



TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



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MEMORANDUM

TO: Commission Members

FROM: Lynnise Roehrich-Patrick
Executive Director

DATE: 19 June 2012

SUBJECT: Update on Effect of Tennessee Valley Authority Payments to Tennessee in Lieu of Taxes

Our understanding of the Tennessee Valley Authority Act and how the move to lease/lease-back arrangements will affect TVA's payments in lieu of taxes to Tennessee was greatly improved at the January 2012 meeting of the Association of Tennessee Valley Governments. Two key points were clarified:

First, Tennessee's share of the total TVA PILOT will not decrease because of the lease and lease-back of existing TVA facilities. Here's why: Section 15d(g) of the act says that

[p]ower generating and related facilities operated by the Corporation under lease and lease-purchase agreements shall constitute power property held by the Corporation within the meaning of section 13 of this Act . . .

This provision causes facilities operated by TVA under leases to be included in the calculation of the value of power-producing property under Section 13, which means that when TVA leases the natural gas plant in Rogersville, for instance, the value of TVA property in Tennessee will not change.

Second, however, the amount of the TVA PILOT that goes through Tennessee's own allocation formula will decrease to the extent that the new plant owners must pay taxes to the state or local governments. Here's why: Section 15d(g) of the TVA act goes on to say that

. . . that portion of the payment due for any fiscal year under said section 13 to a State where such facilities are located which is determined or estimated by the Board to result from holding such facilities or selling electric energy generated thereby shall be reduced by the amount of any taxes or tax equivalents applicable

to such fiscal year paid by the owners or others on account of said facilities to said State and to local taxing jurisdictions therein.

To understand the effect of this provision, consider the Southaven and Caledonia plants in Mississippi, which have similar arrangements. The plants are subject to state and local taxes. Consequently, Mississippi's allocation was reduced by \$5.5 million in 2011 and will be reduced by \$5.9 million in 2012. This works much like the \$3+ million in direct payments TVA makes to counties in Tennessee. Direct payments are taken off the top of TVA's PILOTs to Tennessee, reducing the amount allocated through Tennessee's statutory formula. The amount allocated through Tennessee's formula, including the amount retained by the state in its general fund, will likewise be reduced by any taxes paid on account of the Rogersville plant.

TVA staff noted that states may choose to modify their allocation formulas to offset these direct payments. One option would be to reduce the allocation to any particular jurisdiction by the amount of the reimbursement TVA makes to the plant owners. It is possible, of course, that the reimbursement amount could be greater than the allocation through the state formula to those jurisdictions, so considerable thought would need to go into making such a change. Reimbursement to the Southaven and Caledonia plants, which sit in DeSoto and Lowndes counties in Mississippi, respectively, is now almost 15% of the total distribution to Mississippi (a little over \$40 million). It would be less than 2% of Tennessee's PILOT (more than \$347 million).

Finally, it's important to remember that what's driving this is the debt limit set by Section 15 coupled with growth in the region requiring new energy sources and modernization efforts required to improve air and water quality. Staff will continue to monitor and ponder these situations and make sure that we understand and explain them effectively in our annual reports to the legislature. With your guidance, staff will also develop options to Tennessee's current allocation formula.