

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ELECTRIC INDUSTRY COMPETITION COMMITTEE

Wednesday, November 2, 2005
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Merle Boucher, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Merle Boucher, Tracy Boe, Michael D. Brandenburg, David Drovdal, George J. Keiser; Senators Robert S. Erbele, Tim Mathern, Larry J. Robinson, John O. Syverson, Ben Tollefson

Members absent: Representative Wesley R. Belter; Senator Duane Mutch

Others present: Matthew M. Klein, State Representative, Minot

See attached appendix for additional persons present.

It was moved by Representative Keiser, seconded by Representative Drovdal, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

NORTH DAKOTA TRANSMISSION AUTHORITY

Ms. Karlene Fine, Executive Director and Secretary, Industrial Commission, presented written testimony on this state's transmission authority. A copy of her testimony is on file in the Legislative Council office.

Mr. Glen Skarbakka, Transmission Consultant, Industrial Commission, presented information on the activities of this state's transmission authority. He provided information on Wyoming's Infrastructure Authority and South Dakota's Energy Infrastructure Authority. He provided information on Midwest ISO's proposal before the Federal Energy Regulatory Commission on transmission cost allocation. He said a generator building a line greater or equal to 345 kilovolts would be reimbursed 50 percent with 20 percent of that coming from a postage stamp rate throughout the Midwest ISO footprint and 80 percent from nearby rate zones. He said the 50 percent reimbursement for a line less than 345 kilovolts would come completely from nearby rate zones. A copy of his presentation is on file in the Legislative Council office.

In response to a question from Representative Keiser, Ms. Fine said the Industrial Commission supports the compromise contained in the Midwest ISO proposal.

In response to a question from Representative Boucher, Mr. Skarbakka said the notice of need in the proposed process before building a transmission facility by the transmission authority would be an assessment done within the Industrial Commission. He said the determination of need does not contemplate a hearing.

In response to a question from Representative Klein, Mr. Skarbakka said under the present tax code for a transmission authority bond to be exempt it must be for a project with no private use. He said the Internal Revenue Service would most likely look at the primary use not divide a project on a percentage basis to offer a tax exemption on the private use percentage.

In response to a question from Representative Keiser, Mr. Skarbakka said the transmission authority is limited to revenue bonds as a form of raising funds for a transmission facility. He said the attractiveness of a bond would depend on the project. He said state involvement would make a transmission authority bond more attractive.

In response to a question from Representative Boucher, Mr. Skarbakka said transmission authorities in other states are working on projects within their states and it is too soon to determine if the authorities will cooperate in multistate projects.

In response to a question from Senator Tollefson, Mr. Skarbakka said transmission issues are being addressed in Minnesota through the CapX 2020 initiative.

In response to a question from Representative Keiser, Mr. Skarbakka said a decision on the Midwest ISO proposal from the Federal Energy Regulatory Commission is expected in early February.

In response to a question from Senator Mathern, Mr. Skarbakka said once the Federal Energy Regulatory Commission determines the reimbursement rates, the rates will become part of tariff language and will apply to all projects built under the tariff.

In response to a question from Representative Klein, Mr. Skarbakka said present projects are reimbursed through a license plate scheme and that cannot be changed until 2008.

In response to a question from Representative Keiser, Mr. Skarbakka said if generator XYZ company builds a line costing \$1 million, under the Midwest ISO

proposal the XYZ company would be eligible for partial repayment of \$50 million. He said \$10 million would come from all utilities in the Midwest ISO footprint. He said \$40 million would be from utilities impacted by the addition. He said the reimbursement has not been determined as to whether it is a lump sum, payments over time, or credits on transmission bills.

In response to a question from Representative Boucher, Mr. Skarbakka said a postage stamp rate is the cost of all transmission for a year divided by the load over the entire Midwest ISO footprint. He said a license plate rate would be by zone within the Midwest ISO footprint.

In response to a question from Representative Keiser, Mr. Skarbakka said the Midwest ISO proposal is good for North Dakota because a final determination provides certainty for the generators in developing new transmission. He said support for the proposal is widespread but not universal.

Representative Brandenburg said the postage stamp reimbursement of generator reimbursement should be higher than in Midwest ISO's proposal to the Federal Energy Regulatory Commission.

Mr. John Dwyer, Lignite Energy Council, Bismarck, presented information on the North Dakota Transmission Authority and the Lignite Vision 21 program. He said the North Dakota Transmission Authority is a tool for developers. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Representative Boucher, Mr. Dwyer said the Wyoming Infrastructure Authority received a \$6.6 million appropriation for the operation of the authority.

In response to a question from Representative Boucher, Mr. Dwyer said he does not foresee the North Dakota Transmission Authority becoming a Wyoming Infrastructure Authority. He said he hopes to report to the next Legislative Assembly that developers have used this state's transmission authority.

Mr. Dale Niezwaag, Senior Legislative Representative, Basin Electric Power Cooperative, Bismarck, provided information on the Wyoming Infrastructure Authority and Basin Electric Power Cooperative's partnership with the authority on the Hughes transmission line located in Wyoming. He said 75 percent of the \$50 million needed for the projected cost is funded through a Wyoming Infrastructure Authority loan. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Senator Mathern, Mr. Niezwaag said this state does not have a competitive disadvantage with the Wyoming Infrastructure Authority because the transmission authority in this state does not compete with the Wyoming Infrastructure Authority. He said there is no advantage between the two states as to the issuance of bonds.

In response to a question from Representative Keiser, Mr. Steve Johnson, Basin Electric Power Cooperative, Bismarck, said the Hughes transmission line was funded by a loan that Basin Electric Power Cooperative received from the Wyoming Infrastructure Authority. He said the Wyoming Infrastructure Authority borrowed the money from the state. He said the project did not involve revenue bonds.

In response to a question from Representative Boucher, Mr. Niezwaag said Basin Electric Power Cooperative has joined Midwest ISO as a nontransmission entity.

In response to a question from Representative Klein, Mr. Niezwaag said the Western Area Power Administration joined Midwest ISO on the same basis as Basin Electric Power Cooperative. He said MinnKota Power Cooperative, Inc., has not joined Midwest ISO.

In response to a question from Representative Boucher, Mr. Will Kaul, Great River Energy, Elk River, Minnesota, said Great River Energy supports the Midwest ISO compromise.

OTHER TRANSMISSION ISSUES

Mr. Bill Malcolm, Midwest ISO, Carmel, Indiana, provided a presentation on Midwest ISO and the Northwest exploratory study. A copy of his presentation is on file in the Legislative Council office.

In response to a question from Representative Klein, Mr. Malcolm said comments for the Midwest ISO proposal were filed by the Federal Energy Regulatory Commission on October 28, 2005. He said 11 of 15 states in the Midwest ISO footprint agree with the proposal. He said the Federal Energy Regulatory Commission will have a hearing or a settlement conference on the proposal. He said the Midwest ISO has requested a February decision from the Federal Energy Regulatory Commission.

In response to a question from Representative Drovdal, Mr. Malcolm said in response to the 2003 blackout, the Midwest ISO has upgraded the oversight and monitoring grid of the transmission system. He said the process of building more transmission lines is in motion and progress is beginning to be made.

In response to a question from Senator Syverson, Mr. Malcolm said the federal energy bill allows the Federal Energy Regulatory Commission to have backstop siting authority if a state does approve certain important transmission lines.

In response to a question from Senator Syverson, Mr. Malcolm said there is a transmission bottleneck from Minneapolis going to the east. He said the Federal Energy Regulatory Commission probably will not exercise its backstop jurisdiction in this state because this state has low-cost generation and low load. He said there is no congestion in this state.

In response to a question from Senator Tollefson, Mr. Malcolm said Basin Electric Power Cooperative

and the Western Area Power Administration are not mandated to be in a regional transmission organization. He said the probable reason that Basin Electric Power Cooperative is not a full member is because Basin Electric Power Cooperative's footprint is different from that of the Midwest ISO.

In response to a question from Representative Boucher, Mr. Malcolm said the future goal is to move the excess generating capacity of this state to the rest of the United States and Canada.

In response to a question from Senator Robinson, Mr. Malcolm said most of the Midwest ISO footprint does not use electricity for heat. He said the peak electricity load is in summer.

In response to a question from Senator Tollefson, Mr. Malcolm said Midwest ISO provides reliability coordination to the whole state through a Mid-Continent Area Power Pool entity.

In response to a question from Senator Syverson, Mr. Malcolm said that distance from generator to user becomes cost-prohibitive at approximately 12 to 15 percent electricity loss.

In response to a question from Senator Syverson, Mr. Kaul said a direct current line has lower losses because the line is less flexible. He said a direct current line is expensive if there is any stop between the beginning and end. He said the 3M Corporation has developed a ceramic conductor that does not sag when it is heated. He said it can carry a higher load but is very expensive.

At the request of Chairman Boucher, committee counsel presented information on the National Conference of State Legislatures electric transmission planning and siting sample legislation. A copy of the sample legislation is on file in the Legislative Council office.

Ms. Susan Wefald, Commissioner, Public Service Commission, presented written testimony on the National Conference of State Legislatures model legislation for enabling cooperation and coordination between states when siting electric transmission lines that cross state borders. She said the commission's authority under existing statutes is sufficient to enable cooperation with other states and the federal government. She referred to North Dakota Century Code (NDCC) Sections 49-22-14.1 and 49-02-02 as sources of cooperative authority for the commission. She also provided information on the filing of a complaint by Capital Electric against MDU Resources Group, Inc., to be heard on December 13, 2005. A copy of her testimony is on file in the Legislative Council office.

In response to a question from Representative Keiser, Ms. Wefald said "international" may need to be added to NDCC Section 49-22-14.1 to allow for international cooperation. She said the commission has already cooperated with Canada on siting issues without this addition.

Mr. Kaul and Mr. Rod Scheel, Otter Tail Power Company, Fergus Falls, Minnesota, provided a presentation on CapX 2020. A copy of the presentation is on file in the Legislative Council office.

In response to a question from Representative Keiser, Mr. Scheel said all the partners are participating in the Big Stone II Project, subject to a financial closing in February 2007.

TAXATION

At the request of Chairman Boucher, committee counsel presented a memorandum entitled [*Electric Industry Competition Committee Study of Taxation - History*](#). He provided a copy of bill draft 50121.0200, which was supported by this state's rural electric cooperatives, and amendments to bill draft 59306.0200 and bill draft 50064.0200 supported by MDU Resources Group, Inc. He said the bill drafts and amendments were considered at the last meeting of the Electric Industry Competition Committee during the 2003-04 interim. The committee took no action on either the bill drafts or amendments. A copy of each is on file in the Legislative Council office.

In response to a question from Senator Robinson, Mr. Harlan Fuglesten, North Dakota Association of Rural Electric Cooperatives, Mandan-Fargo, said there have been no discussions in the industry since the 2003-04 interim on the taxation issue. He said every cooperative, Xcel Energy, Inc., and Otter Tail Power Company supported or did not oppose the bill draft during the 2003-04 interim which was supported by this state's rural telephone cooperatives.

In response to a question from Representative Boucher, Mr. Fuglesten said in the past, the Electric Industry Competition Committee has had a task force of industry representatives develop statistics on taxation which were used for the basis of legislative proposals. He said previous proposals have been modified because of the updates in statistics. He said the goal of the legislative proposals was to be revenue-neutral to political subdivisions.

In response to a question from Senator Robinson, Mr. Loren Laugtug, Otter Tail Power Company, Fergus Falls, Minnesota, said the proposal during the 2003-04 interim would have provided simplicity to taxation and was supported by Otter Tail Power Company.

Mr. Dennis Boyd, MDU Resources Group, Inc., Bismarck, presented information to the committee. He said MDU Resources Group, Inc., does not object to consideration of the subject of taxation. He said if the committee is going to consider the taxation issue, it should consider the proposal by MDU Resources Group, Inc., to have the rural electric cooperatives' property centrally assessed and subject to property tax. He said the legislative proposal supported by the rural electric cooperatives would create an administrative burden for MDU Resources Group, Inc., because the electric and gas functions would have to be

separated for taxation purposes. He said there is no reason to change the present taxation system. He said in 1997 there was reason to investigate changes in the taxation system because the electric industry was facing competition with deregulation. He said there has not been deregulation and there is no need to change taxation.

Ms. Kathy Aas, Xcel Energy, Inc., Minot, said Xcel Energy, Inc., is neutral toward the proposal supported by the rural electric cooperatives; however, Xcel Energy is open to discussing the matter.

EMERGENCY 911 TELEPHONE SYSTEMS STANDARDS AND GUIDELINES

Mr. Russ Timmreck, Director, Division of State Radio, provided a report on the operation of and any recommended changes in the emergency 911 telephone system standards and guidelines. He said no changes are recommended at this time. He said a statewide audit of the emergency 911 telephone system is being completed in late November 2005.

He said the audit will be presented to the Adjutant General.

In response to a question from Representative Drovdal, Mr. Terry Traynor, North Dakota Association of Counties, Bismarck, said as of May 2005, all carriers and public safety answering points are compliant with Phase II of the wireless enhanced 911 plan.

In response to a question from Representative Drovdal, Mr. Traynor said the placement of towers is based upon a business decision and not the ability to contact emergency services.

No further business appearing, Chairman Boucher adjourned the meeting at 2:35 p.m.

Timothy J. Dawson
Committee Counsel

[ATTACH:1](#)