

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ELECTRIC INDUSTRY COMPETITION COMMITTEE

Monday, September 8, 2003
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Matthew M. Klein, Chairman, called the meeting to order at 10:00 a.m.

Members present: Representatives Matthew M. Klein, Jim Kasper, George Keiser, James Kerzman; Senators Duane Mutch, David P. O'Connell, Larry Robinson, Ben Tollefson, Thomas L. Trenbeath, Herb Urlacher

Members absent: Representatives Wesley R. Belter, Bruce Eckre

Others present: See Appendix A

At the request of Chairman Klein, Mr. John D. Olsrud, Director, Legislative Council, reviewed the *Supplementary Rules of Operation and Procedure of the Legislative Council*.

Chairman Klein addressed the committee. Although the Electric Industry Competition Committee has not made any recommendations concerning its studies of the impact of competition on the generation, transmission, and distribution of electric energy within this state, the Territorial Integrity Act, or wind energy, he said, committee discussion has led to legislation sponsored by other entities being enacted. He said 1999 House Bill No. 1445 established the differentiation between electricity transmission lines and electricity distribution lines at 41.6 kilovolts. He said 2001 Senate Bill No. 2299 changed the tax status of the Heskett generating station in Morton County. Under previous law, he said, the Heskett Station was excluded from the definition of a coal conversion facility because the production capacity of the two generating units was less than the threshold for application of the coal conversion tax. He said the 2001 legislation reduced the threshold for inclusion as a coal conversion facility, changing the status of the Heskett Station from payment of property taxes to payment of coal conversion taxes. The 2003 Legislative Assembly, he said, exempted transmission lines of 230 kilovolts or larger which are initially placed in service on or after October 1, 2002, from taxation for the first taxable year the line is initially placed in service and reduced the taxes otherwise determined by law--75 percent for the second taxable year of operation, 50 percent for the third taxable year of operation, and 25 percent for the fourth taxable year of operation. After the fourth year of operation, he said, the transmission line is subject to tax at a rate of \$300 per mile. He said this bill was designed to act

as an incentive for the construction of new transmission lines in the state. Finally, he said, as a result of committee discussions, the problem of "pancaking" of gross receipts taxes of certain rural electric cooperatives has been resolved.

Chairman Klein noted that membership of the committee has been expanded from six members to 12 members. He said he hoped the committee might develop a common taxation system for the transmission and distribution components of the electric industry that would apply equally to the state's investor-owned utilities and electric cooperatives. Another issue he would like to see the committee explore, he said, is the exchange or trade of service areas to promote efficiency.

At the request of Chairman Klein, committee counsel reviewed a memorandum entitled *Impact of Competition on the Generation, Transmission, and Distribution of Electric Energy Study - Background Memorandum* describing the statutory duties and structure of the committee. He reviewed the background of electric industry restructuring, federal actions to promote competition, electric industry restructuring initiatives in other states, federal restructuring initiatives, the Territorial Integrity Act, energy-related legislation considered but not enacted by the 2003 Legislative Assembly, energy-related legislation enacted by the 2003 Legislative Assembly, and significant committee activities since formation of the committee.

At the request of Chairman Klein, Mr. John Walstad, Code Revisor, Legislative Council, reviewed a memorandum entitled *Electric Industry Taxation - Background Memorandum* describing taxation of the electric industry. He also reviewed a bill draft [30138.0400] relating to taxation of the generation, distribution, and transmission of electric power considered by the committee in October 2002.

At the request of Chairman Klein, committee counsel distributed three pamphlets prepared by the National Conference of State Legislatures. The pamphlets are entitled *The Electric Industry - State and Federal Jurisdiction; Restructuring in Retrospect; and California's Power Crisis - What Happened? What Can We Learn?*. These pamphlets are on file in the Legislative Council office.

Chairman Klein recognized Mr. Dennis Boyd, Senior Governmental Affairs Representative, Public Affairs Department, MDU Resources Group, Inc. A copy of Mr. Boyd's comments is attached as Appendix B. He discussed the committee's study of the impact of competition on the generation, transmission, and distribution of electric energy within this state to date; the direction the study should take during the 2003-04 interim; the future of the electric energy industry in this state; the taxation of the electric industry; and the feasibility and desirability of encouraging electric energy providers to exchange or trade service areas to promote efficiency.

Chairman Klein recognized Ms. Kathy Aas, Minot Community Relations Manager and North Dakota Governmental Affairs Representative, Xcel Energy, Inc., Minot. A copy of her written comments is attached as Appendix C. She discussed the background of Xcel Energy, Inc.; the 2003 legislative session; and the study of the impact of competition on the generation, transmission, and distribution of electric energy within this state.

In response to a question from Representative Kerzman, Ms. Aas said the revenue generated by Xcel Energy company's activities in North Dakota is reinvested in North Dakota.

Chairman Klein recognized Mr. Loren Laugtug, Otter Tail Power Company, Fergus Falls, Minnesota. A copy of his written comments is attached as Appendix D. He discussed the study of the impact of competition on the generation, transmission, and distribution of electric energy within this state and the operation of the state's Territorial Integrity Act in Jamestown.

In response to a question from Representative Kerzman, Mr. Laugtug said all investor-owned utilities operating in the state would be willing to serve customers to whom the provision of electric service would be economically viable. He said it would not be economically feasible for investor-owned utilities to invest their shareholders' funds to serve uneconomic farms. He said electric cooperatives receive government loans, the purpose of which is to allow electric cooperatives to provide service in rural areas.

In response to a further question from Representative Kerzman, Mr. Laugtug said to the best of his knowledge Otter Tail Power Company has not received any federal loans.

Chairman Klein recognized Mr. Bob Graveline, President, Utility Shareholders of North Dakota. A copy of Mr. Graveline's written comments concerning the study is attached as Appendix E.

In response to a question from Senator O'Connell concerning a recent *Bismarck Tribune* article relating to the salaries paid to executives of MDU Resources Group, Inc., Mr. Graveline said MDU Resources Group, Inc., is a major corporation with annual sales of over \$2 billion and its salaries are not based on the economies of Bismarck-Mandan but the national and

international economies, and salaries must be competitive in those economies to attract quality executives. He said the salaries of the executives of MDU Resources Group, Inc., reflect the value that the company's board of directors and its shareholders place on the services rendered to the corporation by those executives.

Chairman Klein recognized Mr. Harlan Fuglesten, General Counsel and Government Relations Director, North Dakota Association of Rural Electric Cooperatives. A copy of his written comments is attached as Appendix F. He discussed the committee's study of the generation, transmission, and distribution of electric energy within this state.

In response to Mr. Fuglesten's comments, Representative Keiser said it must be remembered the problems experienced in Montana and California as a result of restructuring were not the product of deregulation but the product of insane regulation.

Chairman Klein recognized Ms. Susan Wefald, Commissioner, Public Service Commission, and President, Organization of MISO States. A copy of the overheads used in her presentation is on file in the Legislative Council office. She discussed changes in the midwest wholesale electricity markets.

In response to a question from Representative Klein, Ms. Wefald said the Organization of MISO States has not taken a position on postage stamp transmission pricing versus license plate transmission pricing. She said states in the eastern portion of MISO generally favor license plate pricing while states in the western portion of MISO generally favor postage stamp pricing.

Chairman Klein recognized Senator Robinson. Senator Robinson said the committee should build on the bill draft that was developed by the committee at the end of the previous interim. He said if the committee scrapped that bill draft and started the process from scratch it may lose much of what has been accomplished and may never reach a consensus.

In response to Senator Robinson's comments, Chairman Klein said in order to reach a consensus on taxation of the electric industry, the committee will need to update the taxation information and statistics compiled by the state's investor-owned utilities and rural electric cooperatives. He said this information is essential to develop a common tax policy that is fair to all components of the electric industry.

Chairman Klein recognized Representative Keiser. Representative Keiser said taxation of the electric industry is only one component of the study and the committee must address the operation and effect of the Territorial Integrity Act.

In response to Representative Keiser's comments, Chairman Klein agreed that discussion of the operation and effect of the state's Territorial Integrity Act was within the committee's jurisdiction and will be discussed at future meetings.

WIND ENERGY DEVELOPMENT STUDY

At the request of Chairman Klein, committee counsel reviewed a background memorandum entitled *Wind Energy Development Study - Background Memorandum*. The memorandum describes wind energy in North Dakota, 2003 wind energy legislation, and 2001 wind energy legislation. Committee counsel also distributed a document prepared by Mr. Joe Richardson, President, *Harnessing Dakota Wind*, a copy of which is attached as Appendix G. The document describes proposals for legislation relating to wind energy contract provisions and establishing a wind power development objective for the state.

Chairman Klein recognized Mr. Kim L. Christianson, Energy Program Manager, Department of Commerce. A copy of the overheads used in his presentation is on file in the Legislative Council office. He discussed wind energy development in North Dakota.

In response to a question from Representative Keiser, Mr. Christianson said wind turbine technology has evolved a great deal since many of the wind farms in California were installed. Thus, he said, one no longer sees the dense, closely spaced wind turbines that are characteristic of California wind farms, but current technology calls for more widely spaced, slow-moving turbines which are more pleasing aesthetically and cause much less problems for raptors and birds. In addition, he said, North Dakota's wind resource is superior to California's as a small increase in wind speed results in an exponential increase in electricity generated by the turbine. However, he agreed with Representative Keiser that in order to export electricity generated by wind turbines in North Dakota, a solution must be found for the transmission problem.

Chairman Klein recognized Mr. Michael Brandenburg, Steering Committee member, Coteau Hills Wind Energy, LLC, Edgeley. He said the communities of Edgeley, Kulm, and Ellendale have worked together to promote wind energy development in the area. He noted that electricity producers using lignite as a fuel source have joined together with wind development proponents to try to solve the transmission problem. He said representatives in states wishing to import energy from North Dakota have indicated that if North Dakota's wind energy can be combined with electricity produced from coal-fired plants, it may help solve the transmission problem.

Chairman Klein recognized Mr. Dennis Anderson, Chairman, Steering Committee, Coteau Hills Wind Energy, LLC, Edgeley. Mr. Anderson distributed a copy of a special edition of the *Edgeley Mail* relating to wind energy development in the Edgeley-Kulm area, a copy of which is on file in the Legislative Council office. He said the wind turbine farm near Edgeley is approximately 10 square miles, two miles by five miles. He said there are 41 towers and turbines in the wind farm. He said the Legislative

Assembly cleared the path for development of the state's wind energy resource with the tax legislation enacted in 2001. He said the Legislative Assembly should move cautiously and observe the development of the state's wind energy resource before enacting any legislation affecting the wind energy industry.

Chairman Klein recognized Mr. Richard Aberle, County Commissioner, LaMoure County and Steering Committee member, Coteau Hills Wind Energy, LLC, Edgeley. A copy of his written comments is attached as Appendix H. He discussed the development of wind energy in the Edgeley, Kulm, and Ellendale areas.

Chairman Klein recognized Mr. William Gackle, FPL Energy wind farm landowner and former member of the Legislative Assembly, Kulm. He said FPL Energy has been very good to work with and he and other landowners are satisfied with the manner in which they have been treated by FPL Energy. He cautioned that the Legislative Assembly should not micromanage the relationship between wind energy producers and landowners but allow landowners to negotiate with energy developers on a one-to-one basis.

Chairman Klein recognized Mr. Steve Ponder, Legislative and Regulatory Affairs Manager, FPL Energy, Sacramento, California. He said the wind energy tax incentives enacted by the 2001 Legislative Assembly were instrumental in drawing wind energy developers to North Dakota and without these incentives the \$61 million invested in the Edgeley, Kulm, and Ellendale wind farm would have been invested in another state. He said FPL Energy makes every attempt to use local contractors and products in constructing its wind farms. He said FPL Energy prides itself on treating its landowners fairly and working closely with them in the construction of wind turbines. However, he said, if the committee seeks to develop legislation governing wind energy landowner contracts, he and FPL Energy would be happy to work with the committee.

In response to a question from Representative Klein, Mr. Ponder said South Dakota and Nebraska have enacted wind energy incentives very similar to and based on the North Dakota incentives.

In response to a question from Representative Kerzman, Mr. Ponder said it is difficult for individual landowners to develop and construct their own wind energy turbines because of the expense, difficulty in obtaining power purchase agreements, and availability of the federal production tax incentive for individuals. However, he noted, farmers in Minnesota have formed cooperative arrangements to own and operate wind farms.

In response to a question from Representative Kasper, Mr. Ponder said FPL Energy is pleased with the current tax incentives that are in place and does not have any recommendations for wind energy legislation. However, he said, legislators can encourage

the members of the Congressional Delegation to extend the federal wind energy production tax credit as that is the most important factor in determining whether wind energy projects are constructed. Also, he said, the transmission issue must be resolved and combining electricity generated from wind with electricity generated from coal may help resolve this issue.

Chairman Klein recognized Mr. Robert M. Markee, Vice President for Marketing, Energy Unlimited, West Conshohocken, Pennsylvania. He said the wind energy industry and the lignite energy industry are beginning to work together to resolve the transmission constraints preventing electricity generated in North Dakota from being exported. However, he said transmission is a regional issue rather than a state issue.

Chairman Klein recognized Mr. Orlin Hanson, Economic Development Coordinator, Renville County Jobs Development Authority, Sherwood. He said economic development activities in Renville County are very difficult because of the Canadian border to the north and Minot to the south. He said there is an adequate wind resource in Renville County but no transmission to get the electricity generated from the resource to a market.

STAFF DIRECTIVES

Representative Klein requested that the Association of Rural Electric Cooperatives and investor-owned utilities reprise their electric industry taxation study working group to compile updated taxation information for the committee's use.

No further business appearing, Chairman Klein adjourned the meeting at 4:30 p.m.

Jeffrey N. Nelson
Committee Counsel

ATTACH:8