

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### ENERGY DEVELOPMENT AND TRANSMISSION COMMITTEE

Thursday, June 26, 2008  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator Rich Wardner, Chairman, called the meeting to order at 10:00 a.m.

**Members present:** Senators Rich Wardner, John M. Andrist, Ryan M. Taylor, Herbert Urlacher; Representatives Wesley R. Belter, Scot Kelsh, Matthew M. Klein, Shirley Meyer, Todd Porter, Dave Weiler

**Members absent:** Senators Robert M. Horne, Ben Tollefson

**Others present:** Representative Merle Boucher and Senator David O'Connell, members of the Legislative Council, were also in attendance.

See [Appendix A](#) for additional persons present.

Committee counsel said Mr. Ron Ness would like the minutes clarified regarding a statement made in response to a question from Representative Meyer regarding refineries on page 5 at the bottom of the first column and the top of the second column of the minutes of the previous meeting. He said Mr. Ness would like the record to reflect that his comment was that refinery expansions or potential new refineries in North Dakota and the region are being looked at by numerous parties, likely more than anywhere else in the country. However, there are many challenges that are present in every situation and it is certainly easier to expand existing refineries than build new ones.

**It was moved by Representative Klein, seconded by Senator Taylor, and carried on a voice vote that the minutes of the previous meeting, as clarified, be approved as distributed.**

#### REPORT OF THE DEPARTMENT OF COMMERCE'S ENERGY POLICY COMMISSION - EMPOWER NORTH DAKOTA POLICY RECOMMENDATIONS

Mr. Shane C. Goettle, Commissioner, Department of Commerce, said this meeting was an official meeting of the Empower North Dakota Commission. He took the roll and the members present were Ron Day, Terry Goerger, Paul Goulding, Eric Mack, Ron Ness, Curtis Jabs, Mark Nisbet, Randy Schneider, Andrea Stromberg, Sandi Tabor, Jon Weeda, and Chuck MacFarlane. The member absent was David Straley. He made an electronic presentation ([Appendix B](#)), provided a report entitled *Empower North Dakota: 2008-2025 Comprehensive State Energy Policy* ([Appendix C](#)), and a list of numbered action points recommended by the Empower North Dakota Commission ([Appendix D](#)). He said the report

has 21 goals, 40 policy recommendations, and 98 action points. He said the Empower North Dakota Commission unanimously approved of all of the recommendations. He said of the 98 action points, 8 were for state legislative action, for which he provided bill drafts that are described in the following list:

- Action point 10 extends the 1.5 percent reduction of taxable value for wind generating units until 2015 ([Appendix E](#)).
- Action point 11 makes permanent the sales and use tax exemption for building materials, production equipment, and other tangible personal property used in the construction of a wind tower facility ([Appendix F](#)).
- Action point 12 extends the 15 percent investment tax credit (3 percent for the first 5 years for a total of 15 percent) on the cost associated with installing a wind, biomass, geothermal, or solar energy device until 2015 and extends the income tax credit carryforward from 5 years to 10 years ([Appendix G](#)).
- Action point 27 makes the tertiary extraction tax exemption permanent on all projects using carbon dioxide for enhanced oil recovery ([Appendix H](#)).
- Action points 31 and 32 amend the current coal severance tax exemption to include beneficiated coal that ultimately is used in North Dakota agricultural commodity processing facilities and amend the definition of coal to address changes in the uses of coal ([Appendix I](#)).
- Action points 32 and 35 address tax issues for repowering generation facilities due to new environmental changes and amend the definition of coal in statute to address changes in the uses of coal ([Appendix J](#)).
- Action point 60 creates a state energy building code ([Appendix K](#)).
- Action points 74 and 79 clarify the sales tax exemption created in 2007 House Bill No. 1462 to include gas gathering systems from oil wells ([Appendix L](#)).

In response to a question from Representative Porter, Mr. Goettle said the uncertainty with federal cap and trade legislation is inherently not good for investment. He said major energy projects take

5 years to 10 years to plan and need regulatory certainty.

### Wind

In response to a question from Representative Porter, Mr. Goettle said action point 4 for wind is that the state should address boundary issues and property owner's rights relating to wind towers and wind wakes.

In response to a question from Representative Porter, Mr. Chuck MacFarlane, Otter Tail Power Company, said wind wake issues are related to setback standards and do not relate to Public Service Commission jurisdiction.

Ms. Marcy Dickerson, Tax Department, provided testimony on action points 10, 11, and 12 relating to legislation on wind power. She said action point 10, which extends the 1.5 percent reduction of taxable value for wind generating units until 2015, is a 1.5 percent tax rate as opposed to the normal 10 percent tax rate. She said this is an 85 percent reduction in taxes paid on a wind tower.

In response to a question from Senator Andrist, Ms. Dickerson said all commercially and centrally assessed real property of investor-owned utilities is taxed at 10 percent. She said large power plants pay coal conversion taxes in lieu of property tax. She said rural electric cooperatives pay a gross receipts tax in lieu of property tax.

Mr. Ron Ness, North Dakota Petroleum Council, said the tax reduction for wind development is critical to the wind development activity experienced in this state.

Mr. Mark Nisbet, Xcel Energy, Inc., said the reduction in property tax helps overcome the transmission constraints. He said wind tower development has the secondary effect of aiding manufacturing in this state.

Ms. Kathryn Strombeck, Tax Department, provided testimony on the wind power action points. She said the legislation for action points 11 and 12 merely extends the sunset dates.

In response to a question from Representative Klein, Ms. Strombeck said the sales tax exemption for wind applies only to the materials for the tower.

In response to a question from Representative Weiler, Ms. Strombeck said wind does not have a permanent sales and use tax exemption and other areas of energy have a permanent exemption.

In response to a question from Representative Kelsh, Mr. Goettle said the extension of the 15 percent investment tax credit on the costs associated with installing a wind, biomass, geothermal, or solar energy device until 2015 was sunset at that date because these industries need to be weaned from incentives. He said 2015 is seven years away and it takes five years to get a project through the Midwest independent transmission system operator (MISO) queue.

In response to a question from Representative Kelsh, Mr. Goettle said the recommended study of

property taxation of wind farms based upon installed capacity and production is not meant as an incentive for utilities to own and operate wind farms, but is meant to find a common scheme for property taxation of wind farms.

Mr. Curtis Jabs, Basin Electric Power Cooperative, said the intent of the wind taxation study would be to find a new method of taxing wind farms so that each wind farm would be taxed the same.

In response to a question from Senator Andrist, Mr. Goettle said wind energy contributes to the North Dakota economy through construction jobs, manufacturing jobs, and technician jobs to keep the wind turbines maintained, income to landowners, and by providing sales of electricity to Minnesota and the citizens that demand renewable energy.

In response to a question from Senator Andrist, Ms. Sandi Tabor, North Dakota Transmission Authority, said she is not worried about wind competing with coal for transmission because coal has investment issues that come before there are transmission issues. She said coal and wind need to work together for better transmission.

### Transmission

Mr. MacFarlane said the CapX 2020 plan is 11 utilities in Minnesota cooperating to permit four high-voltage transmission lines in Minnesota. He said these transmission lines will increase exportation from North Dakota and increase reliability in North Dakota. He said the Minnesota Public Utilities Commission has not issued a certificate of need and that a certificate of need most likely will be issued in nine months to one year for these lines.

Ms. Tabor said CapX 2020 is in multiple phases and Phase 3 projects include lines from western North Dakota out of this state.

In response to a question from Representative Porter, Ms. Tabor said the North Dakota Transmission Authority may look at technology to increase transmission through private and public partnerships. She said there are many issues with the technology of increasing the volts in transmission lines. She said MISO is working on the issue.

Mr. MacFarlane said North Dakota is stability limited, not thermally limited. He said North Dakota needs more transmission lines. He said a good solution would be to create more load in North Dakota.

Ms. Tabor said the utilities in this state are concerned that, as transmission is developed, the citizens of this state will not be unduly burdened by the cost of transmission. She said how a project is characterized is important and the North Dakota Transmission Authority is monitoring these issues.

### Lignite

In response to a question from Senator Andrist, Mr. MacFarlane said there needs to be more research on the effects of carbon dioxide sequestration and it

appears that this state has the geological formations to store carbon dioxide.

Mr. Jabs said the Energy and Environmental Research Center (EERC) has received money to study carbon dioxide sequestration. He said there needs to be research on how to remove carbon dioxide from the slipstream of a coal-fired plant. He said early reports of studies have shown that carbon dioxide will stay underground and that this state has a great capacity to store carbon dioxide underground.

Ms. Tabor said the Plains CO<sub>2</sub> Reduction Partnership has done research on this state's geology. She said the partnership has done a cursory review of certain geological stratas and has done some modeling. She said it may require more time for research before pilot projects begin than is being allowed by the federal government that wants pilot projects in 2012.

In response to a question from Senator Urlacher, Ms. Tabor said the Lignite Research Council funds research and the EERC conducts research to look at terrestrial sequestration. She said it is the goal of the lignite industry to deal with a carbon-constrained world.

Mr. Goettle said the industry needs certainty and the federal government will need to preempt states on carbon dioxide emissions.

Ms. Tabor said there needs to be funding for the research of new technology to remove carbon dioxide from existing plants through retrofitting.

In response to a question from Representative Weiler, Ms. Tabor said North Dakota has lignite coal, which poses unique issues. She said although the Department of Energy does a great amount of research, not all of it relates to lignite.

Mr. Jabs said there needs to be a federal, state, and industry partnership to conduct research and conduct demonstration projects to capture carbon dioxide. He said research and demonstration projects are very costly and take time.

In response to a question from Representative Belter, Ms. Tabor said electric consumers will have to pay for carbon dioxide sequestration. She said the cost for the Lieberman-Warner Climate Security Act was \$5.6 trillion.

Mr. Goettle said once there is certainty with federal legislation, there will be a need for research to meet the goals of the federal legislation.

### **Ethanol**

Mr. Randy Schneider, North Dakota Ethanol Producers Association, said for every \$10 per ton saved on shipping, \$3.2 million is made by an ethanol plant. He said if wet byproduct may be sold, the plant does not have to dry the byproduct with natural gas. He said there needs to be a streamlined process for livestock feedlots to locate near ethanol plants. He said 1.5 million head of cattle could be fed in this state with the leftover grains from ethanol production. He said the countercyclical program is working well.

### **Biodiesel**

Mr. Terry Goerger, farmer, said the countercyclical program is a safety net that is wanted by biodiesel producers in the same way as it is provided for ethanol producers. He said the countercyclical program would use the vegetable oil market as the standard price and have the rack price of biodiesel in the formula.

Mr. Goettle said he has drafted legislation to develop a biodiesel countercyclical production incentive similar to the ethanol countercyclical production incentive; however, a funding source has not been determined.

Mr. Eric Mack, Archer Daniels Midland Company (ADM), said vegetable oil is at \$200 per barrel and is worth more as food than as fuel. He said ADM built a biodiesel plant in North Dakota because of the sales tax exemption, the biodiesel partnership in assisting community expansion (PACE) program, and because 95 percent of canola produced is from North Dakota. He said although the ADM plant can crush canola, it may also make biodiesel from vegetable oil.

Mr. Goerger said not all biodiesel plants have crush plants. He said some biodiesel plants purchase vegetable oil on the market.

In response to a question from Representative Porter, Mr. Goerger said the purpose of the countercyclical program is to keep the plants from shutting down, not to guarantee a profit.

In response to a question from Representative Porter, Mr. Schneider said the countercyclical program is meant to mitigate losses, not to guarantee a profit.

Mr. Mack said a countercyclical program may be needed to grow the industry because there are very tight margins and a large investment required for a biodiesel plant.

In response to a question from Representative Porter, Mr. Goerger said there could be more biodiesel plants without crushing facilities. He said corn is needed in the process for ethanol; however, to make biodiesel all that is needed is the oil.

In response to a question from Representative Porter, Mr. Mack said the ADM plant does not need a countercyclical program. He said the program is needed for plants that buy oil on the market.

Representative Porter said he questioned whether the state should have a safety net program when there is a profitable market for the oil. He said a countercyclical program would provide an incentive to plants to not crush canola.

In response to a question from Representative Porter, Mr. Goerger said 65 percent of the return on crush has to come from the meal.

Mr. Mack said biodiesel may be made out of animal fat and yellow fat.

In response to a question from Representative Meyer, Mr. Mack said some plants lease oil to food processors before the plant turns the oil into biodiesel.

### **Biomass**

Representative Meyer said it is difficult to believe that the Game and Fish Department would be excited about using grasses for biomass or ethanol when it is not excited about allowing haying on conservation reserve program (CRP) land.

In response to a question from Representative Meyer, Mr. Goettle said the production of grasses for ethanol may be able to be managed to respect the nesting of ducks.

Mr. Schneider said the longer the switchgrass stays on the land the more starch content it contains, so the harvest would be after the nesting period.

### **Efficiency**

Mr. MacFarlane said action point 66, which recommends the Public Service Commission secure the necessary authority to approve energy efficiency programs that are cost-effective and initiated by utilities, should include cost recovery and return on investment comparable to supply-side investment. He said any program expenditures need to be recovered as well as the profit for what did not happen. He said the utility should earn on the supply option that was avoided.

Ms. Andrea Stromberg, Montana-Dakota Utilities Company, said utilities need to be reimbursed if consumers use less and the utility pays for consumers to use less.

In response to a question from Senator Andrist, Mr. Goettle said e-meetings and carpooling are effective ways of creating efficiencies. He said the private sector will drive software makers to provide software that makes web meetings more consumer-friendly. He said there is increasing interest in employees doing work at home instead of commuting to work.

In response to a question from Senator Andrist, Mr. Goettle said the incentive for telecommuting and teleconferencing is the rising cost of travel.

Senator Wardner said efficiency is doing the same with less and conservation is doing without.

### **Refining**

In response to a question from Representative Klein, Mr. Goettle said there is statewide support for increasing refining capacity; however, there needs to be increased pipeline capacity to ship increased production out of this state.

Mr. Ron Day, Tesoro, said without extra pipeline capacity, it does not make sense to expand refining in this state. He said a refinery in Montana can ship fuel to Minot by pipeline as inexpensively as Tesoro in Mandan can ship fuel by truck. He said every mile Tesoro ships is a cost disadvantage with fuel that is already at market.

Representative Meyer said North Dakota is the end of the pipeline for fuel and if there is an upset in the Middle East, this state will be the first to lose supply. She said this state takes discounts on crude oil and has the best crude in the world. She said refining

should be increased in this state so the increased value stays in this state.

### **Oil and Gas**

In response to a question from Representative Meyer, Mr. Day said the extraction tax is 6.5 percent and the gross production tax is 5 percent. He said a flatter tax structure might include fewer rates ranging between 7 percent and 9.5 percent, rather than the current range of 5 percent to 11.5 percent, and would make budgeting and planning easier for both the industry and the state.

In response to a question from Representative Meyer, Mr. Ness said the flatter tax structure would be achieved through a change in the extraction tax.

Mr. Ness said action point 74 recommends legislation to clarify the sales tax exemption to include gas gathering systems from oil wells. He said the legislation is intended to address Bakken wells to encourage the connection of more gas and eliminate flaring. He said the Tax Department interpreted House Bill No. 1462 (2007) to require a gas well to produce over 50 percent gas. He said the intent at the time of the bill draft was to have it apply to Bakken wells that produce less than 50 percent gas.

In response to a question from Representative Meyer, Mr. Goettle said the issue of gas gathering pipelines not being uniform and consistent was not studied by the commission.

In response to a question from Representative Weiler, Mr. Goettle said action point 75 recommends the examination of the impact of the Bakken Formation tax incentive on the first 75,000 barrels produced during the first 18 months. He said this exemption expires on July 1, 2008. He said he will collect data in the next six months, before the next legislative session, so the Legislative Assembly may determine if it is a positive incentive worth continuation.

In response to a question from Representative Weiler, Mr. Ness said the cap on the oil and gas research fund is \$3 million. He said \$14 million is being spent on a project by big oil players in this state on state land with \$700,000 from the oil and gas research program. He said the project is for testing fracturing techniques and using carbon dioxide to remove more oil.

In response to a question from Representative Meyer, Ms. Karlene Fine, Industrial Commission, said the information gained from the project mentioned by Mr. Ness is proprietary for one year. She said one year was the negotiated term.

In response to a question from Representative Meyer, Mr. Ness said news travels fast in the oilfields and secrets do not last long. He said the proprietary nature of information is negotiated on an individual basis, but usually is six months.

### **Petroleum Marketers**

Mr. Paul Goulding, North Dakota Petroleum Marketers Association, said the industry of petroleum

marketing looks bleak. He expects 20 percent of petroleum marketers to fail in the next year.

Mr. Schneider said the ethanol industry relies on petroleum marketers. He said if all flex-fuel vehicles in this state used E-85, it would require 50 million gallons of ethanol. He said this would need to be delivered to customers through petroleum marketers.

In response to a question from Representative Meyer, Mr. Goettle said action point 84 recommends consideration of authorizing legislation to allow petroleum marketers to access Industrial Commission research funds to enhance innovation in safety, environment, and education. He said the research funds would be oil and gas research funds.

### **Infrastructure**

In response to a question from Representative Meyer, Mr. Goettle said the infrastructure needs of petroleum-producing counties need to be addressed by the Legislative Assembly and the commission was unable to come to a conclusion as to the funding source.

Mr. Schneider said approximately 100 trucks per day go through an ethanol plant.

### **CONCLUSION**

Senator Wardner thanked the Empower North Dakota Commission and said he appreciated having a good inventory of the present status of energy in this state. He said the documents produced by the Empower North Dakota Commission provide a good starting point. He said the philosophy of the documents seems to be to grow each segment of the energy industry in this state to its fullest potential.

No further business appearing, Chairman Wardner adjourned the meeting at 3:15 p.m.

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Timothy J. Dawson  
Committee Counsel

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