NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ELECTRIC INDUSTRY COMPETITION COMMITTEE

Monday, April 24, 2000
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Al Carlson, Chairman, called the meeting to order at 10:00 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

It was moved by Senator Robinson, seconded by Senator Naaden, and carried that the minutes of the March 3, 2000, committee meeting be approved as distributed.

ELECTRIC UTILITY INDUSTRY TAXATION

At the request of Chairman Carlson, committee counsel presented a memorandum summarizing the electric utility industry transmission taxation proposals that have been submitted by the North Dakota Association of Rural Electric Cooperatives and the state's investor-owned utilities to the committee as well as the proposal developed by the committee at its March 3, 2000, meeting entitled *Summary of Electric Utility Industry Transmission Taxation Proposals Submitted to the Electric Industry Competition Committee*. He said the memorandum applies to transmission lines as defined by North Dakota Century Code Section 49-21.1-01.1 which provides that "[e]xcept for purposes of transmission facility siting under chapter 49-22 and regulatory accounting including the determination of the demarcation between federal and state jurisdiction over transmission in interstate commerce and local distribution, for purposes of this title [49] and chapters 57-33 and 57-33.1, lines designed to operate at a voltage of 41.6 kilovolts or more are transmission lines, and lines designed to operate at a voltage less than 41.6 kilovolts are distribution lines." He said the Association of Rural Electric Cooperatives Proposal A would raise $1,968,538, that the Association of Rural Electric Cooperatives Proposal B would raise $2,388,362, that the investor-owned utility proposal would raise $4,943,192, and that the proposal developed by the committee would raise $3,884,387.

Concerning the rationale as to why small power plants, such as the Heskett Plant, are subject to property taxes rather than the coal conversion tax, committee counsel reviewed the report of the North Dakota Legislative Council's 1973-74 Finance and Taxation Committee. He said during the course of discussions undertaken by that committee on the taxation of coal gasification plants, attention was called to the taxation of large electrical generating plants. He said it was noted a number of plants larger than any then in existence were either under construction or in the planning stages. He said the 1973-74 Finance and Taxation Committee reviewed the then current statutes on the taxation of large electrical generating plants. He said that committee recommended a bill to provide for a tax for the privilege of processing or converting coal into synthetic natural gas or electrical power in a coal development plant, which was defined to include facilities for the processing or conversion of coal from its natural form into synthetic natural gas or electrical power which normally uses or is designed to use over two million tons of coal per year. He said the two million ton limitation was placed in this definition to exclude those existing plants that were constructed under existing laws and which substantially served the needs of citizens of the state. He said it was also contended that some existing plants were not economically competitive with the larger plants then under construction and would eventually be phased out.

At the request of Chairman Carlson, Ms. Marcy Dickerson, Utility Tax Appraiser, State Tax Department, addressed the committee. A copy of her presentation is attached as Appendix B. She reported the dollar amounts of property taxes, gross receipts taxes, and transmission line taxes levied against electric companies in North Dakota for the years 1995 through 1999. She said the amount of tax levied was $11,694,190.68 in 1995, $11,947,394.07 in 1996, $12,658,617.81 in 1997, $12,590,293.23 in 1998, and $12,141,287.23 in 1999. She said these figures exclude amounts levied against gas property, some actual and some estimated, and were based on information provided by Montana-Dakota Utilities Company and Northern States Power Company. She said the five-year average is $12,206,356.60.

Chairman Carlson recognized Mr. Jerry Coleman, School Finance and Reorganization Unit, Department of Public Instruction. He distributed a schedule showing the sources of school district revenue, indicators of variation in per pupil current revenue (excluding federal restricted revenue) for North Dakota school districts, a schedule of indicators of variation and per pupil property wealth for North Dakota school districts, a schedule of indicators of variation in the operating levy and mills for North Dakota school districts, a summary of the basic foundation aid formula, and a schedule of the impact on school district funding sources assuming a one percent loss in property valuation. This schedule is attached as Appendix C. He also distributed a schedule showing the number of students, taxable valuation, taxable valuation per pupil, general fund levy, total mill levy, various sources of revenue, the total cost per pupil, and the average cost per pupil for each school district in the state. A copy of this schedule is attached as Appendix D.

Chairman Carlson called on Mr. Bruce J. Kopp, Northern States Power Company, who addressed the committee. A copy of Mr. Kopp's comments is attached as Appendix E. He presented a schedule of power plants owned or operated by the state's investor-owned utilities, by capacity; an analysis of the impact of the North Dakota Association of Rural Electric Cooperatives electric utility industry taxation Proposals A and B and the impact that these proposals would have on the state's investor-owned utilities; and an analysis of the impact the committee transmission line mile tax proposal would have on the state's investor-owned utilities.

Chairman Carlson called on Mr. Harlan Fuglesten, Communications and Government Relations Director, North Dakota Association of Rural Electric Cooperatives, who addressed the committee. A copy of Mr. Fuglesten's comments is attached as Appendix F. He presented a schedule of power plants owned by the state's generation and transmission cooperatives by capacity, information on the impact of the state's investor-owned utilities tax proposal on rural electric cooperatives operations in the state, and an analysis of the proposed line mile tax revision developed by the committee.

In response to the assertion that a percentage of revenue tax may be bypassed by tax-exempt organizations and governmental entities, Mr. Fuglesten said both the percentage of revenue and the kilowatt per hour tax proposed by the North Dakota Association of Rural Electric Cooperatives would be embedded in the rate and paid by the utility rather than by the end consumer. Thus, he said, tax-exempt organizations and governmental entities would not be able to bypass the tax.

Chairman Carlson called on Mr. Will Kaul, Vice President, Transmission, Great River Energy, Elk River, Minnesota, who addressed the committee. A copy of Mr. Kaul's presentation is attached as Appendix G. He said the North Dakota transmission line mile tax is an export tax on North Dakota lignite and that the proposals under consideration by the committee are unfair in their treatment of high-voltage direct current facilities. He said Great River Energy can support the North Dakota Association of Rural Electric Cooperatives position only if the 400 kilovolt or more category is eliminated and the tax on high-voltage direct current lines is capped at $600 per mile.

In response to a question from Representative Klein, Mr. Kaul said transmission taxes in Minnesota have actually declined 30 percent in the last four years. He said Minnesota has exempted new generation from personal property taxes. He said 12 percent of Great River Energy's transmission facilities are located in North Dakota, and currently, approximately seven percent of the total transmission taxes paid by Great River Energy are paid in North Dakota. Thus, he said, one could argue that Great River Energy is underpaying transmission taxes in North Dakota as compared to Minnesota. He said if the committee adopted the transmission line mile tax proposed by Great River Energy, eliminating the 400 kilovolt or more category and capping high-voltage direct current lines at $600 per mile, approximately 16 percent of transmission line mile taxes paid by Great River Energy would be paid in North Dakota. Under the North Dakota Association of Rural Electric Cooperatives proposal, he said, 19 percent of the transmission line mile taxes paid by Great River Energy would be paid in North Dakota, and under the committee's proposal, he said, approximately 25 percent of the transmission line mile taxes paid by Great River Energy would be paid in North Dakota.

In response to a question from Representative Carlson, Mr. Kaul said approximately 80 percent of the energy generated by Great River Energy is generated in North Dakota.

Chairman Carlson called on Mr. John W. Dwyer, President, Lignite Energy Council, who addressed the committee. A copy of a transmission tax analysis prepared by Mr. Dwyer is attached as Appendix H. He said approximately 85 percent of the energy generated from lignite, or 30 million tons, and 18,000 jobs that this industry creates, are due to the generation and transmission cooperatives that generate electricity from lignite. He said the proposed changes in the transmission line mile tax would not kill the lignite industry but also would not be helpful to the lignite industry. He said a low Btu high-moisture fuel such as lignite cannot be transported but must be burned near the mine and transported by transmission lines. Thus, he said, an increase in the transmission line mile tax makes lignite less competitive with Wyoming and Montana coal and Canadian hydropower in a very competitive fuel market. If the question is revenue generation, he said, the Lignite Energy Council would favor a tax that everyone pays, such as an increase in the state sales tax or state income tax rather than a tax that only a portion of the population pays, such as the transmission line mile tax or coal conversion tax. Concerning the Heskett plant, he said, the Lignite Energy Council favors treating all generating facilities, regardless of capacity, the same. In conclusion, he said, due to the very sensitive competitive position of lignite, the proposed transmission line mile tax increase would not benefit the lignite industry.

In response to a question from Senator Naaden, Mr. Dwyer said if North Dakota increased the transmission line mile tax enough to make lignite uncompetitive with coal, Minnesota utilities could bring Wyoming and Montana coal to their North Dakota and Minnesota power plants by rail.

In response to a question from Representative Klein, Mr. Dwyer said just because there has not been a recent increase in the transmission line mile tax does not mean the tax needs to be increased. Under this scenario, he said, the coal extraction tax should also be increased and that was the reason why the lignite energy industry fought so hard during the 1985 legislative session to remove the escalator from the coal extraction tax. He said the trend toward deregulation has slowed, and it may take federal legislation to spur deregulation in those states that have not done so. He said Minnesota and South Dakota have not moved any closer to deregulation than has North Dakota.

TERRITORIAL INTEGRITY ACT STUDY

At the request of Chairman Carlson, Mr. Jerry Lein, Public Utility Analyst, Public Service Commission, addressed the committee. A copy of his presentation concerning the number of Territorial Integrity Act cases, the determination of those cases, the result of appeals, and information on the guidelines used by the commission in determining Territorial Integrity Act disputes is attached as Appendix I.

In response to a question from Representative Klein, Mr. Lein said the issues or guidelines used by the Public Service Commission to decide Territorial Integrity Act cases have been developed based on the statutes and court interpretations of the Territorial Integrity Act.

In response to a question from Representative Klein, committee counsel said the issues or guidelines have not been adopted as administrative rules by the Public Service Commission and at least four of them are from *Application of Otter Tail Power Company*, in which the North Dakota Supreme Court established in addition to customer preference, factors to be considered in determining whether an application for a certificate of public convenience and necessity should be granted include "the location of the lines of the supplier; the reliability of the service which will be rendered by them; which of the proposed suppliers will be able to serve the area more economically and still earn an adequate return on its investment; and which supplier is best qualified to furnish electric service to the site designated in the application and which also can best develop electric service in the area in which such site is located without wasteful duplication of investment service."

In response to a question from Representative Klein, Mr. Lein said the primary consideration undertaken by the Public Service Commission in resolving Territorial Integrity Act disputes is to avoid the wasteful duplication of resources.

In response to a question from Representative Carlson, Mr. Lein said franchised investor-owned utilities may expand within a city as the city expands into annexed areas. However, he noted, some of these areas are already being served by rural electric cooperatives under demarcation lines that were drawn under the Territorial Integrity Act in 1965.

Chairman Carlson recognized Ms. Susan Wefald, Commissioner, Public Service Commission. Ms. Wefald volunteered to supply the committee with the entire record in a Territorial Integrity Act case so the committee could review the decisionmaking process from its beginning to resolution. She said the commission has not discussed any changes to the Territorial Integrity Act but is merely complying with the committee's request for information at this time.

Chairman Carlson called on Mr. Kopp, who addressed the committee. A copy of Mr. Kopp's written comments is attached as Appendix J. He discussed changes that Northern States Power Company believes need to be made to the state's Territorial Integrity Act in order to ensure the future long-term viability of all the electric service providers in the state.

In response to a question from Representative Huether, Mr. Kopp said Northern States Power Company is not pursuing any changes in Minnesota's Territorial Integrity Act because it does not view that Act as being as unfavorable to investor-owned utilities as in North Dakota. He said in his review of Territorial Integrity Acts from Ohio to Minnesota and South Dakota, North Dakota's Territorial Integrity Act is the least favorable to investor-owned utilities.

In response to a question from Representative Klein, committee counsel said the *Territorial Integrity Act Study - Background Memorandum* presented at the March 3, 2000, committee meeting contains a summary of the state's Territorial Integrity Act; a summary of the previous studies conducted by the Legislative Council; a summary of 1999 Senate Bill No. 2389, as introduced; and a discussion of the exclusive electric service area laws of surrounding states including South Dakota, Minnesota, and Montana.

In response to a question from Senator Christmann, Mr. Kopp said the changes to the state's Territorial Integrity Act contained in 1999 Senate Bill No. 2389 are not similar to the Ohio Act but were an effort by Otter Tail Power Company, Montana-Dakota Utilities Company, and Northern States Power Company to develop a fair middle ground between the state's investor-owned utilities and the rural electric cooperatives. He said 1999 Senate Bill No. 2389 did not give all the growth areas to the state's investor-owned utilities but provides an opportunity for both the investor-owned utilities and rural electric cooperatives to participate in the state's growth areas.

Chairman Carlson called on Mr. Scott Ladwig, Northern States Power Company, Fargo, who said he is a lineman for Northern States Power Company in Fargo and because Northern States Power Company is excluded from the growth areas around Fargo, the linemen for Northern States Power Company in Fargo have had trouble finding work and have had to work out of state in order to maintain their jobs with Northern States Power Company. He said the infill territory for Northern States Power Company in Fargo is almost full and his job is jeopardized by the state's Territorial Integrity Act.

Chairman Carlson called on Mr. Fuglesten who said the state's rural electric cooperatives welcome the opportunity to discuss the state's Territorial Integrity Act.

Chairman Carlson recognized former Governor Arthur Link. Governor Link said the state's Territorial Integrity Act was enacted in 1965 to protect the areas the rural electric cooperatives had invested in and investor-owned utilities had not wanted to serve. He said as rural areas decline in North Dakota, the Territorial Integrity Act will ensure that rural consumers are provided affordable electric service.

Concerning electric utility industry taxation, Representative Klein said the two percent gross receipts tax should only be eliminated on electricity sales and not on miscellaneous nonelectric sales made by rural electric cooperatives. He said the personal property tax on land and buildings should be the same for rural electric cooperatives as it is for the state's investor-owned utilities. Whether the committee decides to include improvements as well as land, he said, the tax should be the same for both the cooperatives and the investor-owned utilities. Concerning taxation of standby or peaking plants, he said, a kilowatt per hour tax does not work well because these plants only operate intermittently. He said a two-tier tax should be developed for standby or peaking plants that includes a capacity component and a kilowatt per hour component. Based upon the information provided by the Lignite Energy Council, he said, it appears that Central Power Cooperative and Upper Missouri Generation and Transmission Cooperative have been taxed unfairly, and this should be corrected by the committee.

Representative Klein distributed a memorandum entitled *Surge Impedance Loading*, a copy of which is attached as Appendix K, which shows the megawatts of electricity that various transmission lines can carry. He said the transmission line tax has not been revised for over 20 years, and the tax rate should be reexamined by the committee. He noted that transmission lines should be taxed based upon carrying capacity as well as voltage. Concerning municipal power agencies or municipal utilities, he said, they are able to obtain electricity at one-third the cost paid by other electricity providers, and some of these municipalities are classified as property-poor taxing districts which entitles them to additional state revenue. With the low transmission line mile tax, he said, North Dakota taxpayers are effectively subsidizing out-of-state electricity consumers. Although the transmission line mile tax affects the export of North Dakota electricity, he said, this issue must be addressed by the committee. Another area that should be explored, he said, is to allow investor-owned utilities and rural electric cooperatives to trade service areas. He said this would result in savings for both electricity providers and the state's taxpayers.

STAFF DIRECTIVES

Senator Robinson requested the Legislative Council staff attempt to obtain electric rate schedules for investor-owned utilities and rural electric cooperatives in the surrounding states, and the state's investor-owned utilities and rural electric cooperatives be asked to provide their rates for their North Dakota customers.

Representative Carlson requested the Legislative Council staff send a letter to the Public Service Commission asking whether the commission recommends any changes in the Territorial Integrity Act.

Senator Robinson requested representatives of the state's investor-owned utilities and rural electric cooperatives be requested to provide information on kilowatts per hour of electricity sold during the last 10 years in the geographic areas served by these entities.

No further business appearing, Chairman Carlson adjourned the meeting at 2:40 p.m.

Jeffrey N. Nelson
Committee Counsel

ATTACH:11