director, School Finance and Organization, Department of Public Instruction, concerning a correction of the information presented by Mr. Coleman at the April 24, 2000, committee meeting. He also reviewed an updated memorandum entitled *Summary of Electric Utility Industry Transmission Taxation Proposals Submitted to the Electric Industry Competition Committee*. Copies of these items are on file in the Legislative Council office.

Chairman Carlson recognized Representative Klein. Representative Klein said any electric utility industry taxation proposal will have to raise between \$11 to \$12 million annually to be revenue neutral. Based upon what other states allocate to the transmission component, he said, North Dakota will have to generate between 35 and 40 percent of the total amount from the transmission component of electricity supply. If the total revenue to be raised is \$12 million,

he said, the transmission component should account for just over \$4 million. Thus, he said, transmission lines of 41.6 kilovolts should be taxed at a rate of \$200 per mile, transmission lines of 57 kilovolts should be taxed at a rate of \$300 per mile, transmission lines of 69 kilovolts should be taxed at a rate of \$400 per mile, transmission lines of 115 kilovolts should be taxed at a rate of \$600 per mile, transmission lines of 230 kilovolts should be taxed at a rate of \$800 per mile, transmission lines of 345 kilovolts should be taxed at a rate of \$1,000 per mile, and transmission lines of 400 kilovolts should be taxed at a rate of \$1,500 per mile. He said transmission lines of 500 kilovolts should be taxed at a rate of \$1,300 per mile. He said 250 kilovolt direct current lines should be taxed at a rate of \$1,200 per mile and 400 kilovolt direct current lines should be taxed at a rate of \$1,500 per mile. He said these proposed transmission tax rates would generate approximately \$4 million annually. He said the proposal shifts much of the transmission tax burden from the state's rural electric cooperatives to the generation and transmission cooperatives. He noted that some rural electric cooperatives are penalized by the current system and that the tax rates have not been increased for over 20 years.

In response to Representative Klein's comments, Senator Christmann said creating a new category for 500 kilovolt lines and taxing them at \$1,300 per mile would prohibit any 500 kilovolt lines from being constructed in North Dakota. He said the tax rates proposed by Representative Klein are too high and would discourage economic development in the state.

Senator Robinson said just because the current tax rates have not been changed for over 20 years does not mean the rates are inadequate and not correct.

Representative Huether said there has been no growth in the state's lignite energy, and if and when deregulation occurs, the state needs to ensure that domestic utilities can export energy into the national market. He said an increase in the transmission tax rates would be detrimental to the state and the state's energy industry.

Senator Christmann said North Dakota has some of the lowest electricity rates in the nation with a population of only 630,000 people because of our large

energy industry and plants that were constructed to export power out of state.

Representative Klein said other states typically allocate 35 to 40 percent of their electricity taxation to the transmission component and 60 to 65 percent to the distribution component.

In response to a question from Representative Klein, Mr. Harlan Fuglesten, Communications and Government Relations Director, North Dakota Association of Rural Electric Cooperatives, Mandan, said wholesale power produced and exported by cooperatives in North Dakota, such as power produced at the Antelope Valley Station, is not subject to the gross receipts tax because this power is subject to the coal conversion tax.

Senator Robinson said North Dakota's competitive edge is already slipping due to aging power plants and the specter of Montana and Wyoming coal which is a higher Btu coal.

In response to Senator Robinson's comments, Senator Christmann said North Dakota's power plants are facing an increasing regulatory environment that is impacting the competitive edge of North Dakota's power plants.

Representative Carlson said the transmission tax is not a new tax, and the committee is merely contemplating a change in the methodology of imposing a transmission tax and what portion of the total tax placed on the electricity industry the transmission component should have. If the transmission tax is increased and revenue neutrality is maintained, he said, someone is paying less tax and the consumer may ultimately benefit from the shift in taxation of the different components of the electricity industry.

Representative Huether said the revised transmission tax proposal submitted by the Association of Rural Electric Cooperatives calls for a 42 percent increase in transmission taxes paid by the rural electric cooperatives and a 13 percent increase in transmission taxes paid by the state's investor-owned utilities. Under the proposal submitted by the investor-owned utilities, he said, the state's rural electric cooperatives would see an increase of 166 percent in their transmission line taxes while the investor-owned utilities would see a 19 percent decrease.

Mr. Fuglesten addressed the committee. He distributed rate schedules for the state's 18 rural electric cooperatives, a copy of which is on file in the Legislative Council office, and a schedule of 1999 revenue and kilowatt-hour sales by cooperatives and utilities in North Dakota and megawatt per hour sales data for 1990 through 1999, copies of which are attached as Appendices B and C, respectively. He said the average revenue per residential customer is \$.0689 per kilowatt-hour for rural electric cooperatives and \$.0628 per kilowatt-hour for investor-owned utilities. He said the average revenue for commercial and industrial customers is \$.0533 per kilowatt-hour for cooperatives and \$.0534 per kilowatt-hour for the

state's investor-owned utilities. He said the reason for the variability among the cooperatives is due to the geographical area served by a cooperative. He said rural electric cooperatives around the state's four major cities and Dakota Valley Rural Electric Cooperative, because of the location of the Progold plant near Wahpeton, have shown some increases while the remainder of the state's rural electric cooperatives have remained the same or declined.

In response to a question from Representative Carlson, Mr. Fuglesten said the individual rates for each cooperative are determined by the elected board of directors of that cooperative.

In response to a question from Senator Naaden, Mr. Fuglesten said there is no requirement that a certain percentage of a cooperative's customers must be rural or agricultural.

In response to a question from Representative Carlson, Mr. Fuglesten said rural electric cooperatives pay a tax on the land where their buildings and substations are located but not on the improvements on those parcels. For investor-owned utilities, he said, their property tax includes the investment that they have made in their property holdings. He said the Association of Rural Electric Cooperatives has offered a transmission tax proposal that is equitable and fair. He said the proposal actually increases the transmission tax paid by rural electric cooperatives more than investor-owned utilities would pay, and some entities, such as Great River Energy, contend the association's proposal increases transmission taxes too much. He said Minnesota is looking at reducing its transmission tax, and the North Dakota Legislative Assembly must do what is best for North Dakota to promote economic development in North Dakota.

At the request of Chairman Carlson, Mr. Bruce Kopp, Northern States Power Company, Grand Forks, addressed the committee. He distributed rate schedules for Northern States Power Company's commercial and industrial and residential customers. Copies of the schedules are attached as Appendices D and E, respectively.

In response to a question from Senator Robinson, Mr. Kopp said Northern States Power Company's North Dakota rates are lower than its Minnesota and South Dakota rates. He said the cost of doing business is higher in Minnesota and Northern States Power Company is the single largest taxpayer in Minnesota.

Concerning kilowatt-hour sales by area in North Dakota, Mr. Kopp distributed a schedule showing the kilowatt-hour sales for Fargo, Grand Forks, and Minot for the last 10 years, the annual change and average annual change in kilowatt hours sold, and the number of customers by area. A copy of the schedule is attached as Appendix F.

At the request of Chairman Carlson, Mr. Dennis Boyd, Montana-Dakota Utilities Company, presented

a rate summary sheet for Montana-Dakota Utilities Company and a summary of megawatt per hour sales in North Dakota from 1990 to 1999. The rate summary sheet is attached as Appendix G and the summary of megawatt per hour sales is attached as Appendix H.

In response to a question from Representative Klein, Mr. Boyd said Montana-Dakota Utilities Company's electricity sales have grown 1.8 percent annually over the decade of the 1990s, but the growth in customers is approximately one-third of that amount or .6 percent during this same period.

At the request of Chairman Carlson, Mr. Marlowe Johnson, Otter Tail Power Company, Jamestown, presented a schedule of North Dakota retail kilowatt per hour sales and number of customers for 1989 through 1999 for Otter Tail Power Company and a summary of electric rates for Otter Tail Power Company. The schedule of retail sales and customers is attached as Appendix I and the rate summary sheet is attached as Appendix J. Mr. Johnson also distributed the electric rate schedules for electric service in North Dakota, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Carlson, Mr. Boyd addressed the committee. He said the premise of competition is that everyone plays on an equal playing field. He said Montana-Dakota Utilities Company's position that the corporate income tax be considered in any taxation proposal is based upon this premise. He said the corporate income tax impacts Montana-Dakota Utilities Company's customers and is reflected in their rates. If Montana-Dakota Utilities Company is expected to compete in an open, fair, and competitive market, he said, the corporate income tax must be taken into consideration. He said this is a cost of doing business for Montana-Dakota Utilities Company that may not be paid by its competitors. Concerning the coal conversion tax and the coal extraction tax, he said, there is an inequity in the imposition of the conversion tax. He said there are several small generating plants that are subject to property taxes, and this issue should be resolved. If the committee does not exempt investor-owned utilities from the corporate income tax, he said, the committee should consider levying a corporate income type of tax on cooperatives such as the state of Alaska has done. Another decision that must be made, he said, is which entities are going to participate in open access or competition. Some states, he said, have allowed cooperatives to opt out and not participate in open access.

At the request of Chairman Carlson, Mr. Tom Trenbeath, City of Cavalier and North Dakota Association of Municipal Power Systems, addressed the committee. He said the association would not support any proposal that would increase its members' taxes. He said that most municipal power systems are seeing little if any growth in electricity consumption.

TERRITORIAL INTEGRITY ACT STUDY

At the request of Chairman Carlson, Mr. Jerry Lein, Public Utility Analyst, Public Service Commission, addressed the committee. A copy of his written comments is attached as Appendix K. He reviewed Territorial Integrity Act cases PU-401-89-441 (applicant - Otter Tail Power Company, protester - RSR Rural Electric, customer - Minn-Dak Yeast Company, Wahpeton) and PU-401-96-216 (applicant - Otter Tail Power Company, protester - none, customer - Mr. Clyde Hoffner, Devils Lake). A copy of the record in these cases is on file in the Legislative Council office. He also distributed a letter from the public service commissioners concerning recommended changes to the Territorial Integrity Act. A copy of this letter is attached as Appendix L. In the letter, the commissioners state that it would be inappropriate for them to make suggestions or recommendations concerning potential changes to the Territorial Integrity Act.

In response to a question from Representative Carlson, Mr. Lein said the 10 issues or factors that the Public Service Commission considers in Territorial Integrity Act disputes are: (1) from whom does the customer prefer electric service; (2) what electric suppliers are operating in the general area; (3) what electric supply lines exist within a two-mile radius of the location to be served, and when were they constructed; (4) what customers are served by electric suppliers within at least a two-mile radius of the location to be served; (5) what are the differences, if any, between the electric suppliers available to serve the area with respect to reliability of service; (6) which of the available electric suppliers will be able to serve the location in question more economically and still earn an adequate return on its investment; (7) which supplier's extended electric service would best serve orderly and economic development of electric service in the general area; (8) would approval of the application result in wasteful duplication of investment or service; (9) is it probable the location in question will be included within the corporate limits of a municipality within the foreseeable future; and (10) will service by either of the electric suppliers in the area unreasonably interfere with the service or system of the other. He said items 1, 9, and 10 were developed by the Public Service Commission while items 2, 3, 4, 5, 6, 7, and 8 are taken from Supreme Court decisions concerning the Territorial Integrity Act. He said item 1 is given less weight because this is assumed in most cases since the customer must request service from an investor-owned utility before the case can even reach the Public Service Commission. Concerning reliability, he said, in most cases both proposed suppliers can reliably serve the customer; however, in some cases, one supplier may be more reliably able to serve the specific needs of a customer.

Representative Carlson said he is concerned about item 6. If a customer requests service from a particular supplier, he said, the decision of the customer should prevail.

Chairman Carlson recognized Representative Klein. Representative Klein said he is concerned with a statement contained in Otter Tail Power Company's application that it required its customer, Minn-Dak Yeast Company, to "waive notice of opportunity for hearing and notice of hearing upon said application or hearing thereof."

In response to a question from Representative Carlson, Mr. Lein said item 9 probably is not as important as it once was due to the South Point decisions in Fargo. He said the factor of customer preference is probably of less importance than the other nine factors and that the commission gives the other nine factors equal weight. However, he said, which factors come into play in a specific dispute are dependent upon the specific facts in that case. Concerning customer preference, he said, if all other factors are equal, then customer preference would be the determinative factor.

In response to a question from Representative Carlson, committee counsel said the factors developed by the North Dakota Supreme Court were listed in *Application of Otter Tail Power Company* in 1969 in which the court established that in addition to customer preference, factors to be considered in determining whether an application for a certificate of public convenience and necessity should be granted include the "location of the lines of the supplier; the reliability of the service which will be rendered by them; which of the proposed suppliers will be able to serve the area more economically and still earn an adequate return on its investment; and which supplier is best qualified to furnish electric service to the site designated in the application and which also can best develop electric service in the area in which such site is located without wasteful duplication of investment service."

In response to a question from Representative Carlson, Mr. Lein said investor-owned utilities receive a franchise from a municipality and are then entitled to serve within the corporate boundaries of that municipality. To extend outside a municipality, he said, they need a certificate of public convenience and necessity from the Public Service Commission. Essentially, he said, rural electric cooperatives serve the areas outside municipalities in North Dakota.

At the request of Chairman Carlson, Mr. Kopp addressed the committee. A copy of Mr. Kopp's written comments is attached as Appendix M. He said the Territorial Integrity Act is not working well and should be changed. He said Northern States Power Company expects an opportunity to do business in the state and an opportunity to grow and continue to provide low-cost reliable energy services to North Dakota consumers.

At the request of Chairman Carlson, Mr. Fuglesten addressed the committee. He distributed a series of articles published in the *North Dakota REC/RTC Magazine* from June 1999 to March 2000 in response to 1999 Senate Bill No. 2389 concerning electric utility integrity. Copies of these articles are attached as Appendix N.

At the request of Chairman Carlson, Mr. Jay Haley, EAPC Architects and Engineers, Grand Forks, addressed the committee. He said his firm is working with the Griggs and Steele County Empowerment Zone to develop wind energy projects. He said there is an emerging wind energy industry that is poised for growth in North Dakota. He said whatever transmission proposal is developed by the committee will have an impact on the export of wind energy from North Dakota.

STAFF DIRECTIVES

Representative Klein requested the representatives of the state's investor-owned utilities and rural electric cooperatives be requested to prepare an analysis of the revised transmission line mile tax proposed by him.

Representative Carlson requested the Legislative Council staff invite representatives of Fargo, Bismarck, Grand Forks, Minot, and West Fargo and the North Dakota League of Cities to appear at the next committee meeting to discuss territorial integrity issues and the franchising of municipal utilities.

No further business appearing, Chairman Carlson adjourned the meeting at 2:05 p.m.

Jeffrey N. Nelson
Committee Counsel

ATTACH:14