NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ELECTRIC INDUSTRY COMPETITION COMMITTEE

Wednesday, September 13, 2000
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

It was moved by Senator Robinson, seconded by Senator Naaden, and carried on a voice vote that the minutes of the June 7, 2000, meeting be approved as distributed.

ELECTRIC UTILITY INDUSTRY TAXATION

At the request of Chairman Carlson, Mr. John Walstad, Code Revisor, Legislative Council, reviewed a bill draft relating to taxation of the distribution and transmission of electric power for retail sale in North Dakota. He said the directive to the Legislative Council staff was to draft a bill that among other things applies the state's coal conversion tax to Montana Dakota Utilities Company's Heskett Plant in Mandan; removes investor-owned utility property from central assessment under North Dakota Century Code (NDCC) Chapter 57-06; removes the gross receipts tax for rural electric cooperatives; imposes transmission and distribution line taxes in lieu of property taxes except that property taxes would still be imposed on land, office or administrative-type buildings, and buildings and structures not used primarily and directly in the delivery of electricity through transmission and distribution lines; subjects peaking plants of less than 80 megawatts to local property tax assessment or exempts them as property used primarily in the delivery of electricity through lines; increases the transmission line tax; imposes a distribution tax; excludes municipal power systems from coverage under the bill draft; and allocates the transmission and distribution tax revenue with a continuing appropriation to political subdivisions.

Mr. Walstad said the first seven sections of the bill draft relating to the taxation of the distribution and transmission of electric power for retail sale in North Dakota remove electric utility property from NDCC Chapter 57-06, which provides for central assessment of utility property by the State Board of Equalization. He said the bill draft distinguishes between distribution lines and transmission lines with distribution lines designed to operate at a maximum alternating current voltage of less than 41.6 kilovolts defined as distribution lines and lines designed to operate at a voltage of 41.6 kilovolts or more defined as transmission lines. He said municipal power agencies are not distribution companies for purposes of the new chapter created by the bill draft and thus are not subject to taxation under the bill draft. However, he said, the term "municipal power agency" should be replaced by the term "municipal electric utility." He said the second section of the new chapter created by Section 8 of the bill draft establishes a transmission line mile tax based upon the maximum alternating current voltage or maximum direct current voltage of the transmission line. The third section of the new chapter, he said, establishes a distribution tax of 75.83 cents per megawatt hour for retail sale of electricity to commercial or industrial consumers and a rate of $1.2638 per megawatt hour for the retail sale of electricity to noncommercial or nonindustrial consumers. Two issues the committee should address, he said, are the definition of "commercial or industrial consumer" and who is entitled to the lower rate in instances of mixed use where electricity from a single source is used both for commercial and industrial purposes or residential purposes. He said the word "primarily" should be inserted after the word "used" in the second sentence of new Section 5 in the new chapter. He said a provision should be added to Section 9 of the new chapter of the bill draft which provides for transmission location reports to county auditors. He said a similar report should be forwarded to the Tax Commissioner. He said the bill draft provides a continuing appropriation for allocation of electric transmission and distribution tax revenue to counties. Thus, he said, counties will not have to approach the Legislative Assembly each session to appropriate the revenue from electric transmission and distribution taxes to these political subdivisions. He said revenue from the tax on transmission lines must be allocated among counties based on the mileage of transmission lines and the rates of tax on those lines within each county. Revenue received by a county, he said, must be allocated among taxing districts in the county based on the mileage of transmission lines and the rates of tax on those lines within each taxing district. He said revenue from that portion of a transmission line located in more than one taxing district must be allocated among those taxing districts in proportion to their respective current property tax mill rates that apply to the land on which the transmission line is located.

Mr. Walstad said revenue from the distribution company tax must be allocated to the county in which the retail sale to which the tax applies was made. He said distribution tax revenue received by the county must be allocated among taxing districts in the county in proportion to their respective property tax levies in dollars on property within the county in the previous taxable year. He emphasized that a city that operates a municipal electric utility is excluded from allocations and computations under this provision.

In response to a question from Representative Huether, Mr. Walstad said the bill draft relating to the taxation of the distribution and transmission of electric power for retail sale in North Dakota repeals the city privilege tax on rural electric cooperatives. He said the committee may wish to revisit this issue.

Ms. Marcy Dickerson, Utility Tax Appraiser, State Tax Department, addressed the committee. A copy of her written comments is attached as Appendix B. She commented on the bill draft relating to taxation of the distribution and transmission of electric power for retail sale in North Dakota and presented several suggested changes. The suggested changes concern delinquent taxes, taxes in lieu of certain personal property taxes, and the definition of "commercial or industrial customer" and "coal conversion facility." She said the proposed transmission line tax and distribution tax will produce $354,920 less than the total of taxes levied on electric property under existing law.

Mr. Bruce J. Kopp, Xcel Energy, Inc., Grand Forks, addressed the committee. A copy of his written comments is attached as Appendix C. He said the term "distribution company" includes a company engaged in both the retail sale and the distribution of electricity, and while in today's electric utility environment that is the same company, in a restructured electric market, it may not be. He said this definition may have consequences for power marketing companies, traditional utility companies, and other ancillary service providers. He noted the transmission line mile tax is based on the voltage level the transmission lines are designed for instead of the voltage level the lines are operating at. Thus, he said, the amount of transmission tax the bill draft generates may be understated since the voltage levels used to compute the tax are operating voltages. He said the distribution tax component would raise $546,000 more in annual revenue than existing taxes, and the tax rate should be set at $.6202 per megawatt hour for commercial and industrial customers and $1.0337 per megawatt hour for residential and other customers. Concerning power plants, he said, the language in the bill draft states that electric generating plants with at least one single generation unit with a capacity of 80 megawatts would be taxed under the coal conversion tax. He noted that Montana Dakota Utilities Company's Heskett Plant operates two units--unit one generating 20 megawatts and unit two generating 66 megawatts. Thus, he said, this language needs modification. He said the bill draft does not provide for tax equality. He said under the proposed distribution tax formula, cooperatives average $1.1188 per megawatt hour and generation and transmission cooperatives average $.1104 per megawatt hour for a total between these two of $1.2292. He said the average for investor-owned utilities is $1.3887 per megawatt hour, and noted the bill draft does not include the $2.5 million in North Dakota state income taxes paid by the state's investor-owned utilities. He said the $2.5 million in income taxes adds another $.06 per megawatt hour to the bills of consumers served by investor-owned utilities.

In response to a question from Representative Klein, Mr. Kopp said the recent contract revisions between Central Power Cooperative and Upper Missouri Generation and Transmission Cooperative and Basin Electric Power Cooperative have resulted in a reduction of $810,000 in tax revenue for the state. He said this amount should not be included in the revenue the bill must generate to remain revenue neutral.

In response to a question from Representative Carlson, Mr. Kopp agreed the committee must study the tax structure of the state's electric utility industry, but said any tax restructuring legislation should be part of a comprehensive electric restructuring bill and not enacted before implementation of restructuring.

Mr. Harlan Fuglesten, Director, Communications and Government Relations, North Dakota Association of Rural Electric Cooperatives, addressed the committee. A copy of his comments is attached as Appendix D. Concerning the generation component of electric utility taxation, he said, the bill draft generally treats generation taxes within the state in a fair manner, but some work needs to be done to ensure that the bill draft language is sufficiently clear to carry out legislative intent.

Concerning the transmission component, Mr. Fuglesten said the total amount of transmission taxes would exceed $4.9 million and would impact some transmission owners disproportionally. For example, he said, Great River Energy would realize an immediate tax increase of more than 500 percent or almost $500,000 per year. He said this increase raises the issue of fundamental taxation fairness.

Concerning distribution taxes, Mr. Fuglesten said the bill draft proposes two kilowatt per hour tax rates, with the rate for commercial and industrial consumers set at 60 percent of the rate for residential and other sales. He said if the committee does consider a kilowatt formula using two rates for these broad categories, a figure of 80 percent makes more sense than a figure of 60 percent. Because of the wide variability among customer classes, he said, the Association of Rural Electric Cooperatives proposed a distribution formula that is weighted 50 percent on a flat kilowatt per hour tax and 50 percent on a retail revenue tax. While the association continues to support this compromise as the most fair distribution taxation system, he said, if only a kilowatt per hour tax is imposed, the association believes it would be most fair to make it a single tax rate for all retail kilowatt hours sold.

In response to a question from Representative Carlson, Mr. Fuglesten said although the possibility exists that a distribution tax based on both a flat kilowatt per hour tax and retail revenue could lead to revenue erosion, the possibility is remote.

In response to a question from Representative Klein, Mr. Fuglesten said the transmission component should be redrafted to provide that the tax is on the nominal operating voltage of a transmission line rather than the carrying capacity or maximum designed voltage.

Ms. Mrg Simon, Manager, State Governmental Relations, Missouri River Energy Services, Sioux Falls, South Dakota, addressed the committee. She said Missouri River Energy Services is a municipal power agency composed of municipal utilities in the states of North Dakota, South Dakota, Minnesota, and Iowa. She said it is important to differentiate between a municipal utility and a municipal power system. She said a municipal utility is constituted by one municipality which operates a distribution system. A municipal power system, she said, is made up of two or more cities to take advantage of efficiencies of scale. However, she said, both are consumer-owned utilities and both are political subdivisions of the state.

Ms. Simon said utility tax reform should be part of a comprehensive plan. However, she said, the triggering event should be the beginning of retail competition. Also, she said, Missouri River Energy Services supports the concept that there be no tax shifts from one segment of the industry to another. She said Missouri River Energy Services supports the concept of revenue neutrality--that a revised utility tax system raise the same revenue as the system it replaces.

Mr. John Dwyer, President, Lignite Energy Council, addressed the committee. He said the bill draft effectuates a tax shift to Basin Electric Power Cooperative, Minnkota Electric Cooperative, Square Butte Electric Cooperative, and Great River Energy. He said the bill draft will not help the Vision 21 Project which is attempting to build another lignite electricity generation station in North Dakota. He said another station would mean 1,500 jobs, $150 million in business volume, and $6 million in annual tax revenue for the state. With the electricity shortages in California this summer and the recent experiences in Montana with electric industry restructuring, he said, the impetus for restructuring has slowed. He said 80 percent of the electricity generated in North Dakota is exported, and from a trade perspective, one should make exports as cheap as possible rather than increasing the taxes on a product that is being exported. He said although the proposal is revenue neutral it contains a significant revenue shift within the electric utility industry.

In response to a question from Representative Klein concerning whether in-state electricity consumers are subsidizing the export of electricity out of state, Mr. Dwyer said by enacting a tax system that makes lignite competitive with other sources of energy, the state increases the number of jobs, tax revenue, and business volume in the state. He said the lignite industry is a $1.5 billion industry that generates $60 million in taxes a year and employs 18,000 people. He said electricity is similar to any other commodity, in that if one increases the cost of producing that commodity, it makes it more difficult to export that commodity.

In response to Mr. Dwyer's comments, Representative Carlson said the committee must balance the interests of in-state consumers with the interests of the lignite industry.

TERRITORIAL INTEGRITY ACT STUDY

At the request of Chairman Carlson, Mr. Jerry Hjelmstad, North Dakota League of Cities, Bismarck, distributed a packet of electric utility franchise agreements. This packet is on file in the Legislative Council office.

Mr. Bruce Furness, Mayor, Fargo, addressed the committee. He said the city of Fargo has entered franchise agreements with two electricity providers--an investor-owned utility and a rural electric cooperative. He said the franchise agreements are nonexclusive, in that either provider can provide electric service anywhere within the city of Fargo. He said the usual practice is for franchise agreements to be amended to allow the provider to provide service in areas annexed by the city. If there is a conflict, he said, it is referred to the Public Service Commission for resolution. He said he would like to see a solution where both providers are allowed to grow with the city of Fargo.

Mr. Charles Whitman, city attorney, Bismarck, addressed the committee. He said the city of Bismarck has two electricity providers--Capital Electric Cooperative and Montana Dakota Utilities Company. In 1973, he said, Montana Dakota Utilities Company and Capital Electric Cooperative entered an area services agreement effectively demarcating the area of service by each provider. When Capital Electric Cooperative was granted a franchise by the city of Bismarck to operate within the city, he said, the area services agreement was incorporated into Capital Electric's franchise agreement. He said this system has worked relatively well with only one serious dispute that occurred in 1992.

In response to a question from Representative Carlson, Mr. Whitman said the dispute was resolved by the Bismarck City Commission, and the Public Service Commission did not become involved.

Mr. Bob Frantsvog, Director of Finance, Minot, addressed the committee. In Minot, he said, the franchise automatically follows into areas annexed by the city. He said there has never been a disagreement between Xcel Energy and Verendrye Electric Cooperative that has reached the city commission.

STAFF DIRECTIVES

Chairman Carlson requested that representatives of the state's investor-owned utilities, rural electric cooperatives, and municipal electric utilities meet before the next meeting to review any areas of common ground as well as differences concerning the bill draft relating to the taxation of the distribution and transmission of electric power for retail sale.

Representative Klein requested that the group reviewing the bill draft develop a definition of commercial and industrial user, discuss how standby or peaking plants should be treated for taxation purposes, and address the taxation of electricity used for heating purposes.

Senator Robinson requested that the group provide information on the location of transmission lines within individual counties and the impact the proposal would have on individual counties.

Senator Christmann requested that the group discuss the amount of electricity that is sold in the state and the amount of revenue that must be replaced by the tax proposal.

No further business appearing, Chairman Carlson adjourned the meeting at 1:45 p.m.

____

Jeffrey N. Nelson
Committee Counsel

ATTACH:4