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Committee on Energy

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IDAHO PUBLIC
UTILITIES COMMISSION

Idaho State Capitol
700 W. Jefferson #334
Boise ID 83720

April 15, 2003

Committee Members:

*Senator
Joe Stegner
Co-Chairman*

Ambassador Robert Zoellick
Office of the U.S. Trade Representative
1724 F Street
N.W. Washington, D.C. 20006

*Senator
Laird Noh*

Dear Ambassador Zoellick:

*Senator
Brent Hill*

Like many state legislatures, we believe that international trade agreements can promote U.S. economic growth while respecting state sovereign authority. Recently, the National Conference of State Legislatures (NCSL) wrote you a letter expressing concerns about negotiations on the World Trade Organization's services agreement, the General Agreement on Trade in Services (GATS). We share NCSL's concerns that negotiations under GATS are proceeding, even though provisions that affect state and local governments remain undefined. Idaho officials provided USTR with input prior to adoption of GATS in 1994, and we appreciate this opportunity to assist your office in the current round of negotiations.

*Senator
Sheila Sorenson*

We are writing to expand upon the concerns raised by NCSL with particular attention to state-level energy policy, which is of crucial importance to Idaho's economy. We are aware that the United States and the European Union have exchanged comprehensive proposals for applying GATS rules to the energy sector. We have reviewed the Initial Offers issued by your office on March 31, 2003. We have also studied the E.U. request and other reports from the GATS Council of the WTO. Our review raises the following general concerns:

*Senator
Clint Stennett*

- **Local monopolies** – Will GATS affect Idaho's ability to regulate utility monopolies?
- **Domestic regulation** – Will GATS affect domestic regulation generally, including broad powers to regulate water or electricity in the "public interest"?
- **Specific commitments** – Will specific energy commitments by the United States affect our ability to continue developing Idaho's electricity policy?

*Representative
George Eskridge
Co-Chairman*

These concerns are elaborated in the following set of questions. We would appreciate a written response unless there is a document that already answers our questions.

*Representative
Bert Stevenson*

1. **Local monopolies.** If the United States makes a specific commitment on energy services, any future decisions that "grant" monopoly power require the United States to pay compensation under GATS. Although many states are choosing to deregulate or privatize electricity services, Idaho has purposefully continued to fully regulate the provision of electric service to customers. Idaho regulates by protecting the customer base of electric utilities from competition while limiting the rates electric utilities can charge the ratepayers. Idaho law specifically prohibits an electric provider from "pirating" a customer already served by another Idaho provider.

*Representative
Maxine Bell*

*Representative
Steve Smylie*

*Representative
Charles Cuddy*

- a. Would existing or future measures adopted by the Idaho Legislature that revise, expand or strengthen our electricity monopoly structure conflict with GATS provisions on grants of monopoly power?
- b. Would the transfer of a service area from one electric utility to another constitute a "granting" of monopoly under GATS?

2. **Domestic regulation.** Domestic regulation is now required to be transparent and objective under GATS. The European Union has additionally requested that domestic regulation be "no more burdensome than necessary to assure the quality of a service." The Idaho Department of Water Resources (IDWR) limits electric utilities use of water for hydropower generation under broad and flexible authority to protect the "public interest." This authority promotes not only the quality of electricity services, but other public objectives including recreation, local economic development including agriculture and environmental protection. Additionally, the Idaho Public Utilities Commission (IPUC) regulates the operation of electric utilities in the "public interest." The IPUC is further charged with regulating the rates charged to Idaho's ratepayers and conditions the rates upon the percentage of electricity derived from hydropower.

- a. Is Idaho's broad authority to regulate in the "public interest" a standard that is sufficiently objective and transparent under GATS to avoid a conflict?
- b. Does the authority of the IDWR to monitor water use in the "public interest" exceed the narrower objective of assuring the quality of a service under GATS?
- c. Are the IPUC conditions more burdensome than necessary in order to achieve the quality of service?

3. **Specific commitments under GATS.** The European Union has requested that the United States makes specific commitments in energy-related sectors. Such commitments might result in the application of the national treatment and the market access provisions of GATS to electricity, which would affect Idaho's electricity regulations. Our specific questions including the following:

- a. **National Treatment.** The national treatment provision prohibits measures that give an advantage to domestic firms that are not also available to foreign firms.
 - i. Idaho is currently considering measures that provides tax incentives to electricity providers that invest in alternate forms of electricity within Idaho. If the United States were to make a specific commitment on the energy sector, would tax incentives provided by Idaho to private utilities with investments located in Idaho conflict with GATS because the tax incentives would only benefit in-state producers? In addition to GATS, would tax incentives conflict with U.S. obligations under the GATT, the General Agreement on Tariffs and Trade, which applies to energy as a good rather than as a service?
 - ii. Idaho provides tax-exempt financing and low-interest loans to privately owned electricity providers, e.g., public utilities. Do the above subsidies conflict with GATS because the subsidies benefit privately owned, electricity providers?
- b. **Market Access.** The market access provision prohibits quantitative limits on the number of service suppliers, the number of employees, the value of transactions or assets or the legal structure of a service provider. Idaho has adopted a measure that prevents new electric utilities from gaining existing customers already served by other electric utilities located in Idaho. Would such a measure conflict with GATS because it creates a barrier to market entry and, in effect, limit the number of service providers?

4. **Energy Service Offers.** The Trade Facts summary which was issued March 31 states that "GATS does not require privatization or deregulation of any public service..."

- a. Does this mean that those States, like Idaho, that have not permitted retail competition for electric service, will not be compelled to allow such retail competition? Is that why offer "4.C Retailing: fuel oil, bottled gas, coal and wood" does not specifically refer to distributed electricity, water and non-bottled natural gas? Would Idaho's non-competition measures be affected if the United States later expands its energy commitment to include retail distribution of electricity?

- b. Part II of the energy services offer identifies services for which commitments have not yet been made. How would commitments for "pipeline transportation of fuels" and "bulk storage of services of liquids and gases" be integrated with the need to protect critical infrastructure including water, electric, natural gas and telecommunication facilities?

Thank you on behalf of the Idaho Legislature for taking the time to address our concerns. We appreciate this opportunity to assist you in safeguarding state authority under international trade agreements and look forward to your response to our questions.

Sincerely,



George. E. Eskridge
Idaho House of Representatives
Co-Chair, Energy Committee



Joe Stegner
Idaho Senate
Co-Chair, Energy Committee

Cc: Dirk Kempthorne, Governor
Don Howell
Dr. Robert Stumberg
Gary Smith
Senator Laird Noh
Senator Brent Hill
Senator Sheila Sorenson
Senator Clint Stennett
Representative John "Bert" Stevenson
Representative Maxine Bell
Representative Steve Smylie
Representative Charles Cuddy