NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ELECTRIC INDUSTRY COMPETITION COMMITTEE

Thursday, October 26, 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 on a voice vote that the minutes of the September 13, 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 bill draft had been revised since the committee's last meeting. He said the definitions in North Dakota Century Code (NDCC) Section 57-33.2-01 were revised to impose responsibility for collecting distribution taxes on the distribution company rather than the retailer, to change the term "municipal power agency" to "municipal electric utility," to substitute the word "electricity" for the words "electrical energy," to make clear that a retail sale is the transfer to the end-use consumer, and to make clear that Western Area Power Administration lines are not taxable as transmission lines. He said the transmission line mile tax in Section 57-33.2-02 was revised to change the basis for the tax from designed operating voltage to nominal operating voltage, to specify that the tax is an annual tax, and to provide that nominal operating voltage for a transmission line is determined on April 1 of each year. He said the tax delinquency date in Section 57-33.2-04 is changed from April 15 to March 1 and the allowable extension for payment is eliminated.

Mr. Walstad said the bill draft expands the property tax exemption provisions in NDCC Section 57-33.2-05 to exempt all real or personal property used by a company in the operation and conduct of the business of delivery of electricity through distribution or transmission lines. He said a provision is added to make clear that peaking plants are subject to locally assessed property taxes unless they are subject to coal conversion taxes. He said language has been added to make clear that distribution and transmission taxes are not in lieu of city franchise fees. He said the basis for the credit for taxes on worthless accounts in Section 57-33.2-06 is changed to provide that the credit applies to accounts charged off in accordance with generally accepted accounting principles, rather than for income tax purposes. He said Section 57-33.2-10 has been added to require information and maps to be filed with the Tax Commissioner. He said Section 57-33.2-18 has been changed to require payments of tax funds to counties by April 1 of each year, to provide that transmission line taxes are allocated on the basis of taxes that would apply to land on which the lines are located if the land were taxable, to provide that allocation of distribution line taxes is based on the most recent property tax levies, and to change the term "municipal power agency" to "municipal electric utility." He said the coal conversion tax amendment in Section 57-60-01 is revised to apply to an entire electrical generating plant, rather than a single generation unit, with a capacity of 80 megawatts. Finally, he said, an amendment to Section 57-06-03 has been added to the bill draft to provide that a structure used for both gas and electrical operations is centrally assessed on the taxable portion of the structure, which would be the portion allocated to gas operations. He said there was no consensus at a meeting of electric utilities representatives with regard to how to define commercial or industrial consumer for purposes of distribution taxes and on the appropriate rates of the two classifications for distribution tax imposition.

Mr. Walstad also presented several proposed amendments to the bill draft. He said the amendments address several technical concerns that arose after the bill draft had been distributed. Also, he said, the provisions relating to the Heskett Plant had been put into a separate bill draft relating to electrical generating plants subject to the privilege tax on coal conversion facilities. He said this bill draft defines the term electrical generating plant as a plant, with all additions, which uses coal as a fuel source to generate electrical power which has electrical energy generation capacity of 80,000 kilowatts or more.

In response to a question from Representative Carlson, Mr. Walstad said wind energy facilities and gas turbines are not addressed in the bill draft and thus would be subject to local property taxation similar to peaking plants.

Ms. Marcy Dickerson, Utility Tax Appraiser, State Tax Department, addressed the committee. A copy of her written comments is attached as Appendix B. She said one of the major concerns of the Tax Department is the lack of a definition of commercial or industrial consumer. Without a clear definition of the consumer subject to each tax rate, she said, it will be nearly impossible to administer the proposed law.

In response to a question from Representative Klein, Ms. Dickerson said if the committee determined that entities that used more than 500 kilowatt hours of electricity per year were commercial or industrial consumers and entities that used 500 kilowatt hours or less of electricity per year were residential consumers, then the Tax Department could administer the bill.

In response to a question from Representative Carlson, Mr. Walstad said one alternative to using terms such as commercial and industrial consumer or residential consumer would be class 1 and class 2 consumers.

Mr. Dennis Boyd, Montana-Dakota Utilities Company, addressed the committee. A copy of his written comments is attached as Appendix C. He said the electric utility industry taxation proposal before the committee is a positive step in that it taxes the electric industry by function. However, he said, the bill draft does not address the corporate income tax issue. He said the $2.5 million paid annually by the state's investor-owned utilities incorporate income taxes must be a part of any electric industry taxation proposal. He said if one player in a restructured electricity market pays a tax that another player does not, then the state has not created a level playing field for those participating in the market. He said competition will occur at the generation level, not at the transmission or distribution level, and thus all generation must be subject to the same taxes.

Concerning the bill draft relating to electrical generating plants subject to the privilege tax on coal conversion facilities, Mr. Boyd said the words "a combined" should be added after the word "~~single~~" on page 1, line 16. He said all generation should be treated the same for taxation purposes regardless of fuel source or a plant's status as a baseload or peaking plant. Finally, he said, the bill draft does not hold Morton County harmless as the bill draft's provisions will have a substantial impact on tax revenue to Morton County.

In response to a question from Senator Christmann, Mr. Boyd said the Heskett Plant paid $359,640 in property taxes to Morton County in 1995, $414,740 in 1996, and $408,809 in 1997.

In response to a question from Representative Carlson, Mr. Boyd said in addition to the corporate income tax issue, Montana-Dakota Utilities Company believes that the transmission line mile tax contained in the bill draft is too high and that it may discourage construction of a new coal-fired generating plant in North Dakota. Also, he said, the bill draft does not treat all taxpayers equally.

Mr. Harlan Fuglesten, Communications and Government Relations Director, North Dakota Association of Rural Electric Cooperatives, addressed the committee. A copy of his written comments is attached as Appendix D. His comments addressed the issues of revenue neutrality and contained a proposed amendment to the bill draft. The amendment would substitute the transmission line taxes and distribution tax formula proposed by the Association of Rural Electric Cooperatives for those contained in the bill draft.

In response to a question from Senator Naaden, Mr. Fuglesten said the association's proposal would raise $2.4 million in transmission line taxes and would place a higher burden on the distribution function than would the proposed bill draft. However, he said, the association's proposal is also revenue neutral in that it would raise the same amount of revenue as electric utility taxes do under current law.

In response to a question from Representative Klein, Mr. Fuglesten said the Association of Rural Electric Cooperatives cannot support the transmission line mile tax contained in the proposed bill draft. He said the revised association plan is a good-faith effort to achieve a fair taxation system. He said some members of the association believe that the association's compromise position has already increased the line mile tax too much.

Ms. Marcy Douglas, North Dakota Association of Municipal Power Systems, addressed the committee. A copy of her written comments is attached as Appendix E. She said the Association of Municipal Power Systems would like to see the proposal amended to provide that in prorating taxes paid under NDCC Section 57-33.2-02 among ratepayers, transmission companies could not prorate any portion of the tax among municipal electric utilities operated under NDCC Chapter 40-33, as these municipal electric utilities are exempt from the effect of this section.

In response to a question from Representative Carlson, Mr. Bruce Kopp, Xcel Energy, Inc., Grand Forks, said the reason the proposal submitted by the state's investor-owned utilities has a two-tiered per kilowatt hour distribution tax is because the class cost of service studies that the investor-owned utilities have filed with the Public Service Commission show that commercial and industrial customers, because of their load patterns and load factors, cost less to serve than do residential customers. He said adopting the proposal submitted by the Association of Rural Electric Cooperatives would raise both transmission and distribution taxes for the state's investor-owned utilities.

In response to a question from Representative Carlson, Mr. Fuglesten said the Association of Rural Electric Cooperative's proposal does not contain a major tax shift, but the transmission component of the proposal submitted by the state's investor-owned utilities would increase some transmission line taxes as much as 500 or 600 percent.

In response to a question from Representative Klein, Mr. Fuglesten agreed that transmission line taxes have not been increased since 1977, but he noted the association's proposal calls for an average tax of $630; whereas, if the tax had been increased since 1977 in relation to the consumer price index, the tax would average approximately $600 per line mile. Also, he said, transmission lines are not carrying any more energy than they carried in 1977 and the value of that electricity has also not increased to the same extent and may have even decreased.

In response to a question from Representative Carlson, Mr. Fuglesten said he did not agree with the premise that North Dakota taxpayers are subsidizing the export of electricity. He said North Dakota's rural electric cooperatives pay nearly $40 million annually in conversion, extraction, transmission, property, and gross receipts taxes.

In response to Mr. Fuglesten's comments, Senator Christmann said it could be argued that North Dakota residents are being subsidized by the export of electricity because they benefit from the economies of scale, in that large power plants can produce low-cost electricity for North Dakotans as well as the export market.

WIND ENERGY DEVELOPMENT IN NORTH DAKOTA

Representative Michael D. Brandenburg, Edgeley, addressed the committee. He said the Legislative Assembly should address the issue of the development of wind energy in North Dakota as it has a large potential to enhance economic development in the state.

Mr. Dennis Anderson, Chairman, Wind Energy Committee, Edgeley, addressed the committee. He described wind energy developments in the Edgeley area. He said the Edgeley area could support 1,000 wind energy towers at $1 million each for a total investment of $1 billion. He said it would take approximately 200 full-time employees to service the towers once they are constructed. One problem that needs to be addressed, he said, is that in Minnesota the taxes on a wind turbine and tower would be $7,500, whereas in North Dakota they would be $18,000. He said this difference might make a difference concerning where the towers are located. Although the wind resources are greater in North Dakota, he said, they cannot overcome this tax discrepancy. Also, he said, Minnesota has a 1.5-cent subsidy for wind energy which equates to approximately $70,000 per tower per year.

Mr. Jay Haley, EAPC Architects and Engineers, Grand Forks, addressed the committee. He said a section of land can produce approximately 10 megawatts of wind energy, at a capital investment of $1 million per megawatt. He said only two percent of this land is used for the towers, pads, and access roads and the remaining 98 percent can be farmed or ranched normally.

In response to a question from Senator Robinson, Mr. Haley said the downside of wind energy development is the visual impact of the towers and the competition for limited transmission access.

In response to a question from Representative Klein, Mr. Haley said with new turbine designs noise is no longer a concern and with solid cylindrical towers rather than lattice towers, avian mortality is also no longer a concern.

In response to a question from Senator Naaden, Mr. Haley said generally wind energy development is not subsidized, the exception being a 1.5-cent per kilowatt hour federal production tax credit.

Concerning the proposed bill draft, Mr. Haley said the bill draft should apply to all generation regardless of fuel source.

Mr. Robert M. Markee, Energy Unlimited, Inc., West Conshohocken, Pennsylvania, addressed the committee. He distributed a brochure describing Energy Unlimited, Inc., a copy of which is on file in the Legislative Council office. He said many of the early tax incentives for alternative energy development, such as wind energy, were discontinued in 1985 and thus wind energy is succeeding or failing on its own merits.

COMMITTEE CONSIDERATIONS

It was moved by Representative Klein, seconded by Representative Huether, and carried on a voice vote that the committee adopt the amendments prepared by the Legislative Council staff concerning the bill draft relating to the taxation of the distribution and transmission of electric power.

It was moved by Representative Klein, seconded by Senator Christmann, and carried on a voice vote that the committee not adopt the amendments proposed by Ms. Douglas in her testimony, attached as Appendix E.

It was moved by Representative Klein, seconded by Senator Christmann, and carried on a voice vote that the committee adopt that portion of the amendment proposed by the Association of Rural Electric Cooperatives that provides that the distribution tax does not apply to the sale of electricity to any coal conversion facility subject to taxation pursuant to NDCC Chapter 57-60.

It was moved by Representative Klein, seconded by Senator Christmann, and carried on a roll call vote that the committee not adopt the remainder of the amendments relating to the transmission line tax and distribution tax proposed by the Association of Rural Electric Cooperatives. Representatives Carlson and Klein and Senators Christmann and Naaden voted "aye."

Representative Huether and Senator Robinson voted "nay."

Senator Christmann said nothing has happened at the federal level concerning electric industry deregulation or restructuring and because the state is not facing a strict time constraint or mandate from the federal government there is still time to reach a solution that is positive for North Dakota. He said electricity exports enhance and promote economic development in North Dakota and if anyone is being subsidized by the export of electricity, it is North Dakota residents because of the low cost of electricity produced in the state as a result of the economies of scale realized by producing electricity for the export market.

Representative Huether said increasing the transmission line mile tax as much as that proposed in the bill draft under consideration by the committee would send a message that North Dakota is not interested in constructing another coal-fired generation plant in the state and is in fact saying that the plant should be constructed in another state using that state's fuel resources.

Senator Robinson said there is no pressure on the committee from the federal government to act. Also, he said, there is no industry consensus on the issue and it is not in the committee's best interests to advance a bill merely to present a proposal to the Legislative Assembly. He said deregulation may not be the best answer for North Dakota in that North Dakota has a win-win situation in low-cost electricity and also is exporting electricity that provides economic development for the state.

Senator Naaden said the state should not do anything to hurt the export of electricity.

It was moved by Representative Klein, seconded by Senator Robinson, and carried on a roll call vote that the bill draft relating to the taxation of the distribution and transmission of electric power for retail sale in North Dakota, as amended, not be approved. Representatives Huether and Klein and Senators Christmann, Naaden, and Robinson voted "aye." Representative Carlson voted "nay."

Concerning the bill draft relating to electrical generating plants subject to the privilege tax on coal conversion facilities, Senator Christmann said enactment of the bill draft would have a detrimental impact on tax revenue in Morton County. Before such a measure is adopted, he said, it must address the tax shift from Morton County to the state.

It was moved by Senator Robinson, seconded by Representative Huether, and carried on a roll call vote that the bill draft relating to electrical generating plants subject to the privilege tax on coal conversion facilities not be approved. Representatives Carlson, Huether, and Klein and Senators Christmann, Naaden, and Robinson voted "aye." No negative votes were cast.

TERRITORIAL INTEGRITY ACT STUDY

Mr. Boyd addressed the committee. A copy of his comments is attached as Appendix F. He said Montana-Dakota Utilities Company is facing a municipalization threat in Watford City and Killdeer and the state's Territorial Integrity Act needs to be reformed. He said the actions of McKenzie Rural Electric Cooperative in the Watford City and Killdeer municipalization issue indicate that the Legislative Assembly needs to consider reforming the Territorial Integrity Act in the upcoming Legislative Assembly.

Chairman Carlson requested the Legislative Council staff to send letters to the Watford City Commission and McKenzie Rural Electric Cooperative inviting them to respond to the testimony presented by Montana-Dakota Utilities Company.

Mr. Fuglesten said the Territorial Integrity Act is working well and properly. He said cities have a constitutional right to determine who will provide electric services in those cities. Also, he said, the Territorial Integrity Act avoids costly duplication of services.

Senator Robinson requested that the Legislative Council staff also send a letter to the superintendent of schools in Watford City inviting that person to address the issue of the municipalization of electric service in Watford City.

It was moved by Senator Robinson, seconded by Senator Naaden, and carried that the chairman and the staff of the Legislative Council be requested to prepare a report and to present the report to the Legislative Council.

No further business appearing, Chairman Carlson adjourned the meeting at 3:35 p.m.

Jeffrey N. Nelson
Committee Counsel

ATTACH:6