

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ELECTRIC INDUSTRY COMPETITION COMMITTEE

Tuesday, February 28, 2006
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Merle Boucher, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Merle Boucher, Wesley R. Belter, Tracy Boe, Michael D. Brandenburg, David Drovda, George J. Keiser; Senators Robert S. Erbele, Tim Mathern, Larry J. Robinson, John O. Syverson, Ben Tollefson

Member absent: Senator Duane Mutch

Others present: Matthew M. Klein, State Representative, Minot

See attached appendix for additional persons present.

It was moved by Senator Mathern, seconded by Senator Robinson, and carried on a voice vote that the minutes of the previous meeting be amended so that Mr. Skarbakka's example of XYZ Company building a line costing "\$1 million" be changed to "\$100 million" and that Mr. Fuglesten's testimony on a bill draft on taxation supported by "this state's rural telephone cooperatives" be changed to "this state's rural electric cooperatives" and that the minutes of the previous meeting be approved as amended.

REPORTS

At the request of Chairman Boucher, committee counsel provided a copy of a performance audit report on the collection and use of 911 fees. He said at the next meeting, the committee will receive a report from the Public Safety Answering Points Coordinating Committee on city and county fees on telephone exchange access service and wireless service. He said the performance audit report has been presented to and accepted by the Legislative Audit and Fiscal Review Committee and is meant as background information for the next meeting.

PUBLIC SERVICE COMMISSION

UPDATE

Ms. Susan Wefald, Commissioner, Public Service Commission, presented written testimony on the public hearing for the case between Capital Electric Cooperative, Inc., and Montana-Dakota Utilities Company, on rulemaking to give preference to applicants that maximize the interstate benefits when evaluating the siting of energy conversion and transmission facilities, on rulemaking relating to credits for electricity generated from renewable sources, and on new wind farms. She said the issue

of franchise rights is not an issue that may be determined by the commission and is before the district court. In addition, she provided a letter of intent from Great Northern Power Development L.P. for a new power plant. A copy of her testimony and the letter is on file in the Legislative Council office.

In response to a question from Representative Keiser, Ms. Wefald said when determining whether to give a preference for the siting of an energy conversion or transmission facility, the company would argue the interstate benefits of the proposed project. She said the commission would use this information in determining whether to give a preference. She said the commission usually does not have to give a preference because generally there is not any competition between projects.

In response to a question from Representative Boucher, Ms. Wefald said the commission's jurisdiction ends at the border of this state; however, that does not preclude the commission from working with other states, as the commission does through the Midwest ISO.

In response to a question from Representative Boucher, Ms. Wefald said the Legislative Assembly has given enough authority to the commission to work with other states.

In response to a question from Senator Tollefson, Ms. Wefald said the Energy Policy Act of 2005 gave authority to the Federal Energy Regulatory Commission and Department of Energy to address issues of reliability and the designation of interstate bottlenecks.

In response to a question from Senator Tollefson, Ms. Wefald said the use of the right of way of railroads for transmission siting provides a great opportunity for electricity transmission.

In response to a question from Representative Boucher, Ms. Wefald said the issue of whether to build a new transmission line or haul the coal to a power plant close to the customers is an issue previously considered which relates to railroads and transmission lines.

NORTH DAKOTA TRANSMISSION AUTHORITY

Mr. Steve Waddington, Executive Director, Wyoming Infrastructure Authority, presented testimony on the Wyoming Infrastructure Authority. He said the Wyoming Infrastructure Authority was

created in 2004 and was patterned after the Wyoming Pipeline Authority. He said the authority is governed by a five-member board appointed by the Governor. He said the purpose of the authority is to diversify and expand the economy through the development of transmission facilities. He said the authority is funded with a \$6.6 million loan. He said \$1.6 million is for operating expenses and \$5 million is for feasibility study work. He said a bill in the legislative process will raise the \$5 million to \$10 million. He said the business model of the authority is to act as a catalyst by providing front-end capital. He said it is the intent of the authority to make money and repay the loans.

Mr. Waddington reviewed three projects of the authority. He said the authority financed a transmission line for Basin Electric with \$34.5 million in revenue bonds. He said the authority is working with two independent transmission companies to determine the feasibility for a line from the Powder River Basin to Denver and for a line to reach Boise and Salt Lake City. He said the authority is working with three other states in the prefeasibility phase in developing the Frontier Line.

Mr. Waddington said there is a bill in this session to expand the authority to encourage clean coal development. He said after Wyoming created an authority, South Dakota, Kansas, Idaho, and North Dakota followed suit. He said New Mexico is in the process of creating a similar body. He said Montana attempted to create an authority last session. He said the creation of authorities creates an opportunity for collaboration among the states, especially in dealing with the federal government. He said collaboration among the states would be especially valuable in lobbying for making the bonds issued by an authority tax-exempt.

Mr. Waddington compared the Wyoming Infrastructure Authority and the North Dakota Transmission Authority. He said the entities are similar in structure; however, the level of funding and staffing are much higher in Wyoming. He said Wyoming and North Dakota are in different sides of the market divide. He said Wyoming markets energy to the south and west and North Dakota markets toward the east. He said North Dakota is part of an ISO and Wyoming is not. He said there may be regulatory or cost recovery opportunities in being part of an ISO.

In response to a question from Representative Keiser, Mr. Waddington said the Wyoming Pipeline Authority works much in the same manner as the Wyoming Infrastructure Authority but promotes the expansion of natural gas and oil.

In response to a question from Representative Keiser, Mr. Waddington said a tax credit bond only requires that the principal be paid back and the buyer receives a credit against tax liability. He said these bonds are allowed in certain circumstances under the Energy Policy Act of 2005.

In response to a question from Representative Klein, Mr. Waddington said the entire cost of the Basin

Electric project was \$50 million. He said the authority's contribution was \$34.5 million. He said the repayment schedule is over a period of 20 years and was financed through a private placement with the state treasury.

In response to a question from Senator Mathern, Mr. Waddington said Wyoming is not liable on the bonds issued because they are revenue bonds. He said the source of income used to pay the bonds is liable.

In response to a question from Representative Belter, Mr. Waddington said there are a number of projects being proposed for transmission lines; however, they are usually backed by companies without strong credit. He said the big players are not involved because of regulatory barriers. However, he said, there are many wind projects.

In response to a question from Representative Belter, Mr. Waddington said the regulatory structure impairs the creation of new transmission lines. He said the existing system does not work well. He said environmentalists do not need to do anything to slow or stop a transmission line because regulatory barriers slow or stop projects.

In response to a question from Senator Mathern, Mr. Waddington said the authority may own and operate an interstate transmission line.

In response to a question from Senator Tollefson, Mr. Waddington said the authority does not own any transmission lines and there is no anticipation that the authority will own transmission lines. He said before owning a transmission line the authority must offer the opportunity to the private sector.

Ms. Karlene Fine, Executive Director and Secretary, Industrial Commission, presented written testimony on this state's transmission authority. A copy of her testimony is on file in the Legislative Council office.

Mr. Glen Skarbakka, Transmission Consultant, Industrial Commission, presented information on the Midwest ISO's proposal before the Federal Energy Regulatory Commission on transmission cost allocation. He said the Federal Energy Regulatory Commission order included the Midwest ISO proposal; however, there will be further inquiry into the split of 20 percent from all of the Midwest ISO footprint and 80 percent from nearby rate zones for transmission lines greater than or equal to 345 kilovolts. He provided information on the Federal Energy Regulatory Commission's promotion of transmission investment through pricing reform and the Department of Energy's designation of national interest electric transmission corridors. A copy of his presentation is on file in the Legislative Council office.

In response to a question from Representative Keiser, Mr. Skarbakka said the 100 percent arrow in his presentation pointing toward the reliability zone designates that 100 percent is paid by the transmission customer, not the generator.

In response to a question from Representative Klein, Mr. Waddington said a line that is greater than or equal to 345 kilovolts is a major backbone facility.

In response to a question from Representative Klein, Mr. Skarbakka said direct current lines are part of the grid but these lines are more controllable. He said these lines could be under the tariffs of a regional independent system operator or operated as an independent seller of electricity to particular customers. He said the Midwest ISO places direct current lines within the tariff in an integrated fashion.

In response to a question from Representative Brandenburg, Mr. Skarbakka said backstop authority under the Energy Policy Act of 2005 could allow the Federal Energy Regulatory Commission to allow siting when not allowed by a state. He said the public utility commissions in this area are working together and he does not foresee the use of the backstop authority.

In response to a question from Representative Keiser, Mr. Skarbakka said the Federal Energy Regulatory Commission cannot set retail rates. He said the Federal Energy Regulatory Commission deals with the wholesale level. He said how cost recovery is reflected in retail rates is a state issue.

Mr. Tim Porter, Executive Director, Public Finance Authority, provided written testimony on long-term leases and leaseback transaction. He said federal tax law was changed to remove any economic benefit for lease contracts between tax-exempt and private entities. He said the problem with the transaction was that the cities did not give up any control when selling water systems to third parties. A copy of his testimony is on file in the Legislative Council office.

TAXATION

Mr. Harlan Fuglesten, Director, Communications and Government Relations, North Dakota Association of Rural Electric Cooperatives, presented written testimony on the taxation of the electric industry. He said it is impossible to adopt a new tax plan that is revenue-neutral and that does not increase any utility's tax payments. He said the industry has been unable to achieve complete consensus on a new tax plan. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Representative Boucher, Mr. Fuglesten said the in lieu of property tax plan supported by the rural electric cooperatives will not hold political subdivisions harmless; however, the impact should not produce great shifts in revenue.

Mr. Dennis Boyd, Senior Governmental Affairs Representative, Public Affairs Department, MDU Resources Group, Inc., presented written testimony on the taxation of the electric industry. He testified in favor of changing the taxation of rural electric cooperatives to a system based on the value of the property. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Senator Tollefson, Mr. Boyd said in the past Verendrye Electric was used as a test case for the application of changing the

taxation of rural electric cooperatives to a system based on the value of property. He said original costs may be an issue in changing to a new system; however, fair assumptions may be made and costs determined.

Mr. Bob Graveline, President, Utility Shareholders of North Dakota, introduced Mr. Rod Backman, Covenant Consulting Group, to provide information on property taxes of electric utility entities. He said the cities and school districts in Bismarck and Dickinson would receive significantly more property tax dollars if the areas within those taxing districts currently served by rural electric cooperatives were served by an investor-owned utility or if the rural electric cooperatives were taxed under the same method as the investor-owned utilities. He said if the building and facilities of the rural electric cooperatives are taken into account, he estimated the difference between the two taxing methods to be approximately \$18,000. In practice, he said, taxes are based on a budget and so there would not be increased collections but decreases in taxes to others. He said this provides revenue neutrality among all taxpayers. A copy of his testimony and displayed graphs is on file in the Legislative Council office.

In response to a question from Representative Boe, Mr. Backman said he did not know what the result of a similar study would be if done in a small town. He said he could not evaluate the effect without finding out how much tax each meter generates for the gross receipts tax.

In response to a question from Senator Mathern, Mr. Backman said increased taxes upon electric utilities may be passed on to the consumer; however, the reduction in other taxes should make the net effect the same. He said the argument that taxes should not be increased on electric utilities because they will be passed on to consumers is the same argument that could be used for removing all taxes on electric utilities.

In response to a question from Representative Keiser, Mr. Backman said the application of property taxes to rural electric cooperatives would result in a shift in tax to rural areas around cities.

In response to a question from Representative Klein, Mr. Backman said the property tax on substations in Bismarck includes everything in the substation for Montana-Dakota Utilities and only the unimproved land for rural electric cooperatives.

Mr. Fuglesten provided testimony in response to the testimony provided by Mr. Backman. He said although Mr. Backman may have come to the same result no matter who commissioned the study, the questions would have been different if commissioned by the rural electric cooperatives. He said centrally assessed taxes are based on original investment. He said older equipment has a cheaper value than new equipment.

In response to a question from Representative Keiser, Mr. Fuglesten said creating a third tier of taxation for high-density areas near large cities

creates a complexity that is unnecessary. He said every area should be treated the same.

In response to a question from Senator Tollefson, Mr. Fuglesten said in lieu of taxes are more transparent and uniform than property taxes based on formulas.

In response to a question from Senator Tollefson, Mr. Fuglesten said applying centrally assessed property taxes to rural electric cooperatives is administratively burdensome because electric cooperatives have not maintained records on original investments in quarter-quarter sections as is needed for this type of taxation. In addition, he said, the state would have to add 22 rural electric cooperatives to the central assessment and that would be more burdensome for the state.

COST RECOVERY

Mr. Loren Laugtug, Otter Tail Power Company, Fergus Falls, Minnesota, presented written testimony on transmission cost recovery in Minnesota and South Dakota. He said the market does not tolerate regulatory lag well. He said if investors have to wait until the completion of a large project to receive any return, it is difficult to obtain investors. He said both states allow the timely recovery of new transmission investments at a rate of return based on the most recent rate case. He provided copies of South Dakota and Minnesota laws. A copy of his testimony and handouts is on file in the Legislative Council office.

Mr. David Sederquist, Senior Regulatory Consultant, Xcel Energy, Inc., presented written testimony on the process by which the state's investor-owned electric utilities recover the cost of

building and operating transmission infrastructure in this state. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Representative Keiser, Mr. Laugtug said the rate stability bill introduced last session and vetoed by the Governor related to more than transmission line cost recovery. He said Otter Tail advanced the bill and will advance the bill again. He said Minnesota and South Dakota have laws specifically targeting transmission investments. He said they allow a pay-as-you-go method instead of a pay-later method.

In response to a question from Representative Klein, Mr. Laugtug said the Minnesota Public Utilities Commission determined that green energy does not count toward the 10 percent renewable energy requirement. He said this determination, combined with increased costs, made a certain wind farm project in North Dakota unfeasible.

In response to a question from Representative Brandenburg, Mr. Laugtug said the green community did not want green energy included within the renewable energy requirement so that there would be more renewable energy used.

No further business appearing, Chairman Boucher adjourned the meeting at 12:40 p.m.

Timothy J. Dawson
Committee Counsel

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