

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ELECTRIC INDUSTRY COMPETITION COMMITTEE

Thursday, October 14, 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, Jim Kasper, George Keiser, James Kerzman; Senators Duane Mutch, David P. O'Connell, Larry Robinson, Ben Tollefson, Herb Urlacher

Member absent: Senator Thomas L. Trenbeath

Others present: See Appendix A

It was moved by Senator Robinson, seconded by Senator O'Connell, and carried on a voice vote that the minutes of the August 30, 2004, meeting be approved as distributed.

ELECTRIC INDUSTRY TAXATION

Chairman Klein called on Mr. Harlan Fuglesten, Communications and Government Relations Director, North Dakota Association of Rural Electric Cooperatives, who discussed a bill draft [50121.0200] relating to taxation of generation, distribution, and transmission of electric power, a proposed amendment to this bill draft [59306.0200], and a bill draft [50064.0200] relating to elimination of gross receipts taxes for rural electric cooperatives and substitution of centrally assessed property taxes. A copy of Mr. Fuglesten's comments is attached as Appendix B. Mr. Fuglesten said the Association of Rural Electric Cooperatives continues to support the bill draft relating to taxation of generation, distribution, and transmission of electric power or the in lieu of property tax bill draft and continues to oppose 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 tax plan.

Chairman Klein called on Mr. Scott Handy, President and Chief Executive Officer, Cass County Electric Cooperative, Inc., Kindred. A copy of Mr. Handy's comments is attached as Appendix C. Mr. Handy said Cass County Electric Cooperative supports the proposed in lieu of property tax plan and opposes the ad valorem property tax plan.

In response to a question from Representative Keiser, Mr. Handy said under the in lieu of property tax plan, Cass County Electric Cooperative's taxes would increase slightly. In response to a further question from Representative Keiser, Mr. Handy said Cass County Electric Cooperative has not conducted an

analysis of whether its taxes would increase or decrease under the ad valorem property tax bill draft.

In response to a question from Representative Kasper, Mr. Handy said there probably would be a tax shift among political subdivisions under the in lieu of property tax proposal because the current property tax system is based on the location of transmission lines and the proposed plan would distribute a greater portion of the revenue to more populous areas. He said Cass County Electric Cooperative supports the in lieu of property tax bill and is primarily concerned with how the taxes would be collected and not how they should be distributed to political subdivisions.

Chairman Klein called on Mr. Dale Niezwaag, Basin Electric Power Cooperative. A copy of Mr. Niezwaag's comments is attached as Appendix D. Mr. Niezwaag said Basin Electric Power Cooperative supports the in lieu of property tax proposal supported by the Association of Rural Electric Cooperatives.

In response to a question from Representative Keiser, Mr. Niezwaag said Basin Electric Power Cooperative has not conducted a study to determine the impact the ad valorem property tax proposal would have on its tax burden.

Chairman Klein called on Mr. Bruce R. Carlson, General Manager, Verendrye Electric Cooperative, Inc., Velva. A copy of Mr. Carlson's comments is attached as Appendix E. Mr. Carlson said Verendrye Electric Cooperative is in favor of the proposed combination energy sales and revenue tax formula or the in lieu of property tax bill draft as a replacement for the present 2 percent gross receipts tax. He said the cooperative is opposed to the property tax valuation method for rural electric cooperatives or the ad valorem property tax bill draft.

Chairman Klein called on Mr. Ordean Nygren, General Manager, Capital Electric Cooperative, Inc. A copy of Mr. Nygren's comments is attached as Appendix F. Mr. Nygren said Capital Electric Cooperative supports the in lieu of property tax proposal.

In response to a question from Representative Klein, Mr. Nygren estimated that 40 percent of Capital Electric Cooperative's electricity sales are within the city of Bismarck.

In response to a question from Representative Keiser, Mr. Nygren said as much as 70 percent of Capital Electric Cooperative's electricity sales may

occur within four miles of the city of Bismarck but was uncertain of the exact percentage. However, he agreed, it is a significant portion of Capital Electric Cooperative's electricity sales.

Chairman Klein called on Ms. Lynette Nieuwsma, Chief Executive Officer, Slope Electric Cooperative, New England. A copy of Ms. Nieuwsma's comments is attached as Appendix G. Ms. Nieuwsma said Slope Electric Cooperative supports the in lieu of property tax proposal.

Chairman Klein called on Mr. Jay Jacobson, General Manager, Dakota Valley Electric Cooperative, Milnor. A copy of Mr. Jacobson's comments is attached as Appendix H. Mr. Jacobson said Dakota Valley Electric Cooperative supports the in lieu of property tax plan as being the best plan now before the committee.

At the request of Chairman Klein, Mr. Gary Williamson, Manager, Central Power Electric Cooperative, Minot, addressed the committee. He discussed Central Power Electric Cooperative's electricity accounts and electric industry taxation.

In response to Mr. Williamson's comments, Senator O'Connell said shifting from the in lieu of property tax system to an ad valorem tax system would have an adverse impact on electricity providers such as Central Power Electric Cooperative.

Chairman Klein called on Mr. Dennis Boyd, Senior Governmental Affairs Representative, Public Affairs Department, MDU Resources Group, Inc. A copy of Mr. Boyd's comments is attached as Appendix I. Mr. Boyd said Montana-Dakota Utilities Company remains opposed to the modified gross receipts proposal advanced by the Association of Rural Electric Cooperatives and continues to support and to believe the ad valorem-based property tax proposal put forward by Montana-Dakota Utilities Company is a superior tax plan.

In response to a question from Representative Keiser, Mr. Boyd said under an ad valorem tax system, investor-owned utilities would pay the same amount of tax as they do now because they are already taxed on an ad valorem basis. However, he said, Montana-Dakota Utilities Company believes rural electric cooperatives would pay more in taxes because Montana-Dakota Utilities Company believes rural electric cooperatives are paying considerably less property taxes on their property than if the same property was owned by an investor-owned utility.

In response to a question from Representative Keiser, Ms. Marcy Dickerson, State Supervisor of Assessments, Tax Department, said because sales of utility property are rare, the usual method of valuing investor-owned utility property is the stock and debt approach rather than the comparable sales approach to value utility property. Other options to value utility property, she said, include the cost approach or the income approach.

WIND ENERGY DEVELOPMENT STUDY

At the request of Chairman Klein, Representative Jon O. Nelson, Wolford, reviewed a bill draft [50098.0200] relating to a renewable electricity credit trading and tracking system by the Public Service Commission. Representative Nelson said the bill draft allows the Public Service Commission to establish a program for tradeable credits for electricity generated from renewable sources. He said the bill draft allows the commission to facilitate the trading of renewable electricity credits between states. He said the provisions of the bill draft apply to all public utilities, including electric cooperatives and municipal electric utilities.

In response to a question from Representative Belter, Representative Nelson said non-Minnesota utilities may only trade renewable electricity credits with firms located in Minnesota if the states in which those utilities operate have enacted legislation similar to Minnesota's regarding a program for tradeable credits for electricity generated from renewable sources.

In response to Representative Nelson's comments, Representative Belter said the Legislative Assembly must be cautious in granting authority to state agencies to establish such programs as a renewable electricity credit trading and tracking system.

Chairman Klein called on Mr. Brad Crabtree, Director, Powering the Plains Project, Great Plains Institute, Ashley. Mr. Crabtree discussed the issue of enabling North Dakota to participate in a regional renewable energy credit tracking and trading system. A copy of his written comments is attached as Appendix J.

In response to a question from Representative Belter, Mr. Crabtree said everyone he has come in contact with supports the concept of credit trading and tracking but the major impetus has been utility companies.

At the request of Chairman Klein, Ms. Susan Wefald, Public Service Commission, addressed the committee. She said she has been monitoring this issue for some time. She said she does not want the involvement of the commission to be at the initiative of the commission but to monitor the issue to determine what role the industry wants the commission to play in this area.

Chairman Klein recognized Mr. John Val Emter, God's Project. Mr. Emter said he did not feel the Legislative Assembly was representing small taxpayers very well and urged the committee to consider the interests of small taxpayers in its deliberations.

Chairman Klein recognized Mr. Wade Williams, North Dakota Association of Counties. Mr. Williams said the Association of Counties has monitored the committee since its inception and said the primary concern of the association is how a tax proposal that

may be revenue neutral may affect individual counties. He said the association would like to see the distribution of taxes as close to the current system as possible. He said the association does not favor one proposal over the other and is only concerned with the distribution of the revenue to its member counties and not how the tax is imposed.

It was moved by Representative Keiser, seconded by Senator Mutch, and carried on a voice vote that the chairman and the staff of the Legislative Council prepare a final report and present the report to the Legislative Council.

No further business appearing, Chairman Carlson adjourned the meeting at 11:50 a.m.

Jeffrey N. Nelson
Committee Counsel

ATTACH:10