Minnesota Municipal Utilities Association

2016 Federal Position Statements

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The EPA's "Clean Power Plan" 111(d) Rule

On August 3, 2015, the Environmental Protection Agency (EPA) released its final rule to establish reduction requirements for carbon dioxide (CO2) emissions from fossil fueled power plants. Called the "Clean Power Plan" by the EPA, the rule sets emission reduction targets state by state and outlines ways by which the states can force actions aimed at reducing emissions within their borders to meet their targets. Those targets may be established either as total annual CO2 amount limits or emission rates measured as tons of CO2 per kilowatt hour of electricity generation.

Public power utilities are especially mindful of the costs of regulation, which are necessarily passed through to their customers. Our customer owners are also mindful of the competition for resources to meet personal and local community needs.

With support from the American Public Power Association and other electric industry organizations, the U.S. Senate and House of Representatives passed Senate Joint Resolution 24 which would nullify the Clean Power Plan. President Obama vetoed the resolution in December.

On February 9, 2016, the U.S. Supreme Court granted a petition filed by 29 states to temporarily halt further implementation of the Clean Power Plan pending the decision of the U.S. Court of Appeals for the D.C. Circuit on a separate lawsuit that seeks to overturn the rule.

Following the Court's injunction, the Minnesota Pollution Control Agency announced its intention to proceed with developing its state implementation plan in order to be prepared for enforcement of the rule if it is not ultimately overturned.

Plan's Shaky Legal Foundation is Bad Grounding for Public Policy

MMUA filed comments on the proposed rule and final rule critical of many of the rule's specific features but also on the rule's very tentative basis in law. The Clean Power Plan is very different from air regulations developed by the EPA in the past, and legal experts say many issues combine to create a strong possibility that it will be overturned. MMUA's concern about the rule's shaky legal foundation is rooted in the practical ramifications it could have on MMUA's member systems as part of the nation's electric industry as a whole.

All previous rules promulgated under the Clean Air Act require states to develop plans establishing standards of performance for regulated individual emission sources. For instance, a power plant operator must meet standards to obtain the required permit from the designated state agency or the EPA. But the Clean Power Plan rule under review by the courts does not regulate individual sources as past rules have. The Clean Power Plan makes the states, rather than the power plants, the regulated entities. States have emission limits. Utilities, collectively rather than individually, must meet them. Thus, the power plant-owning entities serving in a given area are forced together into a state-shaped box that is supposed to act as a sort of market where they will hash out who will reduce emissions and how they will pay to do so. And if they transmit wholesale power to utilities in more than one state, they must figure out how to divide and reduce emissions in and among multiple states. The result is a new, unworkable way of indirectly regulating the electric generating industry as if it were a system of parts that states could simply rearrange or eliminate.

More specifically, of the nearly 100 New Source Performance Standards (NSPS) and emission guidelines the EPA has developed since 1970, each one has

been based on a "system of emission reduction" that is incorporated into the design or operation of individual sources. The Clean Power Plan instead requires changes that go well beyond the operations of the power plants that are the source of the targeted CO2 emissions. Thus the rule imposes emissions reductions that cannot be achieved by affected sources and requires the owner or operator of those sources to take actions that are separate and apart from the source, or "outside the fence." In effect, the only allowable "system of emission reduction" at a typical coal-fired plant would simply be to stop it from generating, in some cases before it's fully paid for, lay off the workers and start permitting and constructing multiple new constant-running gas-fired plants to replace the lost baseload energy. Had the EPA proposed a rule that sought to reduce emissions through heat rate improvements at fossil fuel-fired electric generating units, the affected source, its rule would be on solid legal ground.

The Laramie River Station, located east of Wheatland, Wyo., is one of the largest consumer-owned, regional, joint power supply ventures in the United States. Laramie River Station has three coal-based units and a generating capacity of over 1,700 megawatts. Laramie River delivers electricity to two separate electrical grids and to substations in Wyoming, Nebraska and Colorado, where it is then delivered to Missouri Basin Power Project (MBPP) participants. These participants include the Western Minnesota Municipal Power Agency (MRES), Basin Electric Power Cooperative, Heartland Consumers Power District, Lincoln (Neb.) Electric System, Tri-State Generation and Transmission Association and Wyoming Municipal Power Agency. It is unclear how the Clean Power Plan's regulatory framework accomodates these complex contractual relationships.

This restacking of regulatory duties among states and federal agencies also shuffles the deck of authorities governing the electric industry, giving federal and state pollution regulators vast new authority over the operation of the electric industry itself. Through the Clean Power Plan, the EPA would take responsibility away from the Federal Energy Regulatory Commission over crucial aspects of the electric industry and lay it upon the nation's environmental agencies, which have no experience dealing with power supply adequacy, reliability, safety and the economics that drive the industry.

Furthermore, the EPA makes this industry sea change under the limited authority of an administrative rulemaking—not only without appropriate authorizing legislation but against the expressed will of Congress. Clearly, this is the type of transformative expansion in federal agency authority without clear congressional authorization that the Supreme Court invalidated just two years ago in the case of Utility Air Regulatory Group v. EPA. And not one electric utility or electric consumer will be unaffected.

Problems with Implementing the Plan

Minnesota's public power community has formally voiced opposition to the EPA and the Minnesota Pollution Control Agency in regard to specific aspects of the Clean Power Plan in addition to the broad legal reasons described above. But MMUA and its members have also participated actively in efforts to improve the federal rule and to develop a workable implementation plan for Minnesota. Minnesota's municipal utilities and power agencies have been engaged at every level, from state and federal public listening sessions to written comments to one-on-one conversations with state agency leaders. Still it is questionable whether Minnesota's or any state's implementation plan for this fundamentally flawed rule can ameliorate its negative consequences. And although we are aiding the effort in every way we can, serious obstacles remain and may prove insurmountable.

While past rules under the Clean Air Act have involved implementation guidance at the state regulatory level,

the nature of the Clean Power Plan rule necessitates development of a state implementation plan unprecedented in scope and fraught with opportunities for interest groups potentially to expand the regulation beyond its intended purpose of reducing emissions. If the U.S. Supreme Court ultimately allows the EPA to proceed with the rule, we believe that Minnesota's state implementation plan should:

i) not pursue extraneous policy aims that do not have the achievement of the state's target under the Clean Power Plan as their goal,

ii) establish compliance and trading mechanisms designed to meet the state's target flexibly and as economically as possible for Minnesota's electric ratepayers,

iii) ensure the capability of the region's electric system and its components to provide reliable service,

iv) reflect the value of the emission-cutting efforts that Minnesota utilities have made already without the need for a federal mandate,

v) Recognize the value of all emission reduction sources, including large hydro, nuclear, and all types of efficiency improvements, and

vi) maximize the value of existing state-level means, such as the Integrated Resource Plan process, to account for future generation choices and their regulatory treatment.

MMUA Position

The Clean Air Act was enacted to address criteria air pollutants for human health protection—not to regulate CO2 or other greenhouse gases. The EPA's Clean Power Plan, therefore, is not grounded in legal authority and should be withdrawn or overturned. We urge Minnesota's congressional delegation to closely monitor ongoing judicial and Minnesota-level developments regarding the EPA's Clean Power Plan, continue to consult with public power entities about it, and support, where possible, the concepts outlined here.

Under the Clean Power Plan, the only allowable "system of emission reduction" at a typical coal-fired plant would simply be to stop it from generating, in some cases before it's fully paid for, lay off the workers and start permitting and constructing multiple new constant-running gas-fired plants to replace the lost baseload energy. To regulate these plants out of operation before they reach the end of their useful lives promises serious long-term economic consequences.

Community Solar

In late 2015, Congress extended several renewable energy tax credits that were set to expire after 2016. Included was a "residential energy efficient property" income tax credit for individuals to offset the cost of purchasing solar photovoltaic (PV) equipment for their homes. Through 2019, a 30 percent credit will continue to be available. Reduced credits of 26 percent (for 2020) and 22 percent (for 2021) were also provided in the legislation. This credit is useful for incentivizing rooftop solar panel purchases, and will no doubt further propel the solar industry.

Residential PV is a booming industry due to sharply decreasing panel prices and incentives provided by many states and utilities. At the same time, an even more exciting solar option is gaining momentum, yet the benefit for it from the tax credit is uncertain. More and more utilities, including municipal utilities in Minnesota, are becoming increasingly excited about a new and more efficient way of using energy from the sun—community solar.

A community solar facility allows electricity consumers to co-own or subscribe for a share in a centralized PV facility and offset their electric usage with solar energy. Many circumstances make community solar a better option for Minnesota municipal utilities and their customers. First, community solar provides for better grid security and stability than distributed generation placed throughout the system. The electrical grid was designed to match energy supply and demand; distributed generation throughout the system can lead to unpredictability and the need for expensive infrastructure upgrades to handle the additional generation. Community solar provided by a utility can be placed in optimal locations on the electric grid where it causes minimal instability and may even improve the voltage characteristics in problem areas of the system.

Further, community solar provides an opportunity for customers to choose solar energy without the subsidization of infrastructure costs by non-generating customers. In Minnesota, utilities must pay distributed generation customers the retail rate for the energy they produce and put back onto the grid. However, customers' rates include more than just the cost of energy they use; rates also include the infrastructure costs to connect their home or business to the grid. Because the generating customers are compensated at the full retail rate, other non-generating customers end up paying more of the fixed infrastructure costs.

Additionally, solar installations in Minnesota face considerations that may not exist in warmer climates. Rooftops in Minnesota must meet certain snow loading requirements (based on geographic lines). In some instances, a residential or commercial roof will have to be modified to accept the weight of a solar installation, which adds unexpected cost and complexity to the project. Installing photovoltaic panels to a rooftop without consideration of these requirements could lead to potentially hazardous consequences for customers' homes or businesses.

Finally, solar panels perform most efficiently when oriented into the direct sunlight. Many rooftop systems are incorporated directly into the building components and the tilt cannot be adjusted, whereas larger systems are designed to be tilted into the maximum sunlight. Minnesota's global position already limits the angle at which sunlight hits our photovoltaic systems, so the ability to orient panels to increase production is important.

While municipal utilities themselves cannot claim the income tax credit, they now have cause to explore their customers' ability to do so for community solar projects. In September 2015, the Internal Revenue Service (IRS) issued a private letter ruling at the request of a Vermont taxpayer who purchased community solar panels at an array that generates power for his utility. The customer requested a ruling on his eligibility to claim the 30% tax credit, believing that his costs were eligible. The IRS analysis stated that purchases of off-site solar panels could, under some circumstances, meet the definition of a qualified expenditure under the tax credit. The IRS also noted that the utility was providing a credit against the customer's account for the net metering agreement with the community solar array. The IRS ruled that the customer was eligible to claim the income tax credit based on the circumstances of his arrangement.

MMUA Position

Though the IRS stated that the Vermont ruling applied only to an individual taxpayer and cannot be cited as precedent, utilities have sought to model additional community solar projects after the Vermont arrangement to increase the likelihood of their customers being eligible to claim the residential energy efficient property tax credit. Rather than determine customer eligibility on a case by case basis, MMUA supports official action by the IRS or Congress to clarify that customers seeking to buy into community solar arrays are eligible for the credit.

Distributed Generation

Distributed generation (DG) is power that is produced at the point of consumption. In other words, DG is electricity generated on-site at a utility customer's own property. Distributed generation resources can include solar photovoltaic, small wind turbines, combined heat and power (CHP), fuel cells, and micro-turbines. Over 90 percent of installed DG in the U.S. today is solar. The amount of solar generation has increased significantly in the last several years. Driving this growth is the dramatic decrease in the price of solar panels, with the installed costs of residential and commercial photovoltaic declining by over 70 percent since 2008. Federal and utility incentives for solar panel installations, state renewable energy standards and other state-level incentives, including net-metering requirements, are also contributing to the increase in solar generation.

Under a net-metering program, a utility will credit generating customers for their electricity sales to the grid and charge them for periods when electricity consumption from the grid exceeds their generation. Under Minnesota's net-metering statute, the customer is both charged and credited at the utility's full retail rate of electricity.

Customer charges rarely reflect the full amount of fixed costs utilities incur to provide retail service. Net metering worsens this under-collection of the cost of providing service.

Net metering creates an inherent revenue challenge for electric utilities. Residential electric bills have been based primarily on a customer's electric consumption, and the associated "customer charges" rarely reflect the full amount of fixed costs utilities incur to provide retail electric service. Under current billing practices, net metering exacerbates the problem of under-collecting for the cost of providing service. As a result, other retail customers subsidize customers with distributed generation. Utility efforts to adapt their rate and fee structures accordingly are sometimes wrongly decried as discriminatory. The reality is that equal customer treatment requires such revenue collection adjustments as solar DG penetration becomes a more significant part of the mix in utility service territories.

Over 90 percent of the installed distributed generation today is solar. The amount has increased significantly in the last several years.

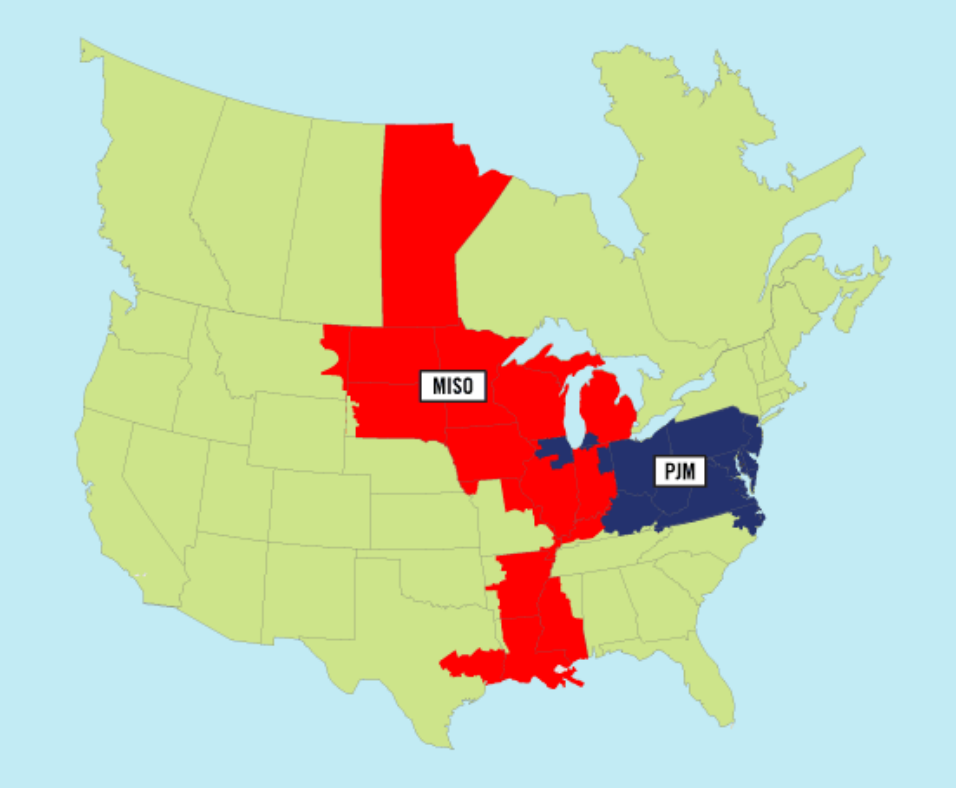
In most states, including Minnesota, the local governing bodies of consumer-owned municipal and cooperative utilities are properly authorized to design their rates based on factors specific to their utility systems and the characteristics of the customer bases they serve. Unfortunately, Congress is currently reviewing several distributed generation proposals that could undermine this local control. One controversial energy bill amendment would bar necessary billing adjustments outright.

MMUA Position

Municipal utilities strive to distribute costs fairly for providing all customers with a fully accessible and reliable electric system. Fair and proper utility rates are best designed at the local level where all factors affecting them are apparent. Congress should fully resist proposals that attempt to federalize decision-making about how utilities design their rates and charges and reject any prescriptive federal electricity policy proposals regarding distributed generation that would intrude on critical electric service decisions that are now and always have been under the authority of states and local jurisdictions.

Energy Capacity Markets

"Energy capacity" is the maximum amount of electricity that a power plant is designed to produce, stated in megawatts (MW). The actual amount of power generated at a given power plant is typically less than the maximum capacity of that plant (although it can be close) and is stated in megawatt hours (MWh). An adequate amount of capacity is necessary at all times to ensure a reliable supply of power because adequate capacity allows for peaks in demand during the hottest and coldest times of the year.



MISO and PJM Interconnection are working together to develop complementing system operations and one "robust, non-discriminatory wholesale electricity market to meet the needs of all customers and stakeholders" in 23 states, the District of Columbia and the Canadian province of Manitoba. However, an eastern-type energy capacity market, like that operated in PJM, has only led to higher profits for generators and little if any rate relief for customers.

The transmission grid in our region of the country is run by one of the nation's seven federally designated Regional Transmission Organizations (RTO). All seven RTOs are quasi-governmental entities under supervision of the Federal Energy Regulatory Commission (FERC). Ours is called the Midcontinent Independent System Operator (MISO).

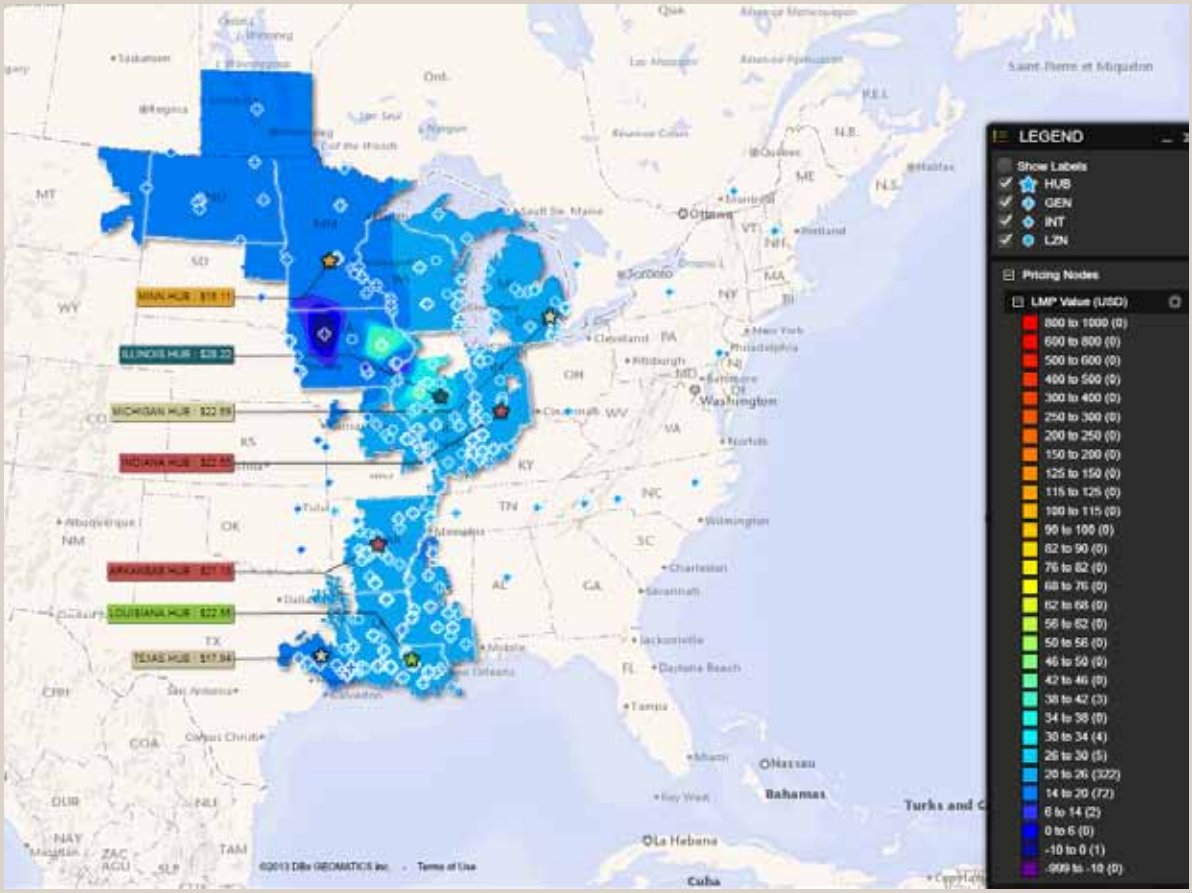
Some RTOs operate energy capacity markets in addition to performing their other functions. An energy capacity market is a means of providing revenue to owners of power plants who in return agree to stand ready to supply power when needed. Two RTOs in the eastern and northeastern U.S., PJM Interconnection (PJM) and New England ISO (ISO-NE), operate such markets, but they function somewhat differently than MISO's market.

PJM and ISO-NE each unilaterally created what is known as a minimum offer price rule (MOPR). A MOPR is an artificially concocted price floor for energy capacity offered into a market. That means that anyone bidding energy capacity for sale into these markets cannot bid a price any lower than the MOPR allows. The claimed reason for these market manipulating rules was to keep energy capacity purchase prices artificially high in order to incentivize construction of more power plants in places where low supply or transmission constriction exists. The effect, however, has simply been higher profits for generators and little if any actual relief for customers in underserved areas.

One might assume that a utility that owns generation would not have to participate in the capacity auction for the amount of capacity that it owns, but that is not the case. All capacity must be bought and sold through these markets, even if it is owned or contracted for, and the RTO sets the price for capacity to be purchased. However, while load-serving entities within the RTO region pay the costs of capacity payments to generation owners, there is no requirement that the generation owners actually use the revenue to build new power plants.

Since 2005, MISO has been operating an energy capacity market that is evolving in its ability to provide a stable

Utilities are increasingly turning to the MISO energy capacity market, as well as MISO-run markets for other types of energy services. A minimum-offer price rule concept threatens the operation of these increasingly effective markets.



source for reliable power supplies. Utilities still rely wisely on long-term, cost-effective bilateral contracts to procure much of their power for stability. However, utilities are increasingly turning to the MISO energy capacity market as well as MISO-run markets for other types of energy services.

The last thing that electric customers in the Midwest need is higher rates caused by artificial quasi-official pricing rules that drive up wholesale energy costs to their utilities. An eastern-type MOPR would not only fly in the face of the very idea of a competitive market here in the upper Midwest, it would surely lead to wider repercussions. For example, in New York, FERC has supported ISO-NE's unfavorable treatment of generators that continue to offer long-term contracts. Because municipal power agencies typically have long-term contracts with their member municipal utilities, a MOPR capacity market could pose a real threat to the public power business model.

Debate over the major House and Senate energy bills has touched on significant market topics, including performance criteria in RTOs, the power of generators versus purchasers, and public power's ability to self-supply generation for their customers. These issues are complicated but important to public power, the entire electric industry and, ultimately, every U.S. electric consumer.

MMUA Position

One of the important roles Congress fills in our government is that of a watchdog over federal agencies. FERC created RTOs and is supposed to oversee them for the benefit of the American public. It is extremely important for Minnesota's delegation members to be aware that the disproven and discredited minimum offer price rule concept has been creeping westward and suggested for implementation by the Midwest ISO. Such dangerous initiatives can be adopted undemocratically and unilaterally by RTOs, including the one serving our region, and must be stopped in their tracks.

Tax-Exempt Financing

Tax-exempt municipal bonds are critical financing tools for all public power utilities, which are entities of state and local governments. These bonds help build utility and community infrastructure; nearly three-quarters of the infrastructure built in the U.S., including roads, bridges, schools, hospitals, water and wastewater treatment plants, and publicly-owned electric utility facilities is financed with muni bonds. These bonds are desirable to investors because the earned interest is not subject to federal income tax. General obligation bonds are backed by the full faith and credit of the issuing public entity so investors are paid even if the issuer has to raise taxes to make the payments. Municipal electric utilities and joint action agencies rely almost exclusively on revenue bonds, which are paid for out of the revenue from the project financed and are not dependent on tax revenue.

The federal tax exemption on municipal bond interest has been in place since enactment of the very first federal tax code in 1913. It has allowed state and local governments to save, on average, an estimated two percentage points on their borrowing, which translates into a 25 percent savings in public infrastructure costs over time. Over the past few decades, tax-exempt financing has generated trillions of dollars of investment in vital public infrastructure, saving state and local governments hundreds of billions of dollars in interest costs.

But muni bonds are under assault from all quarters, including recent White House budget proposals that seek to cap the tax value of the exclusion on muni bonds; this amounts to a surtax on the interest of those bonds and would increase borrowing costs by 32 to 35 percent. Further, this proposal would apply retroactively to $3.7 trillion of existing bonds, imposing a significant financial burden on public power communities.

Proposals to tax municipal bonds would impose higher borrowing costs on cities and other local governments and discourage investment in critical infrastructure. Increased borrowing costs would lead to higher taxes and higher rates for municipal electric, water, and wastewater services.

It seems counterintuitive that in this era of increasingly costly environmental regulations, Congress and the White House are looking to limit the one tool that local governments have to control costs as they make the investments necessary to comply with mounting regulations.

Taxing municipal bond interest would drive up the cost to taxpayers for the provision of public services, including public libraries.

MMUA Position

We urge Congress to preserve the traditional tax-exempt financing tools used by local governments since the development of the federal tax code more than a hundred years ago, and to reject all proposals that would limit or eliminate the tax exempt status for municipal bonds, including replacing muni bonds with tax credits or "direct payment bonds."

The provision of water, electric and wastewater services goes hand-in-hand for many municipal utilities. Taxing these necessary services would not help residential customers, business, or industry.

Why Public Power?

photo courtesy of the Owatonna People's Press

One hundred twenty-five Minnesota cities benefit from having a locally owned and locally operated municipal electric utility. Thirty-one cities have a municipal natural gas system. Of our 87 county seats, 50 are served by a municipal electric or gas system. A not-for-profit municipal electric or gas utility is a tremendous asset. Here are some of the reasons why:

We have great service. We're part of the community and our policy makers, managers and workers are part of the community. Our crews are always on hand in the event of emergency. You don't need to call an 800 number to talk to us.

We're locally regulated. Members of the community who live in the community set rates and service practices. If you have a problem, you know who to talk to.

We're owned by our customers. There is no tension between the interests of customers and the interests of stockholders. Our focus is Main Street, not Wall Street. We work for you.

We're not in it for the money. Municipal utilities are not-for-profit and operated in the public interest. Our goal is long-term community benefit, not short-term gain. We work hard to save *you* money.

We're the yardstick for the industry. For generations, public power systems have set standards for rates and service that other utilities have had to meet.

We'll be there. Most Minnesota's municipal electric utilities have served their communities for more than a hundred years. In an era when new competitors come and go faster than we can learn their names, you can count on us. We will be there when you need us.

We're Public Power.
We're here for you!

Minnesota Municipal Utilities Association

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