

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### **ELECTRIC UTILITIES COMMITTEE**

Tuesday, July 29, 1997  
Harvest Room, State Capitol  
Bismarck, North Dakota

Representative Al Carlson, Chairman, called the organizational meeting of the Electric Utilities Committee 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"

At the request of Chairman Carlson, Mr. John D. Olsrud, Director, Legislative Council, reviewed the Legislative Council supplementary rules of operation and procedure.

Chairman Carlson announced that the Legislative Council had appointed Senator Naaden as vice chairman of the committee.

At the request of Chairman Carlson, Representative John Dorso, primary sponsor of 1997 House Bill No. 1237, which established the Electric Utilities Committee, addressed the committee. Representative Dorso said he serves on the Executive Committee of the National Conference of State Legislatures and as a result has learned that restructuring or deregulation of the nation's electric utility industry is a top priority in other states and at the federal level. He said the driving factors for electric industry restructuring are the high cost of energy in the New England and West Coast states and the high cost of energy experienced by large industrial and commercial users of electricity. He said industry will move to geographical areas of the nation where the cost of doing business is the lowest. Because North Dakota is a low-cost state and deregulation of the electric industry may result in lower energy costs, he said, the benefits of low costs will accrue not only to electric energy consumers in North Dakota but to the state as a whole.

Representative Dorso said North Dakota is an energy-generating state that employs many people in the electric-generating industry and thus restructuring will also affect North Dakota in this area. Also, he said, the committee should review the impact of electric industry restructuring or deregulation on tax revenues collected by both the state and political subdivisions from the electric industry. He noted that the National Conference of State Legislatures has

recognized the importance of this issue by forming a committee to review taxation of the energy industry.

At the request of Chairman Carlson, Senator Gary Nelson, Chairman of the Legislative Council, addressed the committee. Senator Nelson reminded the committee that the Taxation Committee is studying taxation and regulatory incentives for the lignite industry in order to improve its competitive position in the energy marketplace. He encouraged the Electric Utilities Committee to work in conjunction with the Taxation Committee in addressing tax issues affecting the restructuring of the state's electric utilities industry.

At the request of Chairman Carlson, committee counsel presented a background memorandum concerning the electric industry restructuring study.

At the request of Chairman Carlson, Mr. Charles E. Johnson, Commission Counsel, Public Service Commission, addressed the committee. A copy of his comments, which concern the regulated electric industry, is attached as Appendix "B".

In response to a question from Senator Naaden, Mr. Bruce Hagen, Public Service Commissioner, said he is not sure of the reason why municipal utilities are not regulated by the Public Service Commission. He said they have not been regulated by the commission since he joined the commission in 1961.

At the request of Chairman Carlson, Mr. Ron Tipton, President and Chief Executive Officer, Montana-Dakota Utilities Company, addressed the committee. A copy of his presentation is attached as Appendix "C". He also distributed a glossary of electric industry terms which is attached as Appendix "D".

In response to a question from Representative Klein, Mr. Tipton said Montana-Dakota Utilities (MDU) came within one megawatt of its peak capacity last year. However, he said, MDU does have excess capacity during the fringe months of the year which it attempts to sell in the excess power market.

In response to a question from Senator Christmann, Mr. Tipton said proposed federal legislation would deregulate or allow competition in those states

that have not taken any action to restructure their electric industries.

In response to a question from Senator Naaden, Mr. Tipton said the impetus for electric industry restructuring has come from large industrial and commercial energy users that are tired of subsidizing residential electricity users. He said some industrial users in MDU's service area are paying 150 percent of the actual cost of providing energy to those users while residential customers are only paying 60 to 70 percent of the actual cost of providing energy to them.

In response to a question from Representative Klein, Mr. Tipton said approximately 65 percent of the energy generated in North Dakota is exported out of state.

At the request of Chairman Carlson, Mr. John MacFarlane, President, Chief Executive Officer, and Chairman of the Board, Otter Tail Power Company, Fergus Falls, Minnesota, addressed the committee. He said Otter Tail Power Company is an investor-owned utility, and provides power to much of eastern North Dakota. He said Otter Tail's service area is approximately 50,000 square miles, and it serves approximately 460 communities. In North Dakota, he said, Otter Tail provides power to 56,000 customers in 260 communities, the largest of which are Jamestown, Wahpeton, and Devils Lake. He said Otter Tail supports customer choice as to which energy supplier a customer prefers. However, he said, not all energy suppliers in North Dakota operate under the same rules. In order for customers to have the benefits of full competition, he said, the industry must be governed by competitively neutral laws and regulations applicable to all suppliers regardless of the size or structure of the provider. He said the committee should also review the North Dakota Territorial Integrity Act in carrying out its study.

In response to a question from Representative Klein, Mr. MacFarlane said Otter Tail's electricity-generating plants are all coal-fired plants.

At the request of Chairman Carlson, Mr. Bruce Kopp, Government Relations Manager, Northern States Power Company, Grand Forks, addressed the committee. A copy of Mr. Kopp's comments is attached as Appendix "E".

In response to a question from Senator Naaden, Mr. Kopp said the electricity generated by Northern States Power Company's hydroelectric facilities is generated in Wisconsin. He said Northern States Power Company may only purchase nonpreference power from the Western Area Power Administration when there is excess power available and preference customers have been satisfied.

At the request of Chairman Carlson, Mr. Dennis Hill, Executive Vice President and General Manager,

North Dakota Association of Rural Electric Cooperatives, Mandan, addressed the committee. A copy of Mr. Hill's comments is attached as Appendix "F".

At the request of Chairman Carlson, Mr. Loren Kopseng, Rainbow Energy Marketing Corporation, Bismarck, addressed the committee. Mr. Kopseng said Rainbow Energy is an energy marketing firm. He explained the difference between an energy broker and an energy marketer as a broker putting an energy supplier in touch with a consumer for a fee, whereas an energy marketer purchases power from a producer and sells it to a consumer. He said Rainbow Energy Marketing Corporation does most of its energy marketing in the eastern United States, some in the West and none in North Dakota. However, he said, as market restructuring sweeps the nation, wholesale and retail wheeling are spreading throughout the United States. He said his firm is participating in a retail wheeling pilot project in Illinois and is saving its customers approximately 25 to 30 percent from the price charged by the local utility.

At the request of Chairman Carlson, Mr. Don Russell, Chairman and Chief Executive Officer, Cloverdale Foods Company, Mandan, addressed the committee. Mr. Russell said Cloverdale Foods has operated a plant in northwest Mandan since 1979. He said Cloverdale Foods has built four additions to the plant and has negotiated for electricity without success. He said Cloverdale Foods will not invest any more money in its facility until there is a change in the electricity market. He said he is an advocate of radical change which means total open access to the retail electricity market. Concerning stranded costs, he said, these costs were incurred by high cost, inefficient utilities and thus these costs should not be recoverable. Concerning reliability, he said, opponents of retail wheeling claim that restructuring will result in unreliability of electric service yet Cloverdale Foods experienced 266 power interruptions last year.

In response to a question from Representative Klein, Mr. Russell said Cloverdale Foods spends \$1,000 per day on electricity and estimated the company would save \$600 per day if allowed to purchase electricity in the retail market.

At the request of Chairman Carlson, Mr. Dick Bergstad, President, North Dakota Electrical Workers Council, addressed the committee. A copy of Mr. Bergstad's comments is attached as Appendix "G".

Representative Klein requested that the Legislative Council staff contact the Tax Commissioner for information on the amount of taxes collected by the state and political subdivisions from electric utilities in the state and the types of taxes paid by these utilities. He also requested that the Legislative Council staff request information from the Tax Commissioner on

the impact restructuring the electric industry may have on tax revenues in the state.

Senator Robinson requested that the Legislative Council staff provide the committee with copies of the major federal statutes affecting electric utilities and copies of current bills being considered by Congress, FERC Order Nos. 888 and 889, and contact the Federal Energy Regulatory Commission to see if it would provide a person at the committee's next meeting to review the FERC orders.

Representative Carlson requested that the Legislative Council staff contact several municipal utilities in the state and invite them to appear before the committee.

Senator Robinson requested that the Legislative Council staff send each member of the committee the legislative history for 1997 House Bill No. 1237.

Senator Robinson requested that the Legislative Council staff provide a copy of the Territorial Integrity Act and its legislative history to the committee.

No further business appearing, Chairman Carlson adjourned the meeting at 12:15 p.m.

---

Jeffrey N. Nelson  
Counsel

ATTACH:7