NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ELECTRIC INDUSTRY COMPETITION COMMITTEE

Monday, April 15, 2002
Brynhild Haugland 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 Duane Mutch, Larry J. Robinson, Herb Urlacher

Others present: See Appendix A

Concerning the minutes of the December 6, 2001, committee meeting, committee counsel said the term "municipal power agencies" as used in the sentence in the 11th paragraph "[a]lthough municipal power agencies do not have a great deal of transmission assets, she said, they have an interest in the transmission issue because they receive most of their nonpreference power from rural electric cooperatives that are subject to the transmission line mile tax" should be changed to "municipal electric utilities" and the phrase "they receive most of their nonpreference power from rural electric cooperatives" should be changed to "they receive a significant portion of their transmission service from rural electric cooperatives." Also, he said, this sentence should only apply to municipal electric utilities that are not members of Missouri River Energy Services.

It was moved by Senator Mutch, seconded by Senator Urlacher, and carried that the minutes of the December 6, 2001, committee meeting be approved as corrected.

At the request of Chairman Carlson, committee counsel distributed a booklet entitled *Restructuring in Retrospect* and a booklet entitled *The Electric Industry - State and Federal Jurisdiction*, both published by the National Conference of State Legislatures. Copies of these booklets are on file in the Legislative Council office. Committee counsel also distributed a letter from Mr. Joe Richardson, Energy Project Consultant, North Dakota Farm Bureau, concerning wind energy development in North Dakota. A copy of the letter is attached as Appendix B.

LIGNITE VISION 21 PROGRAM AND LIGNITE TAXATION AND DEVELOPMENT

Chairman Carlson called on Mr. Clifford R. Porter, Lignite Energy Council, who addressed the committee. A copy of his presentation is attached as Appendix C. He discussed lignite taxation changes made by the 2001 Legislative Assembly and the Lignite Vision 21 program. He said the 2001 Legislative Assembly attempted to make lignite more competitive with Powder River Basin coal by reducing the tax at the point where lignite is mined or severed and transferring that tax to the point of use or conversion. He said the Lignite Vision 21 program is an initiative to build one or more new 500-megawatt power plants in North Dakota. He said each new 500-megawatt power plant would mean 3 million more tons per year of coal mined, 1,300 more jobs, $140 million more in annual business volume, and $6 million more in annual tax revenue to the state. To date, he said, the Lignite Vision 21 program has received three applications--one from Great River Energy, one from MDU/Westmoreland Gascoyne, and one from Great Northern Properties. He said there are two critical areas for the Lignite Vision 21 program--environmental regulations and transmission issues. He said the four major environmental issues are prevention of significant deterioration, visibility, regional haze, and mercury emissions. He said the transmission issue centers on the fact that electrical generation transmission from North Dakota is constrained.

In response to a question from Senator Robinson concerning environmental and air quality issues, Mr. Porter said North Dakota is unique in that 80 percent of production is scrubbed or treated postcombustion. He said only 20 percent of generation east of the Mississippi River is scrubbed postcombustion.

Chairman Carlson called on Mr. Duane Steen, Administration and Project Manager, Gascoyne Project, MDU Resources Group, Inc., who addressed the committee. Mr. Steen reviewed the Gascoyne project which is a partnership between Montana-Dakota Utilities Company and Westmoreland Coal Corporation to develop a new power plant near Gascoyne and to reopen the Gascoyne mine. He said the project will provide safe, reliable, and low-cost electricity which will act as a drawing card to expand other businesses in North Dakota resulting in economic viability and additional jobs in North Dakota. He said Phase 1 of the Gascoyne project is a visibility study and permitting process and Phase 2 of the project is siting the power plant. He said there are two critical elements in determining whether the proposed plant is constructed, resolving transmission issues and environmental issues.

In response to a question from Representative Carlson, Mr. Steen agreed that resolving transmission constraints in North Dakota is critical to determining whether additional coal-fired generation is constructed in the state.

In response to a question from Representative Huether, Mr. Steen agreed that upgrading existing transmission lines is preferable to constructing new lines because there generally is less resistance to upgrading existing lines than constructing new lines and the attendant right-of-way issues that must then be addressed.

Chairman Carlson called on Mr. Ted Humann, Senior Vice President for Transmission, Basin Electric Power Cooperative, who addressed the committee. He distributed a map of existing transmission lines in central and western North America which is on file in the Legislative Council office, and a copy of his presentation is attached as Appendix D. He discussed transmission issues, especially their effect on the development of generation assets in North Dakota. He said the North American Electric Reliability Council has identified several problems in its assessment of transmission in North America. He said these include the fact that transmission loads are increasing, more transmission curtailments are required, current transmission is not designed for the levels and directions of electricity transfers, transmission planning is short-term, and transmission margins are thin. He said only 7,500 miles of additional transmission is planned with most additions being driven by the need to connect to new generators with no significant improvement to the long-distance transfer of electricity. He said there are also several impediments to the development of new transmission assets, including opposition and litigation, uncertain cost recovery, impacts outweighing benefits, uncertainty as to responsibility to construct, difficulty in siting across multiple jurisdictions, and general investment risk.

Mr. Humann said there is an additional impediment to the construction of additional transmission assets in the United States--license plate pricing. He said the Federal Energy Regulatory Commission is requiring that regulated utilities form and join regional transmission organizations. He said the regional transmission organizations are using what is termed license plate pricing to price their transmission services. Under this methodology, he said, utilities are unable to charge a generator for using their transmission assets to wheel electricity from the generator through the transmission lines of intermediate utilities to the end user of the electricity. He said license plate pricing is the chief reason why Basin Electric Power Cooperative has not joined the Midwest Independent System Operator.

Mr. Humann said Basin Electric Power Cooperative is proposing that the Midwest Independent System Operator use postage stamp pricing where each participant pays the average rate for transmission services. Under postage stamp pricing, he said, costs are shared by all users and a truly level playing field is created.

In response to a question from Representative Klein, Mr. Humann said opposition to postage stamp pricing is coming from regulated utilities that believe they may not be able to recoup their costs under regulated rates.

Chairman Carlson called on Mr. Francis Schwindt, Chief, Environmental Health Section, State Department of Health, who addressed the committee. He discussed the recent determination of the United States Environmental Protection Agency that current emissions in North Dakota exceed allowable levels for Class 1 areas. He said modeling done by the Environmental Protection Agency shows that exceedences of air quality standards exist in western North Dakota and that the state may have to modify its implementation plan to require additional pollution controls on existing power plants in North Dakota. He said the State Department of Health's analysis indicates that there are no exceedences and that the state's power plants may continue to operate as they do currently. He said it is the position of the state that the state has been delegated the program and that the Environmental Protection Agency should work with the State Department of Health to resolve the issue rather than arbitrarily imposing a decision of its own.

Chairman Carlson called on Mr. Scott Fry, Field Organizer, Dakota Resource Council, who addressed the committee. He distributed several letters concerning implementation of the prevention of significant deterioration program under the Clean Air Act, copies of which are attached as Appendix E.

Chairman Carlson called on Ms. Susan Wefald, Commissioner, Public Service Commission, who addressed the committee. A copy of her testimony and materials used in her presentation is attached as Appendix F. She presented an overview of the commission's involvement in recent electric transmission proceedings, the commission's work with other states on transmission issues, the commission's participation in regional activities, and the major issues the commission is working on.

WIND ENERGY DEVELOPMENT

Chairman Carlson called on Mr. Jay Haley, EAPC Architects and Engineers, who addressed the committee. He said there are approximately 23,000 megawatts of installed wind-generating capacity in the world, of which approximately 4,200 megawatts are installed in the United States. He said North Dakota has the greatest wind energy resource in the United States but is near the bottom of the states that utilize their wind energy resource. He said California and Texas are the two leading wind-generating states and

Texas is on pace to have 2,000 megawatts of installed generating capacity by 2010.

Mr. Haley said landowners may receive up to $3,000 to $4,000 per year per turbine for the use of their land for generating electricity from wind. In addition, he said, the land may still be used for farming or ranching and thus the landowner realizes the additional income without losing use of that land. He said the two challenges facing the wind energy industry are lack of transmission and negotiating power purchase agreements.

In response to a question from Senator Robinson, Mr. Haley said wind turbines are able to operate approximately 80 percent of the time in North Dakota.

In response to a question from Representative Carlson, Mr. Haley said wind energy producers are willing to participate in development and construction of new transmission assets to transmit electricity generated from the state's wind resource.

In response to a question from Senator Mutch, Mr. Haley said it would be very difficult for an individual landowner to enter the wind generation business because it is a utility business. He said a wind energy generator needs four key pieces to establish a viable wind generation operation--a customer, the wind resource, transmission, and low-cost capital.

In response to a question from Representative Carlson, Mr. Haley said a wind generation facility requires a 10 percent reserve margin and thus a 100-megawatt wind project would require 10 megawatts of reserve power from an alternate source such as a coal-fired generation plant.

Chairman Carlson called on Mr. Nainish Gupta, Project Director, FPL Energy, Juno Beach, Florida, who addressed the committee. Mr. Gupta said electricity from wind generation blends well into a utility fuel portfolio, aids in fuel risk management, has a short permitting cycle, is a predictable and reliable source of energy, and is clean. He said electricity from wind provides economic, environmental, and energy benefits for North Dakota. He said economic benefits include tax, tourism, education, and royalty revenues for local communities and landowners; employment opportunities in construction and operation and maintenance of wind generation facilities; and the use of local contractors and suppliers for services required by wind generation facilities and their employees.

Mr. Gupta reviewed wind energy incentives enacted in other Midwest states. He said Minnesota provides property and sales tax incentives and has a mandatory green power option. He said Minnesota has 320 megawatts of installed wind generation capacity with 220 megawatts planned. He said wind energy projects are exempt from property taxation in Wisconsin. He said Wisconsin has approximately 50 megawatts of installed wind generation capacity. He said Montana has no installed wind generation capacity but has 285 megawatts planned for construction. He said Montana has income tax incentives and a mandatory green power option. He said Iowa has enacted income and sales tax exemptions for wind energy projects and Oklahoma provides a state income tax credit as well as property and sales tax exemptions. Texas, he said, has enacted income and sales and use tax benefits for wind power generators in that state.

Concerning North Dakota wind energy incentives, Mr. Gupta said the Legislative Assembly should consider extending North Dakota's property tax incentives to large projects, make the income tax credit transferable, and enact a state production tax credit, a mandatory utility green pricing program, and a nonmandatory renewables portfolio standard. He said wind energy provides a good price for renewable energy, is a good risk management tool in that it provides a hedge against rising fuel prices, provides fuel diversity, and is a green source of energy.

In response to a question from Senator Robinson, Mr. Gupta said interest in green energy is increasing. Also, he said, wind energy generation allows for distributed generation, which is beneficial for transmission constraints.

In response to a question from Representative Klein, Mr. Gupta said FPL Energy conducts avian studies when siting wind generation facilities to avoid migratory bird flyways.

Chairman Carlson called on Mr. Mike Hohl, President and Chief Operating Officer, DMI Industries, Inc., West Fargo, who addressed the committee. He said the vision of DMI Industries is to become the premier manufacturer of wind towers in the United States and DMI has evolved from an agricultural manufacturer to a wind tower manufacturer. In response to a question of what wind energy means to DMI and the region, he said, it means 220 jobs in West Fargo, a recent $5 million capital expansion that will double DMI's capacity, a tripling of its tax base in two years, $100 million in sales by 2005, and $350 million of economic activity in North Dakota.

Mr. Hohl said wind energy means taxes, construction jobs, maintenance jobs, and a source of renewable energy to package with nonrenewable energy produced in North Dakota. He said DMI plans to increase capacity, diversify, explore opportunities in other energy areas, and provide growth in value for its employees.

Chairman Carlson called on Mr. Keith Monson, Griggs/Steele Wind Power Development Group LLC, Cooperstown, who addressed the committee. Mr. Monson distributed a study entitled *Potential Economic Impacts of Commercial Wind Power Development in North Dakota* prepared by F. Larry Leistritz for the Griggs/Steele Wind Power Development Group LLC. A copy of the study is attached as Appendix G. The study identifies potential economic impacts of commercial wind power development in North Dakota and concludes that wind energy development may offer substantial economic benefits to

North Dakota's rural areas as well as to its larger communities. He distributed a handout concerning wind energy development which was presented at the third annual North Dakota Wind Conference, a copy of which is attached as Appendix H, information from the web site for WIND, a copy of which is attached as Appendix I, a brochure entitled *Wind Energy Outlook 2002* produced by the American Wind Energy Association, a copy of which is attached as Appendix J and a brochure produced by Wind Interests of North Dakota promoting the development of North Dakota's wind resource, a copy of which is on file in the Legislative Council office. He said the group has been concentrating its efforts on developing its web site which provides information to interested persons concerning the area's wind resources and local contact information.

Chairman Carlson called on Mr. Dennis Anderson, Coteau Hills Wind Development Group, Edgeley, who addressed the committee. He distributed an article entitled *FERC Endorses Fair Treatment of Wind in Wholesale Electricity Markets*, and a map of flowgate interfaces, copies of which are attached as Appendices K and L, respectively. He said wind energy proponents are looking for leadership and urged North Dakota officials to work with their counterparts in other states to resolve transmission issues so that states with energy to export such as North Dakota can supply the needs of states that wish to import energy such as Minnesota, Wisconsin, and Illinois.

Chairman Carlson called on Representative Michael Brandenburg, Edgeley, who addressed the committee. He said North Dakota's wind resource is providing a tremendous opportunity for North Dakota. He said this opportunity is not only for landowners but for industry from manufacturers of wind towers and turbines to service companies.

ELECTRIC INDUSTRY TAXATION STUDY WORKING GROUP

Chairman Carlson called on Mr. Harlan Fuglesten, Director, Communications and Government Relations, North Dakota Association of Rural Electric Cooperatives, who addressed the committee. He presented an update of electric utilities statistics for North Dakota for the years 1998-2000, a copy of which is attached as Appendix M. The compilation contains information on generation, coal conversion taxes paid by plant and year, transmission taxes, electricity sales by utility, electric utility gross receipts taxes paid, electric utility city privilege taxes paid, public utility property taxes paid, electric utility real estate taxes paid, income taxes on electric operations paid, and payments in lieu of taxes paid by municipal power systems. He said the average for taxes paid during the period 1998-2000 was $29,229,446 per year which compares to approximately $28 million per year in the three-year period immediately preceding 1998. He said there has not been a great deal of change during the six-year period, but the information will help the committee as it moves forward.

Chairman Carlson urged the interested parties in attendance that if they have any proposals for changing the taxation of electric utilities in the state, that they present the proposal at the committee's next meeting.

TERRITORIAL INTEGRITY ACT

At the request of Chairman Carlson, committee counsel distributed an excerpt from the report of the Electric Industry Competition Committee submitted to the Legislative Council in November 2000 which deals with the Territorial Integrity Act study conducted by the committee during the 1999-2000 interim, and a survey of state regulation of electric cooperatives. A copy of the survey is attached as Appendix N.

Chairman Carlson called on Mr. Dennis Boyd, Senior Governmental Affairs Representative, Public Affairs Department, MDU Resources Group, Inc., who addressed the committee. A copy of Mr. Boyd's written comments concerning the Territorial Integrity Act and its operation in North Dakota is attached as Appendix O.

Chairman Carlson recognized Mr. Fuglesten who addressed the committee. He agreed with Mr. Boyd that the state's investor-owned utilities and electric cooperatives had often worked together but said the investor-owned utilities did not work with the cooperatives out of a sense of altruism but based upon business decisions. He said the disagreement concerning the operation and effect of the state's Territorial Integrity Act is between the state's investor-owned utilities and both the state's electric cooperatives and generation and transmission cooperatives. He disagreed with Mr. Boyd's assertion that the state's investor-owned utilities are not growing and said the taxation statistics gathered by the Electric Industry Taxation Study Working Group indicate that all three of the state's investor-owned utilities are growing. He said that is not true for all of the state's electric cooperatives and that a majority of the state's electric cooperatives have not grown at the same pace as the state's investor-owned utilities. He said the relative share of electricity retail sales in North Dakota has remained the same in the recent past and the Territorial Integrity Act has not afforded an advantage to the electric cooperatives that would justify a change in the Territorial Integrity Act. He said the Territorial Integrity Act works and works well for both the state's investor-owned utilities and the state's electric cooperatives. He said it places service decisions where they belong, with local city commissions and city councils. He said the Territorial Integrity Act creates a level playing field with a balanced approach, avoids duplication of expensive electric infrastructure, and there is no need to change the Territorial Integrity Act.

Chairman Carlson said if any interested party believes that changes to the state's Territorial Integrity Act are necessary, that party present them in bill draft form at the committee's next meeting.

No further business appearing, Chairman Carlson adjourned the meeting at 4:00 p.m.

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Jeffrey N. Nelson
Counsel

ATTACH:15