

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ELECTRIC INDUSTRY COMPETITION COMMITTEE

Monday, August 30, 2004
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Matthew M. Klein, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Matthew M. Klein, Arden C. Anderson, Wesley R. Belter, George Keiser, James Kerzman; Senators Duane Mutch, David P. O'Connell, Larry Robinson, Ben Tollefson, Thomas L. Trenbeath, Herb Urlacher

Member absent: Representative Jim Kasper

Others present: See Appendix A

It was moved by Representative Keiser, seconded by Senator Robinson, and carried on a voice vote that the minutes of the July 6, 2004, meeting be approved as distributed.

ELECTRIC INDUSTRY TAXATION

At the request of Chairman Klein, committee counsel distributed a bill draft [50121.0100] relating to taxation of generation, distribution, and transmission of electric power, proposed amendments to the bill draft [59306.01], and a bill draft [50064.0200] relating to elimination of gross receipts taxes for rural electric cooperatives and substitution of centrally assessed property taxes.

Chairman Klein called on Mr. Harlan Fuglesten, Communications and Government Relations Director, North Dakota Association of Rural Electric Cooperatives, who discussed the bill draft relating to taxation of generation, distribution, and transmission of electric power or the in lieu of property tax bill draft; the proposed amendments to the bill draft; and the bill draft relating to elimination of gross receipts taxes for rural electric cooperatives and substitution of centrally assessed property taxes or the ad valorem property tax bill draft. He also presented a proposed amendment to the in lieu of property tax bill draft to remove the requirement that a retail sale be delivered "through a distribution line" in order to be subject to distribution taxes. A copy of his presentation is attached as Appendix B.

Chairman Klein called on Mr. Dennis Boyd, Senior Governmental Affairs Representative, Public Affairs Department, MDU Resources Group, Inc., who discussed the bill drafts and the proposed amendment as well as the number of North Dakotans who own MDU stock. A copy of his presentation is attached as Appendix C.

Chairman Klein called on Mr. Steve Schultz, Otter Tail Power Company, Jamestown, who discussed the bill drafts, the amendment, and electric industry taxation. A copy of his presentation is attached as Appendix D.

In response to a question from Representative Keiser, Mr. Schultz said the Otter Tail Power Company would benefit under the in lieu of property tax bill draft and its taxes would stay the same under the ad valorem property tax plan bill draft.

Chairman Klein called on Ms. Kathy Aas, Xcel Energy, Inc., Minot, who discussed the bill drafts and the amendment. A copy of her presentation is attached as Appendix E.

In response to a question from Representative Klein, Mr. Bob Graveline, President, Utility Shareholders of North Dakota, said the Utility Shareholders of North Dakota favors the ad valorem property tax plan bill draft.

Chairman Klein called on Mr. Dale Niezwaag, Basin Electric Power Cooperative, who discussed electric industry taxation. A copy of his presentation is attached as Appendix F.

In response to a question from Senator O'Connell, Mr. Fuglesten cited the state's telephone industry as an industry that has moved from a centrally assessed or ad valorem property tax system to an in lieu of property tax system. Thus, he said, the in lieu of property tax system is not unique to electric cooperatives. In addition, he said, the generation component of the electric industry in North Dakota is taxed on an in lieu of property tax basis. He said the coal conversion tax is an in lieu of property tax. In response to the objection to the in lieu of property tax proposal that it would force a combination electric and natural gas utility company such as Montana-Dakota Utilities Company to separate, for tax purposes, its common property, he said, this is already being done for rate-making purposes and it would not be additionally burdensome for an integrated company to do this for taxation purposes.

Chairman Klein called on Mr. John Dwyer, President, Lignite Energy Council, who addressed the committee. Mr. Dwyer said increasing the transmission line mile tax or shifting electric industry taxes within the industry will not kill the lignite industry in North Dakota; however, he said, neither is it helpful to

the industry. He said lignite is a low BTU high-moisture fuel and the only way to get this fuel to market is through the transmission of electricity. He said lignite operates in a very competitive market competing with Canadian hydropower and Wyoming and Montana subbituminous coal. He reminded the committee that recently a North Dakota power plant switched its fuel source from lignite mined in North Dakota to subbituminous coal railed into the state from Wyoming. He said the committee must be careful concerning the message it is sending to entities wishing to develop new generation in the state. He said if the transmission tax is increased it may adversely impact the development of new coal-fired generation in the state. If the desire of the committee is to raise revenue, he said, the Lignite Energy Council favors a broad-based tax such as the sales tax or income tax that is paid by everyone.

In response to a question from Representative Kerzman, Mr. Dwyer said the Lignite Energy Council and the Vision 21 Project believe that the environmental concerns to constructing new lignite-fired generation in North Dakota can be solved. He said the real key to new coal-fired generation in the state is resolving the transmission issue.

In response to a question from Representative Klein, Mr. Gary Jacobson, Legislative Consultant, Great River Energy, said Great River Energy is currently making adjustments at its Stanton generating station to burn subbituminous coal from Wyoming.

In response to a question from Senator Urlacher, Mr. Niezwaag said Basin Electric Power Cooperative

is using out-of-state coal at its Leland-Olds Station to blend with lignite mined in North Dakota.

In response to a question from Senator Urlacher, Mr. Niezwaag said Basin Electric Power Cooperative is forecasting an annual growth rate in electricity consumption of 2 to 3 percent per year in its service area.

In response to a question from Senator O'Connell, Mr. Boyd clarified that the separation of common property would not be impossible but it would constitute an administrative burden for combined utilities. He agreed that some common property is already separated for ratemaking purposes but said separating common property for ratemaking purposes is different from separating common property for taxation purposes.

It was moved by Representative Keiser, seconded by Senator Robinson, and carried on a voice vote that the in lieu of property tax bill draft be amended to remove the requirement that a retail sale be delivered "through a distribution line" in order to be subject to distribution taxes.

No further business appearing, Chairman Klein adjourned the meeting at 11:15 a.m.

Jeffrey N. Nelson
Committee Counsel

ATTACH:6