



Edison Electric
INSTITUTE

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Vice President, Environment

May 15, 2017

Sarah Rees
U.S. Environmental Protection Agency
Office of Regulatory Policy and Management
1200 Pennsylvania Avenue, N.W.
Mail Code 1803A
Washington, D.C. 20460

[Submitted Electronically]

RE: Docket ID No. EPA-HQ-OA-2017-0190; Evaluation of Existing Regulations

Dear Ms. Rees:

The Edison Electric Institute (EEI) appreciates the opportunity to provide input on the Environmental Protection Agency's (EPA's or Agency's) notice—in accordance with Executive Order (E.O.) 13777, Enforcing the Regulatory Reform Agenda—seeking comments on regulations that may be appropriate for repeal, replacement or modification. The identification of these regulations is likewise consistent with the requirements of E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, which stipulates that two regulations be identified for elimination or revision for every new regulation proposed and that the costs of regulations be managed and controlled via a budgeting process.

EEI is the association that represents all U.S. investor-owned electric companies. Our members provide electricity for 220 million Americans and operate in all 50 states and the District of Columbia. As a whole, our industry supports more than 7 million American jobs. Safe, reliable, affordable and clean energy powers the economy and enhances the lives of all Americans.

Driven by customer demands, technology developments, and federal and state regulatory obligations, the electric sector is undergoing a transition of its generating fleet that will continue over the next decade and beyond. Concurrent with this transition, EEI member companies are investing significant amounts of capital to make the energy grid smarter, more dynamic, more flexible, and more secure in order to integrate and deliver a balanced mix of resources from both central and distributed energy resources to customers.

The power sector has significantly decreased its emissions. At the end of 2016, the sector's emissions of sulfur dioxide (SO₂) were down 53 percent since 2014 and 91 percent from 1990 levels; emissions of nitrogen oxides (NO_x) were down by 28 percent and 82 percent, respectively over the same periods. Additionally, carbon dioxide (CO₂) emissions were nearly 25 percent below 2005 levels. This has all occurred while electricity demand has increased 36 percent since 1990.

To support the ongoing fleet transformation and facilitate the continued operation of electric generating units (EGUs), EEI supports cost-effective public policies and a streamlined approach to regulation. In particular, EEI continues to support efforts—administratively and legislatively—to reform the permitting and siting process for critical energy infrastructure projects. An efficient and expeditious permitting process will enable electric companies to invest in energy infrastructure projects that will benefit customers, achieve greater environmental benefits, create jobs, and stimulate the economy.

EPA efforts to evaluate existing and forthcoming regulations and to look for areas of potential improvement are a key step toward establishing a regulatory structure that can appropriately support and inform the types of long-term investments EEI's members make in both existing and new generation capacity, as well as electric transmission lines and natural gas infrastructure. Consistent with EPA's request and E.O. 13777, these comments focus on examples of EPA regulations and significant guidance documents that potentially could be revised in order to reduce administrative burdens, simplify and streamline the overall process, and enhance the ability of EEI's members to permit, site and operate generation, transmission and other infrastructure assets while maintaining environmental integrity.

Importantly, these comments specifically do not address wider regulatory initiatives already identified by the Administration—including, but not limited to, the Administration's stated intent to revise the Waters of the United States (WOTUS) rule; E.O. 13783, Promoting Energy Independence and Economic Growth, which requires a review and possible revision, rescission or replacement of the Clean Power Plan; the reconsideration of the effluent limitations guidelines and standards for the steam electric point source category; and, any changes to regional haze requirements. EEI and its members intend to participate in these initiatives as they are developed.

The Clean Air Act (CAA)

Many of EEI members' generation and other assets are subject to numerous requirements under the CAA and, in particular, are subject to requirements for individual source permitting. Briefly and non-exhaustively, EGUs often must obtain individual source permits as part of the State Implementation Plan (SIP) process to help attain and maintain the National Ambient Air Quality Standards (NAAQS) under CAA section 110, which includes permitting under the Prevention of Significant Deterioration (PSD) program contained across CAA sections 160-169. Further, fossil fuel-based EGUs are subject to New Source Performance Standards (NSPS) under CAA section 111, and have fully implemented standards to reduce emissions of hazardous air pollutants (HAPs) under CAA section 112. Fossil fuel-based EGUs also comply with requirements under Title

IV's Acid Rain Program, obtain operating permits consistent with Title V of the CAA, and address visibility concerns under CAA section 169A.

EEl's members aim to comply with this array of requirements in a coordinated and cost-effective fashion so that they can continue to provide safe, reliable and affordable electricity to customers.

Certain elements of these regulatory programs could be streamlined, improved or modified in order to reduce the administrative burdens these programs can impose, thereby reducing costs to customers while maintaining or exceeding current levels of environmental protection. Such changes would enhance the ability of EEl's members to permit, site and operate fossil fuel-based generation, transmission, and other infrastructure assets while also protecting the environment. To that end, EPA should:

- Modify the Greenhouse Gas Reporting Rule to incentivize the deployment of carbon capture and storage (CCS) technology by clarifying that CO₂ utilized for enhanced oil recovery (EOR) should not report under Subpart RR, but instead under Subpart UU. Such a change would help to incentivize, and make more cost effective, the deployment of CCS technologies by allowing the captured CO₂ to be utilized more widely for EOR;
- Evaluate stack testing and reporting requirements—which exist across multiple rules and programs—to streamline compliance requirements. Numerous programs under CAA sections 112 and 110, as well as requirements for compliance with CAA title IV and title V, require duplicative stack testing and emissions reporting. In addition, EPA should evaluate whether the frequency of testing that is currently required is necessary given the widespread use of Continuous Emissions Monitoring Systems (CEMS) by EGUs, and should evaluate whether the emissions reports required under current programs are duplicative of the reports contained within a unit's title V operating permit;
- Withdraw the “once in, always in” guidance that interprets certain CAA section 112 applicability requirements so that a major source will always be treated as major, even if it becomes an area source under EPA's regulation. Reinterpreting this guidance could encourage fossil fuel-based EGUs to make improvements that would reduce emissions if they would allow reclassification as a minor source, with the attendant reductions in reporting obligations;
- Reevaluate the final rule establishing operational and emission controls for units identified as commercial and industrial solid waste incineration (CISWI) units, which establishes standards on units that “combust[s] any solid waste.”

Historically, however, several types of materials have been introduced into utility boilers, including boiler cleaning waste and refined coal, as a practical way to manage material without increasing emissions and to reduce the emissions of certain contaminants. These beneficial practices should not trigger CISWI regulation, within the boundaries established by court precedent. The evaporation of boiler cleaning waste in utility boilers is a practical, cost-effective method for managing materials that are mostly or entirely water-based and does not increase emissions beyond regulatory thresholds. Accordingly, EPA should clarify the CISWI rule to explain that these activities do not necessarily trigger regulation, and allow fossil fuel-based EGU operators to manage waste materials and emissions in a cost-effective manner, subject to environmental considerations.

The Resource Conservation and Recovery Act (RCRA)

Many of EEI's members also are regulated under RCRA through the provisions of EPA's Coal Combustion Residuals (CCR) rule. While the CCR rule provides significant health protections and requirements for appropriately managing CCRs, the Water Infrastructure Improvement for the Nation (WIIN) Act provides a mechanism for implementation of the CCR rule through state or federal permit programs and therefore the rule should be revised to allow regulatory agencies to tailor the rule's groundwater monitoring and corrective action programs based on site-specific conditions while maintaining the rule's important environmental protections. This would reduce both administrative and substantive economic burdens on fossil fuel-based EGU operators. EPA should:

- Extend compliance dates established in the CCR rule to provide time for implementation of permit programs given the WIIN Act's establishment of procedures for states and EPA to implement the CCR rule through permit programs. This will avoid unnecessary capital expenditures for elements of the rule that may be implemented differently by a state permit program than as contemplated by EPA's final CCR rule;
- Revise the CCR rule to include site-specific flexibility regarding groundwater monitoring and corrective action similar to that provided in the municipal solid waste regulations and applied under state risk-based cleanup programs;
- Modify the CCR rule so that inactive surface impoundments (*i.e.*, impoundments that did not receive CCR after the rule's effective date) are not subject to regulation. EPA and the states can address any risks from these units in a more cost-effective manner under pre-existing imminent hazard provisions.

The Clean Water Act (CWA)

EEI's members are subject to numerous requirements under the CWA because some of the activities undertaken by electric utilities result in a discharge of pollutants to—or a modification of—a WOTUS, therefore requiring a permit under the CWA. Specifically,

EEI's members often must comply with the requirements of section 402, the National Pollutant Discharge Elimination System (NPDES), and section 404, Permits for Dredged or Fill Material that include the streamlined Nationwide Permits (NWP) program. EGUs also are governed by a variety of other substantive CWA provisions that address water quality criteria and standards, including cooling water intake structures through CWA section 316(b) and effluent guidelines.

EEI's members strive to comply with this array of requirements in a coordinated and cost-effective fashion. However, certain parts of EPA's regulatory programs under the CWA could be streamlined, improved or modified to help reduce the administrative burdens these programs can impose, thereby reducing costs to customers while protecting the environment. To that end, EPA should:

- Withdraw the 2015 Water Quality Standard rule, which impinges on states' authority to set water quality standards while considering each state's priorities and greatly reduces state flexibility to consider other factors when establishing standards. The rule unnecessarily complicates the process and could hamper the ability of fossil fuel-based EGUs to obtain and comply with NPDES permits;
- Rescind EPA's 2016 human health criteria for Washington state and Maine and reinstate the prior practice of giving states discretion as to how they apply fish consumption and exposure criteria by allowing them to propose more applicable criteria. Allowing the states to propose their own criteria potentially save significant project implementation costs;
- Withdraw the proposed 2016 NPDES Application and Program Updates rule, which would make changes to the state-delegated NPDES program and establish federal veto authority, among other concerning programmatic changes. The proposed rule has the potential to create additional permit backlogs, and EEI looks forward to engaging in a constructive dialogue with the Agency to explore opportunities for achieving additional efficiencies in the NPDES program;
- Withdraw the final 2016 EPA-USGS report, "Protecting Aquatic Life from Effects of Hydrologic Alteration." The report addresses protections for aquatic life from the effects of flow alteration—in particular, for changes in historic flow patterns that can result from climate change. However, the final report did not address all the technical and policy concerns raised by commenters;
- Withdraw the proposed "Draft Field-based Methods for Developing Aquatic Life Criteria for Specific Conductivity" given the document's technical and scientific deficiencies that would generate overly conservative criteria, leading to unnecessarily costly implementation of water quality criteria.

Again, EEI appreciates the opportunity to provide input on the EPA's notice requesting comment in accordance with E.O. 13771. If you have any questions concerning EEI's input, please contact me (qshea@eei.org or 202-508-5027) or another member of the EEI team.

Sincerely,



Quinlan J. Shea, III

cc: Ryan Jackson
Samantha Dravis
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