USND

Shareholder NEWS

Vol. 14 No. 1 • 1st Qtr 2013

Utility Shareholders of North Dakota

Utility Shareholders of North Dakota

Inside

usnd@usnd.org
www.usnd.org

LEGISLATIVE SUMMARY

The 63rd Legislative Assembly of North Dakota is in session, and USND is tracking approximately 150 bills on a variety of topics including taxation (individual and corporate income, personal and commercial property, sales, and various production taxes), election and campaign controls (lobbying, initiated measures, elections, financial reporting), and utility issues.

Taxation

At the beginning of the second half of the session, the tax picture is anything but clear. We know there will be reform and relief. The dollar amount could be somewhere between $500 million to over $1 billion when all is said and done, but we don't know what the balance will be between the types of tax relief. There are two bills of particular interest to USND, because they focus on the state taxation rate of dividend income: HB 1105 and HB 1277.

HB 1105 was drafted prior to the 2013 fiscal cliff compromise, and the purpose of the bill was to give ND taxpayers certainty in their ND dividend tax rates. It holds the ND tax exclusion for qualified dividend income at 30% as long as the federal tax rate for qualified dividends remains below the rate of regular income. If the federal rate rises to the rate of regular income, the ND exclusion drops to 20% but expands to all dividend income, not just qualified dividend income. The bill is revenue neutral. We support the bill as it gives our shareholders some form of certainty in their ND tax rate regardless of what the federal government does to dividend taxes in the future.

HB 1277 was introduced as a larger income tax bill, but it was amended by the House to address the tax rates on income derived from dividends, capital gains, and interest. The bill, as amended, expands the 30% exclusion to 100% for income under $75,000. The exclusion would change to 90% for income above $75,000. We support this bill wholeheartedly. The fiscal impact of the bill is estimated to be around $70 million a biennium.

Members of the 63rd Legislative Assembly gather in the House Chambers for a floor session.

Election reform

After last year's initiated measure debacle, legislators are working on the best way to strengthen controls on initiated measures and elections. Ideas range from harsher penalties for petition fraud to stricter criteria for petition circulators. Additionally, legislators are considering ways to provide better financial education to petition signers and voters about the impact of initiated measures or legislative controls on the implementation of successful initiated efforts. Anything affecting the election result of an initiated measure will have to be considered by referral to the next election, because the power of the people to initiate reform is a constitutional right. Statutory issues like credentials and penalties are within the purview of legislators.

(cont. on page 3)

Greetings From Bismarck …

Carlee McLeod
USND President

Common sense is an important concept in any policy. During this legislative session, a major focus is being placed on tax reform and relief. Common sense tax policy is crucial to the overall health of a society.

If you've follow the op-ed pages across the state during this legislative session, you might feel like we've thrown common sense out the window. Tax proposals and spending decisions are being used to create plenty of political rhetoric. Arguments against tax relief often pit one group (tax spenders) against another (tax payers), and they are based on who is more "worthy" or "needy". Emotions are played upon, righteous indignation rears its head, and something that masquerades as common sense is touted.

Allow me to offer my "common sense" on this page, and you can decide if it's the real thing or just another imposter.

Common sense tells me that what I earn is mine. I did the work, I reap the benefits, and no one has the right to take that away from me. Common sense also tells me that there are certain things that can be done more efficiently and effectively with a collaborative approach (government). For those things, I am willing to share a portion (pay a tax) of what I earn with the collective to provide the services. In the long run, those things protect my ability to earn and my earnings more than my individual efforts could achieve. If those collaborative efforts fail to achieve their goals more efficiently or effectively than my individual efforts, I am not willing to share a portion of my earnings to fund them. Likewise, I am not willing to share more of my earnings than is necessary to reasonably fund those goals.

Currently, we are in a situation in North Dakota where government services cost much less than the amount tax payers contribute. Common sense tells me that the appropriate action to take in this situation is to lower the contribution tax payers make to meet the cost of government service. Others think we should expand the level of government service until the tax spenders spend as much as the amount being taken from tax payers. That group believes that the excess funds collected by the government belong to the government. My common sense tells me that the funds are still my earnings, which I have worked for and contributed in good faith to provide basic government services. I do not wish to expand the services provided by government. I want to keep more of my money to fund projects of my choosing, not those chosen by someone else.

When we hear comments about giving millions of dollars to corporations or the wealthy through tax cuts, my common sense cries foul. Before you spinners of political rhetoric get too excited–I'm not crying foul over tax cuts–I'm crying foul over the ridiculous idea that a tax cut means "giving" money away. Tax cuts do not "give" money to anyone. Tax cuts stop the government from taking money that doesn't belong to the government anyway–it belongs to the tax payers.

Some special interest groups criticize legislators for working to collect less in taxes rather than expanding government spending. To those groups, I have a message: IT'S NOT YOUR MONEY! HANDS OFF! Every penny paid to the state through taxes came from someone. Every penny. From every tax. It all comes out of money that belongs to the people who earned it. When there is a surplus, it only means the government has taken more than it needed from its citizens. It does not mean that the government should expand.

North Dakota has a surplus. The surplus is the result of years of building a business friendly regulatory system and maintaining conservative revenue estimates and spending habits. Over the past few years, the economy grew, and as a result, more taxes were collected than estimated. Higher revenues were used to bulk up state reserves to provide for continuity of government in the event of a rainy day. Tax payers understood and accepted the need to build state savings funds. Maintaining a savings account is prudent; it is never good to live paycheck to paycheck. As a people, we've voted on additional Constitutional savings funds, and those funds should be respected. For instance, the Legacy Fund, which collects 30% of oil and gas extraction and production revenue, is nearing $1 billion. There are myriad ideas circulating on how to spend the money that the people wanted to preserve. Special interests see how quickly the fund is growing, and they want to get a part of the action. As a people, we will have to decide the best use for that money. In doing so, we'll need common sense.

With plenty of buckets filled for a rainy day, we are in a place where there is no reason to maintain current tax levels. It is time to let the people keep more of their own money. We, the tax payers, have not given the government authority to take more than it needs, in good faith. We can wrestle with the appropriate balance of relief between revenue streams, and we can argue about what amount of relief is prudent. We can't argue with this: returning something to its rightful owners is not the same as giving them something. Keeping something from its rightful owners, no matter how noble the intended use, is theft. Common sense tells us that. It's time to let common sense prevail.

Legislative Summary *(cont. from page 1)*

Utility Issues

USND is tracking and taking action on a variety of bills directly affecting shareholders and investor-owned utilities. Generally, most of the tracked bills relating to industry are being followed to ensure issues don't arise to cause problems with the existing regulatory framework utilities find acceptable. Bills addressing setbacks, mediation, reclamation, etc. are also being watched.

Dan Kuntz, MDU Resources, testifies in front of the House Political Subdivisions committee.

Here are a few bills of interest from our larger tracking list:

HB 1147: This bill is a pipeline siting bill, but the way it was drafted implicated transmission lines as well. The purpose of the bill was to fast track deviations from PSC permitted routes when certain criteria are met (land owner approval, no cultural or land protection issues, etc.). The original bill posed serious concerns for utility companies. However, by working with a subcommittee comprised of industry and PSC staff, utility concerns have been addressed. We will follow this bill to ensure no additional concerns develop.

HB 1359: This is a reform of the current one-call system. USND led the initiative to form a consensus group on the reforms included in this bill. The bill raises the fine limit from $5,000 to $25,000 for one-call violations. The fine is accessed at the discretion of the PSC, and the increase is hoped to serve as a deterrent for violators who aren't stopped by a $5,000 fine. Aside from the fine increase, the bill extends re-spot time from 10 to 21 days, provides for costs to the locator for marking when no excavation occurs, places the responsibility on excavators to maintain markings, allows for additional information when submitting locate requests (maps, GPS, white marking, etc.), and requires all new facilities to be locatable. The bill had no opposition in the House hearing and passed 82-7.

SB 2291: This bill would have required utilities to pay retail price for electricity a customer creates beyond what that costumer uses. The concept is called net metering. With net metering, a customer operates a generator of some sort–often solar panels or wind turbines. The electricity produced from those generators power the customer's property. A customer is only charged for the electricity provided from the utility, so if a customer generates enough electricity to power his/her property, there is no use of utility services, and therefore, no charge. When the customer generators more electricity than he/she uses, the extra electricity runs back into the power grid through the equipment the utility provides. Proponents of this bill wanted the full retail rate for the excess electricity, rather than the rate at which a utility purchases electricity. However, the retail rate charged by a utility includes more than just the cost of electricity. The rate includes the cost of generation, transmission, distribution and administration. Further, that rate is highly scrutinized and set by the Public Service Commission in order for the rate to be fair and consistently applied among customers. If utilities were forced to pay more for the electricity purchased from a consumer-generator than the actual cost of that electricity, the other costs of utility service for that electricity would fall on all other customers. To put it more simply, had the bill passed, regular customers would have been forced to subsidize the activities of a customer-generator. USND opposed this bill because of its unfair effect on consumers. The bill was defeated before crossover.

Lt. Governor Drew Wrigley discusses legislation with Kathy Aas, Xcel Energy, between legislative hearings.

SB 2209: This bill allows eminent domain proceedings to begin through the courts prior to a route approval from the PSC. The intent is to allow both proceedings concurrently in order to limit delays to transmission building. The bill passed the senate and is working its way through the house.

2012 FINANCIAL RESULTS

MDU Resources Reports 2012 Results

MDU Resources Group, Inc. announced a consolidated loss for 2012 of $1.4 million, or 1 cent per common share, compared to 2011 earnings of $212.3 million, or $1.12 per share. Adjusted earnings were $216.8 million, or $1.15 per common share for 2012 compared to 2011 adjusted earnings of $225.2 million, or $1.19 per share.

The company reported a consolidated loss for the fourth quarter of $61.2 million, or 32 cents per share, compared to 2011 fourth quarter earnings of $60.8 million or 32 cents per share. Adjusted earnings were $76.0 million, or 40 cents per common share, compared to $73.9 million, or 39 cents per share in 2011.

"Our businesses are strong and our 2012 adjusted earnings reflect it," said David L. Goodin, president and CEO of MDU Resources. "Our construction businesses are seeing markets improve with earnings growth of 47 percent compared to last year."

At the electric utility, earnings were $1.4 million higher driven by strong customer and sales growth largely in the North Dakota Bakken oil play. Electric retail sales increased 4 percent overall, and 6 percent in North Dakota. To help serve this growing customer load and meet other needs, the utility is entering 2013 with a record capital budget of $252 million. The electric utility expects to begin construction this year of an $86 million, 88-megawatt natural gas turbine to be completed in late 2014. The utility also will contribute about $125 million toward installation of a new emission control system at the Big Stone generating plant, which it co-owns. The system installation is expected to be complete in 2015.

"Our businesses have a strong foundation for growth, and we expect to build on the momentum that we experienced throughout 2012," Goodin said. "We are excited about the opportunities we are pursuing and are committed to continue growing our company with a capital budget of $3.8 billion between 2013 and 2017, including $807 million in 2013. Accordingly, building off of our 2012 adjusted earnings results of $1.15 per share, we are establishing our 2013 guidance in the range of $1.20 to $1.35 per common share."

Otter Tail Corporation Reports Solid Financial Results for 2012

Otter Tail Corporation announced financial results for the year ended December 31, 2012.

Operating revenues were $212.6 million compared with $207.3 million for the same quarter a year ago. Operating income was $24.2 million compared with $12.6 million for the fourth quarter of 2011. Net income from continuing operations was $17.1 million compared with $6.0 million in the fourth quarter of 2011. Fourth quarter 2012 net income from continuing operations includes increases in net income in all of the corporation's operating segments. Net income from continuing and discontinued operations was $3.0 million compared with a net loss of $44.1 million in the fourth quarter of 2011. The fourth quarter 2011 net loss from continuing and discontinued operations mainly reflects a net loss from discontinued operations of $50.1 million, which included a $39.1 million net-of-tax asset impairment charge at DMS resulting from the write down of DMS to its fair value based on DMS's indicated sales price, and a $3.8 million after-tax loss on the sale of Wylie.

Diluted earnings per share from continuing operations were $0.47 compared with $0.16 for the fourth quarter of 2011. Diluted earnings (losses) per share from continuing and discontinued operations were $0.08 compared with ($1.23) for the fourth quarter of 2011.

"We are pleased to have ended the year with a good quarter. 2012 was a year of transformation. We made significant progress and our company is stronger with enhanced financial stability, more predictable growth, and a lower risk profile," said Otter Tail Corporation President and CEO Jim McIntyre.

"In 2013 we will work to further improve operational and financial results from all of our businesses. Our goal is to deliver annual growth in earnings per share between four to seven percent over the next several years. The growth is expected to come from the substantial increase in our regulated utility rate base and from planned increased earnings from existing capacity already in place in our manufacturing and infrastructure businesses. As previously indicated, we are targeting approximately 75-85 percent of earnings from our core electric business and 15-25 percent to come from our remaining portfolio of companies. We believe this is sustainable over time while maintaining strong credit quality, dependable earnings and manageable risk."

Xcel Energy 2012 Year End Earnings Report

Xcel Energy Inc. reported 2012 GAAP earnings of $905 million, or $1.85 per share compared with 2011 GAAP earnings of $841 million, or $1.72 per share.

Ongoing earnings, which exclude one adjustment, were $1.82 per share for 2012 compared with $1.72 per share in 2011. Ongoing earnings increased largely due to increases in electric margins driven by the conclusion of various rate cases, which reflect our continued investment in our utility business and a lower effective tax rate. Partially offsetting these positive factors were warmer than normal winter weather, increases in depreciation expense, operating and maintenance expenses and property taxes.

"We had an excellent year financially and operationally in 2012," said Ben Fowke, Chairman, President and Chief Executive Officer. "We delivered earnings in the upper half of our guidance range, which represents the eighth consecutive year in which we have met or exceeded our earnings guidance and for the ninth consecutive year we increased our dividend. We implemented a multi-year rate plan in Colorado and reached constructive regulatory outcomes in several other rate cases. Finally, we maintained excellent reliability during one of the warmest years on record, all executed with outstanding safety performance."

"We have established a solid strategy and continue to execute our business plan. As a result, we are well positioned to deliver on our 2013 earnings guidance of $1.85 to $1.95 per share," stated Fowke.

Companies declare quarterly dividends

Otter Tail Corporation:

On February 4, 2013 the Board of Directors declared a quarterly common stock dividend of $0.2975 per share, payable March 9, 2013 to shareholders of record on February 15, 2013. The Board also declared quarterly dividends on the corporation's four series of preferred stock, payable March 1, 2013 to shareholders of record on February 15, 2013.

Xcel Energy Inc:

The Board of Directors of Xcel Energy declared a quarterly dividend on its common stock of 27 cents per share. The dividends are payable April 20, 2013, to shareholders of record on March 21, 2013.

MDU Resources:

The MDU Resources Group (NYSE: MDU) board of directors today declared quarterly dividends on the company's common and preferred stock. The dividends are payable April 1, 2013 to stockholders of record March 14, 2013.

The dividend for common stock is 17.25 cents per share, unchanged from the previous quarter.

Dividends for preferred stock are:

- $1.12-1/2 per share on 4.50 percent Series Preferred
- $1.17-1/2 per share on 4.70 percent Series Preferred
- $1.27-1/2 per share on 5.10 percent Series Preferred

Defend My Dividend SUCCESS!

On January 1, 2013, Congress passed The American Taxpayer Relief Act of 2012, keeping dividend tax rates low and permanently linked to the tax rates for capital gains. The Act permanently sets the top tax rate for both dividend income and capital gains at 20% for couples earning more than $450,000 or singles earning more than $400,000. Tax rates for incomes below those thresholds have been made permanent at either 0% or 15%, depending on the income level of the taxpayer.

USND thanks you for everything you did to send the message to Washington that these rates needed to stay low and linked, permanently. Your voice was heard!

Backers of COAL ASH LEGISLATION hope to fold it into farm bill

Supporters of legislation to prevent U.S. EPA from designating coal ash as a hazardous waste are considering pushing the measure in the upcoming must-pass farm bill.

Kirk Benson, CEO of coal ash recycling firm Headwaters Inc., made the rounds on Capitol Hill this week to press for action on the issue again this year. The debate flared throughout the past Congress.

"The Senate is probably going to go first, and I think it will be a somewhat similar process to what happened last time," Benson said in an interview. He echoed recent comments by House Environment and Economy Subcommittee Chairman John Shimkus (R-Ill.), who called the coal ash issue one of his priorities for the year.

At issue are parallel EPA proposals to regulate the power plant combustion waste under either Subtitle C or Subtitle D of the Resource Conservation and Recovery Act. Going with the "C" option would effectively label it as hazardous. Opponents of such a move, including coal ash recyclers, say it would discourage the use of the material in wallboard and for road construction.

They came close to convincing lawmakers to accept their bill as an amendment to the transportation reauthorization last year. The measure would have banned the hazardous designation and created a disposal scheme to be administered largely by states.

"We're now in the process of going back and ensuring that we'll have our 60 votes if we can get a vote on the legislation," Benson said.

Bill backers like Sen. John Hoeven (R-N.D.) have claimed to have the 60 votes necessary to ensure Senate passage. But with strong opposition from environmental stalwarts like Environment and Public Works Chairwoman Barbara Boxer (D-Calif.), they have said finding an appropriate vehicle is necessary.

Anticipating that critics will disagree with agriculture legislation as a vehicle for coal ash policy, they say some coal combustion residuals are also used in farming – more than 600,000 short tons, according to 2011 American Coal Ash Association statistics.

"People have known that gypsum improves soil condition for hundreds of years," said Benson. "In addition to that, many plants need calcium and they need sulfur. So you're in addition to conditioning the soil, you are putting in two nutrients that plants need."

Benson said that advocates were in the early stages of strategy planning. But he noted that supporters like Hoeven and Montana Sen. Max Baucus (D) hold seats on the Agriculture panel.

They're also positive about feedback from new Sen. Heidi Heitkamp (D-N.D.), who replaced bill supporter Kent Conrad, and Sen. Tammy Baldwin (D-Wis.), who voted for the House version of the bill in 2011.

Despite bipartisan support for the legislation, environmental groups and their supporters in Congress – including House Energy and Commerce Committee ranking member Henry Wax- man (D-Calif.) – have long been fighting it because they say it is not strong enough to protect water and ground resources or prevent accidents at coal ash dumping sites like the 2008 Tennessee spill.

Many green groups prefer EPA regulation under Subtitle C, don't trust states to take the bulk of regulatory responsibility, and question whether a true legislative compromise is possible. They also think the discussion should be less about ash recycling and more about public health and safety.

After a recent House Environment and Economy Subcommittee hearing on state regulation, Earthjustice legal representative Andrea Delgado said that "weak or nonexistent state regulations have done little to limit the arsenic, lead and selenium from coal ash that has already poisoned lakes, streams, rivers and aquifers at more than 200 sites nationwide." She added, "Federal protection against coal ash ensures that every state must follow the rules and protect the waters that provide drinking water for millions of Americans. State regulations have done nothing of the sort."

Benson thinks EPA may be leaning toward a Subtitle D rulemaking, which would please him. Even so, he said a bill would be best for all sides. "It gives the EPA additional power that they don't currently have, and a backstop to fix the permit program if it doesn't work," he said.

Benson's bottom line is that a hazardous designation for coal ash could cripple companies like his. "You still have people who will not use fly ash because of the potential. So we are still living in this aura of regulatory uncertainty," he said. "I wouldn't be back here if we didn't have these issues." *(Environment & Energy Daily, March 1, 2013)*

MDU Resources and Calumet Specialty Products Partners, L.P. announce receipt of air permit to construct for DAKOTA PRAIRIE REFINING

MDU Resources Group, Inc. and Calumet Specialty Products Partners, L.P. announced that the North Dakota Department of Health has issued an Air Quality Permit to Construct for Dakota Prairie Refining, a diesel refinery the two companies are developing in southwestern North Dakota.

“Approval of the air quality permit means that we can begin construction within the next month, and the facility can be operational and helping supply North Dakota’s diesel fuel market by late 2014,” said David L. Goodin, president and CEO of MDU Resources. “We are committed to operating this state-of-the-art facility responsibly and safely, and we appreciate the rigorous permitting process conducted by the health department.”

“This facility will be an important contributor to the local and state economy,” said Jennifer G. Straumins, president and chief operating officer of Calumet’s general partner. “We appreciate the help of the state’s agencies and officials to identify issues and help solve problems in a manner that has brought this project from concept to reality.”

The facility will process 20,000 barrels per day of Bakken crude oil. The plant will be located on a 318-acre site located west of Dickinson in Stark County, N.D. It will employ approximately 100 people. Hiring and training of operating personnel is expected to begin in 2013. The plant will employ its own plant manager and management team, who will report to a governing board composed of representatives of WBI Energy and Calumet.

Xcel Energy Announces “At-The-Market” Offering

Xcel Energy Inc. announced that it has filed a prospectus supplement under which it may offer and sell from time to time shares of its common stock having an aggregate gross sales price of up to $400,000,000 through an “at-the-market” offering program. The shares will be offered through Barclays Capital Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated and Morgan Stanley & Co. LLC as sales agents. These sales, if any, will be made pursuant to the terms of equity distribution agreements between Xcel Energy and each of the sales agents and may be made by means of ordinary brokers’ transactions on the New York Stock Exchange or otherwise at market prices prevailing at the time of sale, at prices related to the prevailing market prices or at negotiated prices, in block transactions, or as otherwise agreed upon by Xcel Energy and the sales agents.

Spring member meetings on the horizon

Watch your mail for notice regarding USND spring member meetings!
The meetings will be held across the state during May.
We hope to see you all in attendance.

Words to Ponder…

Facts do not cease to exist because they are ignored.”

– Aldous Huxley

Give me six hours to chop down a tree, and I will spend the first four sharpening the axe.

– Abraham Lincoln

I arise in the morning torn between a desire to improve the world and a desire to enjoy the world. This makes it hard to plan the day.

– E.B. White

The world breaks everyone and afterward many are strong in the broken places.

– Ernest Hemingway

Utility Industry Terms

Petroleum: A broadly defined class of liquid hydrocarbon mixtures. Included are crude oil, lease condensate, unfinished oils, refined products obtained from the processing of crude oil, and natural gas plant liquids.

Crude Oil: Petroleum as found in the earth, before it is refined into oil products.

Lease Condensate: A natural gas liquid recovered from gas-well gas in lease separators or natural gas field facilities. Lease condensate consists primarily of pentanes and heavier hydrocarbons. Generally, it is blended with crude oil for refining. This category excludes natural gas plant liquids, such as butane and propane, that are recovered at downstream natural gas processing plants or facilities.

Liquefied Petroleum Gases (LPG): Ethane, propane, normal butane, ethane-propane mixtures, propane-butane mixtures, and isobutene produced at natural gas processing plants. LPG also includes liquefied refinery gases (ethylene, propylene, butylene, and isobutylene) produced from crude oil at refineries.

Congressional Contacts

Senator John Hoeven
120 Russell Senate Office Bldg.
Washington DC, 20510
Phone: 202-224-2551

Senator Heidi Heitkamp
G55 Dirksen Senate Office Bldg.
Washington DC, 20510
Phone: 202-224-2043

Congressman Kevin Cramer
1032 Longworth House Office Bldg.
Washington DC, 20515-3401
Phone: 202-225-2611