

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

AGRICULTURE AND NATURAL RESOURCES COMMITTEE

Thursday, August 3, 2006
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Chet Pollert, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Chet Pollert, LeRoy G. Bernstein, Michael D. Brandenburg, Chuck Damschen, Lyle Hanson, Craig Headland, Keith Kempenich, Joyce Kingsbury, Matthew M. Klein, Jon O. Nelson, Mike Norland, Dorvan Solberg, Gerald Uglen; Senators Bill L. Bowman, Stanley W. Lyson, David O'Connell, Herb Urlacher

Members absent: Representatives Tom Brusegaard, Rod Froelich, Scot Kelsh, Eugene Nicholas; Senator Joel C. Heitkamp

Others present: See Appendix A

Representative Lois Delmore, a member of the Legislative Council, was also in attendance.

It was moved by Senator O'Connell, seconded by Senator Urlacher, and carried on a voice vote that the minutes of the June 6, 2006, meeting be approved as distributed.

RAIL RATE CASE

Chairman Pollert recognized Mr. Tony Clark, President, Public Service Commission. Mr. Clark discussed the status of ongoing state efforts to address the rail shipping rates charged to the state's agricultural producers. A copy of his written comments is attached as Appendix B. He said the Public Service Commission is recommending that if by the end of the biennium, it has not yet filed a rate complaint case, that the Legislative Assembly consider creating a continuing appropriation entitled the North Dakota rail litigation fund.

In response to a question from Representative Klein, Mr. Clark said the Public Service Commission is working with the Governor and the Office of Management and Budget in preparing the commission's budget for the next biennium and if it is determined that appropriation authority should be contained in legislation, it will be included in the Public Service Commission's appropriation bill.

Chairman Pollert requested that the Public Service Commission provide an update on the status on the rail rate case at the committee's next meeting.

In response to a question from Representative Solberg, Mr. Curtis Jabs, Basin Electric Power Cooperative, said Basin Electric Power Cooperative normally maintains a 700,000-ton coal supply inventory. He said the utility's inventory was recently reduced to 125,000 tons with the bottom 50,000 tons

probably unusable. He said the utility was down to a three-day supply and developed a curtailment plan which it did not need to implement. He said due to a scheduled maintenance at the Laramie River Station, the utility has been able to rebuild its inventory to 850,000 tons and has not needed to purchase any electricity in the spot market during this period.

ENERGY-INTENSIVE ECONOMIC DEVELOPMENT STUDY

Chairman Pollert recognized Mr. Bob Humann, Senior Vice President of Lending, Bank of North Dakota. Mr. Humann discussed the Ag PACE and ENVEST North Dakota programs. A copy of a summary of the programs and a recap of Ag PACE and ENVEST loans is attached as Appendix C. He said the agriculture partnership in assisting community expansion or Ag PACE program provides low-interest financing to on-farm businesses. He said the program's funds are used to buy down the interest rate on loans that have been approved by a local lender and the Bank of North Dakota. He said the loans are available for any business, except traditional production agriculture, which is integrated into a farm operation and is used to supplement farm income. He said if a project qualifies as an Ag PACE project, the borrower receives an interest rate reduction of a maximum of 5 percent below the yield rate with a minimum rate of 1 percent. He said the total buydown amount per borrower from the Ag PACE fund may not exceed \$20,000 per biennium with a lifetime cap of \$60,000. In addition, he said, in order to receive buydown funds in excess of \$20,000, the applicant must have a net worth of less than \$1 million. Also, he said, State Water Commission funds, not to exceed \$20,000 per borrower, may be used to supplement Ag PACE funds for the purchase of irrigation equipment on newly irrigated acreage.

In response to a question from Representative Headland, Mr. Humann said the 2005 Legislative Assembly earmarked \$1.2 million for the Biodiesel PACE program. He said the Bank of North Dakota has funded one project that has used \$400,000 of the \$1.2 million total. He said the Bank is working on another project which will also use \$400,000 of the \$1.2 million total. Thus, he said, it appears that two-thirds of the allocated \$1.2 million will be used this biennium.

In response to a question from Representative Pollert, Mr. Humann said the value-added agriculture equity loan program or ENVEST North Dakota program is not a statutory program but was developed by the Bank of North Dakota. He said the program is designed to enable North Dakota residents to invest in North Dakota value-added agricultural processing facilities. Under the program, he said, the Bank of North Dakota can purchase up to 70 percent of the loan from a local lender and the Bank will price the loan at 1 percent below the prime interest rate.

In response to a question from Representative Pollert, Mr. Humann said if the Legislative Assembly were to provide funding for interest rate buydowns on the ENVEST North Dakota program, the Bank would administer the program. However, he said, whether nonfarmers should be able to use the program may be controversial and is a policy decision for the Legislative Assembly.

At the request of Chairman Pollert, committee counsel distributed copies of petitions to amend the city of Fargo and the city of Grand Forks home rule charters to provide that 20 percent of each of the city's electricity comes from renewable sources by 2020 and 30 percent of each city's electricity comes from renewable sources by 2030 and a letter from Mr. Bob Graveline, President, Utility Shareholders of North Dakota, concerning the petitions. A copy of the petitions is attached as Appendix D and a copy of the letter is attached as Appendix E.

Chairman Pollert recognized Mr. Scott Handy, President and Chief Executive Officer, Cass County Electric Cooperative, Inc., Kindred. Mr. Handy discussed the proposed amendment to Fargo's home rule charter regarding requirements for renewable electricity. A copy of Mr. Handy's written comments is attached as Appendix F.

In response to a question from Representative Solberg, Mr. Handy said the sponsor of the Fargo initiative is the South Agassiz Resource Council.

In response to a question from Representative Nelson, Mr. Handy said Cass County Electric would have to install 40 megawatts of wind or other renewable energy to meet the 20 percent requirement by the year 2020. By the year 2030, he said, Cass County Electric would need to install 90 megawatts to account for increased demand.

Representative Nelson said there is a wind project in his district which is stalled because of lack of a power purchase agreement. He said if this market were created, wind energy would be developed to meet it.

In response to a question from Representative Klein, Mr. Handy said Cass County Electric would have to construct or install renewable sources in order to meet the initiative's requirement.

In response to a question from Representative Nelson, Mr. Mark Nisbet, Principal Manager, Xcel Energy, Inc., Fargo, said the Fargo petition requires that at least half of the renewable electricity sold and delivered be generated in North Dakota.

Chairman Pollert recognized Mr. Jerry Hjelmstad, North Dakota League of Cities, Bismarck. Mr. Hjelmstad said citizens have the power to initiate amendments to home rule charters under North Dakota law without the approval of the city's governing body.

Chairman Pollert recognized Mr. Nisbet, who discussed the renewable energy home rule charter proposals under consideration in Fargo and Grand Forks. A copy of his written comments is attached as Appendix G.

Chairman Pollert recognized Ms. Susan Wefald, Commissioner, Public Service Commission. Ms. Wefald said the commission would be willing to hold hearings in Fargo and Grand Forks on the initiated measures to amend the home rule charters in Fargo and Grand Forks.

In response to Ms. Wefald's statement, Representative Pollert said whether the commission determines to hold hearings should be an internal decision made by the Public Service Commission.

Chairman Pollert recognized Mr. Loren Laugtug, Otter Tail Power Company, Fergus Falls, Minnesota. Mr. Laugtug discussed the efforts to amend the home rule charters of the cities of Grand Forks and Fargo to require that 20 percent of electricity be secured from renewable sources by 2020 and 30 percent by 2030. A copy of Mr. Laugtug's comments is attached as Appendix H.

RESERVED WATER RIGHTS STUDY

At the request of Chairman Pollert, committee counsel reviewed a bill draft [\[70063.0200\]](#) to establish a reserved water rights compact commission to negotiate reserved water rights of the United States and federally recognized Indian tribes and a bill draft authorizing the Governor to appoint a commission to negotiate a reserved water rights settlement with the Turtle Mountain Band of Chippewa Indians of North Dakota, a copy of which is attached as Appendix I.

Chairman Pollert recognized Mr. Jon Patch, Assistant Division Director, Water Appropriation Division, State Water Commission. Mr. Patch discussed the bill draft to establish a reserved water rights compact commission. A copy of the flow chart used by Mr. Patch in his presentation is attached as Appendix J. He said the bill draft as drafted requires Legislative Assembly approval of the agreement following negotiations and then if there are exceptions, an adjudicative proceeding begin with the State Engineer to issue a final order and the reserved water right then become effective. He said the State Engineer is proposing that the adjudicative process occur before the agreement is submitted to the Legislative Assembly for ratification. Following ratification, he said, the State Engineer would issue a final order and the reserved water right would become effective.

Mr. Patch said the Montana Reserved Water Rights Commission has eight or nine full-time employees to staff its commission. He said the State

Water Commission would have sufficient resources to negotiate a reserved water rights agreement with the Turtle Mountain Band of Chippewa Indians but if the state were to be involved in additional negotiations, additional resources may be required.

Chairman Pollert recognized Mr. Gene Laducer, Tribal Water Planner, Turtle Mountain Band of Chippewa Indians, Belcourt. Mr. Laducer said the Turtle Mountain Band of Chippewa Indians supports the bill draft authorizing the Governor to negotiate with the Turtle Mountain Band of Chippewa Indians.

Representative Pollert recognized Mr. Steve Kelly, attorney, Three Affiliated Tribes, New Town. Mr. Kelly said the Three Affiliated Tribes supports the commission bill draft modeled on the Montana Reserved Water Rights Commission. He said he does not believe the Governor has the authority to enter into reserved water rights agreements without statutory authority. In other instances, such as gaming compacts, he said, the Legislative Assembly has authorized the Governor to negotiate agreements with the state's tribes. He said the Three Affiliated Tribes supports the suggested changes submitted by the State Engineer's office.

Representative Pollert said he would support a bill draft authorizing the Governor to negotiate reserved water rights agreements with the changes suggested by the State Engineer's office. He said this would allow the Governor to appoint qualified individuals to negotiate water rights agreements on behalf of the state.

Senator Urlacher said authorizing the Governor to negotiate reserved water rights agreements may be preferable to including members of the Legislative Assembly on a commission. He said the Governor will certainly appoint qualified individuals to undertake the negotiations, whereas members of the Legislative

Assembly may not have the requisite expertise to be qualified members of the commission.

In response to a question from Representative Nelson, Mr. Patch said the State Water Commission could handle negotiations with the Turtle Mountain Band of Chippewa Indians with its current resources. If the Three Affiliated Tribes and Standing Rock Sioux Nation wish to negotiate their reserved water rights, he said, additional staff may be required. He said negotiations with the river tribes would entail a number of permits to surface water which may increase the complexity of the negotiations.

Chairman Pollert requested the Legislative Council staff to redraft the reserved water rights bill draft to authorize the Governor to negotiate reserved water rights agreements rather than a commission and revise the bill draft to implement the procedural suggestions submitted by the State Engineer that the agreement would be ratified by the Legislative Assembly near the end of the negotiation process.

Chairman Pollert requested that the State Engineer's office be requested to provide additional fiscal information regarding the revised reserved water rights bill draft.

No further business occurring, Chairman Pollert adjourned the meeting at 12:15 p.m.

The committee traveled by bus in the afternoon to Great River Energy's Coal Creek Station to tour the station and received information concerning the station and the Blue Flint ethanol project.

Jeffrey N. Nelson
Counsel

[ATTACH:10](#)