

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

ELECTRIC INDUSTRY COMPETITION COMMITTEE

Thursday, December 6, 2001
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, Matthew M. Klein; Senators Duane Mutch, Larry J. Robinson, Herb Urlacher

Member absent: Representative Robert Huether

Others present: See Appendix A

At the request of Chairman Carlson, committee counsel reviewed the Legislative Council supplementary rules of operation and procedure.

At the request of Chairman Carlson, committee counsel reviewed a memorandum entitled *Impact of Competition on the Generation, Transmission, and Distribution of Electric Energy Study - Background Memorandum* describing the statutory duties and structure of the committee. He also reviewed the background of electric industry restructuring, federal actions to promote competition, electric industry restructuring initiatives in other states, federal restructuring initiatives, energy-related legislation considered but not enacted by the 2001 Legislative Assembly, wind energy, and wind energy legislation enacted by the 2001 Legislative Assembly.

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 his written comments is attached as Appendix B. Mr. Fuglesten discussed electric industry restructuring, taxation of the electric industry, the Territorial Integrity Act, and development of generation and transmission facilities.

In response to Mr. Fuglesten's comments, Representative Carlson said he agreed that advocates of changing the state's Territorial Integrity Act should bring forward concrete proposals rather than presenting general criticisms of the Act.

In response to a question from Representative Carlson, Mr. Fuglesten said the committee should continue its study of the structure of the taxation of the electric industry in the state. He said the various interested parties would be willing to revive the electric industry taxation study working group to compile information to assist the committee in its study of the impact of competition on the generation, transmission, and distribution of electric energy.

In response to a question from Representative Carlson, Mr. Fuglesten said rural electric cooperatives pay four types of in lieu of property taxes, i.e., a 2 percent gross receipts tax, a land tax, a tax of \$225 per mile on high-voltage transmission lines of 230 kilovolts or higher, and a city privilege tax in some cities. He said the Association of Rural Electric Cooperatives proposed that the gross receipts tax, transmission line mile tax, and city privilege tax as well as the public utility tax paid by investor-owned utilities be eliminated and replaced by a tax on each function or component of the industry, i.e., generation, transmission, and distribution. He said the proposal did not call for any significant change in the generation tax but increased the transmission line mile tax and instituted a two-part distribution tax. He said the distribution tax was a kilowatt per hour tax of 59 cents per megawatt-hour and a revenue tax of .95 percent of revenue. He said the transmission line mile tax would raise approximately \$2 million and the distribution tax would raise approximately \$9.6 million.

Chairman Carlson called on Mr. Dennis Boyd, Senior Governmental Affairs Representative, Public Affairs Department, MDU Resources Group, Inc., who addressed the committee. A copy of Mr. Boyd's written comments is attached as Appendix C. He discussed the past activities of the committee, restructuring of the electric industry, electric industry taxation, the Territorial Integrity Act, and the Lignite Vision 21 program to study the feasibility of constructing additional coal-fired generation facilities in North Dakota.

In response to a question from Representative Klein, Mr. Boyd said interest nationally in deregulation is waning and deregulation of the electric industry is not imminent in North Dakota. He said the current Lignite Vision 21 program studies are based on the current taxation system and thus altering the current taxation system may jeopardize the Lignite Vision 21 program and whether the proposed new lignite mine and generation plant at Gascoyne should be constructed.

In response to a question from Representative Carlson, Mr. Boyd said MDU Resources Group, Inc., and the other investor-owned utilities would present specific proposals for revising the state's Territorial Integrity Act for the committee's consideration. In

response to a further question from Representative Carlson, Mr. Boyd said the committee should also consider whether all electric providers in the state should be subject to regulation by the Public Service Commission.

At the request of Chairman Carlson, committee counsel presented the written comments of Mr. Bruce J. Kopp, Legislative Affairs Manager, Xcel Energy, Inc. A copy of Mr. Kopp's comments is attached as Appendix D. He discussed the committee's study of the impact of competition on the generation, transmission, and distribution of electric energy within the state to date; the future of the electric energy industry in the state; and the direction the study should take during the remainder of the 2001-02 interim. He said the committee should also address the issue of the Territorial Integrity Act.

Chairman Carlson called on Ms. Mrg Simon, Director of Governmental Affairs, Missouri River Energy Services, Sioux Falls, South Dakota, who addressed the committee. Ms. Simon said Missouri River Energy Services is a joint action agency that serves as a supplemental power supplier for 55 municipal electric utilities in North Dakota, South Dakota, Iowa, and Minnesota. She said there must be vigorous wholesale competition before retail competition can occur. Until this occurs, she said, the committee should not study the issue of electric industry restructuring any further. She agreed that the committee should update its taxation statistical information, but she said municipal power agencies are nonprofit distribution utilities that are consumer-owned. Concerning Public Service Commission regulation, she said, the commission regulates investor-owned utilities because there is an inherent conflict between investor-owned utility shareholders and customers. She said no such conflict exists with municipal power suppliers because they are regulated locally by the people they serve in their communities. Although municipal power agencies do not have a great deal of transmission assets, she said, they have an interest in the transmission issue because they receive most of their nonpreference power from rural electric cooperatives that are subject to the transmission line mile tax. Thus, she said, as the tax on transmission lines increases, the cost of power for municipal power agencies increases accordingly. Concerning wind energy generation, she said, Iowa and Minnesota have both enacted renewable energy portfolio requirements but do not have the renewable energy resources available to satisfy them; thus, North Dakota may be able to provide renewable energy for Iowa and Minnesota. However, she said, this is dependent on solving the transmission problem.

In response to a question from Representative Carlson, Ms. Simon said the committee should concentrate its efforts during the 2001-02 interim on determining how to obtain the transmission upgrades that the state needs to grow its electric generating industry.

Chairman Carlson called on Mr. Dean Peterson, North American Coal Corporation, who addressed the committee. Mr. Peterson said the North American Coal Corporation has significant lignite reserves in the state and is very interested in marketing those reserves. He said North American's investors have made significant investments in the state and in developing North American's lignite reserves. He said the single largest issue facing the lignite industry and its ability to market its product is transmission. He said if energy derived from coal is to move to market, it must move over the transmission line system.

Chairman Carlson called on Mr. LeRoy M. Sletten, Larimore, North Dakota, who addressed the committee. He said the electric utility industry is very important to the state and provides a number of good-paying jobs in the state. He said wind energy is not economical because of its high initial investment cost and its unreliability. He said the Legislative Assembly should not expend state funds to promote an inefficient and unreliable source of energy.

STAFF DIRECTIVES

Representative Klein requested that the Legislative Council staff invite the vice president for transmission for Basin Electric Power Cooperative to attend the next committee meeting and discuss transmission issues.

Representative Carlson requested that the Legislative Council staff arrange for an update on the Lignite Vision 21 program and that representatives of MDU Resources Group, Inc., be invited to address the proposed mine and power plant near Gascoyne.

Representative Carlson requested that the Association of Rural Electric Cooperatives and investor-owned utilities reprise their electric industry taxation study working group to develop updated taxation information for the committee's use.

Representative Carlson requested that the Legislative Council staff contact wind energy proponents and request that they address wind energy development and incentives in North Dakota.

Senator Robinson requested that the Legislative Council staff invite representatives of the Lignite Energy Council to address lignite taxation changes made by the 2001 Legislative Assembly and their impact on the state's lignite industry.

Commissioner Tony Clark, Public Service Commission, said he would be pleased to brief and update the committee on transmission issues as they develop over the interim.

No further business appearing, Chairman Carlson adjourned the meeting at 12:00 noon.

Jeffrey N. Nelson
Committee Counsel

ATTACH:4