

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### **ELECTRIC INDUSTRY COMPETITION COMMITTEE**

Tuesday, June 27, 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 Drovdal, George J. Keiser; Senators Duane Mutch, Larry J. Robinson, John O. Syverson, Ben Tollefson

**Members absent:** Senators Robert S. Erbele, Tim Mathern

**Others present:** See attached appendix

Representative Matthew M. Klein, member of the Legislative Council, was also in attendance.

Committee counsel said the previous minutes stated Mr. Loren Laugtug, Otter Tail Power Company, Fergus Falls, Minnesota, said "the rate stability bill introduced last session and vetoed by the Governor related to more than transmission line cost recovery." and "Otter Tail advanced the bill and will advance the bill again." He said Mr. Laugtug sent an e-mail clarifying that Otter Tail will advance "a very similar" bill draft and the bill draft will be limited to cost recovery for transmission investments. A copy of Mr. Laugtug's e-mail is on file in the Legislative Council office.

**It was moved by Representative Keiser, seconded by Senator Robinson, and carried on a voice vote that Mr. Laugtug's e-mail clarification be accepted and the minutes of the previous meeting be approved.**

#### **TRANSMISSION FINANCING**

Mr. Scott Scofield and Mr. Jim Wavle, Scofield and Associates, LLC, presented information on the financing of transmission projects through the state of North Dakota guaranteeing to purchase transmission supply. Mr. Scofield said the tax advantages may make the arrangement able to compete with tax-exempt bonds. He said under the concept a private entity would be established for the purpose of providing power transmission capacity through construction of the intrastate transmission asset. He said the state would enter a long-term, take-or-pay transmission supply contract with the private entity. He said the state would enter long-term transmission supply contracts with transmission users. He said the private entity would obtain construction financing and select a contractor and operator through a competitive procurement process. He said upon completion of construction, the private entity would enter a

leveraged sale leaseback for the permanent financing of the plant. He said the private entity supplies transmission, collects supply payments from the state, and services the lease and operation and maintenance agreement obligations. A copy of his presentation is on file in the Legislative Council office.

In response to a question from Representative Boucher, Mr. Scofield said the private entity is a special purpose entity for the lease of assets in this state and the interstate connectivity of the transmission asset would be up to the state.

In response to a question from Representative Boucher, Mr. Scofield said the ongoing operation and maintenance would be conducted by a third-party operator under contract with the private entity.

In response to a question from Representative Keiser, Mr. Wavle said the useful life of a transmission facility is usually 25 years. He said the state would purchase capacity for 25 years and would receive revenue from the users to pay for the capacity.

In response to a question from Senator Syverson, Mr. Scofield said the financing concept in his testimony is different from the sale leaseback concept mentioned in previous meetings. He said the sale leaseback concept involves a governmental tax-exempt body selling a facility to a taxable entity and leasing the facility back for the favorable tax consequences to the taxable entity. He said under the financing concept, the private entity is a for-profit corporation that sells capacity on a take-or-pay basis to the state.

In response to a question from Senator Syverson, Mr. Wavle said the private entity is not organized by the state. He said the state creates the demand that drives the concept.

In response to a question from Representative Belter, Mr. Scofield said the state of North Dakota would be a major risk taker because it must buy all the transmission capacity; however, before entering this financing arrangement, if prudent, the state would have buyers for the capacity. He said his presentation is not focused on the business merits but on alternative financing arrangements.

#### **NORTH DAKOTA TRANSMISSION AUTHORITY**

Ms. Karlene Fine, Executive Director and Secretary, Industrial Commission, provided testimony on the North Dakota Transmission Authority and on

clean energy renewable bonds. A copy of her testimony is on file in the Legislative Council office. Committee counsel provided a handout of information provided by Mr. Steve Waddington, Executive Director, Wyoming Infrastructure Authority, on clean renewable energy bonds. A copy of the handout is on file in the Legislative Council office.

### **PUBLIC SERVICE COMMISSION UPDATE**

Ms. Susan Wefald, Commissioner, Public Service Commission, presented testimony on a letter from the Public Service Commission to the committee on whether certificates of public convenience and necessity should be required for all electric service providers, the order of the Public Service Commission on the dispute between Capital Electric Cooperative and Montana-Dakota Utilities (MDU) Company over the Boulder Ridge First Addition and on long-term planning reserves. She said MDU has appealed to district court and has requested a stay of the commission's order. She said the Mid-Continent Area Power Pool (MAPP) is no longer in place and a new reliability organization is in the process of applying for reliability duties. She said there needs to be adequate generation so prices do not rise abnormally in 10 to 15 years. A copy of the letter and the order of the commission are on file in the Legislative Council office.

### **BILL DRAFT ON COST RECOVERY FOR TRANSMISSION FACILITIES**

At the request of Chairman Boucher, committee counsel presented a bill draft [\[70119.0100\]](#) on allowing a public utility to automatically adjust rates for the recovery of capital and operating costs incurred for a new or modified electric transmission facility with the capacity of 41.6 kilovolts or more and five miles or more in length.

Mr. Laugtug presented written testimony in favor of the bill draft. A copy of his testimony is on file in the Legislative Council office.

Ms. JoAnn Thompson, Otter Tail Power Company, Fergus Falls, Minnesota, presented testimony on the bill draft and the recovery on regionally allocated transmission charges under the bill draft. A copy of her testimony is on file in the Legislative Council office.

In response to a question from Representative Klein, Ms. Thompson said presently interest incurred for the completion of a transmission facility is recovered when the public utility files a general rate case. She said the benefit to non-Midwest ISO members of transmission facilities are indirectly accounted for through an agreement with MAPP members.

In response to a question from Representative Drovdal, Mr. Laugtug said the intent of the bill draft is to have the expedited tariff available for major investments. He said maintenance is included under the general tariff.

In response to a question from Senator Syverson, Mr. Laugtug said the language in the bill draft is borrowed from a recently enacted South Dakota bill.

In response to a question from Representative Boucher, Mr. Laugtug said shareholders are paying for the cost of facilities constructed between rate cases. He said as long as returns are good enough, shareholders absorb the cost. He said future plans are for major transmission projects. He said these future projects will require a more substantial investment than in the past and there will be a need for timely recovery.

In response to a question from Representative Boucher, Mr. Laugtug said Otter Tail would apply under the expedited tariff once per year when building major transmission facilities.

In response to a question from Representative Boucher, Mr. Laugtug said if public utilities are allowed to timely recover costs, the repayment costs should be reduced which will result in lower rates for consumers in the long term.

In response to a question from Representative Brandenburg, Ms. Thompson said it is critical that the Federal Energy Regulatory Commission rule on the regional cost allocation methodology proposed by Midwest ISO for there to be transmission development.

Mr. Jerry Lein, Public Service Commission, answered questions for the committee. In response to a question from Representative Keiser, Mr. Lein said interest on a project is not recovered until there is a rate filing and an order from the Public Service Commission. He said what interest is and how it is calculated is determined on a case-by-case basis.

Ms. Kathy Aas, Minot Community Relations Manager, North Dakota Governmental Affairs Representative, Xcel Energy, Inc., Minot, presented testimony on the bill draft. She said Xcel Energy, Inc., is in support of the bill draft. She said the bill draft would spur transmission growth in this state.

### **BILL DRAFT ON RECOVERY OF COST FOR ENVIRONMENTAL COMPLIANCE AND ACTS OF TERRORISM, SABOTAGE, AND NATURAL DISASTERS**

At the request of Chairman Boucher, committee counsel presented a bill draft [\[70116.0100\]](#) that allows a public utility to have an automatic rate adjustment for recovery of capital and operating costs incurred to comply with environmental laws or costs incurred to repair damages caused by an act of terrorism, sabotage, or a natural disaster.

In response to a question from Representative Boucher, Ms. Wefald said a company may file a rate case or single issue application and the filing would be followed by a hearing. She said the bill draft appears to allow the automatic passthrough of the costs listed in the bill draft.

Representative Keiser said he requested the bill draft after speaking with legislators in other states

about disasters in the other states. He said utilities need to have immediate action when there is a disaster so utilities may move quickly to make repairs with certainty of cost recovery.

Mr. Dennis Boyd, Senior Governmental Affairs Representative, Public Affairs Department, MDU Resources Group, Inc., Bismarck, presented written testimony in favor of the bill draft. He said MDU Resources Group, Inc., supports the previous bill draft as well as this bill draft. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Representative Boucher, Mr. Boyd said under the bill draft a public utility would make a filing and would begin to recover costs immediately without a hearing. He said the Public Service Commission could review the filing and make an adjustment if necessary.

In response to a question from Senator Robinson, Mr. Boyd said he could not envision a fact scenario when the Public Service Commission would negate the filing under the bill draft. He said the conditions precedent for filing the expedited tariff under the bill draft are very certain events.

In response to a question from Senator Tollefson, Mr. Boyd said the procedure in the bill draft is comparable to the administration of the fuel cost adjustment. He said the fuel cost adjustment has nothing to do with the general rate and goes up and down on a monthly basis. He said delayed recovery is adverse to the shareholders' interests.

In response to a question from Representative Klein, Mr. Boyd said presently these costs are recovered through rates after the next general rate case.

In response to a question from Senator Syverson, Mr. Boyd said the bill draft does not contemplate compensation of the public utility by a federal agency; however, public utilities are not eligible for recovery from the Federal Emergency Management Agency.

### **REPORT FROM THE PUBLIC SAFETY ANSWERING POINTS COORDINATING COMMITTEE**

Mr. Terry Traynor, North Dakota Association of Counties, Bismarck, presented the report prepared by the Public Safety Answering Points Coordinating Committee on city and county fees on telephone exchange access service and wireless service. A copy of the report is on file in the Legislative Council office.

In response to a question from Senator Robinson, Mr. Traynor said the legislation recommended in the performance audit is being addressed by a committee organized by the Adjutant General.

### **WIND ENERGY**

Mr. Ed Weber, Western Area Power Association, Billings, Montana, presented the results of the *Dakotas Wind Transmission Study*. He said some transmission problems may be solved through new

technologies. He said the study shows limits to the nonfirm available capacity must be solved with systems additions, such as series compensation. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Senator Syverson, Mr. Weber said the capacity of a transmission line may be exceeded. He said transmission lines are designed to have the capacity exceeded for 10 percent for 30 minutes. He said other equipment may limit capacity before the conductor would limit capacity.

In response to a question from Representative Brandenburg, Mr. Weber said there are stability limits but the transmission system is robust. He said the severe limitations are not in this state. He said the solution is to have interstate transmission systems like those proposed by CapX 2020. He said North Dakota needs a large 345-kilovolt system running from North Dakota into Minneapolis.

In response to a question from Representative Belter, Mr. Weber said although there is more variability of the resource with wind, if the pool is large enough the effect of variability is reduced. He said forecasting wind is important. He said if there is an unexpected stop in wind, it is a problem. He said there does not need to be an instantaneous backup for wind if there is good wind forecasting.

In response to a question from Representative Belter, Mr. Weber said although customers require continuous electricity supply, there does not need to be a total backup for wind if the system is designed to have the capacity serve the demand.

Representative Belter said wind energy has its positives but it is not consistent and the economics of wind energy do not promote the building of transmission capacity for wind.

Mr. John DiDonato, Florida Power and Light, Florida, presented testimony on wind energy in North Dakota from a wind developer's perspective. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Representative Belter, Mr. DiDonato said there are some benefits in placing a wind farm next to the demand but economics require wind farms be placed where there is lots of wind.

In response to a question from Representative Belter, Mr. DiDonato said the cost of four to seven cents per kilowatt for the production of wind energy includes federal subsidies. He said without the federal subsidies the cost would increase approximately 40 percent.

In response to a question from Representative Boucher, Mr. DiDonato said Florida Power and Light is not in the business of developing high-volume users in this state. He said the ideal customer would be a high-volume user who wants to use green energy and locate in this state.

## COMPETITION

Mr. Ronald E. Cizek, Wahpeton Site Manufacturing Director, and Mr. Steven B. Otto, Principal Engineer, Imation, Wahpeton, presented testimony on the need for competition in electric rates. A copy of the presentation is on file in the Legislative Council office.

In response to a question from Representative Boucher, Mr. Cizek said the objective of Imation is to grow the manufacturing plant in Wahpeton. He said electrical rates enter these equations. Mr. Otto said rates were 15 percent higher in Wahpeton than in Minnesota in recent history.

In response to a question from Senator Robinson, Mr. Cizek said the business climate in North Dakota is otherwise favorable, except for electrical rates.

In response to a question from Representative Boucher, Mr. Cizek said the main competition for Imation comes from China and India. He said energy is more reliable in the United States than in foreign countries. However, he said, foreign countries have a significant advantage in the cost of labor. To compete, he said, Imation cannot do much about what foreign countries do but should be able to work with key suppliers in this country.

In response to a question from Representative Keiser, Mr. Laugtug said the increase in rates to Imation are attributed to the fuel cost adjustment which relates to power purchased on the wholesale market. He said the fuel cost adjustment allows Otter Tail to pass through dollar per dollar to the customer the increased cost. He said the fuel cost adjustment has been high because of planned outages at the Coyote Plant and Big Stone and rail issues that have had Big Stone operating at half capacity. He said Otter Tail may not easily change general rates; however, general rates are divided by different groups of users. He said his company would investigate at the next rate case a rate structure that provides better rates for business users.

Mr. Mark Remer, Account Representative, Otter Tail Power, answered questions from the committee. In response to a question from Senator Robinson, Mr. Remer said the last rate case for Otter Tail was in 1983.

In response to a question from Representative Klein, Mr. Remer said the 8 and 16 percent yearly increases in rates are solely attributable to the fuel cost adjustment. He said the base rates have remained the same. He said the rail rate increases are a good portion of the increase in electric rates.

In response to a question from Representative Boucher, Mr. Remer said there are discounts for volume users and Imation is using the available discounts.

In response to a question from Representative Keiser, Mr. Remer said Otter Tail cannot negotiate a special rate without commission approval. He said cooperatives may set any rate they want.

Mr. Cizek said Xcel Energy has reached a settlement with respect to the Midwest ISO and fuel cost adjustment in Minnesota, lowering the customers'

cost for energy. He said the Otter Tail fuel cost adjustment has not been reduced. He said Imation needs a short-term solution so that jobs may remain in Wahpeton.

Mr. Jay Jacobson, Manager, Dakota Valley Cooperative, presented information to the committee. He said the Dakota Valley rates are cost-based rates. He said industrial customers are on standard rates; however, occasionally new customers have a lower rate because of investments in the transmission system.

In response to a question from Representative Boucher, Mr. Jacobson said rates are set with regard to usage.

In response to a question from Senator Tollefson, Mr. Jacobson said Dakota Valley cannot serve Imation.

In response to a question from Representative Keiser, Mr. Jacobson said the 4.5 cents per kilowatt-hour for Min-Dak Farmers Cooperative is the standard Dakota Valley rate. He said the rate for Cargill is less because of investments in the transmission system.

Mr. Otto said a business one-fortieth the size of Imation receives the same rates from Otter Tail. He said Imation is the sixth largest customer of Otter Tail Power in North Dakota. He said Imation pays more for electricity from Otter Tail in North Dakota than if it received electricity in Minnesota or South Dakota from Otter Tail.

In response to a question from Representative Boucher, Mr. Laugtug said rate structures favoring residential customers over business customers are policy-driven and are not set by economic pressure.

In response to a question from Representative Keiser, Mr. Laugtug said there has not been a rate case for Otter Tail since 1983 because the company has not underearned. He said rate cases are time-consuming and expensive.

In response to a question from Representative Boe, Mr. Laugtug said all customers of Otter Tail are rate-regulated and under the Public Service Commission's jurisdiction. Mr. Remer said some reservation customers are Otter Tail customers and are on the same tariff structure.

Representative Keiser said the Legislative Assembly as the policymaking branch of government should provide that a regulated company may more easily change the rate structure.

In response to a question from Representative Keiser, Mr. Lein said there have been negotiated contracts with Public Service Commission approval in the past for purposes of economic development. He said Otter Tail could negotiate a lower rate with Imation and have Public Service Commission approval. He said Otter Tail can change its rate structure without a full rate case.

## TAXATION

Mr. Harlan Fuglesten, Director, Communications and Governmental Relations, North Dakota Association of Rural Electric Cooperatives, Mandan,

presented testimony on taxation of the electric industry. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Senator Syverson, Mr. Fuglesten said revenue from the transmission line tax would be allocated among the counties based on the mileage and tax rates on the lines in each county and within the county to each taxing district based on the mileage and tax rates on the land on which the line is located. He said revenue from a portion of a transmission line in more than one taxing district would be allocated in proportion to the respective most recent property tax mill rates on land where the transmission line is located.

In response to a question from Representative Keiser, Mr. Fuglesten said the bill draft does not contemplate a separate allocation for an extension of line from an urban to a rural area.

Mr. Rod Backman, Covenant Consulting Group, Bismarck, provided testimony to the committee. He said he was hired to look at certain cities, not the whole state, in the study he presented at the last meeting. He said the report was provided without a recommendation. He said if the committee is concerned with the conclusion of the report, the committee may wish to have an independent study. He said an independent study would be expensive.

Representative Keiser said line mile tax revenue given to the county for new developments in the outskirts of a city should be examined. He said the city would like to have the revenue.

Senator Robinson said the issue is complex because people from rural areas go to the cities and pay local sales tax for projects the people from rural areas do not use.

Senator Tollefson said the area of taxation deserves further study.

## COMMITTEE DISCUSSION

Chairman Boucher said the Electric Industry Competition Committee was scheduled to sunset in 2007. Senator Robinson said the contentious issues brought before the committee make a strong case for the continuation of the committee.

Committee counsel distributed a bill draft [\[70126.0100\]](#) relating to the continuation of the Electric Industry Competition Committee until August 1, 2009.

Representative Keiser said the committee should continue but the scope of the committee should be broadened to include all energy development and transmission.

Representative Klein said the Legislative Assembly is the policymaking branch and, unlike the Public Service Commission, can change the law, especially as to speeding up the procedure for rate changes and as such should have an energy committee.

**It was moved by Representative Keiser, seconded by Senator Robinson, and carried on a voice vote that the Legislative Council staff be requested to prepare a bill draft to create an energy development and transmission committee to take the place of the Electric Industry Competition Committee.**

No further business appearing, Chairman Boucher adjourned the meeting at 4:35 p.m.

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Timothy J. Dawson  
Committee Counsel

[ATTACH:1](#)