

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### **ELECTRIC INDUSTRY COMPETITION COMMITTEE**

Monday, September 11, 2006  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator Ben Tollefson, Vice Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators Tim Mathern, Duane Mutch, Larry J. Robinson, John O. Syverson, Ben Tollefson; Representatives Wesley R. Belter, Michael D. Brandenburg, David Drovdal, George J. Keiser

**Members absent:** Senator Robert S. Erbele; Representatives Tracy Boe, Merle Boucher

**Others present:** See attached appendix

Senator David O'Connell and Representative Matthew M. Klein, members of the Legislative Council, were also in attendance.

Vice Chairman Tollefson called on committee counsel to read the following statement:

I have spoken with Representative Merle Boucher who regrets not being here today. He said he wanted to clarify some of the comments he made at the previous meeting in response to the comments made by Mr. Dennis Boyd regarding the decision of the Public Service Commission on the provision of electric service to Boulder Ridge. Representative Boucher said what he intended to convey was that testimony on that matter was out of order at that time, not that any testimony made would not be placed in the minutes.

**It was moved by Senator Robinson, seconded by Representative Drovdal, and carried on a voice vote that the minutes of the previous meeting be approved.**

#### **TAXATION**

Ms. Marcy Dickerson, State Supervisor of Assessments, Tax Department, provided written testimony on city franchise fees for electric service. She said anecdotal information provided by a representative of the city of Grand Forks included the reason for the franchise tax was that it was a means to control city rights of way and to provide a benefit to taxpayers who bore the cost of the acquisition of the right of way. A copy of her testimony is on file in the Legislative Council office.

#### **PUBLIC SERVICE COMMISSION UPDATE**

Vice Chairman Tollefson called on Ms. Susan Wefald, Commissioner, Public Service Commission, who presented written testimony on the difference

between construction work in progress and allowance for funds used during construction, progress on the Imation issue, and the history of the Public Service Commission with special contracts for electric service. Ms. Wefald said construction work in progress is an account description used to identify assets that are in the process of being constructed and therefore have not been placed into service. She said allowance for funds used during construction is a calculation of capital costs incurred while constructing an asset. She said the calculations of allowance for funds used during construction are complex but the general idea is to capture the cost of money used to build an asset, including the time value of money. She said the Public Service Commission met with Imation and Otter Tail Power Company on August 31, 2006. She said Imation gave Otter Tail a proposal for a time-of-day rate. She said Otter Tail will review the proposal and provide a counteroffer or acceptance by September 15, 2006. She said under North Dakota Century Code Section 49-04-07, the Public Service Commission has the authority to approve electric service rate agreements negotiated with individual customers. She said since 1988, 18 of these contracts have been approved, mostly for economic development or load-retention purposes. A copy of her testimony is on file in the Legislative Council office.

In response to a question from Senator Mathern, Ms. Wefald said after six or seven years, contracts involving individuals are sent to be microfiched at the State Historical Society. She said the Public Service Commission staff keeps copies of important contracts and has that information on file in the Public Service Commission office.

#### **BILL DRAFT ON COST RECOVERY FOR TRANSMISSION FACILITIES**

At the request of Vice Chairman Tollefson, committee counsel presented a bill draft [\[70119.0200\]](#) to allow a public utility to file a tariff that provides an expedited adjustment of rates to recover jurisdiction capital and operating costs incurred for a new or modified electric transmission facility. He said this bill draft provided for a review of a rate adjustment by the Public Service Commission. He said the bill draft requires the Public Service Commission to approve the rate adjustment unless the adjustment does not

comply with the tariff or the incurred costs are not reasonable or prudent.

Mr. Jerry Lein, Public Service Commission, answered questions for the committee. In response to a question from Senator Mathern, Mr. Lein said at present the recovery of transmission facility costs is done through a general rate case. Currently, he said, a fuel cost adjustment is allowed above the base rate provided for in the general tariff. He said this adjustment prevents having a general rate case every time there is a fuel cost increase. He said if the bill draft were to go into effect, public utilities would be able to recover transmission facility costs as soon as they are incurred, as with the fuel cost adjustment.

In response to a question from Senator Mathern, Mr. Lein said the bill draft would provide for a special charge to customers which would recover investments in transmission immediately, without going through a general rate case.

In response to a question from Representative Keiser, Mr. Lein said whether the expedited adjustment for the recovery of transmission facility costs will be a separate line on a customer's bill, as is the case with the fuel cost adjustment, is not considered in the bill draft.

In response to a question from Senator Mathern, Mr. Lein said he did not know if the rate adjustment for recovery for transmission facility costs would be a separate line on a customer's bill but he did not think it would be a separate line.

In response to a question from Representative Keiser, committee counsel said "automatic" on page 1, line 9, modifies "adjustment of rates" and is not meant to modify "tariff"; however, the word "automatic" is not needed because the procedure for the adjustment of rates is contained in subsection 3.

**It was moved by Representative Keiser, seconded by Representative Belter, and carried on a voice vote that the bill draft be amended to remove "automatic" on page 1, line 9.**

Vice Chairman Tollefson called on Mr. Loren Laugtug, Otter Tail Power Company, Fergus Falls, Minnesota, who presented written testimony in support of the bill draft. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Senator Mathern, Mr. Laugtug said the charges allowed in the bill draft would accrue to North Dakota customers in the amount North Dakota customers are benefited. He said the bill draft refers to "jurisdictional capital and operating costs" and the word "jurisdictional" applies only to the costs attributable to ratepayers in this state. He said the methodology for determining what is attributable would come from the Federal Energy Regulatory Commission. He said under this methodology, a portion of the cost would be allocated to the entire MISO footprint. He said the majority of the cost would be paid by the customers of the utility that built and benefit from the line.

In response to a question from Senator Mathern, Mr. Laugtug said his personal preference is to provide

for a separate line on the customer's bill for a rate adjustment for transmission facility costs because it provides information to the customer.

Ms. Kathy Aas, Minot Community Relations Manager and North Dakota Governmental Affairs Representative, Xcel Energy, Inc., Minot, presented written testimony in support of the bill draft. A copy of her testimony is on file in the Legislative Council office.

Ms. Wefald provided written testimony in support of the bill draft on behalf of the Public Service Commission. She said the bill draft has two parts. The first part is that the Public Service Commission may approve a tariff that describes a process for the adjustment of rates. She said the bill draft then describes what that tariff must include. She said the rate adjustments are under the tariff and are rather automatic; however, the Public Service Commission approves and reviews the rate adjustments. A copy of her testimony is on file in the Legislative Council office.

In response to a question from Representative Klein, Ms. Wefald said the language in the bill draft has the same intent as the laws in Minnesota and South Dakota. She said the language is similar to the South Dakota law.

In response to a question from Senator Tollefson, Ms. Wefald said the procedure for the tariff to be changed would take approximately six months. She said the rate adjustment may not happen for years because there needs to be a qualifying project.

In response to a question from Representative Keiser, Mr. Lein said the allowance for funds used during construction calculation will figure into this bill draft because there will be a return on investment that will be returned through this mechanism.

**It was moved by Representative Keiser, seconded by Senator Mutch, and carried on a roll call vote that the bill draft, as amended, relating to providing for a rate adjustment to recover transmission facility costs be approved and recommended to the Legislative Council.** Representatives Belter, Brandenburg, Drovdal, and Keiser and Senators Mathern, Mutch, Robinson, Syverson, and Tollefson voted "aye." No negative votes were cast.

## **ENERGY DEVELOPMENT AND TRANSMISSION COMMITTEE**

At the request of Vice Chairman Tollefson, committee counsel presented a bill draft [[70126.0200](#)] to create the Energy Development and Transmission Committee in lieu of the Electric Industry Competition Committee.

Senator Syverson said the committee should be named the energy committee and the bill draft should be amended on page 2, line 2, after the third "the" to insert "processing, distribution," and after "sale" to insert "and consumption".

In response to a question from Representative Drovdal, Senator Syverson said the study of oil may be interpreted not to be included within the study.

Representative Keiser said he wished the transmission authority bill last session would have been addressed during the interim when there was time to thoughtfully consider the provisions of the bill. He said the intent of the bill draft is so that petroleum transmission may be studied during the interim. He said the intent of the bill draft is to include oil.

In response to a question from Senator Tollefson, committee counsel said the Legislative Council could give the Energy Development and Transmission Committee more studies in addition to the statutory duties. He said the Energy Development and Transmission Committee would be required to study "each facet of the energy industry." He said this is a broad directive that includes all forms of energy.

In response to a question from Senator Mathern, committee counsel said by creating a statutory committee, the Legislative Council would be required to study the subject matter in the bill draft; however, the Legislative Council could manage the workload among committees so there is no duplication.

Representative Belter said the Energy Development and Transmission Committee would not be taking any authority away from the Legislative Council. He said because of the importance of energy in this state, a committee that studies energy is important.

Senator O'Connell said the Legislative Council would select the membership of the committee and could provide other areas of study.

**It was moved by Senator Syverson, seconded by Senator Mathern, and failed on a roll call vote that the bill draft be amended to name the committee the energy committee and on page 2, line 2, after the third "the" to insert "processing, distribution," and after "sale" to insert "and consumption".** Senators Mathern, Robinson, and Syverson voted "aye." Representatives Belter, Brandenburg, Drovdal, and Keiser and Senators Mutch and Tollefson voted "nay."

Representative Brandenburg said the state needs to address transmission because transmission is the key issue in energy. He said he did not support the motion.

Representative Belter said he likes the title in the bill draft and the sentence designating the committee's

area of study is inclusive of all processes of energy development and extra words are not necessary.

Senator Syverson said his additional language is in the "shall study" sentence. He said the inclusive language is included in the "may study" sentence.

Senator O'Connell said the membership should be equal from the majority and minority parties in the House and the Senate.

**It was moved by Senator Mathern, seconded by Senator Robinson, and failed on a roll call vote that the bill draft be amended to require equal members of the majority and minority parties from the Senate and the House.** Senators Mathern and Robinson voted "aye." Representatives Belter, Brandenburg, Drovdal, and Keiser and Senators Mutch, Syverson, and Tollefson voted "nay."

**It was moved by Representative Keiser, seconded by Representative Brandenburg, and carried on a roll call vote that the bill draft relating to the creation of the Energy Development and Transmission Committee be approved and recommended to the Legislative Council.** Representatives Belter, Brandenburg, and Keiser and Senators Mathern, Mutch, Robinson, Syverson, and Tollefson voted "aye." Representative Drovdal voted "nay."

## MISCELLANEOUS

At the request of Vice Chairman Tollefson, committee counsel reviewed the testimony and actions to date of this committee.

**It was moved by Senator Robinson, seconded by Senator Mathern, and carried that the chairman and staff of the Legislative Council be requested to prepare a report and bill drafts recommended by the committee and to present the report and recommended bill drafts to the Legislative Council.**

Vice Chairman Tollefson adjourned the meeting at 10:55 a.m.

---

Timothy J. Dawson  
Committee Counsel

[ATTACH:1](#)