The Tennessee Advisory Commission on Intergovernmental Relations

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MEMORANDUM

TO: TACIR Commission Members

FROM: Harry A. Green
Executive Director

DATE: December 9, 2009

SUBJECT: The Electric G&T Cooperative Act and Potential for Changes in TVA Payments in Lieu of Taxes

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The Act

- The Electric Generation and Transmission Cooperative Act is a response to a need "for electric utility systems engaged in the distribution of electric power and energy in this state and adjoining states to have additional sources of electrical energy through traditional sources of generation and through renewable, clean and passive sources of electrical energy, as well as through other sources known and those sources yet to be known and discovered."

- With that purpose in mind the Act authorizes the creation of nonprofit cooperatives to generate and transmit electricity in Tennessee.

TVA Payments in Lieu of Taxes

- The TVA Act of 1933 specifically directs that five percent of the agency's "gross proceeds" be paid to states and local governments, in which the agency owns and operates property, as payments in lieu of taxes.

- In Fiscal Year 2009 the total payments in lieu of taxes were $505 million of which $295 million was paid to the state of Tennessee and its local governments. The estimated payments for FY 2010 are $538 million with $320 million going to Tennessee.

Seven States Power Corporation

- The Tennessee Valley Public Power Association, a group consisting of TVA power distributors, organized a nonprofit corporation, the Seven States Power Corporation, to develop cooperatives as authorized by the Act.

Impact of the Act on the TVA PILOT

- The critical issue in determining the possible impact of future wholesale power supply arrangements on TVA payments in lieu of taxes is the nature of the contractual arrangements between any new cooperatives and TVA. At the present time a number of legal and accounting issues must be decided before those contractual arrangements can be settled.

- Only in the event that revenues generated by any new cooperatives would not pass through TVA accounts would there be any effect on the payments in lieu of taxes. Even then the effect would not be to reduce TVA payments, or even the growth of those payments. Rather, the result would be simply that TVA revenues would not increase by the amount of the power sales by the cooperative. Any possible negative impact would be on TVA's incremental, or additional, revenues not their base revenue level or growth path.

- Any new co-ops built in Tennessee would be subject to the ad valorem property tax now in place.

Conclusions

- To the question of whether a consequence of the Act could change wholesale power supply arrangements between TVA and its distributors so as to affect payments in lieu of taxes in the future, the answer is yes. It is possible that some TVA revenues would not be subject to the PILOT.

- Is it likely that the Act will have serious negative consequences for the state and local government revenue streams? TVA revenue forecasts are for between one and two percent growth for the foreseeable future. In fact, there are many factors that will impact TVA revenues in the future and there are no guarantees regarding those revenues and the payments in lieu of taxes.

- Recommendations: TBA