

To: regulatory.review@hq.doe.gov[regulatory.review@hq.doe.gov]; Pruitt, Scott[Pruitt.Scott@epa.gov]; the.secretary@hq.doe.gov[the.secretary@hq.doe.gov]; daniel.cohen@hq.doe.gov[daniel.cohen@hq.doe.gov]
Cc: amy zubaly ()[IMCEAINVALID-amy+20zubaly+20+28+29@EXCH090.serverpod.net]; wayne.smith@hq.doe.gov[wayne.smith@hq.doe.gov]; Dravis, Samantha[dravis.samantha@epa.gov]; Jackson, Ryan[jackson.ryan@epa.gov]; Dunham, Sarah[Dunham.Sarah@epa.gov]; gunasskara.mandy@epa.gov[gunasskara.mandy@epa.gov]; brian.mccormack@hq.doe.gov[brian.mccormack@hq.doe.gov]
From: Theresa Pugh
Sent: Wed 7/5/2017 7:26:53 PM
Subject: Regulatory Burden Reduction RFI (Florida Municipal Electric Association submittal)
[FMEA Comments Regulatory Reduction Request for Info 20170714.pdf](#)

Good afternoon. I am writing to submit the comments from Florida Municipal Electric Association (FMEA) regarding your solicitation for comments on Regulatory Reform at DOE. FMEA is an organization representing 34 municipal or public power electric utilities serving about 15% of the population or 3 million Floridians.

In light of the significance of all that you are undertaking, these comments on regulatory reform are offered 9 days early. Several recommendations refer to EPA regulations. Thus, I have copied Administrator Pruitt, EPA's RRO professionals and appropriate career professionals in this submittal. FMEA provided detailed comments to EPA on May 15 in response to their call for comments on Regulatory Reform.

FMEA is available to answer any questions. FMEA is headquartered in Tallahassee but has technical experts in D. C. should you seek a meeting. We could teleconference Ms. Zubaly in if she is not in DC that day.

Thank you very much,

Theresa

Thank you,

Theresa

Theresa Pugh Consulting, LLC

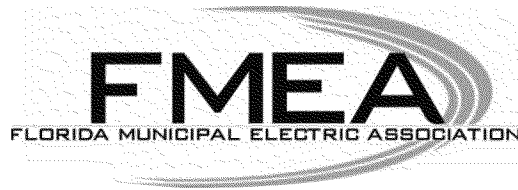
2313 North Tracy Street

Alexandria, VA 22311

703-507-6843

www.theresapughconsulting.com





July 14, 2017

Secretary Rick Perry
Mr. Daniel Cohen (RRO)
Mr. Brian McCormack
U. S. Department of Energy
1000 Independence Ave, SW
Room 6A245
Washington, D. C. 20485

Submitted by e mail to: Regulatory.Review@hq.doe.gov

Re: Regulatory Burden Reduction Request for Information (RFI)

Dear Secretary Perry, Mr. Cohen, and Mr. McCormack:

These comments are submitted on behalf of the Florida Municipal Electric Association (FMEA) regarding the regulatory issues at DOE that merit your consideration in order to reduce regulation and control regulatory costs. You will see that the two issues have a nexus with U. S. Environmental Protection Agency (EPA) and thus why Administrator Scott Pruitt and his Regulatory Reform Officer (RRO), Ms. Samantha Dravis and Mr. Ryan Jackson are copied on the comments.

Who Is FMEA:

The Florida Municipal Electric Association (FMEA) represents the unified interests of 34 public power communities (or municipally owned and operated) across Florida. Municipal electric utilities provide low-cost, reliable electric service, and have been doing so for over a century. Public power utilities play an important role in Florida’s electric industry serving 15% of the state’s population or about 3.0 million Floridians. The utilities are community-owned and locally managed and support local government with transfer payments in lieu of taxes.

Regulatory Issue: Revision/Modify New Source Review Policy (U. S. EPA- Clean Air Act)

U. S. Department of Energy should seek an early role in EPA’s review of the existing interpretations against power plants (and factories). Modernization measures have been made extremely difficult under the Clean Air Act’s New Source Review (NSR) program. Modernization at individual power plants (and factories) reduces coal or natural gas fuel use and makes the entire electric utility system more efficient. These modernizations would also make the U.S. manufacturing sector more competitive because our international business competitors do not have the same policies that discourage

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modernization. In fact, Canada, Germany, the UK, Japan and China encourage factory modernization measures. Organizations as diverse as the FMEA, U. S. Chamber, NAM, Business Roundtable, National Economic Development Association (NEDA-CAP), and American Petroleum Institute filed comments urging NSR reform to the U.S. Department of Commerce.

These groups pointed out that New Source Review should be one of EPA's top priorities for regulations to be modified under Executive Order 13777¹. FMEA agrees that NSR policy must be modified and needs EPA's technical expertise. A one page paper on the need for NSR reform is attached.

Recommendation 1: DOE's Fossil Energy Office and Energy Information Agency should provide policy expertise and technical analysis to EPA on NSR. Power plant energy efficiency improvements should not trigger NSR. Changing NSR policy requires no change to the governing Clean Air Act statute because this EPA change in interpretation was made administratively in the 1990s and can be changed administratively. DOE could provide helpful modernization data to demonstrate why revisions to the earlier 1977 policy would cut regulatory costs and extend the lives of factories and power plants. The underlying Clean Air Act emissions standards and limitations for hazardous air pollutants such as mercury and National Ambient Air Quality Standards (NAAQS) for ozone, PM2.5, carbon monoxide, SO₂ and NO_x, would remain in place and this NSR change would not be contrary to or weaken the statute. DOE's use of policy experts, EIA database and documentation from the Federal Energy Regulatory Commission (FERC)'s database can assist EPA in making better policy decisions by linking efficiency and modernization at power plants with extending the life of the power plant while reducing new investments by power companies that are not yet needed, thus minimizing higher energy costs to residential and industrial consumers. DOE has participated in past interagency policy NSR discussions on modernizing power plants and factories.

Recommendation 2: DOE should be an active participant in the preparation of any regulatory replacement of the so-called New/Modified NSPS for CO₂ and Clean Power Plan or 111(d) rules. DOE brings valuable expertise on the remaining useful life of power plants and what types of energy efficiency and modernizations might be undertaken to reduce CO₂. DOE can make certain that EPA technical and policy staff understand the appropriate regulatory roles of other energy policy setting bodies such as Public Utility Commissions or that of the Federal Energy Regulatory Commission (FERC). DOE should assist EPA to ensure that it does not step outside its statutory authority in setting environmental limits and pollution controls. The U. S. EPA is not an energy policy setting or reviewing agency. EPA should not change the electric utility industry's dispatch order by changing economic dispatch to environmental dispatch based upon CO₂ or CO₂e for other GHGs. Nor should EPA be allowed to regulate outside the fence line of a power plant (or factory) as was attempted under the "building block" design of the Clean Power Plan (CPP). EPA needs DOE's expertise during preparations for the proposed rule and during inter-agency review.

¹ Filings for EPA-HQ-OA-2017-0190 submitted May 15, 2017 in www.regulations.gov

Recommendation 3: Department of Energy should contemplate the meaning of “demonstration”, “available”, “commercial demonstration” or “proven”² when DOE or the ARPA-e program describes breakthroughs or promising new technologies that DOE seeks to support. These terms may have one meaning at DOE but may well have an entirely different meaning under the Clean Air Act’s determinations for Best Available Control Technology (BACT), for NESHAP standards, or for setting Best System of Emissions Reduction (BSER) in EPA’s New Source Performance Standards (NSPS) for both unconventional and conventional pollutants. In particular, FMEA has been concerned about DOE’s descriptions of carbon capture and sequestration (CCS) in the context of EPA’s Clean Power Plan (CPP) regulation. DOE staff made statements between 2013-2016 regarding a series of underground or geologic sequestration of CO₂ technologies including from CO₂ separation, CO₂ pipeline transport, applications of the injection systems and long-term or permanent storage that may have been intended to encourage investments or larger commercial demonstrations.

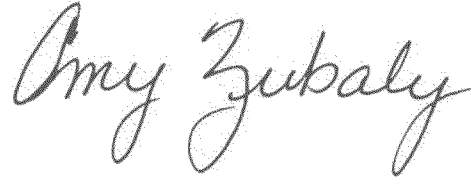
DOE’s statements came too close to an assertion that the series of technologies were “demonstrated” under the Clean Air Act for NSPS/BACT determinations. Yet some of these CCS projects had not officially begun operation, were not fully operational, not yet commercially demonstrated or widely applicable in many geologic formations. Nor were the projects paid for by the marketplace—rather they have been supported with enormous DOE or state subsidies. FMEA does not suggest that DOE refrain from using government funding to wisely support new energy technologies that make sense. However, DOE should remain cognizant that U. S. EPA and DOE are often working on inter-connected issues. DOE must be careful in asserting that technologies are demonstrated and commercially viable in all 50 states when there may be many aspects that have not yet been fully vetted.

In the case of geologic CCS, DOE was entirely too focused on the carbon *separation process* and did not make adequate distinctions in DOE written materials or in oral presentations that the entire chain of CCS technologies had not been commercially demonstrated for the entire power sector and for the many geologic formations across the nation’s 50 states. Nor did DOE investigate whether CO₂, an acid gas, may legally be injected into all 50 states where some states make no differentiation between surface rights of property and mineral rights. These comments don’t dispute DOE’s assertions that CO₂ injection for Enhanced Oil and Gas production works successfully and is demonstrated. EOR and CCS for power plants are not the same technologies.

² <https://energy.gov/fe/science-innovation/carbon-capture-and-storage-research> and NETL’s <https://www.netl.doe.gov/research/coal/major-demonstrations> and <https://www.netl.doe.gov/research/coal/project-information/FE0001547> and Kemper <https://www.c2es.org/docUploads/doe-ccs-memo-09-20-13.pdf> and FutureGen <https://www.netl.doe.gov/File%20Library/Research/Coal/major%20demonstrations/futureGen/FE0001882-FE0005054.pdf>

Thank you for your consideration of our comments. I would be happy to meet with you if you would like more explanation of these issues. Please contact me at azubaly@publicpower.com, or (850) 224-3314, ext. 1, if I can be of any assistance. Or you may reach our federal government environmental affairs consultants at: Hilary Sills, hsills@starpower.net or 202-309-0300
Bob Kappelmann, rbrtkappelmann@gmail.com, 904-307-6277
Theresa Pugh, pugh@theresapughconsulting.com, 703-507-6843

Sincerely,



Ms. Amy S. Zubaly
Executive Director

cc: Mr. Scott Pruitt
Administrator
U. S. EPA
1200 Pennsylvania Ave, NW
Washington, D. C. 20004
Ms. Samantha Dravis (RRO)
Dravis.samantha@epa.gov
Mr. Ryan Jackson (RRO)
Jackson.ryan@epa.gov

Attachment

- New Source Review White Paper

New Source Review - triggering NSR in Permit Reviews for Existing Sources Discourages Energy Efficiency and Power Plant/Factory Modernization

Why it is Broken: Adopted in 1977, New Source Review (NSR) was designed by Congress to address new, greenfield factories. NSR is often interpreted as a “new” source regulation but this name is now a misnomer. As initially implemented by EPA, an existing source would only be subject to NSR when a change was made to the source that resulted in a significant annual emission increase of a regulated air pollutant. Because of its broad nature, Congress included an exception for emission increases due to routine maintenance repairs, and replacement (RMRR). This exception was extremely important because without it, when a unit would shut down, emitting no emissions, it would violate the NSR emission increase criteria by simply restarting the unit.³ Under the Clinton Administration NSR application, the RMRR exception was greatly narrowed to the point that virtually any activity on a generating unit could trigger NSR for that unit. This narrowing was so prescriptive that efficiency improvements at existing factories and power plants could be NSR violations. The most egregious effect of NSR is to discourage modernization and expansions of factories, refineries, paper companies, steel mills, and power plants because it triggers Prevention of Significant Deterioration (PSD) and Best Available Control Technology Requirements (BACT) requirements that rarely can be economically justified for an existing unit. While NSR has been wielded as a cudgel against coal, recent actions by EPA and environmentalists against natural gas generation indicates that NSR challenges to modernization of factories will not be limited to coal.

Economic Implications in Florida: Corrections to the NSR program would allow utilities and other industries to make improvements and modernize without impairing air quality.⁴ The corrections would enable utilities to make repairs to superheaters, replace economizers, make tubing changes with new materials that do not pit and install new turbine blades, etc., which would improve the efficient operation of the plants

How to Fix the Problem: Many fine legal scholars, think tanks and public policy institutions⁵ have written about ways to surgically correct NSR without leaving the door open to NSR abuses. NSR needs to be clearer and to provide bright lines about what is permissible and what is not under RMRR. EPA should work with industry to develop a list of projects that can be categorically excluded from NSR under the RMRR provision of the regulation. This would help eliminate unnecessary NSR permitting that now averages 14

³ Until the reinterpretation under the Clinton administration, RMRR was applied to activities on the unit that was typical for that class of unit. In other words, routine repairs replacement and maintenance to a unit that was routine for that class of unit in the industry.

⁴ It should be noted that all major air pollution sources operate under a Title 5 permit which establishes the emission limits for that facility. These emission limits are set at levels that assures no NAAQS will be violated.

⁵ Including but not limited to Resources for the Future, Indiana University Law School, Heritage Foundation, and others. See Environmental Law Reporter, 47 ELR 10026, “EPA’s New Source Review Program: Time for Reform?“, Environmental Law Institute (ELI), <http://www.eli.org>

months for power plants and refineries.⁶ FMEA urges EPA to consider many responsible recommendations made for reform. Correcting the NSR program does not mean allowing companies and power plants to avoid their responsibilities for reducing pollution under NAAQS, HAP/NESHAP regulations, and other Title I requirements. But power plants and factories should be encouraged to undertake energy efficiency programs and to replace out of date components and equipment in order to be competitive economically as well as reduce air pollutant emission rates. Allowing energy efficiency modernization at power plants and factories can also be a “no regrets” approach.

⁶ Id, derived from EPA’s RACT/BACT/LAER Clearinghouse 9(RBLC) as described in footnote 30 of ELI article.