To: Jackson, Ryan[jackson.ryan@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]
From: Johnson, Kirk D.
Sent: Thur 6/22/2017 2:06:00 PM
Subject: Invitation to Administrator Pruitt - Oct 23

Dear Ryan and Mandy –

Thank you again for the opportunity for our Generation & Transmission cooperative CEOs to speak with the Administrator on Monday about the Clean Power Plan. We appreciate it very much.

Nationwide, there are about 65 G&Ts across the country that supply the power to most of the 865 retail distribution cooperatives. The CEOs of those G&Ts gather twice every year to compare notes, receive updates on key issues, and help plan for the future. EPA's regulations have always been a top issue for this group of our membership.

They have asked me to see if Administrator Pruitt would be willing and able to come speak at their next meeting, which will be Oct 23 (all day) and 24 (morning only) in Lexington, Kentucky. I am certain they would schedule around the Administrator's availability if he were able to make it. They begin with a reception on Sunday evening, and then get into the meeting first thing Monday morning.

If you would consider adding this request to the countless others in the Administrator's long-term scheduling list, we would greatly appreciate it!

Thanks so much!

-K

Kirk Johnson

Senior Vice President, Government Relations

703-907-5775 (office) | 703-887-0706 (mobile) | kirk.johnson@nreca.coop

Assistant: Erin Steverson | 703-907-5854 | erin.steverson@nreca.coop

NRECA Mission: To Promote, Support, and Protect the Community and Business Interests of Electric Cooperatives.

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To: Cassady, John M.[John.Cassady@nreca.coop]
Cc: Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]
From: Jackson, Ryan
Sent: Wed 5/31/2017 12:16:15 AM
Subject: RE: Re:

John, I may have accidentally erased your response. It is set now on Jun 19 at 1pm at EPA. We have over a dozen utility CEO's confirmed with another dozen likely. It will be a two hour meeting with the Administrator of a round table to talk about the next steps after CPP withdrawal. Much appreciated for your help on this. We would love to have NRECA local operators present as well as Matheson. Thanks.

From: Cassady, John M. [mailto:John.Cassady@nreca.coop]
Sent: Monday, May 22, 2017 3:25 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Subject: Re:

Not June?

Are we on target with the number of attendees?

On: 22 May 2017 06:52, "Jackson, Ryan" <jackson.ryan@epa.gov> wrote:

John we are targeting July 19 now. Afternoon.

Ryan Jackson
Chief of Staff
U.S. EPA
Ex. 6 - Personal Privacy

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To: Jackson, Ryan[jackson.ryan@epa.gov]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]
Cc: Morrison, Jay A.[jay.morrison@nreca.coop]; Cassady, John M.[John.Cassady@nreca.coop]; Cromwell, Ted T.[ted.cromwell@nreca.coop]
From: Johnson, Kirk D.
Sent: Mon 5/22/2017 4:14:32 PM
Subject: Responses to Administrator Pruitt's questions
Final Pruitt Letter.pdf
NRECA Comments Identifying Burden Reduction Opportunities under E.O. 137....pdf

Dear Ryan and Mandy –

When we met with Administrator Pruitt earlier this month, he asked about specifics on CPP lost investment, Regional Haze specifics, and NRS ideas. The attached letter from our CEO to the administrator covers those issues and we would be happy to discuss further should you or others at EPA want to dig deeper.

Thanks so much for reaching out to us!

-K

Kirk Johnson

Senior Vice President, Government Relations

703-907-5775 (office) | 703-887-0706 (mobile) | kirk.johnson@nreca.coop

Assistant: Erin Steverson | 703-907-5854 | erin.steverson@nreca.coop

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NRECA
America's Electric Cooperatives

May 19, 2017

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Pruitt,

The National Rural Electric Cooperative Association appreciated the opportunity to have representatives of our Generating and Transmission Leadership group meet with you recently to discuss several high priority environmental issues.

As a follow up to our conversation, you had asked us to provide additional feedback on several topics, including: 1) economic impacts of the Clean Power Plan on the cooperatives' coal-based units, 2) our suggestions on how to improve the New Source Review program, and 3) recommendations for addressing the impacts of Regional Haze requirements on cooperatives. These topics are addressed in this letter. I've also attached a copy of NRECA's comments to EPA regarding your request for input under President Trump's Executive Order 13777.[1]

CLEAN POWER PLAN VALUE OF LOST CAPITAL RESULTING FROM PROJECTED ELECTRIC COOPERATIVE COAL PLANT RETIREMENTS

According to the EPA's IPM modeling of the Clean Power Plan Base Case and its Rate Case (embodied in EPA's modeling for the proposed Cross-State Air Pollution Rule Update), 4,862 MW of capacity at coal plants owned by electric cooperatives is projected to be retired by 2018. For reliability purposes, cooperatives would need to replace this capacity by either building or purchasing new capacity. The market value of this replacement capacity can be estimated based on projected regional electric generating capacity values. These values represent capacity market prices for regions with organized markets or, for other regions, the incremental revenue above energy margins that would be necessary for a new asset owner to enter the market. By multiplying projected annual $/kW regional capacity values, developed by IHS CERA, with the lost co-op capacity in each region, NRECA estimates the total

[1] NRECA Comments submitted May 15, 2017 to EPA Docket: EPA-HQ-QA-2017-0190: Identification of Regulations for Repeal, Modification or Replacement Under Executive Order 13777

market cost for replacing the 4,862 MW of lost coal capacity to be approximately $3.4 billion over the 2018-2030 period.

REGIONAL HAZE IMPACTS FOR COOPERATIVES ARE SIGNIFICANT

In recent years, EPA has become much more prescriptive by forcing states to impose high cost, low benefit pollution controls to drive the Regional Haze program towards a goal that is still 48 years away. Regardless of the states' extensive analysis and recommendations for their implementation plans, EPA has instead largely rejected the state recommended approaches and imposed the Federal preference for selective catalytic reduction technology to be installed at electric generating units to control NOx emissions. This technology can cost hundreds of millions of dollars per unit while the projected visibility improvements offered by the technology are often imperceptible as compared to what the states' lower cost recommendations would achieve.

In planning for Phase II of Regional Haze, EPA "doubled down" in 2017 by finalizing its regulation and accompanying guidance in ways that further erode state authority over their own programs. We urge EPA to redraft both the rule and guidance as the law intended, place the decision making back in the hands of the states, and allow them the time and discretion to manage their programs cost effectively.

In numerous examples of national rulemaking as well as individual states where EPA has imposed Federal Implementation Plans in lieu of the preferred state approach, NRECA supports the current Administration's decision to hold the litigations in abeyance and reevaluate its approach. Cooperatives face significant compliance burdens unless EPA makes needed changes. These include:

- EPA's Regional Haze rule for Texas and Oklahoma (State of Texas v. EPA, No. 16-60118). Not only does that rule exceed EPA's authority in those two states, but EPA's policy decisions in this rule established precedent that was used when EPA updated the nationwide Regional Haze rules and guidance that were issued in 2017. At a minimum, EPA needs to: 1) revise and decouple the Reasonable Progress Goals from the Long Term Strategy, 2) modify the guidance for interstate consultation requirements for state visibility plans, and 3) revise the rule to again allow states to rely on regional planning organization modeling and documentation.

- EPA's pursuit of a 90-Day Administrative Stay of Certain provisions of the Arkansas Regional Haze FIP. This is of particular concern to Arkansas Electric Cooperative and some distribution cooperatives in Arkansas and Texas where EPA justifies its imposition of high-priced control technologies on a $/ton basis even though it provides minimal visibility improvement – in this case not even perceptible to the human eye.

- In the litigation over EPA's January 2017 final Visibility Rule Revisions and Guidance, multiple parties are developing consolidated briefs. We do support EPA's recommendation to extend the Phase II planning by 3 years and we believe EPA should equally extend the compliance deadline. We have significant concern in this rulemaking with the same issues raised in the State of Texas case (above) as well as: 1) adding to state planning burdens by inserting consultation

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requirements with Federal Land Manager both before and after public hearings and 2) imposing on states in Phase II to require the most stringent controls for electric generating units that weren't required to adopt them in Phase I.

- In Utah vs. EPA, the litigation focuses on the agency again rejecting the state's plan and promulgating a plan requiring SCR technology even though analysis conclusively demonstrates that EPA's approach would achieve, at most, a 0.1 deciview improvement compared to the state's approach. Yet EPA's approach would increase costs by several hundred million dollars. If implemented, EPA's approach will have dire consequences for the local cooperative whose portion of capital cost ($45-50 million) would exceed their current financing capacity prior to 2025. The FIP deadline for full implementation is mid-year 2021. In Utah, EPA followed the rationale adopted in their policy decisions now under review in the Texas case (discussed above) In fact, EPA under the outgoing administration apparently wholesale discontinued traditional economic evaluations based on a $/ton removal or $/per deciview. Instead, EPA asserted it only determined "affordability" based on whether they believed the cost could be absorbed and the utilities remain in business. For the cooperative, the potential to be mandated to make this size of investment could threaten their viability as it would create severe stress to cash flows currently earmarked to sustain debt service payments on their restructured debt. Time is of the essence for EPA to reevaluate their approach and let the more cost-effective state SIP be adopted.

- In Wyoming, we support the Administrations' recent decision to back the mediated agreement reached for the Laramie River Station. We are asking that the consolidated litigation be put in abeyance until EPA finalizes all of these actions.

EPA SHOULD REMOVE NEW SOURCE REVIEW PROGRAM ELEMENTS THAT IMPEDE ELECTRIC GENERATING UNIT (EGU) EFFICIENCY IMPROVEMENTS

EPA may propose standards of performance for EGUs that require evaluation of unit-based heat-rate efficiency measures under revisions to the Clean Power Plan regulations. NRECA has previously filed comments and made suggestions relating to an inadvertent triggering of NSR requirements when undertaking many efficiency measures or improvements. There are numerous examples of EGUs identifying projects that could improve unit efficiency, yet these projects would almost certainly trigger NSR concerns as the program is currently implemented. This means that these projects cannot be pursued.

In 2005, EPA proposed to remedy some of the NSR program difficulties, but that effort was never finished and published as a final rule. NRECA believes that rulemaking held promise and we recommend EPA revisit their 2005 NSR reform proposal as a starting point for making much needed changes to this program.

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At a minimum, EPA needs to change the NSR rules to provide substantial certainty that efficiency improvement projects do not trigger a NSR review and do not create a reasonable apprehension of NSR review.

CONCLUSION

Thank you again for the opportunity to meet with you and to provide the electric cooperatives' perspectives on these important issues. Please contact me with any questions or clarification.

Sincerely,

Jim Matheson
CEO, NRECA

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NRECA
America's Electric Cooperatives

May 15, 2017

Via Email

Samantha Dravis
Senior Counsel and Associate Administrator for Policy
Regulatory Reform Officer for Executive Order 13777
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Re: Identification of Regulations for Repeal, Modification or Replacement Under Executive Order 13777 - Docket No. EPA-HQ-OA-2017-0190

Dear Ms. Dravis:

The National Rural Electric Cooperative Association (NRECA) submits these comments in response to EPA's request for input on regulations that may be appropriate for repeal, replacement, or modification under Executive Order 13777, "Enforcing the Regulatory Reform Agenda." EO 13777 furthers the policy goal of alleviating unnecessary regulatory burdens on the American people by directing the heads of federal agencies to establish Regulatory Reform Task Forces (RRTF) which, among other duties, is directed to seek input from entities significantly affected by Federal regulations including, among others, trade associations. NRECA appreciates the opportunity to recommend burden reduction candidates and incorporates by reference comments submitted by the Utility Air Regulatory Group (UARG), the Utility Solid Waste Activities Group (USWAG), and the Utility Water Act Group (UWAG).

NRECA is the national service organization for more than 900 not-for-profit rural electric cooperatives chartered to provide affordable, reliable electricity to approximately 42 million people in 80 percent of U.S. counties. Rural electric cooperatives are small businesses, most of which serve member-owners, especially those in rural areas, facing significant economic challenges.

Electric cooperatives and our member-owners value, and deserve, a healthy environment and cooperatives are proud of their environmental compliance. Nonetheless, the economic challenges faced by so many cooperatives and their member-owners underscore the importance of ensuring that these regulations are cost-effective.

NRECA appreciates the efforts already announced to reconsider several regulations of utmost concern to our members, specifically:

- The Clean Power Plan (80 Fed. Reg. 64661, October 23, 2015) to be reviewed per Executive Order 13783 (82 Fed. Reg. 16093, March 31, 2017);
- The Clean Water Rule, also known as the "Waters of the US" rule (80 Fed. Reg. 37054, June 29, 2015) to be reviewed per Executive Order 13778 (82 Fed. Reg. 12497); and
- The Steam Electric Effluent Limitation Guidelines rule (80 Fed. Reg. 67838, November 3, 2015) per EPA's notification and postponement of compliance dates (82 Fed. Reg. 19005, April 25, 2017).

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Each of these rules has significant substantive and procedural deficiencies as discussed below and in the comments submitted by UARG regarding the Clean Power Plan and UWAG concerning the WOTUS and ELG rules. We look forward to working with EPA on these issues.

We also urge EPA to act quickly on USWAG's petition for reconsideration of the Coal Combustion Residuals (CCR) rule (80 Fed. Reg. 21302, April 17, 2015) submitted May 12, 2017. As discussed below and in the comments submitted by USWAG, the Water Infrastructure Improvement for America (WIIN) Act (P.L. 114-322, December 16, 2016), provides EPA with the authority, previously lacking, to implement and inforce the federal CCR criteria through state or federal permits and to incorporate risk-based approaches to achieving the protectiveness embodied in the CCR rule.

Air Issues:

1. EPA should remove New Source Review program elements that impede electric generating unit (EGU) efficiency improvements.

   EPA may propose that EGUs to make heat-rate improvements or efficiency-based modifications to existing EGUs under revisions to the Clean Power Plan regulations. NRECA has previously filed comments and made suggestions relating to an inadvertent triggering of NSR requirements when undertaking many efficiency improvements. There are numerous examples of EGUs identifying numerous projects that could improve unit efficiency by greater than 5%, yet these projects would almost certainly trigger NSR concerns as the program is currently implemented. This means that these projects likely won't be pursued.
   In 2005, EPA proposed to remedy some of the NSR program difficulties, but that effort was never finished and published as a final rule. EPA should revisit their 2005 NSR reform proposal as a starting point for making much needed changes to this program.

   EPA needs to change the NSR rule to provide substantial certainty that efficiency improvement projects don't trigger a NSR review or do not create a reasonable apprehension of NSR review.

2. EPA should re-evaluate their compliance testing requirements under the MATS program.

   MATS compliance testing is very expensive and in many circumstances testing results indicate that when HAP emissions exist, they are below the test method detection level. Compliance testing should not be punitive, nor should sources be discouraged from seeking testing waivers in situations where EPA has otherwise provided for them through guidance.

   A single battery of stack tests for MATS acid gas and particulate matter (PM) compliance can cost over $25,000 per calendar quarter, or $100,000 per year. "Low-emitter status" determination requires three years of quarterly stack testing, or a total of 36 individual data points at a cost of about $300,000. Once successfully completed, the low-emitter status still requires a stack test frequency every third year. The on-going testing and monitoring is excessive, burdensome and in some cases duplicative and provide little benefit. The following is suggested:
   - Some EGUs are inherently low-emitters given installed control technology and/or fuel choice.

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- EGUs that use Powder River Basin (PRB) coal have relevant information that fuel chloride concentration is frequently below 10 ppm. Ash from PRB fuel is highly alkaline and adsorbs the chlorine gases that would otherwise be emitted. HCl concentration at the boiler outlet, before any pollution control technology, is already at or below test method detection levels.
- Pre-status determination of nine tests, including the initial performance test, can provide statistically relevant indications of performance levels at relatively high confidence intervals.

Once the low-emitter status is confirmed a stack test of once in 3 years, as currently provided in MATS, should continue to be adequate.

Current EPA Clean Air Act National Stack Testing Guidance provides for certain testing waivers, including a relaxation of testing frequency, when multiple units at the same location have similar design and when they have exhibited similar traits relating to verified emissions. It seems reasonable that such guidance can be extended to coal-based EGUs when the same principles are applied.

The source should provide sufficient emissions data that, though the margin of compliance is not substantial, allow for a determination that the variability of emissions is low enough for confidence that the unit is in compliance. The national guidance provides three relevant factors for evaluating whether a waiver of testing may be appropriate.

The guidance further identifies that if a facility does not have the ability to emit a pollutant in excess of the prescribed emissions limit that a waiver may be granted on a case-by-case basis.
Finally, EPA should provide that an EGU undergoing maintenance (not an NSR major modification), upon submitting a reasonable request for an extension of time to perform a required periodic compliance test, be granted an extension, not to exceed 720 hours, to conduct such testing if the scheduled restart of such EGU does not provide for a 720-hour shakedown period prior to the end of the calendar quarter. This experience does not arise from a force majeure; not unlike and initial startup compliance with the requirements may be a reflection following major maintenance on systems that will likely require several days of shakedown.

EPA can maintain the stringency of MATS while also significantly reducing the compliance burden of the rule, by making these recommended changes.

3. <u>EPA should revise their SIP-call to the states relating to the treatment of startup, shutdown, and malfunction (SSM) in utility operations</u>.

Coal-fired EGUs are very large facilities with many complex and interconnected systems and components that generate electricity while maintaining compliance with both their environmental and power system regulations. Generally, pollution control technology performance cannot be optimized with changing operating levels or at levels of operation significantly below that designed for maximum pollution control technology performance.

Many coal-fired EGUs now operate at lower loads and at varying loads to accommodate the growth of renewable energy sources. Sudden changes in operating levels that are forced upon a particular facility by electric grid operation can and do significantly affect pollution control performance. Challenges to emission control performance are sometimes unavoidable and are always highest

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during periods classified as startup, shutdown, and malfunction.

A well-reasoned SSM program should consider whether an SSM event actually causes or contributes to any significant impacts on ambient air quality or ambient standards non-attainment. The growing nationwide attainment or maintenance of attainment with ever-tightening NAAQS suggests that existing SSM allowances in permits should be retained as they are not triggering adverse air quality issues. In fact any emission upsets have been calculated into 'normal' operation allowable emission rates in permits and AP-42 factors. With its current policy EPA has over-reached in the conclusions that some state programs are ineffectively managing their sources in situations involving SSM.

Accordingly EPA should withdraw its SSM SIP call and instead encourage state agencies to work with their sources to critically evaluate the implications of specific SSM events that can or may have previously occurred at a particular facility before establishing whether any new event of the same type is worthy of any action at all.

4. NAAQS attainment should be based on air quality monitoring and not modeling estimates.

EPA made a significant change when they decided to use computer modeling rather than actual air quality monitoring data to make 'non-attainment' determinations for the Sulfur Dioxide NAAQS. Any number of variables used in the model can have a significant impact on these determinations. This can then be compounded by EPA establishing non-attainment based on exaggerated modeled information and then applying "potential to emit" models to drive permitted emission limits well below what is needed to achieve attainment. This approach causes significant cost to economic development and can even prohibit business development in these areas. This can be easily remedied by EPA using actual monitored emissions data to establish nonattainment designations.

5. Return primacy for the Regional Haze program to the states.

Congress established Clean Air Act authority for EPA to set best available retrofit technology requirements with the goal of achieving natural visibility conditions in areas like National Parks and Wilderness areas by 2064. But Congress gave the *states* the primary role to determine where these determinations apply using a four part test as well as determining their 'glide-path'. Compliance with Phase I of this program will largely be achieved by 2018.

In recent years, EPA has become much more prescriptive in forcing states to implement the program exactly as EPA wishes, or else EPA rejects the state program and issues a Federal plan. For Phase II of the program, EPA appears to be doubling down on this approach with even greater prescriptiveness in their recent guidance and rulemaking. This will force states to impose high cost, low benefit pollution controls to drive a standard based on aesthetics rather than human health and the environment. EPA has largely demanded that states impose selective catalytic reduction technology on all utility units to control NOx emissions. This technology can cost hundreds of millions per unit for purported visibility improvements that are difficult to perceive. EPA also requires use of their outdated models which historically have over-estimated visibility impacts.

EPA should revise their recent guidance and rulemaking to put the decision making back in the hands of the states and to allow them the time and discretion to cost-effectively manage their

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program towards a goal that is still 48 years away. A good first step would be to extend the 2018-2028 planning and compliance cycle by at least 3 years, to give states and the regulated community added time to meet the next round of limits.

Specific to the Federal Implementation Plan(FIP) for Arkansas, EPA, by a Federal Register notice dated April 25, 2017, 82 Fed Reg. 18994, announced a 90 day stay of the rule and the convention of a proceeding for reconsideration of certain requirements contained in the final FIP rule published in the Federal Register on September 27, 2016.

EPA should evaluate the Arkansas FIP requirements for coal-fired EGUs referenced in the federal register notice and amend the requirements to reflect timing of controls, costs of controls, and overall impact on visibility improvement.

In Utah, the Regional Haze litigation focuses on the agency again rejecting the state's plan and promulgating SCR technology to be implemented by 2021 even though analysis conclusively demonstrates that EPA's approach would achieve, at most, a 0.1 deciview improvement compared to the state's approach. Yet EPA's approach would increase costs by several hundred million dollars. If implemented, EPA's approach will have dire consequences for the local cooperative whose portion of capital cost ($45-50 million) would exceed their current financing capacity prior to 2025. Time is of the essence for EPA to reevaluate their approach and let the more cost-effective state SIP be adopted.

6. <u>EPA should finalize proposed revisions to 40 CFR Part 60 App. F Procedure 2, section 10.4</u>

   On November 21, 2016 EPA issued a direct final rule (81 Fed. Reg. 83160) and an alternative proposed rule (81 Fed Reg. 83189) addressing quality assurance requirements for particulate matter (PM) continuous monitoring to demonstrate Clean Air Act NSPS compliance. These actions were necessary to correctly account for the installation of additional PM control devices and their effect on compliance with annual quality assurance/quality control criteria.

   Due to comment on the direst final rule the rule had to be withdrawn as required by legal procedure. EPA should complete the rulemaking process on the proposed rule by addressing any concerns with it and an issue final rule revising section 10.4 referenced above for reasons heretofore stated.

Waste Issues:

1. <u>Revise the Coal Combustion Residuals, or "CCR," rule to reflect the permitting and risk-based opportunities provided by the Water Infrastructure Improvement for the Nation WIIN) Act – 40 CFR 257 & 261 (80 Fed. Reg. 21302, April 17, 2015)</u>.

   In the absence of clear RCRA authority, the CCR rule promulgated in 2015 established self-implementing one-size-fits-all federal standards for coal ash and air pollution control scrubber sludge; standards that can only be enforced through citizen suits.

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The WIIN Act, signed into law last December, gives EPA new authority to implement the federal requirements through state permitting programs – the mechanism used to implement the current Municipal Solid Waste Landfill (MSWLF) requirements upon which the CCR criteria are based and even the federal *hazardous* waste rules. Most importantly, it allows those permits to reflect site-specific conditions and risks so long as the conditions in the permit are "as protective" as the federal criteria. The new law also allows EPA to establish a federal CCR permitting program for those states that do not adopt their own programs.

This new WIIN authority removes EPA's rationale for the current self-implementing approach as well as the Agency's justification for one-size-fits-all standards. EPA will be revisiting parts of the CCR rule under a settlement agreement which provides the perfect opportunity to reflect the new WIIN authority and incorporate site-specific, risk-based approaches into the federal standards.

Regulating CCR units under a state or federal permit that reflect site specific conditions and risks will significantly reduce the burden of complying with the CCR rule. In addition, implementing the requirement through permits will remove the burden of bringing, defending against, and adjudicating citizen suit – a burden reduction for everyone.

NRECA is a member of USWAG and wholeheartedly endorses the petition for reconsideration of the CCR rule submitted May 12, 2017, and to extend the upcoming CCR rule compliance deadlines. Owners and operators of CCR units are or will shortly be confronted with significant and irrevocable decisions or financial commitments to comply with the CCR rule – decisions or commitments that may be unneeded, inappropriate, or insufficient if the rule is modified. In addition, the CCR and ELG rules (see below) must work together and be implemented together. EPA has already stayed the ELG requirements while considering a petition submitted by UWAG. To make sure the two programs work together, compliance dates in the CCR rule should also be stayed.

2. <u>Revise the PCB regulations to allow disposal of all wastes with PCB contamination of less-than 50 parts-per-million in modern, engineered landfills such as municipal solid waste landfills and other non-TSCA units</u>.

EPA has determined that disposal of remediation wastes containing PCBs at less than 50 parts-per-million (<50 ppm) can be protectively managed in modern, engineered landfills such as municipal solid waste landfills (MSWLF) and other non-TSCA units. In fact, the PCB regulations already allow disposal of *most* < 50 ppm PCB-contaminated waste in non-TSCA facilities (*See* 68 Fed. Reg. 4934, January 31, 2003 acknowledging that < 50 ppm PCB remediation waste" has little inherent potential to pose an unreasonable risk to health or the environment."), but not all as-found remediation waste. EPA has issued approvals for NRECA and USWAG members to dispose of as-found < 50 ppm remediation wastes subject to conditions of the approval, including reporting to EPA, the state, and local authorities each time soil is disposed of under the approval. (Approval available online at https://www.epa.gov/pcbs/nationwide-risk-based-pcb-remediation-waste-disposal-approvals-under-title-40-code-federal#nreca, current as of May 15, 2017.)

While NRECA's members very much appreciate the approvals, we recommend that the PCB disposal regulations themselves be amended to reflect EPA's protectiveness determination and acknowledgement that PCB cleanup should be driven by the as-found concentration of PCBs (See 40

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CFR 761.50(b)(3), "PCB remediation waste … is regulated for cleanup and disposal in accordance with 761.61" and 761.61 "Any person cleaning up and disposing of PCBs under this section shall do so based on the concentration at which PCBs are found."). EPA should allow *all* low-level (<50 ppm) PCB wastes to be managed in modern, engineered landfills such as MSWLF. We believe this change will encourage and significantly reduce the costs and regulatory burden of cleaning up low-level PCB contamination wherever it may be found.

3. Issue a Letter of Interpretation confirming that refined coal and boiler cleaning wastes do not trigger regulation of utility steam generation boilers as commercial and industrial solid waste incinerators (CISWI) – 40 CFR 60 and 241 (78 Fed. Reg. 9112, February 7, 2013).

   The commercial and industrial solid waste incineration (CISWI) rule established standards for units that "combust" solid waste. In comments on the proposed rule, the Utility Solid Waste Activities Group (USWAG) raised concern over potential application of the rule to boiler cleaning wastes and refined coal. The concerns were not resolved in the final rule or response to comments, and USWAG subsequently, on November 4, 2013, USWAG asked EPA to confirm that the introduction of refined coal and boiler cleaning waste into a utility boiler will *not* subject the unit to CISWI.

   In the course of operations, boiler cleaning wastes and refined coal may be introduced into a utility boiler as a practical way to manage materials without increasing emissions and even to reduce the emissions of certain contaminants. As explained in both the USWAG comments and the 2013 request, these materials are not combusted when introduced into utility boilers because these materials have no heating value are, therefore, not combusted. Consequently, they should not trigger the CISWI requirements.

   Since submitting the initial request for clarification, USWAG staff has provided additional justification for the request and has responded to additional questions from EPA's Office of Resource Conservation and Recovery (ORCR) staff, and have every reason to believe that the Agency is well underway toward issuing such a confirmation.

Water Issues:

1. Review and reconsider the Steam Electric Effluent Limitation Guidelines (ELG) rule with respect to the identification of best available treatment technology and the quality and public availability of information and data supporting the rule – 40 CFR 423 (80 Fed. Reg. 67838, November 3, 2015).

   The Steam Electric Effluent Limitation Guideline (ELG) rule prohibits discharge of waters used to transport coal ash and imposes unachievable standards for discharge of wastewaters from air pollution control systems (e.g. scrubbers). The rule is ripe for revision based on substantive and procedural deficiencies.
   - EPA significantly underestimated the costs of compliance and the actual availability of technologies undergirding the rule.
   - The rule will require many plants to redesign their ash and wastewater management systems at tremendous cost, yet with no assurance the technology EPA relied on will actually work.

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- EPA grossly over-classified information, methods, and analyses as confidential business information (CBI) in violation of the Data Quality Act and its own guidelines on transparency and reproducibility.

Plants that can't retrofit their systems or can't meet the limits could be forced to close. NRECA urges EPA to revisit the best available technology (BAT) limits for flue gas desulfurization (FGD) wastewater and bottom ash transport water (BATW).

NRECA greatly appreciates that EPA has announced that it is considering petitions for reconsideration submitted by the Utility Water Act Group (UWAG) and the Small Business Administration Office of Advocacy. The recent administrative stay of the effective dates of the ELG rule is testament to the seriousness with which the Agency is considering the petitions. This stay is especially important for facilities that otherwise would have been forced to make imminent, significant, and irreversible capital investment within the next few months to meet the rule's aggressive implementation deadline.

2. Withdraw and re-propose the Waters of the United States (WOTUS) rule – 33 CFR 328 (80 Fed. Reg. 37054, June 29, 2015).

The final WOTUS rule expanded Clean Water Act jurisdiction in a manner that affects electric cooperatives by delaying and increasing the costs for constructing new and maintaining existing power lines and by potentially increasing the costs to site, operate, and eventually decommission new and existing electrical generation facilities.

We appreciate and support Executive Order 13778, "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule" and look forward to working with EPA and the US Army Corps of Engineers in its implementation.

NRECA appreciates this opportunity to provide our initial recommendations for opportunities to reduce regulatory burden from certain regulations while protecting our environment. We particularly compliment EPA for the very public approach to soliciting burden reduction suggestions. We look forward to working with EPA and other stakeholders in implementing Executive Orders 13771 and 13777.

Respectfully submitted,

Dorothy Allen Kellogg
Sr. Principal – Environment Policy

CC: K. Bromberg, SBA Office of Advocacy

To: Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]
From: Johnson, Kirk D.
Sent: Wed 5/3/2017 3:13:00 PM
Subject: NRECA follow-up

Hi Mandy –

Thanks so much for joining so many electric co-ops with Administrator Pruitt last week while we had our annual legislative Conference! I wanted to follow-up with you to make sure we had the right list of "to do" items as a result.

Per the Administrator's request:

We will be getting you our stranded assets (or "lost capital" as Administrator Pruitt called it) information resulting from the CPP.

We will also follow-up with specific Regional Haze issues our members are still having.

And we are developing specific suggestions for NSR reform.

Please do not hesitate to reach out at any time we can provide information or assist you and the Administrator as you organize the Agency to tackle several of these key issues.

Thanks so much!

-K

Kirk Johnson

Senior Vice President, Government Relations

703-907-5775 (office) | 703-887-0706 (mobile) | kirk.johnson@nreca.coop

Assistant: Erin Steverson | 703-907-5854 | erin.steverson@nreca.coop

NRECA
America's Electric Cooperatives

VOTE.COOP

NRECA Mission: To Promote, Support, and Protect the Community and Business Interests of Electric Cooperatives.

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Cc: Jackson, Ryan[jackson.ryan@epa.gov]; Morrison, Jay A.[jay.morrison@nreca.coop]; Cassady, John M.[John.Cassady@nreca.coop]; Cromwell, Ted T.[ted.cromwell@nreca.coop]
To: Johnson, Kirk D.[kirk.johnson@nreca.coop]
From: Gunasekara, Mandy
Sent: Mon 5/22/2017 5:24:46 PM
Subject: Re: Responses to Administrator Pruitt's questions

Thank you, Kirk. Look forward to continuing to work with you on these.

Best,
Mandy

Sent from my iPhone

> On May 22, 2017, at 12:15 PM, Johnson, Kirk D. <kirk.johnson@nreca.coop> wrote:
>
> Dear Ryan and Mandy –
>
> When we met with Administrator Pruitt earlier this month, he asked about specifics on CPP lost investment, Regional Haze specifics, and NRS ideas. The attached letter from our CEO to the administrator covers those issues and we would be happy to discuss further should you or others at EPA want to dig deeper.
>
> Thanks so much for reaching out to us!
>
> -K
>
>
> Kirk Johnson
> Senior Vice President, Government Relations
> 703-907-5775 (office) | 703-887-0706 (mobile) | kirk.johnson@nreca.coop<mailto:kirk.johnson@nreca.coop>
> Assistant: Erin Steverson | 703-907-5854 | erin.steverson@nreca.coop<mailto:erin.steverson@nreca.coop>
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