

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ELECTRIC INDUSTRY COMPETITION COMMITTEE

Friday, October 15, 1999
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 Christmann, and carried that the minutes of the August 26, 1999, committee meeting be approved as distributed.

At the request of Chairman Carlson, Mr. Dennis Boyd, Montana-Dakota Utilities Company, addressed the committee. A copy of Mr. Boyd's written comments is attached as Appendix B. He said the objective of an electric utility tax system should be one that is competitively neutral, that taxes all providers of electricity on an equal basis, that avoids nexus problems that arise from taxing new market entrants and out-of-state providers, that is revenue-neutral to the state when it is first established, that provides a stable revenue source to the state in the future, and that is relatively easy to understand and administer. He said the electric industry taxation study group studied several tax alternatives, including a consumption tax replacing coal conversion, transmission, ad valorem, state income, and gross receipts taxes; a transmission tax on all electricity transmitted into the state replacing coal conversion, transmission, ad valorem, state income, and gross receipts taxes; a consumption tax replacing transmission, ad valorem, state income, and gross receipts taxes and an import tax on electricity generated from out-of-state sources; a consumption tax replacing transmission, ad valorem, state income, and gross receipts taxes; a transmission line mile tax and consumption tax replacing transmission, ad valorem, state income, and gross receipts taxes; an ad valorem tax on the transmission and distribution of electricity replacing the current transmission line, ad valorem, state income, and gross receipts taxes and a gross receipts tax on power marketers; a transmission line tax and megawatt per hour tax replacing transmission, ad valorem, state income, and gross receipts taxes including a tax on electricity imported into the state; leaving electricity taxes as is until the legislative or regulatory framework of open access has been established; and a transmission line tax, distribution megawatt per hour

tax, and revenue tax replacing the transmission mile, ad valorem, and gross receipts taxes.

At the request of Chairman Carlson, Mr. Bruce Kopp, Northern States Power Company, addressed the committee. A copy of Mr. Kopp's written comments is attached as Appendix C. He reviewed the positives and negatives of the tax proposal presented by the North Dakota Association of Rural Electric Cooperatives at the August 26, 1999, committee meeting. He also described the investor-owned utility's tax proposal. He said the proposal developed by the state's investor-owned utilities contains a generation component, transmission component, and distribution component. He said the generation component requires all generation plants in the state to pay taxes based on the current coal conversion tax formula. He said the transmission component would impose a line mile tax of from \$200 per mile to \$1,200 per mile. He said the distribution component would impose a tax rate of \$1.5255 per megawatt hour for residential and other classes of customers and \$.9153 per megawatt hour for commercial and industrial customers. He said the commercial and industrial rate would be 60 percent of the residential rate. He said the tax proposal developed by the state's investor-owned utilities is revenue-neutral and it results in a total net gain of \$183 for the state. A summary of the generation, transmission line, and megawatt per hour tax is attached as Appendix D.

At the request of Chairman Carlson, Ms. Rita Mulkern, Montana-Dakota Utilities Company, addressed the committee. She said the power marketer tax proposed by the state's investor-owned utilities was developed based upon the coal conversion tax and would be \$.4416 per megawatt hour on electricity imported into the state by power marketers.

Chairman Carlson recognized Mr. Boyd, who said, concerning state corporate income taxes, the state's investor-owned utilities weighed the political reality of eliminating the corporate income tax for electric providers or continuing to pay the tax and to then take a tax credit for those payments. He said the proposal developed by the investor-owned utilities embodies the latter choice. He also noted that the state's rural electric cooperatives are able to access Federal Emergency Management Agency funds that are not

accessible by the state's investor-owned utilities. He said this represents a subsidy to the rural electric cooperatives that is not available to the state's investor-owned utilities which is in excess of \$28.5 million.

At the request of Chairman Carlson, Mr. Harlan Fuglesten, Communications and Government Relations Director, North Dakota Association of Rural Electric Cooperatives, addressed the committee. A copy of Mr. Fuglesten's written comments is attached as Appendix E. He noted that modifications in the current contractual relationship among some cooperatives may minimize duplication of the two percent gross receipts tax on revenue received by distribution and transmission cooperatives. Under this arrangement, he said, certain distribution cooperatives will purchase power directly from Basin Electric Power Cooperative. He said this will reduce the total tax liability of Central Power Electric Cooperative and Upper Missouri G & T by approximately \$800,000. However, he said, this tax change does not eliminate the disparity between the state's rural electric cooperatives and the state's investor-owned utilities. He said the objective of the taxation proposal developed by the rural electric cooperatives is to create property tax fairness for utilities as well as the state's political subdivisions.

In response to a question from Senator Christmann concerning why the individual cooperatives will only purchase 95 percent of the power previously purchased by Central Power Electric Cooperative from Basin Electric Power Cooperative directly, Mr. Fuglesten said Central Power must continue to supply five percent of the electricity requirements of its member distribution cooperatives in order to remain a voting member of Basin Electric Power Cooperative.

In response to a question from Representative Carlson, Mr. Fuglesten described the differences and similarities between the electric industry taxation proposal developed by the Association of Rural Electric Cooperatives and the proposal developed by the state's investor-owned utilities. Concerning generation, he said, this is the area that has the most similarities between the two proposals. He said the association's plan calls for continuation of the state's coal conversion tax. He said the association's plan calls for including the coal used by Montana-Dakota Utilities Company Heskett plant in the coal conversion tax while the investor-owned utility plan goes further in that in addition to the Heskett plant its plan calls for an electric conversion tax on any existing or new energy conversion facility.

Concerning transmission, Mr. Fuglesten said both the association's proposal and the investor-owned utility's proposal call for a tax per line mile based upon the voltage of the transmission line. He said the association's transmission tax ranges from \$100 per mile for 41.6-kilovolt lines to a maximum of \$500 per

mile for 400-kilovolt lines. He said the investor-owned utility's proposal calls for a tax beginning at \$200 per line mile for 41.6-kilovolt transmission lines to \$1,200 per mile for a 400-kilovolt transmission line. He said the investor-owned utility's proposal more than doubles the tax per line mile for large kilovolt lines and thus raises more than twice as much revenue from the transmission component of the proposed electricity utility tax.

Concerning a tax on the distribution component, Mr. Fuglesten said to achieve revenue neutrality the investor-owned utility proposal calls for a kilowatt per hour tax on the use of electricity. He said the investor-owned utility proposal calls for a distribution tax of \$1.50 per megawatt hour for residential customers and a tax of 90 cents per megawatt hour for commercial and industrial power users. He said the association's plan has one rate per megawatt hour--62 cents per megawatt hour. The other part of the association's formula, he said, is a one percent retail tax on electric sales. Together, he said, the taxes equal approximately \$1.25 per megawatt hour. One difficulty with the investor-owned utility's proposal, he said, is the definition of commercial and residential customer. He said the association and the investor-owned utilities may have different definitions of who is a commercial user and who is a residential user.

In summary, Mr. Fuglesten said there are a number of similarities between the two proposals which may form a basis to continue discussions to address the differences between the proposals.

In response to a question from Representative Carlson, Mr. Fuglesten said that rural electric cooperatives are eligible for Federal Emergency Management Agency assistance because of their nonprofit status. Also, he said, since rural electric cooperatives only have approximately 1.5 customers per line mile as compared to 25 customers per line mile for investor-owned utilities, ice storm and windstorms disproportionately affect the state's rural electric cooperatives.

In response to a question from Representative Carlson, Mr. Boyd said the state's investor-owned utilities would meet with the Association of Rural Electric Cooperatives prior to the next committee meeting to see if there is any common ground concerning the differences between the two proposals.

In response to a question from Representative Carlson, Mr. Kopp said the power marketer tax is determined by dividing the revenue generated by the current coal conversion tax by the net generation in the state, which equals 44.16 cents per megawatt hour.

At the request of Chairman Carlson, Mr. Thomas L. Trenbeath, North Dakota Association of Municipal Power Systems, Cavalier, addressed the committee. A copy of his written comments is attached as Appendix F. He described the impact of the tax

proposal of the Association of Rural Electric Cooperatives on the municipal utilities in the state. He said the combined effect of the association's tax proposal would be \$267,159 on the state's municipal power systems.

In response to a question from Representative Klein, Mr. Trenbeath said approximately 80 percent of the power used by the city of Cavalier is federal preference power and the blended rate for electricity in the city of Cavalier is 2.7 cents per kilowatt hour.

Representative Klein noted that since the municipal power system facilities are tax-exempt, the school districts in cities with municipal power systems do not receive property tax revenue from these facilities which lowers their property tax receipts and thus increases the amount of foundation aid they receive from the state.

In response to a question from Senator Christmann, Mr. Trenbeath said the city of Cavalier transfers the maximum amount allowed by law--20 percent of its gross revenues--from its municipal utility to the general fund of the city.

In response to a question from Senator Naaden, Mr. Trenbeath said the city of Cavalier is realizing the natural benefit of an agreement that the city made some years ago to purchase preference power for the city's municipal power system. In response to a further question from Senator Naaden, Mr. Trenbeath said the city subsidizes services provided by the city with revenue from its municipal power system.

At the request of Chairman Carlson, Ms. Mrg Simon, State Government Relations Director, Missouri River Energy Services, Sioux Falls, South Dakota, addressed the committee. She said six of the members of the North Dakota Association of Municipal Power Systems purchase power from Missouri River Energy Services, which is a joint action agency that serves municipal utilities in North Dakota, South Dakota, Minnesota, and Iowa. She said the primary concern of the state's municipal power systems is that they be allowed to continue to operate as a competitive player in providing electricity to their customers. She urged the committee to ensure that any changes made in the taxation of the state's electric utilities not hinder the ability of municipal power systems to provide electricity to their customers.

Chairman Carlson recognized Mr. Fuglesten. He said the association's tax proposal does not eliminate the transfers from municipal power systems to the general funds of the cities they serve. He said municipal power systems in North Dakota would not experience any type of revenue loss as a result of the association's utility tax proposal.

At the request of Chairman Carlson, Mr. Mark A. Johnson, Executive Director, North Dakota Association of Counties, addressed the committee. A copy of his written comments is attached as Appendix G. He said if some sort of "in lieu of" tax such as a gross receipts tax is proposed, it should be in lieu of

personal property taxes only and there should be no real property tax exemption. He said revenue from all property taxes and in lieu of property taxes should be distributed directly to local government rather than require a legislative appropriation. To the greatest extent possible, he said, the distribution of any in lieu of tax revenue should be such that political subdivisions receive approximately the same share of revenue as they did before any change. He said local governments should participate in any growth or decrease that occurs in this sector's tax. He said the distribution should be, to the greatest extent possible, consistent with existing tax structures and allocations and the calculation, certification, and allocation of tax revenue should be as simple as possible for the industry, the Tax Department, and local government.

At the request of Chairman Carlson, Mr. Jerry Lein, Public Utility Analyst, Public Service Commission, addressed the committee. A copy of his written comments is attached as Appendix H. He addressed significant wholesale electricity price spikes that occurred in our region this past summer. He said Northern States Power spent approximately \$32 million to meet its load for July 29 and 30, 1999, when under more normal conditions, it would likely have cost only \$700,000 per day. He said Northern States Power paid up to \$5,000 per megawatt hour for wholesale energy that would normally sell somewhere within a range of about \$50 per megawatt. He said Great River Energy also sustained significant losses during the last 10 days of July 1999.

At the request of Chairman Carlson, Ms. Marcy Dickerson, State Tax Department, addressed the committee. Under existing law, she said, the State Board of Equalization is responsible for assessing the property of the state's investor-owned utilities but is not involved with assessing the property of the state's rural electric cooperatives. Thus, she said, if the committee were to develop a tax proposal that covers both types of entities, it may require a constitutional amendment to allow the State Board of Equalization to assess the property of the state's rural electric cooperatives.

At the request of Chairman Carlson, Ms. Rita Lepp, Rainbow Energy Marketing, addressed the committee. She noted that the power marketer tax proposed by the state's investor-owned utilities will only apply to imported energy. She said Rainbow Energy Marketing would probably purchase power sold in North Dakota from North Dakota generators in order to avoid high transmission costs which would make its energy uncompetitive with energy sold by North Dakota providers.

Chairman Carlson requested that the Association of Rural Electric Cooperatives, the state's investor-owned utilities, the state's municipal power systems, and any interested power marketers reconstitute the electric industry utility taxation task force to review the association's and the investor-owned utilities' taxation

proposals to see whether they contain any common ground and to note the differences between the two proposals and whether these differences can be resolved.

STAFF DIRECTIVES

Chairman Carlson requested the Legislative Council staff review any constitutional impediments to a statutory provision requiring the State Board of Equalization to assess electric utility taxes for the state's rural electric cooperatives in order to implement the tax proposal submitted by the investor-owned utilities to the committee.

Senator Christmann requested that the Legislative Council staff review whether the state may impose a

kilowatt per hour tax on electricity generated by the state's municipal power systems.

Chairman Carlson requested that the Legislative Council staff arrange for a representative from the Mid-Continent Area Power Pool to review the status of implementing an independent system operator.

No further business appearing, Chairman Carlson adjourned the meeting at 12:30 p.m.

Jeffrey N. Nelson
Committee Counsel

ATTACH:8