

July 7, 2000

The Honorable Slade Gorton
730 Hart Senate Office Building
Washington, D.C. 20510-4701

Dear Senator Gorton:

The American Public Power Association (APPA), the Edison Electric Institute (EEI) and the Large Public Power Council (LPPC) are pleased to advise you that we have agreed to support comprehensive tax legislation that facilitates fair electric competition for both publicly owned and shareholder-owned electric companies. As you recommended, we have worked long and hard to reach a reasonable industry agreement on a number of important tax issues.

We urge that Congress amend the federal tax laws this session to reflect the following:

- We would modify the private use provisions of the Internal Revenue Code to remove impediments for public power to provide open access transmission and distribution services. We also would allow public power systems that provide such access a carefully delineated opportunity to mitigate stranded costs by making certain electric power sales not subject to private use rules.
- With certain exceptions, existing public power systems can continue to use tax-exempt financing for transmission and distribution facilities to serve their own customers. Public power utilities established after the date of enactment could use tax-exempt financing for distribution facilities after they have been in existence for ten years.
- Public power systems could elect to terminate issuance of tax-exempt bonds for most new generation facilities, in return for relief from the application of “private use” rules to facilities previously financed with tax-exempt bonds. However, an electing system could continue to issue tax-exempt bonds for pollution control facilities at generating plants in service on the date of enactment. An electing public power

system could also issue tax-exempt bonds for renewable energy generation facilities during any period in which tax credits for the same type of facility are available for private entities. (APPA, EEI and LPPC believe that shareholder-owned utilities also should be allowed to issue new tax-exempt bonds for pollution control facilities, but do not propose legislative language at this time.)

- Taxation of customer Contributions in Aid of Construction of transmission and distribution facilities to shareholder-owned utilities would be eliminated to avoid distorting distribution competition.
- We would facilitate the sale or spin-off of transmission facilities in conformance with Federal Energy Regulatory Commission decisions (and with comparable state decisions in Texas where FERC lacks jurisdiction) promoting formation of independent regional transmission organizations. Because FERC policy strongly encourages utilities to give up control of their transmission facilities, we would defer federal taxes in case of a sale, and would permit tax-free spin-offs, of such facilities to qualified entities.
- Congress has already shown its support for addressing the tax treatment of nuclear facilities through passage of H.R. 2488, the Financial Freedom Act of 1999, which was vetoed by President Clinton for other reasons. We support passage of the Weller bill, H.R. 2038, to modify the tax treatment of nuclear facilities in competitive markets.

Our agreement addresses only tax aspects of restructuring, which are within the jurisdiction of the House Ways and Means Committee and Senate Finance Committee.

We urge Congress to act on these tax matters now. As the States move forward with electric restructuring, resolving these tax issues becomes increasingly urgent for public power and shareholder-owned utilities alike. The Federal Energy Regulatory Commission requires utilities to state by October 15, 2000, how they intend to proceed to form new Regional Transmission Organizations. The collective tax provisions included in this industry agreement are essential to satisfying that requirement.

Therefore, we urge you to support the contemporaneous enactment of all of these provisions in the next appropriate tax legislation considered in this Congress. Legislation this year is essential for implementation of full and fair interstate competition in electric markets in conformance with deadlines established by the Federal Energy Regulatory Commission.

The specifics of our agreement appear in the attachments to this letter.

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We appreciate your active support.

Sincerely,



Alan H. Richardson
Executive Director
AMERICAN PUBLIC POWER ASSOCIATION



Tom Kuhn
President
EDISON ELECTRIC INSTITUTE



Walt Bussells
Chairman
LARGE PUBLIC POWER COUNCIL

Attachments (2)