



Western Governors' Association Policy Resolution 08-9

Tax-exempt Status for Transmission Authority Revenue Bonds

A. **BACKGROUND**

1. Western states have long held a firm conviction that energy for the United States and the Western states is a key driving force for stable and growing economies, is a vital component to the high quality of life enjoyed by Americans, and is an essential component of the nation's vitality and long-term competitiveness. Western Governors have been consistent advocates for sound, long-term energy policy and have regularly engaged in public policy discussions to advance sound energy policy that meets the needs of the Western states and the nation. Western Governors and their states have:
 - a. Established sound energy policies for the West.
 - b. Assembled interested parties to evaluate transmission needs in the West and published *Conceptual Plans for Electricity Transmission in the West (August 2001)*.
 - c. Convened an energy forum in Portland following the blackouts of 2001 to help formulate short term and long term solutions to recent power outages in the West.
 - d. Regularly advocated before Congress and the Administration for policies that will provide a diverse, reliable energy supply for the Western states and for the Nation.
 - e. Sponsored the North American Energy Summit (2004) that included many recommendations from diverse stakeholders on options to secure a clean and diversified energy future.
 - f. Adopted the *Clean and Diversified Energy Initiative*, which is designed, in part, to foster new and clean energy supplies, and transmission capacity and reliability for the West.
 - g. Determined "that a comprehensive study of the development and transmission of the West's clean energy resources is necessary but should emphasize policies that can facilitate clean development throughout the region."
 - h. In partnership with the US Department of Energy, initiated a multi-part project designed to identify potential renewable energy zones, develop regional transmission planning to connect those zones, connect buyers and sellers of the electricity generated from renewable sources and provide a platform to address project siting and costs.
2. Western Governors recognize that in order to foster new energy supplies, develop new technologies, develop wind resources and secure a reliable energy future for the West, new transmission capacity and reliability is essential. Uncertainty of reliability and price has been harmful to businesses and consumers, which impedes local and regional

investment, and hampers new energy investment as well.

3. Part of the uncertainty and unreliability of energy supply is the result of a fractured transmission system, which is subject to a fluid regulatory regime at the state and national level, exacerbating uncertainty in the market and paralyzing the potential of investment for new transmission. Solving transmission issues is a key component of a sound national energy policy for the nation, and warrants the nation's attention.
4. In response to the absence of new transmission investment, and the need for new transmission to provide a more reliable and diverse energy supply, states have sought new mechanisms by which to encourage new transmission investment.
5. Kansas, North Dakota, South Dakota, Wyoming, Colorado, Idaho and New Mexico have all created public transmission authorities, which are designed to foster new transmission construction and investment in the West. These new public entities are designed to act as catalysts or otherwise assist private development that will foster and transport diverse energy resources, such as wind, coal and biomass, to regional load centers.
6. These mechanisms will encourage new transmission to be built in the U.S. and should be fostered through public policy. New transmission capacity and links will increase efficiency, save consumers millions of dollars, provide a more reliable energy delivery system, and will encourage a more diverse and efficient energy supply for the nation. However, bonds issued by a state-owned transmission authority do not qualify as tax-exempt under current IRS regulations 26 CFR Part 1 (67 FR 59756). Tax-exempt status for bonds is a significant financial incentive to attract new transmission investment, amounting to approximately 1-to-1.5 percent interest rate in current market conditions.
7. In order to receive federal tax-exempt status for revenue bonds issued by a transmission authority, certain provisions of the IRS Code and regulations need to be revised. For example, Section 1.141-7(g)(2), *Certain use by nongovernmental persons under output contracts – (I) Transmission facilities* (67 FR 59761) requires that the following to be in place in order to receive federal tax exempt status:
 - a. The facility is owned by a government person;
 - b. The facility is operated by an independent transmission operator in a manner that satisfies Paragraph (g)(1)(ii) of this section; and
 - c. The facility is not financed for a principal purpose of providing that facility for use by that nongovernmental person.
8. Under current law, the state-owned transmission authority will not meet these restrictions, thereby limiting their usefulness to attract new transmission investment. U.S. Senator Mike Crapo (ID) introduced legislation during the 110th Congress (S. 1630) that would amend the Internal Revenue Code to exempt, for five years after enactment of the Act, nongovernmental operators or users of electric transmission facilities from the private business use test for tax-exempt financing of such facilities.

B. GOVERNORS' POLICY STATEMENT

1. In order to collaborate in the exploration of opportunities “to develop a clean, secure, and diversified energy system for the West and to capitalize on the region’s immense energy resources” as provided in WGA policy resolution 04-14, Western Governors recognize that new transmission investment is needed in the West and in the Nation.
2. Western Governors urge that legislation such as S. 1630 or related legislative proposals be passed by the United States Congress to change the Internal Revenue Code to provide that revenue bonds issued by a state-owned transmission authority be provided with federal tax exempt status, so that income from such bonds are not subject to federal income tax.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. The Western Governors’ Association (WGA) shall post this resolution to its Web site to be referred to and transmitted as necessary.
2. WGA staff shall consult with and seek the passage of legislation to affect changes to the Internal Revenue Code to implement the resolution.

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