

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ELECTRIC UTILITIES COMMITTEE

Tuesday, April 7, 1998
Roughrider 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 Randel Christmann, Pete Naaden, Larry J. Robinson

Others present: See Appendix A

Committee counsel said the first two sentences of the fifth paragraph in column two of page 3 of the February 17, 1998, minutes should be corrected to read "In response to a question from Senator Christmann, Mr. Fuglesten said that state corporate income taxes paid by investor-owned utilities should not be included in any comparison of taxes paid by the state's investor-owned utilities and the rural electric cooperatives. He said if corporate income taxes are included and if a similar type of tax were imposed on the rural electric cooperatives, then as the profits of the state's investor-owned utilities increase, the cost of electricity to rural electric cooperative consumers would increase correspondingly." **It was moved by Senator Robinson, seconded by Representative Klein, and carried that the minutes of the February 17, 1998, meeting be approved as corrected.**

At the request of Chairman Carlson, Mr. Dennis Boyd, Senior Governmental Affairs Representative, Public Affairs Department, MDU Resources Group, Inc., addressed the committee. A copy of Mr. Boyd's comments relating to electricity customer location, classification, usage, and rates and electric utility taxation is attached as Appendix B and a schedule of information concerning electricity customer location, classification, usage, and rates arranged by customer class and usage is attached as Appendix C.

In response to a question from Representative Klein, Mr. Boyd said that Montana-Dakota Utilities defines electricity usage above 50 kilowatts as commercial and usage below 50 kilowatts as residential.

In response to a question from Senator Robinson, Mr. Boyd said that Montana-Dakota Utilities

Company's companywide growth rate is one percent per year.

Mr. Boyd also reviewed the average electric rates by class for Montana-Dakota Utilities Company. He said the average cost of residential electric service is 6.84 cents per kilowatt hour, 7.67 cents for small general electric service, 5.51 cents for large general electric service, and 5.22 cents for lighting service and municipal pumping service.

Mr. Boyd next reviewed the miles of transmission lines in North Dakota by size and the tax rate per megawatt hour for each of the state's investor-owned utilities and rural electric cooperatives. He said the tax rate per megawatt hour for Montana-Dakota Utilities Company is \$6.29, \$5.59 for Northern States Power Company, and \$5.59 for Otter Tail Power Company while the tax rate per megawatt hour for the state's rural electric cooperatives is \$1.97 cents per megawatt hour. He also called for the creation of a utility task force to meet and discuss ideas on utility taxation throughout the summer that would report back to the committee on any commonalities that exist for developing a tax proposal.

At the request of Chairman Carlson, Mr. Michael J. Hanson, Chief Executive-Dakotas, Northern States Power Company, addressed the committee. A copy of his comments concerning the amount of electricity sold by customer class, the tax information presented by the Association of Rural Electric Cooperatives at the February 17, 1998, meeting, transmission lines, and electric utility taxation and the overheads used in his presentation is attached as Appendix D. He also distributed rate folders for Northern States Power Company's residential electric rates and commercial and industrial electric prices. Copies of the rate folders are on file in the Legislative Council office. He emphasized that the committee should adopt four principles when evaluating various electric utility taxation proposals. First, he said, the tax system must be competitively neutral. He said all providers of electricity in the state must

be taxed on an equal basis. Secondly, he said, the tax system must avoid nexus problems that may arise when taxing new market entrants and out-of-state providers of electricity. Third, he said, the tax system should be revenue neutral to the state when it is first established and provide a stable revenue source to the state in the future. Finally, he said, the tax system should be relatively easy to understand and to administer.

In response to a question from Representative Klein, Mr. Hanson said Northern States Power Company would provide information on the number of miles of transmission lines owned by the company in North Dakota.

In response to a question from Senator Naaden, Mr. Hanson said the utility taxation system should be designed to ensure revenue neutrality but provide that the tax revenue would grow commensurately with growth in electricity consumption.

At the request of Chairman Carlson, Mr. Kerry Kaseman, Property Tax Analyst, Otter Tail Power Company, Fergus Falls, Minnesota, addressed the committee. A copy of Mr. Kaseman's written presentation concerning electricity sold by customer class, electric rates, customer demographics, and transmission lines is attached as Appendix E.

In response to a question from Representative Huether, Mr. Kaseman said Otter Tail Power Company will provide information on minimum charges per class for electricity services.

In response to a question from Senator Naaden, Mr. Kaseman said Otter Tail Power Company believes that Northern States Power Company's proposal is fair and equitable and worth exploring. However, he said, the investor-owned utilities will need information for all suppliers in North Dakota in order to finalize a decision on the proposal.

At the request of Chairman Carlson, Mr. Harlan G. Fuglesten, Communications and Government Relations Director, North Dakota Association of Rural Electric Cooperatives, addressed the committee. A copy of Mr. Fuglesten's written remarks relating to the amount of electricity sold by customer class, the amount of electricity sold by several rural electric cooperatives, electric utility taxation, transmission lines, and the Territorial Integrity Act is attached as Appendix F. In response to Mr. Boyd's comments, Mr. Fuglesten said the association presented information on all types of taxes paid by rural electric cooperatives at the December 16, 1997, meeting.

At the request of Chairman Carlson, Mr. Ted Humann, Basin Electric Power Cooperative,

addressed the committee. A copy of a white paper entitled *Mid-Continent Area Power Pool Regional Transmission Committee Application Criteria for Delineation of Transmission and Local Distribution Facilities and Wholesale Access on Local Distribution Facilities* discussed by Mr. Humann is included in Appendix F.

In response to a question from Representative Klein, Mr. Fuglesten said the North Dakota Association of Rural Electric Cooperatives would be willing to participate in an electric industry task force to examine various industry taxation issues.

At the request of Chairman Carlson, Ms. Marcy Dickerson, Utility Tax Appraiser, State Tax Department, addressed the committee. A copy of her written comments relating to the taxation of transmission lines in North Dakota is attached as Appendix G.

At the request of Chairman Carlson, Mr. Jerry Lein, Utility Analyst, Public Utilities Division, Public Service Commission, addressed the committee. He discussed a letter from the Public Service Commissioners to Chairman Carlson comparing regulatory authority over electric utilities between North Dakota and other state regulatory commissions and the regulatory agency responsibilities in other states. A copy of this letter is attached as Appendix H. A copy of Mr. Lein's written testimony concerning steps the Public Service Commission is taking to address the year 2000 problem is attached as Appendix I.

In response to a question from Representative Carlson, Mr. Lein said it appears that the state's utilities are moving forward and addressing the year 2000 problem in a timely manner.

At the request of Chairman Carlson, Mr. David Anderson, Basin Electric Power Cooperative, addressed the committee. A copy of the overheads used by Mr. Anderson in his presentation is attached as Appendix J. Concerning the year 2000 problem, he said, on January 1, 2000, a significant number of computers in the world, if left as they are, will cease to operate correctly. He said any calculations involving a date beyond December 31, 1999, could fail because of the way dates are stored by computers. He emphasized that this problem is here, real, and is not going to go away. He said the cost of fixing year 2000 problems will be very high and is going higher as January 1, 2000, approaches. He said it has been estimated that litigation expenses and damages as a result of year 2000 problems could approach \$6 trillion. He said anything with a chip is suspect and one should assume that the chip will fail until proven otherwise.

At the request of Chairman Carlson, Mr. LeRoy J. Neubauer, President, North Dakota

Association of Municipal Power Systems, Valley City, addressed the committee. A copy of his written presentation concerning taxes paid by, megawatt hours sold by, and the tax rate per megawatt hour for several cities that have municipal power agencies and the amount of electricity sold by customer class for each of the municipal power agencies in the state is attached as Appendix K.

In response to a question from Representative Klein, Mr. Neubauer said state law prohibits a municipal power agency from transferring more than 20 percent of its revenues to the general fund of a city.

At the request of Chairman Carlson, committee counsel distributed a letter from Mr. Arthur W. Wheeler, President, North Dakota Retail Association, to Representative Matthew M. Klein concerning retail wheeling pilot programs, a copy of which is attached as Appendix L, and presented a memorandum entitled *Retail Wheeling Limitations and Pilot Projects*. In response to the memorandum, Senator Christmann noted that even if the state were to allow rural electric cooperatives or municipal power agencies to opt out of a deregulation environment, the federal government may preempt the state's laws by enacting unlimited retail wheeling at the federal level.

In response to a question from Representative Huether, Mr. Fuglesten said the Montana electric industry deregulation legislation allows anyone,

not just rural electric cooperatives, to opt out of the legislation.

At the request of Chairman Carlson, Mr. Jess Cooper, Vice President, Greater North Dakota Association, addressed the committee. He briefed the committee on a series of public meetings the Greater North Dakota Association is sponsoring in Minot, Bismarck, Grand Forks, and Fargo concerning electric industry deregulation.

At the request of Chairman Carlson, Ms. Mrg Simon, Missouri Basin Municipal Power Association, Sioux Falls, South Dakota, addressed the committee. She agreed with Mr. Neubauer that any electric industry deregulation legislation must address the unique issues applicable to municipal power agencies.

STAFF DIRECTIVES

Representative Huether requested that the Legislative Council staff provide information on taxes imposed by other states on electric transmission lines.

No further business appearing, Chairman Carlson adjourned the meeting at 3:00 p.m.

Jeffrey N. Nelson
Counsel

ATTACH:12