From: "Shea, Quin" <QShea@eei.org>
To: "Lassiter, Tracie" <tracie_lassiter@ios.doi.gov>
Cc: Billy Dove <william_dove@ios.doi.gov>, "leila_getto@ios.doi.gov" <leila_getto@ios.doi.gov>, "Ball, Sarah" <SBall@eei.org>, "Mohammed, Riaz" <rmohammed@eei.org>, "gseidlit@blm.gov" <gseidlit@blm.gov>, "Owen, James" <JOwen@eei.org>
Subject: RE: [EXTERNAL] EEI Speaking Engagement
Date: Thu, 16 Aug 2018 18:10:42 +0000
Importance: High
Attachments: CEOmtg0918-InfraSumm081618.docx; CEOmtg0918-EnvNRSumm081618.doc

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Hello Tracie. We're looking forward to tomorrow morning's conversation with Joe. Sarah and Riaz will be with you in person, and I'll be doing my best to disconnect from my prior obligation—at least for a few minutes.

In advance of EEI's CEO and board meetings, we routinely supply company executives with brief background documents on myriad issues underlying the current national policy climate (e.g., cyber and physical plant security; fuel diversity and generation supplies; tax and other economic matters; transmission and pipeline issues; emerging technologies; and, of course, key White House, FERC, DOE, EPA ***and DOI*** initiatives). Accordingly, and consistent with my earlier note, attached are two additional documents that your team may find useful contextually. They address the national policy landscape around energy infrastructure, as well as environment and natural resources issues, respectively. DOI-centric references and/or specific policy and regulatory issues are prominent in both documents.

Sarah and Riaz will have a couple of additional items to share with Joe during our meeting. Until then, thanks again for your continued assistance. Best, Quin

---

From: Shea, Quin
Sent: Tuesday, August 14, 2018 12:13 PM
To: 'Lassiter, Tracie' <tracie_lassiter@ios.doi.gov>
Cc: Billy Dove <william_dove@ios.doi.gov>; leila_getto@ios.doi.gov; Owen, James <JOwen@eei.org>; Ball, Sarah <SBall@eei.org>; Mohammed, Riaz <rmohammed@eei.org>
Subject: RE: [EXTERNAL] EEI Speaking Engagement

Tracie: Good logistics call this morning, so thank you for facilitating same. Jim's team is running down all the information that will be of interest for purposes of your internal ethics evaluation (e.g., hotel, meal and reception *pro rata* values). In that vein, the current meeting RSVP list is attached. We currently are identifying company execs that would like to meet with Joe separate and apart from the formal meeting agenda, and in turn Joe may spot some folks he wants to connect with.

I still plan to send you some background materials for our Friday session. Looking forward to it. Best, Quin

---

From: Lassiter, Tracie <tracie_lassiter@ios.doi.gov>
Sent: Tuesday, August 14, 2018 9:31 AM
To: Shea, Quin <QShea@eei.org>
Cc: Billy Dove <william_dove@ios.doi.gov>; leila_getto@ios.doi.gov; Owen, James <JOwen@eei.org>
Subject: Re: [EXTERNAL] EEI Speaking Engagement

#1364515.1

Good morning Quin:

Thanks for the follow up email and our team has scheduled a conference call with Jim Owens this morning at 11 to discuss the details of the conference. Please call our conference line on Friday August 17th if you are available to participate in a portion of the meeting [redacted], code [redacted]. Thanks and look forward to hearing prior to the meeting.

Best, Tracie

On Tue, Aug 14, 2018 at 8:05 AM, Shea, Quin <QShea@eei.org> wrote:

> Good morning Tracie. The option of a dial-in number would be great, even if logistics don't permit my participation in the entire discussion. Attending in person on my behalf will be two team members from our core Environment and Natural resources practice: Sarah Ball, Senior Manager and Riaz Mohammed, Manager. Both work on the range of DOI-centric issues of interest to EEI and our CEO community.
>
> Either tomorrow or Thursday at the latest, I intend to send you a few background documents, including the current draft attendance list for our CEO and board meetings; and some background material we provide to the CEOs relative to key infrastructure (e.g., permitting-siting challenges), environmental and natural resources issues.
>
> As an aside, as you are working on Joe's logistics for the Colorado Springs trip, I hope he is amenable to coming out a bit early and joining the CEOs for their welcome reception and dinner, which is held off property Tuesday evening at the Cheyenne Mountain Lodge. It's a tremendous networking opportunity and a nice complement to Wednesday's meeting opportunities and speaking gig.
>
> Thanks for your continued assistance. Again, I'll be in touch later in the week. Cheers, Quin
>
> **From:** Lassiter, Tracie <tracie_lassiter@ios.doi.gov>
> **Sent:** Friday, August 10, 2018 3:18 PM
> **To:** Shea, Quin <QShea@eei.org>
> **Cc:** Billy Dove <william_dove@ios.doi.gov>; leila_getto@ios.doi.gov; Owen, James <JOwen@eei.org>
> **Subject:** Re: [EXTERNAL] EEI Speaking Engagement
>
>
>
> ---
>
> Hi Quin:
>
> If you are available at that time we could certainly provide a conference dial-in. If not we can certainly move forward with confirming on the schedule also may I ask if you would provide the names of those team members and their titles and I will provide to our security/visitor's desk. Many thanks and have a great weekend.
>
> Best, Tracie

#1364515.2

On Fri, Aug 10, 2018 at 3:11 PM, Shea, Quin <QShea@eei.org> wrote:

Hi Tracie. Let's lock down the 10:30-11 a.m. window on August 17. Ironically, next Friday is the only day I'm *not* in town between now and the end of the month; no worries, however, as a couple of my key team members will be able to succinctly cover the waterfront relative to the range of items suggested by my earlier note. Separately, I know that Jim is preparing to correspond with and/or talk to you about overall logistics for Joe's trip.

Thanks again, and have a great weekend. Best, Quin

From: Lassiter, Tracie <tracie_lassiter@ios.doi.gov>
Sent: Friday, August 10, 2018 2:36 PM
To: Shea, Quin <QShea@eei.org>
Cc: Billy Dove <william_dove@ios.doi.gov>; leila_getto@ios.doi.gov; Owen, James <JOwen@eei.org>
Subject: Re: [EXTERNAL] EEI Speaking Engagement

Good afternoon Quin:

given Mr. Balash's travel schedule he would like to schedule something on next Friday, August 17th which would be the only date that he would have some available time as he will be departing for travel again on the 20th. He could meet for 30-45 minutes either from 10:30-11:00am or between 4:00-5:00pm on the 17th. Please let us know what would work for you and your team.

Thanks, Tracie

On Thu, Aug 9, 2018 at 8:20 AM, Shea, Quin <QShea@eei.org> wrote:

Good morning Tracie. Could you please check with Joe regarding his availability for a short meeting in the next couple of weeks? Per our last conversation, I recognize Joe's schedule is tight and includes significant travel, so perhaps better to not let this slip too long. We are getting a lot of interest from our CEO community regarding Administration speakers that are joining us in Colorado Springs. My staff and I are in a position to provide insights to Joe, Billy and other DOI team members regarding the anticipated scope of remarks by both Administration and CEO speakers who are on EEI's program, as well as which DOI policy initiatives and specific regulatory vehicles are of most interest to this particular audience.

A short meeting also would afford us the opportunity to update Joe on an ACEC-related project we are working on.

Thanks again for your help in coordinating Joe's participation in EEI's board meeting. Please let me know your thoughts. Best, Quin

From: Lassiter, Tracie <tracie_lassiter@ios.doi.gov>
Sent: Tuesday, July 31, 2018 2:40 PM
To: Shea, Quin <QShea@eei.org>
Cc: Billy Dove <william_dove@ios.doi.gov>; Owen, James <JOwen@eei.org>; leila_getto@ios.doi.gov
Subject: Re: [EXTERNAL] EEI Speaking Engagement

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Quin,

Thanks for the follow up email and I look forward to working with Jim in the upcoming weeks on finalizing logistics for Joe's upcoming trip.

Best,

Tracie Lassiter

On Tue, Jul 31, 2018 at 9:18 AM, Shea, Quin <QShea@eei.org> wrote:

Good morning Tracie. Per our conversation yesterday, attached is a preliminary draft agenda for EEI's upcoming CEO meetings. The slot in which Joe would be speaking is Wednesday afternoon, September 5. We envision remarks of about 15 minutes plus Q/A. Importantly, this two-hour window likely includes three Administration speakers, but they would be distinct segments, involving separate CEO leads and corresponding board discussion. (Under Secretary Dabbar will cover technology trends and emerging work from the National Labs, while Acting Administrator Wheeler will cover his vision and major rules affecting the electric power sector.)

The EEI team is available to work with Joe, Billy and other BLM staff regarding all manner of preparations. Joe and I have discussed previously the Secretary's vision in terms of reorganizing the Department and ongoing efforts by the various DOI agencies/bureaus (and the Administration generally) to streamline the permitting and siting process for major infrastructure projects such as natural gas pipelines and transmission lines, e.g., NEPA, ESA and vegetation management reform, and removing the backlog of expired ROWs and making the renewal process more efficient generally. Given Joe's background, he also has deep familiarity with key DOI-centric issues that transcend his LMM portfolio, e.g., government and private sector relationships with the tribes. In summary, the "American Energy Dominance" theme will resonate with the EEI audience.

We understand Joe maintains a pretty hectic schedule, but hope he may have some flexibility while on the ground in Colorado Springs. The Tuesday evening reception/dinner, which provides a great networking opportunity, is held at the Broadmoor's Cheyenne Mountain Lodge and is open to all attendees. Wednesday's lunch with the former Governors is a fairly traditional fixture for EEI's fall meeting, and routinely is both insightful and entertaining. Finally, depending on Joe's interests, we could arrange short meetings with various industry execs.

I trust this information is helpful and provides a good platform from which to proceed. Copied on this note is Jim Owen, who heads our member relations and CEO meeting efforts, and who will be involved on the logistical front going forward. We look forward to hearing from you regarding next steps. Cheers,
Quin

From: Lassiter, Tracie <tracie_lassiter@ios.doi.gov>
Sent: Friday, July 27, 2018 3:47 PM
To: Getto, Leila <leila_getto@ios.doi.gov>
Cc: Shea, Quin <QShea@eei.org>; Billy Dove <william_dove@ios.doi.gov>
Subject: Re: [EXTERNAL] EEI Speaking Invitation to Secretary Zinke, Colorado Springs, CO, September 4-6

#1364515.4

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Thank you Leila.

Hi Quin- I just left a message with your assistant Cynthia. We can touch base on Monday and look forward to working with you! Have a great weekend.

Best, Tracie

On Fri, Jul 27, 2018 at 3:34 PM, Getto, Leila <leila_getto@ios.doi.gov> wrote:

> Hi Quin -- Sorry for my delay. Thank you again for your understanding on the Secretary's schedule and allowing Assistant Secretary Balash to participate in his place. I'm cc'ing his assistant, Tracie Lassiter (202-208-2599), who manages his schedule. And Billy Dove (202-208-4606) who is one of his policy advisers. They're your best contact moving forward to coordinate the . And if you don't mind, I'll follow up with you on Monday regarding the 2019 invitation.
>
> Billy/Tracie -- Quin's direct office line is 202-508-5027 and cell (b) (6) [redacted]
>
> Thank you!
>
> Leila
>
> *Leila Getto*
>
> *U S Department of the Interior*
>
> *Immediate Office of the Secretary*
>
> *Deputy Director, Scheduling and Advance*
>
> *Direct: 202-208-5359*
>
> *Main 202 208 7551*
>
> *Cell: 202-706-9435*
>
> *Email leila_getto@ios doi gov*
>
> ---------- Forwarded message ----------
> From: **Shea, Quin** <QShea@eei.org>
> Date: Wed, Jun 13, 2018 at 8:27 AM
> Subject: [EXTERNAL] EEI Speaking Invitation to Secretary Zinke, Colorado Springs, CO, September 4-6
> To: "Getto, Leila (leila_getto@ios.doi.gov)" <leila_getto@ios.doi.gov>
> Cc: "james_cason@ios.doi.gov" <james_cason@ios.doi.gov>, "catherine_gulac@ios.doi.gov" <catherine_gulac@ios.doi.gov>, "vincent_devito@ios.doi.gov" <vincent_devito@ios.doi.gov>, "gisella_ojeda@ios.doi.gov" <gisella_ojeda@ios.doi.gov>, "james_voyles@ios.doi.gov" <james_voyles@ios.doi.gov>

Good morning Leila. I trust you are well and will be able to take advantage of some quality down time this Summer! Per the attached letter from EEI President Tom Kuhn, we would like to invite Secretary Zinke to speak to our Board of Directors at the Broadmoor in Colorado Springs. It would be great if the Secretary could join our Executive Committee CEOs for a private dinner on September 4 and address the full Board the following morning. Alternatively, we certainly could accommodate the Secretary later in the day on September 5 or even the morning of September 6.

Please let me know if you have any questions, and thanks in advance for the team's consideration of this request. Best, Quin

--

Thanks,

Tracie L. Lassiter

U.S. Department of the Interior

Office of the Secretary

Land & Minerals Management

1849 C. Street, NW, Room 6615

Washington, DC 20240

(o) 202-208-6734

(f) 202- 208-3619

Tracie_Lassiter@ios.doi.gov

--

Thanks,

Tracie L. Lassiter

U.S. Department of the Interior

Office of the Secretary

Land & Minerals Management

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Tracie_Lassiter@ios.doi.gov

--

Thanks,

Tracie L. Lassiter

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--

Thanks,

Tracie L. Lassiter

U.S. Department of the Interior

Office of the Secretary

#1364515.7

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Thanks,

Tracie L. Lassiter

U.S. Department of the Interior

Office of the Secretary

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#1364515.8

Energy Infrastructure Policy Recommendations

EEI 2018 Fall Board and Chief Executives Meeting – September 4-6, 2018

Our industry is leading a profound transformation to deliver the energy future that customers want by investing in smarter energy infrastructure that empowers customers, ensures reliability, and reinforces resiliency. As the most capital-intensive industry in the United States, our members invest more than $100 billion each year, and our industry supports more than 7 million American jobs. The passage of tax reform legislation last year provides a solid financial foundation for a major industry priority: increased infrastructure investment that benefits electric customers.

Our industry is focused on several major initiatives in the area of infrastructure investment—including Smart communities, electric transportation, grid resiliency, Federal Energy Regulatory Commission (FERC) transmission initiatives, and siting and permitting—which we are pursuing through administrative and regulatory actions, as well as legislation.

Encouraging the development of public-private partnerships to invest in smart communities and electric transportation is critical for local electric companies to leverage technology to spur economic development, help drive efficiencies, enhance the overall quality of life for their citizens, and improve sustainability. EEI advocates for expanding smart community initiatives at the state and local level by leveraging private investments through existing technology deployment grant and loan programs at the Departments of Transportation (DOT) and Energy (DOE). We will work to ensure that the authorizations for these DOT and DOE programs are flexible enough to accommodate advances in technologies that are essential elements in smart communities and alternative fuel vehicles, and that there is adequate funding for states and localities to participate in public-private partnerships.

In the area of grid resiliency, EEI will work Department of Defense (DOD) facilities to help create comprehensive energy resiliency plans and develop public-private partnerships to invest in smarter, stronger infrastructure. Those plans should include not just traditional "inside the fence" solutions but also projects for overall grid resilience through "outside the fence" initiatives, such as measures to protect the substations, transmission lines, control centers, and other assets that provide grid-supplied power to defense installations. EEI member companies also will work with DOD facilities to complete resiliency projects, with an emphasis on private sector funding, including utility rate-basing financing mechanisms, enhanced land-use leases, special tariffs, utility privatization, and utility energy service contracts.

EEI will encourage FERC to support investment in transmission infrastructure—the backbone of the energy grid and one of the nation's most capital-intensive assets—through sound ratemaking policies by reviewing and revising its approach to addressing successive complaints filed under Federal Power Act Section 206; the current methodology for determining transmission returns on equity; and the treatment of transmission investment incentives.

One of the most significant obstacles to facilitating energy infrastructure investment continues to be obtaining permits from federal agencies. Permitting and siting energy infrastructure on federal lands is subject to a wide array of land-use authorizations and associated environmental reviews. The current permitting process involves multiple federal and state agencies engaging in uncoordinated and sequential project reviews. Lack of interagency cooperation, the absence of deadlines, scarce federal resources, and extensive permit and environmental requirements have resulted in lengthy timeframes and costly processes for project proponents. For example, the average timeframe for permitting and siting an interstate transmission line is on the order of 7 to 10 years.

#1364917.1

The Administration released a proposed infrastructure plan in February. The plan includes legislative goals that could shorten and simplify the approval process for electric utility infrastructure projects. The proposals include establishing a "one agency, one decision" structure for environmental reviews; shortening the lengthy National Environmental Policy Act (NEPA) review process to two years; and eliminating redundant and inefficient provisions in federal permitting and siting laws.

On April 9, the Administration announced that 12 Federal agencies signed the One Federal Decision Memorandum of Understanding (MOU), which establishes a coordinated and timely process for environmental reviews of major infrastructure projects. In accordance with the MOU, one lead federal agency will be responsible for navigating each major infrastructure project through the entire federal environmental review and permitting process. The lead agency will seek written concurrence from other agencies at important points in the process. Federal agencies will follow permitting timetables established by the lead agency, with a goal of completing the process within two years. Finally, under the MOU, federal agencies will conduct their review processes at the same time, rather than sequentially, which has led to unnecessary delays.

On April 27, the Department of Interior (DOI) issued a memorandum detailing improvements to the Department's NEPA reviews. The memorandum outlines timelines for completing the NEPA process, page limits for environmental impact statements, and the waiver process for timeliness or page limit exceedances. In June, the White House Council on Environmental Quality (CEQ) published an advance notice of proposed rulemaking (ANPR) that took comment on updating the regulations for implementing NEPA provisions. This action indicates CEQ's intent to revise the NEPA regulations that apply across the federal government. EEI submitted comments on the ANPR encouraging CEQ to promulgate a rulemaking that ensures concurrent and consolidated environmental review documents while limiting the scope of the action agency's analysis.

EEI continues to evaluate and update its energy infrastructure recommendations to ensure that they succinctly address current policy and legal challenges, CEOs' evolving direction, and key strategic opportunities with Congress and the agencies. Our focus continues to be on what can be accomplished through a combination of legislative and administrative pathways, with an emphasis on regulatory changes to the implementing regulations for various environmental and natural resources statutes (e.g., NEPA, Endangered Species Act, and Migratory Bird Treaty Act). EEI continues to meet regularly with DOI, EPA and other Administration officials on assessing potential opportunities to enhance the efficiency of siting and permitting for new and existing projects (e.g., energy production and generation, and electricity transmission).

In concert with these actions, EEI will continue to look for opportunities for favorable congressional oversight of agency actions to keep infrastructure issues front and center for all policymakers. Both the House and the Senate have held several oversight hearings to examine federal permitting processes. EEI and member companies will remain extensively involved in all efforts to develop and foster new national policies related to enhancing energy infrastructure and modernizing the grid.

EEI Board Leads:

Pat Vincent-Collawn, Chairman, President & CEO, PNM Resources

Gerard M. Anderson, Chairman, President & CEO, DTE Energy Co.

Lynn Good, President & CEO, Duke Energy

Sean Trauschke, Chairman, President & CEO, OGE Energy Corp.

Environment and Natural Resources

EEI 2018 Fall Board and Chief Executives Meeting – September 4-6, 2018

U.S. electric companies face several critical environmental, natural resources and clean energy policy issues that impact their strategic planning and decision-making. These issues are spurring major changes in electric power generation and transmission, particularly in the context of an aging generation fleet, low natural gas prices, increased use of renewable energy and a focus on increased end-use energy efficiency.

Our industry is increasingly safer, smarter, more reliable and cleaner than ever before, a trend driven in part by customer and investor needs that will continue regardless of the political landscape. Working with other stakeholders, EEI will continue discussing with the Administration how our priorities and fleet transition mesh with their priorities of improving infrastructure, job growth and economic growth.

The September CEO meeting will include a brief discussion of new developments in the environmental arena generally, including next steps on several key rulemakings.

EEI Board Leads:

Gerard M. Anderson, Chairman, President & CEO, DTE Energy Co.

Sean Trauschke, Chairman, President & CEO, OGE Energy Corp.

Greenhouse Gas Performance Standards

In October 2017, EPA issued a proposed repeal of the Clean Power Plan (CPP), and EEI filed consensus comments calling on EPA to develop a replacement rule if it decides to repeal the CPP. EPA issued the proposed repeal after reviewing the CPP in response to President Trump's March 2017 Executive Order (EO) on Energy Independence. The Agency is proposing to repeal the CPP in its entirety because it purportedly exceeds EPA's changed legal interpretation of its statutory authority under section 111 of the Clean Air Act (CAA) by setting carbon dioxide emission guidelines involving the use of measures—building blocks 2 and 3 under the CPP—that were beyond an "inside-the-fenceline" approach to setting standards.

On July 9, EPA submitted a notice of proposed rulemaking (NOPR) regarding a possible CPP replacement rule to the Office of Management and Budget (OMB) for interagency review. This action follows EPA's issuance in December 2017 of an advance notice of proposed rulemaking (ANPR) on the same matter. The ANPR sought comment on a wide range of issues, including measures that meet EPA's changed legal interpretation of the Best System of Emission Reduction that could be used to develop a replacement rule, and flexibilities that states could include in their implementation plans. EEI filed consensus comments on issues raised in the ANPR reiterating publicly stated positions on the original CPP, and EEI staff met with EPA and OMB officials to further discuss these views. EPA has indicated that it intends to make the NOPR available for public comment by early fall, and to finalize a replacement rule by early 2019.

EEI and allied stakeholder CEOs have met several times with EPA leadership to outline the industry's views on next steps on the CPP. If EPA finalizes the repeal of the CPP, it also should promulgate a replacement rule that reflects a source-based, inside-the-fenceline approach that gives states a lead role in implementation, including providing significant flexibility in their compliance plans for covered units.

EPA also has indicated that it plans to revise the greenhouse gas (GHG) performance standards for new coal plants under section 111(b) of the CAA in the coming months, which currently require the de facto use of carbon capture and storage technology to comply. EPA is not planning to alter the existing GHG performance standards for new gas plants.

There also has been recent action on GHG issues at other federal agencies. On April 25, the Federal Energy Regulatory Commission (FERC) published a Notice of Inquiry (NOI) in the *Federal Register* regarding the process for reviewing and authorizing interstate natural gas pipelines, including requesting feedback on how FERC should calculate GHG emissions and impacts resulting from the upstream and downstream use of natural gas. On July 25, EEI filed comments on the NOI, emphasizing that FERC's NEPA analysis should promote reasoned decision making and recognize the GHG reductions achieved by the power sector.

The National Highway Transportation Safety Administration (NHTSA) released a joint proposal with EPA on August 2 to establish standards for vehicle Model Years (MY) 2021-2026 that would be frozen at MY 2020 levels for both the Corporate Average Fuel Economy (CAFE) and GHG tailpipe standards. Additionally, the proposal posits withdrawing California's CAA section 209 waiver to set its own GHG tailpipe standards, which currently are followed by 12 other states and the District of Columbia. EEI will work through its Electric Transportation CEO Task Force to develop comments on this proposed rule.

There continues to be a significant amount of activity on climate policy at the state and regional levels. For example, a number of states are exploring ways to put a price on GHG emissions, increase renewable energy goals, or introduce a clean peak standard (CPS). For example, Massachusetts recently enacted legislation that increases its Renewable Portfolio Standard and creates the first CPS in the nation. EEI continues to track and engage members on climate-related developments at the state and regional levels.

Regarding international climate policy, the U.S. position continues to be that it will withdraw from the Paris Agreement unless it can negotiate better terms. It takes four years to withdraw formally from the Agreement. In the interim, the United States continues to participate in international climate negotiations to protect its interests.

Coal Combustion Residual (CCR) Regulation

EPA published the final CCR rule in April 2015, regulating CCR as a non-hazardous waste under Subtitle D of the Resource Conservation and Recovery Act (RCRA). While industry achieved its primary goal—securing Subtitle D, non-hazardous waste regulations—the rule has flaws. The industry has continued efforts to address those flaws and implement provisions of the regulations.

In July 2015, the Utility Solid Waste Activities Group (USWAG) filed a legal challenge to certain elements of the rule in the D.C. Circuit. Oral argument was held in November 2017, and a decision in the case is expected later this year.

EEI and USWAG supported legislation, enacted in December 2016, addressing the most significant of the rule's flaws by establishing a mechanism for EPA to authorize the implementation of the federal rule by the states through permit programs. In August 2017, EPA released interim final guidance for the review and approval of state CCR permit programs. The guidance contains examples of regulatory flexibility addressing groundwater monitoring and corrective action requirements, and makes clear that the states can propose additional flexibilities to those specifically identified—key objectives of the industry's advocacy efforts. In June 2018, EPA finalized the approval of the Oklahoma Department of Environmental Quality CCR program; additional states are expected to apply for approval in 2018.

In May 2017, USWAG filed a rulemaking petition requesting that EPA reconsider and modify provisions of the CCR rule. In September 2017, EPA granted the petition—indicating it would reconsider portions of the CCR rule—including the regulation of inactive impoundments, certain groundwater monitoring and corrective action requirements, and criteria defining beneficial use. EPA will complete its reconsideration in two phases: Phase I includes revisions and issues subject to a partial settlement of USWAG's challenge to the rule; and Phase II will address the remaining issues for reconsideration that were not included in the Phase I rulemaking.

On March 15, EPA proposed its Phase I Remand Rule that included potential revisions to provide site-specific, risk-based tailoring of groundwater monitoring, corrective action, and location restriction requirements of the CCR Rule. USWAG's comments supported site-specific, risk-based flexibility, and urged the agency to include those revisions in the self-implementing rule and to extend upcoming deadlines as necessary to ensure those revisions have a practical impact.

In July, EPA finalized a portion of the Phase I revisions establishing risk-based groundwater protection standards and extending closure deadlines, providing greater certainty regarding the continued operation, closure and clean-up of CCR disposal units. EPA is expected to propose Phase II revisions this fall, and final action on that proposal as well as the remainder of the issues in Phase I is expected by June 2019.

Environmental groups have brought citizen suits in federal district courts, under both the Clean Water Act (CWA) and the CCR Rule, alleging unpermitted discharges from CCR disposal units and attempting to force those disposal facilities to close by removal. In August 2017, the District Court for the Middle District of Tennessee ruled in favor of environmental groups in a suit brought against TVA's Gallatin Plant, upholding the conduit theory—that groundwater discharges are subject to the CWA—and ordering the removal of ash from the facility's ash basins. In December 2017, the District Court for the Eastern District of Kentucky dismissed a similar lawsuit brought against Kentucky Utilities' E.W. Brown Plant. Both those decisions were appealed—by TVA seeking to reverse the decision in the Gallatin case and by environmental groups hoping to reverse the dismissal of their case—to the 6th Circuit Court of Appeals. EEI and USWAG filed an *amicus* in support of TVA, and EEI joined with industry groups in an *amicus* brief in the Kentucky Utilities case. Oral argument was held August 2nd, and a decision regarding these cases, and potentially the applicability of the CWA to CCR basins, is expected to be issued by late 2018. It is likely that the number of citizen suits—over two dozen to date—will increase as environmental groups increase their scrutiny of, and pressure on, CCR management activities.

Steam Electric Effluent Limitation Guidelines

EPA is engaged in a three-step process for reconsidering the 2015 final steam electric effluent limitation guidelines (ELG) rule. In step one, in April 2017, EPA published a notice in the *Federal Register* invoking section 705 of the Administrative Procedure Act (APA) to stay the 2015 rule's applicability dates. In step two, in September 2017, EPA finalized a rule that delays the near-term applicability dates for flue gas desulfurization (FGD) wastewater and bottom ash transport water (BATW) from November 1, 2018, to November 1, 2020, while lifting the APA section 705 stay. This "postponement rule" was intended to obviate the need for unnecessary industry expenditures until EPA completes its reconsideration of the FGD and BATW standards. In step three, EPA will reconsider portions of the ELG rule itself, including Best Available Technology (BAT) and Pretreatment Standards for Existing Sources limits for both BATW and FGD wastewater. The latest EPA regulatory agenda notes that the agency plans to release the proposed ELG rule for comment in December 2019 and to finalize the rule in December 2020. EEI has developed options to advocate to EPA leadership as the agency reconsiders the ELG limits for BATW and FGD wastewater.

EEI and individual member companies have met with EPA staff to provide industry perspective on management of the two waste streams being reconsidered in the forthcoming revised rule. EEI provided EPA with actual electric power industry experiences, as well as thoughtful ideas for a more flexible rule consistent with the EEI ELG options paper discussed in June. The objective is to continue pressing agency staff on the need for a durable, cost-effective and achievable rule.

Litigation challenging the 2015 rule has been filed in the U.S. Court of Appeals for the 5th Circuit, and the court has taken party briefs for the waste streams not being reconsidered (legacy wastewater and combustion residual leachate). Litigation challenging the postponement rule is underway in the 5th Circuit and U.S. District Court for the District of Arizona, though the Utility Water Act Group (UWAG) has moved to dismiss or transfer the latter case to the 5th Circuit. EEI and allied stakeholders will continue to work with Administration officials during reconsideration proceedings to communicate utility-specific concerns.

Waters of the United States (WOTUS)

EPA and Army Corps of Engineers (the agencies) are proceeding with repeal and replacement of the 2015 WOTUS rule in a two-step process. The first step is a proposal to repeal the 2015 rule and recodify the prior definition of WOTUS. The second step is to promulgate a replacement rule.

Regarding step one, in July 2017, the agencies published a proposal to rescind the 2015 rule and to recodify the regulatory text and associated guidance documents defining WOTUS that were in place prior to the 2015 rule. EEI filed comments supporting this action and providing additional legal, technical and policy reasons why the repeal and recodification is warranted. In July 2018, the agencies published a supplemental notice of proposed rulemaking providing additional legal and policy justifications for the proposed repeal of the 2015 rule. EEI filed comments in August supporting the supplemental notice and has communicated that support in meetings with EPA.state that the Legislative proposals to repeal or otherwise address the rule have been considered in Congress, including provisions in FY 2018 and FY 2019 appropriations bills, as well as the 2018 Farm bill in the House, but none has been enacted into law.

Regarding step two, a proposed replacement rule was sent to OMB for interagency review in June. EEI met with OMB to advocate that the replacement rule should clearly and reasonably identify waters that are and are not subject to federal jurisdiction, using discretion afforded to the agencies and informed by congressional intent and Supreme Court precedent. Of greatest importance to electric companies, the rule also should include a comprehensive waste treatment exemption. Any revised rule should also reflect the primary role of the States in regulating land and water use as recognized in the CWA, and should be as clear and easy to administer as possible. The latest EPA regulatory agenda notes that the agency now plans to release a final revised WOTUS replacement rule by September 2019.

In October 2015, the 6th Circuit granted a nationwide stay of the 2015 rule, which had become effective that August. In January 2018, the U.S. Supreme Court, in *Nat'l Assn of Manufacturers v. Dept. of Defense, et al.,* held that federal districts courts are the proper venue to hear challenges to the WOTUS rule, and the Court subsequently ordered the 6th Circuit to dismiss the case before it. As a result, on February 28, the 6th Circuit's nationwide stay of the 2015 rule was lifted, although two district courts have granted preliminary injunctions staying the rule in 24 states. In February, EPA and the Corps issued a final rule adding a two-year applicability date to the 2015 rule—now applicable on February 6, 2020—ensuring that there will be regulatory consistency and continuity as the Agencies develop a replacement rule. Numerous states and other stakeholders have challenged the applicability date rule, and state plaintiffs in at least one district court case have asked the court to review the 2015 rule on the merits.

Groundwater

EEI has been monitoring and participating in a group of cases in various federal district and circuit courts that address the critical issue of whether CWA liability arises when pollutants move through groundwater to surface waters from aggregation points (e.g., coal ash ponds). At the request of members, EEI has participated in industry *amicus* briefs in *Upstate Forever v. Kinder Morgan Energy Partners* and *Sierra Club v. Virginia Electric & Power Company*—both in the 4th Circuit—emphasizing the relationship between groundwater regulation and the CWA, as well as the relationship between RCRA and the CWA as applied to coal ash ponds. EEI and USWAG have jointly filed a similar *amicus* brief in support of TVA in *Tennessee Clean Water Network v. TVA*, and EEI has participated in an *amicus* brief in support of Kentucky Utilities Co. in the 6th Circuit.

On February 20, EPA published in the *Federal Register* a request for comment on whether discharges such as these should be subject to CWA regulation. EEI submitted comments on May 21, consistent with positions we have taken in recent *amicus* briefs, supporting the conclusion that CWA regulation does not apply to discharges that reach jurisdictional surface waters via groundwater. EEI comments request that the agency promptly adopt this interpretation through notice-and-comment rulemaking and move to clarify its previous conflicting statements concerning the scope of the NPDES program and whether the CWA covers releases of pollutants to groundwater that is hydrologically connected to jurisdictional surface waters. EEI continues to engage EPA on this issue, including advocating for a subsequent proposed rulemaking.

Tribal Lands

Many EEI members have no choice but to site some electric generation and delivery facilities on federal and Indian lands. Such lands are so ubiquitous in the West that there often are no practical alternatives. The process of getting approvals to site facilities on these lands, and to renew expiring approvals, is becoming increasingly challenging.

One particularly difficult illustrative example involved PNM's AY-transmission line, which crosses some allotted Indian-land parcels and some reservation trust lands in the Navajo Nation. At issue is the transfer of individual allotted land to a tribe and how such change in ownership affects condemnation authority. The 10th Circuit affirmed a lower court's decision that, when part of a parcel of land allotted to an individual is transferred to the U.S. in trust for a tribe, that land becomes tribal land that is not subject to condemnation. PNM sought, but was denied, Supreme Court review of the 10th Circuit decision. At the request of PNM, EEI filed an *amicus* brief in support of the U.S. Supreme Court granting PNM's petition for certiorari, though PNM's petition ultimately was denied.

This issue impacts many members, especially in the western U.S., where electric company facilities, including transmission lines, are located on or across allotted and tribal lands. The 10th Circuit's decision could have very broad implications for energy infrastructure, both for maintaining and upgrading existing facilities and for building new ones. The industry is meeting with DOI and other stakeholders to assess options that both respect tribal sovereignty and allow for energy infrastructure development that will benefit our country and the tribes. Preserving rights-of-way (ROWs) for critical projects, with just and adequate compensation, benefits all sides.

Endangered Species Act (ESA)

EEI members are subject to various ESA provisions in undertaking generation and delivery activities. In recent years, the number of species listed as endangered or threatened has grown substantially, increasing both the difficulty of obtaining permits and the challenge of staying in compliance with the ESA.

Furthermore, the section 7 consultation and section 10 Habitat Conservation Plan processes have grown lengthy and complex, producing onerous conditions and impeding regulated activities through delay, costs, and limitations on use of land and facilities. At the same time, the listing process has been increasingly driven by third-party lawsuits, and the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (the Services) have expanded their underlying regulations to give themselves very broad authority. For example, critical habitat implementing regulations finalized in the last Administration allow the Services to designate broad areas of existing and potential habitat as critical, restricting land use and increasing mitigation requirements.

EEI has identified regulatory issues and accompanying recommendations on ways to improve the implementation of ESA requirements and processes, including changes relative to listing decisions, critical habitat designations, "take" prohibitions, federal consultations, and habitat conservation planning. On July 25, the Services published three ESA regulatory proposals which align closely with EEI advocacy on needed reforms. EEI will file comments on all three proposals on September 24.

The proposed regulatory reforms will impact Sections 4 and 7 of the ESA. Section 4 addresses species listings and critical habitat designations; Section 7 applies to federal agency consultations when listed species and their habitats could be impacted through land-use activities such as siting and permitting electric facilities. When finalized, the proposed revisions will provide clarity and consistency in how the ESA is implemented, as well as streamline and expedite interagency consultation and cooperation.

Vegetation Management

Transmission and distribution line ROWs crossing federal lands face multiple layers of jurisdiction and decision-making, which can hamper electric companies' ability to timely manage vegetation to meet mandatory reliability standards and reduce wildfire risks. EEI members rely on specific authorizations from government agencies to locate generation and energy grid facilities on federal lands, including transmission, distribution, solar, and wind facilities. Unfortunately, the authorizations often do not include adequate authorization to maintain the facilities and to manage vegetation. EEI advocates giving electric companies adequate authority to engage in integrated vegetation management on and adjacent to ROWs as needed to meet applicable reliability standards, and to enhance grid safety and reliability without the need for agency case-by-case approval.

The FY 2018 Omnibus Appropriations Act, signed into law on March 23, contains positive vegetation management and operation and maintenance (O&M) provisions for power line ROWs located on federal lands. EEI strongly advocated for the provisions in Congress. The Act directs federal land management agencies to issue guidance for utility vegetation management, facility inspection, and right-of-way O&M. The guidance must be compatible with NERC standards, and take into account both fire safety requirements and the 2016 EEI Vegetation Management MOU with the agencies for powerline ROWs on federal lands. On August 4, EEI hosted a U.S. Forest Service-Bureau of Land Management event—focused on facilitating effective implementation of the Omnibus vegetation management provisions—with electric utility vegetation managers, federal agencies and congressional staff participating.

Avian Protection

Implementation of federal avian protection laws can hinder companies' ability to permit, operate and maintain clean energy and transmission and distribution infrastructure. EEI members are seeking to improve the implementation of the Bald and Golden Eagle Protection Act (BGEPA) and the Migratory Bird Treaty Act (MBTA) to reduce the risk of criminal prosecution for non-intentional incidental take arising from otherwise lawful activities, i.e., the generation and delivery of electricity. The question of whether non-intentional incidental take of avian species is covered under MBTA has created legal uncertainty for the industry as U.S. circuit courts are divided on the issue. Some courts have concluded that the MBTA applies only to intentional take and does not prohibit incidental take, while other courts have held that the Act prohibits not only intentional take but also unintentional take.

EEI successfully advocated for the December 2017 DOI Solicitor's "M" Opinion that states the MBTA does not create incidental take liability. On April 11, the U.S. Fish & Wildlife Service (FWS) issued guidance related to how the "M" Opinion should be interpreted and implemented both by FWS, and by extension, other agencies. The guidance memo clarifies that the MBTA's prohibitions on take apply only when the ***intent*** of an action is to take migratory birds, their eggs, or their nests. In broad terms, this means that the FWS would not consider incidental take arising from an activity, the intent of which is the generation and delivery of electricity, a violation of MBTA. EEI is urging DOI to further codify the M Opinion with a new rulemaking, which could be initiated in late 2018. In May, a group of environmental organizations filed a Complaint for Declaratory and Injunctive Relief challenging the M Opinion as unlawful and arbitrary and capricious.

EEI is advocating that the FWS modify BGEPA implementing regulations to simplify and expedite the process for obtaining incidental take permits for generation facilities and the energy grid. Specific BGEPA guidance should be developed for electric transmission and distribution.

Air Quality and Emissions Trends

In July, EPA released its annual air quality report, "Our Nation's Air: Status and Trends Through 2017," which finds that between 1990 and 2017 (except where noted), the average of national ambient concentrations of all criteria (NAAQS) air pollutants decreased significantly: e.g., 1-hour average sulfur dioxide (SO_2) was down 88 percent; annual average nitrogen dioxide (NO_2) was down 56 percent; 24-hour average fine particulate matter ($PM_{2.5}$) was down 40 percent (2000 to 2017); and 8-hour average ground-level ozone (O_3) was down 22 percent.

The report also finds that, between 1970 and 2017, the combined emissions related to criteria air pollutants—SO_2, Pb, CO, $PM_{2.5}$ and PM_{10}, nitrogen oxides (NO_x) and volatile organic compounds (VOCs)—decreased by 73 percent while the U.S. economy grew 262 percent. Emission reduction results for the period 1990 to 2017 included national SO_2 and NO_x emissions declining by 88 and 58 percent, respectively.

The power sector has outperformed the national results. According to April 2018 data from EPA's Clean Air Markets Division, power sector SO_2 and NO_x emissions have been reduced 92 and 84 percent, respectively, from 1990 to 2017. According to EPA's Toxics Release Inventory program, power sector air releases of mercury have been reduced by nearly 90 percent over the period 2006 to 2016.

Regional Haze

EPA was very active on the topic of regional haze (visibility) at both the national and state levels during the last Administration, which issued decisions that frequently limited state discretion and imposed extensive emission reduction requirements. EEI continues to seek improvements to EPA's state-specific regional haze rules for the first compliance period (through 2018) and national regional haze rule and associated guidance for the second compliance period (2019-28). EEI supports aspects of the final rule for the second period, but remains critical of EPA's attempt to lay the groundwork for emission reductions during 2019-28 that go beyond (and possibly far beyond) those needed to meet required uniform (constant) "glide-path" visibility improvements through the year 2064. EEI is likewise critical of EPA's shift within the federal-state relationship, most notably by giving federal land managers an expanded role in regulating individual sources. EPA's final rule became effective in January 2017 and is being litigated by numerous parties.

In January 2018, EPA announced that it will revisit certain aspects of the January 2017 regional haze rule revisions and plans to specifically address Reasonably Attributable Visibility Impairment (RAVI) provisions, Federal Land Manager (FLM) certifications, and other key elements in a new rulemaking. EPA also plans to finalize guidance for regional haze State Implementation Plan (SIP) revisions due in 2021. Following EPA's motion, the D.C. Circuit placed the case in abeyance and directed EPA to file status reports at 90-day intervals beginning April 30. Some states have expressed concern over EPA's lack of progress on revisiting the rule for the second compliance standard and associated guidance. EEI will continue its advocacy with the agency regarding key issues raised in our 2016 comments on the second compliance period proposal and proposed guidance. EEI is supportive of a revised rule that would focus on the four statutory CAA factors and the intended approach of the regional haze program: gradual progress over a glidepath culminating almost 50 years in the future via state-led planning. EEI also supports revision of associated draft guidance and met with EPA to discuss necessary changes to the rule and guidance.

In October 2017, EPA released a memorandum on "Availability of Modeling Data and Associated Technical Support Document for the EPA's Preliminary 2028 Visibility Air Quality Modeling," which communicates the availability of preliminary 2028 visibility modeling data and results. EPA identified numerous uncertainties and model performance issues that should be addressed in future EPA, state, multistate, or stakeholder modeling that may be used in SIP development.

EPA has, by rulemaking, allowed states subject to the Cross-State Air Pollution Rule (CSAPR) to rely on that rule to satisfy Best Available Retrofit Technology (BART) requirements for power plants (for the first compliance period), and this determination has been challenged. Retroactive source-by-source BART determinations for Eastern U.S. power plants would be very disruptive. On March 20, the D.C. Circuit issued a decision in *Utility Air Regulatory Group v. EPA*, finding "no merit in the conservation petitioners' arguments," which included that BART should be determined for each individual source (the National Parks Conservation Association and Sierra Club had challenged EPA's rule that allowed states to treat CSAPR as a better-than-BART compliance option in regional haze SIPs). There are several other pending cases regarding the validity of CSAPR = BART.

EPA also issued several final state-level Federal Implementation Plans (FIPs) in 2016 to address first compliance period regional haze obligations for Arkansas, Texas and Utah. All three state proceedings are currently being litigated and are in the process of being revisited by the Administration. EEI filed *amicus* briefs at the request of affected companies in the Arkansas and Utah cases.

Hazardous Air Pollutants

The industry has fully implemented the Mercury and Air Toxic Standards (MATS), but the rule is being challenged on numerous grounds, most notably regarding whether EPA correctly considered costs and benefits when promulgating the rule (*Murray Energy Corporation v. EPA*, currently in abeyance pending EPA's current review of the previous Administration's "Supplemental Finding" justifying the costs of the rule in response to a Supreme Court decision). Given that electric companies already have fully implemented MATS, rescinding these standards could have significant impacts on the sector, including challenges to cost recovery for installed controls and stranded assets; disruptive impacts on organized markets and wholesale power prices; more stringent future rules; challenges in current and future rate cases for recovery of operation and maintenance expenses for installed controls; impacts on compliance with other standards that rely on MATS controls for compliance; and, negative reactions from customers, state regulators and other stakeholders.

CEO discussions support discouraging EPA from rescinding MATS and EEI continues to carry this message to the Administration, which is considering whether to revisit the regulation of electric company hazardous air pollutants. The industry also is engaged with EPA on other important hazardous air pollutant/MATS-related activities. In *ARIPPA v. EPA*, currently being held in abeyance, EPA should continue to defend the MATS particulate matter standards. In other litigation, EPA should defend the MATS startup/shutdown procedures; a recent decision in the boiler Maximum Achievable Control Technology (MACT) litigation establishes good precedent for the MATS case on startup/shutdown work practice standards.

On July 10, electric sector groups (EEI, APPA, NRECA, CEG, the Class of '85) and labor unions (IBEW and Boilermakers) sent a joint letter to EPA regarding the MATS rule. The letter asks that EPA complete the Residual Risk and Technology Review (RTR) for power plants as expeditiously as possible, and notes that a complete and robust RTR should recognize the capital investments already made for compliance and allow the industry to continue full implementation of the MATS rule. The letter urges EPA to leave the underlying MATS rule in place and notes that pollution controls, where needed, are installed and operating. The letter specifies that in traditionally regulated jurisdictions, state public utility commissions, in many cases, are still reviewing the cost of these controls for inclusion in rates, along with the related and ongoing operation and maintenance costs. The letter also urges EPA to consider potential technical revisions to the MATS rule — such as considering whether performance tests could be performed less frequently if units are running less frequently—while still ensuring that the standards are being achieved.

EPA is required to complete RTRs for two regulations, MATS and combustion turbines (CTs). The CAA requires EPA to evaluate: 1) “residual (health) risk” eight years after a hazardous air pollutant MACT standard is first set; and 2) developments in “practices, processes and control technologies” every eight years. Per statute, EPA must complete an RTR for MATS by early 2020. EPA resource constraints are a concern given that EPA has also been ordered to complete overdue RTR rulemakings for many source categories by March 2020. EEI met with EPA to discuss unintended negative impacts with rescinding MATS and the importance of completing the RTRs. In May, EPA announced that it will release a proposal to address the cost-benefit and RTR issues for MATS in August 2018.

EPA has proposed a rule reconsidering the Risk Management Program (RMP) requirements, "Accidental Release Prevention Requirements: Risk Management Program Under the Clean Air Act." If finalized, this proposal would rescind or modify certain provisions of EPA's January 2017 RMP rule. EEI submitted comments supporting aspects of the proposal, based on 2016 EEI comments, regarding duplication with OSHA regulations, third-party auditing, and public disclosure requirements.

New Source Review

DOE addressed issues related to new source review (NSR) in its August 2017 “Staff Report to the Secretary on Electricity Markets and Reliability,” which detailed the status of the various components of the electricity sector. DOE found that the retrofit-or-retire decision is impacted by EPA's NSR regulations affecting owners’ ability to enhance plant efficiency due to the delay, cost and uncertainty associated with obtaining NSR permits.

An October 2017 EPA report responding to E.O. 13783 discusses four initiatives EPA plans to undertake, including NSR reform. The report states that “EPA believes opportunities exist to simplify the NSR application and permit process; to review ways to reduce the length of the permitting process; to review burdens created by the current emissions offsets structure; to improve relationships with the states; and to review the ‘once in, always in’ policy to clarify how a facility currently classified as a major source for hazardous air pollutants can become an area source.”

EPA has issued several NSR/permitting decisions and anticipates adding additional reforms throughout 2018. In a December 2017 policy memorandum, EPA clarified that the agency will not pursue NSR enforcement action based on the claim that a source failed to properly project future emissions if actual emissions following the retrofit have not increased. In January, EPA withdrew the 1995 "once in, always in" policy for the classification of major sources of hazardous air pollutants under CAA section 112. New guidance finds that sources of hazardous air pollutants previously classified as "major sources" may be reclassified as "area" sources when the facility limits its potential to emit below major source thresholds. States, state organizations (e.g., ECOS) and industries had requested rescission of this policy. EPA anticipates that it will take comment on adding regulatory text that will reflect EPA's reading of the statute as discussed in the memorandum. In March, EPA issued a guidance memo addressing project emission accounting under the NSR preconstruction permit program.

EPA intends to address additional issues—such as "project aggregation" and "routine maintenance, repair and replacement" (RMRR)—in the near term. EPA's actions to date and the subsequent project aggregation action are expected to have limited impacts on electric generating units. Revising aspects of RMRR policy through EPA guidance, or by Congressional legislation, could be beneficial but is challenging given court precedents. EEI met with EPA to seek information and discuss potential upcoming CAA policy actions on NSR/permitting. EEI and member company staff have assessed potential NSR/permitting issues of importance, such as RMRR, best available control technology, and emissions offsets flexibility and availability.

In its CPP replacement rule, EPA may include reforms to the NSR program that would aim to exempt power plants from NSR requirements if making heat rate improvements to comply with the replacement rule.

The House Energy and Commerce Committee has held several hearings on NSR issues in 2018, including on a legislative proposal developed by Rep. Griffith (R-VA). On July 17, the House Energy & Commerce Subcommittee on Environment passed H.R. 3128 to amend the NSR program to rely on the New Source Performance Standards maximum hourly emissions rate test. EEI will monitor and engage as appropriate in important regulatory or legislative NSR initiatives.

National Ambient Air Quality Standards and Interstate Transport

National Ambient Air Quality Standards (NAAQS) and interstate transport continue to be complex issues for the industry, with multiple actions underway related to ozone, fine particle ($PM_{2.5}$), sulfur dioxide (SO_2) and nitrogen dioxide (NO_2) NAAQS.

EPA's final 2015 ozone NAAQS became effective in December 2015. The final standard of 70 parts per billion was consistent with EEI's position that, if EPA decided to make the standard more stringent, the standard should be set no lower than the top end of the proposed range. The standard is being challenged by environmental groups as too lenient, while 10 states and other petitioners are challenging the standards as too stringent. In an August Final Status Report, EPA decided to not reconsider the 2015 NAAQS but rather will complete the 5-year review of the ozone NAAQS by 2020. Motions to govern further proceedings in the litigation were due in August. In late April, EPA announced designations, consisting of 51 non-attainment areas in 22 states and D.C. EPA designated most areas outside of California as marginal non-attainment; areas in Connecticut, New Jersey, and New York were designated as the more stringent moderate non-attainment classification. EPA completed its designations by announcing one non-attainment county in the San Antonio, Texas area in July.

EPA in 2017 foreshadowed potential approaches to implementing the 2015 ozone NAAQS, followed by an April Presidential memo to the EPA Administrator and a May memo from former Administrator Pruitt. The President's April memo to EPA directs EPA to ensure "efficient and cost-effective implementation" of the NAAQS program, including timely processing of state implementation plans; timely processing of preconstruction permit applications; and many other actions. The May memo from former EPA Administrator Pruitt advances many initiatives set out in President Trump's memo, specifically laying out five "principles" for EPA to observe in future NAAQS reviews: 1) meet statutory deadlines; 2) address all CAA provisions for NAAQS reviews; 3) streamline and standardize the process for development and review of key policy-relevant information; 4) differentiate science and policy judgments in the NAAQS review process; and 5) issue timely implementation regulations and guidance.

Regarding interstate transport and the 2008 ozone NAAQS, in October 2016 EPA finalized its CSAPR Update, which is being challenged on numerous grounds, including state emission budgets, improper consideration of international emissions, and failure to treat maintenance-only areas distinctly from non-attainment areas as required by the CAA. The D.C. Circuit has scheduled oral arguments for October 3. In January 2018, New York and Connecticut filed suit in the U.S. District Court for the Southern District of New York asking the court to compel EPA to perform the alleged nondiscretionary duty of promulgating "full remedy" FIPs with respect to interstate transport requirements for the 2008 ozone NAAQS for five upwind states. A June EPA proposal addressing requirements for 20 states regarding interstate transport for the 2008 ozone NAAQS would find that the CSAPR Update fully addresses the CAA interstate transport provisions and that these states are not expected to contribute significantly to nonattainment in, or interfere with maintenance by, any other state.

Also related to the 2008 ozone NAAQS, several eastern states have filed petitions under CAA sections 126 and 176A, and after EPA failed to act in a timely fashion, states and environmental groups have sued EPA in District Court to force action on their petitions, which has led to EPA being put on a schedule to act. In November 2017, EPA finalized its denial of the section 176A petition to include several upwind states in the Ozone Transport Region, which is being challenged and defended by different groups of states. In March, New York state filed a section 126 petition alleging that EGUs and non-EGU facilities, including facilities in the oil and natural gas sector in nine states—Illinois, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia and West Virginia—significantly contribute to nonattainment and interfere with maintenance of the 2008 and 2015 ozone NAAQS in New York. EPA is scheduled to reply by early November. This is the first such petition seeking EPA action on sources beyond EGUs. EPA in June proposed to deny four petitions submitted by the state of Delaware and one petition submitted by the state of Maryland under CAA section 126, after previously denying an earlier Connecticut petition.

Regarding the 2015 ozone NAAQS and interstate transport, the CAA requires states to submit state implementation plan updates to address interstate transport obligations by October 2018. EPA issued modeling in January 2017 (which EEI commented upon) and March 2018 to provide information to states and EPA regional offices as they develop or review state SIPs under the CAA "good neighbor" provision. The March 2018 modeling found 11 monitoring sites outside of California as potential nonattainment receptors and 14 as potential maintenance receptors, estimating the contribution to each from states in the continental United States, plus D.C. and other types of sources such as Canada, Mexico and fires. EPA's March 2018 memo presents numerous potential flexibilities for developing a good neighbor SIP. Two courts in July found in favor of EPA's discretion to approve states' applications for CAA regulatory exemptions for "exceptional events."

In July 2017, the House of Representatives passed legislation (H.R. 806) to delay implementation of EPA's 2015 ozone standard by eight years and revise the NAAQS standard setting process by extending the review

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cycle from five to 10 years. In the Senate, the Environment and Public Works Committee held a hearing on a similar bill (S. 263) in May 2017, but Senate passage is unlikely. In June 2018, the House Science Committee held a hearing on State Perspectives on Regulating Background Ozone to examine available CAA remedies to address natural and international background ozone.

In April 2018, EPA finalized its proposal to retain the primary NAAQS for NO_2—both the 1-hour standard and the annual standard—consistent with the advice from both EPA staff and the Clean Air Scientific Advisory Committee. EEI submitted comments supporting retention of the current standard. EPA proposed to retain the 1-hour SO_2 NAAQS in June and EEI submitted supportive comments in August. Five-year reviews of the 2012 fine particle ($PM_{2.5}$) and 2015 ozone NAAQS are behind schedule, but the Administrator's May memo directs EPA staff to speed up the reviews, meet the October 2020 statutory deadline for the ozone NAAQS review, and complete the overdue $PM_{2.5}$ NAAQS review by the end of 2020.

Air Quality Modeling

EPA is in the process of altering its air quality modeling program through new regulation and guidance. EPA's 2015 "Appendix W" air quality modeling guidelines were effective in May 2017 and included some improvements in designated models and processes to evaluate models, although further changes would be beneficial. EPA proposed guidance on Significant Impact Levels (SILs) and on Modeled Emission Rates for Precursors (MERPs) that should help some facilities with low emission rates avoid complicated and costly air quality modeling for ozone and $PM_{2.5}$. EEI commented on the Appendix W, SILs and MERPs proposals—seeking improved modeling and permitting policy and procedures—and met with EPA and OMB to discuss those comments. In April, EPA issued final guidance and supporting documents recommending SILs. EPA previously has suggested that final SILs will be followed in short order by final MERPs guidance, which would establish allowable annual tonnage emissions thresholds below which facilities would not need to undertake photochemical grid modeling for facility air quality impacts on ozone and $PM_{2.5}$. EEI will continue to advocate for expeditious finalization of MERPs, as well as for codifying the SILs through a formal rulemaking process.