OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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July 20, 2007

Re: Our File No. LR-06-106

Dear

In response to your request of December 4, 2006 for a ruling regarding the correctness of the proposed methodology to calculate the Company's gross receipts attributable to Oklahoma for tax purposes, I have included the ruling of September 18, 2006 along with additional facts and a response to the aforementioned request. The factual scenario along with the questions posed and the responses thereto are set forth herein as follows:

FACTS

An electric cooperative (the "Company") organized according to the laws of a state adjacent to Oklahoma (the "Adjacent State") is engaged in the generation and distribution of electricity to customers in the Adjacent State. The Company intends to acquire an undivided ownership interest in an electricity generation facility (the "Facility") in Oklahoma. The Company will jointly own and operate the Facility with an Oklahoma rural electric cooperative, , established and doing business in Oklahoma. Consequently, the Company will be entitled to receive, and sell only a percentage of the megawatt hours of electricity generated at the Facility in any particular period equal to its ownership interest in the Facility (the Company's "ownership share"). The Company also intends to acquire other property interests located in Oklahoma relating to a high voltage direct current tie with the that will be used to transmit electricity from the Facility into the electric power grid, and transmission lines that will be used to transmit electric power from the Facility into the Adjacent State. The Company will make no retail sales in either Oklahoma or the Adjacent State and will have no distribution lines in Oklahoma. The Company defines "distribution lines" as electric power lines operated below 60 kilovolts, when measured phase-to-phase. Sales of power will be only at wholesale primarily in the Adjacent State.

RULING REQUESTS

1. The gross receipts of the Company subject to the Gross Receipts Tax will be the gross receipts attributable to the Company's Ownership Share of the sales and distribution of electricity generated at the Facility.

2. The methodology described above (i.e., the Company's cost of power for its Ownership Share of the megawatt-hours of electricity generated and metered at the Facility during a particular month) for apportioning and calculating the Company's gross receipts to Oklahoma for purposes of the Gross Receipts Tax complies with applicable statutory provisions.

Cooperatives organized under the provisions of the Rural Electric Cooperative Act must pay a tax at the rate of 2% of the gross receipts derived by it from the sale and distribution of electric energy during the calendar year. 68 O.S. § 1803. This tax when paid is in lieu of any tax on its property which includes "any and all property, tangible and intangible, real, personal, and/or mixed, used or intended for use in generation, transmission and distribution of electric energy, and for the operation and maintenance of such rural electric co-operative" . . . . 68 O.S. §§ 1803 and 1804. On or before the 20th day of the month each cooperative must file with the Tax Commission a statement of its total gross receipts derived from the sale and distribution of electric energy during the next preceding calendar month and remit the tax thereon. 68 O.S. § 1802. Cooperatives must also file with the OTC, by March 1st of each year, a statement of the total number of miles of line owned, maintained and operated by the cooperative in each Oklahoma county and school district as of January 1st of each year. 68 O.S. § 1805.

Only the electricity generated and distributed from the Oklahoma facility is subject to the tax levied in Section 1803 of Title 68. Further, the Company will not be the sole owner and operator of the Facility and will only be entitled to receive and to sell a percentage of the megawatt hours of electricity generated at the Facility in a particular period equal to its ownership interest in the Facility. Therefore, The Company's proposed methodology—the Company's cost of power for its ownership share of the megawatt-hours of electricity generated and metered at the Facility during a particular month—for apportioning and calculating the Company's gross receipts to Oklahoma complies with applicable statutory provisions.

3. So long as the Company has no customers in Oklahoma, it will not pay any License Fee, but nevertheless will remain exempt from all Oklahoma income and excise taxes pursuant to the REC Act.

Cooperatives and foreign corporations transacting business in Oklahoma under the Rural Electric Cooperative Act must pay an annual fee of $1.00 for each 100 persons, or fraction thereof to whom it supplies electricity within the state as of the preceding June 30th, but shall be exempt from all other excise and income taxes whatsoever. 18 O.S. § 437.25. The tax must be paid to the Oklahoma Tax Commission by August 31st of each year.

Although this scenario of a cooperative in Oklahoma not having any Oklahoma customers may not have been contemplated by the grantors of the excise and income tax exemption there is no qualifying language that requires the payment of the license fee in order for the REC to be exempt from excise and income taxes. Even though the Company has no Oklahoma customers and therefore is not required to pay the subject license fee, the company will be exempt from all Oklahoma income and excise taxes.

4. The Gross Receipts Tax revenues will be distributed among Oklahoma school districts based upon the proportion that the Company's transmission lines in each particular school district bears to the total miles of the Company's transmission lines in Oklahoma, without regard to the school district in which the facility is located.

The taxes levied pursuant to Section 1803 of Title 68 and collected or received by the Tax Commission are apportioned in accordance with Section 1806 of Title 68 as follows:

1. Five percent (5%) of the amounts collected are paid to the State Treasurer for placement to the credit of the General Revenue Fund, and
2. The remaining ninety-five percent (95%) of the amounts collected are paid to the school treasurers or school districts of the respective counties in which the remitting cooperative owns property and operates property according to the proportion which the number of miles of electrical distribution lines of such cooperative in such school district bears to the total number of miles of such lines owned and operated by such cooperative within the state.

Revenue distribution to the schools will be based upon the report filed by the Company pursuant to 68 O.S. § 1805.

This response applies only to the circumstances discussed in your request of June 26, 2006 and supplemental correspondence of December 4, 2006. Pursuant to Commission Rule 710:1-3-73(e), this Letter ruling may be generally relied upon only by the entity to whom it is issued, assuming that all pertinent facts have been accurately and completely stated, and there has been no change in applicable law.

Sincerely,

OKLAHOMA TAX COMMISSION

Christy J. Caesar

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Tax Policy Analyst