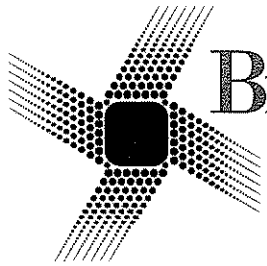
~~Main~~ Case file



Big Rivers
Electric Corporation
201 Third Street • P.O. Box 24
Henderson, KY 42419-0024

PSC CASE NO. 2007-00455
BIG RIVERS ELECTRIC CORPORATION'S
RESPONSES TO AG's
INITIAL DATA REQUEST
3 of 4

BIG RIVERS ELECTRIC CORPORATION'S
RESPONSE TO THE ATTORNEY GENERAL'S INITIAL REQUEST
FOR INFORMATION TO JOINT APPLICANTS
PSC CASE NO. 2007-00455
February 14, 2008

Item 132) Provide documents compiled or written by national associations of which Big Rivers is a member (e.g., NRECA, National Rural Electric Environmental Association) which address potential costs of electric generating company compliance with current and future regulations pertaining to the environment, pollution and/or air/water quality, since January 2005, that are in Big Rivers' possession or available to it as an association member.

Response) Big Rivers objects to this request on the grounds that it is overly broad, unduly burdensome, and irrelevant to the extent that it asks Big Rivers to do additional research or to obtain documents in the possession of third parties that Big Rivers has not used or relied on in connection with the Unwind Transaction. Without waiving this objection, please see the CD titled NRECA Bi-weekly Environmental Bulletins attached to these AG data request responses. This is the primary source of this information received by Big Rivers on a regular basis. Additional reports are attached. An NRECA report entitled "Projections of Equilibrium Allowance Prices for SO_2, NO_x and Mercury" is Confidential and is not included in this response. Big Rivers has not conducted additional research to determine what additional information is available from NRECA.

Witness) Michael H. Core
Counsel

National Rural Electric Cooperative Association
A Touchstone Energy® Cooperative

Glenn English
Chief Executive Officer

DAVE — I know Mike received, but here is another copy

January 9, 2006

Mr. Michael Core
President/CEO
Big Rivers Electric Corporation
PO Box 24
Henderson, KY 42419-0024

RECEIVED JAN 17 2006

Dear Mike,

Greetings and Happy New Year. As you are aware, the Environmental Protection Agency has finalized new Clean Air Act (CAA) regulations that mandate further reductions in electric utility emissions of sulfur and nitrogen oxides as well implement a new program to reduce mercury emissions. These regulations are all designed to meet their objectives through three new "cap and trade" programs covering the three emission types. NRECA, with the technical assistance of many of the G&T environmental professionals, has recently completed a study by Charles River International (CRI) to assess and predict the future market prices of emission "allowances" under these new regulatory programs. A copy of the study is enclosed for your use.

The G&Ts as a whole are familiar with emission trading resulting from national "acid rain" and regional "SIP Call" regulations. For numerous reasons, these new programs pose additional and significant challenges in anticipating future market emission prices and therefore, developing sound compliance strategies. The programs are interrelated creating complexities beyond uncertainties such as future coal and natural gas prices, future possible carbon constraints, and the effectiveness of relatively untested mercury emission controls. With this in mind, the CRI study was designed to predict future market prices for all the covered emissions under individual scenarios, where each scenario stipulates a set of plausible major assumptions that are generally thought to substantially affect future market prices. A select group of G&T environmental professionals collectively representing varying G&T generation and environmental interests assisted in selecting the specific scenarios and assumptions, and their help is acknowledged and greatly appreciated.

As with many studies of this nature, it assumes perfect market conditions. In reality, of course, many subjective factors affect market prices, and for this reason we recommend that you use this information as a management tool in formulating your CAA compliance strategies as opposed unquestioned reliance on its predictions.

You'll note the study is marked "confidential" and includes a request not to copy or distribute the materials outside your G&T. In the past, several G&Ts expressed concern that studies, like the enclosed, could be taken out of context and used negatively in certain public forums by our adversaries. We believe the same potential for misuse exists with this study and thus request it be treated confidentially. Also for the same reason, no electronic copies are available.

Lastly, should you have any questions regarding the study background or content, please call NRECA Environmental Counsel Rae Cronmiller at 703-907-5791.

Sincerely,

Glenn English

cc: Mr. Michael Thompson, Production Operations Technical Advisor

Enclosure

Powerpoint given by Sierra Club/ISY comm. Com. to Co-op Mgr. Meet - 8/29/07 1.00, 33.1

Why Are We Here?

- We recognize the value of coops as leaders at the local and state level.
- We want coops to continue to provide quality service to customers at a time when the energy market is changing.
- We believe that coops and advocacy groups share many concerns about these changes.

1

Our Main Points

Problems:

1. Increasing cost of coal
2. Rapidly increasing costs of building new power plants
3. The increasing costs of required pollution controls
4. Coal is linked to health and environmental problems

The Solution:

- Reducing growth in electric demand,
- Acquiring renewable energy sources.

2

Kentucky's RECs Lack Diversity in Generating Fuel Sources

97.4% of EKPC's generation comes from just one fuel source: Coal

Source:

BENCHMARKING AIR EMISSIONS OF THE 100 LARGEST ELECTRIC POWER PRODUCERS IN THE UNITED STATES – 2004 (April 2006)

Total Generation	Coal Generation
8,604,768	8,384,871

3

Costs Of Building New Power Plants Are Rising Rapidly

For example, Duke, NC Cliffside Unit 6
Cost was originally estimated at $1 billion. The total cost is now $2.4 billion.

Letter to Public Utilities Commission, July 31, 2007

...We continue to update the project cost estimate as we develop more current information. Some parts of the cost estimate have increased and some have decreased as shown in the confidential Appendix 2 to this report; but, based on current information and our plans for further refinement, we remain reasonably confident that the project can be completed within the current capital cost estimate of $1.8 billion. The pro rata portion of the federal advanced clean coal tax credits will reduce the overall project cost to customers by approximately $6b billion.

Our estimate of financing costs (AFUDC) associated with the construction of Unit 6 is unchanged at the $600 million value. Actual financing costs will depend on the company's cost of capital during construction of the plant, the final cost of constructing the plant, and the in-service date of the unit, currently targeted for February 2012. Over the next three months, we

4

The Cost of Coal Has Greatly Increased

- EKPC's cost of coal increased 77% in just five years, from 2002 to 2006.

	2006	2005	2004	2003	2002
Cost of Coal Purchased					
$/ton	$55.82	$49.95	$43.24	$34.13	$32.35
$/MBtu	$2.35	$2.09	$1.78	$1.39	$1.33

Source: EKPC 2006 Annual Report

5

Coal-fired Electricity Has a Cost To Human Health And The Environment

- SOx – Acid Rain
- NOx – Smog
- Fine Particulates – Asthma, Heart disease
- CO_2 – Global Warming

We are all concerned about the health of our communities

6

The Cost Of Controlling Pollution is Also Rising

- Clean Air Interstate Rule takes effect in 2009
- EKPC emits a lot of SOx, NOx, and CO_2
- EKPC is 5th worst in the nation for SOx emissions

Source. April 2006
BENCHMARKING AIR EMISSIONS OF THE 100 LARGEST ELECTRIC POWER PRODUCERS IN THE UNITED STATES – 2004

7

Mitigating CO2 Will Increase Costs Substantially

"As the debate on climate change intensifies, we will give it to you straight: there is a price to pay to reduce greenhouse gas emissions, and it will be expensive."

Glenn English, NRECA Chief Executive Officer
http://www.kaec.coop/info/archive07/climatecosts.htm

8

Mitigating CO_2 Will Increase Costs Substantially for utilities that are over-dependant on coal

- Global Warming Regulations are likely to double the cost of coal fired generation.
- At $27 per ton, CO2 alone will cost EKPC $236,011,698 per year

9

RECs can make choices that control costs and benefit their customers

- Energy efficiency ("negawatts") helps customers, avoids new generation, and avoids distribution costs.
- Renewable energy is clean and spurs economic development.

10

Efficiency is The Lowest Cost Option

- We think large-scale efficiency programs which reduce baseload are a major solution
- Efficiency programs typically reduce load at a cost under 3.5 cents/KWH; new generation costs more.
  - See ACEEE 20 Utilities report (2005); and ACEEE Testimony to Ohio Legislature, House Alternative Energy Committee

11

Efficiency is the lowest cost option

- No transmission and distribution costs with delivery of negawatts, and can be faster than building new generation.
- High per capita consumption of electricity in KY, so good opportunities for efficiency programs.
  - Kentucky 500 KWH residential per capita per month
  - US Average 365 KWH residential per capita per month

Source: Energy Information Administration

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Effective Coop Energy Efficiency Programs:

- **Great Rivers Energy Co-op in MN**
- **Maquoketa Valley Electric Co-op**, Anamosa, Iowa
  - Major rebate program for energy efficient appliances, In rebated 550 water heaters in 2006; over 5,200 since beginning in 1985. Also gave out 6,700 Compact Fluorescents in past two years, est. savings for CFBs approx. 472,000 kWh
- **New Hampshire Electric Co-op**, Plymouth, N.H.,
  - SmartSTART (Savings Through Affordable Retrofit Technologies) loan program,

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Efficiency

One Example from Ameren:

$2 for 6 Compact Fluorescent Bulbs ($.34 per CFL)
Replace 60 w bulb with 15 w bulb = 45 negawatts
45 negawatts * 2 hours per day * 365 days per year * 3 years = 98.5 kw/hours
$0.34 / 98.5= $0.00345 per kw/hour, or 0.34 Cents/Kwh

http://www.ameren.com/AboutUs/ADC_AU_CFL.asp

14

Renewable energy creates new opportunities

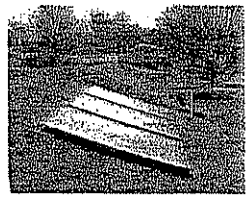
Wind:

- **Coops in Missouri, North Dakota, Minnesota and Oklahoma have very successful wind programs.**
- **Coops can purchase wind energy from other states.**

15

Renewable energy creates new opportunities

Solar Hot Water:



- **No distribution cost**
- **Up to $2000 federal tax credit – 30%**
- **Hot water can be 20% of household electric usage**

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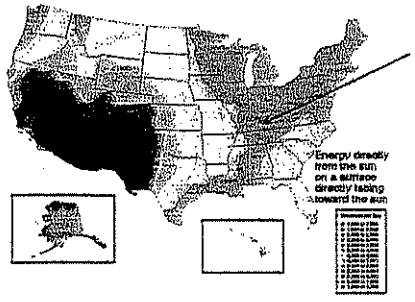
Average Daily Solar Radiation 1961-1990



Kentucky has good solar energy resources

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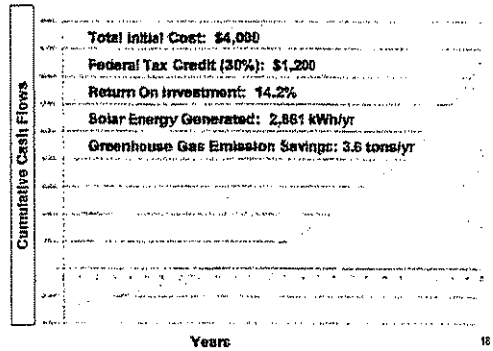
Residential Solar Water Heater Financial Summary



18

Solar Hot Water Information

- **Lifetime Kwh production of solar water heater in previous slide = 71,625 Kwh**
- **If co-op offered $2,000 incentive, cost of KWH saved is under 2.8 cents/kwh. Customer could immediately have slightly lower utility cost.**

- A study of central Kentucky low income, all electric homes showed average electrical use of 1,265 kwh/month
- 15-20% of that total is used to heat water (a little over 200 kwh/mon)
- the families would save, on average, about $225/year, assuming 8¢/kwh cost
- For a family of four, a solar water heater will typically cost $3,000-$4,500
- Kentucky Solar Partnership, solar@kysolar.org, 502-227-4562, 1-888-576-6527 for more information

19

Clean Renewable Energy Bonds

- **Potentially interest free financing for clean renewable energy projects with this Federal incentive**

20

Kentucky RECs can take immediate action

- **Participate in existing demand side management programs**
- **Invest in large scale energy efficiency**
- **Ask EKPC and other G&Ts to issue RFPs for renewable energy sources**
- **Support renewable energy portfolios**

21

Community partners can help find solutions

- **Discuss opportunities to increase customer participation in energy efficiency programs**
- **Identify potential sources of renewable energy**
- **Analyze policies and support those that benefit coops' financial interests as well as community health and environmental protection**

22

An open invitation…

- **We will gladly talk with coops interested in exploring any or all of these issues.**
- **Our goal is to find mutually-beneficial energy solutions for Kentucky.**

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Our Contact Information

- **Sierra Club**
  - Wallace McMullen, mcmulw@gmail.com, 502-228-6016
  - Rick Clewett, Rick.Clewett@insightbb.com, (859) 272-4247
- **Kentuckians for the Commonwealth**
  - Lisa Abbott, labbott@kih.net, (859) 986-1277 ex 223
- **Kentucky Environmental Foundation**
  - Elizabeth Crowe, elizabeth@cwwp.org, (859) 986-0868

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National Rural Electric Cooperative Association

A Touchstone Energy® Cooperative

4301 Wilson Boulevard
Arlington, Virginia 22203-1860
Telephone: (703) 907-5500
TT-(703) 907-5957
www.nreca.org

MEMORANDUM

March 3, 2003

TO: Statewide Managers
G&T Managers
NRECA Board of Directors

FROM: Glenn English, Chief Executive Officer

A few things I wanted to share with you...

Overview ...

The battle lines over critical legislation for electric cooperatives are starting to take shape, and the Administration renewed calls this week for early action on several issues including electric deregulation and streamlining air emissions standards. A 285-page draft electricity restructuring proposal similar to one electric co-ops opposed last year, is now circulating in the House and about to go to Subcommittee markup. NRECA is urging Congress and the Federal Energy Regulatory Commission (FERC) to take a "time-out" on electricity restructuring to review the failed deregulation schemes and consider a different approach that provides reliability and stability for consumers. At the same time, both chambers of Congress are looking over Clear Skies Initiative bills (H.R. 999/S. 485) reintroduced late last week on behalf of the Administration.

The White House is maintaining pressure for an energy bill with an electricity title, as well as passage of environmental, Medicare and medical liability reform legislation. Yet, the time frame for moving bills through Congress early this year is shrinking as the military build up around Iraq intensifies and partisan rhetoric leading to the presidential election campaign continues to build. Electricity restructuring proponents want to move energy legislation quickly, and we must be ready to respond with our position that now is not the time to pass electricity legislation that creates new instability in the electric industry.

In the House...

House Energy and Commerce Committee Chairman Billy Tauzin (R-LA) said this week during an Energy and Air Quality Subcommittee hearing that he plans to move comprehensive energy legislation on a fast track. Subcommittee Chairman Joe Barton (R-TX), who is circulating a draft that is similar to his proposal last year, plans to markup legislation after a hearing on March 13, at which I am scheduled to testify. The new draft strips significant Federal Energy Regulatory Commission (FERC) and Securities and Exchange Commission (SEC) authority over large conglomerate utilities, merchant generators and power marketers, while shifting new FERC regulation onto electric co-ops by: (1) extending FERC transmission regulation to transmitting utilities, including distribution cooperatives; (2) requiring FERC to adopt incentive transmission rates and participant funding in a way that benefits the big investor-owned utilities; (3) adding a

PMA provision that would allow an Regional Transmission Organization to order actions by a Power Marketing Administrations in violation of the preference clause or cost-based rates; (4) repealing the Public Utilities Holding Company Act (PUHCA); and (5) repealing FERC's merger review. My testimony will point out that the electric industry needs stability and reliability right now, not the new instability that would surely result if this bill were enacted. We should not be limiting FERC's and SEC's ability to protect consumers and investors from those who were at fault in California, and extending FERC jurisdiction over co-ops that were not at fault in California.

Committee Clears Pension Reform Bill with Provisions Helpful to Co-ops

The House Education and Workforce Committee approved on a 29-19 vote a pension security bill (H.R. 1000) intended to restore confidence in the national pension system in the wake of the Enron debacle. NRECA is supporting this bill, which has 53 bipartisan co-sponsors and is likely win passage on the floor. This legislation, which is very similar to a measure passed by the House and backed by the President last year, gives workers new options to better manage and build retirement savings. Most H.R. 1000 provisions focus on issues concerning 401(k) participants holding employer stock in their retirement plans (which NRECA plans do not have) and publicly-traded companies accounting standards. NRECA succeeded in getting a provision inserted that permits expanded consideration by the Treasury Department of the facts and circumstances in the application of certain mechanical, functionality tests that would provide NRECA and co-ops participating in NRECA's SelectRE 401(k) plan with more flexibility in pension plan administration. The real debate on this issue will be in the Senate, where the Finance Committee is drafting a bill for introduction in April.

In the Senate...

Sens. Dianne Feinstein (D-CA), Richard Lugar (R-IN), Tom Harkin (D-IA), Peter Fitzgerald (R-IL) and others introduced legislation (S. 509) to restore strong federal oversight over energy markets. The bill calls for restoring the Commodity Futures Trading Commission's (CFTC) ability to police all energy derivatives markets for fraud and commodity price manipulation – including on-line markets like the one operated by Enron. It also strengthens the tools that the Federal Energy Regulatory Commission (FERC) has at its disposal to combat fraud in the energy markets. NRECA has taken a strong leadership role in seeking legislation to close the loopholes that allowed Enron to manipulate energy prices through its own on-line trading market.

Bills Introduced to Advance Administration's "Clear Skies Initiative"

The Administration's Clear Skies proposal was introduced in the House and Senate late last week. Senate Environment Committee James Inhofe (R-OK) and Air Quality Subcommittee Chairman George Voinovich (R-OH) co-sponsored the Senate bill (S. 485). House Energy and Commerce Committee Chairman Billy Tauzin (R-LA) and Energy and Air Quality Subcommittee Chairman Joe Barton (R-TX) co-sponsored a companion bill (H.R. 999). The 2003 version differs only slightly from the original introduced in the last Congress. Clear Skies would mandate new cap and trade requirements for electric utility emissions of sulfur dioxide (SO_2), nitrogen oxides (NOx) and mercury beginning in 2008 for NOx and in 2010 for SO_2 and mercury. The caps are supposed to be substitutes for a host of impending regulatory programs aimed at these same air emissions. If done properly, the imposition of the caps in combination with a streamlining of these other programs away from the utility sector should result substantial emissions reductions at a fraction of the costs associated with the existing regulations. An

NRECA analysis indicates that the new Clear Skies proposal needs to be improved substantially in the regulatory streamlining category to make it a good deal for electric co-ops. Co-ops own and operate a lot of coal-based generation that would be the primary target of any new "multi-emissions" legislative proposal including Clear Skies. Not surprisingly, some in Congress and certain environmental groups have denounced the Administration's Clear Skies proposal as a giveaway to the electric utilities, a rollback from existing Clean Air Act requirements. The bills, introduced as a courtesy to the Administration, kick off a long process in which Congress will determine what provisions will be included in a revamped Clean Air Act.

DG Interconnection Standard Proposal Approved by IEEE Working Group

The Institute of Electrical and Electronics Engineers (IEEE) P 1547 working group recently approved a new technical standard for the interconnection of a generation facility with a capacity of up to 10 MW to the distribution system. The proposed standard must now go to the IEEE Standards Board and then the full IEEE for approval. There is significant controversy about the standard. Many utility engineers believe that the standard does not address all of the technical requirements needed to protect the reliability of the distribution grid from distributed generation, particularly from larger generators or greater numbers of small generators. The standard specifically does not cover system impacts. Consequently, just because a generator meets the requirements of 1547 does not mean that it can be interconnected without degrading safety or reliability for other consumers. Further study and adaptations to the generator or the grid might be required. Despite assertions to the contrary by some generator manufacturers, generators that comply with 1547 still are not "plug and play."

NRECA and its members signed onto the standard despite that concern because there is language in the introduction to 1547 that states explicitly that the tests and standards in 1547 are necessary for all interconnected generators, but are not necessarily sufficient. A footnote states that additional tests and standards may be required in limited situations. It is important that federal and state regulators and legislators that may wish to codify 1547 understand that the standard is valuable, but that it is not a "plug and play" standard. Utilities must have the local flexibility required to adopt additional tests and standards that are not included in 1547 where utility engineers believe they are necessary to preserve safety and reliability.

Interim rule issued on Terrorism Risk Insurance Program

The Treasury Department has issued an interim final rule to provide up to $100 billion in federal guarantees to cover 90 percent of future terrorism-related property and casualty claims over the next three years under the Terrorism Risk Insurance Act of 2002. This interim rule outlines the Terrorism Risk Insurance Program scope and key definitions. The legislation was enacted on Nov. 26, 2002 in response to the unavailability of affordable property and casualty insurance following the September 11, 2001 terrorist attacks. This is another step to help ensure that co-ops will be able to obtain proper property and casualty insurance for their facilities and employees. (See rule at http://www.treas.gov/offices/domestic-finance/financial-institution/terrorism-insurance/regulations/index.html)

Enclosures: (1) Regulatory Issues Tracking Sheet.

(*) Enclosures and attachments always accompany all hardcopy versions of "A Few Things ...". Electronic deliveries may not contain attachments for technical reasons. NOTE: This document, and any attachments, may contain privileged and confidential information intended for limited distribution. This information is reserved for the use of persons specifically addressed on the title page.

REGULATORY ISSUES TRACKING SHEET

♣ February 2003

Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
EPA *Rae Cronmiller X5791	Final Rule and proposed rule	Prevention of Significant Deteriora-tion (PSD) and Non-attainment New Source Review (NSR): Routine Mainten-ance, Repair and Replace-ment	67FR80185 12/21/2002 67FR80289	The EPA is revising regulations governing the New Source Review (NSR) programs mandated by parts C and D of title I of the Clean Air Act (CAA or Act). These revisions include changes in NSR applicability requirements for modifications to allow sources more flexibility to respond to rapidly changing markets and to plan for future investments in pollution control and prevention technologies. Today's changes reflect EPA's consideration of discussions and recommendations of the Clean Air Act Advisory Committee's (CAAAC) Subcommittee on NSR, Permits and Toxics, comments filed by the public, and meetings and discussions with interested stakeholders. The changes are intended to provide greater regulatory certainty, administrative flexibility, and permit streamlining, while ensuring the current level of environmental protection and benefit derived from the program and, in certain respects, resulting in greater environmental protection. **This final rule is effective on March 3, 2003.**
EPA *Rae Cronmiller X5791	Direct Final Rule	National Ambient Air Quality Standard: Particulate Matter	67FR80325 12/31/2002	The EPA is taking direct final action to amend the national ambient air quality standards for particulate matter. The revision reduces to 15 percent the requirement that reporting organizations collocate 25 percent of State and local air monitoring station (SLAMS) sites with a second sampler in order to estimate precision at a reporting organization level. The regulations describe the number of collocated sites required within a reporting organization. With today's action, EPA is making a simple change in the regulations by changing the requirement to collocate 25 percent of reporting organizations sites to 15 percent of the reporting organizations sites. The effect of this change will be to reduce the number of monitors which must be collocated. This in turn will reduce the cost of implementing and maintaining monitoring networks but without significantly affecting our confidence in the precision at the reporting organization level or in providing acceptable estimates of achievement of the precision Data Quality Objectives (DQOs). Since reporting organizations are of unequal size in the number of monitors they implement, 15 percent was considered an acceptable limit of providing enough precision information for smaller reporting organizations while not unduly burdening larger reporting organizations. **This direct final rule will be effective on March 31, 2003** without further notice, unless significant adverse comments are received by January 30, 2003. If significant adverse comments are received, we will publish a timely withdrawal in the Federal Register informing the public that this rule will not take effect.

REGULATORY ISSUES TRACKING SHEET

February 2003

Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
EPA *Jim Stine X5739	Direct Final Rule and proposed rule	National Pollutant Discharge Elimination System--Amendment of Final Regulations Addressing Cooling Water Intake Structures for New Facilities	67FR78947 12/26/2002 67FR78956 12/26/2002	Today's direct final rule makes minor changes to EPA's final rule published December 18, 2001 implementing section 316(b) of the Clean Water Act (CWA) for new facilities that use water withdrawn from rivers, streams, lakes, reservoirs, estuaries, oceans or other waters of the United States for cooling. The December 2001 rule established national technology-based performance requirements applicable to the location, design, construction, and capacity of cooling water intake structures at new facilities. The national requirements establish the best technology available for minimizing adverse environmental impact associated with the use of these structures. EPA is making several minor changes to the December 2001 rule because, in several instances, the final rule text does not reflect the Agency's intent. **This direct final rule is effective on March 26, 2003 without further notice, unless EPA receives adverse written comment by January 27, 2003.** If EPA receives such comment, it will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that this rule will not take effect. The rule is located at http://www.epa.gov/fedrgstr/.
FERC *Rich Meyer X5811	Notice	Proposed Pricing Policy for Efficient Operation and Expansion of Transmission Grid	68FR3842 1/27/2003	The Federal Energy Regulatory Commission (Commission) proposes a new pricing policy for the rates of transmission owners that transfer operational control of their transmission facilities to a Regional Transmission Organization (RTO), form independent transmission companies (ITCs) within RTOs, or pursue additional measures that promote efficient operation and expansion of the transmission grid. The proposed policy would create rate incentives that reward RTO and ITC formation and grid investment, because independent regional grid operation and coordination will improve grid performance, reduce wholesale transmission and transactions costs, improve electric reliability, and make electric wholesale competition more effective in ways that benefit all customers. We invite comments on the proposed policy statement. **Comments are due March 13, 2003.**

REGULATORY ISSUES TRACKING SHEET

♣ February 2003

Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
FERC *Rich Meyer X5811	Notice	Revised Public Utility Filing Requirements; Notice Providing Detail on Electric Quarterly Reports Software Availability and Announcing Schedule for Software Demonstrations	67FR79077 12/27/2002	The Commission issued an order on December 18, 2002, instructing all public utilities to file Electric Quarterly Reports using software available on its Web site beginning with the report due on or before January 31, 2003. The order ends the interim filing format and fully implements Order No. 2001, a final rule which requires public utilities to file Electric Quarterly Reports. This notice gives more details on the implementation of the new software and announces the availability of in-person and Internet-based software demonstrations. FR 31043, FERC Stats. & Regs.] 31,127 (April 25, 2002); reh'g denied, Order No. 2001-A, 100 FERC] 61,074, reconsideration and clarification denied, Order No.2001-B, 100 FERC] 61,342 (2002). \2\ Respondents are reminded that complete contract data, including all active contracts under 18 CFR part 35, are required beginning with this quarter's filing. The Electric Quarterly Report System can be accessed on the Commission's Web site at http://www.ferc.gov/electric/eqr/eqr.htm. The Electric Quarterly Report System Users Guide, a detailed guidance document, is also available to be downloaded from that web page. The software provides a user interface on the filer's workstation. (For those familiar with the Commission's Form 1 or Form 423 software, the Electric Quarterly Report System uses a similar approach.) It can be loaded onto several PCs to allow multiple users working on a LAN. Data can reside anywhere on the user's network. Data can be entered manually or imported into the system in Comma Separated Values (CSV) format. In addition to the Electric Quarterly Report System Users Guide, respondents can participate in demonstrations of the software at the Commission and on-line, using the Internet. **For more information on how Webex works, see** http://www.webex.com. It is free to the respondents who participate. There will also be a recorded Webex demo made available for downloading from the Commission's Web site by December 20. Persons desiring to participate in either of the Webex demos should e-mail public.webtrain@ferc.gov and state which demo they would like to participate in.

REGULATORY ISSUES TRACKING SHEET

February 2003

Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
FERC *Rich Meyer X5811	Notice: Comment Request	Remedying Undue Discrimin-ation Through Open Access Transmission Service and Standard Electricity Market Design	67FR76122 12/11/2002	In the Standard Market Design Notice of Proposed Rulemaking, (67 FR 55452, Aug. 29, 2002), the proposed open access transmission tariff imposes an obligation on an Independent Transmission Provider, if a request for transmission service cannot be accommodated, to use due diligence to expand or modify its transmission system. The Commission invites all interested persons to file comments with respect to whether a merchant transmission provider should have an obligation to expand its merchant transmission facilities. **Initial comments were due January 10, 2003. Reply comments were due February 17, 2003.** (Comments on this issue should be filed in conjunction with any January 10, 2002 comments on transmission planning and pricing, including participant funding).
FERC *Rich Meyer X5811	Notice Extension of Time and Further Procedures; Standardiza -tion of Small generator interconnec-tion	NOPR; Extension of comment period	67FR70194 11/21/2002	The Federal Energy Regulatory Commission is extending the deadline for filing of comments on the Advance Notice of Proposed Rulemaking (ANOPR) and comments on the consensus documents that are currently due to be filed on November 12, 2002. Comments were extended to and including December 9, 2002. On August 16, 2002, the Commission issued an Advance Notice of Proposed Rulemaking (ANOPR) in the above-docketed proceeding. On October 23, 2002, a Notice extending the period for filing of comments until November 26, 2002 was issued. Notice is given that the deadline for the filing of comments on the ANOPR and comments on the consensus documents (which are due to be filed November 12, 2002) was extended to December 20, 2002. Furthermore, on or before December 9, 2002, the stakeholders who have participated in the development of the consensus documents will file statements explaining their various positions on the consensus documents. Upon receipt of these statements, Commission staff will prepare a summary table showing various issues and delineating the positions and explanations of the various parties and file the summary table in this proceeding.

REGULATORY ISSUES TRACKING SHEET

♣ February 2003

Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
FERC *Rich Meyer X5811	**Final Rule**	Accounting and Reporting of Financial Instruments, Comprehen-sive Income, Derivatives and Hedging Activities	67FR67691 11/6/2002	The Federal Energy Regulatory Commission is amending its regulations to update the accounting and financial reporting requirements under its Uniform Systems of Accounts for jurisdictional public utilities and licensees, natural gas companies and oil pipeline companies. The Commission is establishing uniform accounting requirements and related accounts for the recognition of changes in the fair value of certain security investments, items of other comprehensive income, derivative instruments, and hedging activities. The Commission is adding new balance sheet accounts to the Uniform Systems of Accounts to record items of other comprehensive income and derivative instruments. The Commission is also adding new general instructions and revising certain account instructions to incorporate the above changes in the existing Uniform Systems of Accounts. And, the Commission is revising the following Annual Reports: FERC Form Nos. 1, 1-F, 2, 2-A and 6 to include the new accounts and a new schedule contained in the final rule. The Commission is severing from this rulemaking proceeding the inquiry on whether independent and affiliated power marketers, and power producers should continue to be eligible, on a case by case basis, for waiver of the Commission's Uniform Systems of Accounts and blanket approval under part 34 of the Commission's regulations for the issuance of securities and the assumptions of liabilities. The Commission will consider separately the issue of accounting and reporting requirements by gas marketers, independent and affiliated power marketers, and power producers. An important objective of the rule is to provide sound and uniform accounting and financial reporting for the above types of transactions and events. The new accounts and reporting schedule will add visibility, completeness and consistency of accounting and reporting changes in the fair value of certain financial instruments, items of other comprehensive income, derivative instruments and hedging activities, in the above mentioned FERC Forms. <u>The rule became effective January 6, 2003.</u>

REGULATORY ISSUES TRACKING SHEET

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
FMCSA *Jonathan Glazier X5798	Final Rule	Commercial Driver's License Standards, Require-ments, and Penalties; Commercial Driver's License Program Improve-ments and Non-commercial Motor Vehicle Violations	68FR4394 1/29/2003	The FMCSA amends its Commercial Driver's License (CDL) rules concerning disqualification of drivers to make a technical correction in response to a petition for reconsideration filed by the International Brotherhood of Teamsters, the Transport Workers Union of America, the Transportation Trades Department of the AFL-CIO, and the Amalgamated Transit Union (collectively, ``the Petitioners''). The technical correction provides that disqualifications for offenses committed by a CDL holder while operating a non-commercial motor vehicle (non-CMV) would be applicable only if the conviction for such offenses results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privileges. The agency denies the Petitioners' request to: shorten the disqualification periods driving a non-CMV while under the influence of controlled substances or alcohol; and establish a means to disqualify foreign drivers for offenses committed in a non-CMV in the country of domicile. The FMCSA believes these issues were adequately explained in the July 31, 2002, final rule concerning the CDL program, and that the petitioners have not presented any new information that would warrant reconsideration of the agency's decisions. **The effective date of this final rule is January 29, 2003.**
Forest Service *Jonathan Glazier X5798	Proposed Rule; Comment Request	National Forest System Land and Resource Manage-ment Planning	67FR72769 12/6/2002	The Forest Service is proposing changes to the National Forest System Land and Resource Management Planning Rule adopted November 9, 2000. These proposed changes are a result of a review conducted by Forest Service personnel at the direction of the Office of the Secretary. The review affirmed much of the 2000 rule and the underlying concepts of sustainability, monitoring, evaluation, collaboration, and use of science. Although the 2000 rule was intended to simplify and streamline the development and amendment of land and resource management plans, the review concluded that the 2000 rule is neither straightforward nor easy to implement. The review also found that the 2000 rule did not clarify the programmatic nature of land and resource management planning. This proposed rule is intended to improve upon the 2000 rule by providing a planning process which is more readily understood, is within the agency's capability to implement, is within anticipated budgets and staffing levels, and recognizes the programmatic nature of planning. **Comments are due by March 6, 2003.**

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
RUS *John Holt X5805	Notice	Information Collection Activity; Comment Request	67FR78771 12/26/2002	In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB). Title: 7 CFR part 1728, Electric Standards and Specifications for Materials and Construction. The Rural Utilities Service makes loans and loan guarantees in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 et seq., (RE Act). Section 4 of the RE Act requires that RUS make or guarantee a loan only if there is reasonable assurance that the loan, together with all outstanding loans and obligations of the borrower, will be repaid in full within the time agreed. In order to facilitate the programmatic interests of the RE Act, and, in order to assure that loans made or guaranteed by RUS are adequately secure, RUS, as a secured lender, has established certain standards and specifications for materials, equipment, and the construction of electric systems. The use of standards and specifications for materials, equipment and construction units helps assure RUS that: (1) Appropriate standards and specifications are maintained; (2) RUS loan security is not adversely affected; and (3) loan and loan guaranter funds are used effectively and for the intended purposes. 7 CFR 1728 establishes Agency policy that materials and equipment purchased by RUS electric borrowers or accepted as contractor-furnished material must conform to RUS standards and specifications where they have been established and, if included in RUS IP 202-1, ``List of Materials Acceptable for Use on Systems of RUS Electrification Borrowers'' (List of Materials), must be selected from that list or must have received technical acceptance from RUS. **Comments are due February 24, 2003.**

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
RUS *Tracey Steiner X5847	Rural Broadband Access Loans and Loan Guarantees; Application deadline	**Final Rule**	68FR4684 1/30/2003 68FR4753 1/30/2003	The Rural Utilities Service (RUS) is amending its regulations in order to establish the Rural Broadband Access Loan and Loan Guarantee Program as authorized by the Farm Security and Rural Investment Act of 2002 (Pub. L. 101-171) (2002 Act). Section 6103 of the Farm Security and Rural Investment Act of 2002 amended the Rural Electrification Act of 1936, as amended (RE Act), to add Title VI, Rural Broadband Access, to provide loans and loan guarantees to fund the cost of construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural communities. This final rule prescribes the types of loans available, facilities financed, and eligible applicants, as well as minimum credit support requirements to be considered for a loan. In addition, the rule prescribes the process through which RUS will consider applicants under the priority consideration and the state allocations required in Title VI. **This rule is effective January 30, 2003.**
RUS *Steve Piecara X5802	**Final Rule**	Exceptions of RUS Operational Controls Under Section 306E of the RE Act	67FR70151 11/21/2002	In an effort to streamline requirements of borrowers and make regulations simple and direct, the Rural Utilities Service (RUS) will eliminate regulations on Exceptions of RUS Operational Controls under Section 306E of the RE Act in its entirety. Because borrowers are now afforded the same exemptions of RUS operational controls by way of other provisions, RUS has determined that the regulation can now be removed from its regulations. **This rule became effective December 23, 2002.**
RUS *Jay Morrison X5825	**Final Rule**	Demand Site management and Renewable Energy Systems	67FR70150 11/21/2002	The Rural Utilities Service (RUS) is removing its regulations which detail separate policies and requirements for loans for renewable energy systems and demand side management. Many of these requirements overlap provisions found elsewhere in part 1710. Others do not seem well suited for the smaller scale projects of this type that are becoming increasingly common in the industry. RUS believes that it is more appropriate to consider such small scale projects in this rapidly developing segment of the energy industry by proceeding on a case-by-case basis. By contrast, the balance of part 1710 affords a useful framework for considering utility-scale energy projects without regard to whether they are for demand side management or renewable resources. This rule was effective November 21, 2002.

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- Most NRECA comments are available on the web site **www.nreca.org** under Legal/Regulatory.
- Updated: February 21, 2003
- Questions about items appearing on this Tracking Sheet? Contact the NRECA staff person identified in the table.

Dial 703-907-then the 4-digit telephone extension listed by the contact name, or e-mail to:
(first name).(last name)@nreca.org.

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A Touchstone Energy® Cooperative

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File: 1.10.4

MEMORANDUM

March 3, 2003

TO: Statewide Managers
G&T Managers
NRECA Board of Directors

FROM: Glenn English, Chief Executive Officer

A few things I wanted to share with you...

Overview ...

The battle lines over critical legislation for electric cooperatives are starting to take shape, and the Administration renewed calls this week for early action on several issues including electric deregulation and streamlining air emissions standards. A 285-page draft electricity restructuring proposal similar to one electric co-ops opposed last year, is now circulating in the House and about to go to Subcommittee markup. NRECA is urging Congress and the Federal Energy Regulatory Commission (FERC) to take a "time-out" on electricity restructuring to review the failed deregulation schemes and consider a different approach that provides reliability and stability for consumers. At the same time, both chambers of Congress are looking over Clear Skies Initiative bills (H.R. 999/S. 485) reintroduced late last week on behalf of the Administration.

The White House is maintaining pressure for an energy bill with an electricity title, as well as passage of environmental, Medicare and medical liability reform legislation. Yet, the time frame for moving bills through Congress early this year is shrinking as the military build up around Iraq intensifies and partisan rhetoric leading to the presidential election campaign continues to build. Electricity restructuring proponents want to move energy legislation quickly, and we must be ready to respond with our position that now is not the time to pass electricity legislation that creates new instability in the electric industry.

In the House...

House Energy and Commerce Committee Chairman Billy Tauzin (R-LA) said this week during an Energy and Air Quality Subcommittee hearing that he plans to move comprehensive energy legislation on a fast track. Subcommittee Chairman Joe Barton (R-TX), who is circulating a draft that is similar to his proposal last year, plans to markup legislation after a hearing on March 13, at which I am scheduled to testify. The new draft strips significant Federal Energy Regulatory Commission (FERC) and Securities and Exchange Commission (SEC) authority over large conglomerate utilities, merchant generators and power marketers, while shifting new FERC regulation onto electric co-ops by: (1) extending FERC transmission regulation to transmitting utilities, including distribution cooperatives; (2) requiring FERC to adopt incentive transmission rates and participant funding in a way that benefits the big investor-owned utilities; (3) adding a

PMA provision that would allow an Regional Transmission Organization to order actions by a Power Marketing Administrations in violation of the preference clause or cost-based rates; (4) repealing the Public Utilities Holding Company Act (PUHCA); and (5) repealing FERC's merger review. My testimony will point out that the electric industry needs stability and reliability right now, not the new instability that would surely result if this bill were enacted. We should not be limiting FERC's and SEC's ability to protect consumers and investors from those who were at fault in California, and extending FERC jurisdiction over co-ops that were not at fault in California.

Committee Clears Pension Reform Bill with Provisions Helpful to Co-ops

The House Education and Workforce Committee approved on a 29-19 vote a pension security bill (H.R. 1000) intended to restore confidence in the national pension system in the wake of the Enron debacle. NRECA is supporting this bill, which has 53 bipartisan co-sponsors and is likely win passage on the floor. This legislation, which is very similar to a measure passed by the House and backed by the President last year, gives workers new options to better manage and build retirement savings. Most H.R. 1000 provisions focus on issues concerning 401(k) participants holding employer stock in their retirement plans (which NRECA plans do not have) and publicly-traded companies accounting standards. NRECA succeeded in getting a provision inserted that permits expanded consideration by the Treasury Department of the facts and circumstances in the application of certain mechanical, functionality tests that would provide NRECA and co-ops participating in NRECA's SelectRE 401(k) plan with more flexibility in pension plan administration. The real debate on this issue will be in the Senate, where the Finance Committee is drafting a bill for introduction in April.

In the Senate...

Sens. Dianne Feinstein (D-CA), Richard Lugar (R-IN), Tom Harkin (D-IA), Peter Fitzgerald (R-IL) and others introduced legislation (S. 509) to restore strong federal oversight over energy markets. The bill calls for restoring the Commodity Futures Trading Commission's (CFTC) ability to police all energy derivatives markets for fraud and commodity price manipulation – including on-line markets like the one operated by Enron. It also strengthens the tools that the Federal Energy Regulatory Commission (FERC) has at its disposal to combat fraud in the energy markets. NRECA has taken a strong leadership role in seeking legislation to close the loopholes that allowed Enron to manipulate energy prices through its own on-line trading market.

Bills Introduced to Advance Administration's "Clear Skies Initiative"

The Administration's Clear Skies proposal was introduced in the House and Senate late last week. Senate Environment Committee James Inhofe (R-OK) and Air Quality Subcommittee Chairman George Voinovich (R-OH) co-sponsored the Senate bill (S. 485). House Energy and Commerce Committee Chairman Billy Tauzin (R-LA) and Energy and Air Quality Subcommittee Chairman Joe Barton (R-TX) co-sponsored a companion bill (H.R. 999). The 2003 version differs only slightly from the original introduced in the last Congress. Clear Skies would mandate new cap and trade requirements for electric utility emissions of sulfur dioxide (SO_2), nitrogen oxides (NOx) and mercury beginning in 2008 for NOx and in 2010 for SO_2 and mercury. The caps are supposed to be substitutes for a host of impending regulatory programs aimed at these same air emissions. If done properly, the imposition of the caps in combination with a streamlining of these other programs away from the utility sector should result substantial emissions reductions at a fraction of the costs associated with the existing regulations. An

NRECA analysis indicates that the new Clear Skies proposal needs to be improved substantially in the regulatory streamlining category to make it a good deal for electric co-ops. Co-ops own and operate a lot of coal-based generation that would be the primary target of any new "multi-emissions" legislative proposal including Clear Skies. Not surprisingly, some in Congress and certain environmental groups have denounced the Administration's Clear Skies proposal as a giveaway to the electric utilities, a rollback from existing Clean Air Act requirements. The bills, introduced as a courtesy to the Administration, kick off a long process in which Congress will determine what provisions will be included in a revamped Clean Air Act.

DG Interconnection Standard Proposal Approved by IEEE Working Group

The Institute of Electrical and Electronics Engineers (IEEE) P 1547 working group recently approved a new technical standard for the interconnection of a generation facility with a capacity of up to 10 MW to the distribution system. The proposed standard must now go to the IEEE Standards Board and then the full IEEE for approval. There is significant controversy about the standard. Many utility engineers believe that the standard does not address all of the technical requirements needed to protect the reliability of the distribution grid from distributed generation, particularly from larger generators or greater numbers of small generators. The standard specifically does not cover system impacts. Consequently, just because a generator meets the requirements of 1547 does not mean that it can be interconnected without degrading safety or reliability for other consumers. Further study and adaptations to the generator or the grid might be required. Despite assertions to the contrary by some generator manufacturers, generators that comply with 1547 still are not "plug and play."

NRECA and its members signed onto the standard despite that concern because there is language in the introduction to 1547 that states explicitly that the tests and standards in 1547 are necessary for all interconnected generators, but are not necessarily sufficient. A footnote states that additional tests and standards may be required in limited situations. It is important that federal and state regulators and legislators that may wish to codify 1547 understand that the standard is valuable, but that it is not a "plug and play" standard. Utilities must have the local flexibility required to adopt additional tests and standards that are not included in 1547 where utility engineers believe they are necessary to preserve safety and reliability.

Interim rule issued on Terrorism Risk Insurance Program

The Treasury Department has issued an interim final rule to provide up to $100 billion in federal guarantees to cover 90 percent of future terrorism-related property and casualty claims over the next three years under the Terrorism Risk Insurance Act of 2002. This interim rule outlines the Terrorism Risk Insurance Program scope and key definitions. The legislation was enacted on Nov. 26, 2002 in response to the unavailability of affordable property and casualty insurance following the September 11, 2001 terrorist attacks. This is another step to help ensure that co-ops will be able to obtain proper property and casualty insurance for their facilities and employees. (See rule at http://www.treas.gov/offices/domestic-finance/financial-institution/terrorism-insurance/regulations/index.html)

Enclosures: (1) Regulatory Issues Tracking Sheet.

(*) Enclosures and attachments always accompany all hardcopy versions of "A Few Things ...". Electronic deliveries may not contain attachments for technical reasons. NOTE: This document, and any attachments, may contain privileged and confidential information intended for limited distribution. This information is reserved for the use of persons specifically addressed on the title page.

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
EPA *Rae Cronmiller X5791	Final Rule and proposed rule	Prevention of Significant Deteriora-tion (PSD) and Non-attainment New Source Review (NSR): Routine Mainten-ance, Repair and Replace-ment	67FR80185 12/21/2002 67FR80289	The EPA is revising regulations governing the New Source Review (NSR) programs mandated by parts C and D of title I of the Clean Air Act (CAA or Act). These revisions include changes in NSR applicability requirements for modifications to allow sources more flexibility to respond to rapidly changing markets and to plan for future investments in pollution control and prevention technologies. Today's changes reflect EPA's consideration of discussions and recommendations of the Clean Air Act Advisory Committee's (CAAAC) Subcommittee on NSR, Permits and Toxics, comments filed by the public, and meetings and discussions with interested stakeholders. The changes are intended to provide greater regulatory certainty, administrative flexibility, and permit streamlining, while ensuring the current level of environmental protection and benefit derived from the program and, in certain respects, resulting in greater environmental protection. **This final rule is effective on March 3, 2003.**
EPA *Rae Cronmiller X5791	Direct Final Rule	National Ambient Air Quality Standard: Particulate Matter	67FR80325 12/31/2002	The EPA is taking direct final action to amend the national ambient air quality standards for particulate matter. The revision reduces to 15 percent the requirement that reporting organizations collocate 25 percent of State and local air monitoring station (SLAMS) sites with a second sampler in order to estimate precision at a reporting organization level. The regulations describe the number of collocated sites required within a reporting organization. With today's action, EPA is making a simple change in the regulations by changing the requirement to collocate 25 percent of reporting organizations sites to 15 percent of the reporting organizations sites. The effect of this change will be to reduce the number of monitors which must be collocated. This in turn will reduce the cost of implementing and maintaining monitoring networks but without significantly affecting our confidence in the precision at the reporting organization level or in providing acceptable estimates of achievement of the precision Data Quality Objectives (DQOs). Since reporting organizations are of unequal size in the number of monitors they implement, 15 percent was considered an acceptable limit of providing enough precision information for smaller reporting organizations while not unduly burdening larger reporting organizations. **This direct final rule will be effective on March 31, 2003** without further notice, unless significant adverse comments are received by January 30, 2003. If significant adverse comments are received, we will publish a timely withdrawal in the Federal Register informing the public that this rule will not take effect.

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EPA *Jim Stine X5739	Direct Final Rule and proposed rule	National Pollutant Discharge Elimination System--Amendment of Final Regulations Addressing Cooling Water Intake Structures for New Facilities	67FR78947 12/26/2002 67FR78956 12/26/2002	Today's direct final rule makes minor changes to EPA's final rule published December 18, 2001 implementing section 316(b) of the Clean Water Act (CWA) for new facilities that use water withdrawn from rivers, streams, lakes, reservoirs, estuaries, oceans or other waters of the United States for cooling. The December 2001 rule established national technology-based performance requirements applicable to the location, design, construction, and capacity of cooling water intake structures at new facilities. The national requirements establish the best technology available for minimizing adverse environmental impact associated with the use of these structures. EPA is making several minor changes to the December 2001 rule because, in several instances, the final rule text does not reflect the Agency's intent. **This direct final rule is effective on March 26, 2003 without further notice, unless EPA receives adverse written comment by January 27, 2003.** If EPA receives such comment, it will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that this rule will not take effect. The rule is located at http://www.epa.gov/fedrgstr/.
FERC *Rich Meyer X5811	Notice	Proposed Pricing Policy for Efficient Operation and Expansion of Transmission Grid	68FR3842 1/27/2003	The Federal Energy Regulatory Commission (Commission) proposes a new pricing policy for the rates of transmission owners that transfer operational control of their transmission facilities to a Regional Transmission Organization (RTO), form independent transmission companies (ITCs) within RTOs, or pursue additional measures that promote efficient operation and expansion of the transmission grid. The proposed policy would create rate incentives that reward RTO and ITC formation and grid investment, because independent regional grid operation and coordination will improve grid performance, reduce wholesale transmission and transactions costs, improve electric reliability, and make electric wholesale competition more effective in ways that benefit all customers. We invite comments on the proposed policy statement. **Comments are due March 13, 2003.**

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FERC *Rich Meyer X5811	Notice	Revised Public Utility Filing Requirements; Notice Providing Detail on Electric Quarterly Reports Software Availability and Announcing Schedule for Software Demonstrations	67FR79077 12/27/2002	The Commission issued an order on December 18, 2002, instructing all public utilities to file Electric Quarterly Reports using software available on its Web site beginning with the report due on or before January 31, 2003. The order ends the interim filing format and fully implements Order No. 2001, a final rule which requires public utilities to file Electric Quarterly Reports. This notice gives more details on the implementation of the new software and announces the availability of in-person and Internet-based software demonstrations. FR 31043, FERC Stats. & Regs.] 31,127 (April 25, 2002); reh'g denied, Order No. 2001-A, 100 FERC] 61,074, reconsideration and clarification denied, Order No.2001-B, 100 FERC] 61,342 (2002). \2\ Respondents are reminded that complete contract data, including all active contracts under 18 CFR part 35, are required beginning with this quarter's filing. The Electric Quarterly Report System can be accessed on the Commission's Web site at http://www.ferc.gov/electric/eqr/eqr.htm. The Electric Quarterly Report System Users Guide, a detailed guidance document, is also available to be downloaded from that web page. The software provides a user interface on the filer's workstation. (For those familiar with the Commission's Form 1 or Form 423 software, the Electric Quarterly Report System uses a similar approach.) It can be loaded onto several PCs to allow multiple users working on a LAN. Data can reside anywhere on the user's network. Data can be entered manually or imported into the system in Comma Separated Values (CSV) format. In addition to the Electric Quarterly Report System Users Guide, respondents can participate in demonstrations of the software at the Commission and on-line, using the Internet. **For more information on how Webex works, see** http://www.webex.com. It is free to the respondents who participate. There will also be a recorded Webex demo made available for downloading from the Commission's Web site by December 20. Persons desiring to participate in either of the Webex demos should e-mail **public.webtrain@ferc.gov** and state which demo they would like to participate in.

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
FERC *Rich Meyer X5811	Notice: Comment Request	Remedying Undue Discrimin-ation Through Open Access Transmission Service and Standard Electricity Market Design	67FR76122 12/11/2002	In the Standard Market Design Notice of Proposed Rulemaking, (67 FR 55452, Aug. 29, 2002), the proposed open access transmission tariff imposes an obligation on an Independent Transmission Provider, if a request for transmission service cannot be accommodated, to use due diligence to expand or modify its transmission system. The Commission invites all interested persons to file comments with respect to whether a merchant transmission provider should have an obligation to expand its merchant transmission facilities. **Initial comments were due January 10, 2003. Reply comments were due February 17, 2003.** (Comments on this issue should be filed in conjunction with any January 10, 2002 comments on transmission planning and pricing, including participant funding).
FERC *Rich Meyer X5811	Notice Extension of Time and Further Procedures; Standardiza -tion of Small generator interconnec-tion	NOPR; Extension of comment period	67FR70194 11/21/2002	The Federal Energy Regulatory Commission is extending the deadline for filing of comments on the Advance Notice of Proposed Rulemaking (ANOPR) and comments on the consensus documents that are currently due to be filed on November 12, 2002. Comments were extended to and including December 9, 2002. On August 16, 2002, the Commission issued an Advance Notice of Proposed Rulemaking (ANOPR) in the above-docketed proceeding. On October 23, 2002, a Notice extending the period for filing of comments until November 26, 2002 was issued. Notice is given that the deadline for the filing of comments on the ANOPR and comments on the consensus documents (which are due to be filed November 12, 2002) was extended to December 20, 2002. Furthermore, on or before December 9, 2002, the stakeholders who have participated in the development of the consensus documents will file statements explaining their various positions on the consensus documents. Upon receipt of these statements, Commission staff will prepare a summary table showing various issues and delineating the positions and explanations of the various parties and file the summary table in this proceeding.

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FMCSA *Jonathan Glazier X5798	Final Rule	Commercial Driver's License Standards, Require-ments, and Penalties; Commercial Driver's License Program improve-ments and Non-commercial Motor Vehicle Violations	68FR4394 1/29/2003	The FMCSA amends its Commercial Driver's License (CDL) rules concerning disqualification of drivers to make a technical correction in response to a petition for reconsideration filed by the International Brotherhood of Teamsters, the Transport Workers Union of America, the Transportation Trades Department of the AFL-CIO, and the Amalgamated Transit Union (collectively, ``the Petitioners"). The technical correction provides that disqualifications for offenses committed by a CDL holder while operating a non-commercial motor vehicle (non-CMV) would be applicable only if the conviction for such offenses results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privileges. The agency denies the Petitioners' request to: shorten the disqualification periods driving a non-CMV while under the influence of controlled substances or alcohol; and establish a means to disqualify foreign drivers for offenses committed in a non-CMV in the country of domicile. The FMCSA believes these issues were adequately explained in the July 31, 2002, final rule concerning the CDL program, and that the petitioners have not presented any new information that would warrant reconsideration of the agency's decisions. The effective date of this final rule is January 28, 2003.
Forest Service *Jonathan Glazier X5798	Proposed Rule; Comment Request	National Forest System Land and Resource Manage-ment Planning	67FR72769 12/6/2002	The Forest Service is proposing changes to the National Forest System Land and Resource Management Planning Rule adopted November 9, 2000. These proposed changes are a result of a review conducted by Forest Service personnel at the direction of the Office of the Secretary. The review affirmed much of the 2000 rule and the underlying concepts of sustainability, monitoring, evaluation, collaboration, and use of science. Although the 2000 rule was intended to simplify and streamline the development and amendment of land and resource management plans, the review concluded that the 2000 rule is neither straightforward nor easy to implement. The review also found that the 2000 rule did not clarify the programmatic nature of land and resource management planning. This proposed rule is intended to improve upon the 2000 rule by providing a planning process which is more readily understood, is within the agency's capability to implement, is within anticipated budgets and staffing levels, and recognizes the programmatic nature of planning. Comments are due by March 6, 2003.

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♣ February 2003

Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
RUS *Tracey Steiner X5847	Rural Broadband Access Loans and Loan Guarantees; Application deadline	**Final Rule**	68FR4684 1/30/2003 68FR4753 1/30/2003	The Rural Utilities Service (RUS) is amending its regulations in order to establish the Rural Broadband Access Loan and Loan Guarantee Program as authorized by the Farm Security and Rural Investment Act of 2002 (Pub. L. 101-171) (2002 Act). Section 6103 of the Farm Security and Rural Investment Act of 2002 amended the Rural Electrification Act of 1936, as amended (RE Act), to add Title VI, Rural Broadband Access, to provide loans and loan guarantees to fund the cost of construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural communities. This final rule prescribes the types of loans available, facilities financed, and eligible applicants, as well as minimum credit support requirements to be considered for a loan. In addition, the rule prescribes the process through which RUS will consider applicants under the priority consideration and the state allocations required in Title VI. **This rule is effective January 30, 2003.**
RUS *Steve Piecara X5802	**Final Rule**	Exceptions of RUS Operational Controls Under Section 306E of the RE Act	67FR70151 11/21/2002	In an effort to streamline requirements of borrowers and make regulations simple and direct, the Rural Utilities Service (RUS) will eliminate regulations on Exceptions of RUS Operational Controls under Section 306E of the RE Act in its entirety. Because borrowers are now afforded the same exemptions of RUS operational controls by way of other provisions, RUS has determined that the regulation can now be removed from its regulations. **This rule became effective December 23, 2002.**
RUS *Jay Morrison X5825	**Final Rule**	Demand Site management and Renewable Energy Systems	67FR70150 11/21/2002	The Rural Utilities Service (RUS) is removing its regulations which detail separate policies and requirements for loans for renewable energy systems and demand side management. Many of these requirements overlap provisions found elsewhere in part 1710. Others do not seem well suited for the smaller scale projects of this type that are becoming increasingly common in the industry. RUS believes that it is more appropriate to consider such small scale projects in this rapidly developing segment of the energy industry by proceeding on a case-by-case basis. By contrast, the balance of part 1710 affords a useful framework for considering utility-scale energy projects without regard to whether they are for demand side management or renewable resources. This rule was effective November 21, 2002.

REGULATORY ISSUES TRACKING SHEET

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- Most NRECA comments are available on the web site **www.nreca.org** under Legal/Regulatory.
- Updated: February 21, 2003
- Questions about items appearing on this Tracking Sheet? Contact the NRECA staff person identified in the table.

Dial 703-907-then the 4-digit telephone extension listed by the contact name, or e-mail to:
(first name).(last name)@nreca.org.

File : 1.10.4

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MEMORANDUM

June 28, 2002

TO: Statewide Managers
G&T Managers
NRECA Board of Directors

FROM: Glenn English, Chief Executive Officer

A few things I wanted to share with you...

Overview...

On the heels of revelations about unethical energy trading practices, news of accounting improprieties and alleged fraud resulting in a $3.8 billion shortfall on the books at telecommunications giant WorldCom has again put a sharp focus on the need for market transparency and other protections for the public. Congress and regulatory leaders are feeling pressure to rein in dubious corporate accounting and require public disclosure of corporate finances. Steady news reports of financial scandals and a lack of public disclosure is increasing support for legislation to ban energy companies from making "wash trades," an old stock market manipulation tactic that dates to the 1920s and now banned by stock markets. The Senate Agriculture Committee will also review Sen. Dianne Feinstein's (D-CA) proposal to boost market transparency and oversight of over-the-counter (OTC) exchanges and online exchanges like Enron's. NRECA is watching these developments closely because we will benefit from having an energy market with greater transparency. But, this new Hill activism could also be an excuse to increase regulation over us.

The House-Senate conference on the energy bill (H.R. 4) opened this week with a televised meeting that revealed little substance about the behind-the-scene talks on key issues. Major issues include Arctic National Wildlife Refuge (ANWR) development, increased ethanol mandate levels, electricity provisions, and renewable portfolio standards (RPS). Just days before, House Energy and Air Quality Subcommittee Chairman Joe Barton (R-TX) told industry officials that energy legislation may not pass this year, but other conferees seem willing to compromise. Conference Chairman Rep. Billy Tauzin (R-LA) said the Senate's electricity restructuring language is "close to what we want to do." Senate Energy and Natural Resources Committee Chairman Jeff Bingaman (D-NM) said they could "find some ways to improve it."

Meanwhile, the White House is urging Congress to quickly approve the proposed Homeland Security Department (HSD); legislation (H.R. 5005) was introduced by House Majority Leader Dick Armey (R-TX) to create the new $37.5 billion department. The

plan to merge about 100 federal agencies and departments has raised legislative oversight and jurisdiction issues for Congress along with the financial and political issues. House committees held more than a dozen hearings on that proposal this week. Senate Government Affairs Chairman Joseph Lieberman (D-CT) has amended a pending anti-terrorism bill (S. 2452) to include homeland security language. The Senate Environment and Public Works Committee moved a related bill (S. 2664) that includes $3.5 billion in "homeland security" block grants for states to increase "first responders" funds for emergency operations such as fire, rescue, ambulance, law enforcement and medicine. Our concern is that enabling laws like FEMA will be reopened, putting at risk our achievement two years ago of keeping electric co-ops eligible in spite of FEMA opposition.

Congress takes Independence Day recess next week with major issues unresolved, most notably House-Senate conferences on energy, trade and FY02 supplemental spending, and no agreement on any FY03 spending bills. In July, the House will come back for three weeks, and the Senate four, before the August recess. The Senate must vote on S.J. Res. 34 to overturn Nevada's veto of a proposed nuclear waste storage site by July 25. Committees are just starting to grapple with the Homeland Security proposal and contentious spending issues. Lawmakers must act fast for an October adjournment, but expect a lame-duck session in November.

In the Senate...

On a slim 10-9 vote, Senate Environment and Public Works Committee Chairman Jim Jeffords (I-VT) was able to move his bill to cap carbon dioxide (CO_2) emissions from electric power plants and set lower levels for sulfur dioxide (SO_2), nitrogen oxide (NOx) and mercury (Hg) out of his committee. Sen. Jeffords' revised Clean Power Act (S. 556) calls for faster emission reductions than the Administration's Clear Skies Initiative. The legislation does not meet the principles outlined by electric cooperatives and will result in increased electricity prices and damage the coal industry. Sen. Max Baucus (D-MT) voted against the measure while Sen. Lincoln Chafee (R-RI) voted for it. Otherwise, all Democrats supported the bill and all Republicans opposed it. The general expectation is the bill will not be considered on the Senate floor this year because of the partisanship, election politics and unrealistic reduction targets. We will do everything possible to stop this bill. Republican and Democratic committee members offered and withdrew several amendments, including complete substitutes. Ranking member Sen. Bob Smith (R-NH) offered a substitute with SO_2, NOx and Hg reduction requirements similar to those in the Clear Skies Initiative. Sen. Baucus said in a strong opposition statement that he agrees with the goals of S. 556, but could not support the bill as drafted. He noted the negative economic impacts that will be imposed on electric consumers in Montana and other rural areas. Sens. James Inhofe (R-OK), George Voinovich (R-OH) and Christopher Bond (R-MO) also raised concerns about impacts for rural communities.

In the House...

The House Energy and Commerce Committee plans a hearing next month on bills by Reps. Peter DeFazio (D-OR) and Greg Walden (R-OR) to amend the Federal Power Act

and Securities Exchange Act to prohibit "round-trip" or "wash" trades by energy traders. Rep. Joe Barton (R-TX) said there is a "100 percent chance that we'll ban round-trip-trades." The current legislation is problematic because some electric co-op transactions could be defined as "wash trades" when they buy back power sold as a result of unexpected weather changes or equipment failures.

After a lot of inter-party wrangling over the appropriate level of discretionary spending, House Appropriations Committee Chairman Bill Young (R-FL) sent his FY03 discretionary spending allocations to the 13 subcommittees, and most are higher than current FY02 levels and FY03 Bush Administration proposals totaling $748.14 billion. Given the demands for defense and homeland security, disaster relief and requests of various state governors, there may not be enough funds to meet all the needs and many doubt they can meet needs at these spending level projections.

NRECA Comments on FERC Standards of Conduct Rulemaking

NRECA filed supplemental comments on the Federal Energy Regulatory Commission's (FERC) proposed standards of conduct for transmission providers on June 2. The comments – developed through the NRECA Transmission Task Force – call for FERC to recognize that electric cooperatives are different from investor owned utilities and should not be subject to the standards of conduct the Commission proposes to impose on IOUs. These attached comments follow up earlier comments filed by NRECA on December 20. FERC's proposal, if applicable to cooperatives, could severely impact and even preclude essential communications between G&Ts and their member distribution cooperatives, as well as communications between power supply and transmission employees within individual G&Ts. NRECA has also successfully urged RUS to also submit comments.

NRECA Comments on FERC Standard Market Design Rulemaking

NRECA has filed supplemental comments at the Federal Energy Regulatory Commission (FERC) on demand response (see attachment). The comments are intended to assist FERC to better address the issue of demand response in the upcoming Standard Market Design Notice of Proposed Rulemaking.

A Break for Congress and 'A Few Things...'; A Safe and Happy Fourth of July

The weeklong Independence Day recess for Congress brings a brief halt in legislative action, and also a pause for "A Few Things..." next week. I will be in touch with you again on July 12. Have an enjoyable and safe Fourth of July celebration.

Enclosures: (4) Market Design filing; Conduct Standards filing; Regulatory Issues Tracking Sheet; Legislative Update.

National Rural Electric Cooperative Association
A Touchstone Energy® Cooperative

Legislative Update

Government Relations Department

RETIREMENT SAVINGS – Several retirement savings tax breaks enacted last year would become permanent under a bill passed by the House on a 308-70 vote. H.R. 4931 eliminates the repeal on Dec. 31, 2010 of higher contribution limits for 401(k) plans and Individual Retirement Accounts (IRAs). The bill maintains provisions that gradually increase annual 401(k) contribution limits to $15,000 by 2006. The annual limit for IRAs would continue to rise to $5,000 in 2008. Along with easing administrative burdens on businesses, the bill enhances the ability of employees to roll pension savings into qualified plans provided by new employers. If the provisions do not become permanent, contribution caps drop to the 2001 levels and higher "catch-up" limits for people older than 50 would be eliminated. The bill is in the Senate, where the outcome is uncertain.

SMALL BUSINESS PAPERWORK – Federal paperwork filing requirements for small businesses would be eased under legislation the House cleared, with Senate amendments, on a 418-0 vote and sent to the President. H.R. 327 amends the Paperwork Reduction Act to require the Office of Management and Budget to publish each year in the *Federal Register* and post on the Internet a list of the regulatory compliance assistance resources available to small businesses. Each agency that collects information and processes paperwork must assign an agency liaison for small businesses and attempt to reduce paperwork burdens for businesses with less than 25 employees.

THREAT WARNING – The Housed passed a bill (H.R. 4598) on a 422-2 vote that would require federal intelligence and law enforcement officials to share information about potential terrorism threats with state and local government officials, emergency management and response administrators, and private-sector companies that oversee critical infrastructure, cyber networks and economic security. Federal officials would have six months to develop procedures for quickly declassifying and sharing information with local officials, and they could use existing electronic information systems. The measure was sent to the Senate.

DEBT LIMIT – On its way to the White House is a bill to raise the debt limit by $450 billion to $6.4 trillion, which the House cleared late this week after President Bush called for passage. The House voted 215-214 to approve S. 2578, a bill the Senate passed two weeks ago. The legislation is necessary to avoid government default when the national debt reaches the $5.95 trillion limit, which was expected to happen on June 28.

ACCOUNTING OVERHAUL – Accounting firms would be limited in consulting work they can do for clients that also hire them to audit their internal corporate books under a draft bill the Senate Banking, Housing and Urban Affairs Committee approved on a 17-4 vote and sent to the Senate. Though the bill has yet to be officially introduced, Senate Majority Leader Tom Daschle (D-SD) has indicated that he wants to move the bill on the Senate floor before the end of this session. This legislation is a direct result of a federal

probe into energy trading activities by Enron, and audit problems stemming from the fact that Enron's auditor, Arthur Andersen LLP, also provided consulting services. In April, the House passed and sent to the Senate a bill (H.R. 3763) that allows an industry Public Regulatory Organization to investigate potential accounting misconduct and issue sanctions under Securities and Exchange Commission (SEC) oversight.

WORKPLACE INJURIES RULES – Labor Department officials would be required to issue within two years a new set of mandatory rules to prevent repetitive motion injuries in workplace settings under a bill the Senate Health, Education, Labor and Pensions Committee sent to the full Senate on a narrow 11-10 vote. S. 2184, sponsored by Sen. John Breaux (D-LA), would replace voluntary ergonomics guidelines issued by the Labor Department in April 2002. The bill would require rules to define situations in which employers must make efforts to prevent repetitive-motion injuries and set standards for measuring those injuries.

UNIVERSAL SERVICE FUND – Senate Commerce Communications Subcommittee members advised the Federal Communications Commission (FCC) during a hearing to take regulatory action to address concerns that the Universal Service Fund (USF), a pool of money used to wire schools and libraries for telecommunications services, including Internet access, will be depleted. USF is a critical source of money for providing widespread telecommunications infrastructure to schools and libraries, particularly in rural areas. Legislators are urging the FCC to develop a new plan for administering USF contributions paid by carriers that provide interstate service. The subcommittee is particularly concerned about shrinking carrier contributions due to increased voice services on the Internet and resulting FCC actions that cut the "e-rate" portion of USF money.

Robert Holt - 703.907.5709
GR Advocacy Tools Group

REGULATORY ISSUES TRACKING SHEET

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
CEQ *Mac McLennan X5809	Proposed Guidelines; Comment Request	Proposed Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information	67FR35814 5/21/2002	This notice requests comment on proposed guidelines implementing Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2002 (Public Law 106-554; H.R. 5658). Section 515 directs the Office of Management and Budget (OMB) to issue government-wide guidelines under sections 3504(d)(1) and 3516 of Title 44, and require each Federal agency to issue agency-specific guidelines, to ensure and maximize the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by the agency and to establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with such guidelines. Each agency must also report periodically to the OMB director on the number, nature, and resolution of complaints received by the agency in regards to these requirements. The proposed guidelines published below would implement these requirements for the Council on Environmental Quality. They are intended to comply with both the statutory requirements noted above and the final guidelines published by OMB on February 22, 2002 (67 FR 36, at 8452). **Comments are due July 1, 2002.** The Council on Environmental Quality's guidelines will be published in the *Federal Register* and posted on the agency's Web site at www.whitehouse.gov/ceq.

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
DOE *Rae Cronmiller X5791	Notice; Comment Request	Voluntary Reporting of Greenhouse Gas Emissions, Reductions, and Carbon Sequestration	67FR30370 5/6/2002	The Department of Energy (DOE) is seeking comments on possible modifications to the guidelines governing the Voluntary Reporting of Greenhouse Gases Program (VRGGP) that allows for the voluntary reporting of greenhouse gas emissions and reductions, and carbon sequestration under section 1605(b) of the Energy Policy Act of 1992. On February 14, 2002, the President directed the Secretary of Energy to propose improvements to the current registry to ``enhance measurement accuracy, *reliability and verifiability, working with and taking into* account emerging domestic and international approaches." This notice of inquiry is an initial step in a process to propose improvements to the current VRGGP Greenhouse Gas Registry (GHG Registry), for which guidelines were published in 1994. DOE is seeking comment on the issues posed below, and welcomes any other comments pertinent to future changes in the GHG Registry. Because of the broad public interest in the issues involved, DOE believes that the public should have an opportunity to provide input on the issues raised in advance of the Secretary' recommendations to the President. DOE is requesting written comments as one means to bring a broad range of views into the process of developing recommendations for proposed improvement to the GHG Registry. After analyzing submissions made in response to this notice, DOE contemplates scheduling at least one public workshop for obtaining additional public input prior to finalizing the recommendations for proposed improvements to the GHG Registry. Notice of workshop(s) and other opportunities for input during development of proposed improvements to the GHG Registry will be published in the *Federal Register*. Comments were due June 5, 2002. The Council on Environmental Quality's guidelines will be published in the *Federal Register* and posted on the agency's Web site at www.whitehouse.gov/ceq.
EPA *Jim Stine X5831	**Proposed rule; comment extension**	National Pollutant Discharge Elimination System; Regulations Addressing Cooling Water Intake Structures for Phase II Existing Facilities	67FR41668 6/19/2002	EPA is extending the comment period for the proposed rule addressing cooling water intake structures for Phase II existing facilities. The proposed rule was published in the *Federal Register* on April 9, 2002 (67 FR 17122). The comment period for the proposed rule is extended by 30 days for a total of 120 days, ending on August 7, 2002. **Comments are due August 7, 2002.**

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
EPA *Rae Cronmiller X5791	Final Rule	Revisions to the Definitions and the Continuous Emission Monitoring Provisions of the Acid Rain Program and the NOX Budget Trading Program	67FR40393 6/12/2002	EPA is taking final action on the portions of the June 13, 2001 proposed rule revisions that modify the existing requirements for sources affected by the Acid Rain Program and by the NOX Budget Trading Program under the October 27, 1998 NOX SIP Call. Certain changes to the proposed rule revisions have been made based on the public comments received. EPA is not finalizing the proposed changes at this time to the Appeal Procedures or to the Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport. This final rule establishes additional flexibility and options for sources in meeting the continuous emission monitoring system (CEMS) requirements under programs to reduce sulfur dioxide and nitrogen oxides emissions. These revisions may apply to sources that monitor and report emissions only during the ozone season, as well as to sources that monitor and report emissions for the entire year. The provisions in this final rule benefit the environment by ensuring that sulfur dioxide (S02), nitrogen oxides (NOX), and carbon dioxide (CO2) emissions are accurately monitored and reported, even as they benefit the affected industrial sources by creating opportunities to adopt cost saving procedures. This document and technical support documents can be accessed through the EPA Web site at: http://www.epa.gov/airmarkets. **The effective date of this rule is July 12, 2002.**
EPA *Bill Wemhoff X5824	Proposed Rule	Hazardous Waste Manage-ment System; Modification of the Hazardous Waste Program; Cathode Ray Tubes and Mercury-Containing Equipment	67FR40507 6/12/2002	Many used cathode ray tubes (CRTs) and items of mercury-containing equipment are currently classified as characteristic hazardous wastes under the Resource Conservation and Recovery Act (RCRA). They are therefore subject to the hazardous waste regulations of RCRA Subtitle C unless they come from a household or a conditionally exempt small quantity generator. Today, the Environmental Protection Agency (EPA) proposes and seeks comment on an exclusion from the definition of solid waste which would streamline RCRA management requirements for used cathode ray tubes (CRTs) and glass removed from CRTs sent for recycling. In today's notice, the Agency also clarifies the status of used CRTs sent for reuse. In addition, EPA proposes and seeks comment on streamlining management requirements for used mercury-containing equipment by adding it to the federal list of universal wastes. Some of the supporting documents in the docket also are available in electronic format on the Internet at URL: http://www.epa.gov/epaoswer/hazwaste/recycle/electron/crt.htm. **Comments are due August 12, 2002.**

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
EPA *Bill Wemhoff X5824	**Final Rule**	Consolidated Emissions Reporting	67FR39602 6/11/2002	This action simplifies and consolidates emission inventory reporting requirements to a single location within the Code of Federal Regulations (CFR), establishes new reporting requirements related to PM2.5 and regional haze, and establishes new requirements for the statewide reporting of area source and mobile source emissions. Many State and local agencies asked EPA to take this action to: Consolidate reporting requirements; improve reporting efficiency; provide flexibility for data gathering and reporting; and better explain to program managers and the public the need for a consistent inventory program. Consolidated reporting should increase the efficiency of the emission inventory program and provide more consistent and uniform data. **These regulatory amendments take effect on August 9, 2002.** A copy can be downloaded from the internet at http://www.epa.gov/ttn/chief.

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
EPA *Rae Cronmiller X5791	**Final Rule**	Section 126 Rule: Revised Deadlines	67FR21521 4/30/2002	EPA is revising the compliance date and other related dates for sources subject to a final rule published on January 18, 2000, known as the Section 126 Rule. The EPA promulgated the rule in response to petitions submitted by four Northeastern States under section 126 of the Clean Air Act (CAA) for the purpose of mitigating interstate transport of nitrogen oxides (NOX) and ozone. Nitrogen oxides are one of the main precursors of ground-level ozone pollution. The Section 126 Rule requires electric generating units (EGUs) and non-electric generating units (non-EGUs) located in 12 States and the District of Columbia to reduce their NOX emissions through a NOX cap-and-trade program. Originally, EPA harmonized the Section 126 Rule with a related ozone transport rule, known as the NOX State implementation plan call (NOX SIP Call), by establishing the same compliance date, May 1, 2003. A court action subsequently delayed the NOX SIP Call compliance deadline until May 31, 2004. More recently, on August 24, 2001, the court temporarily tolled (suspended) the Section 126 Rule compliance date for EGUs pending EPA's resolution of an issue remanded by the court related to EGU growth factors. On April 23, 2002, EPA issued its response to the growth factor remand. That action reactivated the compliance period for EGUs after nearly a year delay. Therefore, with this final rule, EPA is resetting the EGU compliance date and other related dates, such as the monitoring certification date. The EPA is also resetting the dates for non-EGU sources to match the new dates for EGUs. **The new compliance date is May 31, 2004**. In general, other related dates are extended by one year from the original deadlines. Today's rule once again aligns the Section 126 Rule with the NOX SIP Call. **This final rule was effective April 30, 2002.** The *Federal Register* rulemaking actions and associated documents are located at http://www.epa.gov/ttn/rto/126.

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
EPA *Jim Stine X5739	Proposed Rule; Comment Request	National Pollutant Discharge Elimination System—Proposed Regulations to Establish Requirements for Cooling Water Intake Structures at Phase II Existing Facilities	67FR17121 4/9/2002	Today's proposed rule would implement section 316(b) of the Clean Water Act (CWA) for certain existing power producing facilities that employ a cooling water intake structure and that withdraw 50 million gallons per day (MGD) or more of water from rivers, streams, lakes, reservoirs, estuaries, oceans, or other waters of the U.S. for cooling purposes. The proposed rule constitutes Phase II in EPA's development of section 316(b) regulations and would establish national requirements applicable to the location, design, construction, and capacity of cooling water intake structures at these facilities. The proposed national requirements, which would be implemented through National Pollutant Discharge Elimination System (NPDES) permits, would minimize the adverse environmental impact associated with the use of these structures. Today's proposed rule would establish location, design, construction, and capacity requirements that reflect the best technology available for minimizing adverse environmental impact from the cooling water intake structure based on water body type, and the amount of water withdrawn by a facility. In general, the more sensitive or biologically productive the waterbody, the more stringent the requirements proposed. A facility may choose one of three options for meeting best technology available requirements under this proposed rule. **Comments on this proposed rule and information Collection Request (ICR) are due July 8, 2002.**
EPA *Rae Cronmiller X5791	Proposed Rule; Comment period extended	Interstate Ozone Transport: Response to Court Decisions on NOX SIP Call, NOX SIP Call Technical Amendments and Section 126 Rules	67FR17954 4/12/2002	Today, EPA is extending the closing date of the public comment period regarding EPA's notice of proposed rulemaking ``Interstate Ozone Transport: Response to Court Decisions on the NOX SIP Call, NOX SIP Call Technical Amendments, and Section 126 Rules,'' published February 22, 2002 at 67 FR 8395. The original comment period was to close on April 15, 2002. The new closing date will be April 29, 2002. The EPA received a request to extend the comment period due to the complexity of the issues surrounding the actions EPA is proposing to take. All comments were due April 29, 2002.

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
FCC *Tracey Steiner X5847	**Proposed Rule**	Improving Public Safety Communications in the 800 MHz Band and Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels	67FR16352 4/5/2002	In this document, the Commission seeks comment on proposals made by the National Association of Manufacturers and MRFAC, Inc. and Nextel Communications, Inc. for alleviation of interference to public safety communications in the 800 MHz band. Comments were due May 6, 2002, and reply comments are due on or before June 4, 2002. The full text may also be downloaded at www.fcc.gov. **The FCC has since granted a request to extend the reply comment deadline to July 8.**
FERC *Rich Meyer X5811	**Final Rule**	Revised Public Utility Filing Require-ments	67FR31043 5/8/2002	In this final rule, the Federal Energy Regulatory Commission (Commission) is amending its filing requirements for public utilities under the Federal Power Act (FPA) to require public utilities to electronically file Electric Quarterly Reports summarizing the contractual terms and conditions in their agreements for all jurisdictional services (including market-based power sales, cost-based power sales, and transmission service) and transaction information for short-term and long-term market-based power sales and cost-based power sales during the most recent calendar quarter. Implementation of the reporting requirements will take place in two phases: an interim phase through October 31, 2002, and a final phase thereafter. This rule will make available for public inspection, in a convenient form and place all relevant information relating to public utility rates, terms, and conditions of service; ensure that information is available in a standardized, user friendly format; and meet the Commission's electronic filing option obligation. **This final rule will become effective on July 8, 2002.**
FERC *Rich Meyer X5811	Notice Of Proposed Rulemaking (NOPR)	Standardization of Generator Interconnection Agreements and Procedures	67FR22249 5/2/2002	The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations to require public utilities to file the standardized interconnection agreement and procedures we will adopt in this proceeding and to take and provide interconnection service under them. The agreement and procedures also would apply to any non-public utility that seeks voluntary compliance with jurisdictional transmission tariff reciprocity conditions. Comments were due June 17, 2002.

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
FERC *Rich Meyer X5811	Notice	Electricity Market Design and Structure; Notice of Options Paper	67FR18603 4/16/2002	FERC has distributed an options paper for resolving rate and transition issues for standardized transmission service and wholesale electric market design. The purpose of this paper is to stimulate public discussion that can guide the development of a proposed rulemaking on these issues. Parties filing comments are requested to make recommendations on the options that should be included in the proposed rulemaking as well as to address the pros and cons of the various options contained in the paper. The options paper is in the record of this rulemaking docket. It will also be available on the Commission's website at http://www.ferc.gov/Electric/RTO/mrkt-strct-comments/discussion--paper.htm. Comments were due to the Commission by May 1, 2002.
IRS *Steve Piecara X5802	**Final Regulations**	Taxation of Tax-Exempt Organizations' Income From Corporate Sponsorship	67FR20433 4/25/2002	The IRS has issued final regulations relating to the tax treatment of corporate sponsorship payments received by tax-exempt organizations. The final regulations affect exempt organizations that receive sponsorship payments. These regulations were effective April 25, 2002. These regulations are applicable for payments solicited or received after December 31, 1997.
IRS *Steve Piecara X5802	**Final and temporary Regulations**	Required Distributions From Retirement Plans	67FR18988 4/17/2002	The IRS has issued final and temporary regulations relating to required minimum distributions from qualified plans, individual retirement plans, deferred compensation plans under section 457, and section 403(b) annuity contracts, custodial accounts, and retirement income accounts. These regulations will provide the public with guidance necessary to comply with the law and will affect administrators of, participants in, and beneficiaries of qualified plans; institutions that sponsor and individuals who administer individual retirement plans, individuals who use individual retirement plans for retirement income, and beneficiaries of individual retirement plans; and employees for whom amounts are contributed to section 403(b) annuity contracts, custodial accounts, or retirement income accounts and beneficiaries of such contracts and accounts. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of the *Federal Register*. **These regulations are effective January 1, 2003.**

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
IRS *Steve Piecara X5802	NOPR by cross-reference to temporary Regulations	Required Distributions From Retirement Plans	67FR18834 4/17/2002	In the Rules and Regulations section of this issue of the *Federal Register*, the IRS is issuing temporary regulations that provide guidance concerning required minimum distributions for defined benefit plans and annuity contracts providing benefits under qualified plans, individual retirement plans, and section 403(b) contracts. The text of those temporary regulations also serves as the text of these proposed regulations. **Comments are due July 16, 2002.**
OMB *Gary Bartlett X5817	Notice	Availability of the 2002 Circular A-133 Compliance Supplement	67FR16138 4/4/2002	On April 9, 2001 (66 FR 18517), the Office of Management and Budget (OMB) issued a notice of availability of the 2001 Circular A-133 Compliance Supplement. The notice also offered interested parties an opportunity to comment on the 2001 Circular A-133 Compliance Supplement. The 2002 Supplement has been updated to add 8 additional programs, updated for program changes, and makes technical corrections. A list of changes to the 2002 Supplement can be found at Appendix V of the supplement. Due to its length, the 2002 Supplement is not included in this Notice. The 2002 Supplement will apply to audits of fiscal years beginning after June 30, 2001 and supersedes the 2001 Supplement. **All comments on the 2002 Supplement are due by October 31, 2002.** To obtain a copy of the 2002 Supplement, go to the Grants Management heading on the OMB home page on the Internet at www.omb.gov.
OSHA *Jonathan Glazier X5798	Notice: Request for Nominations	Intent to establish a National Advisory Committee on Ergonomics; request for nominations	67FR22121 5/2/2002	The Secretary of Labor intends to establish a Committee to advise the Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) on ergonomic guidelines, research, and outreach, and assistance. The Committee will consist of not more than 15 members who will be selected based upon their expertise or experience with ergonomic issues. OSHA invites interested parties to submit nominations for membership on the Committee. Nominations for membership (whether hard copy, electronic mail, or facsimile) were due June 17, 2002.

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♣ June 2002

Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
OSHA *Jonathan Glazier X5798	**Direct Final Rule;** **Comment Request** **Proposed Rule**	Safety Standards for Signs, Signals, and Barricades	67FR18091 4/15/2002 67FR18145 4/15/2002	The Occupational Safety and Health Administration (OSHA) issued both a direct final rule and a proposed rule amending construction industry standards to require that traffic control signs, signals, barricades or devices protecting construction workers conform to Part VI of either the 1988 Edition of the Federal Highway Administration (FHWA) Manual on Uniform Traffic Control Devices (MUTCD), with 1993 revisions (Revision 3) or the Millennium Edition of the FHWA MUTCD (Millennium Edition), instead of the American National Standards Institute (ANSI) D6.1-1971, Manual on Uniform Traffic Control Devices for Streets and Highways (1971 MUTCD). **This direct final rule will become effective August 13, 2002 unless significant adverse comments were received by June 14, 2002.** If adverse comment is received, OSHA will publish a timely withdrawal of the rule in the *Federal Register*. On-line copies of the Millennium Edition are available for downloading from DOT's web site: http://mutcd.fhwa.dot.gov/kno-millennium. On-line copies of the 1988 Edition of the Manual on Uniform Traffic Control Devices (Revision 3, dated 9/93, with the November 1994 Errata No. 1) are available for downloading from OSHA's website: http://www.osha.gov/doc/highway_workzones.
RUS *Steve Piecara X5802	**Proposed Rule**	Useful Life of Facility Determination	67FR17018 4/9/2002	The Rural Utilities Service (RUS) proposes to eliminate the requirement to use depreciation rates as found in Bulletin 183-1, for determining the useful life of a facility. If the proposed useful life of a facility is deemed inappropriate by RUS, other means to establish an appropriate term for the loan will apply. Current reliance on the fixed range of depreciation rates found in Bulletin 183-1, to be used across the country, has been determined to not be as appropriate as looking at proposals on a case-by-case basis. This proposed rule is made as part of the RUS efforts to continually look for ways to streamline lending requirements and make regulations useful and direct. Comments were due May 9, 2002.

- Most NRECA comments are available on the web site **www.nreca.org** under Legal/Regulatory.
- Updated: June 21, 2002
- Questions about items appearing on this Tracking Sheet? Contact the NRECA staff person identified in the table. Dial 703-907-then the 4-digit telephone extension listed by the contact name, or e-mail to: (first name).(last name)@nreca.org.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Standards of Conduct for Transmission Providers — **Docket No. RM01-10-000**

SUPPLEMENTAL COMMENTS OF THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

The National Rural Electric Cooperative Association ("NRECA") hereby submits these supplemental comments on the Commission's Notice of Proposed Rulemaking ("NOPR") issued on September 27, 2001, relating to standards of conduct for transmission providers.[1] These comments supplement NRECA's previous written comments dated December 20, 2001 and oral comments provided by NRECA's representative at the Commission's Technical Conference in this rulemaking on May 21, 2002.

I. INTRODUCTION

NRECA is a not-for-profit national service organization representing 930 consumer owned not-for-profit rural electric cooperatives providing electricity to more than 35 million consumers in 46 states. Most electric cooperatives are borrowers subject to the federal regulations and mortgage requirements of the U.S. Department of Agriculture's Rural Utilities Service ("RUS"). They are also governed by unique cooperative organization enabling statutes of the states in which they are located, and subject to specific provisions of the Internal Revenue Code that limit the income that tax-exempt cooperatives may receive from non-members.

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[1] *Standards of Conduct for Transmission Providers; Notice of Proposed Rulemaking*, 66 Fed. Reg. 50919 (October 5, 2001).

The Commission has repeatedly recognized that Electric Cooperatives are Different. All rural electric cooperatives are consumer-owned and nearly all are "small electric utilities" as defined by the Small Business Administration. This contrasts with investor-owned utilities, only very few of which qualify as small electric utilities.[2] Electric cooperatives are also *fundamentally different in the way that they are managed and governed and the purpose for which they were created and operated.* Cooperatives are governed by their member-consumers. They were created and are operated solely to provide the most reliable electric service to their members at the most reasonable cost of that service. *The customers are in charge.*

Electric distribution cooperatives commonly participate in larger, "federated" generation and transmission cooperatives ("G&Ts") that provide *transmission and power supply at cost to their cooperative members.* Under the cooperative form of organization, the G&T cooperative operates on a not for profit basis. The distribution cooperatives generally are tied to their G&T cooperatives through long-term, all-requirements contracts under which the G&T provides all of the power requirements of the distribution cooperatives.[3] And critical to this NOPR, the distribution cooperatives, acting together, participate directly in governance of the G&Ts and commonly serve on G&T planning and management committees as part of the cooperative governance structure. They are not passive investors, but rather the collective owners that rely on the service that their G&T provides. Moreover, those G&Ts that receive funding through the RUS have an affirmative federal regulatory obligation to engage in integrated planning on behalf of their member distribution

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[2] *See, Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 at 31,897 (1996) (hereinafter "Order No. 888") "); *order on reh'g*, Order No. 888-A, 78 FERC ¶ 61,220 (1997); Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998); *aff'd sub nom. New York v. FERC*, ___ U.S. ____, 122 S. Ct. 1012 (2002).

[3] In some cases, G&T cooperatives have also created their own federated generation and transmission cooperatives that provide transmission and power supply to the G&T cooperative members, which in turn remain responsible to their own distribution cooperatives. For purposes of application of this NOPR, and its potentially disruptive effect on G&T cooperative management and planning responsibilities, the relationships within the federated G&T cooperatives are virtually the same as the relationships of the G&T cooperative to its distribution cooperatives.

cooperatives, which necessarily entails communication and coordination to effectively meet those needs.

Clarification Needed. As stated in our initial comments in this NOPR, NRECA supports the Commission's efforts to adopt standards of conduct "to govern the relationship between regulated transmission providers and all their energy affiliates."[4] However, NRECA remains concerned that the apparently inadvertent and unnecessarily broad sweep of the proposed standards of conduct will undermine the way cooperatives are governed by their cooperative members and threaten their ability to fulfill their mission of providing low-cost, reliable service to their members. Under reciprocity principles, the Commission has applied previous standards of conduct requirements to non-jurisdictional entities, which makes the application of these proposed standards a significant concern for all cooperatives.[5]

Starting with Order No. 888 and throughout the implementation of non-discriminatory open-access transmission service, the Commission has been sensitive to the differences between the structure of investor-owned utilities and the structure of cooperatives. This sensitivity has been an important factor in ensuring that cooperatives can participate in and share in the benefits of open access transmission, to the benefit of American consumers. But as we noted before, the language of the NOPR, if taken literally, ignores the important differences between cooperatives and investor-owned utilities that the Commission has long recognized. The Staff Analysis included in the April 25, 2002 Notice of Staff Conference in this NOPR addressed concerns raised by other commenters on other aspects of the proposed standards, but it did not address NRECA's concerns on the breadth of the standards noted in our previous comments. Moreover, the failure to clarify the scope of the proposed standards could well expose RUS-borrower cooperatives to inconsistent federal

[4] NOPR, 66 Fed. Reg. at 50920, col. 1.
[5] Order No. 888-A, FERC Stats. and Regs. at 30,286 and n. 330; *Sunflower Electric Power Corp.*, 87 FERC ¶ 61,263, at 61,994-995, n. 6 (1999).

requirements, and compliance with the proposed standards of conduct could force those cooperatives to violate RUS regulations and loan agreements.

NRECA submits these supplemental comments to emphasize the need for clarification by the Commission that these standards (1) will continue the Commission's recognition that distribution cooperatives are not "affiliates" of their G&T cooperative, and (2) will incorporate a waiver procedure and continue the effectiveness of waivers previously issued.[6] NRECA also requests that the Commission revise the proposed standards, consistent with the recognition that distribution cooperatives should not be deemed affiliates, to not require G&T cooperatives to isolate their transmission function from their traditional (and RUS-required) member load-serving function. NRECA has included proposed language to clarify the definition of "affiliate" to assist the Commission.

II. COMMUNICATIONS

Communications regarding these supplemental comments should be directed to the following NRECA representatives:

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[6] NRECA maintains all of the comments initially submitted in writing in December, 2001.

III. COMMENTS

A. CONSISTENT WITH COMMISSION PRECEDENT, THE COMMISSION SHOULD CLARIFY AND REAFFIRM THAT DISTRIBUTION COOPERATIVE MEMBERS AND THEIR GENERATION AND TRANSMISSION COOPERATIVE ARE NOT "AFFILIATES."

The proposed rule, if promulgated in its present form, seems on its face to inadvertently apply the standards of conduct to communications between Generation and Transmission ("G&T") cooperatives and their distribution cooperatives. The rule should clarify and confirm, consistent with the repeated previous treatment of the G&T-distribution cooperative relationship by the Commission, that distribution cooperatives are not "affiliates" of the G&T cooperatives in which they are members. Absent clarification, the existing proposed language for the definition of "affiliate" in proposed § 358.3 (b) would significantly harm cooperatives.

Proposed § 358.3 (b) defines the term "affiliate" to mean "(1) Another person which controls, is controlled by or is under common control with, such person, and (2) For any exempt wholesale generator, as defined under section 32 (a) of the Public Utility Holding Company Act of 1935, as amended, the same as provided in section 214 of the Federal Power Act." The NOPR proposes to define "control" in § 358.3 (c) as follows:

> (c) Control (including the terms "controlling," "controlled by," and "under common control with") as used in this part and § 250.16 of this chapter, includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of 10 percent or more creates a rebuttable presumption of control.

The term "energy affiliate" is then defined in proposed § 358.3 (d) to mean "an affiliate of a transmission provider that (1) engages in or is involved in transmission transactions; or (2) manages or controls transmission capacity of a transmission provider; or (3) buys, sells, trades or administers

natural gas or electric energy; or (4) engages in financial transactions relating to the sale or transmission of natural gas or electric energy."[7]

Since distribution cooperatives buy and sell electric energy, and participate through their elected representatives in the policies and management direction of their G&T cooperative, they may, under a literal reading absent clarification of these proposed definitions, be improperly deemed to be "energy affiliates" of their G&T.

The Commission properly recognized that G&Ts and their member distribution cooperatives should not be considered to be affiliates in Order No. 888. The Commission noted in its response to the comments submitted to the proposed rule that:

> Many cooperatives request that the term "affiliates" be defined: (1) to apply only to corporate "affiliates" over which the transmission customer exercises legal control; and (2) to exclude the distribution cooperative members of a generation and transmission (G&T) cooperative.[8]

The Commission explicitly agreed with the comments submitted that distribution cooperatives and their G&T were not affiliates:

> In addition, in response to arguments raised by cooperatives and joint action agencies, we agree to limit the reciprocity requirement to corporate affiliates. If a G&T cooperative seeks open access transmission service from the transmission provider, then only the G&T cooperative, and not its member distribution cooperatives, would be required to offer transmission service. However, if a member distribution cooperative itself receives transmission service from the transmission provider, then it (but not its G&T cooperative) must offer reciprocal transmission service over its interstate transmission facilities.[9]

The Commission has also explicitly recognized in the context of RTO membership that a

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[7] NOPR, 66 Fed. Reg. at 50927, col. 3.

[8] Order No. 888, FERC Stats. & Regs. at 31,759. *See also, Promoting Wholesale Competition Through Open Access Nondiscriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, order on reh'g*, Order No. 888-A, FERC Stats. and Regs. ¶ 31,048, at 30,366 (1997)(hereinafter "Order No. 888-A") ("In Order No. 888, in response to arguments raised by cooperatives, the Commission agreed to limit the reciprocity requirement to corporate affiliates. In other words, if a G&T cooperative seeks open access transmission service from the transmission provider, only the G&T cooperative (not its member distribution cooperatives) would be required to offer transmission service. If a member distribution cooperative itself receives transmission service from the transmission provider, then it (but not its G&T cooperative) must offer reciprocal transmission service over its interstate transmission facilities, if any.").

[9] *Id.*, at 31,763.

G&T and its member distribution cooperatives are not affiliates. *Avista Corporation, et al.*, 96 F.E.R.C. ¶ 61,058 (2001). And in several other orders, the Commission has treated cooperative power marketers that are owned and controlled by cooperatives as not being subject to the cross-subsidization and affiliated interest rules that otherwise apply to corporate affiliates of investor-owned utilities.[10]

In those decisions, the Commission recognized that for cooperatives, the member-customers enjoy the economic benefits of the transactions with the affiliated marketers, and that there is no affiliate abuse that must be guarded against. Similarly here, the relationship of distribution cooperative to G&T does not create the risk of market abuse that the standards of conduct are intended to address. Virtually all distribution cooperatives are economically tied to their G&T for their power and/or transmission requirements over long-term, usually all-requirements contracts. *Those distribution cooperative members of G&Ts are not independently participating in the wholesale transmission and power markets, and are not in a position to use any transmission information gained from G&T membership to disadvantage other market participants.*

Nothing in the NOPR indicates any intention by the Commission to reverse its decision that G&Ts and their member distribution cooperatives are not affiliates. None of the written comments submitted in this NOPR and none of the speakers at the May 21 Technical Conference opposed NRECA's request that the affiliate definition be changed to exclude the G&T – distribution cooperative relationship. The comments of the Transmission Access Policy Study Group, a strong proponent of the expansion of standards of conduct contemplated in this NOPR, supported clarification that the Commission will continue to follow Order No. 888's approach to limiting the concept of "affiliates" to corporate affiliates, excluding both cooperatives and municipal joint action agencies, citing Order No. 888 at 31, 759 and 31,763. The Commission should clarify that the

[10] *See, e.g., GEN-SYS Energy*, 81 F.E.R.C. ¶ 61,045 at 61,241 (1997), and orders cited therein.

proposed definitions in the rules are not intended to apply to G&T cooperatives and their member distribution cooperatives.

We suggest adding the following language to the "affiliate" definition:

> §358.3 **Definitions**
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> (d) ...(ii) The definition of energy affiliate excludes the distribution cooperative and other members of a generation and transmission (G&T) cooperative.

NRECA would also support similar language with regard to the members of municipal joint action agencies.

B. APPLYING THE PROPOSED STANDARDS OF CONDUCT TO G&T COOPERATIVES AND THEIR MEMBERS WOULD CAUSE SIGNIFICANT HARM.

If the proposed rule is not clarified and applies as broadly as it is written to the conduct of a G&T and its member distribution cooperatives, contrary to what NRECA believes was intended, then the relationship of a G&T to its members will be significantly and adversely affected. [11] Moreover, for those G&Ts that are RUS borrowers, adhering to the proposed standards could place both the G&T cooperative and its distribution cooperative members in breach of their RUS loan commitments, and out of compliance with RUS federal regulations. Thus NRECA urges the Commission to clarify this element of the NOPR as it would apply to cooperatives.

The NOPR proposes that the standards of conduct be applied to all sales functions, including bundled retail sales, and to restrict preferential access to transmission information for the bundled retail sales function. Employees engaged in bundled sales functions for retail native load are to be

[11] As noted above, some G&T cooperatives include other G&T cooperatives as members. Those G&T cooperatives would be just as adversely affected by the proposed standards, and these comments apply equally to such cooperatives and their G&T member cooperatives.

treated under the proposed rules in the same manner as wholesale merchant function employees. Proposed §358.5 (a)(2) would prohibit any employee of an "energy affiliate" from obtaining information about the transmission provider's system "through access to information not posted on the OASIS or Internet website or that is not otherwise also available to the general public without restriction." The information that is covered by this provision would include information about available transmission capability, price, curtailments, ancillary services, balancing, maintenance activity, and any capacity expansion plans.

If applied without clarification, the proposed rules would disrupt the governance and structure of consumer-owned cooperatives, and make it very difficult for them to comply with basic financial and financing requirements as well as with RUS federal regulations. NRECA urges the Commission not to apply this aspect of the proposed rule to cooperatives.

As explained earlier, cooperatives are not-for-profit, member-owned and member-controlled utilities. Under the Rural Electrification program established through the Rural Electrification Act,[12] residents of rural America joined together to form rural electric cooperatives to bring electric service to generally rural, economically-disadvantaged communities at the lowest possible cost. Groups of distribution cooperatives later joined together to form G&T cooperatives. The G&T cooperatives generate and deliver firm, long-term power supply to their member distribution cooperatives at cost, another fundamental principle of cooperative organization and operation. G&T sales of power to non-members in wholesale markets are a secondary function, carried out to dispose of surplus power not required by their distribution cooperative members' needs. On a national basis, G&T cooperatives are net purchasers of electricity, self-generating only approximately fifty percent of what is required by their member distribution cooperatives.

[12] 7 USC § 901, et seq.

Cooperatives are not generally able to raise capital by issuing stock for sale in the capital markets or by financing from conventional lenders. Although there is a growing number of cooperatives that no longer hold RUS debt, most G&T cooperatives still depend upon loans guaranteed by the RUS to fund the construction, maintenance, and improvement of their facilities. All G&T cooperatives, whether or not RUS-financed, use coordinated planning among all of the cooperative members of the G&T in order to efficiently serve the electric load of the entire G&T. Moreover, member-customer participation in G&T governance is a fundamental element of cooperative organization and is required for G&Ts to maintain their tax treatment as cooperatives.

RUS federal lending regulations affirmatively require G&Ts to carefully plan their operations and expansion on an integrated basis, and to operate their generation and transmission resources as an integrated system. For example, the RUS requires, as a matter of federal law, that G&Ts study their combined generation and transmission requirements as part of adopting a Construction Work Plan, which addresses a forward planning period of at least 3 to 4 years. The Construction Work Plan must include

> "transmission facilities required to deliver the power needed to serve the existing and planned new loads of the borrower and its members, and to improve service reliability, including tie lines for improved reliability of service, line conversions, improvements and replacements, new substations and substation improvements and replacements, and System Control and Data Acquisition equipment, including communications, dispatching and sectionalizing equipment, and load management equipment...."[13]

The Construction Work Plan also must include the G&T's share of transmission facilities that tie together systems of supporting power pools, and studies of transmission load flows, and demonstrations of system performance and needs.[14] It must be supported by comprehensive, project-specific engineering and cost studies that cover a period of at least 10 years and that include comprehensive economic analyses of the various options. In addition, a G&T RUS borrower must

[13] 7 C.F.R. §1710.252(c)(2).
[14] 7 C.F.R. § 1710.252(d).

prepare, and its board of directors must approve, a 10-year financial forecast that demonstrates the effects that the addition of generation, transmission and any distribution facilities will have on the G&T borrower's sales, costs, and revenues, and on the cost of power to the member distribution cooperatives. The long-range financial forecast must identify all plans for generation and transmission capital additions and system operating expenses.[15]

The G&T's generation and transmission resources are carefully planned to meet the needs of the members, and the revenues from power sales and delivery to the members are the fundamental security for financing to acquire the G&T's assets. The RUS regulations recognize, incorporate, and rely on the interrelated nature of the G&T organization and its members in the context of an integrated resource plan:

> "When an [Integrated Resource Plan] is required, a distribution borrower that is a member of a power supply borrower [G&T] must use the IRP prepared by the power supply borrower for its overall system. This IRP must have been coordinated with all of the member systems and it must have been approved by the board of directors of the power supply borrower. Because of the relationship between the power supply borrower and its members under which the loans incurred by the power supply borrower are primarily to construct, improve or acquire facilities that benefit all members directly or indirectly, the security of loans to all parties is interlinked."[16]

All of these coordination and planning requirements mean that distribution cooperative members must regularly be involved in the shorter-term and longer-term transmission planning process of the G&T. *The distribution cooperatives are not in the nature of investment subsidiaries; they are the owners of the G&T and generally each has a representative on the board of the G&T.* Those board members are required to understand and approve these various plans that will, by their very nature, include non-public transmission planning information. Moreover, the managers of the distribution cooperatives commonly serve on various facilities and financial planning committees of the G&T, and actively participate in the planning process. Those managers and G&T board members

[15] 7 C.F.R. § 1710.302(d).
[16] 7 C.F.R. § 1710.356(b).

participate in management discussions of the G&T financial operations and the determination of the G&T's rates that it charges its distribution cooperative members. *Treating a G&T cooperative and its member distribution cooperatives as "energy affiliates" under the proposed rule would prevent the distribution cooperatives from complying with federal regulations on facilities and financial planning. Even for non-RUS borrowers, the NOPR 's broad affiliate definition would preclude the G&T from fulfilling its fundamental mission and contractual obligations to effectively serve its member distribution cooperatives needs as a whole.*

As observed before, virtually all distribution cooperative members of G&Ts are tied into long-term, all-requirements power and/or transmission supply agreements with their G&T. The all-requirements power agreements effectively preclude the distribution cooperatives from using transmission related information to obtain any market advantage in the wholesale market. Nor is NRECA aware of any complaints asserted -- either formally or informally -- at the FERC that distribution cooperatives, or G&T cooperatives, have exploited inside transmission knowledge to the disadvantage of potential competitors. There is no record that cooperatives are or have been part of the problem the Commission is now seeking to remedy.

NRECA renews its requests that the Commission clarify that G&T cooperatives be permitted to continue to communicate with their distribution cooperative member-owners as they now do in the normal course of business under Orders 888 and 889, rather than having to subject all potentially "transmission-related" communications with their members to the strictures set out in the proposed standards of conduct.

C. THE RULE SHOULD NOT REQUIRE G&T COOPERATIVES TO FUNCTIONALLY SEPARATE THEIR TRADITIONAL TRANSMISSION AND LOAD SERVING FUNCTIONS.

Just as it is critical for a G&T cooperative's distribution cooperative members to participate in the G&T's planning processes, the G&T's own internal management is a key element of the process.

The standards as proposed would require any G&T management persons having non-public transmission information, whether it be on short-term outage or maintenance plans, or on longer-term improvements and expansions, to be excluded from decision-making on the power supply decisions to serve the distribution members that are the very foundation of the G&T. Yet, as explained above, the G&T is required to develop its Construction Work Plans, its integrated resource plans, and its long-term financial plans on an integrated basis, to best use the financial resources of the G&T to serve the needs of the G&T members as a whole. To do so, the G&T management will unavoidably consider non-public transmission information in the planning process, at a stage well before that information would be meaningful for release to public.

Unlike much larger investor-owned utilities and their holding companies, G&T cooperatives operate with relatively thin layers of senior management, and not uncommonly the most senior executive and financial officers are involved directly in detailed planning discussions and some operational decisions to ensure that distribution cooperative needs are met. To require functional separation in the G&T of the transmission function from the bundled retail load serving function (which is the basic, delivered power supply function of a G&T) might require two separate sets of management and a separate financial management staff. Even then, they could not effectively meet their obligation for integrated planning. For a G&T's management to effectively do its job, and for the G&T to comply with federal lending regulations, it must be able to coordinate its transmission function and its traditional power supply function for its distribution members. This issue is just as critical for non-RUS borrower G&Ts as for those that remain RUS borrowers.

NRECA is mindful of the concerns raised by other commenters that the retail load serving function exception to the previous standards of conduct has been used by some integrated utilities to wholesale market advantage. We believe that an exception from functional separation for G&T cooperatives would not pose that risk to others in the market. G&T cooperatives nationally remain net purchasers of electricity, and self generate only about half of their needs. Acting effectively as

aggregators to serve the combined loads of their members at cost, they typically use their transmission system as a delivery pathway to serve their members, not as a marketing mechanism. The vast majority of G&Ts also are subject to tight limitations on the levels of non-member derived revenues they may receive, *i.e.*, no more than 15 percent of income can be derived from non-members; failing that limitation test can cause loss of income tax exempt status and other significant tax repercussions.[17] This exception would only allow G&Ts to use transmission information to fulfill their traditional, distribution cooperative load-serving function to their cooperative members, and not for power merchant activities in the wholesale market. The very small likelihood that a G&T cooperative would improperly use an exception from functional separation of the transmission function from the retail load service function is borne out by the absence of any complaints against G&T cooperatives previously granted waivers from the requirements of Order No. 889.

The Commission should clarify the proposed rule to ensure that it would not require a G&T cooperative to functionally separate its transmission and its distribution cooperative load-serving functions. The G&T management must be able to use non-public transmission information to fulfill the G&T's role to provide the traditional delivered power supply service at cost to its members.

D. THE RULE SHOULD EXPRESSLY ALLOW FOR WAIVERS AND FOR THE CONTINUING EFFECTIVENESS OF WAIVERS PREVIOUSLY GRANTED.

The Commission recognized in Order No. 888, that its terms and the requirements of Order No. 889[18] may not be appropriate for all entities, and the Commission therefore created a waiver process.[19] As adopted in Order No. 888, 18 C.F.R. § 35.28 (d) provides in pertinent part as follows:

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[17] Most G&T cooperatives are subject to non-member derived income limitations under Internal Revenue Code § 501(c)12.

[18] *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, 61 Fed. Reg. 21,737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,035 (1996) (hereinafter "Order No. 889").

[19] Both jurisdictional and non-jurisdictional entities rely on the waiver provisions contained in 18 C.F.R. § 35.28 (d). Non-jurisdictional entities are subject to the standards of conduct promulgated in Order No. 889 by virtue of the reciprocity requirements of Order No. 888. Specifically, in Order No. 888-A, the Commission made it clear that under reciprocity, a non-public utility must comply with the OASIS and standards of conduct requirements or obtain a waiver of them. Order No. 888-A, FERC Stats. and Regs. at 30,286 and n. 330; *Sunflower Electric Power Corp.*, 87 FERC ¶ 61,263, at 61,994-995, n. 6 (1999).

> A public utility subject to the requirements of this section and Order No. 889, FERC Stats. & Regs. 31,037 (Final Rule on Open Access Same-Time Information System and Standards of Conduct) may file a request for waiver of all or part of the requirements of this section, or Part 37 (Open Access Same-Time Information System and Standards of Conduct for Public Utilities), for good cause shown.

After issuing Order No. 888, the Commission issued a series of orders that addressed specific requests for waivers under 18 C.F.R. § 35.28 (d).[20] Order No. 889-A explained the waiver criteria developed in that series of orders, and in particular in *Black Creek Hydro, Inc., et al.*, 77 FERC ¶ 61,232 (1996)("*Black Creek*"). The *Black Creek* order explained the elements of "good cause" for granting a waiver under 18 C.F.R. § 35.28 (d) as including either ownership, operation and control of only limited and discrete transmission facilities or if the applicant is a small public utility that owns, operates or controls a transmission grid under certain circumstances.[21] Order No. 889-A also provided that once granted,[22] *a waiver would remain in effect in the absence of a complaint.*[23]

All of the reasons for granting a waiver under Order No. 888 also apply to the standards of conduct proposed by the NOPR. For many G&Ts, there are very few senior executive personnel, and many of them are also involved in hands-on, operational decisions. Imposing the standards of conduct on such a G&T would require the hiring of several new personnel at the senior level to provide, in effect, a purely financial management divorced from operational knowledge and responsibilities. While such separation might allow for literal compliance with the NOPR separation standards, it would do so at very significant additional cost to small utilities and almost no benefit to

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[20] *Open Access Same-Time Information System and Standards of Conduct, order on reh'g*, Order No. 889-A, 62 Fed. Reg. 12,484 (March 14, 1997), FERC Stats. and Regs. ¶ 31,049, at 30,554-555, and n. 33 (1997)(hereinafter "Order No. 889-A").

[21] Order No. 889-A., FERC Stats. and Regs. at 30,555 (footnotes omitted). Order No. 889-A also explained that to qualify as a "small public utility", the applicant for the waiver "must meet the Small Business Administration's definition of a small electric utility, *i.e.*, "one that is independently owned and disposes of no more than 4 million MWh annually." *Id.*, n. 35.

[22] Numerous waivers have been issued by the Commission under this rule. In Order No. 889-A, the Commission noted that it has granted waivers to approximately thirty-six small entities of the requirement to establish and maintain an OASIS and/or the requirement to comply with the Order No. 889 standards of conduct. *Id.*, at 30,578; *Transmission Access Policy Study Group*, 225 F. 3d at 738.

[23] *Id.*, at 30,555. NRECA is not aware of any complaints having been filed against cooperatives that would potentially lead to a loss of a waiver previously granted.

the integrity of the overall wholesale market that is the goal of the NOPR. The Commission will be unable to make the necessary findings required by the Regulatory Flexibility Act unless the waiver provisions are maintained.

The NOPR does not address whether the waiver provisions contained in 18 C.F.R. § 35.28 (d) would be affected by this rulemaking. However, the waiver provisions contained in 18 C.F.R. § 35.28 (d) by their terms apply only to the requirements of 18 C.F.R. § 35.28 and Order No. 889. Since the standards of conduct adopted in Order No. 889 would be replaced by the NOPR's standards of conduct in new Part 358, NRECA concludes that, by what we assume is unintended oversight, the waiver provisions of 18 C.F.R. § 35.28 (d) would not be applied to the standards of conduct in the NOPR's new Part 358.

NRECA does not believe that the Commission intended to eliminate the opportunity for waiver of the standards of conduct under new Part 358. As the Commission explained in Order No. 889-A, the waiver provisions promulgated in 18 C.F.R. § 35.28 (d) "take into account potential burdens on small entities and at the same time balance the need to prevent undue discrimination and affiliate abuse in interstate power markets."[24] *The waiver provision was expressly relied upon by the Court of Appeals to uphold the Commission's action in Transmission Access Policy Study Group*, 225 F. 3d 667, 738 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, ___ U.S. ____, 122 S. Ct. 1012 (2002). None of the other commenters in this NOPR have opposed a waiver provision for the proposed standards of conduct. The only other comments on the issue, including those from the Transmission Access Policy Study Group, a strong proponent of the NOPR, have supported the waiver provision as proposed by NRECA.

The Commission should explicitly state that waivers previously granted under 18 C.F.R. §

[24] *Id.*

35.28 (d) of the requirements of Order No. 889 will remain in effect in the event the standards of conduct under the new Part 358 are promulgated, without further action by the entities now holding such waivers. The NOPR does not introduce any new underlying principles different from those underlying the existing standards of conduct. Requiring existing waiver recipients under Order No. 889 requirements to reapply for waivers of the new Part 358 requirements would add only additional cost and regulatory burdens for both the requesting entities and the Commission, without corresponding benefits.[25]

The Commission should clarify that the proposed rules are not intended in any way to eliminate the ability of applicants to seek, and the ability of Commission to grant in appropriate circumstances, waivers of the new Part 358. The Commission should also expressly provide that in the event the new Part 358 standards of conduct are implemented, waivers previously granted by the Commission under 18 C.F.R. § 35.28 (d) will remain in effect without need for further action by entities now holding such waivers.

IV. CONCLUSION

WHEREFORE, NRECA respectfully requests the Commission to consider these supplemental comments in this docket.

Dated this 14th day of June, 2002.

Respectfully submitted,

NATIONAL RURAL ELECTRIC
COOPERATIVE ASSOCIATION

Wallace F. Tillman
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[25] As noted above, in response to such a complaint, the Commission may, under 18 C.F.R. § 35.28 (d), withdraw a waiver that has been granted. *See*, fn. 21, *supra*.

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June 14, 2002

The Honorable Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Standards of Conduct for Transmission Providers, Docket No. RM01-10-000.

Dear Ms. Salas:

Enclosed via electronic filing please find the Supplemental Comments of the National Rural Electric Cooperative Association in the above-referenced rulemaking docket.

Thank you.

Sincerely,

WHEELER, VAN SICKLE & ANDERSON, S.C.

/s/ Thomas J. Zaremba

Thomas J. Zaremba

Enclosure
cc: Atty. Richard Meyer

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Electricity Market Design and Structure) **Docket No. RM01-12-000**

SUPPLEMENTAL COMMENTS OF THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION ON THE COMMISSION'S APRIL 10, 2002 OPTIONS PAPER CONCERNING DEMAND RESPONSE

Pursuant to the "Notice of Options Paper" issued in the above-noted docket on April 10, 2002 and consistent with the comments already filed in this docket, the National Rural Electric Cooperative Association ("NRECA") submits Supplemental Comments on the "Options for Resolving Rate and Transition Issues in Standardized Transmission Service and Wholesale Electric Market Design" ("Options Paper"). NRECA's intent in filing these Supplemental Comments is to assist the Commission and its Staff to better address the issue of demand response as they prepare the upcoming Standard Market Design Notice of Proposed Rulemaking ("SMD NOPR").

I.

INTERESTS OF NRECA

As already explained in this docket, NRECA is a not-for-profit national service organization representing 930 not-for-profit, customer-owned rural electric cooperatives located in 46 states. NRECA's members serve more than 35 million end use electric customers. As discussed below, NRECA's members are extremely active in developing and operating their own demand response programs.

II.

COMMENTS

NRECA appreciates this opportunity to provide further input to the Commission on its Options Paper focusing on the issue of demand response, including both traditional demand side management ("DSM") and more innovative market-based programs. NRECA strongly supports demand response programs and supports the Commission's efforts to encourage the use of demand response as one of many tools for combating wholesale market power. In that context, however, NRECA requests that the Commission carefully focus wholesale demand response programs and its own activities in this area so as not to "undermine existing state DSM programs or other state rules governing retail sales, but to promote complementary wholesale programs."[1]

In particular, and as discussed in more detail below, NRECA believes that the Commission can better promote both demand response and robust wholesale markets if it:

1. Recognizes and clarifies in the SMD NOPR that the existence of demand response programs will not be adequate alone to mitigate market power;
2. Reduces the regulatory burden and uncertainty for consumers and those who operate load response programs by clarifying, consistent with its findings in Docket No. EL01-47, that end-use consumers participating in utility-sponsored demand response programs are not public utilities; and

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[1] *Removing Obstacles to Increased Energy Supply and Reduced Demand in the Western United States and Dismissing Petition for Rehearing*, "March 14, 2001 Order," 94 FERC ¶ 61,272, at p. 61,972 (2001), *order on reh'g*, 96 FERC ¶ 61,155, at p. 61,679 (2001) ("*Removing Obstacles*").

3. Affirms and supports the role of traditional utilities as aggregators of demand response, particularly in those states and service territories that have chosen not to adopt retail competition.

NRECA Demonstrably Supports Demand Response

NRECA's member cooperatives are extremely active in developing and operating their own demand response programs. For example, cooperatives have approximately 1,440 MW of residential load control in place. To provide some context, while cooperatives serve about 9% of the country's total load, their combined residential demand response resources add up to about 80% of the residential demand response capacity of all IOUs put together. Cooperatives are also actively dispatching customer owned generation, and have been among the first to experiment with market-based demand response programs.

Cooperatives run these demand response programs because they permit cooperatives to keep power costs low for their member owners. As member-owned and member-governed private companies, cooperatives' primary goal is to provide reliable energy at the lowest possible costs – not to maximize revenues or profits. Any margin that cooperatives earn must be used to improve service or returned to consumers as capital credits.

Demand response is critical to cooperatives' cost-cutting efforts because cooperatives nationally generate only about 45% of the power they need to serve their members. That means they are subject to the substantial risks and costs of the wholesale market. Demand response permits cooperatives to mitigate those risks and lower costs for all consumers by giving cooperatives an option other than buying power from the

market. If cooperatives can ask their consumers to reduce load when market prices are highest, the cooperatives can keep rates low.

Role of Demand Response in Disciplining Wholesale Markets

As NRECA noted in its April 10, 2002 comments on the Commission's March 15, 2002 working paper, demand response will have a significant role in disciplining market power in the wholesale electric markets. Nevertheless, based on the experiments we have seen to date in PJM and the New England ISO, [2] it will take some time for the demand response market to mature. Accordingly, demand response should not be relied upon as a substitute for rigorous analysis of regional wholesale power supply markets and submarkets to identify and remedy generation market power. We cannot yet assume that just because an RTO has incorporated demand response into its market design that all market power problems have been addressed and that market rates will, by definition, be just and reasonable.

The Commission Should Affirm Its Jurisdictional Determination In Its Order on Removing Obstacles

On rehearing from the Commission's initial order in the *Removing Obstacles* proceeding, the Commission held that:

> We recognize that there is a fine line separating state and federal jurisdiction where a retail customer receives compensation for a load reduction. Where a supplier directly compensates its retail consumer for load reduction, state jurisdiction is indicated. Where there are third parties involved, particularly where the transaction is tied to markets within our jurisdiction, then load reduction transactions where the seller is a public utility would fall within our jurisdiction. [3]

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[2] In 2001, PJM signed up 150 MW of emergency load response, out of a peak demand of 54,000 MW (0.27%). During the three emergency events in 2001, the actual response totaled 20 MW, 22 MW, and 43 MW (0.079%). The New England ISO has had similar problems. The 2001 program had a goal of 300 MW participation but signed up only 65.6 MW. After offering significant new financial incentives in 2002, the NE ISO signed up only 166 MW, still only 0.6% of the NE ISO's system peak of about 25,000 MW.

[3] *Removing Obstacles*, 96 FERC at p. 61,679 (2001)(emphasis added).

The Commission clarified its jurisdiction in this area after NRECA expressed concern that, in the absence of such clarification, tens of thousands of residential and other retail consumers participating in traditional DSM programs would have the choice between either being treated as public utilities or dropping out of their DSM programs.

Unfortunately, in its Orders accepting PJM's Load Response Programs,[4] the Commission appears to have implicitly moved away from the jurisdictional position it stated so clearly in *Removing Obstacles* and thus is again imperiling existing DSM programs. In the *PJM* Orders, the Commission explained that the sale of demand response from an end user "to another party (whether an LSE or otherwise) for payment or credit," is a jurisdictional sale for resale.

In support of its holding, the Commission cited and quoted an earlier decision involving the New York ISO.[5] The *NYISO* decision, however, did not reach that far. In that case, the NYISO merely asked the Commission to decline jurisdiction over retail sales from an LSE to an end use consumer where the end use consumer might participate in the demand response market. The NYISO explained that it needed the clarification specifically because "in New York, the LSE that supplies the customer's retail energy needs may not be the same market participant that coordinates the retail customer's megawatt sales."[6]

Nor did anything in the PJM case require the Commission to reach so far. PPL challenged the Commission's jurisdiction generally over the wholesale market for

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4 *PJM Interconnection. L.L.C.*, 99 FERC ¶ 61,139 (2002); 99 FERC ¶ 61,227 (2002) (order accepting tariff sheets as modified). (*"PJM"*).

5 *New York Independent System Operator*, 98 FERC ¶ 61,268 (2002) (*"NYISO"*).

6 *Id.* at p. 62,041.

demand response operated by PJM, a public utility. The specific question as to the Commission's jurisdiction over participating end users or sales from end users to their own LSEs does not appear from the face of the Orders to have arisen.

Further, the Commission's holding in *PJM* could have a substantial chilling effect on demand response programs. Utilities and LSEs may be hard pressed to sign up consumers for either traditional DSM or other more innovative demand response programs if participation makes those consumers public utilities. The Commission could grant those who participate in DSM programs blanket waivers from many of the filing requirements to which public utilities are subject as it has for consumer-generators,[7] but cannot waive all of the requirements of the Federal Power Act.[8] Moreover, the obligation to make filings on behalf of those participating consumers with blanket waivers will raise the cost of demand response programs for the utilities and LSEs operating the programs, imposing inappropriate disincentives to broad-based load response programs.

The Commission could better achieve its goals of expanding participation in demand response programs by reaffirming its holding in *Removing Obstacles* that the Commission lacks jurisdiction over sales by consumers of demand response to their own utilities.

This structure would be more consistent with the Commission's determination in *MidAmerican Energy Company*[9] that it lacks jurisdiction over state net metering programs. There, the Commission rejected MidAmerican's argument that a state net

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7 *See, e.g., Orange & Rockland Utilities, Inc.*, 42 FERC ¶ 61,012, at p. 61,030 (1988); *Public Service Co. of Colorado*, 88 FERC ¶ 61,056, at p. 61,140 (1999); *InPower Marketing Corp.*, 90 FERC ¶ 61,329, at p. 62,105 (2000); *Removing Obstacles*, 94 FERC at p. 61,971 (2001).

8 *Orange & Rockland Utilities, Inc.*, 42 FERC at p. 61,027; *Public Service Co. of Colorado*, 88 FERC at p. 61,140; *InPower Marketing Corp.*, 90 FERC at p. 62,105.

9 *MidAmerican Energy Company*, 94 FERC ¶ 61,340 (2001) ("*MidAmerican*").

metering program for certain consumer-owned generation was preempted by the Federal Power Act and PURPA. In particular, the Commission disagreed with the assertion "that every flow of power constitutes a sale, and, in particular, that every flow of power from a homeowner or farmer to MidAmerican must be priced consistent with the requirements of either PURPA or the FPA."[10] Instead, the Commission found that "no sale occurs when an individual homeowner or farmer (or similar entity such as a business) installs generation and accounts for its dealings with the utility through the practice of netting."[11]

The facts in *MidAmerican* appear logically indistinguishable from a load response program under which a consumer receives bill credits for reducing load at the request of its own utility. If not every flow of power from a consumer to its utility must constitute a sale, then a consumer's provision of demand response to his utility need not constitute a wholesale sale in interstate commerce either. In fact, the Commission's reasoning in *MidAmerican* is even more appropriate in the demand response context because there is never a physical flow of power from the consumer to the utility as there is in the case of consumer-owned generation.

By reaffirming *Removing Obstacles* and its recognition of the Commission's narrower jurisdiction, the Commission can "reduce regulatory uncertainty for participants in these programs,"[12] increase participation in demand response programs, avoid burdening existing programs and state policies, and still regulate wholesale demand response markets such as those operated by PJM and the NYISO. [13]

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10 *Id.* at p. 62,263.

11 *Id.*

12 *NYISO*, 98 FERC at p. 62,041.

13 As NRECA noted in its pleading in the *Obstacles* proceeding, NRECA does not believe the Commission has jurisdiction over any retail consumer that agrees to reduce load in exchange for payment because the consumer is providing a service, not selling energy. If the Commission accepted this narrower view of its jurisdiction, the Commission would still be able to encourage demand

Wholesale Demand Response Programs Should Not Permit "Bypass"

While NRECA firmly supports the Commission's efforts to encourage and standardize wholesale demand response markets, it must sound one cautionary note. As discussed below, NRECA believes that those markets must recognize the differences between those states and service territories that have adopted retail competition, and those that have not. In particular, wholesale demand response programs should permit retail consumers to participate directly only if the consumers:

- Are located in states and service territories that have established retail competition;
- Are served by a competitive supplier – not a default supplier with a traditional obligation to serve at a regulated rate; and,
- Can meter or otherwise confirm the time and quantity of their actual load reduction.

This approach would be very easy for the Commission to adopt and implement. Because all of the states located in the areas served by PJM and NYISO have opted to move to retail restructuring, the Commission could accept NRECA's proposal without requiring significant changes to the load response markets already adopted by these ISOs.

This approach would also significantly reduce the opposition that the Commission might otherwise encounter from states concerned about the impact of a standard load response market on their existing policies.

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response and to regulate the wholesale market in demand response because it regulates RTOs and others who will operate wholesale markets. In fact, NRECA believes that the Commission could achieve a higher level of participation in the wholesale market if it accepted a narrower view of its jurisdiction over retail consumers because retail consumers would not face a serious regulatory cost to participation.

It should also lead to as much or more load response in wholesale markets as one that permits bypass. Just because a consumer does not have a federal right to sell power directly into the wholesale markets does not mean that the consumer will not respond to price signals. All it means is that the utility providing traditional retail electric service must act as intermediary or aggregator.

In fact, NRECA believes that traditional utilities are in the best position to acquire the most load response in the most efficient manner. For example, utilities can achieve efficiencies of scale and scope individual consumers cannot reach because:

- Utilities can purchase interval meters and other communications and control technologies in bulk;
- Utilities can offer multiple demand response plans to serve the interests of different classes of consumers, e.g., water heater controls for residential, interruptible contracts for commercial, and internet-based market programs for industrial consumers; and,
- By balancing the broad range of demand response resources available across the system, utilities can achieve the same level of savings for individual consumers with less sacrifice by each consumer. For example, a consumer with real-time rates may need to turn off their air conditioner during the entire peak but their air conditioner would only be cycled in a utility-run program that achieved the same system-wide demand response results.

Moreover, utilities can achieve efficiencies that competitive aggregators are unlikely to reach because:

- Utilities have an existing relationship with a broad range of consumers, making it easier and less expensive for them to reach more consumers with demand response programs than competitive aggregators;
- Utilities with an obligation to serve at a fixed retail rate (and the significant risk that comes with the obligation to serve) have an incentive to achieve greater levels of load response than competitive aggregators who seek only those load response resources that are profitable standing alone.

On the other hand, if the Commission authorizes those consumers receiving traditional electric service at regulated rates to participate directly in the wholesale markets, it would undermine state energy policies, lead to considerable litigation and confusion, undermine existing demand response programs, impose higher costs on many consumers, and impose additional costs and risks on utilities for which they may not be compensated.

To date, fewer than half of the states have moved forward to implement retail competition. The rest have either chosen not to move in that direction or have delayed movement to retail competition after seeing what happened to California. Even within states that have moved to competition, some have permitted cooperatives and municipals to make the decision for themselves. Those states, cooperatives, and municipals that have not yet moved to competition have decided at least for now to retain the traditional regulatory compact. The Commission should not disturb those decisions made by the respective elected officials and cooperatives' boards.

Several of the states that have moved to competition have done so in part because they concluded that some consumers were paying more for power under the traditional

system than they "needed" to. One reason was that customers in commercial and industrial rate classes – which have fairly good load profiles – historically subsidized retail consumers with their less desirable load profiles. Another was that even within a single rate class, there would be individual consumers with a broad range of actual load profiles. Those with the better load profiles were thought to subsidize those with less favorable profiles. Finally, as Eric Hirst has recently explained, the bundled retail rate also includes an insurance premium that each consumer pays in exchange for the risk management service provided by their utility. Those consumers with a higher tolerance for risk were paying for more insurance than they wanted. By adopting retail competition, states disaggregated the single "insurance pool" and permitted consumers – and marketers to find each other. That has meant in practice that a few large industrial consumers have found better rates.

On the other hand, many states, cooperatives, and municipals have chosen not to move to retail restructuring notwithstanding their recognition that existing rate structures included a variety of subsidies. Instead, they deliberately decided as a matter of policy that the existing structure – with its "insurance pool" effects – was the best way to protect the public health and welfare; the best way to ensure that all consumers had access to reliable power at an affordable price.

To the extent those states and others chose to address the differences between consumers' load factors and risk tolerance, they deliberately chose to do so within the traditional utility structure. For example, states and non-state regulated utilities have addressed inter-rate class subsidies over the past several years through gradual rate changes and special incentives for new commercial and industrial consumers. Also,

many states and non-state regulated utilities have implemented demand response programs within the traditional utility structure, under which consumers with a higher risk tolerance can be compensated for getting off the system when market prices increase. In exchange for demand response services, those consumers are "rebated" part of their "insurance premium" and everyone on the system is better off because they all benefit from their utilities' reduced power purchase costs. One prominent example is the time-of-use tariff that regulated Puget Sound has adopted for all of its consumers, but there are hundreds more such efforts now being operated or developed around the country to benefit consumers receiving traditional utility service.

If, however, the Commission permits consumers in states and service territories that have not moved to retail competition to bypass their utilities and sell demand response to third parties, the Commission will undermine the states' deliberate policy decisions. Permitting RTOs and aggregators to cherry pick the best demand response resources on a utility's system unwinds the broad pool concept that many states have intentionally maintained. It allows the consumers with the best load profiles and the greatest willingness to reduce load to leave the pool, leaving behind consumers with less desirable load profiles and less flexibility in their energy consumption. Those consumers will have to pay more for energy because they no longer benefit from the averaging effects seen with the broader pool. Those consumers will have to pay more because they no longer share in the benefit of the load reduction. While economists may prefer the allocative efficiency that supposedly comes with breaking up the pool, by declining to move to retail competition, many states, cooperatives, and municipals deliberately

rejected that approach, choosing instead to protect smaller and more vulnerable consumers.

Moreover, breaking up the pool may result in less load response over all. As discussed above, utility-run programs have several significant efficiency advantages over individual participation in load response markets and even over aggregators. Allowing aggregators to compete to cherry pick the best load response resources out of existing utility demand response programs might (1) strand investments made to serve the cherry-picked consumers, (2) discourage utilities from reaching out to those consumers by creating a risk of stranded investment, and (3) even eliminate the necessary efficiencies of scale and scope required for the utilities to reach the remaining consumers who may not be attractive to aggregators but would otherwise be economic to reach in a more broad-based program.

In the *PJM* cases, the Commission rejected PPL's argument that the PJM load response market will undermine existing programs for lack of evidence.[14] But, one year of experience with an experimental program is hardly adequate to judge the impact on existing demand response programs. It would be surprising indeed if utilities in PJM and NYISO are able to sign up as many consumers for their load control programs in the future as they had in the past. Why would consumers – given the choice – share the benefits of load response with the other consumers on the system if they can receive all of the benefits themselves? At some point, the existing programs may no longer have the critical mass required to continue – leaving behind those consumers whose load response resources are not valuable enough to attract the attention of aggregators.

[14] *PJM*, 99 FERC at p. 61,574.

There is also a serious risk that utilities who might otherwise make significant investments in infrastructure required for load response, such as advanced meters, control and communications technologies, and smart thermostats, might choose not to out of concern that the investment could be stranded because of competition for load response resources.

Some might think that this "parade of horribles" is impossible because the Commission has expressly stated that it does not intend to preempt or alter any existing tariffs or contracts. Where is the risk if state retail service tariffs either do not give consumers a legal right to power they do not actually use, essentially a right to their load profile, or actually expressly deny consumers the right to sell load response to third parties? Unfortunately, when most states drafted their retail tariffs and when cooperatives and municipals drafted their retail requirements contracts, it was never anticipated that the Commission would create a wholesale market for load response. Thus, those tariffs and contracts are largely silent on the topic. Without clarification from the Commission, consumers and their utilities will likely be locked in years of litigation.

CONCLUSION

For the forgoing reasons, NRECA respectfully requests that the Commission:

1. Clarify in the SMD NOPR that it will not consider the existence of a demand response market alone sufficient evidence that an RTO has adequately addressed market power;
2. Reaffirm in the SMD NOPR the Commission's determination in *Removing Obstacles*, that "[w]here a supplier directly compensates its retail consumer for load reduction, state jurisdiction is indicated."; and,

3. Provide in the SMD NOPR that retail consumers are eligible to participate directly in the wholesale market for demand response only if the consumers:
    - Are located in states and service territories that have established retail competition;
    - Are served by a competitive supplier – not a default supplier with a traditional obligation to serve at a regulated rate; and,
    - Can meter or otherwise confirm the time and quantity of their actual load reduction.

Respectfully submitted,

NATIONAL RURAL ELECTRIC
COOPERATIVE ASSOCIATION

/s/

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June 21, 2002

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MEMORANDUM

April 26, 2002

TO: Statewide Managers
G&T Managers
NRECA Board of Directors

FROM: Glenn English, Chief Executive Officer

A few things I wanted to share with you...

Senate Leaders Move Energy Bill to Conference in Amended H.R. 4

Democratic and Republican leaders in the Senate got to final votes this week on the energy policy bill with electricity provisions after forging an agreement for a future vote on permanent repeal of the estate tax and other tax cuts. After Majority Leader Thomas Daschle (D-SD) got the nods of key Republicans, 86 senators voted to end debate and move the energy bill to final passage. All provisions agreed to under S. 517 were substituted for the text in H.R. 4, the energy bill passed by the House last year. Thus, there is now a Senate version and a House version of H.R. 4. Though a clear majority (88-11) voted for final passage, the Senate version is headed for another critical showdown in conference with House leaders. Passage of the energy bill after more than two months of floor debate was slowed by the need to sort through a list of more than 250 amendments, including an amendment to the tax incentives package that is vital to electric cooperatives.

NRECA supports the Senate bill because it represents an advance in the cause of consumer-ownership by clearly recognizing that there are differences between cooperatives and others in the industry. It allows consumer-elected boards of directors to make decisions on innovation and diversification of power supply. Senators believe the general desire across the country for renewable fuels and innovation will be reflected in the boardrooms of consumer-owned systems. The bill fully addresses the need for 85-15 tax relief and for tradable tax credits so consumer-owned systems can respond to the same incentives as investor-owned systems.

As part of the Energy bill, the Senate passed landmark tax legislation giving co-ops relief from the 85-15 rule and access to tradable tax credits for renewable and clean coal energy projects. However, it was unclear for several days whether the tax provisions would actually be included. Only a week earlier, several Senators were saying that the tax provisions would not be included because the rules of the Senate would have prohibited the tax amendment and other "non-germane" amendments from being considered after cloture is invoked – a procedural move to complete debate on a bill. NRECA lobbied

aggressively on the issue, urging Senators to oppose the cloture motion unless there was an agreement to include the tax package in the energy bill. On Tuesday, the Senate got the agreement to include the tax package, after Sen. Daschle promised Sen. Phil Gramm (R-TX) that he would bring his bill to permanently repeal the estate tax to the Senate floor by June 28.

NRECA strongly opposed Sen. Mary Landrieu's (D-LA) amendment on so-called "participant funded" transmission, which is another version of incentive rates which we have fought. Sen. Landrieu offered the amendment but withdrew it without a vote. Had she insisted on a vote, the amendment would have been defeated.

Over the last several weeks, NRECA and a coalition of electric utilities and industry representatives worked intensely to improve three climate change provisions in the Senate energy bill. The industry coalition won changes in the sections that address executive branch structure and the climate change science program. More problematic was a provision that would have mandated reporting of greenhouse gas emissions for entities that emit more than 10,000 metric tons of carbon dioxide equivalents annually. The original bill would have required cooperatives to report direct emissions from electricity generation, vehicles and land use activities, and indirect emissions from outsourced activities and imported energy. The coalition succeeded in getting the Senate to reject mandatory reporting. Instead, the Senate adopted an amendment to establish an enhanced voluntary reporting system for greenhouse gas emissions and reductions, and triggers mandatory reporting in 5 years if less than 60 percent of U.S. emissions are reported. While some problems remain, NRECA believes that they can be addressed in conference. The House energy bill only has climate change research provisions.

There is a version of FERC-lite in the bill that exhibits more sensitivity to co-op needs in any legislation to date. It exempts 400 of our smaller co-ops and all "transmission-only" co-ops. For all others, rates and conditions for transmission given to third parties using transmission lines must be comparable to what is provided to their consumer-owners for transmission.

One area that is lacking in the Senate bill is adequate federal protections against the accumulation of market power among the largest generators and wholesalers of electricity. Frankly, Congress has not shown much concern about market power in deregulation of railroads, airlines and banking, so there is consistency in this decision. The largest IOUs want to repeal the Public Utility Holding Company Act (PUHCA), eliminate merger review by the Federal Energy Regulatory Commissioner (FERC), and acquire huge sums of cash through transmission incentive rates, transmission repricing, forgiveness of capital gains tax and accelerated depreciation for rate setting and taxes. The Senate version of H.R. 4 repeals PUHCA, but does not deliver the rest. Still, there is little in the bill to prevent the accumulation of market power.

A House-Senate Conference Committee will iron out differences between Senate and House versions of H.R. 4. Advocates of electricity restructuring in the House will attempt to substitute a bill (H.R. 3406) drafted by House Energy and Air Quality Subcommittee Chairman Rep. Joe Barton (R-TX) for the Senate electricity provisions.

NRECA opposes H.R. 3406 because it frees the IOUs and power marketers from federal regulation and assures huge new revenues from existing facilities, while loading substantial new federal regulation on co-ops. H.R. 3406 probably cannot win passage in the House as a stand-alone bill, which is why House Republican leaders want to get it substituted in the conference negotiations on energy legislation. Also, House Ways and Means Committee Chairman William Thomas (R-CA) has not supported tradable tax credits, and included far less 85-15 relief in the House bill than the Senate bill. Sens. Max Baucus (D-MT) and Charles Grassley (R-IA) of the Senate Finance Committee will push to include all Senate-passed tax provisions.

Sen. Daschle Willing to "Double Track" Terrorism Reinsurance Legislation

With the Senate passing an energy bill this week, Senate Democrats are now are working on a unanimous consent to bring up a terrorism reinsurance, which the House passed last year (H.R. 3210). The Senate will likely utilize compromise legislation drafted by Sen. Daschle with Senate Banking Committee Chairman Paul Sarbanes (D-MD) and Banking Committee members Sen. Phil Gramm (R-TX) and Christopher Dodd (D-CT) as the base Senate bill and then move to conference committee. Mindful of his pledges to move trade authority and estate tax repeal bills in the next two months, Senate Majority Leader Thomas Daschle (D-SD) said the terrorism insurance bill could be "double-tracked" to move at the same time with other legislation. Tort reform is the key issue that remains to be resolved. The latest push for terrorism reinsurance legislation comes after more representatives in the business sector called on Sens. Daschle and Minority Leader Trent Lott (R-MS) urging them to pass a bill to provide a "temporary federal backstop for terrorism insurance as quickly as possible," a position that NRECA is actively supporting on the Hill. It is hoped that such a bill will help stem some of the property and casualty insurance rates that are shooting up for many co-ops since September 11.

In the House...

A response to problems unveiled after Enron's collapse, the House passed the Corporate and Auditing Accountability Responsibility and Transparency Act (H.R. 3763). The finance bill is intended to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws. Part of an effort to protect retirement savings plans, the bill includes a provision to create "public regulatory organizations" with the Securities and Exchange Commission to oversee the accounting and auditing professions. Provisions include a ban on accounting firms from serving as an external auditor while doing certain types of consulting work for a company and disclosure of the types of off-balance-sheet deals that contributed to Enron's collapse. H.R. 3763 drew only muted opposition from industry groups that originally feared Congress would impose stricter regulatory oversight as a result of Enron's collapse. The bill now waits for Senate action.

Enclosures: (1) Regulatory Issues Tracking Sheet.

REGULATORY ISSUES TRACKING SHEET

♣ April 2002

Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
EPA *Jim Stine X5739	Proposed Rule; Comment Request	National Pollutant Discharge Elimination System--Proposed Regulations to Establish Requirements for Cooling Water Intake Structures at Phase II Existing Facilities	67FR17121 4/9/2002	Today's proposed rule would implement section 316(b) of the Clean Water Act (CWA) for certain existing power producing facilities that employ a cooling water intake structure and that withdraw 50 million gallons per day (MGD) or more of water from rivers, streams, lakes, reservoirs, estuaries, oceans, or other waters of the U.S. for cooling purposes. The proposed rule constitutes Phase II in EPA's development of section 316(b) regulations and would establish national requirements applicable to the location, design, construction, and capacity of cooling water intake structures at these facilities. The proposed national requirements, which would be implemented through National Pollutant Discharge Elimination System (NPDES) permits, would minimize the adverse environmental impact associated with the use of these structures. Today's proposed rule would establish location, design, construction, and capacity requirements that reflect the best technology available for minimizing adverse environmental impact from the cooling water intake structure based on water body type, and the amount of water withdrawn by a facility. The Environmental Protection Agency (EPA) proposes to group surface water into five categories--freshwater rivers and streams, lakes and reservoirs, Great Lakes, estuaries and tidal rivers, and oceans--and establish requirements for cooling water intake structures located in distinct water body types. In general, the more sensitive or biologically productive the waterbody, the more stringent the requirements proposed as reflecting the best technology available for minimizing adverse environmental impact. Proposed requirements also vary according to the percentage of the source waterbody withdrawn, and facility utilization rate. A facility may choose one of three options for meeting best technology available requirements under this proposed rule. These options include demonstrating that the facility subject to the proposed rule currently meet specified performance standards; selecting and implementing design and construction technologies, operational measures, or restoration measures that meet specified performance standards; or demonstrating that the facility qualifies for a site-specific determination of best technology available because its costs of compliance are either significantly greater than those considered by the Agency during the development of this proposed rule, or the facility's costs of compliance would be significantly greater than the environmental benefits of compliance with the proposed performance standards. The proposed rule also provides that facilities may use restoration measures in addition to or in lieu of technology measures to meet performance standards or in establishing best technology available on a site-specific basis. EPA expects that this proposed regulation would minimize adverse environmental impact, including substantially reducing the harmful effects of impingement and entrainment, at existing facilities over the next 20 years. As a result, the Agency anticipates that this proposed rule would help protect ecosystems in proximity to cooling water intake structures. Today's proposal would help preserve aquatic organisms, including threatened and endangered species, and the ecosystems they inhabit in waters used by cooling water intake structures at existing facilities. EPA has considered the potential benefits of the proposed rule and in the preamble discusses these benefits in both quantitative and non-quantitative terms. Benefits, among other factors, are based on a decrease in expected mortality or injury to aquatic organisms that would otherwise be subject to entrainment into cooling water systems or impingement against screens or other devices at the entrance of cooling water intake structures. Benefits may also accrue at population, community, or ecosystem levels of ecological structures. Comments on this proposed rule and Information Collection Request (ICR) are due July 8, 2002.

REGULATORY ISSUES TRACKING SHEET

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
EPA *Rae Cronmiller X5791	Proposed Rule; Comment period extended	Interstate Ozone Transport: Response to Court Decisions on NOX SIP Call, NOX SIP Call Technical Amendments and Section 126 Rules	67FR17954 4/12/2002	Today, EPA is extending the closing date of the public comment period regarding EPA's notice of proposed rulemaking ``Interstate Ozone Transport: Response to Court Decisions on the NOX SIP Call, NOX SIP Call Technical Amendments, and Section 126 Rules," published February 22, 2002 at 67 FR 8395. The original comment period was to close on April 15, 2002. The new closing date will be April 29, 2002. The EPA received a request to extend the comment period due to the complexity of the issues surrounding the actions EPA is proposing to take. We find it appropriate to provide additional time for interested and affected parties to submit comments. **All comments are due April 29, 2002.**

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
EPA *Bill Wemhoff X5824	Proposed Rule	Interstate Ozone Transport: Response to Court Decisions on the NOX SIP Call, NOX SIP Call Technical Amendments and Section 126 Rules	67FR8395 2/22/2002	In today's action, we are proposing to amend two related final rules we issued under sections 110 and 126 of the Clean Air Act (CAA) related to interstate transport of nitrogen oxides (NOX), one of the main precursors to ground-level ozone. We are responding to the March 3, 2000 decision of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in which the Court largely upheld the NOX State Implementation Plan Call (NOX SIP Call), but remanded four narrow issues to us for further rulemaking action; the related decision by the D.C. Circuit on June 8, 2001, concerning the rulemakings providing technical amendments to the NOX SIP Call, in which the Court, among other things, vacated and remanded an issue for further rulemaking; and the decision by the D.C. Circuit on May 15, 2001, concerning the related, section 126 rulemaking, in which the Court, among other things, vacated and remanded an issue for further rulemaking; and the related decision by the D.C. Circuit on August 24, 2001, concerning the Section 126 Rule, in which the Court remanded an issue. In the final NOX SIP Call, we found that emissions of NOX from 22 States and the District of Columbia (23 States) significantly contribute to downwind areas' nonattainment of the 1-hour ozone national ambient air quality standards (NAAQS). We established statewide NOX emissions budgets for the affected States. In rulemakings providing technical amendments to the NOX SIP Call budgets, we revised those budgets. Today's action addresses the issues remanded by the Court in the two cases involving challenges to both the NOX SIP Call and the rulemakings providing technical amendments for notice-and-comment rulemaking and proposes related amendments. In today's action, we are also responding to the D.C. Circuit's decisions in a third case concerning a related rulemaking, the Section 126 Rule, in which the Court remanded an issue and vacated an issue. This action addresses the vacated issue. **Comments are due April 15, 2002. A public hearing, if requested, will be held in Washington, DC, on March 15, 2002, beginning at 9:00 am.** The *Federal Register* rulemakings and associated documents are located at http://www.epa.gov/ttn/rto/.

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
EPA *Bill Wemhoff X5824	Notice	National Advisory Committee for Acute Exposure Guideline Levels (AEGLs) for Hazardous Substances; Proposed AEGL Values	67FR7164 2/15/2002	The National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) is developing AEGLs on an ongoing basis to provide Federal, State, and local agencies with information on short-term exposures to hazardous chemicals. This notice provides AEGL values and Executive Summaries for eight chemicals for public review and comment. Comments are welcome on both the AEGL values in this notice and the technical support documents placed in the public version of the official docket for these eight chemicals. **Comments, identified by docket control number OPPTS-00330, are due March 18, 2002.** Additional information can be found at http://www.epa.gov/.

REGULATORY ISSUES TRACKING SHEET

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
EPA *Rae Cronmiller X5791	**Final Rule**	NESHAP: Interim Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Interim Standards Rule)	67FR6791 2/13/2002	On September 30, 1999, EPA promulgated standards to control emissions of hazardous air pollutants from incinerators, cement kilns and lightweight aggregate kilns that burn hazardous wastes. A number of parties sought judicial review of the rule. On July 24, 2001, the United States Court of Appeals for the District of Columbia Circuit (the Court) granted the Sierra Club's petition for review and vacated the challenged portions of the rule. In its decision, the Court invited EPA or any of the parties that challenged the regulations to file a motion with the Court to request either that the current standards remain in place, or that EPA be allowed time to develop interim standards, pending further time in which EPA develops standards complying with the Court's opinion. On October 19, 2001, EPA, together with all other petitioners, jointly moved the Court to stay the issuance of its mandate for four months to allow EPA time to develop interim standards. The motion contemplates that EPA will issue final standards by June 14, 2005. The joint motion also details other actions EPA intends to take. These actions include promulgating, by February 14, 2002, a rule with amended interim emission standards and several compliance and implementation amendments to the rule, which EPA proposed on July 3, 2001. The Court has granted this motion and stayed issuance of its mandate until February 14, 2002. Today's rule amends the September 1999 emission standards, with certain provisions amended as set out in the parties' joint motion. The rule also adopts the compliance and implementation amendments described in that motion. Although this Interim Standards Rule results in emission reductions that are less stringent than those of the September 1999 rule, we believe it achieves most of the emission gains of that rule. Promulgation of the rule now, before the Court issues its mandate, also avoids the severe problems relating to developing the Maximum Achievable Control Technology (MACT) on a source-by-source basis pursuant to section 112(j)(2) of the Clean Air Act, which applies if there are no national standards in place. We believe that adopting this Interim Standards Rule now best fulfills the statutory requirement to have national emission standards in place by a specified time, while avoiding unnecessary disruption and burden to regulated industry and affected state and federal administrative agencies. <u>This final rule was effective on February 13, 2002. Compliance is required by September 30, 2003.</u>

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
FCC *Tracey Steiner X5847	**Notice of Proposed Rule-making**	Establishment of Rules Governing Procedures To Be Followed When Informal Complaints Are **Filed** by Consumers Against Entities Regulated by the Commission	67FR18560 4/16/2002	In this document, the Commission seeks comment on whether to establish a consumer complaint mechanism to apply to all entities regulated by the Commission. The complaint mechanism will be patterned after our existing rules for informal complaints **filed** against common carriers pursuant to section 208 of the Act. Comments are due May 16, 2002 and reply comments are due May 31, 2002. Written comments are due May 16, 2002. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection on or before June 17, 2002.
FEMA *Jonathan Glazier X5798	**Interim Final Rule**	Hazard Mitigation Planning and Hazard Mitigation Grant Program	67FR8843 2/26/2002	This rule addresses State mitigation planning, identifies new local mitigation planning requirements, authorizes Hazard Mitigation Grant Program (HMGP) funds for planning activities, and increases the amount of HMGP funds available to States that develop a comprehensive, enhanced mitigation plan. This rule also requires that repairs or construction funded by a disaster loan or grant must be carried out in accordance with applicable standards and says that FEMA may require safe land use and construction practices as a condition of grantees receiving disaster assistance under the Stafford Act. This rule was effective February 26, 2002. Comments will be accepted through April 29, 2002.
FERC *Rich Meyer X5811	Notice	Electricity Market Design and Structure; Notice of Options Paper	67FR18603 4/16/2002	April 10, 2002. Take notice that the Commission has distributed an options paper for resolving rate and transition issues for standardized transmission service and wholesale electric market design. The purpose of this paper is to stimulate public discussion that can guide the development of a proposed rulemaking on these issues. Parties filing comments are requested to make recommendations on the options that should be included in the proposed rulemaking as well as to address the pros and cons of the various options contained in the paper. The options paper is in the record of this rulemaking docket. It will also be available on the Commission's website at http://www.ferc.gov/Electric/RTO/mrkt-strct-comments/discussion--paper.htm. Comments on this paper should be filed with the Commission by May 1, 2002. Comments may be filed in paper format or electronically.

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
FERC *Rich Meyer X5811	Notice of informal technical conference, agenda and comment request	Accounting and Reporting of Asset Retirement Obligations	67FR16071 4/4/2002	The Federal Energy Regulatory Commission (Commission) previously issued a Notice of Informal Technical Conference on March 8, 2002. Today's notice announces that the technical conference will be held on Tuesday, May 7, 2002, starting at 9 A.M., in the Commission's Meeting Room, 888 First Street, NE., Washington, DC. The Conference will address the financial accounting, reporting and related ratemaking implications related to asset retirement obligations associated with the retirement of tangible long-lived assets. This notice provides the format for the conference, the agenda and requests for comments and provides further details regarding the technical conference. All interested parties are invited to attend. **Written comments are due April 29**, 2002. The above-captioned proceeding. is posted on both the Commission's Issuance Posting System (CIPS) and the Records and Information Management Systems (RIMS), and may be viewed and printed remotely via the Internet through the Commission's Home Page (http://www.ferc.gov).

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
FERC *Richard Meyer X5811	Notice	Intent To Modify the Commission Issuance Posting System, Records Information Management System and Docket Sheet System	67FR10910 3/11/2002	The Federal Energy Regulatory Commission (the Commission), hereby gives notice that it intends to modify its Commission Issuance Posting System (CIPS), Records Information Management System (RIMS) and its Docket Sheet System on the web. The Commission intends to combine these three online systems into a single online system called the Federal Energy Regulatory Records Information System (FERRIS). In response to many suggestions regarding the Commission's online systems, the Commission plans to replace its existing systems with newer, more robust technology. Ultimately, the new system will provide users with a single point of access with better search capability and additional functions. The Commission intends the new system to result in increased performance and reliability for the Commission's staff and public users. This notice announces the coming availability of the new system. The Commission will make FERRIS available for testing and comment before placing the system into full production. We encourage the public and the Commission's staff to try the new system and comment on it through the Content Master e-mail link, contentmaster@ferc.gov.The Commission is making every effort to incorporate all functions currently in the existing systems into FERRIS. Appendix A provides a cross reference between the existing functions in CIPS, RIMS and the Docket Sheets and the corresponding function in FERRIS. Appendix B discusses the few features that will not be programmed into FERRIS. The Commission will make some modification to the file formats in which the documents will be available. Details appear in Appendix B. A test version of FERRIS will be made available to the public through the Commission's Web site at www.ferc.gov in Mid March. The full production version of FERRIS will be available in early April. Please refer to the Commission's website for the announcement of the exact dates the system will be available. To familiarize the public with the features of the new system, demonstrations will be conducted in Room 3M-2A&B at the Commission's headquarters on March 12, 2002, at 2:00 pm and on March 18, 2002, at 2:00 pm. While it is not mandatory, it is preferable to pre-register for the demonstrations. Pre-registration will facilitate passing through security. To pre-register, send an e-mail with your name, company affiliation and the date of the demonstration you will attend to contentmaster@ferc.gov or fax to (202) 208-2320 or call the Public Reference Room at (202) 208-1371, then press 0.

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
FERC *Richard Meyer X5811	Notice	Electricity Market Design and Structure Working Paper RM01-12-000	67FR11689 3/15/2002	Working Paper on Standardized Transmission Service and Wholesale Electric Market Design, issued March 15, 2002 [pdf, 63K] is now up on the Federal Energy Regulatory Commission web site at http://www.ferc.gov/Electric/RTO/mrkt-strct-comments/discussion_paper.htm The Federal Energy Regulatory Commission (Commission) is planning to hold a technical conference at its Washington, DC, headquarters on March 25, 2002 to allow the public and all interested participants an opportunity to ask questions about the results of its RTO Cost Benefit Report. This technical conference is in additional to the regional teleconferences announced in our March 1, 2002 notice. The technical conference will be held from 10:00 am-2:00 pm EST in the Commission's Meeting Room. All previously scheduled regional teleconferences for industry and the public will still be held on March 18 and 19, 2002. Like the regional technical teleconferences, the March 25th technical conference is designed to assist participants in understanding the results of the RTO Cost Benefit Report and not to discuss the merits of the Commission's RTO policy. The Commission believes that this conference and the regional teleconferences will assist the participants in preparing **comments on the report, which were due April 9, 2002. Reply comments are still due April 23, 2002.**
IRS *Steve Piecara X5802	**Final and tempor-ary Regula-tions**	Required Distributions From Retirement Plans	67FR18988 4/17/2002	This document contains final and temporary regulations relating to required minimum distributions from qualified plans, individual retirement plans, deferred compensation plans under section 457, and section 403(b) annuity contracts, custodial accounts, and retirement income accounts. These regulations will provide the public with guidance necessary to comply with the law and will affect administrators of, participants in, and beneficiaries of qualified plans; institutions that sponsor and individuals who administer individual retirement plans, individuals who use individual retirement plans for retirement income, and beneficiaries of individual retirement plans; and employees for whom amounts are contributed to section 403(b) annuity contracts, custodial accounts, or retirement income accounts and beneficiaries of such contracts and accounts. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of the *Federal Register*. **These regulations are effective January 1, 2003.**

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
IRS *Steve Piecara X5802	NOPR by cross-reference to temporary Regula-tions	Required Distributions From Retirement Plans	67FR18834 4/17/2002	In the Rules and Regulations section of this issue of the *Federal Register*, the IRS is issuing temporary regulations that provide guidance concerning required minimum distributions for defined benefit plans and annuity contracts providing benefits under qualified plans, individual retirement plans, and section 403(b) contracts. The regulations will provide the public with guidance necessary to comply with the law and will affect administrators of, participants in, and beneficiaries of qualified plans; institutions that sponsor and individuals who administer individual retirement plans, individuals who use individual retirement plans for retirement income, and beneficiaries of individual retirement plans; and employees for whom amounts are contributed to section 403(b) annuity contracts, custodial accounts, or retirement income accounts and beneficiaries of such contracts and accounts. The text of those temporary regulations also serves as the text of these proposed regulations. **Comments are due by July 16, 2002.**
OMB *Jonathan Glazier X5798	**Notice, Comment Request**	Draft Report to Congress on the Costs and Benefits of Federal Regulations	67FR15013 3/28/2002	OMB requests comments on the attached Draft Report to Congress on the Costs and Benefits of Federal Regulation. The Draft Report is divided into four chapters. Chapter I discusses regulatory policy during the Administration's first year. It discusses OMB's role in coordinating regulatory policy, its open and transparent approach to regulatory oversight, and its function as overseer of information and quality analysis. Chapter II presents estimates of the costs and benefits of Federal regulation and paperwork with an emphasis on the major regulations issued over the last 30 months. Chapter III discusses developments in regulatory policy governance that have recently taken place in the international arena and its relevance for the U.S. Chapter IV asks for recommendations from the public for the reform of Federal rules. **Written comments are due May 28, 2002.**

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
OMB *Ty Thompson X5855	**Notice; Comment Request**	Audits of States, Local Governments, and Non-Profit Organizations; Circular A-133 Compliance Supplement	67FR16138 4/4/2002	On April 9, 2001 (66 FR 18517), the Office of Management and Budget (OMB) issued a notice of availability of the 2001 Circular A-133 Compliance Supplement. The notice also offered interested parties an opportunity to comment on the 2001 Circular A-133 Compliance Supplement. The 2002 Supplement has been updated to add 8 additional programs, updated for program changes, and makes technical corrections. A list of changes to the 2002 Supplement can be found at Appendix V of the supplement. Due to its length, the 2002 Supplement is not included in this Notice. See Addresses for information about how to obtain a copy. This Notice also offers interested parties an opportunity to comment on the 2002 Supplement. The 2002 Supplement will apply to audits of fiscal years beginning after June 30, 2001 and supersedes the 2001 Supplement. **All comments on the 2002 Supplement are due October 31, 2002.** A copy is available under the Grants Management heading from the OMB home page at www.omb.gov.
OSHA *Jonathan Glazier X5798	**Direct Final Rule;** **Comment Request**	Safety Standards for Signs, Signals, and Barricades	67FR18091 4/15/2002	The Occupational Safety and Health Administration (OSHA) issued a direct final rule amending construction industry standards to require that traffic control signs, signals, barricades or devices protecting construction workers conform to Part VI of either the 1988 Edition of the Federal Highway Administration (FHWA) Manual on Uniform Traffic Control Devices (MUTCD), with 1993 revisions (Revision 3) or the Millennium Edition of the FHWA MUTCD (Millennium Edition), instead of the American National Standards Institute (ANSI) D6.1-1971, Manual on Uniform *Traffic Control Devices for Streets and Highways* (1971 MUTCD). This action is consistent with OSHA's June 16, 1999 interpretation letter stating that the agency would allow employers to comply with Revision 3 in lieu of the 1971 MUTCD. See also the companion document published in the Proposed Rules section of today's *Federal Register*. **This direct final rule will become effective August 13, 2002 unless significant adverse comments are received by June 14, 2002.** If adverse comment is received, OSHA will publish a timely withdrawal of the rule in the *Federal Register*. The incorporation by reference of certain publications listed in the rule is approved by the Director of the *Federal Register* as of August 13, 2002. On-line copies of the Millennium Edition are available for downloading from DOT's web site: http://mutcd.fhwa.dot.gov/kno-millennium. On-line copies of the 1988 Edition of the Manual on Uniform Traffic Control Devices (Revision 3, dated 9/93, with the November 1994 Errata No. 1) are available for downloading from OSHA's website: http://www.osha.gov/doc/highway_workzones.

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
OSHA *Jonathan Glazier X5798	Proposed Rule; Comment Request	Safety Standards for Signs, Signals, and Barricades	67FR18145 4/15/2002	The Occupational Safety and Health Administration (OSHA) is proposing to amend construction industry standards to require that traffic control signs, signals, barricades or devices protecting construction workers conform to Part VI of the 1988 Edition of the Federal Highway Administration (FHWA) Manual on Uniform Traffic Control Devices (MUTCD), with 1993 revisions (Revision 3) or the Millennium Edition of the FHWA MUTCD (Millennium Edition), instead of the American National Standards Institute (ANSI) D6.1-1971, Manual on Uniform Traffic Control Devices for Streets and Highways (1971 MUTCD). This action is consistent with OSHA's June 16, 1999 interpretation letter stating that the agency would allow employers to comply with Revision 3 in lieu of the 1971 MUTCD. Because OSHA believes the amendment is non-controversial, the Agency is issuing it as a Direct Final Rule published in the Final Rules section of today's Federal Register. If no significant adverse comment is received on the Direct Final Rule, OSHA will confirm the effective date of the Final Rule. If significant adverse comment is received, OSHA will withdraw the Direct Final Rule and proceed with rulemaking on this proposal. **A subsequent *Federal Register* document will be published to announce OSHA's action. Comments and requests for a hearing are due June 14, 2002.** Copies of the MUTCD: The 1988 Edition of the Manual on Uniform Traffic Control Devices (Revision 3, dated 9/93, with the November 1994 Errata No. 1 is available for downloading from OSHA's website: http://www.osha.gov./doc/highway_workzones. In addition, Revision 3 is available for viewing and copying at each OSHA Area Office. The Millennium Edition is available for downloading from DOT's website: http://mutcd.fhwa.dot.gov/kno-millennium. The Federal Highway NW., Suite 300 West, Washington, DC 20005-3438; FAX: (202) 289-7722; www.ite.org; and (3) American Association Administration partnered with three organizations to print copies of the Millennium Edition Manual of Uniform Traffic Control Devices for sale. The organizations are: (1) American Traffic Safety Services Association, 15 Riverside Parkway, Suite 100,Fredericksburg, VA 22406-1022; Telephone: 1-800-231-3475; FAX: (540) 368-1722; www.atssa.com; (2) Institute of Transportation Engineers, 1099 14th Street, of State Highway and Transportation Officials; www.aashto.org; Telephone: 1-800-231-3475; FAX: 1-800-525-5562.

REGULATORY ISSUES TRACKING SHEET

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
RUS *Steve Piecara X5802	Final Rule	Pre-Loan Policies and Procedures for Insured Electric Loans	67FR16969 4/9/2002	This final rule revises the manner in which the Rural Utilities Service (RUS) notifies Borrowers of the schedule of interest rates for municipal rate loans. RUS will post the quarterly interest rates for municipal rate loans on the RUS website at the beginning of each calendar quarter to allow for a quicker notification of the municipal interest rates to RUS Borrowers. EFFECTIVE DATE: April 9, 2002. RUS municipal loan interest rates can be found on the RUS Web site, http://www.usda.gov/rus/electric/.
RUS *Steve Piecara X5802	Proposed Rule	Useful Life of Facility Determination	67FR17018 4/9/2002	The Rural Utilities Service (RUS) proposes to eliminate the requirement to use depreciation rates as found in Bulletin 183-1, for determining the useful life of a facility. If the proposed useful life of a facility is deemed inappropriate by RUS, other means to establish an appropriate term for the loan will apply. Current reliance on the fixed range of depreciation rates found in Bulletin 183-1, to be used across the country, has been determined to not be as appropriate as looking at proposals on a case-by-case basis. This proposed rule is made as part of the RUS efforts to continually look for ways to streamline lending requirements and make regulations useful and direct. Comments are due May 9, 2002.

- Most NRECA comments are available on the web site **www.nreca.org** under Legal/Regulatory.
- Updated: April 22, 2002
- Questions about items appearing on this Tracking Sheet? Contact the NRECA staff person identified in the table.

Dial 703-907-then the 4-digit telephone extension listed by the contact name, or e-mail to:
(first name).(last name)@nreca.org.

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MEMORANDUM

March 29, 2002

TO: Statewide Managers
G&T Managers
NRECA Board of Directors

FROM: Glenn English, Chief Executive Officer

A few things I wanted to share with you...

Overview...

Congress reconvenes the week of April 8 and congressional leaders are assessing their options on how to proceed with a full legislative agenda during the remaining 20 weeks of the session. The House is scheduled to begin hearings on the Administration's $27 billion supplemental spending request for defense, recovery and security as the Senate considers a one-year cap on the FY03 budget. Pension law changes, as a response to the Enron collapse in which thousands of employees lost their life savings, are advancing to the floor in both chambers.

The Senate will resume consideration on some of the thorniest issues remaining in S. 517, the energy policy bill comprising an electricity title that NRECA Government Relations staff – with well timed assistance from electric co-op leaders – has been able to negotiate and recraft by striking the most onerous language. According to Majority Leader Tom Daschle (D-SD), the Senate will proceed immediately to the Arctic National Wildlife Refuge (ANWR) amendment and then other pending issues. Included among the remaining provisions NRECA has been actively working on, are: opposition to a Landreiu/Kyl amendment mandating participant funding for transmission; support for a Feinstein amendment establishing federal oversight of trading in energy derivatives, and approval for the co-op tax fix language. On a visit this Tuesday to East River Electric Power in South Dakota, Sen. Daschle said that if the Senate could not make brisk progress through the amendments by next Friday, so they could move on to other things, he would pull the bill from the floor. This squares with what NRECA staff also heard informally.

Those of you who were in Dallas are aware there was much discussion on energy derivatives and subsequent approval of a new resolution calling for transparency in electricity markets.

Sen. Dianne Feinstein's (D-CA) amendment for federal oversight in energy derivatives has been increasingly refined, particularly over the past two weeks, in ways that will make electricity and energy trading less secretive. Because these trades are not now regulated, it has been nearly impossible for the regulators to trace precisely why energy prices had so spiraled out of control in California a year ago. The Feinstein amendment has undergone at least four substantive revisions, each time becoming more narrowly focused on the specific problems intrinsic to the completely private electronic trading platform. You should also be aware that the owners of these trading platforms have organized fierce opposition to seek defeat of the Feinstein amendment. NRECA Government Relations staff are on Capitol Hill and keeping close watch on these and other activities. We will keep you apprised.

FCC to Issue NRP on Nextel Proposal To Move Co-ops from 800 MHz Spectrum

The Federal Communications Commission (FCC) will issue a Notice of Proposed Rulemaking (NPR) on a proposal by Nextel Communications to reallocate the 800 MHz band to reduce signal interference in the band, which includes public safety entities like police and fire units. The NPRM will also consider an alternative proposal from the National Association of Manufacturers (NAM). The FCC will seek comments on alternatives, including those that do require spectrum reallocation, such as minimum technology standards for receivers and out-of-band emissions limits. NRECA will participate in the FCC's rulemaking proceeding. Initial comments are due 30 days after the NPRM is published in the *Federal Register*. Nextel's proposal would move public safety users within the 800 MHz band, while other incumbents, including electric cooperatives, relocate. The problem is there may not be enough spectrum in the 700 MHz or 900 MHz bands, now or in the future, to relocate everyone. Communications equipment for 800 MHz may not work in the other bands, requiring costly equipment replacement. Nextel's proposal would limit incumbent licensees that remain in the 800 MHz band to operate only on a "secondary, non-interference" basis to public safety. The second proposal, from NAM and MRFAC (a NAM subsidiary and frequency coordinator), is a "re-banding" approach that requires public safety users to retune to the lower channels 1-200 and other users, including electric co-ops, to retune to channels 201-400. NAM/MRFAC and Nextel both propose that cellular systems retune to the upper channels. NRECA members who hold 800 MHz licenses are encouraged to provide information about the potential cost and impact these two proposals will have on their systems, along with any suggestions for alternatives. Contact Tracey Steiner, NRECA Corporate Counsel, at 703.907.5847 or tracey.steiner@nreca.org.

NRECA Files in Support of NERC Role in Reliability Standards Development

NRECA has submitted a joint filing with the American Public Power Association (APPA) and Transmission Access Policy Study Group (TAPS) to the Federal Energy Regulatory Commission (FERC) in response to its request that the industry develop a single commercial business practice and communication protocol standards organization for the wholesale electric industry. (See attachments.) At this time, it is presumed that the North American Energy Standards Board (NAESB – the former Gas Industry Standards Board) would become that organization. FERC also requested that such an organization should coordinate its standards development process with other wholesale electric standards development organizations, such as the North American Electric Reliability Council (NERC) and its

process for developing reliability standards for the wholesale electric industry. NRECA's filing focuses on preserving NERC's role in developing reliability standards and preserving or improving the current level of reliability and suggests several issues to be addressed in the process of setting standards. The feedback received from a number of G&T Managers and Transmission Task Force members were critical to the development of these comments. We authorized NERC to list NRECA as a supporter of their filing to FERC. NERC's filing outlines its responsibilities in continuing as the organization that develops reliability standards.

Legislative Conference 2002 Will Focus on Key Issues

A host of legislative initiatives affecting electric cooperatives will continue to be front burner issues May 5-8, during the annual NRECA Legislative Conference. Mark your calendars: identical general briefings presented twice, on Monday, May 6, from 3 p.m. to 5 p.m., and again on Tuesday, May 7, from 9 a.m. to 11 a.m. The second of these sessions usually is sparsely attended, so you may wish to encourage your conference participants to take advantage of the extra space and seating available. Three pre-conference seminars are being offered this year, and will be presented concurrently on Monday, May 6, from 9 a.m. to 11 a.m. These consist of an environmental issues briefing, an update on the proposed EchoStar-DirecTV merger, and legislative issues on finance and risk assessment. On Sunday, May 5, from 9 a.m. to noon, the Grassroots Advocacy team will lead the interactive and popular grassroots skills building module, "Congressional Insight."

Energy Department Seeking Projects for Clean Coal Initiative

The Department of Energy (DOE) is seeking Clean Coal Initiative proposals, with $330 million in matching funds available for industry proposals. DOE is seeking projects that demonstrate or accelerate commercial deployment of technology advancements in efficiency, environmental and economic improvement compared to current alternatives. DOE expects proposals for innovative concepts to reduce mercury, nitrogen oxide, sulfur dioxide and small particulate matter from power plants, improve power plant control systems, and improve plant efficiency and reliability. The deadline for proposals is August 1, 2002, with projects selected in December. Contact John Holt at 703.907.5805.

Members Get Their Message to Lawmakers During Annual Meeting

Thanks to statewide managers for the tremendous effort in getting members to use the Congressional Action Center during NRECA's annual meeting in Dallas. Our members sent messages at a critical time, with more than 2,000 e-mails to Congress. E-mail messages and letters went to 72 U.S. Senators during debate on energy policy and electricity provisions. Another 480 e-mails went to 135 House members on electricity legislation (H.R. 3406). More than 1,200 messages were sent in opposition to the EchoStar-DirecTV merger.

Other enclosures: (1) Regulatory Issues Tracking Sheet.

REGULATORY ISSUES TRACKING SHEET

♣ March 2002

Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
COE/EPA *Jim Stine X5739	**Final Rule** **Final Notice; correct-ion**	Issuance of Nationwide Permits Issuance of Nationwide Permits; Notice; Correction	67FR2019 1/15/2002 67FR6692 2/13/2002 67FR2020 1/15/2002	The Corps of Engineers is reissuing all the existing Nationwide Permits (NWPs), General Conditions, and definitions with some modifications, and one new General Condition. These final NWPs will be effective on March 18, 2002. All NWPs except NWPs 7, 12, 14, 27, 31, 40, 41, 42, 43, and 44 expire on February 11, 2002. Existing NWPs 7, 12, 14, 27, 31, 40, 41, 42, 43, and 44 expire on March 18, 2002. In order to reduce the confusion regarding the expiration of the NWPs and the administrative burden of reissuing NWPs at different times, we are issuing all NWPs on the same date so that they expire on the same date. Thus, all issued, reissued and modified NWPs, and General Conditions contained within this notice will become effective on March 18, 2002 and expire on March 19, 2007. Prior to 1996, they covered activities up to 10 acres, **after 1996 the size limit was reduced to three acres**. Now, the new permits apply only to activities that affect one-half acre or less. 2) The Corps included a bit more flexibility in how the "no net loss" goal is handled. This criterion no longer has to be met on each individual project, however each district office will be expected to insure that for all the projects in their region, the TOTAL number of wetland acres added will equal or exceed the TOTAL number of acres lost to development. The new permits also make minor changes to the way intermittent and "ephemeral" streams are handled and they contain new provisions that apply to mountain top mining. The final rule was published in the January 15 *Federal Register*. **All NWPs and general conditions became effective on March 18, 2002. All NWPs have an expiration date of March 19, 2007.**For further information go to the U.S. Army Corps of Engineers Regulatory Home Page at: http//:www.usace.army.mil/inet/functions/cw/cecwo/reg/. This document contains corrections to the final notice of issuance of Nationwide Permits (NWPs) which was published in the *Federal Register* on January 15, 2002 (67 FR 2020-2095).

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
EPA *Bill Wernhoff X5824	Proposed Rule	Interstate Ozone Transport: Response to Court Decisions on the NOX SIP Call, NOX SIP Call Technical Amendments and Section 126 Rules	67FR8395 2/22/2002	In today's action, we are proposing to amend two related final rules we issued under sections 110 and 126 of the Clean Air Act (CAA) related to interstate transport of nitrogen oxides (NOX), one of the main precursors to ground-level ozone. We are responding to the March 3, 2000 decision of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in which the Court largely upheld the NOX State Implementation Plan Call (NOX SIP Call), but remanded four narrow issues to us for further rulemaking action; the related decision by the D.C. Circuit on June 8, 2001, concerning the rulemakings providing technical amendments to the NOX SIP Call, in which the Court, among other things, vacated and remanded an issue for further rulemaking; and the decision by the D.C. Circuit on May 15, 2001, concerning the related, section 126 rulemaking, in which the Court, among other things, vacated and remanded an issue for further rulemaking; and the related decision by the D.C. Circuit on August 24, 2001, concerning the Section 126 Rule, in which the Court remanded an issue. In the final NOX SIP Call, we found that emissions of NOX from 22 States and the District of Columbia (23 States) significantly contribute to downwind areas' nonattainment of the 1-hour ozone national ambient air quality standards (NAAQS). We established statewide NOX emissions budgets for the affected States. In rulemakings providing technical amendments to the NOX SIP Call budgets, we revised those budgets. Today's action addresses the issues remanded by the Court in the two cases involving challenges to both the NOX SIP Call and the rulemakings providing technical amendments for notice-and-comment rulemaking and proposes related amendments. In today's action, we are also responding to the D.C. Circuit's decisions in a third case concerning a related rulemaking, the Section 126 Rule, in which the Court remanded an issue and vacated an issue. This action addresses the vacated issue. **Comments are due April 15, 2002. A public hearing, if requested, will be held in Washington, DC, on March 15, 2002, beginning at 9:00 am.** The *Federal Register* rulemakings and associated documents are located at http://www.epa.gov/ttn/rto/.

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
EPA *Bill Wemhoff X5824	Notice	National Advisory Committee for Acute Exposure Guideline Levels (AEGLs) for Hazardous Substances; Proposed AEGL Values	67FR7164 2/15/2002	The National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) is developing AEGLs on an ongoing basis to provide Federal, State, and local agencies with information on short-term exposures to hazardous chemicals. This notice provides AEGL values and Executive Summaries for eight chemicals for public review and comment. Comments are welcome on both the AEGL values in this notice and the technical support documents placed in the public version of the official docket for these eight chemicals. **Comments, identified by docket control number OPPTS-00330, are due March 18, 2002.** Additional information can be found at http://www.epa.gov/.

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
EPA *Rae Cronmiller X5791	Notice: Availability and Correction to November 15, 2001 Notice of Availability	Recent Posting to the Applicability Determination Index (ADI) Database System of Agency Applicability Determinations, Alternative Monitoring Decisions, and Regulatory Interpretations Pertaining to Standards of Performance for New Stationary Sources and NESHAP	67FR1295 1/10/2002	This document announces the availability of applicability determinations, alternative monitoring decisions, and regulatory interpretations that EPA has made under the New Source Performance Standards (NSPS)(40 CFR part 60), and the National Emission Standards for Hazardous Air Pollutants (NESHAP)(40 CFR parts 61 and 63). This document also corrects and clarifies the Notice of Availability published in the Federal Register on November 15, 2001 (66 FR 57453). The General Provisions to the NSPS in 40 CFR part 60 and the NESHAP in 40 CFR part 61 provide that a source owner or operator may request a determination of whether certain intended actions constitute the commencement of construction, reconstruction, or modification. EPA's written responses to these inquiries are broadly termed applicability determinations. See 40 CFR 60.5 and 61.06. The NSPS and NESHAP also allow sources to seek permission to use monitoring or recordkeeping which is different from the promulgated requirements. See 40 CFR 60.13(i), 61.14(g), 63.8(b)(1), 63.8(f), and 63.10(f). EPA's written responses to these inquiries are broadly termed alternative monitoring decisions. Further, EPA responds to written inquiries about the broad range of NSPS and NESHAP regulatory requirements as they pertain to a whole source category. These inquiries may pertain, for example, to the type of sources to which the regulation applies, or to the testing, monitoring, recordkeeping or reporting requirements contained in the regulation. EPA's written responses to these inquiries are broadly termed regulatory interpretations. Today's notice comprises a summary of 42 such documents added to the ADI on October 19, 2001. The subject, author, recipient, and date (header) of each letter and memorandum is listed in this notice, as well as a brief abstract of the letter or memorandum. Complete copies of these documents may be obtained from the ADI at http://es.epa.gov/oeca/eptdd/adi.html.

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
EPA *Rae Cronmiller X5791	**Final Rule**	NESHAP: Interim Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Interim Standards Rule)	67FR6791 2/13/2002	On September 30, 1999, EPA promulgated standards to control emissions of hazardous air pollutants from incinerators, cement kilns and lightweight aggregate kilns that burn hazardous wastes. A number of parties sought judicial review of the rule. On July 24, 2001, the United States Court of Appeals for the District of Columbia Circuit (the Court) granted the Sierra Club's petition for review and vacated the challenged portions of the rule. In its decision, the Court invited EPA or any of the parties that challenged the regulations to file a motion with the Court to request either that the current standards remain in place, or that EPA be allowed time to develop interim standards, pending further time in which EPA develops standards complying with the Court's opinion. On October 19, 2001, EPA, together with all other petitioners, jointly moved the Court to stay the issuance of its mandate for four months to allow EPA time to develop interim standards. The motion contemplates that EPA will issue final standards by June 14, 2005. The joint motion also details other actions EPA intends to take. These actions include promulgating, by February 14, 2002, a rule with amended interim emission standards and several compliance and implementation amendments to the rule which EPA proposed on July 3, 2001. The Court has granted this motion and stayed issuance of its mandate until February 14, 2002. Today's rule amends the September 1999 emission standards, with certain provisions amended as set out in the parties' joint motion. The rule also adopts the compliance and implementation amendments described in that motion. Although this Interim Standards Rule results in emission reductions that are less stringent than those of the September 1999 rule, we believe it achieves most of the emission gains of that rule. Promulgation of the rule now, before the Court issues its mandate, also avoids the severe problems relating to developing the Maximum Achievable Control Technology (MACT) on a source-by-source basis pursuant to section 112(j)(2) of the Clean Air Act, which applies if there are no national standards in place. We believe that adopting this Interim Standards Rule now best fulfills the statutory requirement to have national emission standards in place by a specified time, while avoiding unnecessary disruption and burden to regulated industry and affected state and federal administrative agencies. <u>This final rule was effective on February 13, 2002. Compliance is required by September 30, 2003.</u>

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
FEMA *Jonathan Glazier X5798	**Interim Final Rule**	Hazard Mitigation Planning and Hazard Mitigation Grant Program	67FR8843 2/26/2002	This rule addresses State mitigation planning, identifies new local mitigation planning requirements, authorizes Hazard Mitigation Grant Program (HMGP) funds for planning activities, and increases the amount of HMGP funds available to States that develop a comprehensive, enhanced mitigation plan. This rule also requires that repairs or construction funded by a disaster loan or grant must be carried out in accordance with applicable standards and says that FEMA may require safe land use and construction practices as a condition of grantees receiving disaster assistance under the Stafford Act. **This rule was effective February 26, 2002. Comments will be accepted through April 29, 2002.**

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
FERC *Richard Meyer	Notice	Intent To Modify the Commission Issuance Posting System, Records Information Management System and Docket Sheet System	67FR10910 3/11/2002	The Federal Energy Regulatory Commission (the Commission), hereby gives notice that it intends to modify its Commission Issuance Posting System (CIPS), Records Information Management System (RIMS) and its Docket Sheet System on the web. The Commission intends to combine these three online systems into a single online system called the Federal Energy Regulatory Records Information System (FERRIS). In response to many suggestions regarding the Commission's online systems, the Commission plans to replace its existing systems with newer, more robust technology. Ultimately, the new system will provide users with a single point of access with better search capability and additional functions. The Commission intends the new system to result in increased performance and reliability for the Commission's staff and public users. This notice announces the coming availability of the new system. The Commission will make FERRIS available for testing and comment before placing the system into full production. We encourage the public and the Commission's staff to try the new system and comment on it through the Content Master e-mail link, contentmaster@ferc.gov.The Commission is making every effort to incorporate all functions currently in the existing systems into FERRIS. Appendix A provides a cross reference between the existing functions in CIPS, RIMS and the Docket Sheets and the corresponding function in FERRIS. Appendix B discusses the few features that will not be programmed into FERRIS. The Commission will make some modification to the file formats in which the documents will be available. Details appear in Appendix B. A test version of FERRIS will be made available to the public through the Commission's Web site at www.ferc.gov in Mid March. The full production version of FERRIS will be available in early April. Please refer to the Commission's website for the announcement of the exact dates the system will be available. To familiarize the public with the features of the new system, demonstrations will be conducted in Room 3M-2A&B at the Commission's headquarters on March 12, 2002, at 2:00 pm and on March 18, 2002, at 2:00 pm. While it is not mandatory, it is preferable to pre-register for the demonstrations. Pre-registration will facilitate passing through security. To pre-register, send an e-mail with your name, company affiliation and the date of the demonstration you will attend to contentmaster@ferc.gov or fax to (202) 208-2320 or call the Public Reference Room at (202) 208-1371, then press 0.

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
FERC *Richard Meyer X5811	Notice	Electricity Market Design and Structure Working Paper RM01-12-000	67FR11689 3/15/2002	Working Paper on Standardized Transmission Service and Wholesale Electric Market Design, issued March 15, 2002 [pdf, 63K] is now up on the Federal Energy Regulatory Commission web site at http://www.ferc.gov/Electric/RTO/mrkt-strct-comments/discussion_paper.htm The Federal Energy Regulatory Commission (Commission) is planning to hold a technical conference at its Washington, DC, headquarters on March 25, 2002 to allow the public and all interested participants an opportunity to ask questions about the results of its RTO Cost Benefit Report. This technical conference is in additional to the regional teleconferences announced in our March 1, 2002 notice. The technical conference will be held from 10:00 am-2:00 pm EST in the Commission's Meeting Room. All previously scheduled regional teleconferences for industry and the public will still be held on March 18 and 19, 2002. Like the regional technical teleconferences, the March 25th technical conference is designed to assist participants in understanding the results of the RTO Cost Benefit Report and not to discuss the merits of the Commission's RTO policy. The Commission believes that this conference and the regional teleconferences will assist the participants in preparing **comments on the report, which are due April 9, 2002. Reply comments are still due April 23, 2002.**

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
FERC *Steve Piecara X5802	Proposed Rule	Accounting and Reporting of Financial Instruments, Comprehen-sive Income, Derivatives and Hedging Activities	67FR1025 1/8/2002	The Federal Energy Regulatory Commission proposes to revise its regulations to update the accounting and reporting requirements under its Uniform Systems of Accounts for jurisdictional public utilities, natural gas companies and oil pipelines. The Commission proposes to establish uniform accounting requirements and related accounts for the recognition of changes in the fair value of certain security investments, items of other comprehensive income, derivative instruments, and hedging activities. The Commission proposes to add new balance sheet accounts to the Uniform Systems of Accounts to record items of other comprehensive income and derivative instruments. The Commission also proposes to add new general instructions and revise certain account instructions to incorporate the above changes in the existing Uniform Systems of Accounts. Additionally, the Commission proposes to revise the following Annual Reports: FERC Form No. 1, Annual Report of Major Public Utilities, Licensees and Others (Form 1); FERC Form No. 1-F, Annual Report of Nonmajor Public Utilities and Licensees (Form 1-F); FERC Form No. 2, Annual Report of Major Natural Gas Companies (Form 2); FERC Form No. 2-A, Annual Report of Nonmajor Natural Gas Companies (Form 2-A); and Form No. 6, Annual Report of Oil Pipeline Companies (Form 6) to include the new accounts and new schedules proposed by this rulemaking. An important objective of the proposed rule is to provide sound and uniform accounting and financial reporting for the above types of transactions and events. The new instructions and accounts for recording the above transactions and events will result in improved, consistent and complete accounting and reporting. The addition of new accounts and new reporting schedule is intended to address and resolve the problems of lack of visibility, completeness and consistency of accounting and reporting changes in the fair value of certain financial instruments, items of other comprehensive income, derivative instruments and hedging activities, in the above mentioned FERC Forms. **Comments on the proposed rulemaking were due on March 11, 2002.**

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
RUS *Steve Piecara X5802	Notice and request for comments	Accounting Require-ments for Electric and Telecom-munications Borrowers	67FR2855 1/22/2002	In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).This notice identifies an information collection that RUS is submitting to OMB as a revision to an existing collection. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Title: Accounting Requirements for Electric and Telecommunications Borrowers. OMB Control Number: 0572-0003. Type of Request: Revision of a currently approved collection. Abstract: RUS is proposing to revise record retention requirements for its Electric and Telecommunications borrowers more in line with standard industry practices. Three areas that we consider to be industry practice but will be specifically addressed are: Establishment and maintenance of an index of accounts. Retention of loan fund records until they are audited by RUS, generally three years or less. Retention of plant records for 25 years or the life of the plant plus ten years, this being necessary to support depreciation and amortization schedules. **Comments were due March 25, 2002.**

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
RUS *Tracey Steiner X5847	**Direct Final Rule** **And** **Proposed Rule**	Distance Learning and Telemedicine Loan and Grant Program	67FR3039 1/23/2002 67FR3128 1/23/2002	The Rural Utilities Service (RUS) is amending its regulations for the Distance Learning and Telemedicine (DLT) Loan and Grant Program. This direct final rule addresses the amendments affecting the grant program. These amendments will clarify eligibility; change the grant minimum matching contribution; clarify that only loan funds will be used to finance transmission facilities; modify financial information requirements; adjust the leveraging of resources scoring criterion; revise financial information to be submitted; and make other minor changes and corrections. **This rule will become effective March 11, 2002**, unless written adverse comments or a written notice of intent to submit adverse comments are received on or before February 22, 2002. If such comments or notice are received, a timely document will be published in the *Federal Register* withdrawing the rule. Comments received will be considered under the proposed rule published in this edition of the *Federal Register* in the proposed rule section. A second public comment period will not be held. **Comments are due February 22, 2002.**
RUS *Tracey Steiner X5847	Proposed Rule	Distance Learning and Telemedicine Loan and Grant Program	67FR3128 1/23/2002	The Rural Utilities Service (RUS) is amending its regulations for the Distance Learning and Telemedicine (DLT) Loan and Grant Program. This proposed rule addresses the amendments affecting the grant program. These amendments will clarify eligibility; change the grant minimum matching contribution; clarify that only loan funds will be used to finance transmission facilities; modify financial information requirements; adjust the leveraging scoring criterion; clarify financial information to be submitted; and make other minor changes and corrections. In the final rule section of this *Federal Register*, RUS is publishing this action as a direct final rule without prior proposal because RUS views this as a non-controversial action and anticipates no adverse comments. If no adverse comments are received in response to the direct final rule, no further action will be taken on this proposed rule and the action will become effective at the time specified in the direct final rule. If RUS receives adverse comments, a timely document will be published withdrawing the direct final rule and all public comments received will be addressed in a subsequent final rule based on this action. **Comments are due at RUS by February 22, 2002.**

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
RUS *Steve Piecara X5802	**Direct Final Rule**	Treasury Rate Direct Loan Program; Notice of confirmation of direct final rule	66FR66293 12/26/2001 67FR6369 2/12/2002	The Rural Utilities Service (RUS) hereby gives notice that no adverse comments were received regarding the direct final rule establishing rules and regulations to administer the Treasury Rate Direct Loan Program, and confirms the effective date of the direct final rule. The direct final rule published in the *Federal Register* on December 26, 2001 (66 FR 66293) was effective February 11, 2002. In fiscal year 2001, Congress provided funding to establish a Treasury rate direct loan program to address the backlog of qualified loan applications for insured municipal rate electric loans from RUS. RUS administered the Treasury rate loan program in a manner substantially the same as it administered the municipal rate program under a Notice of Funding Availability (NOFA) published in the Federal Register at 65 FR 80830 on December 22, 2000. Title III of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002 authorizes a direct Treasury rate electric loan program of $750 million for FY 2002. RUS is amending its regulations to establish rules and regulations to administer the Treasury rate direct loan program. **This rule was effective February 11, 2002** unless written adverse comments or written notice of intent to submit adverse comments are received before January 25, 2002.

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Agency & *NRECA Contact	Action Type	Subject	Federal Register Citation	Comments/Status
RUS *Tracey Steiner X5847	Notice of funds availability	Broadband Pilot Loan Program	67FR3140 1/23/2002	This is to notify interested parties that, during the current fiscal year (FY) 2002, $80 million is available for loans in the Broadband Pilot Loan Program administered by the Rural Utilities Service (RUS). This is a continuation of the Broadband Pilot Loan Program initiated by RUS during FY 2001 to finance the construction of facilities and systems providing broadband transmission service to rural consumers. The program provides financing for facilities serving rural communities of up to 20,000 inhabitants so that rural consumers in those areas may enjoy the same quality and range of telecommunications services as are available in urban and suburban communities. This notice describes the eligibility and application requirements and the criteria RUS will consider in evaluating applications for broadband loans. RUS currently has applications for broadband loans, submitted in response to the FY 2001 Broadband Pilot Loan Program, in excess of $350 million. **Before accepting new applications, RUS will act on those completed applications currently pending. RUS currently has completed applications in the aggregate amount of $150 million.** RUS anticipates that the FY 2002 lending authority will be fully committed after it has acted on those completed applications. However, should FY 2002 loan authority remain available thereafter, RUS shall publish a notice advising interested parties that it is accepting additional applications. **New applications will be accepted only if, after processing all pending completed applications, RUS publishes an additional notice announcing that loan funds remain available.**

- Most NRECA comments are available on the web site **www.nreca.org** under Legal/Regulatory.
- Updated: March 22, 2002
- Questions about items appearing on this Tracking Sheet? Contact the NRECA staff person identified in the table. Dial 703-907-then the 4-digit telephone extension listed by the contact name, or e-mail to: (first name).(last name)@nreca.org.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Electricity Market Design and Structure	Docket No. RM01-12-000

JOINT FILING OF THE AMERICAN PUBLIC POWER ASSOCIATION, NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION, AND THE TRANSMISSION ACCESS POLICY STUDY GROUP REGARDING BUSINESS STANDARDS DEVELOPMENT PROCESS

The American Public Power Association ("APPA"), the National Rural Electric Cooperative Association ("NRECA"), and the Transmission Access Policy Study Group ("TAPS") jointly respond to the December 19, 2001 Order Providing Guidance on the Formation of a Standards Development Organization for the Wholesale Electric Industry, 97 F.E.R.C. ¶ 61,289 (2001) ("December 19 Order"). As discussed in more detail below:

- Whatever business practice standards setting model is developed, the North American Electric Reliability Council's ("NERC") role in developing and adopting reliability standards must be preserved. APPA, NRECA and TAPS support the Comments of the North American Electric Reliability Council on the Formation of a Standards Development Organization for the Wholesale Electric Industry ("NERC Comments") and the division of responsibility and process for coordination between NERC and the North American Energy Standards Board ("NAESB") outlined in that pleading, filed today.

- We can support the concept of business practices established through a NAESB-like process if and only if fundamental concerns about NAESB's structure and the processes proposed for the Wholesale Electric Quadrant ("WEQ") in the IOU Group Pleading[1] are addressed.[2]

[1] Our comments on the IOU Group Pleading are based upon the draft version of the filing (then entitled "Joint Filing on the Formation of a Standards Development Process for the Wholesale Electric Industry") circulated on March 11, 2002 by the Edison Electric Institute and NAESB. Our understanding is that approximately fifteen entities, primarily investor-owned utilities, have joined as signatories to the pleading.

- NAESB's single segment veto severely limits the ability to craft segments in a way that would ensure that the views of wide diversity of industry participants are fairly reflected.

- While the IOU Group Pleading does not definitively permit multiple segment representations for single entities (*i.e.*, vertically-integrated utilities), such a rule would defeat the purpose of achieving a true industry-wide consensus, as opposed to merely a consensus of the divisions of the largest market participants.

- An independent professional staff is needed to facilitate a result not tilted towards the interest of the most well-funded market participants that can "volunteer" their drafting services.

- "Pay to play" funding will not yield the broad representation necessary for credibility as a legitimate industry "consensus" process.

- In establishing a consensus business standards development body, the Commission needs to carefully preserve its authority to fully review proposed standards for consistency with the FPA and to ensure that these standards appropriately implement the standard market design ultimately adopted by the Commission.

APPA, NRECA and TAPS ask the Commission to provide clear direction to the industry on these issues. We believe that the industry will not make further progress toward creation of a single organization to develop business practice standards and communication protocols absent specific Commission directives on the fundamental issues that have so severely divided the industry during these months of exhaustive and expensive negotiations, and that have led to the highly splintered filings we expect to be made in this proceeding in response to the December 19 Order.

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[2] We would also support having business and reliability standards established under the NERC umbrella, with business practice standards adopted through a consensus process overseen by the NERC Board, while reliability standards would continue to be subject to the judgment of the independent NERC Board. *See* February 8, 2002 Additional Comments of Roy Thilly, available at ftp://www.nerc.com/pub/sys/all_updl/docs/shc/thilly2-wesm.pdf. As discussed below, however, in response to certain market participant industry objections, the NERC Board at its February 20 meeting pulled back from its previously-announced interest in including business practice standards development

We can and will work out details. But first, the Commission must make the policy calls to limit subsequent collaborative work to such details.

I. DESCRIPTION OF APPA, NRECA AND TAPS

APPA is the national service organization representing the interests of not-for-profit, publicly owned electric utilities throughout the United States. More than 2,000 public power systems provide over 15 percent of all kilowatt-hour (kWh) sales to ultimate customers in the United States. Approximately 1,870 of these systems are cities and municipal governments that currently own and control the day-to-day operation of their electric utility systems. They purchase nearly 70 percent of the power used to serve their ultimate customers. Public power systems own about 8 percent of the nation's high voltage transmission lines, although many of these lines are configured to deliver energy to our load centers, not to provide transmission service in interstate commerce. On balance, public power systems buy much more energy and transmission than they sell to third parties.

NRECA is a not-for-profit national service organization representing 930 not-for-profit, consumer-owned rural electric cooperatives located in 46 states. NRECA's members serve more than 35 million end use electric customers. NRECA's membership includes both transmission-owning and transmission-dependent utilities. While NRECA members do generate their own power and make sales of power to third parties in wholesale markets, electric cooperatives on the whole are net buyers of power.

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under its aegis.

TAPS is an informal association of transmission-dependent utilities in more than 30 states, promoting open and non-discriminatory transmission access.[3] As entities entirely or predominantly dependent on transmission facilities owned and controlled by others, TAPS members are vitally interested in issues of industry structure, reliability and the business practices applicable to participation in electricity markets. TAPS and its members have commented upon and been involved in nearly all aspects of electric industry restructuring activities both before this Commission and in the legislative arena.[4]

Together, APPA, NRECA and TAPS serve approximately one-quarter of the country's electric load.

II. THE TASK AT HAND: ESTABLISHING A SINGLE STANDARD SETTING PROCESS FOR BUSINESS PRACTICES AND COMMUNICATION PROTOCOLS

The Commission's December 19 Order asked the industry to come to agreement on a single organization to develop business practices and communications protocols to support FERC's to-be-developed standard market design:

> 1. The Commission is in the process of developing a Notice of Proposed Rulemaking (NOPR) dealing with market design for the wholesale electric market. As part of this process, standards governing business practices and electronic

[3] TAPS is chaired by Roy Thilly, CEO of Wisconsin Public Power, Inc. Current members of the TAPS Executive Committee include, in addition to WPPI, representatives of: American Municipal Power-Ohio; Blue Ridge Power Agency; Clarksdale, Mississippi; ElectriCities of North Carolina, Inc.; Florida Municipal Power Agency; Geneva, Illinois; Illinois Municipal Electric Agency; Indiana Municipal Power Agency; Madison Gas & Electric Co.; Missouri River Energy Services; Municipal Energy Agency of Nebraska; Northern California Power Agency; Oklahoma Municipal Power Authority, Southern Minnesota Municipal Power Agency; and Vermont Public Power Supply Authority.

[4] Since 1989, when TAPS developed a formal position favoring fair transmission access through joint planning and use, TAPS has been actively involved in seeking fair and non-discriminatory transmission access for all users. *See Proposal of the Transmission Access Policy Study Group for Adoption and Implementation of a Fair Access Transmission Policy* in *The Transmission Task Force's Report to the Commission*, App. H, 253-267 (FERC, Oct. 1989). In the legislative process that led to the Energy Policy Act of 1992, TAPS continued to advocate strong transmission access provisions. TAPS has submitted comments in most of the FERC's rulemaking proceedings involving transmission access or pricing issues.

> communications are needed to complement the market design principles we develop. Once the Commission develops its market design principles, wholesale business practice and communications standards must be developed as soon as possible thereafter so that the industry can operate efficiently under the market design principles.
>
> 2. We prefer that the industry develop these business practice standards and communication protocols by establishing a single consensus, industry-wide standards organization for the wholesale electric industry.... To ensure that a mechanism is in place to develop these crucial standards when the market design principles are established, we request that the various participants in the wholesale electric industry agree on a single standards organization to develop wholesale electric standards by March 15, 2002.
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> ***
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> 6. The Commission is confident that, based on the characteristics outlined above, the industry can cooperate in creating a single standards organization that will develop a consistent set of national business practice and communication standards that will serve to create an integrated wholesale electricity market that promotes competition and enhances efficiency.

December 19 Order, 97 F.E.R.C. at 62,301-02. The Commission also made clear that it would take action if the industry did not reach consensus by March 15 (*id.* at 62,301):

> If the industry does not agree, by March 15, 2002, on a single standards organization, we will institute our own procedures either to choose an organization to develop such standards or to develop the standards ourselves.

APPA, NRECA and TAPS each participated in this intensive and expensive effort, to the limits of each of our resources. As discussed in the IOU Group Pleading, the effort spanned the country, involving numerous meetings.

Despite the substantial efforts put in by APPA, NRECA, TAPS, and others, this intensive and costly process did not yield an industry-wide consensus. In the absence of clear directives from the Commission on the fundamental issues described below, future industry efforts to create a single business standards setting organization will be protracted and in all likelihood, unsuccessful.

III. WHATEVER BUSINESS PRACTICE STANDARD SETTING PROCESS IS ADOPTED, THE ROLE OF THE INDEPENDENT NERC BOARD IN DEVELOPING AND ADOPTING STANDARDS TO SAFEGUARD RELIABILITY MUST BE PRESERVED

At the time the Commission issued its December 19 Order, both NERC and NAESB were seeking to act as the organization to set wholesale electric business standards. On October 16, 2001, the independent NERC Board, at the urging of its Stakeholder Committee, adopted a resolution providing that NERC would promptly: [5]

> Take all necessary steps to become the single organization in North America to develop both reliability standards and wholesale electric business practice standards through a fair, open, balanced, and inclusive process....

APPA, NRECA and TAPS were (and would continue to be) supportive of the concept of standard setting for both reliability and business standards going forward under NERC. If implemented, such a structure could have provided the efficiency of a more appropriate, single set of segments, and a single payment of dues, under the supervision of an independent Board, acting with the support of a knowledgeable professional staff.[6] NERC's initiative, however, met with resistance from some market

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[5] Resolution on the Role of NERC in Developing Market Interface or Commercial Practice Standards (Oct. 16, 2001), available at ftp://www.nerc.com/pub/sys/all_updl/docs/bot/BoardResolutions10-16-01/pdf.

[6] The development process for business and reliability standards could have been largely integrated, but business practices could appropriately be established by stakeholder consensus process overseen by the NERC Board, while as to reliability standards, the NERC Board would continue to exercise independent judgment. *See* February 8, 2002 Additional Comments of Roy Thilly, available at

participants who preferred to consolidate all standard setting under NAESB's purely stakeholder-controlled process.

By resolution adopted February 20, 2002, NERC removed itself from consideration as the organization to establish business practice standards and communications protocols, leaving the field open to others (presumably NAESB). The NERC Board reaffirmed its mission to develop, adopt and enforce reliability standards, while providing for coordination with the business practice standards development organization:[7]

> BE IT THEREFORE RESOLVED that NERC will, through a fair, open, balanced, and inclusive process, continue to set, monitor, and enforce compliance with standards for the reliable operation and planning of interconnected electric grids throughout North America, and
>
> BE IT FURTHER RESOLVED that NERC will work with other electric industry organizations to create a workable process to coordinate NERC's standards with the development of related standards, and
>
> BE IT FURTHER RESOLVED that NERC will work with other electric industry organizations on the development of a joint filing by March 15 in response to the Commission's December 19 order.

The NERC Board's February 20 action is fully consistent with the Commission's December 19 Order, which recognizes the need to closely coordinate development of business practice and reliability standards, but does not call for combining the two into a single process:

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http://www.nerc.com/~filez/wesm.htm.

[7] Resolution on Responsibility for Reliability Standards (Feb. 20, 2002), available at ftp://nerc.com/pub/sys/all_updl/docs/bot/FinalBoardResolutions-WESM2-20-02.pdf.

> 5. In establishing the structure and characteristics of a standards organization to develop wholesale electric business practice standards, the industry also should adopt a *process to coordinate* between wholesale electric business practice standards and other standards that impact the integrated North American electric grid. Business practices for wholesale electric transactions may be integrally linked with certain reliability standards since reliability requirements often overlap with business practices; for example, congestion management supports reliability, but also may significantly affect business practices. ... In its deliberations, the industry should consider the best process for achieving effective *coordination* between these *related* standards.

December 19 Order, 97 F.E.R.C. at 62,301-02 (emphasis added).

Further, the NERC Board's February 20 action is consistent with its reliability mission to protect the reliability so essential to our economy. In our view, reliability must be preserved at the current level or improved. Therefore, it is critical that business practice standards and communications protocols conform with both NERC's reliability standards and this Commission's standard market design.

Notwithstanding the December 19 Order's directive and the NERC Board's February 20 action, which cleared the way for a NAESB-like organization to act as the single standard setting organization for business practices and communications protocols, much of the industry effort since December was focused on the NERC-NAESB coordination issue. While APPA, NRECA, TAPS and others strongly believe that NERC should continue to fulfill its critical reliability mandate, others sought to minimize if not eliminate NERC's role.

No consensus was reached on the NERC-NAESB coordination issue, and is unlikely to be achieved without clear direction from this Commission. Nevertheless, the

extended discussions on this issue resulted in a set of principles that describe the complementary roles of NERC and NAESB, outline a mechanism for their close coordination, and list elements that could be included in a future Memorandum of Understanding between the two organizations. APPA, NRECA and TAPS support these principles, included in the NERC Comments (at 4-7), as a reasonable means to:

- maintain NERC's role in developing reliability standards, through its own processes that recently have been revamped after an extended and thorough vetting, and which the independent NERC Board will continually review.

- keep reliability in the hands of an independent board, subject to Commission oversight when reliability standards are incorporated in a tariff, instead of relegating reliability to a stakeholder-controlled process of the sort that this Commission has found unworkable in the ISO/RTO context.[8]

- provide for clear and meaningful coordination between development of reliability standards and the business practices needed to support the market mechanisms to be put in place through the Commission's standard market design.

In contrast, the IOU Group Pleading draws a vague line between NERC's "policy- setting" "what" function and NAESB's "standard-setting" "how" function, which could be read to inappropriately restrict NERC's Board from adopting the standards it deems necessary to ensure reliability.[9] During the industry process, some generators and marketers sought strenuously to put market participants in the position of limiting what NERC could do, *e.g.*, by requiring all NERC "policies" to go through the

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[8] *See, e.g., Bangor Hydro-Electric Co., et al.*, 96 F.E.R.C. ¶ 61,063, at 61,259 (2001), *reh'g pending.*

[9] There may be instances where a NERC standard may appropriately include elements that at least some industry participants might characterize as more of a "how" than a "what." NERC must be able to establish, for example, the specific rules for how, when and what data entities must submit to demonstrate compliance. NERC also establishes training and certification standards for system operators, which necessarily describe how such persons or their organizations demonstrate compliance.

NAESB stakeholder-controlled process before they could be adopted and enforced by NERC.

In contrast, we oppose putting stakeholders in the position of restricting the independent judgment of the NERC Board as to what needs to be included in a reliability standard. It is for this Commission, not industry participants, to determine whether NERC is intruding on the Commission's tariff, its standard market design, or the market mechanisms the Commission is seeking to promote.

As for the benefits claimed for "one stop shopping" in the development of reliability and business standards, a single process could come at a very high price if reliability standards are left to a stakeholder-controlled process that can subordinate them to commercial concerns.

IV. WE CAN SUPPORT BUSINESS PRACTICE DEVELOPMENT THROUGH A NAESB-LIKE PROCESS IF FUNDAMENTAL CONCERNS ARE ADDRESSED

The IOU Group Pleading proposes to develop wholesale electric standards through the "Wholesale Electric Quadrant" of NAESB, and includes (as an attachment) a flowchart setting forth that process in schematic form. While APPA, NRECA and TAPS would continue to support the concept of NERC overseeing standard setting for both reliability and business practices, we can support the concept of development of standardized business practices and communications protocols through a NAESB-like process if and only if our fundamental concerns with NAESB and elements of that process as set forth in the IOU Group Pleading can be adequately addressed. We therefore urge the Commission to provide clear directives at this juncture.

A. NAESB's One-Segment Veto Severely Limits the Ability to Craft Segments that Reflect the Diversity of Interests in the Electric Industry

The December 19 Order reflects the Commission's desire to develop a consensus-based standard setting process that reflects the full range of views reflected in the electric industry:

> Since *all* segments of the industry must conduct business and operate under these standards, it is appropriate that the standards reflect a reasonable consensus of the *entire* industry.

97 F.E.R.C. at 62,301 (emphasis added).

The IOU Group Pleading echoes the Commission's view that segments should reflect the important goal of giving voice to all industry viewpoints.[10]

> [E]very stakeholder group with a distinct interest in wholesale electric standards should have the opportunity to provide input to and vote in the standards development process, and protect itself from undue harm stemming from this process.

APPA, NRECA and TAPS agree that a structure that provides a meaningful voice in the decisionmaking process to each distinct interest is an essential ingredient to a credible, industry-wide "consensus" process. However, we fear that the NAESB organizational structure, as reflected in its current and difficult-to-change articles of incorporation, creates significant barriers to achievement of that goal. In particular, the NAESB organizational structure (1) poses a serious impediment to creation of a sufficient number of segments to ensure that the consensus process is broadly representative, and (2) denies effective participation to some sector of the industry, by grouping smaller sectors with others that have distinctly different and incompatible business interests.

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[10] IOU Group Pleading at 12-13, as distributed March 11, 2002.

Although the IOU Group Filing does not list particular segments, much of the discussion during these last few months focused on restricting the WEQ to no more than six sectors: Transmission, Generation, Load-Serving Entities, Marketing, End-Users, and Public Interest. While five segments may be said by some to work adequately in the gas industry which (among other things, is less vertically integrated), it will not accommodate definition of segments in a manner that reflects a true cross-section of electricity industry views. Five or six sectors will not capture the diversity of distinct voices in the electric industry given its history, structure, and current stage of evolution. Smaller but distinct voices, such as transmission dependent utilities, public power, and rural electric cooperatives, will likely be drowned out and discouraged from participation.[11]

For example, the voice of municipal and cooperative distribution utilities, whose interests and needs are far different than the distribution function of large vertically-integrated investor-owned utilities, would be muffled by inclusion together in the LSE segment. Similarly, municipal joint action agencies and generation and transmission cooperatives would be completely overwhelmed by both IOU and independent generators if included, without differentiation, in the Generator segment. And small transmission dependent utilities will never be heard over the din of larger entities into whose segments they are swept. The result is a so-called "consensus" process that sheds little light on whether there is anything approaching a true consensus among *all* the varied industry participants that must live with the resulting standard.[12]

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[11] Even on the gas side, the process is such that we understand that the American Public Gas Association and its members do not participate in GISB.

[12] There was discussion during the industry process of use of subsegments although, as reflected in the IOU Group Pleading, no consensus was reached. While properly-defined subsegments would be an essential step in the right direction if the electric industry had to fit its square pegs into the round holes of a five or six segment structure, a far better solution would be to define a larger number of segments to truly reflect

In contrast, the nine well-vetted Wholesale Electric Standards Model ("WESM") segments that emerged through NERC's Standing Committee Representation Task Force, and which were adopted by the NERC Board for use in its reliability standards development process (subject to the Board's continuing supervision), while not perfect, are a far better starting point than the five segment model adopted by NAESB's predecessor, Gas Industry Standards Board ("GISB"). For example, NERC's WESM segments includes transmission dependent utilities as a separate segment. We expect the segments to change over time, as trust in the new process is established and as the industry evolves.

A major source of the resistance to expanding the number of segments to more than five or six is the NAESB's requirement that any one segment has the power to veto a standard when it comes before the "Executive Committee." Under the NAESB Amended and Restated Certificate of Incorporation,[13] any "segment" can effectively veto adoption of a standard. According to Article V, § 4,

> An affirmative vote of at least sixty-seven percent (67%) from each of the applicable Quadrant(s) of the Executive Committee, including an affirmative vote of at least forty percent (40%) from representatives of each Segment within each of the applicable Quadrant(s), which vote must be ratified by a sixty-seven percent (67%) affirmative vote of those members of the applicable Quadrants of the general membership voting, shall be required to adopt, promulgate, amend, revise, modify, interpret or rescind a standard.

This NAESB requirement is reflected in Step 9 of the IOU Group Filing.

Since Executive Committee members are appointed by members of each segment, segment veto rights would allow a minority to veto a standard. To reduce the risk of

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the diversity of interests represented in the electric industry.

standards paralysis, NAESB supporters advocate that the WEQ have a smaller number of segments than the wholesale electric industry currently has. The fact is, the organizational form of market participants – including whether they are large or small, for-profit or customer/community owned, or vertically-integrated, transmission dependent, or otherwise or unbundled – does make a difference. With today's industry structure, we just can't be shoe-horned into five segments without abrogation of minority interests. However, while minority interests – such as ours – must be taken into account, a single-segment veto is just plain wrong.

NAESB's single segment veto stands in marked contrast to the weighted sector voting structure adopted by the NERC Board for its reliability standards development process. *See* NERC Board's February 20 Resolution on Incorporating Features of the WESM Proposal into the NERC Standards Development Process:[14] "the Board favors the approach recommended in the proposed WESM model that prevents any single segment from blocking the approval of a standard."

Nor is the NAESB single segment veto requirement one that is easy to change. To the contrary, it is hardwired into the organization absent an affirmative vote of at least 75% of the NAESB board, including an affirmative vote of 40% from the directors representing each segment within each quadrant, which must be ratified by a 90% affirmative vote of the general membership. *See* NAESB Certificate of Incorporation, Article V, §3.

The Commission could move this logjam forward by making clear its expectation that segment definitions must reflect the full range of views encompassed in this industry,

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[13]The NAESB certificate is available at http://www.naesb.org/pdf/naesbcert.pdf.

and that it will not countenance the sacrifice of its stated intention to create consensus organization reflecting the *entire* electric industry to NAESB's artificial single segment veto requirement. Such guidance will give NAESB, its current voting membership (90% of whom would need to approve the change), and the electric industry, a clear signal that (1) if NAESB is to function as a single standard setting organization for wholesale business practices and communications protocols, it must promptly change its certificate; and (2) segments should be defined to ensure that *all* distinct views have a meaningful voice in decisionmaking, with any changes to the segment definitions subjected to a well-defined, fair and open process that also is broadly representative. If NAESB cannot accommodate a broadly representative structure without the single segment veto, then a different organizational vehicle must be found for the business standard setting process.

B. The Commission Should Make Clear that Single Entities Can Vote in Only One Segment

The IOU Group Pleading does not definitively decide the issue of multiple segment representations for single entities (*i.e.*, vertically-integrated utilities). However, it was a much discussed issue, which could benefit from clear Commission guidance.

The NAESB by-laws, Article 1, § 1.1T, provides for any single entity to vote in multiple segments within a quadrant, so long as the entity meets the requirement of a given segment within a quadrant, joins the segment and quadrant, and pays the dues for each such segment: "A Voting Member may only be a member of multiple Quadrants and Segments if it has paid dues in each such Quadrant and Segment."[15] As we understand it, multiple representation of individual entities is permitted in GISB.

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[14] Available at ftp://www.nerc.com/pub/sys/all_updl/docs/bot/FinalBoardResolutions-WESM2-20-02.pdf.

[15] By-laws of NAESB available at http://www.naesb.org/pdf/naesbbylaws.pdf.

But the electric industry remains highly vertically integrated, resulting in the prospect that the various segments will be primarily populated by representatives of different divisions of the same companies. For example, vertically-integrated utilities would be eligible (so long as they paid the dues for each segment) to participate in four out of the six segments that have been the focus of much of the discussion these past few months: Transmission, Generation, Load-Serving Entities, and Marketing. Similarly, most independent generators will likewise fit in both the Generation and Marketing segments.[16] And all industry participants have headquarters served at retail, and therefore may potentially attempt to squeeze into the End User segment.[17]

Allowing individual entities to vote in multiple segments creates the real potential that the so-called consensus process will represent nothing more than the consensus of views of divisions of the largest utilities in this country. Nor is this a paranoid vision. It is revealing that among the few entities that have thus far sent NAESB letters of intent to join the wholesale electric quadrant, one large investor-owned utility has specified four segments in which it seeks voting membership: Transmission, Generation, Load-Serving Entities, and Marketing.[18] In our view, agreement to a standard by the various divisions of the largest vertically-integrated utilities hardly demonstrates that the standard in any way reflects a consensus of the *entire* electric industry, as the December 19 Order properly sets as the Commission's goal.

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[16] Subsegment proposals discussed in the industry process featured vertically-integrated utility subsegments in three of the six segments.

[17] We understand that the end user segment of GISB is largely populated by electric utilities.

[18] *See* North American Energy Standards Board, Companies Intending Joining Quadrants and Sending Letter of Intent, dated 3/14/02, at 4-5, posted at http://www.naesb.org/naesb.htm.

We ask the Commission to express its preference for a true industry consensus process where the large players could not drown out all other voices by simply populating most of the segments with divisions that ultimately must reflect the overall corporate objective of the single enterprise.[19] Thus, the Commission should limit the voting participation of any individual entity,[20] including vertically integrated utilities, to a single segment of their choice (whose definition they satisfy). Such clear guidance should assist NAESB in making the necessary changes in its by-laws.[21]

C. *A Professional Independent Staff is Critical to the Effectiveness and Credibility of the Consensus Process as a Voice for the Industry*

NAESB has a skeletal, essentially administrative staff. All the real work is performed by industry "volunteers."

Reliance on volunteers invites hijack of the consensus process by the largest, most well-funded players, who have the resources to "volunteer" and steer the process in their favor. The absence of an independent, professional staff thus cuts against an open, inclusive process where "resource limited" players can have an effective voice. Instead, a purely "volunteer" process makes more likely a "might makes right" outcome.

Given the complexity of the electric industry and the business standards needed to implement a standard market design, an unbiased, technically proficient professional staff is required to help develop standards, administer the process, and thereby ensure a truly

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[19] While industry participants have argued that divisions of the same enterprise do not necessarily agree with each other, we've seen too many times evidence of the obvious fact that they all must answer to the same authority.

[20] We do not seek to limit the participation of vertically-integrated utilities for purposes other than voting.

[21] Under Article V, § 5 of NAESB's Certificate of Incorporation, changes to its by-laws require an affirmative vote of at least 75% of the NAESB board, including an affirmative vote of at least 40% from directors representing each segment within each quadrant.

open, inclusive, broadly representative process. While we would prefer having such staff report to an independent board (as in the NERC structure), in the NAESB context such staff would report to the stakeholder Executive Committee.

D. Pay to Play is not an Appropriate Means to Fund What is Intended to be a Broadly Representative Process

As proposed in the IOU Group Pleading, WEQ should be funded by a fixed annual fee for each participant, with entities participating in more than one segment paying an additional fee for each segment in which they participate. The IOU Group Pleading suggests that some unspecified accommodation of entities that have difficulty contributing the fixed annual payment is contemplated.

A poll tax is no way to encourage the broad participation of all sectors of the industry that is needed to give this process legitimacy. Especially given the already heavy burden placed on small organizations that seek to participate, in terms of travel expense and staff time, imposing a fixed annual fee (such as GISB's $5000 fee) could well discourage participation by smaller players and consumer groups.[22] If experience on the gas side is any guide, the likely result of the dues structure (as well as the other attributes of the NAESB/GISB process) is that only large well-funded entities will participate.[23]

Nor should we take comfort in the accommodation of the less well funded players hinted at in the IOU Group Pleading. As shown in NAESB's March 8, 2002 press

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[22] GISB's $5000 fee assumes only a tiny administrative and no professional staff. Inclusion of the professional staff needed to make the consensus process effective and less tilted, however, would likely cause the $5000 dues to rise, aggravating the dues structure problem.

[23] *See* Wholesale Gas Quadrant membership list, posted at http://www.naesb.org/pdf/wgqmembers.pdf, which includes no public gas system or consumer representative.

release,[24] NAESB has approved until December 31, 2003 "promotional dues" of $500 a year, available to no more than three organizations (selected through an "open season") representing residential end users in each of the retail gas and retail electric quadrants. Such a limited, and limited time, "promo" rate hardly ensures broad representation.

If the Commission is serious about creating a truly inclusive, rather than exclusive, process, it should make clear its expectation that "tiered" funding levels should be established.

V. FERC NEEDS TO CAREFULLY PRESERVE ITS AUTHORITY TO FULLY REVIEW THE RESULTS OF WHATEVER "CONSENSUS" PROCESS IS ADOPTED TO ENSURE CONSISTENCY WITH THE FPA AND THE STANDARD MARKET DESIGN

In adopting literally hundreds of GISB standards, this Commission has been deferential to GISB, ruling that such deference is consistent with OMB Circular No. A-119, and the National Technology Transfer and Advancement Act of 1995 ("NTT&AA").[25]

> Section 12 of the NTT&AA establishes governmental policy that federal agencies shall use technical standards that are developed or adopted by voluntary consensus standards bodies unless such use is "inconsistent with applicable law or otherwise impractical." Although ... Senator Rockefeller, a sponsor of the bill, referred to governmental use of standards for procurement purposes, nothing in the final language of the Act limits it applicability to procurement. Congressman Brown, a cosponsor or the Act, in fact, specifically refers to the use of standards for "procurement and *regulatory* purposes." In addition, § 12 of the NTT&AA was intended to codify

[24] The press release is available at http://www.naesb.org/pdf/030802pr.pdf.

[25] The Commission refers to the National Technology Transfer and Advancement Act of 1995 ("NTT&AA"), Pub L. No 104-113, § 12(d), 110 Stat. 775 (1996), which codified an earlier version of OMB Circular No. 119-A. The currently effective Circular and the Act are consistent.

> OMB Circular A-119, which did not limit the policy of using private sector standards to procurement.

Standards for Business Practices of Interstate Natural Gas Pipelines, 77 F.E.R.C. ¶ 61,061, at 61,227 (1996) (footnotes omitted). In supporting this position, the Commission stressed the broadly representative consensus process (*id.*):

> Even if § 12 of the NTT&AA does not strictly apply here, the Commission is warranted in giving significant weight to the consensus standards. Not only does the industry possess specialized knowledge of business and electronic communication practices, but, since the industry itself has to operate under these standards, the standards should implement practices that are favored by the broadest cross-section of industry members.

At the same time, the Commission has recognized the dangers of relying on an industry process, especially where (as in the NAESB structure), one segment can veto a needed standard:

> The Commission is fully aware of the potential for private sector standards committees to inhibit competition, particularly if one interest can block the adoption of a necessary standard. GISB's rules provide that at least two votes from each industry segment are needed to approve a standard. While such a rule is important to ensuring that any approved standard commands a consensus of the industry, the rule also can permit one industry segment voting as a block to defeat a needed standard.
>
> That is precisely why the Commission has not previously, and is not now, delegating to the industry the responsibility to develop the needed standards. The Commission took, and is still taking, an active role in identifying the business areas needing standardization. The Commission provided the industry the opportunity to apply its expertise to craft solutions that command broad agreement throughout the industry, and has appropriately given these consensus solutions great weight. In those areas where additional consideration of modifications or enhancement of the standards may be warranted, the Commission has established a schedule for the industry to

> consider refinements. And, the Commission stands ready to resolve issues if necessary.

Standards for Business Practices of Interstate Natural Gas Pipelines, [1996-2000 Regs. Preambles] F.E.R.C. Stats. & Regs. ¶ 31,038, at 30,065-66 (1996) (footnotes omitted).

Particularly in the current state of the electric industry, the Commission must be particularly cautious about deference to a consensus process that is likely to be heavily dominated by the most well-funded participants, who can use the process to undermine the pro-competitive purposes of the standard market design. To ensure that the business standards process does not subvert the FPA's purposes, the Commission must ensure that the process is truly representative by taking the steps APPA, NRECA and TAPS have urged:

- providing for segment definitions that reflect distinctly the industry's diversity;
- eliminating the single segment veto;
- preventing domination by the largest players through multiple segment voting;
- calling for a professional staff; and
- implementing a tiered dues structure.

Further, the Commission should shield from stakeholder control the critical role performed by the independent NERC Board in developing and adopting standards needed to preserve reliability, as articulated above and in the NERC Comments filed today.

However, even if the Commission takes the steps urged above, it will remain difficult for smaller entities to be effectively heard in such a resource-intensive process.

Thus, there remains a serious risk of capture – that the consensus process may not end up reflecting the full range of views.[26]

The Commission therefore needs to carefully preserve its authority and heed its responsibility to closely examine and review the results of the consensus business standards development process for consistency with the Act and the standard market design ultimately adopted by the Commission.

[26] This risk is especially high if the Commission does not provide the guidance requested by APPA, NRECA and TAPS.

CONCLUSION

APPA, NRECA and TAPS request the Commission to provide clear directives, consistent with comments set forth above, to facilitate prompt industry agreement to a truly fair and inclusive process for development of business practices and communications protocols needed to implement the Commission's standard market design.

Respectfully Submitted,

American Public Power Association

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March 15, 2002

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Electricity Market Design and Structure	)	**Docket No. RM01-12-000**

COMMENTS OF THE NORTH AMERICAN ELECTRIC RELIABILITY COUNCIL ON THE FORMATION OF A STANDARDS DEVELOPMENT ORGANIZATION FOR THE WHOLESALE ELECTRIC INDUSTRY

The North American Electric Reliability Council (NERC) strongly supports the formation of an industry organization to develop business practice standards and related communications protocols for the wholesale electric industry, as requested by the Commission in its December 19, 2001, order in this docket.[1] In a related development, NERC's Board of Trustees on February 20, 2002, made two important decisions:

(1) NERC will continue to establish reliability standards for the operating and planning of the bulk electric systems of North America through its own fair, open, balanced and inclusive standards development process; and

(2) NERC is committed to closely coordinating its standard-setting activities with those of the new business practices organization, in support of the Commission's goal of achieving reliable, well-functioning competitive wholesale electric markets.

These comments describe the nature and scope of NERC's reliability standards and explain how NERC envisions coordinating its standard-setting activities with those of the new business practices organization.

[1] Since its formation in 1968, NERC has been instrumental in making the North American electric system the most reliable electric system in the world. NERC's membership is unique. As a not-for-profit corporation, NERC's members are the ten Regional Reliability Councils whose members come from all segments of the electric industry: investor-owned utilities; federal power agencies; rural electric cooperatives; state, municipal and provincial utilities; independent power producers; power marketers; and end-use customers. These entities account for virtually all the electricity supplied and purchased in the United States, Canada, and a portion of Baja California Norte, Mexico.

NERC is authorized to state that the following organizations and entities have agreed to support this filing: American Public Power Association, Arizona Public Service Corporation, National Association of State Utility Consumer Advocates, National Rural Electric Cooperative Association, Southern Company Services, Inc., Transmission Access Policy Study Group, Western Area Power Administration, and Wisconsin Electric Power Company.

Comments and questions with respect to these comments should be addressed to:

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I. Background

In its December 19 order, the Commission stated that it expected to issue a rule regarding a standard market design for the wholesale electric market in the near future and that standards governing business practices and electronic communications would be needed to implement the Commission's market design principles. The Commission called on the electric industry to establish a single consensus, industry-wide standards organization to develop these business practice standards and communication protocols for the wholesale electric industry. The Commission also directed the industry to adopt a process to coordinate the development of wholesale electric business practice standards and related communications protocols with other standards, such as reliability standards, that impact the integrated North American electric grid.

For several months prior to the December order, NERC had been working with other industry participants as well as representatives of the Gas Industry Standards Board on the issue of how best to

develop business practice standards and reliability standards to support the evolving electricity markets. Once the Commission issued the order, NERC and all industry participants intensified their efforts to pursue a consensus process that would both address the development of business practice standards and communications protocols, and ensure the coordination of that process with the development of NERC's reliability standards. The industry has made substantial progress toward meeting the Commission's request, although work remains to be done. NERC is committed to continue to work with others in the industry to complete the task of creating an organization to develop the business practice standards needed to implement the Commission's market design policies.

At its meeting on February 20, 2002, NERC's independent Board of Trustees adopted a resolution that demonstrates its complete and unambiguous commitment to maintaining the reliability of the North American electric grid, including the development of reliability standards (Appendix A-1). The Board strongly believes that there is a paramount public interest in a reliable bulk power system in North America and concluded that an organization encompassing both the United States and Canada should have as its principal mission maintaining the reliability of that system. In light of NERC's technical expertise, history, and governance by an independent board charged to represent the broad public interest, the Board affirmed that NERC will be that organization. At the same time, the Board indicated it is committed to developing reliability standards that enable and encourage market solutions to the maximum extent possible. The Board also committed NERC to work with the industry to develop a joint filing in this docket, and to coordinate with those organizations responsible for developing any standards that impact the operation of the interconnected electric systems throughout North America.

To further support the concept of a fair, open, balanced and inclusive process for developing reliability standards, the Board adopted a weighted-sector voting model for the approval of reliability standards (Appendix A-2). This approach provides for balanced and inclusive participation in the standards development process, and at the same time prevents any single segment from dominating the process or blocking the approval of a standard. NERC is in the process of incorporating the new voting model into

the NERC standards development process. NERC will also apply to the American National Standards Institute (ANSI) for accreditation of its standards development process.

II. Proposed Process for Coordinating the Development of Reliability Standards and Wholesale Electric Business Practice Standards

NERC remains committed to ensure that its revised process for developing and adopting reliability standards is closely coordinated with the new business standards organization. Anticipating that the North American Energy Standards Board (NAESB) will be the entity under which wholesale electric business practice standards and related communications protocols will be developed, NERC has already begun working with NAESB to develop a memorandum of understanding that will define how our respective standards development processes will be coordinated. This section outlines a proposed process for achieving this coordination.

A. Principles for Coordination

NERC supports the following overarching principles for coordinating with the standards setting process of a wholesale electric business practice standards body:

- Safeguarding the reliability and integrity of the integrated, international bulk power system is of paramount importance.
- Clear reliability standards that are mandatory and enforceable for all industry participants are necessary for the reliable physical operation and planning of the facilities that comprise the integrated bulk power system.
- Business practice standards are also needed to ensure liquid and efficient wholesale electricity markets.
- Business practice standards are often integrally linked to standards developed to ensure the reliability of integrated grids.

Therefore, NERC believes that it and NAESB should work together to coordinate the development of reliability standards by NERC and wholesale electric business practice standards and

related communications protocols by NAESB.

B. NERC Reliability Standards

NERC develops reliability standards through its standards development process (Appendix B). These standards consist of policies, principles, requirements, measures, and expected outcomes or performance to assure the reliable physical operation and planning of integrated transmission grids.

- Reliability standards are based on the reliability and market interface principles adopted initially by the NERC independent Board on October 16, 2001 (See Appendix C).
- Reliability standards establish technical or performance requirements that can be measured, along with requirements for preparedness.[2]
- Reliability standards are written such that they:
  - Achieve their reliability objective without causing undue restrictions or adverse impacts on competitive electricity markets,
  - Do not provide any entity the opportunity or means to impose discriminatory requirements upon users of the bulk electric system,
  - Neither mandate nor prohibit any specific market structure, and
  - Enable and encourage market solutions to the extent possible and appropriate.
- Where the intent is to rely primarily on market mechanisms for implementation, reliability standards may also include "backstop" procedures to assure the physical reliability of the system. Such procedures would be implemented when market mechanisms are not in place or will likely be ineffective to achieve the reliability objectives.
- The NERC Board acts to adopt reliability standards, which makes them mandatory.

[2] Such standards will include (1) technical standards related to the provision, maintenance, operation, or state of electric systems, and will likely contain measures of physical parameters and will often be technical in nature; (2) performance standards related to the actions of entities providing for or impacting the reliability of bulk electric systems, and will likely contain measures of the results of such actions, or the performance of such actions; and (3) preparedness standards related to the actions of entities to be prepared for conditions that are low in probability but high in risk and consequence. Such standards are critical to reliability and will likely contain measures of such preparations or the state of preparedness, but measurement of actual outcomes may occur infrequently or never.

C. NAESB Business Practice Standards and Related Communications Protocols Processes

The proposed Wholesale Electric Quadrant (WEQ) of NAESB will develop voluntary wholesale electric business practice standards and related communications protocols, which will conform to standard market design principles developed by the Commission and to reliability standards developed by NERC. NAESB will not develop reliability standards or policies, principles, requirements, measures, and expected outcomes or performance for the reliable physical operation and planning of integrated transmission grids. It is expected that some of the business practice standards developed by NAESB will, however, establish uniform market rules and mechanisms for implementing and achieving compliance with NERC reliability standards.

D. Coordinating between the NERC and NAESB Processes: Elements of a Memorandum of Understanding

NERC believes that that there should be a formal coordination process between NERC and the WEQ of NAESB, and that the terms of this coordination process should be formalized in a memorandum of understanding (MOU) between the two organizations. The following are elements that should guide the development of such an MOU:

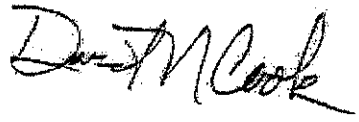
- It should be the intent of both NERC and NAESB that reliability standards and wholesale electric business practice standards be harmonized and that each organization be able to move forward with its appropriate standards development activity while keeping the other fully informed as to its efforts.
- NERC and NAESB should coordinate closely their respective standards development activities to achieve the maximum possible coordination and synergy between the reliability standards developed by NERC and the business practice standards and related communications protocols developed by NAESB.
- NERC will determine if any business practice standard developed by NAESB conflicts with any NERC reliability standards, and will work with NAESB to resolve any such conflicts.

- NERC will encourage the members of its committees and subcommittees to participate actively in the NAESB standards development process on the development of those wholesale electric business practice standards and related communications protocols that help achieve reliability objectives through market mechanisms.
- NAESB should encourage the members of its proposed Wholesale Electric Quadrant Executive Committee, subcommittees and working groups to participate actively in the NERC standards development process on the development of those NERC reliability standards that impact wholesale electric markets.
- NERC and NAESB should agree on specific coordination protocols that address notifications, joint participation, and conflict resolution related to the development of their respective standards.

II. Conclusion

NERC commits to continue to work with the Commission and with all entities involved in the electric industry to ensure that the reliability of the North American electric grid is maintained. NERC also commits to develop its reliability standards such that they enable and encourage market solutions to the extent possible and appropriate. NERC and the parties listed in support of this filing believe that the process outlined above provides a viable and supportable approach to fulfill these objectives.

North American Electric Reliability Council



David N. Cook
General Counsel

Appendix A-1

Resolution on Responsibility for Reliability Standards, adopted February 20, 2002, by NERC Board of Trustees

WHEREAS, safeguarding the reliability and integrity of the integrated, international bulk power system is of paramount importance, and

WHEREAS, there need to be clear rules for the reliable operation and planning of the facilities that comprise the integrated bulk power system (core reliability standards), that are mandatory and enforceable for all industry participants, and

WHEREAS, the NERC Board is committed to NERC developing reliability standards that enable and encourage market solutions to the maximum extent possible, and

WHEREAS, NERC has successfully exercised responsibility for reliability of the interconnected, international transmission grid for nearly 35 years, and

WHEREAS, the Federal Energy Regulatory Commission, on December 19, issued an order announcing that it would develop standard market design principles and requested the industry to establish a single consensus, industry-wide organization to develop wholesale electric business practice standards and communication protocols to complement these principles, and

WHEREAS, in its December 19 order, the Commission also stated that the industry should adopt a process to coordinate between wholesale electric business practice standards and reliability standards,

BE IT THEREFORE RESOLVED that NERC will, through a fair, open, balanced, and inclusive process, continue to set, monitor, and enforce compliance with standards for the reliable operation and planning of interconnected electric grids throughout North America, and

BE IT FURTHER RESOLVED that NERC will work with other electric industry organizations to create a workable process to coordinate NERC's standards with the development of related standards, and

BE IT FURTHER RESOLVED that NERC will work with other electric industry organizations on the development of a joint filing by March 15 in response to the Commission's December 19 order.

Appendix A-2

Resolution on Incorporating Features of the WESM Proposal into the NERC Standards Development Process, adopted February 20, 2002, by NERC Board of Trustees

WHEREAS, the Board finds the weighted-segment voting model in the WESM proposal is most appropriate for the approval of reliability standards, and

WHEREAS, the Board favors the approach recommended in the proposed WESM model that prevents any single segment from blocking the approval of a standard, and

WHEREAS, the Board believes that it is critical to meeting its public interest responsibilities that the Board vote to adopt all standards for the reliable operation and planning of interconnected electric grids throughout North America,

THEREFORE BE IT RESOLVED that the Board commends the Standing Committees Representation Task Force for their proposal on Wholesale Electric Standards Development, and

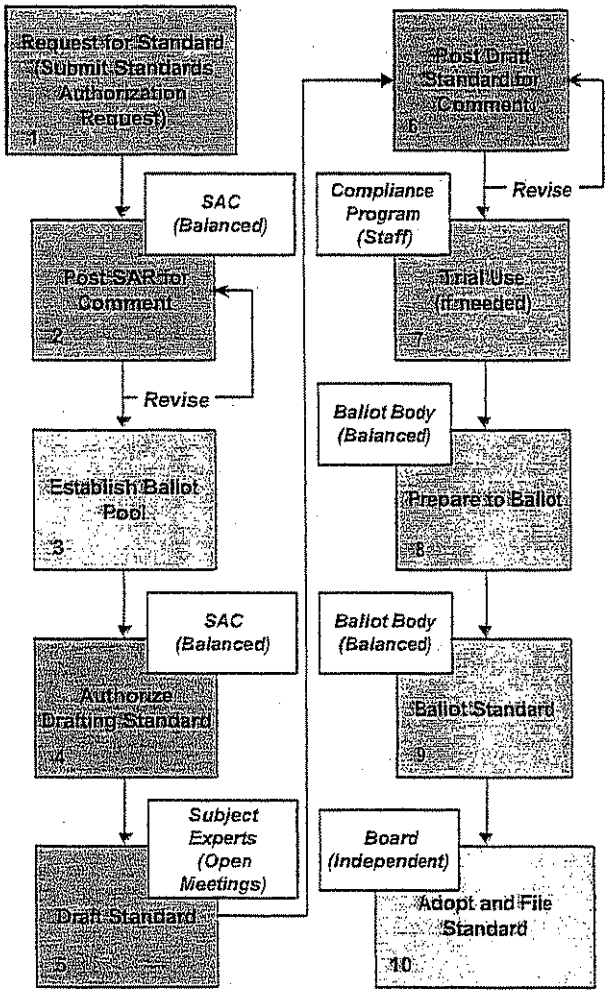
BE IT FURTHER RESOLVED that the Board adopts the segments and weighted-segment voting model proposed by the Task Force and directs that this voting model be incorporated into the NERC standards development process as soon as possible, and

BE IT FURTHER RESOLVED that the Board directs staff to make the necessary changes to the Organization Standards Process Manual and make application to ANSI for accreditation of this new NERC standards development process.

Appendix B

North American Electric Reliability Council (NERC) "A Day in the Life of a Reliability Standard"

The flowchart on the right depicts the steps necessary for developing a NERC reliability standard. It begins with submitting a Standards Authorization Request (SAR), progresses through standard drafting steps and weighted industry segment voting, and culminates with NERC Board adoption and implementation. Along the way, NERC posts the SAR and draft standards on its public Internet website for public review and comment.



Overview

The process for developing and approving NERC reliability standards is generally based on the procedures of the American National Standards Institute (ANSI) and other standards-setting organizations in the United States and Canada. The NERC Standards Development Process has the following characteristics:

Due process – Any person with a direct and material interest has a right to participate by: a) expressing an opinion and its basis, b) having that position considered, and c) appealing if adversely affected.

Openness – Participation is open to all persons who are directly and materially affected by North American bulk electric system markets and reliability. There shall be no undue financial barriers to participation. Participation shall not be conditional upon membership in NERC or any organization, and shall not be unreasonably restricted on the basis of technical qualifications or other such requirements.

Balance – The NERC Standards Development Process shall have a balance of interests and shall not be dominated by any single interest category. The Process develops consensus, first on the need for the standard, then on the standard itself. The Process includes the following key elements:

- Nomination of a proposed standard, revision to a standard, or withdrawal of a standard using a Standard Authorization Request (SAR).
- Public posting of the SAR to allow all parties to review and provide comments on the need for the proposed standard and the expected outcomes and impacts from implementing the proposed standard. Notice of standards shall provide an opportunity for participation by all directly and materially affected persons. A notice shall be posted with the SAR, requesting that interested individuals complete and submit a Standard Drafting Team Self-nomination Form
- Review of the public comments in response to the SAR and public posting of the resolution of all posted comments
- Prioritization of proposed Standards Actions, leading to the authorization to develop, modify, or withdraw standards for which there is a consensus-based need.
- Assignment of appropriate technical experts to draft the new or revised standard.
- Drafting of the standard.
- Public posting of the draft standard to allow all parties to review and provide comments.
- Public posting of the resolution of all posted comments. At this point, the need for the standard has been established and comments should focus on aspects of the draft standard itself.
- Trial use of the draft standard and associated measures. The need and extent of the trial use shall be determined during the authorization process considering the recommendation of the NERC Compliance Director and public comments. The trial use may be industry-wide or may consist of one or more lesser-scale demonstrations. The trial use should be cost effective and practical, yet sufficient to validate the requirements, measures, measurement processes, and other elements of the standard. For some standards and their associated measures, a trial use may not be appropriate, such as those measures that consist of administrative reports.
- Determination of consensus on the standard as meeting the intent of the SAR and confirming its readiness for balloting.
- Formal balloting of the reliability standard for approval by the Standards Ballot Pool using the NERC Weighted Segment Voting Model.
- Re-ballot to consider specific comments by those submitting comments with negative votes.
- Board adoption of the reliability standard.
- Filing for information with FERC and applicable Canadian Regulatory Agencies.
- An appeals mechanism as appropriate for the impartial handling of substantive and procedural complaints regarding action or inaction related to the standards process.

Groups Involved in the NERC Standards Development Process

NERC Board of Trustees – has overall responsibility for assuring compliance with the integrity of the Standards Development Process. In fulfilling this responsibility the Board shall assure the public's interest is considered in developing reliability standards that are consistent with NERC's Reliability Principles and Market Interface Principles.

Registered Ballot Body – The Registered Ballot Body is comprised of the corporations, entities, and individuals registered in NERC's nine Industry Segments. Each member of the Registered Ballot Body is eligible to participate in the voting process for each Standards Action.

Ballot Pool. Each Standards Action has its own Ballot Pool formed of interested members of the Registered Ballot Body. The Standards Ballot Pool is comprised of those members of the Registered Ballot Body that respond to a pre-ballot survey for that particular Standard Action. The Ballot Pool is responsible for assessing the need for and technical merits of proposed Standard Actions, and for assuring comments received in the process are provided due consideration. The Ballot Pool casts its votes electronically.

Standards Authorization Committee – The Standards Authorization Committee (SAC), which reports to the NERC Board, consists of two members of each of the Industry Segments in the Registered Ballot Body. The SAC meets at regularly scheduled intervals (either in person, or by other means) to monitor and coordinate the Standards Development Process.

Requester – A Requester is any person (organization, company, government agency, individual, etc.) who submits a Standard Authorization Request (SAR) to initiate a Standards Action. A Requester may be a NERC subcommittee, working group, or task force, or any person or entity that is directly and materially affected by an existing reliability standard or the need for a new standard.

Standard Drafting Team – A team of technical experts, appointed by the SAC that drafts the technical details of a standard. Each team needs to have the technical expertise required to draft the standard to ensure the standard is objective, measurable, within the scope of the SAR, etc. When making assignments to the Drafting Team, the SAC shall consider all individuals who have completed a self-nomination form, which is posted at the same time as the SAR. Standard Drafting Teams develop responses to comments and participate in industry forums to discuss differing viewpoints on posted draft standards.

Appendix C

NERC Reliability and Market Interface Principles

Reliability Principles

NERC Organization Standards are based on Reliability Principles that define the foundation of reliability for North American bulk electric systems. Each Organization Standard shall enable or support one or more of the Reliability Principles, thereby ensuring that each standard serves a purpose in support of reliability of the North American bulk electric systems. Each Organization Standard shall also be consistent with all of the Reliability Principles, thereby ensuring that no standard undermines reliability through an unintended consequence.

Reliability Principle 1 – Interconnected bulk electric systems shall be planned and operated in a coordinated manner to perform reliably under normal and abnormal conditions as defined in the NERC Standards.

Reliability Principle 2 – The frequency and voltage of interconnected bulk electric systems shall be controlled within defined limits through the balancing of real and reactive power supply and demand.

Reliability Principle 3 – Information necessary for the planning and operation of interconnected bulk electric systems shall be made available to those entities responsible for planning and operating the systems reliably.

Reliability Principle 4 – Plans for emergency operation and system restoration of interconnected bulk electric systems shall be developed, coordinated, maintained and implemented.

Reliability Principle 5 – Facilities for communication, monitoring, and control shall be provided, used, and maintained for the reliability of interconnected bulk electric systems.

Reliability Principle 6 – Personnel responsible for planning and operating interconnected bulk electric systems shall be trained, qualified, and have the responsibility and authority to implement actions.

Reliability Principle 7 – The security of the interconnected bulk electric systems shall be assessed, monitored, and maintained on a wide-area basis.

Market Interface Principles

Recognizing that bulk electric system reliability and electricity markets are inseparable and mutually interdependent, all NERC Organization Standards shall be consistent with the Market Interface Principles. Consideration of the Market Interface Principles is intended to assure Organization Standards are written such that they achieve their reliability objective without causing undue restrictions or adverse impacts on competitive electricity markets.

Market Interface Principle 1 – The planning and operation of bulk electric systems shall recognize that reliability is an essential requirement of a robust North American economy.

Market Interface Principle 2 – An Organization Standard shall not give any market participant an unfair competitive advantage.

Market Interface Principle 3 – An Organization Standard shall neither mandate nor prohibit any specific market structure.

Market Interface Principle 4 – An Organization Standard shall not preclude market solutions to achieving compliance with that standard.

Market Interface Principle 5 – An Organization Standard shall not require the public disclosure of commercially sensitive information. All market participants shall have equal opportunity to access commercially non-sensitive information that is required for compliance with reliability standards.

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MEMORANDUM

File: 1.10.4

February 8, 2002

TO: Statewide Managers
G&T Managers
NRECA Board of Directors

FROM: Glenn English, Chief Executive Officer

A few things I wanted to share with you...

Overview...

The Bush Administration budget proposal for FY03 was released this week and congressional hearings began. In spite of general bipartisan agreement that the defense budget is going to have to increase substantially, and that as a result the nation will be running a deficit, the actual process of establishing the appropriated levels for other programs is promising to be much more contentious this year than last. There is serious bipartisan concern about the "in your face" stance that has been taken by OMB Director Mitchell Daniels about his disregard for the decision-making role of Congress in establishing program funding levels for the nation. The fact that thousands of extra dollars were spent to illustrate OMB's views through the use of color photographs of congressional appropriations considered low priorities has enflamed the reception of the budget in the critical appropriation committees. For the non-defense programs, after the Administration's increases for National Institutes of Health and a few other programs are taken into account, the budget proposes a $1 billion dollar raise for everything else. This fact, along with an optimistic set of economic assumptions which increases the tax revenue income, is setting the stage for what may be one of the more challenging political situations in years on federal spending.

The Administration's $2.13 trillion spending plan for FY03 relies primarily on deficit spending of $80 billion to cover a $45 billion increase for the military and an additional $10.5 billion for national security, some of the shortfall is offset by domestic funding cuts. While there are small increases for most non-military agencies, the Administration leaves overall agriculture funding unchanged and cuts spending at the Justice Department, Army Corps of Engineers and Environmental Protection Agency (EPA). Many cuts are aimed at "small category" programs that, when viewed individually, will not draw widespread attention or criticism. Some of these program cuts are harmful to consumer-owned utilities and the communities they serve. Here are highlights of the

budget that directly impact electric co-ops. We will be giving your more information about these issues as the budget and appropriations process continues through the various committees.

Rural Utilities Service

Under the White House budget proposal, Rural Utilities Service loans are listed for a cut from the $4.1 billion appropriated by Congress in the current budget. The Administration is asking for $2.47 billion, which is more than the White House proposed in FY02. The breakdown of loan levels shows Municipal electric loans being reduced from $500 million to $100 million and Treasury rate loan guarantees dropping from $750 million to $700 million. The Administration wants to cut FFB loan levels from $2.6 billion to $1.6 billion, and leave hardship loan levels unchanged at $121 million. In addition, the White House is attaching a much higher subsidy level to the municipal loan program. Last year, when the level was $500 million for the municipal program, it required zero subsidies. In contrast, the subsidy just for the proposed $100 million level is $4 million in appropriated funds. Bringing this program up to last year's level of $500 million will require an appropriation of $20 million. This will be a very difficult appropriations challenge given the tight domestic Administration budget for FY03.

Power Marketing Administration

The Administration proposes to dramatically cut funding for the Power Marketing Administration's Purchased Power and Wheeling Program (PP&W). The budget proposes to reduce WAPA's use of revenues for PP&W from $186 million to $30 million, SEPA's from $34.5 million to $20 million and SWPA's from $1.8 million to $300,000. The Office and Management and Budget, a long-time opponent of federal power, also recommends the elimination of PP&W at the end of FY04.

While energy prices are lower than the sky-high markets of last year, low reservoirs in many parts of the country make the PP&W program an integral part of meeting customers' energy needs. NRECA will be working with key members of the Appropriations Committees to remind them that PP&W costs are repaid every year and is no burden on the taxpayer. The White House proposes giving the Bonneville Power Administration (BPA) an additional $700 million in borrowing authority for FY03, but that amount is substantially less than the $1.3 billion BPA had sought for transmission upgrades.

Department of Energy

The Department of Energy is listed for a 3.6 percent increase from 2002 to $19.8 billion, with increases mostly going to nuclear programs. The White House is proposing $2.1 billion in tax credits for nuclear power plant decommissioning. Energy efficiency funding remains flat at $904.3 million. State energy efficiency programs increase by $41 million or 14 percent in the Administration's proposal. In addition, the budget proposes funds for energy efficiency and renewable energy programs using an assumed $1.2

billion in royalty receipts derived if oil exploration in the Arctic National Wildlife Reserve is authorized, a highly charged political issue yet to be resolved by Congress. Energy Department science programs are listed to get $3.293 billion, an increase of $4.6 million. The White House wants nuclear research funding to go up by 35 percent; renewable energy research to increase by 5 percent; and energy efficiency research to decrease by 9.3 percent.

The Coal Research Initiative is listed for funding of $325 million, a decrease of 4 percent for the program components:

- The Clean Coal Power Initiative is listed for full funding at $150 million.
- Central Systems, including innovations for existing plants and advanced systems (pressurized fluidized bed combustion, integrated gasification combined cycle, and advanced turbines) are proposed for a 12 percent cut to $85 million.
- Sequestration will receive a 68 percent increase to $54 million.
- Fuels receive the largest, overall decrease in funds. The budget request for this program includes no funding for coal.
- Advanced Research would increase 13 percent to $31.6 million.

Environmental Protection Agency

EPA spending is listed at $7.6 billion, down $300 million. The Administration is again proposing to cut staff at the Office of Enforcement and Compliance, a plan rejected by Congress in the FY02 appropriations. The White House wants to shift environmental enforcement to states, proposing a $15 million in state enforcement grants. The largest reductions in the budget proposal come from water quality programs, including funding for water infrastructure programs. Funding for EPA's Science and Technology programs are to remain relatively flat at $670 million, $28 million less than FY02, but $30 million more than the FY02 budget request. Clean Air science is to receive $174.6 million in 2003, up from $170.2 million. Clean Water science is listed at $113.3 million in 2003, up from $110.3 million.

Domestic Program Highlights

Some domestic spending cuts in the Administration proposal hit directly at the quality of life in areas that electric cooperatives serve, and work to help grow and develop into thriving communities. An example is the proposal to eliminate two successful programs that help bridge the gaps in high technology resources available to rural and disadvantaged communities. Under the White House proposal, $15 million is eliminated for "Digital Divide" grants distributed by the National Telecommunications and Information Administration (NTIA). The Administration also wants to eliminate $32.5-million for Community Technology Centers grants, which boosts access to technology and the use of technology in education in rural areas and economically distressed communities.

Efforts to oppose the funding cuts will difficult, because the Administration is already talking in terms that characterize potential calls to restore money for domestic spending as undermining homeland defense and a direct assault on anti-terrorism efforts.

In the Senate...

Ironically some of the budget pressure may have eased after Majority Leader Thomas Daschle (D-SD) stopped work on the tax cut stimulus package. Sen. Daschle shelved the bill for the time being and moved to consideration of the farm bill, because neither Republicans nor Democrats have 60 votes needed to break a filibuster to pass their competing versions. Sen. Daschle will likely bring up the energy policy bill (S. 1766) next week, as he promised at the end of last year. But no debate or votes on the measure are expected before the President's Day recess starts Friday. S. 1766 will be pending business when the Senate returns on Feb. 25. Since the energy bill has been pulled out of the Senate Energy and Natural Resources Committee, all amendments to it will be handled on the floor. Given the public fascination with the Enron story, expect to see these concerns along with ANWR to dominate the Senate debate as NRECA goes to our annual meeting in Dallas.

Senate Multi-emissions Bill Delayed for Bipartisan Effort

Seeking to build bipartisan support for a multi-emissions reduction bill (S. 556), Senate Environment and Public Works Committee Chairman James Jeffords (I-VT) is pushing back markup on the proposal until March. Sen. Jeffords pulled the bill from the schedule for committee action next week after talks with committee members Sens. Robert Smith (R-NH) George Voinovich (R-OH) and Joseph Lieberman (D-CT).

Along with setting standards of at least 75 percent reductions in coal-fired power plant emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_2), and 90 percent for mercury, S. 556 includes carbon dioxide (CO_2) for reductions. The Bush Administration and Senate Republicans oppose the bill, warning that it would be too costly to meet those standards and may cause some coal-fired power plants to shut down.

In discussions with NRECA, Senate staffers say Sens. Jeffords, Lieberman, Smith and Voinovich have been instructed to try and draft bipartisan power plant multi-emission reduction legislation. A major point of difference is how to address the issue of CO_2 reductions. Sen. Jeffords hopes to move bipartisan legislation out of committee before the Easter recess starts on March 25. The Bush Administration is also drafting a multi-emissions reduction proposal.

In the House...

Amid all the congressional inquiries into the Enron debacle, House Energy and Commerce Committee Chairman Billy Tauzin (R-LA) has slowed efforts to move electricity legislation until there is more understanding of what happened. Energy and Air Quality Subcommittee Chairman Joe Barton (R-TX) has been instructed not to proceed next week with markup of H.R. 3406, the "Electric Supply and Transmission Act," and instead hold hearings on whether Enron's financial collapse had a damaging

effect on energy markets. Rep. Tauzin says he believes the Enron situation has proven the energy marketplace is strong and reacted well in the crisis, but acknowledges that public concerns must be addressed.

House Leadership Planning Vote on Campaign Finance Bill

The House is scheduled to vote on a campaign finance reform bill that only a few weeks ago seemed indefinitely stalled. But while House Speaker Dennis Hastert (R-IL) is bringing H.R. 2356 to the floor, he and other Republican leaders oppose the measure intended to ban unregulated soft money contributions and restrict campaign advertising. But with congressional elections looming ahead this year, and the White House backing off from a veto, the Republican leadership is scheduling action on a bill and trying to devise a floor strategy of amendments that could water down its provisions. It is expected to pass given the negative public reaction to the Enron's corporate use of unregulated soft money donations to non-campaign political activities. The legislation is expected to have no impact on political action committees like ACRE, which are strictly regulated by laws that require complete and public disclosure.

White House Discussing Greenhouse Gas Plan

Discussions within the White House continue on the development of a U.S. climate change policy. The discussions of late have focused on whether the U.S. will release a plan before President Bush leaves for a visit to Asia next week. The Administration continues to debate how the U.S. can address pollutants and greenhouse gases in lieu of signing the Kyoto Protocol on controlling emissions. The U.S. is drawing criticism from leaders in Asian countries for not endorsing the Kyoto treaty. White House officials say they want to develop an emissions reduction plan that will not harm the U.S. economy and promotes widespread international participation in emissions reductions.

In the *2002 Economic Report of the President*, the White House Council of Economic Advisers (CEA) expresses concern about the uncertainty surrounding the risk of climate change and appropriate responses. The CEA suggests that U.S. environmental policy first consider ways to slow the rate of greenhouse emissions before actually trying to stop and reverse it. As an alternative to signing the 1997 Kyoto accord, the Administration is considering an "emissions intensity" plan that links target levels for greenhouse gases to economic measures like the Gross Domestic Product (GDP), with the reduction goals rising and falling with economic output. The Administration is weighing the prospects for offering the "emissions intensity" program to other countries as way to resolve American concerns about the Kyoto Protocol's exemptions and lower standards for developing and rebuilding countries like India, China and Russia.

You can get the CEA report online at www.whitehouse.gov/cea/pubs.

EPA Establishes Utility Working Group To Address Electric Utility Mercury Emissions

The Environmental Protection Agency (EPA) has started a public advisory committee, the Utility MACT Working Group, process to develop the regulatory framework for

mercury regulations on electric utility power plants. EPA is required by law to develop mercury regulations for power plants by 2003.

The purpose of the group is to provide recommendations to EPA on the appropriate level of control that it should implement. Seminole Electric Co-op (FL) is participating on the committee as the official cooperative representative. NRECA has been participating in an unofficial capacity as well as through the Utility Air Regulatory Group, another official representative. On Feb. 5, the Utility MACT Working Group held another in a series of meetings to address the setting of Maximum Achievable Control Technology (MACT) standards for mercury emissions from coal- and oil-fired power plants.

Several significant issues are currently before the group. These include the adequacy of the data being used to set the standards and whether (and to what extent) individual MACT standards should be set for different types of boilers, coals, etc. – referred to as subcategorization. Tracking the efforts of this working group is extremely important to electric cooperatives because the application of new mercury standards to existing power plants could be incredibly costly. For more information on mercury reductions from electric utilities, please contact Bill Wemhoff at (703) 907-5824.

NRECA Comments Filed at FERC on Generation Interconnection and Market-Based Rate authorizations

Joint NRECA-APPA Generation Interconnection Comments: NRECA and APPA jointly filed comments at FERC on standardized procedures for connecting generators to transmission lines. The comments generally support the Commission's efforts to standardize procedures, but caution the Commission against (1) unfairly apportioning interconnection costs to load and (2) adopting any interconnection policies that would undermine the rights of NRECA and APPA members to network service. The comments represent the culmination of several weeks of meetings at the FERC among co-op, public power, IOU and generators interests, and repeated telephone conferences with the Transmission Task Force.

Reply Comments on Market-Based Rate Authorizations: NRECA filed reply comments on the Commission's proposal to condition market-based rate authorizations on the inclusion of a condition that would allow the Commission to order refunds when rates are excessive due to market power abuse. Consistent with the NRECA maxim of "Consumer's First!," NRECA's comments explain that "NRECA supports the Commission's effort to provide for refunds when consumers have been overcharged as a result of market power abuse." At the same time, NRECA's comments clarify that (1) nothing in the comments is intended to suggest that NRECA does not support market-based pricing for wholesale rates of electricity in truly competitive markets, and that (2) the Commission should seek to avoid exposing sellers to "open-ended refund exposure."

Copies of the two sets of comments are attached. Please contact NRECA Senior Regulatory Counsel Rich Meyer at 703-907-5811 (rich.mever@nreca.org) if you have any questions.

NRECA Legislative Conference in May

The NRECA Legislative Conference begins Sunday, May 5, at the Hyatt Regency Hotel on Capitol Hill and adjourns at noon on Wednesday, May 8. This year we will again conduct several workshops on Sunday, May 5. To keep the conference workshops timely and relevant, we are still developing the outlines for discussion topics. Please mark the dates on your calendar. More information on the conference will be mailed at a later date.

Enclosures: (1) NRECA comments to FERC on generation interconnection and market-based rate authorizations.

(*) Enclosures and attachments always accompany all hardcopy versions of "*A Few Things ...*". Electronic deliveries may not contain attachments for technical reasons.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations	)))	**Docket No. EL01-118-000**

MOTION TO INTERVENE AND REPLY COMMENTS OF THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

Pursuant to the Federal Energy Regulatory Commission's ("Commission") "Order Establishing Refund Effective Date and Proposing to Revise Market-Based Rate Tariffs and Authorizations," issued in the above-noted docket on November 20, 2001 ("November 20 Order"), and the Commission's November 30, 2001 Notice of Extension of Time in the same docket, the National Rural Electric Cooperative Association ("NRECA") moves to intervene in this proceeding and submits the following reply comments.

NRECA is guided by the maxim, "Consumers First!" Thus NRECA supports the Commission's effort to provide for refunds when consumers have been overcharged as a result of market power abuse. Nothing in these reply comments, however, is intended to suggest that NRECA does not support market-based pricing for wholesale sales of electricity in *truly competitive* markets. The Commission is not obligated to authorize market-based rates. The Commission may nevertheless choose to authorize market-based rates in truly competitive markets. Unfortunately, since 1998, the Commission has been starkly and repeatedly reminded that wholesale electricity markets are not yet always truly competitive. Thus it is reasonable for the Commission to condition market-based rates so that, during those instances when markets are not truly competitive, consumers remain protected from market power abuse. At the same time, however, the Commission should seek to avoid exposing sellers to open-ended refund exposure. To accomplish this, the Commission – as part of its market monitoring function – could

periodically enter a finding (*e.g.*, every six months) that wholesale markets were in fact competitive during a prior period, thereby terminating refund exposure for such prior period.

EXECUTIVE SUMMARY

- NRECA supports the refund condition the Commission proposes in the November 20 Order because it is necessary to ensure that market-based rate tariffs and authorizations on file are just and reasonable, and because it protects customers in the event that public utilities with market-based rates abuse their market power by charging supra-competitive prices.
- In proposing the refund condition, the Commission has acted consistently with its obligation under the Federal Power Act ("FPA") to ensure that all rates – including market-based rates – are just and reasonable.
- The Commission has the legal authority to include its proposed refund condition as part of its grant of market-based authority.
- The existence of competitive markets is required for the Commission to ensure that market-based rates are just and reasonable. If, in the absence of such competitive markets, prices in excess of just and reasonable rates are charged, then the Commission has not only the authority, but the obligation, to act to ensure the refund of overcharges to the consumer. Such action does not constitute retroactive ratemaking and does not violate the filed rate doctrine.

I. SERVICE AND COMMUNICATIONS

Service in these proceedings should be made upon and communications directed to the following persons:

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II. MOTION TO INTERVENE

NRECA is a not-for-profit national service organization representing 930 not-for-profit, consumer-owned rural electric cooperatives located in 46 states. NRECA's membership includes both transmission-owning and transmission-dependent utilities. While NRECA members do generate their own power and make sales of power to third parties in wholesale markets, electric cooperatives on the whole are net buyers of power, purchasing almost 50 percent of their requirements from other wholesale suppliers.

These proceedings concerns the November 20 Order, in which the Commission instituted a proceeding under section 206 of the Federal Power Act "to investigate the justness and reasonableness of the terms and conditions of market-based rate tariffs and authorizations of public utilities." November 20 Order at 1. The Commission proposes to impose a tariff condition on all public utility sellers with market-based rate authority . . . [which] will ensure that rates collected pursuant to market-based rate tariffs and authorizations are just and reasonable and that customers have full refund protection against anticompetitive behavior or

abuse of market power." November 20 Order at 3.

Some NRECA members are "public utilities" holding market-based rate authority and thus could be directly affected by the Commission's November 20 Order. Market conditions sometimes allow those members to sell power in excess of their costs; market conditions at other times preclude those members from selling in excess of their costs (or even recovering their costs). In any event, many more purchase power from third-party suppliers holding market-based rate authority. But most important, NRECA members – whether in their capacity as buyers or as sellers – have a vital interest in seeing that the price of power in markets in which they participate is not impacted by the exercise of market power. NRECA's members passed Resolution No. 00-G-3 at their March 2000 Annual Meeting held in Orlando, Florida (subsequently reaffirmed at NRECA's March 2001 Annual Meeting) calling on "the FERC, FTC and the Securities and Exchange Commission to develop rules that protect consumers with regard to the volatile pricing of electricity[,] preventing manipulation of market prices."

NRECA's members will be substantially affected by the outcome of this proceeding; NRECA, therefore, has an interest in the above-captioned proceeding that cannot be represented by any other party. NRECA's intervention in the above-captioned proceeding is in the public interest and should be granted. NRECA submitted initial comments in this docket on January 7, 2002. It is moving to intervene now merely to make clear its party status.

III. REPLY COMMENTS

A. The Commission's Proposed Refund Condition Is Consistent with the Commission's Obligation Under the Federal Power Act to Ensure that Rates Are Just and Reasonable.

The Commission's action in the November 20 Order is consistent with the purpose of FPA sections 205 and 206. The primary purpose of FPA sections 205 and 206, which were

drafted in response to widespread abuses of market power in unregulated wholesale electric markets that were beyond the regulatory reach of the states, is to protect consumers from excessive rates and charges. *Municipal Light Boards of Reading and Wakefield, Mass. v. FPC*, 450 F.2d 1341, 1348 (D.C. Cir. 1971), *cert. denied*, 405 U.S. 989 (1972). In those instances where utilities have *and* choose to abuse market power, the Commission's proposal will provide consumers the protection that has been missing to date under the existing market-based rate regime.

It is "black letter" regulatory law that a utility's rates are just and reasonable under the FPA, and therefore lawful, when they fall within a "zone of reasonableness" within which the rates are high enough to be compensatory to the utility but not excessive for the consumer. *City of Chicago v. FPC*, 458 F.2d 731, 750-51 (D.C. Cir. 1971), *cert. denied*, 405 U.S. 1074 (1972). *See also Permian Basin Area Rate Cases*, 390 U.S. 747, 797 (1968); *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 602-03 (1944). Although the FPA does not prescribe any particular method for establishing rates, the customary basis for determining the zone of reasonableness has long been cost-of-service regulation. "Because the relevant costs, including the cost of capital, often offer the principal points of reference for whether the resulting rate is 'less than compensatory' or 'excessive,' the most useful and reliable starting point for rate regulation is an inquiry into costs." *Farmers Union Central Exchange, Inc. v. FERC*, 734 F.2d 1486, 1502 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1034 (1984). Thus, "[d]epartures from cost-based rates must be made, if at all, only when the non-cost factors are clearly identified and the substitute or supplemental ratemaking methods ensure that the resulting rate levels are justified by those factors." *Id.* at 1530.

Consistent with the above principles, it has been a well-established rule under both the FPA and the analogous provisions of sections 4 and 5 of the Natural Gas Act ("NGA"), 15

U.S.C. §§ 717c & 717d, that a negotiated rate—a rate that buyer and seller are willing to accept—is not exempt from the statutory requirement that it be just and reasonable. The courts have recognized that "when there is a competitive market the FERC may rely upon market-based prices in lieu of cost-of-service regulation to assure a 'just and reasonable' result." *Elizabethtown Gas Co. v. FERC*, 10 F.3d 866, 870 (D.C. Cir. 1993). *See, also Louisiana Energy & Power Authority v. FERC*, 141 F.3d 364, 365 (D.C. Cir. 1998) ("Where there is a competitive market, the Federal Energy Regulatory Commission (FERC) may rely on market-based rates in lieu of cost-of-service regulation to ensure that rates satisfy this requirement.").

Similarly, courts have recognized that the Commission may appropriately rely upon the prices emerging from a fully competitive market as reasonable proxies for the results that would follow from applying its historical policy of basing rates upon the cost of providing service plus a fair return on investing capital. The District of Columbia Circuit explained the underlying economic rationale in *Tejas Power Corp. v. FERC*, 908 F.2d 998, 1004 (D.C. Cir. 1990):

> In a competitive market, where neither buyer nor seller has significant market power, it is rational to assume that the terms of their voluntary exchange are reasonable and specifically to infer that price is close to marginal cost, such that the seller makes only a normal return on its investment.

In the context of a proceeding under the NGA, the D.C. Circuit subsequently explained that in a competitive market there is reasonable assurance that the regulated utility "will not be able to raise its prices above the competitive level without losing substantial business to rival sellers. . . . Such market discipline provides strong reason to believe that [the regulated utility] will be able to charge only a price that is 'just and reasonable' within the meaning of § 4 of the NGA." *Elizabethtown Gas Co.*, 10 F.3d at 871.

Thus, although the Commission has granted companies the authority to charge market-based rates, the Commission in so doing has not abdicated its continuing responsibility to ensure

that these rates are consistent with the FPA, *i.e.*, that they are just and reasonable. Indeed, market-based rates are premised on the existence of a *truly competitive* market that imposes price discipline on sellers and protects the interests of consumers. Allowing sellers to charge whatever price they desire when a market is not competitive would amount to an administrative repeal of a key component of the Federal Power Act – the requirement of section 205 that a public utility may lawfully charge only a price that is just and reasonable.

B. The Commission's Proposed Refund Condition Is Consistent with Its Authority to Condition Market-Based Rates.

The Commission has the authority to grant market-based rates, and the Commission has the corresponding authority to condition market-based rates. The Commission's implementation of market-based rates within the structure of sections 205 and 206 of the FPA is simply a grant of authority to jurisdictional public utilities to change their rates without the full panoply of filings required by section 205 and without prior Commission review. When a public utility changes its rates and charges, the Commission issues a public notice and gives persons potentially affected by the rate filing an opportunity to file protests and requests for hearing.[1] The Commission then determines whether the proposed rate is acceptable for filing. If a hearing as to the justness and reasonableness of the rate is required, the Commission institutes such a hearing under section 206.

When a public utility applies for market-based rate authority, once it has adequately demonstrated the requisite lack of market power,[2] the Commission normally issues an order accepting the applicant's tendered market-based sales tariff for filing without suspension or

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1 Section 205(d) prohibits a public utility from changing its rates and charges without advance notice to the Commission and the public. 16 U.S.C. § 824d(d).

2 In dismissing petitions for review of Order No. 2000, the D.C. Circuit confirmed "the current state of the law: the Commission approves market-based rates only if the seller and its affiliates

hearing. At the same time, the Commission also waives many of the filing requirements of section 205(c)[3] and the Commission's implementing regulations.[4] Specifically, the Commission routinely grants the applicant waiver from compliance with the provisions of subparts B and C of Part 35 of the Commission's regulations, 18 C.F.R., Part 35, subparts B-C, dealing respectively with the required content of an initial rate schedule and the required contents of any filing for change in rate schedule.[5] The Commission has thus waived the requirement that rate changes be filed at least 60 days before they become effective.

These waivers of the filing requirements of section 205 and the Commission's regulations are predicated on the assumption that the existence of a competitive market renders such filings unnecessary. Thus, there is no need to require the seller to specify a sales price if effective

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either do not have or have adequately mitigated market power." *Public Utility District No. 1 of Snohomish County, Washington v. FERC*, No. 00-1174, slip op. at 14 (D.C. Cir. Dec. 11, 2001).

3 To effectuate the requirement of section 205(a) that rates and charges "shall be just and reasonable," section 205(c) requires a public utility to file with the Commission schedules showing all rates and charges subject to Commission jurisdiction, together with the classifications, practices and regulations affecting the filed rates and charges.

4 The Commission has implemented section 205(c) by adopting a regulation, 18 U.S.C. § 35.12, requiring the filer to explain the basis for the rate or charge proposed in its initial rate filing and how the proposed rate or charge was derived. The filing public utility is also required to submit a summary statement of all cost computations involved in arriving at the derivation of the level of the rate in sufficient detail as to justify the rates.

5 Unlike traditional public utilities that own generation or transmission facilities, "power marketer" public utilities, which own neither generation nor transmission facilities, are not required to file any service agreements for either short- or long-term sales, but only quarterly transaction reports. In *Southern Company Services, Inc.*, 87 FERC ¶ 61,214, at p. 61,847 (1999), *reh'g pending*, the Commission announced a change in generic policy that would require power marketers to submit service agreements for long-term transactions like traditional public utilities; but this requirement was to be implemented only upon the Commission's issuance of an order on rehearing in that case, which has not occurred. More recently, the Commission has proposed to change the current filing requirements to eliminate all filing of service agreements for market-based sales of electricity and all quarterly transactions reports; instead, sellers would post on their web sites and file electronically with the Commission indexes of customers that contain a summary of contractual terms and conditions in its service agreements and transaction information for its market-based sales during the most recent calendar quarter. *See* Revised Public Utility Filing Requirements, 66 Fed. Reg. 40,929 (2001) (to be codified at 18 C.F.R. pts. 2, 35 & 37) (proposed July 26, 2001).

competition in the markets in which it operates will assure that the price will be within the zone of reasonableness. There is no need to require the seller to file the detailed cost information required under the Commission's regulations if the competitive market affords an alternative and satisfactory method of keeping price in an appropriate relationship to cost. Since the fundamental underlying premise for market-based rates is the existence of a market in which competition restrains prices to just and reasonable levels, it is completely consistent with a grant of market-based rate authority to condition it as the Commission proposes: to attach a prospective refund condition if rates charged under that rate schedule are the product of the exercise of market power.

C. Rebuttal of Specific Arguments.

1. The Commission's Proposed Refund Condition Is Consistent with the Filed Rate Doctrine and Does Not Constitute Retroactive Ratemaking.

Several parties characterize the Commission's action as akin to "making efforts to expand that authority [pursuant to section 206] to allow it to order retroactive refunds for market-based sales." *E.g.*, Comments of Mirant Americas, Inc. and Mirant Americas Energy Marketing, L.P. ("Mirant") (Jan. 7. 2002), at 4; *see also* Comments of Duke Energy Entities ("Duke") on the Commission's November 20, 2001 Order Establishing Refund Effective Date, and Proposing To Impose Conditions on Market-based Rate Tariffs and Authorizations (Jan. 7, 2002) ("If a supplier is granted the ability to charge market-based rates, that is the filed rate under the Federal Power Act. As such, under the Federal Power Act, there are limits on the Commission's ability to change the filed rate and limits on the Commission's ability to order retroactive refunds of the filed rate"), at 7. These characterizations are inapposite. The Commission is not here ordering retroactive refunds for sales already made pursuant to outstanding market-based rate authority; it is attaching a prospective refund condition.

Duke, Mirant and others making this claim misunderstand the Commission's FPA authority. Such an interpretation of the filed rate doctrine would utterly demolish the permanent "bond of protection" for consumers that Congress intended to be available to consumers at all times and in all circumstances. *See Atlantic Refining Co. v. Public Serv. Comm'n*, 360 U.S. 378, 388 (1959). The essential elements of this protection include the requirement that: (1) rates and charges established by a regulated utility for a new service meet the Commission's "just and reasonable" standards *and* (2) any changes which the utility subsequently makes in those rates and charges be subjected to a process in which the utility bears the burden of establishing the justness and reasonableness of the changes, and consumers are fully protected through the availability of refunds.

In granting a supplier the ability to charge market-based rates, the Commission in no way has abdicated its statutory obligation under the FPA to ensure that these market-based rates are just and reasonable. As the New England Conference of Public Utilities Commissioners, Vermont Department of Public Service and the Michigan Public Service Commission (jointly "State Commissions") correctly explain in their comments, "[m]arket-based rates are not deregulated rates and it is an affirmative obligation of the Commission to ensure that conditions justifying reliance on market forces to constrain rates within a zone of reasonable are and remain in place." Comments of the New England Conference of Public Utilities Commissioners, Vermont Department of Public Service and the Michigan Public Service Commission (Jan. 7, 2002), at 2 (citations omitted). Further, these State Commissions are absolutely correct in their assessment that "[t]ariffs that permit utilities to pass supracompetitive prices through to ratepayers are not less unreasonable than fuel adjustment charges that reflect imprudently incurred costs. If such charges are not already implicitly inconsistent with filed market based rate tariffs, the Commission is well within its power to modify those tariffs." *Id.* at 3. *See also*

Public Service Co. of New Hampshire, 6 FERC ¶ 61,299 (1979); *Cities and Villages of Albany and Hanover, Ill.*, 61 FERC ¶ 61,037, at p. 61,186 (1992).

There is well-established legal precedent that the Commission may order refunds for rates charged in violation of or in excess of the filed rate. *See, e.g., Louisiana Pub. Serv. Comm'n v. FERC*, 174 F.3d 218, 224 & n.6 (D.C. Cir. 1999) ("The Commission's authority to order refunds of amounts improperly collected in violation of the filed rates derives from FPA § 309" [16 U.S.C. § 825h]); *Towns of Concord v. FERC*, 955 F.2d 67, 73 (D.C. Cir. 1992). Once the Commission departs from a system of cost-based ratemaking premised upon the utility's filing a fixed rate pursuant to section 205(c), the "filed rate" ceases to be a simple number. With market-based rates, the filed rate is not a fixed number or a mathematical formula, but an economic concept adopted by the Commission: a rate to be set by competitive market forces. A "market-based rate" is lawful under the FPA only when competitive market forces keep rates within the "zone of reasonableness" permitted by the statute. The Commission's proposed refund condition would enable the Commission to ensure that if market power is exercised and supra-competitive rates charged, these overcharges are properly refunded to customers.

Accordingly, the comments made by various parties that the Commission lacks the authority to require refunds for a period of greater than 15 months miss the mark entirely. *See, e.g.*, Comments of the Independent Energy Producers Association (Jan. 7, 2002) ("an open-ended and perpetual refund liability is not consistent with Section 206"), at 2; Initial Comments of Entergy Services, Inc. (Jan. 4, 2002) ("the proposal would constitute an end-run around the FPA, which requires that refunds are allowed only upon 60 days notice and may continue only for a fifteen-month period" and "there would effectively be no limit on retroactive refunds from sales made pursuant to market-based rate authority"), at 8.

Where a refund condition is made part of the filed rate, as the Commission is now proposing to do here, and the Commission finds that sellers have imposed charges violating or departing from the filed rate, the Commission has not only the right but the duty to consider all the equitable factors relating to the fairness of ordering refunds. *See Koch Gateway Pipeline Co. v. FERC*, 136 F.3d 810 (D.C. Cir. 1998); *Towns of Concord*, 955 F.2d at 73 ("The Federal Power Act does not explicitly deprive the Commission of remedial discretion with respect to refunds; in fact the Act quite clearly confers it."). Although the Commission has discretion to determine whether refunds are necessary, *see, e.g., Towns of Concord*, 955 F.2d at 76, the "sound basic rule" consistent with agency authority and considerations of equity is 'full refund under an invalid order.'" *Consumer Federation of America v. FPC*, 515 F.2d 347, 359 (D.C. Cir. 1975), *cert. denied*, 423 U.S. 906 (1975). "The rationale for prompt ordering of refunds is clear: 'to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges.'" *Interstate Natural Gas Ass'n v. FERC*, 756 F.2d 166, 171 (quoting *Atlantic Refining Co. v. Public Serv. Comm'n*, 360 U.S. 378, 388 (1959)).

2. The Commission Has the Authority to Take Generic Action Under Section 206.

Contrary to the argument made by several parties, *see, e.g.*, Request of the Edison Electric Institute and the Alliance of Energy Suppliers for Rehearing and Initial Comments on Order Establishing Refund Effective Date and Proposing to Revise Market-based Rate Tariffs and Authorizations (Dec. 20, 2001) ("EEI Comments"), at 17, 22-26, courts have held that the Commission *does have* the authority to make generic findings under either section 206 of the FPA or section 5 of the NGA that existing rates are unjust and unreasonable. In *American Public Gas Ass'n v. FPC*, 567 F.2d 1016, 1064-67 (D.C. Cir. 1977), the Court held that the Commission could exercise its authority under NGA section 5(a) through rulemaking as well as adjudication; *see also Wisconsin Gas Co. v. FERC*, 770 F.2d 1144, 1153 (D.C. Cir. 1985) (articulating the

American Public Gas holding). Additionally, in the natural gas certificate context, courts have also held that "the Commission may satisfy its § 7 obligations by making generic findings of public convenience and necessity." *United Distribution Companies*, 88 F.3d at 1139.

Recently, in upholding Order No. 888, the D.C. Circuit rejected the argument that sections 205 and 206 of the FPA "do not give the Commission the authority to order open access as a generic remedy." *Transmission Access Policy Study Group, et al. v. FERC*, 225 F.3d 667, 685 (D.C. Cir. 2000), *cert. granted,* 69 U.S.L.W. 3574 (Feb. 26, 2001). Instead, the Court accepted the Commission's reliance "upon general findings of systemic monopoly conditions and the resulting potential for anti-competitive behavior, rather than evidence of monopoly and undue discrimination on the part of individual utilities" as "sufficient to substantiate its decision to impose the open access requirement." *Transmission Access Policy Study Group*, 225 F.3d at 688, *citing Wisconsin Gas,* 770 F.2d at 1166. The Court followed the rationale of *Wisconsin Gas* in concluding that the Commission "satisfied the requirements for invoking its authority under FPA § 206(a)." *Id.*

3. The Commission's Action Is Consistent With the Legislative History of Section 206.

Arguments that the Commission's application of FPA section 206 (b) is contrary to the intent of Congress are wide of the mark. *E.g.*, EEI Comments ("The Commission's action in this proceeding obviously goes far beyond what the framers of the RFA [Regulatory Fairness Act] intended."), at 20. The Regulatory Fairness Act was not intended to narrow the reach of the Commission's refund authority. Rather, it was intended to remedy the fundamental inequity associated with sellers being allowed under the statute to change rates on 60 days notice, subject to a potential maximum suspension of five months, while consumers were denied any rate relief until the conclusion of a litigated complaint proceeding. The Regulatory Fairness Act provided some degree of parity in treatment, with sellers and buyers accorded the end-state statutory

protection of entitlement to "just and reasonable rates." "[T]his bill is more fair to these consumers because it makes it just as easy to enjoy a refund as it is now to contend with an increase." Statement of Rep. Bruce, 134 Cong. Rec. H8094 (Sept. 23, 1988). "Utilities should receive and consumers should pay, a just and reasonable rate for electricity." Statement of Rep. Gejdenson, *Id.*

A Commission grant of market-based rate authority relieves sellers of the 60-day notice period required to modify their rates. The refund condition that the Commission is now proposing to add to grants of market-based rate authority, which would be triggered only as to a seller that violates the proscription against engaging in anticompetitive behavior or exercising market power, maintains parity with that timing, and thus is entirely consistent with the framework of the Regulatory Fairness Act.

4. There Is More Than Ample Evidence Demonstrating That Recent Market Conditions Have Resulted in Unjust and Unreasonable Rates.

Some parties argued that the Commission has failed to make the findings necessary to initiate a section 206 proceeding. *See, e.g.,* Comments of Southern Company Services, Inc. (Jan. 7, 2002), at 6-8. The Commission, however, has amassed more than ample evidence that the current market-based rate authorization scheme – i.e., one without a refund condition – is unjust and unreasonable. *See, e.g.*, Staff Report to the Federal Regulatory Commission, Investigation of Bulk Power Markets: Southeast Region (Nov. 1, 2000); Staff Report to the Federal Regulatory Commission on Western Markets and the Causes of the Summer 2000 Price Abnormalities, Staff Report on U.S. Bulk Power Markets (Nov. 1, 2000). The Federal Trade Commission ("FTC"), too, issued a staff report on electric power market restructuring issues, concluding that "the benefits of deregulating the electric power industry may be deferred – or may not materialize at all – if existing monopoly utilities are left unchecked to exercise market power in a deregulated marketplace." Federal Trade Commission Staff Report: Competition and

Consumer Protection Perspectives on Electric Power Regulatory Reform (July 2000), at 3. Indeed, the FTC Staff filed comments in this docket stating that in their view, "before allowing public utilities the ability to sell electric energy and ancillary services at market-based prices, structural conditions should be in place to support effective competition in wholesale electric markets." Comments of the Staff of the Bureau of Economics and the Office of the General Counsel of the Federal Trade Commission (Jan. 7. 2002), at 2.

Additionally, other comments received in this docket support the finding that there *are* market conditions, even outside of the West, that would indicate current markets are not sufficiently competitive to rely solely on market forces to discipline rates. *See, e.g.,* Comments of Industrial Coalitions on Conditions to Market-Based Rate Authorizations (Jan. 7, 2002) (discussing extreme price spikes in the Midwest, flaws in New England's market, and in particular, the conclusion by the PJM Market Monitoring Unit that "'[m]arket participants do possess some ability to exercise market power under certain conditions in PJM markets.'"), at 8 (citations omitted); Motion to Intervene and Comments of Multiple Intervenors (Dec. 5, 2001) ("Clearly the New York power and electricity markets do not currently protect consumers against anticompetitive behavior and market power abuses."), at 7.

Finally, the Commission itself in its November 20, 2001 Order in *AEP Power Marketing, Inc., et al.,* 97 FERC ¶ 61,219 (2001), has found that the prior hub-and-spoke method, which it used to assess market power under most market-based rate tariffs now outstanding, is insufficient and must be replaced. In that order, the Commission "concluded that, because of significant structural changes and corporate realignments that have occurred and continue to occur in the electric industry, our hub-and-spoke analysis no longer adequately protects customers against generation market power in all circumstances." *Id.* at p. 61,969. Given that virtually all market-based rate authorizations now outstanding were granted using the hub-and-spoke method, the

proposed refund condition is essential to protect consumers from the potential abuse of market power while a new, more complete test is developed and implemented.

IV. CONCLUSION

The refund condition that the Commission proposes here merely ensures that market-based rates on file are just and reasonable rates, and protects customers in the event that public utilities with market-based rates abuse their market power by charging supra-competitive prices. Accordingly, NRECA supports the refund condition the Commission proposes.

Wherefore, NRECA supports the Commission's proposal to implement the refund condition set out in the November 20 Order, with the clarifications outlined in NRECA's January 7, 2002 comments.

Respectfully submitted,

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February 5, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have this 5th day of February, 2002, served the foregoing document upon all parties shown on the Commission=s official service lists in the above-captioned proceeding by depositing copies in the United States mail, first class postage prepaid.

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Standardization of Generation Interconnection Agreements and Procedures	))	Docket No. RM02-1-000

COMMENTS OF THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION AND THE AMERICAN PUBLIC POWER ASSOCIATION ON THE ADVANCE NOTICE OF PROPOSED RULEMAKING AND JANUARY 11, 2002 STANDARD GENERATOR INTERCONNECTION OPERATING AGREEMENT AND PROCEDURES

The National Rural Electric Cooperative Association ("NRECA") and the American Public Power Association ("APPA") (collectively "NRECA-APPA") hereby submit comments responding to the Advanced Notice Of Proposed Rulemaking ("ANOPR") issued by the Federal Energy Regulatory Commission ("FERC" or the "Commission") in the above-docketed proceeding on October 25, 2001,[1] and the Standard Generator Interconnection Operating Agreement and Procedures filed by the Interconnection Agreement and Interconnection Procedures Drafting Groups in the above-docketed proceeding on January 11, 2002.[2]

NRECA-APPA in general are supportive of the Commission's efforts to standardize the generation interconnection process through the ANOPR. NRECA-APPA have members that are constructing generation themselves (or contracting with third

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[1] Standardizing Generator Interconnection Agreements and Procedures, Advance Notice of Proposed Rulemaking, 66 Fed. Reg. 55,140 (November 1, 2001), FERC Stats. & Regs. [Notices] ¶ 35,540 (2001) ("ANOPR").

[2] Standardizing Generator Interconnection Agreements and Procedures, FERC Dkt. No. RM02-1-000 (2001) (Standard Generator Interconnection Procedures and Standard Generator Interconnection and

parties to construct generation) that will interconnect to the local transmission grid, as well as transmission owning members who are receiving requests by third party generators for interconnection services. What NRECA-APPA's members share in common is a significant concern about what interconnection and related costs should be appropriately borne by loads. Many of NRECA-APPA's members are network transmission service customers under the Open Access Transmission Tariffs ("OATTs") of various utilities around the country. Such members are very concerned about the network transmission costs borne by their loads, and also want to ensure that their network service rights are not eroded or adversely affected as part of this process.

I. BACKGROUND

In the ANOPR, the Commission stated its intent to adopt a standard generator interconnection agreement and procedures to apply to all public utilities that own, operate or control transmission facilities under the Federal Power Act ("FPA").[3] The Commission further stated that it was considering basing the standard agreement and procedures on those adopted by the Electric Reliability Council of Texas ("ERCOT"), as supplemented and modified by various "best practices" that the Commission identified and included in the ANOPR as Attachment A. For purposes of commenting on these interconnection issues, the Commission included a summary of its current pricing policy as Attachment B. However, the Commission stated that commenters should not interpret

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Operating Agreement, filed January 11, 2002) (herein after, the "January 11 IPs" and "January 11 IA", respectively, and the "January 11 Filing", collectively).

[3] ANOPR at ¶ 35,798.

Attachment B as an indicator of the Commission's long-term pricing policy, and that the Commission would address cost responsibility and pricing in a subsequent rulemaking.[4]

In the ANOPR, the Commission strongly encouraged interested persons to pursue consensus on interconnection issues through a consensus building process to be initiated by the Commission.[5] Subsequently, the Commission directed staff to establish that process, and required participants to file a single document reflecting as much consensus as possible on a standard generator interconnection agreement and procedures, on or before January 11, 2002.[6] The Commission ordered that comments on issues posed by the ANOPR be filed on or before February 1, 2002.[7] NRECA-APPA participated in that consensus process and hereby submit their written comments on the ANOPR as well as the January 11 Filing.

II. ABOUT NRECA

NRECA is the national service organization representing the interests of 930 consumer-owned, not-for-profit rural electric systems serving more than 35 million consumers in 46 states, including 2500 of the nation's 3,128 counties. NRECA counts among its members both transmission-owning and transmission-dependent utilities. Kilowatt-hour sales by rural electric cooperatives account for approximately nine percent of total retail electricity sales in the United States. Nearly 50% of the electricity sold by electric cooperatives is purchased from others, and consequently, NRECA's members

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4 Id. at ¶ 35,799-3.

5 Id.

6 See Standardizing Generator Interconnection Agreements and Procedures, FERC Dkt. No. RM02-1-000 (2001) (Revised Notice of Staff Public Meeting, issued October 31, 2001; Notice of Staff Public Meeting, issued November 5, 2001; Notice of Extension of Time, issued December 14, 2001; Notice of Staff Public Meeting; issued January 3, 2002; Notice of Extension of Time, issued January 16, 2002).

have a strong interest in ensuring access to existing and new generation resources. The majority of rural electric cooperatives are not regulated as "public utilities" under the FPA and are small entities under the Small Business Regulatory Enforcement Fairness Act of 1996.

III. ABOUT APPA

APPA is the national service organization representing the interests of the nation's approximately 2,000 municipal and other state and local government-owned utilities throughout the United States. APPA member utilities include state public power agencies and serve many of the nation's largest cities. The majority of APPA members, however, are located in small and medium-sized communities in every state except Hawaii. APPA members serve about fifteen percent of all kilowatt-hour sales to ultimate consumers in the United States. About 1,870 of these systems are cities and municipal governments that currently own and control the day-to-day operation of their electric utility systems. As purchasers of nearly seventy percent of the power used to serve their ultimate customers -- nearly forty million people in the United States -- they have a vital interest in the competitive future of the electric power industry.

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[7] Id. (Notice of Extension of Time, issued January 16, 2002).

IV. COMMUNICATIONS

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V. EXECUTIVE SUMMARY

As a general principle, NRECA-APPA believe that transmission delivery rights that are associated with new interconnection products should vest solely in the entity that pays (has paid) for those rights. A number of NRECA-APPA members are network customers of transmission providers and want nothing in this proceeding to undermine their rights under such network service arrangements, i.e., it is vital to those members and the communities that they serve that they continue to receive reliable transmission service at predictable rates and that they not be forced to subsidize profit-seeking activities of others that will provide no discernable benefits to the NRECA-APPA members and their customers.

At the same time, NRECA-APPA's members are also interested in just and reasonable interconnection procedures to ensure that plants that they are constructing (or that third party's are constructing to serve their loads) are interconnected on a timely basis. Moreover, some of NRECA-APPA's members have encountered resistance from transmission providers to rolling-in to transmission rates the cost of transmission facilities that clearly formed part of the integrated transmission system and that were needed for serving the cooperative's and public power provider's network load. Consequently, ensuring appropriate cost allocations and responsibilities between generators and transmission providers are also significant goals of NRECA-APPA's members, and the Commission should use this opportunity to delineate clearly the facilities that will be the generator's responsibility, and those facilities whose costs should be rolled-in to transmission rates.

In addition, while standardization is in many respects a desirable goal, NRECA notes that many of its members are borrowers of funds from the Rural Utilities Service ("RUS") and they must adhere to RUS regulatory requirements and, in many cases, obtain RUS approval for entering into power supply arrangements or interconnection agreements with third party generators. As borrowers of funds from RUS, cooperatives are required to provide service to their members who are beneficiaries under the Rural Electrification Act of 1936 ("REAct"),[8] and cooperatives must obtain RUS consent if any facilities financed by RUS funds are to be used by non-REAct beneficiaries. Some NRECA members are non-jurisdictional utilities and may voluntarily adopt the final

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[8] 7 U.S.C. § 901 et seq.

standards and agreement issued as a result of this rulemaking, but others may reserve the right to modify them in light of the requirements of RUS and its members.

Some of NRECA's members are also concerned that construction of interconnection facilities for non-members may result in loss of their tax-exempt status. Tax-exempt cooperatives must ensure that at least 85% of their income is derived from members, and amounts received for constructing or providing facilities for non-members could be construed as non-member income and jeopardize the tax-exempt status of the cooperatives.

The proposed liquidated damage provisions contained in both the ANOPR and the January 11 Filing are also of concern to many NRECA-APPA members. The liquidated damage provisions are especially burdensome on cooperatives and public power providers because of their small and limited staffs. The lean staffs of cooperatives and public power providers spend much of their time discharging their contractual and regulatory obligations to provide power to their customers. While cooperatives and public power providers have a very good track record of responding to third party generator requests and using reasonable best efforts in doing so, imposition of liquidated damages for missed study deadlines and in-service dates is especially problematic for cooperatives and public power providers, and may make it financially prohibitive for them to continue handling interconnection requests from third party generators. In addition, cooperatives and public power providers do not have outside shareholders, and they will be the ones typically at risk for the liquidated damages. Moreover, the liquidated damages may result in compensation for consequential and related damages

that have been consistently excluded in interconnection agreements that have been approved by the Commission.

In addition, while imposing liquidated damages on transmission providers, the ANOPR and the January 11 IA contain no related requirements typically contained in contracts with liquidated damage provisions, i.e., milestones, for generators. At the very least, this is inequitable. NRECA-APPA are in favor of reasonable milestones that a generator must satisfy in order to retain its place in the queue, both before and after signing an interconnection agreement. Some NRECA-APPA members have received interconnection requests from generators who then delay projects, to the detriment of other generators who are behind them in the queue, even after entering into an interconnection agreement.

NRECA-APPA are generally supportive of the concept of streamlined procedures for interconnecting "small" generators, in some circumstances. However, NRECA-APPA are concerned that the Commission should not overlook their reliability and cost implications for transmission providers, particularly those in rural areas. For example, the 20 megawatt ("MW") threshold proposed in the ANOPR and January 11 Filing could be far too high for some systems. Projects of only a few MWs in size can greatly impact circuits that are near their stability limits, and could, in such cases, impose very significant costs on cooperatives and public power providers. NRECA-APPA recommend replacing the fixed "size" threshold for streamlined interconnection procedures with a flexible standard that takes into account the size of the generator relative to the size and stiffness of the transmission circuit to which it would be

interconnected. Moreover, NRECA-APPA would not exempt so-called "small" generation from appropriately assigned interconnection related costs.

Finally, NRECA-APPA have some concern about the Commission's decision to focus on interconnection services, products and related procedures in this ANOPR, without considering related cost allocation and pricing issues, or the impact of these services on the Commission's *pro forma* OATT. At times during the consensus process, NRECA-APPA's members found it very difficult to consider the proposed changes to the interconnection agreement and procedures without considering the implications on pricing and the OATT. Because cost allocation and pricing and OATT issues have not yet been determined, NRECA-APPA must reserve their right to reconsider their agreement with many of the interconnection issues/provisions in the January 11 Filing based upon the impact that the Commission's additional rulemakings in these areas may have on them. Changes to the OATT should not be made piecemeal in this interconnection process but should instead be addressed if and when the Commission conducts an overall reexamination of the OATT, possibly as previously announced in discussions of FERC Docket No. RM01-12.

VI. COMMENTS

A. Generation Interconnection Products And Studies

Attached to both the January 11 IPs and January 11 IA is the Generation Interconnection Products and Studies document, which attempts to define three new types of interconnection service that a generator may request from the transmission provider.[9] These so called "product definitions" are in a very real sense the centerpiece of the

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[9] See January 11 IPs (undesignated attachment); January 11 IA, Att. A.

materials generated by the consensus building process. These product definitions were the subject of much discussion and debate throughout the consensus process, and have yet to be agreed to by the participants in that process, let alone the industry at large. Thus, NRECA-APPA does not believe that a consensus has been achieved on these definitions.

NRECA-APPA have grave concerns regarding these product definitions to the extent that they would compromise the principle that any and all transmission delivery service rights that are associated with new interconnection products vest solely in the entity that pays (has paid) for those rights. Even though the Energy Resource Interconnection Service and Network Resource Interconnection Service product definitions state that they do not in and of themselves convey rights to any delivery service, these products may effectively transfer a right to transmission delivery service capacity that heretofore resided with the Network Customer (as defined in the OATT) from the Network Customer to the interconnecting generator.

This transfer of rights to delivery service capacity from the Network Customer to the interconnecting generator is most troublesome under the definition of the Network Resource Interconnection Service product and is best illustrated in two different scenarios. The first scenario involves a transmission system that has existing excess delivery capacity, i.e., "headroom" to accommodate a new interconnecting generator. In this circumstance, if a generator chooses the Network Resource Interconnection Service product, the transmission provider would determine through study of its system that no additional network upgrades are necessary to accommodate the new generator. However, once the generator is receiving this Network Resource Interconnection Service -- which

provides that at any future time, the interconnection generator's facility may be designated as a Network Resource (as defined in the OATT) by a Network Customer – this headroom would become permanently associated with that generator, rather than the Network Customers that paid for it. If a Network Customer later chooses to designate another nearby generator as a Network Resource, and would have made use of this previously available headroom to access that generator, the Network Customer might be prevented from doing so unless it pays for costly upgrades to the transmission system. Such costly upgrades may result because the transmission provider is now obligated to study its system in a manner that preserves the deliverability of the generator with Network Resource Interconnection Service to serve any Network Customer that designates it. Essentially the right of Network Customers to choose Network Resources would be compromised because network delivery service capability would now be associated with particular generators receiving Network Resource Interconnection Service, rather than the Network Customers that paid for it. The right to this "headroom" should remain vested in the Network Customers that have paid for it, and not transfer to the generator by virtue of a simple renaming of interconnection products.

The second scenario is a transmission system that has no existing capacity to accommodate a new interconnecting generator. In this circumstance, if a generator chooses the Network Resource Interconnection Service product, the transmission provider would determine through study of its system that additional network upgrades are necessary to accommodate the new generator. To the extent that Network Customers bear the cost of these network upgrades, then the future right to the use of those facilities should vest in the Network Customers, and not the generator. To do otherwise would be

to uncouple the right to transmission delivery capability from the entity that paid for the upgrade. However, to the extent that the generator pays these costs, then the rights to the associated transmission delivery capability should vest in that generator.[10]

NRECA-APPA recognize that their positions are dependent somewhat on the pricing and cost allocation issues that will be addressed by the Commission in the next phase of the interconnection rulemaking. Nevertheless, it is important that the Commission at this stage properly define what types of facilities constitute network upgrades – which are subject to rolled-in and transmission crediting – and direct assignment facilities, which are borne directly by the generator and not subject to reimbursement or credits. Only through defining which facilities fall within which category can this rulemaking be effective. Direct Assignment Facilities (as defined in the OATT), for example, typically include the interconnection line that connects the generator to the high voltage transmission system as well as the generator step-up transformer, certain switches, new substations, etc. Network Upgrades (as defined in the OATT) are those new facilities and transmission lines that are part of the integrated transmission system, and enable the delivery of power to load and enhance reliability.

There is obviously some difficult line drawing to be done in applying these two categories to specific situations. To help address this difficulty, the interconnection studies performed for the generator should clearly describe which facilities will be considered Direct Assignment Facilities, and which are Network Upgrades, so the

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[10] However, in situations where the generator pays the cost of network upgrades but the generator is later reimbursed for those costs through transmission credits under a Network Service Tariff, then the Network Customers again should have the rights to the additional network capacity.

generator will understand its cost exposure and have ample opportunity to question the results of the studies and seek more information.

As a separate concern, NRECA-APPA note that the Generation Interconnection Products and Studies document states that the rights and obligations defined in the definitions are to apply to distribution level interconnections.[11] Such an unqualified extension to distribution would overstep the bounds of FERC's jurisdictional authority under the FPA.[12] Unless a generator interconnecting at the distribution level will be selling power at wholesale, or wheeling power across transmission facilities, there is no FERC jurisdictional activity. NRECA-APPA expect based on the experience of their members that by far the greatest of number of generators located on the distribution system will never take such actions. Moreover, even with respect to those interconnections that may be FERC jurisdictional, the physical and economic differences between interconnections at the distribution and transmission levels would make a single rule for both inappropriate.[13] NRECA-APPA, therefore, ask the Commission to clarify that this proceeding applies only to interconnections at the transmission level.

NRECA-APPA encourage the Commission to carefully consider the implications and effects of the new interconnection products that it ultimately adopts on the

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11 See January 11 IA, Att. A, fn. ** (Generation and Interconnection Products and Studies, second footnote "**").

12 See 16 U.S.C. § 824(b)(1).

13 The Commission's proposal that interconnections of 20 MW and less should be exempted from paying for studies and system upgrades demonstrates why, from a technical level, the Commission should not apply this rule to distribution level interconnections. Obviously, a 20 MW generator interconnected at the distribution level would have the most severe safety, reliability, and cost implications. Throughout this process, the Commission will find that standards and procedures that are appropriate at the transmission level, will not be appropriate for the distribution level. Moreover, the state and local regulators that have been regulating the distribution system for 65+ years are in the best position to determine what rules should apply to generation interconnected to those facilities to meet local conditions and system designs.

customer/ratepayer, and to establish products that promote the efficient siting and construction of generation and transmission facilities as dictated by demand (i.e., the customer/ratepayer or Network Customer). NRECA-APPA fully support the Commission's efforts to promote a competitive bulk power market, and interconnecting new generation to the grid is a key component of such pro-competitive policies. The market, in general, and NRECA-APPA's members, specifically, many of whom need new capacity to meet their needs, can greatly benefit from improved interconnection procedures.[14]

B. Scope And Treatment Of Network Upgrades

The Commission's consensus building process failed to yield any consensus among participants over the definition of a "Network Upgrade." Failure to reach consensus was due in large part to the fact that "Network Upgrades" is defined in the OATT to be those modification or additions to transmission-related facilities that are integrated with and support the transmission system for the general benefit of all users of such transmission system.[15] In addition, the cost of Network Upgrades is typically borne by the transmission customer. Consequently, to the extent that a particular upgrade is defined as a "Network Upgrade," chances are that the transmission customer will bear the cost of that upgrade through higher transmission rates. While a generator could itself be the transmission customer for point to point service, it is more likely that Network

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[14] However, NRECA-APPA note, as discussed in the next section, that Network Customers should not be saddled with costs for Network Upgrades that are never built or completed because a planned generation facility is not constructed.

[15] Pro Forma OATT § 1.26 (Definition of "Network Upgrades").

Customers like many of NRECA-APPA's members would bear such costs under the network tariff provisions.

During the ANOPR consensus building process, it appeared that some generators wanted all interconnection-related facilities deemed to be Network Upgrades, even those facilities that have historically been considered Direct Assignment Facilities borne by the generator. If taken to its logical extreme, the generator would be responsible for no interconnection costs, while potentially causing unnecessary transmission facilities to be built. Such costs would be borne by transmission customers even in instances where reliability is not enhanced by the new transmission facilities, or where no Network Customers have contracted for power that requires such facilities. If a network upgrade for interconnection does not provide a general benefit to the transmission grid, then the costs of that upgrade should be borne entirely by the generator. To the extent that the upgrade does provide a general benefit to the grid, then in the circumstance where the generator has paid for those upgrades, once transmission service is obtained by the generator or by load contracting with the generator, the generator would be reimbursed for its appropriate Network Upgrade costs through appropriate transmission service credits.

From a generator perspective, NRECA-APPA note that some of their members have encountered resistance from the transmission provider when petitioning to roll-in to transmission rates the costs of facilities that clearly did benefit the transmission system and should have been considered Network Upgrades. The Commission should clarify the ambiguity in this area. Network Upgrades that are needed to interconnect a generator that will be serving a particular Network Load or loads -- wherever those loads are

located in that transmission system -- should be rolled in to the transmission system's rates.[16] Such upgrades clearly are part of the integrated system and provide system-wide benefits to all transmission customers.

NRECA-APPA urge the Commission to ensure that only appropriate network upgrade costs be borne by Network Customers, and adopt a consistent policy regarding rolled-in treatment for Network Upgrades that are added to a system to accommodate a new generator. There should be a reasonably clear delineation between Direct Assignment Facilities and Network Upgrades; however, the Commission should not, under pressure from the generators, disregard the well-established requirement that Network Upgrades provide a general benefit to all users.

C. Standardization Must Accommodate Regional Differences

New interconnection products and the study process associated with those products must accommodate existing market differences, regional and otherwise. The designation of new interconnection products should not drive the redefinition of markets. Rather, these new interconnection products should be adapted to regional and other market differences, i.e., transmission systems under an RTO versus no RTO, regions with organized spot markets versus no organized market, markets with installed capacity requirements versus no requirements, etc.

For example, Network Resource Interconnection Service is defined in the January 11 Filing to be superior interconnection service to any that is currently being offered. Under the OATT, a Network Customer must designate Network Loads by delivery point

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[16] Some NRECA-APPA members are Network Customers who serve loads in multiple control areas, and build generation to provide power to their customers in such different control areas.

with a ten-year forecast. To accommodate the Network Resource Interconnection Service request, the transmission provider is to study the generator at full output, and the transmission provider is to ensure that the aggregate of the generation in the local area can be delivered to the aggregate of the load on the transmission system. This is to be accomplished by "displacing" some portion of the Network Resources with the generator output. This concept is problematic for all but the largest transmission systems. Displacing Network Resources in the study could yield erroneous results since some of the displaced generation may actually have impacted the study results, and some of the actual displaced generators may not even be on the system of the entity conducting the study. The study thus could be entirely invalid.

D. Maintaining Tax-Exempt Status – 85/15 Member Income Test

There are certain tax-related impediments that may hinder a cooperative's ability to comply with the Commission's new standard generator interconnection agreement and procedures. One such restriction directly applicable to electric cooperatives concerns the requirement that in order to maintain tax-exempt status under Section 501(c)(12) of the Internal Revenue Code of 1986, as amended,[17] at least 85 percent of the cooperative's income must be received from the cooperative's members for the sole purpose of meeting losses and expenses. If such member-derived income does not at least equal 85 percent of total income (determined on an annual basis), then the cooperative would lose its tax-exempt status and become a taxable cooperative.

Some of NRECA's members are concerned that construction of interconnection facilities for non-members may result in loss of their tax-exempt status. Tax-exempt

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[17] 26 U.S.C. § 501(c)(12); 26 C.F.R. § 1.501(c)(12).

cooperatives must ensure that at least 85% of their income continues to be derived from members, otherwise the cooperative's tax-exempt status could be jeopardized. One remedy is for cooperatives to be made whole if their tax-exempt status is lost due to providing interconnection services, allowing them to "gross up" their charges in such a situation. Alternatively, it may be necessary for the Commission to engage actively in discussions with the Internal Revenue Service, as well as the U.S. Congress to support legislation or perhaps regulation that eliminates this significant impediment with regard to the 85 percent restriction. The possibility of losing tax-exempt status in this way could have a significant and chilling effect on the desire of some of NRECA's member cooperatives to embrace the Commission's interconnection initiatives since loss of tax-exempt status could significantly increase the rates that members pay for transmission as well as generation services.

E. Liquidated Damages

Both the ANOPR and the January 11 IA propose that the transmission provider pay liquidated damages to generators in the event that the transmission provider interconnection facilities or Network Upgrades are not completed by the designated completion dates that had been agreed upon by the parties.[18] The January 11 IPs propose that the transmission provider pay liquidated damages to the extent that it fails to meet any of its obligations under the procedures, e.g., failing to complete a study in the allotted time period.[19]

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[18] See ANOPR (ERCOT IA § 4.1B(ii)); January 11 IA § 5.1B(ii).

[19] See January 11 IPs § 13.5.

NRECA-APPA are opposed to compulsory inclusion of such liquidated damages, and believe these measures are best addressed by the parties to such contracts. Many cooperatives and public power providers with limited staffs are simply not well positioned to manage the interconnection study process, and/or procurement and construction process, and it would be unduly burdensome for them to be held to specific study periods and specific in-service dates. Moreover, any payments would ultimately be borne by individual retail customers since cooperatives and public power providers and do not have outside shareholders.

The ANOPR proposes that transmission providers pay liquidated damages to generators of ½ of 1% of the total interconnection costs for each day that the stated in-service date is missed, up to a maximum of 20% of the total interconnection costs. The January 11 IPs proposes damages of 1% per day up to a maximum of 50% of the actual cost of the applicable study. The January 11 IA does not specify damage amounts. The appropriateness of these liquidated damage provisions is troublesome given that it effectively would act to compensate generators for lost profits and consequential damages; damages that FERC-approved interconnection agreements typically exclude.

An in-service date may be missed for any of a variety of reasons beyond the control of the transmission provider. Interconnection facilities -- including lines, substations, breakers and related equipment -- are not manufactured and fabricated by the transmission provider. Rather, multiple vendors manufacture this equipment tailored to the particular generation facility and transmission system that it will interconnect. Such equipment and facilities are simply not available "off-the-shelf." An in-service date may slip because of delays by any of the equipment vendors in producing the equipment that

is needed. There also can be delays related to environmental permitting and condemnation. For these reasons, if the Commission does approve of liquidated damage provisions, NRECA-APPA assert that it is essential that the Commission also adopt the TO Proposal in the January 11 IA, restricting the accrual of liquidated damages until no earlier than 15 months after all regulatory approvals, right-of-way, etc. have been obtained.[20] In addition, there should be an exclusion from the liquidated damages provisions of all items beyond the control of the transmission provider. These provisions are essential because these and similar delays are outside the control of the transmission provider, and therefore, any liquidated damage penalty that did not release the transmission provider from liability arising from these uncontrollable events would be unreasonable.

The small staffs of cooperatives and public power providers spend much of their time discharging the contractual and regulatory obligations to provide power to their customers. While cooperatives and public power providers have a very good track record of responding to third party generator requests and use reasonable best efforts in doing so, imposition of liquidated damages for missed study and in-service dates is especially problematic for some cooperatives and public power providers, and may make it financially prohibitive for them to continue handling interconnection requests from third party generators. Indeed, RUS staff have indicated grave concern over this liquidated damage provision. For instance, assuming the ANOPR liquidated damage provision is adopted, if a cooperative that is an RUS borrower agrees to construct a $20 million dollar transmission project for a generator, it will need to advise RUS that it could be subject to

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[20] See January 11 IA § 5.1B(iii) (TO Proposal).

liquidated damages penalties of as much as another $4 million, for a total exposure to RUS of $24 million, even in situations where the generator has no actual damages.

"Step in" rights for generators have some appeal as an alternative to liquidated damages, particularly since they leave financial responsibility with the party that seeks the benefit. However, because generators do not have eminent domain rights, virtually any type of new transmission line or facility would have to be built by the transmission provider with eminent domain rights. Consequently, "step in" rights might not be much of an alternative at all, except with respect to the acquisition and installation of the necessary "hardware."

At the same time, NRECA-APPA have members who are constructing generation (or are having third parties construct generation) for their member's needs. Unreasonable delays in the construction of interconnection facilities by transmission providers could hamper the ability of the cooperatives and public power providers to supply power through such new facilities to its members. Consequently, there must be some reasonable basis for holding transmission providers accountable for constructing projects on a timely basis. Some interconnection agreements that have been accepted by the Commission require the interconnecting utilities to adhere to Good Utility Practice and to use best efforts to construct such projects, with the transmission provider responsible for actual damages. A similar legal standard should be considered by the Commission for the interconnection agreement and related procedures to be developed as part of this process, in lieu of the liquidated damage provisions.

From a different perspective, NRECA-APPA believe that a generator and interconnection utility should be able to negotiate these types of provisions, allocating

risk and responsibility as is appropriate and efficient under the circumstances. The parties may decide to include bonuses for having work completed prior to the stated in-service date, with some form of compensation for damages if the date is missed. Milestones should also be incorporated (see Section F below). In any event, NRECA-APPA oppose compulsory inclusion of liquidated damages provisions, and believe these measures are best addressed by the parties to such contracts.

F. Milestones

The ANOPR, while including a liquidated damage provision if the transmission provider misses an in-service deadline (discussed above), contains no such requirements for generators. Likewise, the January 11 IA contains no agreed upon language regarding milestones, although it does include a provision proposed by the "TOs".[21]

Some systems, such as PJM, specify a number of milestones that the generator must reach after signing the interconnection agreement, or risk losing its place in the interconnection/transmission queue. NRECA-APPA are in favor of reasonable milestones that a generator must satisfy in order to retain its place in the queue after signing an interconnection agreement. Some NRECA-APPA members have received requests from generators who state a desire to interconnect, but who delay projects, to the detriment of other generators who are behind them in the queue. This places the transmission provider in the unenviable position of having to referee disputes and constantly prod generators to abide by their obligations and adhere to the timeline in the interconnection agreement. Milestones serve a useful purpose in delineating these

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[21] See January 11 IA § 5.14 (TO Proposal).

requirements beforehand and establishing individualized bright line standards by which to measure progress once the interconnection agreement has been signed.

G. Small Generator Interconnection Requests

The ANOPR proposes exempting small generators (20 MW and below) from paying for interconnection studies and network upgrades, and requires the transmission provider to put streamlined procedures in place for administering interconnection requests from these small generators.[22] Section 14 of the January 11 IPs contains proposed modified interconnection procedures for small generators, largely proposed by the small generator group participating in the consensus building process. NRECA-APPA believe fundamentally, that generators ought to be required to pay the costs that they impose on the system, regardless of size. In addition, while NRECA-APPA are supportive of the concept of streamlined procedures in some cases for interconnecting generators, NRECA-APPA do not believe that the proposed artificial threshold of 20 MW should be determinative of which projects qualify for such streamlined consideration.

While the 20 MW threshold may seem reasonable to many in the industry, this MW level is really quite high for a number of cooperatives and public power providers who are providing service in less populated areas of the country. Many cooperatives and public power providers serve small loads at the end of long radial high-voltage lines. Because of the electrical characteristics of these lines, a generator of even a few MWs in size could have a significant impact on the stability and reliability of the circuit. Also, some cooperatives and public power providers operate high voltage circuits with a total

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[22] ANOPR at ¶ 35,799-5.

peak load of less than 20 MW. Those circuits would be totally overwhelmed by a 20 MW, or even a 10 MW generator.[23] In addition, the 20 MW threshold does not take into account the possible penetration level for new generator units. While the first 20 MW generator might be easily integrated into some transmission circuits, the second or third could cause significant reliability problems for the system.

To address these concerns, it would make more sense to use a flexible threshold that provides simplified procedures for generators of different sizes based on the size and stiffness of the transmission circuit to which they would interconnect. Where the generator would be small in relation to the circuit, and the circuit is not currently loaded close to its stability limits, very little engineering would be required to interconnect safely and reliably. Where the generator is large in relation to the circuit, or the circuit already faces stability problems, then it would be a mistake to apply streamlined procedures to the interconnection. Engineering studies, and possibly significant system upgrades would be necessary and should not be rushed or skipped over simply because the generator falls below an artificial threshold that does not relate to the operational characteristics of the system.

NRECA-APPA are also concerned that the adoption of a fixed MW threshold could create too much of an opportunity for gaming. For example, a generator could take advantage of streamlined procedures based on a 20 MW threshold by developing ten 15 MW units in close proximity (but at different interconnection points). One solution might

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[23] Moreover, NRECA-APPA note that the Generation Interconnection Products and Studies document suggests that the rights and obligations in the definitions are to apply to distribution level interconnections. The proposed 20 MW threshold for streamlined interconnection at the transmission level would be unreasonable at the distribution level. Streamlined procedures would not be appropriate at the distribution level for generators larger than 15-30 kilowatts.

be the imposition of a one-mile ownership/control rule applied such that units owned or controlled by a particular generator within a one-mile radius all be grouped together for purposes of determining whether the MW threshold has been exceeded.

Finally, NRECA-APPA largely support the TO Position proposed in the January 11 IPs, which does not exempt small generators from the generator interconnection costs. As stated above, NRECA-APPA believe fundamentally, that generators ought to pay the costs that they impose on the system, regardless of size. Moreover, if the Commission adopts NRECA-APPA's proposed flexible approach, there is no need for such an exemption. If the exemption is properly crafted to reflect operational realities, there will be very little study and engineering cost in those cases where the generator qualifies for streamlined treatment. In such cases, cost would not be a barrier to development of the project. On the other hand, where the generator does not qualify for streamlined treatment, by definition, there could be significant study and engineering costs. In those cases the generator should not be permitted to avoid responsibility for the costs it imposes on the system. Consumers who might not even get the benefit of the new generation or the required upgrades should not have to pay the costs just because the generator falls below some artificial threshold.

H. Concerns About The Scope Of The ANOPR

NRECA-APPA are concerned about considering interconnection products, services and procedures separately from cost allocation and pricing decisions, and changes to the OATT. First, NRECA-APPA and their members, as did many, found it very difficult to consider the implications and consequences of interconnection services, products and related procedures, without considering and agreeing upon the related financial implications. Consequently, there are many issues/provisions in the January 11

Filing that NRECA-APPA now agree with in principle; however, because the cost allocation and pricing issues have not yet been determined, NRECA-APPA must reserve their right to reconsider their stated positions regarding these issues/provisions based upon the impact that the Commission's separate upcoming rulemaking on cost responsibility and pricing may have on them.

Second, NRECA-APPA have a related concern regarding interconnection issues that impact the OATT. While the ANOPR specifically addresses standardizing generator interconnection agreements and procedures, because of the issues that arose in the interconnection consensus process, we are concerned that the issues discussed in this forum could necessitate wholesale and fundamental changes to the OATT. Moreover because the Commission has stated that it intends to issue a NOPR reforming the OATT to standardize market design rules,[24] NRECA-APPA believe it is more appropriate to consider any changes to the OATT in the forthcoming market design proceeding. Nonetheless, as with cost responsibility and pricing, it is very difficult to consider the implications and consequences of interconnection services, products and related procedures, without considering and agreeing upon the related OATT implications. Therefore, NRECA-APPA must again reserve their right to reconsider their agreement with many issues/provisions contained in the January 11 Filing based upon the impact that the Commission's separate rulemaking on the OATT and the forthcoming interconnection cost NOPR may have on them. Changes to the OATT should not be made in the relative isolation of this docket but should instead be addressed if and when the Commission conducts an overall reexamination of the OATT.

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[24] Electricity Market Design and Structure, 97 FERC ¶ 61,146, at 61,633-34 (2001).

Third, NRECA-APPA acknowledge that the primary players in the interconnection ANOPR consensus process were the generators and larger transmission providers; however, NRECA-APPA encourage the Commission not to overlook the impact that its NOPR on the terms and conditions of interconnection service (and the forthcoming interconnection cost NOPR) will have on the entire electricity industry -- from generator to consumer/ratepayer -- and to achieve solutions that will address the concerns of all industry participants. NRECA-APPA and their members have participated in the IA and IPs drafting committee meetings to the extent possible through the designated seat for transmission dependent utilities. However, NRECA-APPA maintain that the fact that they and others have participated in these meetings in no way precludes their right to comment on the drafting committee documents, whether in support or protest.

VII. CONCLUSION

WHEREFORE, NRECA and APPA respectfully request the Commission to consider their comments on the ANOPR and January 11 Filing.

Respectfully submitted,

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February 1, 2002

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rule of Practice and Procedure, I hereby certify that I have this day served a copy of the foregoing "Comments of the National Rural Electric Cooperative Association and the American Public Power Association on the Advance Notice of Proposed Rulemaking and January 11, 2002 Standard Generator Interconnection Operating Agreement and Procedures" on all persons designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 1st day of February, 2002.

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NRECA

ENVIRONMENTAL BULLETIN

December 6, 2001

Comments Filed

(Referenced comments are posted to the NRECA web site at: http://www.nreca.org/members/pub_policy/)

NEW SOURCE REVIEW On November 30, the Utility Air Regulatory Group (UARG) provided supplemental comments to EPA regarding its review of the impact of the Clean Air Act's new source review (NSR) program. UARG previously provided comments saying that EPA's current approach to implementing NSR would disrupt the ability of the electric utility industry to provide a safe and reliable supply of electricity. The current approach prevents utilities from performing common repair and replacement projects and from using permitted capacity to respond to electricity demand. The group's most recent comments show that states have been following the NSR rules as well as EPA's historic guidance whereby common industry repair and replacement projects are not modifications triggering NSR. UARG said that recently, however, EPA Enforcement is attempting to reverse state determinations that are inconsistent with the agency's litigating position without undergoing notice and comment rulemaking. UARG urged the agency to reaffirm that common industry replacement projects are not modifications and thereby avoid serious and adverse impacts on the supply of electricity. NRECA is a member of UARG.

NSR - INDIAN RESERVATIONS On November 20, UARG submitted supplemental comments regarding EPA's proposed revision of the definition of "Indian Reservation" as part of its NSR reform proposal (61 FR 38250). EPA is proposing to revise the term as it is used in the redesignation provisions of the prevention of significant deterioration (PSD) program. UARG explained that because of the interrelationship of certain aspects of federal Indian law with important features of the CAA, the proposed change in the definition could have significant unintended consequences. It threatens to work a fundamental change in the effect that the tribes' exercise of authority can have on sources located outside the tribal lands. UARG suggested clarifying language that would achieve EPA's stated objectives without resulting in the unintended consequences.

RSPA SHIPPING PAPER RETENTION PROPOSAL The Utility Solid Waste Activities Group (USWAG) submitted comments in response to the Department of Transportation Research and Special Program Administration's (RSPA) shipping paper retention proposal (66 FR 47443). The proposal would incorporate into the hazmat regulations the statutory requirement for shippers and carriers to retain copies of hazardous materials shipping papers. USWAG supported the proposal in general but objected to the imposition of new recording keeping requirements on the use of

"permanent shipping papers". USWAG said that modifying the current procedures to require the use and maintenance of a separate running log of these shipments would impose a significant, unnecessary paperwork burden on industry. It defeats the purpose of the use of "permanent shipping papers." USWAG requested that RSPA maintain the current, proven approach. NRECA is a member of USWAG.

New Documents

(See *Federal Register* web site at: http://www.access.gpo.gov/su_docs/aces/aces140.html)

GUIDANCE ON USE OF WETLANDS AND RIPARIAN AREAS (November 6; 66 FR 56106) EPA notice announcing the availability of draft guidance for use by States, Indian tribes, and local governments regarding the use of wetlands and riparian areas for the abatement of nonpoint source pollution. The draft describes three different strategies - the protection of existing wetlands and riparian areas, the restoration of degraded wetlands and reparian areas, and the establishment of vegetated filter strips and constructed wetlands. The draft contains a considerable amount of technical information about the use of these techniques, including a description of specific projects around the country and a comparison of the costs and effectiveness of these wetland-centered abatement techniques with more standard control technologies. The guidance is available on the EPA web site at http://www.epa.gov/owow/nps. The deadline for comments is February 4, 2002.

GUIDANCE ON RECLASSIFICATION PROCEDURES FOR HISTORIC RETROFILLS EPA has provided written confirmation of its earlier guidance regarding the methods for demonstrating that "historic retrofills" are reclassified for purposes of the new PCB reclassification rule (66 FR 17602). In a November 8 letter to USWAG, the agency essentially "grandfathers" all retrofills that were conducted prior to the new reclassification rule provided they were conducted "in a manner that meets the conditions of the April 2, 2001 final reclassification rule." The letter represents significant success for USWAG as it reverses EPA's original position. In the preamble of the final reclassification rule, the agency stated that historic retrofills would not be viewed as reclassified under the new rule unless the retrofills were conducted pursuant to an EPA waiver letter. USWAG convinced the agency to reevaluate its position and EPA now agrees that as long as the historic retrofill operations meet the requirements of the new rule, it only makes sense to view these retrofills as "reclassified." EPA's letter is available on the NRECA web site.

ON-LINE ALLOWANCE TRANSFERS On December 3, EPA's Clean Air Markets Division announced that it is beginning to accept on-line allowance transfers of SO2 and NOx allowances. The On-line Allowance Transfer System (OATS) is an Internet application that allows participants to record their own allowance transfers for either the Acid Rain Program or NOx Budget programs. Additional information about the new program, including a description of the procedures for making transfers, is available on the EPA web site at: http://www.epa.gov/airmarkets/transfer/index.html.

US GREENHOUSE GAS EMISSIONS UP The Department of Energy's Energy Information Administration (EIA) issued a report on November 9 that said that total U.S. greenhouse gas emissions rose by 2.5 percent in 2000 - well above the 1.3 percent average annual growth rate observed from 1990 to 2000. According to the report, carbon dioxide emissions, 83 percent of total U.S. greenhouse gas emissions, increased by 3.1 percent in 2000, the second-highest increase in a decade. The sources of the increase were from transportation-related activities where CO2 emissions increased by 3.1 percent, and emissions from the residential sector, which rose by 4.9 percent. Energy industry-related CO2 emissions remained flat. The report, *Emissions of Greenhouse Gases in the United States 2000,* is available on the DOE web site at ftp://ftp.eia.doe.gov/pub/oiaf/1605/cdrom/pdf/ggrpt/057300.pdf.

CROMERRR (November 28; 66 FR 59392) EPA notice that it is extending the comment period through January 28, 2002, on its proposal for agency-wide cross-media electronic reporting and record keeping requirements (CROMERRR) (66 FR 46161). The proposal applies to all parts of Title 40 of the Code of Federal Regulations. The extension is due in large part to the efforts of a multi-industry coalition, including UARG. The coalition sent a letter to EPA arguing that although the agency characterized its proposal as "voluntary," in reality, once a state (or a company) has decided to implement electronic reporting or record keeping, EPA's specific requirements for those systems become mandatory. The coalition said that if CROMERRR is finalized as proposed, current state electronic reporting and record keeping programs will not be allowed or recognized by EPA unless and until a state meets EPA's computer system criteria and secures EPA approval for program revisions or modifications. Similarly, regulated facilities that already have electronic record keeping systems will need to meet applicable CROMERRR criteria or will no longer satisfy EPA's underlying record keeping requirements. Many regulated entities, therefore, would have to adopt existing computer systems to meet CROMERRR requirements or, in the alternative, replace existing software and perhaps even hardware. For example, if a utility wanted to continue maintaining records electronically, it would have to revise its computer programs to incorporate all of the quality assurance/quality control requirements specified in the proposed regulations (e.g., protecting the documents from unauthorized alterations and tracking all alterations). The coalition's letter is posted to the NRECA web site.

TREATED WOOD GUIDELINES In response to concerns raised by environmental groups regarding potential health and environmental effects associated with treated wood products, USWAG developed a voluntary Treated Wood Guidelines document for use by its members. The guidelines are intended to help ensure greater consistency and uniformity within the industry regarding treated wood management practices. They also are intended to help ensure that treated wood products are properly managed when removed from service. Included in the guidelines are reasonable measures industry can take to help ensure that secondary users acknowledge the potential risks and responsibilities of the handling, use, and subsequent disposal of the treated wood products. USWAG also is working with EPRI to explore additional reuse/recycling options for treated wood as alternatives to the traditional reuse market. The voluntary Treated Wood Guidelines are posted to the NRECA web site.

EPA REGULATORY AGENDA (December 3; 66 FR 62239) EPA notice announcing the issuance of its semiannual regulatory agenda. The agenda provides specific information on the status of regulations and policies that are under development, revision, or review.

NAAQS OZONE STANDARDS (November 14; 66 FR 57267) EPA notice of its proposed response to the U.S. Court of Appeals 1999 remand of the agency's 1997 National Ambient Air Quality Standards (NAAQS) for ozone. The court ordered EPA to reconsider the standard, taking into account possible beneficial health effects from ground-level ozone in shielding the public from the harmful effects of ultraviolet radiation. In its response, EPA proposes to keep the standard for ground-level ozone at 0.08 parts per million, the level it set in 1997. The agency says the damaging effects of ground-level ozone far outweigh any benefits it may provide as a radiation shield.

By way of background, the remand was included in a ruling in which the D.C. Circuit overturned the 1997 ozone standard, as well as a new air quality standard for particulate matter in a case that brought national attention. The court found that EPA exceeded its constitutional authority in issuing the 1997 standards, partly because it did not base the standards on an "intelligible principle" for protecting public health. Most of the ruling was subsequently overturned by the Supreme Court. The high court, however, let stand that part of the lower court's decision that ordered EPA to reconsider certain aspects of the standards, including the possible protective effects of ground-level ozone. Comments on EPA's proposed response to the court's remand are due January 14, 2002.

TITLE V OPERATING PERMITS (November 27; 66 FR 59161) EPA final rule revising the definition of "major source" under Title V (Part 70) to no longer require sources subject to section 111 and 112 standards promulgated after August 7, 1980, to include non-hazardous fugitive emissions in determining major source status. The final rule, effective upon publication, also deletes the phrase "but only with respect to those air pollutants that have been regulated for that category" from the definition. Thus, it requires consideration of all pollutants if fugitives are included. EPA is only requiring states to revise their programs to implement the deletion. The change to exclude fugitives emissions for sources subject to post-August 7, 1980, NSPS is optional. Accordingly, this deletion could theoretically trigger Title V applicability for some sources with fugitive emissions that are not regulated under an applicable NSPS.

COOLING WATER INTAKE STRUCTURES 316(b) EPA Administrator Christine Whitman signed the final section 316(b) Cooling Water Intake Structure (CWIS) new facility rule on November 9. The rule is the first of three scheduled regulations designed to reduce adverse environmental impacts, especially impacts on fish and shellfish, from CWIS at industrial facilities and power plants. According to EPA estimates, the rule will govern the design and construction of structures at 121 new manufacturing and electricity generating plants over the next 20 years at a cost of less than $47 million annually. EPA says it expects that the rule will not impact on the nation's energy supply. The rule, accompanied by a preamble of over 350 pages, includes elements of a two-track approach suggested by industry that would allow certainty and fast permitting over greater flexibility

through site-specific analysis. The approach is far less useable than that suggested, however, and the rule has another major shortcoming in that it fails to include a definition of "adverse environmental impact," a key section 316(b) term. The rule, along with a *Technical Development Document*, *Economic Analysis*, and other related information is available on the EPA web site at: http://www.epa.gov/ost/316b/.

POLICY REGARDING EXCESS EMISSIONS On November 8, EPA issued a memorandum titled "Clarification- State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown." The memo was intended to satisfy the agency's obligation under a settlement agreement involving industry's challenge to EPA's September 20, 1999, guidance on that issue. Unfortunately, through some sort of processing error, the November 8, 2001, memorandum erroneously included a paragraph that EPA had intended to delete. As a result, the agency is planning to re-issue the guidance without the paragraph. It is currently making its way up the signature chain. If you are provided a copy of the November 8, 2001 guidance, please refrain from circulating that document as it will soon be replaced with a new version.

WATER BODY MONITORING GUIDANCE EPA recently finalized the first of two long-awaited guidance documents on impaired water listing and assessment methodologies under the federal TMDL program. It includes recommendations to states regarding biological monitoring to determine whether a water body is impaired, thus requiring a TMDL. The guidance contains few changes from the earlier draft that EPA circulated on October 5. It is available on the EPA web site at: http://www.epa.gov/owow/tmdl/new.html.

Litigation Proceedings

NPDES IMPLICATIONS OF WATER TRANSFERS The Second Circuit Court of Appeals recently decided a case involving the inter-basin transfer of water in a manner that raises potentially problematic questions for electric utilities that use canal systems to connect separate waterbodies or operate hydroelectric facilities that divert water form one waterbody and return it to another. The case involves a project that was designed to facilitate the delivery of water to a city for use as drinking water - diverting the water from a reservoir in one watershed basin through a tunnel to a creek and then to a second reservoir in a separate watershed basin. Absent the tunnel, water from the reservoir would not reach the creek.

The plaintiffs in the case claimed that the release of suspended solids, turbidity and heat from the tunnel to the creek constituted the "addition" of pollutants and, thus, triggered NPDES permitting obligations for the city under the Clean Water Act. The court agreed. In short, it ruled that whenever pollutants are transferred form one waterbody to a distinctly separate waterbody by way of a discernable, confined and discrete conveyance, that transfer will trigger NPDES permitting obligations (at least within the Second Circuit). A copy of the case is available online at: http://csmail.law.pace.edu/lawlib/legal/us-legal/judiciary/second-circuit/test3/00-9447.html.

POWER PLANT OPACITY The U.S. District Court for the Eastern District of Tennessee recently issued an opinion dismissing a citizen suit against two coal-fired power plants for alleged opacity violations (National Parks Conservation Association, Inc., v. Tennessee Valley Authority, No. 3:00-cv-547 (E.D. Tenn. Nov. 26, 2001)). The opinion offers two alternative rationales for dismissal – both of them significant. Under the first rational, the court dismissed for failure to provide notice of sufficient specificity to satisfy the requirements for citizen suits under CAA section 304(b). The Court found the group's statement in the notice that the utility had "regularly violated" the opacity standard "for at least five years" insufficient in part because it did not "specify the dates of the alleged violations or identify at which sites the violations occurred." Under the second rationale, the Court found that because the group had not identified any opacity exceedances that were not approved under the plant's permits, the group's suit was in essence a collateral attack on a facially valid permit issued under the SIP. (The permit allowed, among other exceptions, "*de minimis*" exceedances for up to 2% of the time). Although the permit differed from the SIP by allowing the 2% exclusion, the Court found the state's decision to provide the 2% exclusion in exchange for the plant's agreement in the permit to use a Continuous Opacity Monitoring System (rather than Method 9) as the compliance method, reasonable given that the end result was a "more restrictive emission standard." The decision is available on the NRECA web site.

Produced by the NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION
Energy Policy Department; Editor Bill Wemhoff

The Environmental Bulletin is provided free of charge to all NRECA members upon request. Prior editions and referenced documents are posted to the NRECA web site at: http://www.nreca.org/members/pub_policy/.

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~~M.K.T.~~
File 1.10.4.1

NRECA

ENVIRONMENTAL BULLETIN

November 12, 2001

Comments Filed

(Referenced comments are posted to the NRECA web site at: http://www.nreca.org/members/pub_policy/)

REGIONAL HAZE BART GUIDELINES On October 5, the Utility Air Regulatory Group (UARG) submitted comments to EPA on its proposed guidelines for Best Available Retrofit Technology (BART) determinations under the Regional Haze regulations (66 FR 38108). UARG said the proposed guidelines intrude upon the States' discretion to fashion local solutions for the visibility problems they encounter and in doing so, exceed EPA's authority. UARG said that Congress intended for the States to take the lead in developing and implementing visibility protection programs and, therefore, the proposed guidelines should be withdrawn and revised to be consistent with the congressional allocation of authority. NRECA is a member of UARG.

NATIONWIDE PERMITS On October 9, the Utility Water Act Group (UWAG) filed comments in response to a proposal by the U.S. Army Corps of Engineers to reissue and modify the nationwide permits (NWPs) (66 FR 42070). The proposed rule would reissue all nationwide permits – even those issued as part of the Corps' replacement permit rulemaking in March of 2000. This would result in all of the current nationwide permits being in effect for the same five-year period beginning on February 11, 2002. In its comments, UWAG supported the removal of the requirement in General Condition 26 to affirmatively document compliance with FEMA and also supported the corresponding deletion of the notification provision in General Condition 13 for above grade fills. UWAG said it approved of proposed revisions relaxing the mitigation preference for restoration of at least 1:1 based on acreage and also the extension of the grandfathering provision for certain projects permitted near the end of the NWP's five-year period. UWAG recommended that the Corps modify the acreage requirements for NWP 12, direct divisions and districts to review and revise as necessary regional conditions that may inhibit expeditious use of energy-related NWPs, and reduce the time limits in General Conditions 13 to 30 days for energy-related projects. NRECA is a member of UWAG.

PROPOSED MERCURY TMDLs UWAG joined with the Federal Water Quality Coalition in filing comments that responded to EPA's proposed mercury total maximum daily loads (TMDLs) for the Middle and South Georgia watersheds. The coalition commended EPA for certain elements of the approach it used in drafting the TMDLs but expressed concern about several other aspects. It said it did not support the reliance on the use of bioaccumulation factors and strongly opposed permitting options for point

source dischargers that imposed limits equivalent to "no mixing zone" requirements. The coalition said it also was concerned about including requirements for minimization plans as permit conditions and said that there are other better ways to ensure that water quality is protected while treating all parties fairly.

EPA GUIDANCE ON RCRA CORRECTIVE ACTION On November 1, the Utility Solid Waste Activities Group (USWAG) sent a letter to EPA endorsing comments by several other industry groups regarding EPA's initiative to provide guidance to the regions on recognizing when RCRA corrective action has been completed (66 FR 50195). USWAG said the comments it is endorsing have correctly identified the strengths and weaknesses of the agency's draft guidance. It said that the process for determining when corrective action is "complete" is essential for facilitating the transfer of formerly contaminated properties and restoring them to economic productivity as part of brownfields and similar programs. USWAG went on to say that the importance of such a determination, however, is not limited to RCRA corrective action sites and therefore urged EPA to develop a broader program for remediations overseen by State regulatory authorities. NRECA is a member of USWAG. The guidance is available on the EPA web site at: http://www.epa.gov/correctiveaction.

SPCC PHASE I AMENDMENTS On October 4 and again on October 15, USWAG sent additional information to EPA regarding secondary containment at oil-filled electrical equipment installations and described the structural and design differences between utility operating electrical equipment and oil storage tanks. USWAG also provided information regarding discharges of oil to navigable waters form oil-filled electrical equipment installations that were reported to the National Response Center since 1997. The information is part of a continuing effort by USWAG that is intended to assist the agency in tailoring its proposed Spill Prevention Control and Countermeasures Plans (SPCC) Phase I amendments to address the special characteristics of oil-filled electrical equipment. The SPCC Phase I amendments rule was finalized under the Clinton Administration but never promulgated. It currently is on hold while undergoing review and possible revision by the new Administration. The latest indications are that publication of the final rule has again been delayed and now is anticipated no earlier than February or March of next year.

COMPREHENSIVE PROCUREMENT GUIDELINES On October 29, USWAG joined with the American Coal Ash Association (ACCA) in submitting comments that responded to EPA's notice and request for information on its proposed Comprehensive Guideline for Procurement of Products Containing Recovered Materials (66 FR 45256) and its Recovery Materials Advisory Notice IV (66 FR 45297). USWAG and ACAA endorsed the proposal to add to the Comprehensive Procurement Guidelines (CPG) blasting grit made with coal slag and the designation of nonpressure pipe and roofing materials made with recovered content concrete. They commended EPA for promoting the CPG program and said that the assistance of the federal government is needed to break down the barriers to expanded use of coal combustion products - one of the most abundant mineral resources in the country and one of the largest stresses on waste disposal capacity.

RCRA HAZARDOUS WASTE MANIFEST On October 4, USWAG filed comments with EPA in response to the agency's hazardous waste manifest standardization and automation proposal (66 FR 28239). The agency's proposal is intended to simplify the current hazardous waste manifest program in several ways, including (1) revising the federal Uniform Hazardous Waste Manifest form to eliminate variability among states, (2) standardizing the manifest procedures for handling so-called "rejected loads" and "residues" that cannot be accepted or handled by the designated TSDF, and (3) allowing for, but not requiring, waste handlers to electronically prepare, transmit, sign, and store hazardous waste manifests.

In general, USWAG supported many of EPA's proposed revisions that aim to provide significant regulatory relief from current manifest paperwork requirements. USWAG emphasized, however, that the final rulemaking must be kept as simple as possible to ensure full future participation of the regulated community. It also said that the rule will only be effective if EPA continues to coordinate its manifest program with that of the Department of Transportation (DOT).

In that regard, USWAG also submitted comments in response to the DOT Research and Special Programs Administration's (RSPA) proposal to revise the shipping paper requirements for transportation of hazardous wastes (66 FR 41490). RSPA's proposal is intended to conform its shipping paper requirements with EPA's hazardous waste manifest reform proposal. USWAG said the ongoing coordination between RSPA and EPA is necessary to ensure that the agencies' interrelated regulatory requirements and proposals are compatible and thus facilitate regulatory compliance and promote transportation safety. USWAG expressed concern, however, that the RSPA proposed regulatory language is needlessly complex and therefore may frustrate compliance efforts. USWAG recommended streamlining the regulations by incorporating by reference EPA's hazardous waste manifest regulations and simply requiring that a printed copy of the hazardous waste manifest form serve as the shipping paper and accompany the shipment – regardless of whether a traditional or electronic version is prepared by the waste generator.

PCB Q&A MANUAL On October 4, USWAG sent a letter to EPA expressing concern about the agency making changes to its PCB Question and Answer Manual (Q&A Manual) without bringing those changes to the attention of the public. USWAG said that because many in the regulated community may rely on the Q&A Manual in determining their PCB regulatory obligations, it is important to know when and why EPA makes any amendments to the document. USWAG said its letter was not intended to discourage EPA from continuing with the development of the manual, but rather requests that EPA simply provide better notice (as opposed to none) to the regulated community when it amends the manual.

EPA responded favorably and quickly to the letter and said it is taking action to implement changes on its PCB Home Page and in the Q&A Manual to better inform the public about changes made. Specifically, every page of the manual now will contain a header identifying the latest revision date and all Q&As have been individually numbered sequentially by regulatory section. In addition, the manual has a new front page identifying the individual

questions that have been changed since the last update. Thus, readers can go to the first page to determine quickly the individual Q&As that have been modified or added. For additional information, see the EPA web site at: http://www.epa.gov/opptintr/pcb/.

ORD MERCURY REPORT USWAG also provided comments on EPA's report, *Characterization and management of Residues from Coal-Fired Power Plants,* prepared by the Office of Research and Development (ORD). USWAG said it is troubled that development of the draft report appears to have had little participation by the agency's Office of Solid Waste (OSW). OSW is the focal point of regulatory decisionmaking within the agency regarding solid wastes in general and solid wastes with the scope of the Bevill Amendment to RCRA in particular. USWAG said OSW data demonstrates that mercury and dioxin concentrations in coal combustion products (CCPs) are too low to merit further concern and questioned ORD's reliance on a mass balance approach to estimate anticipated mercury concentrations in CCPs. USWAG said that a mass-balance is a simplistic approach that, in black box fashion, generates output numbers based on broad assumptions and bypasses the complex chemical-physical relationships that are at the core of these issues. USWAG also expressed concern that the draft report does not seem to appreciate the complexity of CCP reuse issues from both policy and economic perspectives. It makes casual, damaging preliminary conclusions of potential future risk from some CCP uses. USWAG urged ORD to strike such conclusions from the draft report.

New Documents

(See *Federal Register* web site at: http://www.access.gpo.gov/su_docs/aces/aces140.html)

UWAG UPDATE LETTER UWAG provided an Update Letter on October 8 that includes information on developments of significant interest to electric utilities on Clean Water Act issues that have occurred over the last several months. Issues addressed in the letter include cooling water Section 316(b) and Total Maximum Daily Load developments as well as updates on various litigation activities. The update is available on the NRECA web site at: http://www.nreca.org/members/pub_policy/.

MERCURY TEST METHODS (October 9; 66 FR 51518) EPA is proposing to modify test method 1631 for measuring mercury in aqueous samples. The proposal fulfills the requirements of an October 19, 2000, settlement agreement. It requires the use of certain "clean techniques" and quality control requirements when using the test method. The deadline for comments on the proposal is December 10, 2001.

MIXTURE AND DERIVED-FROM RULES (October 4; 66 FR 50332) EPA direct final rule clarifying an earlier rule (66 FR 27266) that revised the mixture and derived-from rules under RCRA. The rule replaces an exemption concerning Bevill wastes that was deleted inadvertently. The rule also clarifies that Bevill mixtures and listed hazardous wastes that have been listed solely for their ignitability, corrosivity, and reactivity characteristics are exempt once the characteristic for which the waste was listed has been removed. The rule is effective December 3, 2001, unless adverse comments are received.

DELAY OF TMDL RULE (October 18; 66 FR 53044) EPA final rule delaying by 18 months the effective date of its Total Maximum Daily Load (TMDL) rule (65 FR 43585). The new effective date is April 30, 2003. The rule also gives states more time to submit their next lists of impaired waters – to October 1, 2002, from April 1, 2002. The delay is designed to allow the agency additional time to review the rule and incorporate recommendations made by the National Research Council. Those recommendations were published on July 13, 2000 (65 FR 43586).

As part of its reevaluation efforts, EPA plans to hold public meetings to receive stakeholder perspectives on key issues associated with the TMDL program and related issues in the NPDES program. Additional information about the meetings, which EPA is characterizing as "listening sessions," is available on the EPA web site at: http://www.epa.gov/owow/tmdl/meetings/.

GUIDANCE DOCUMENTS (October 18; 66 FR 52918) EPA notice of availability of two guidance documents on compliance with land disposal restrictions (LDRs). The first document is draft guidance on demonstrating compliance with the LDR alternative soil treatment standards. The second is a draft interpretive memorandum on the stabilization of organic-bearing hazardous wastes. The documents are available on the EPA web site at: http://www.epa.gov/epaoswer/hazwaste/ldr/soilguid.htm.

(October 10; 66 FR 51665) EPA notice of release of the third in a series of waterbody-specific nutrient criteria technical guidance documents. This one addresses estuarine and coastal marine waters. EPA already has published guidance for lakes/reservoirs and rivers/streams and plans to prepare a fourth for wetlands. This latest guidance is available on the EPA web site at: http://www.epa.gov/ost/standards/nutrients/marine/. Comments will be accepted through December 10, 2001.

On October 31, in response to criticism over the effectiveness of compensatory mitigation programs, the U.S. Army Corps of Engineers published Regulatory Guidance Letter 01-1, *Guidance for the Establishment and Maintenance of Compensatory Mitigation Projects Under the Corps Regulatory Program Pursuant to Section 404(a) of the CWA and Section 10 of the Rivers and Harbors Act.* The guidance applies to mitigation proposals submitted after October 31, 2001, "and to those [mitigation projects] in the early stages of planning or development." It affords district engineers increased flexibility in adopting appropriate mitigation for impacts to waters of the US. It also imposes additional requirements on the permittee to insure the success of any mitigation projects. The guidance is posted to the NRECA web site at: http://www.nreca.org/members/pub_policy/.

RCRA CORRECTIVE ACTION HANDBOOK (October 17; 66 FR 52762) EPA notice announcing the availability of a final "Handbook of Groundwater Policies for RCRA Corrective Action." The handbook is intended to promote faster and more flexible cleanups and improve program implementation. It is available on the EPA web site at http://www.epa.gov/correctiveaction.

DRINKING WATER ARSENIC STANDARD EPA announced on October 31 its final decision regarding reconsideration of the final rule setting an arsenic standard for drinking water. The agency has had the rule under review since its adoption by the Clinton Administration in January. The review was initiated because of concerns that the new standard was not based on sound science or did not undergo a proper cost analysis. In its announcement, EPA reaffirmed the new lower standard of 10ppb and said it based its decision in part on three reassessment reports it has since received – the National Academy of Sciences' reassessment of the risk assessment, the National Drinking Water Advisory Council's review of the costs of compliance, and the EPA Science Advisory Board's review of the rule's benefits. EPA said the additional study and consultation have not delayed, however, the compliance date for implementing a new standard in 2006. At this point it is uncertain how EPA will translate its recent announcement into final regulatory action. The agency may simply leave the January 2001 Clinton rule in place or it may publish a new final rule to promulgate a 10ppb maximum concentration level (MCL) based upon the Bush Administration's reassessments of the science and economics.

In an extraordinary coincidence, the agency's announcement of the new standard coincided with the deadline for comments on the agency's proposal to adopt an MCL within the range from 3ppb to 20ppb (66 FR 37617). EPA's decision to reaffirm the 10ppb standard was not a complete surprise, however, and comments submitted by USWAG along with other industry groups on the agency's proposal focused on limiting the collateral effects of EPA's decision on non-drinking water programs such as RCRA and CERCLA. Towards that end, the comments addressed in detail EPA's methodology for setting the standard, arguing that a non-linear model is more appropriate. EPA also was urged to provide a statement in it final action that "decouples" the Safe Drinking Water Act regulatory action from other programs.

OZONE HOLE NOW STABLE According to scientists from NASA and the National Oceanic and Atmospheric Administration, satellite data shows that the area of the Antarctic ozone hole has remained similar in size over the past three years. The researchers say they have observed a leveling-off of the size of the hole and predict a slow recovery over the next 30 to 50 years. They said the stability of the ozone layer is consistent with human-produced chlorine compounds having reached their peak concentrations in the stratosphere and beginning to very slowly decline. The scientists predicted that recovery of the ozone hole back to levels observed before 1980 will take at least 50 years, however, given expected changes in climate, including a cooler stratosphere, which could cause a delay in the recovery. More information on the NOAA and NASA estimates can be found on the internet at: http://www.gsfc.nasa.gov/topstory/20011016ozonelayer.html.

MORE COMPLEX ASSESSMENT RECOMMENDED FOR TREATED WOOD On October 24, a federal scientific advisory panel recommended that EPA conduct a more complex probabilistic risk assessment for its review of wood treated with the preservative pesticide chromated copper arsenate (CCA), rather than the more simplified approach that the agency chose. The Federal Insecticide, Fungicide, and Rodenticide Act Advisory Panel provided the recommendation in response to a request that it comment on the

methods and data that the agency is using for a preliminary assessment of hazards and exposure to children from playgrounds with wooden equipment treated with the preservative. The review is in response to a petition by consumer and environmental groups to ban use of the preservative on playground equipment. The panel said the simplified EPA assessment looks only at the hazards and exposures regarding CCA and does not characterize potential risks posed by chromium or arsenic residues that can leach from the treated wood. It said a probabilistic assessment produces a distribution of exposures and risks and is viewed as more accurate or realistic than the deterministic approach EPA is using. Reportedly, EPA hopes to release a complete preliminary assessment of CCA, including and assessment of risk to children, by early next year.

NOX BUDGET TRADING PROGRAM EPA recently released the following new documents related to monitoring under the NOx SIP Call and Section 126 Trading Programs: (1) "Certification Application Review Checklist for the NOx Budget Trading Program" (revised 10-10-01), (2) "OTC Sources Under the Federal NOx Budget Trading Program: Guidance on Changing Monitoring Methods and Upgrading Monitoring Plans to EDR v2.1", (dated 10-12-01), and (3) "Monitoring Plan Review Checklist for NOx Budget Trading Plan" (revised 10-10-01). Also available, is EPA's "Monitor Certification Guidelines." The guidance addresses monitor certification and QA/QC requirements and monitor certification deadlines for various categories of units affected by these programs. The documents are available on the EPA web site http://www.epa.gov/airmarkets/fednox/index.html.

COMBINED HEAT AND POWER GUIDANCE (October 15; 66 FR 52403) EPA notice announcing the availability of draft guidance providing relief for Combined Heat and Power (CHP) facilities under the CAA new source review (NSR) and Title V programs. The guidance would clarify the definition of "stationary source" to allow CHP facilities to be considered separate sources from the host facility - thus, allowing the facilities to escape NSR requirements that otherwise would apply if their emissions were combined. The guidance also would clarify a procedure that could allow new CHP projects to "net out" of the NSR program by subtracting from their emissions the forgone emissions of the units they replace. The draft guidance is available on the EPA web site at http://www.epa.gov/ttn/nsr. Deadline for comments is November 14, 2001.

THE SKEPTICAL ENVIRONMENTALIST A recent book by Bjorn Lomborg, a young statistics professor and political scientist at the University of Aarhus in Denmark, finds on close analysis that the factual foundation on which the environmental doomsayers stand is deeply flawed. Lomborg says that exaggeration, prevarications, white lies and even convenient typographical errors have been absorbed unchallenged in the folklore of environmental disaster scenarios.

The book, *The Skeptical Environmentalist; Measuring the Real State of the World,* counters the gloom with a clear scientifically based picture of the true state of the Earth. It takes a rational view of what we can expect in the next century. Lomborg finds a decline of poverty and starvation across the world, that we are not running out of energy and mineral resources, the population bomb is fizzling, and far from killing us, pesticides

and chemicals are improving longevity and the quality of life. The book's longest, most detailed chapter is on global warming and the Kyoto Treaty. While Lomborg agrees that a warming trend is real, he says the IPCC exaggerates the possible threats and present-day proportions of global warming while neglecting the benefits. His most stunning conclusion: even if the Kyoto treaty were fully implemented, it would stave off warming by only about six years - postponing it from 2100 to 2106, while costing anywhere from $80 to $350 billion per annum.

Litigation Proceedings

NPDES PERMIT SHIELD On October 10, the Fourth Circuit Court of Appeals in Richmond, Virginia, ruled that the Clean Water Act provides a permit shield from enforcement actions for discharges that are not regulated under a facility's discharge permit. The case, *Piney Run Preservation Association v. County Commissioners of Carroll County, Maryland,* involves a publicly owned treatment works (POTW) that was fully complying with its NPDES permit but also was discharging heated water - and heat was not expressly mentioned in the permit. Local landowners claimed that the POTW was forbidden to discharge any pollutant, like heat, that was not explicitly authorized in the permit.

The appeals court decision overturned a federal district court and upheld the principle that the NPDES "permit shield" is broader than just the pollutants named in the permit. The basic principle is that an NPDES permit authorizes the discharge of any pollutant that was "within the reasonable contemplation of the permitting authority at the time the permit was issued."

UWAG, along with several other business and industry groups, had filed an *amicus* brief in the case calling the court's attention to a prior case that turned out to be crucial. The brief also explained at some length that weakening the "shield" would mean that permittees could be penalized for even infinitesimal discharges of unlisted pollutants - an idea the court took up near the end of its opinion. UWAG said that the court's decision is a very favorable outcome and makes clear that the more you tell the permitting agency about your watestreams, operations, and processes during the permit application process, the broader is you permit "shield."

Meetings / Workshops

RCRA NATIONAL MEETING EPA recently announced that the 2002 RCRA National Meeting will be open to the public for the first time ever. The meeting will be held January 15-18 in Washington, DC. Session discussions will include Corrective Action, Permitting, Federal, State and Tribal Programs, Municipal Solid Waste, Non-hazardous Industrial and Special Waste, Waste Minimization and more. While there is no fee for attending the meeting, pre-registration is required. Additional information, including how to register, is available on the EPA web site at: http://epa.gov/osw/meeting.

EPA TRI TRAINING SESSIONS (October 29; 66 FR 54522) EPA announced that it will conduct full-day EPCRA Toxic Release Inventory (TRI) training workshops across the country this fall. The workshops are intended to assist in preparing annual reports on release and other waste management activities under section 313 of the Emergency Planning and Community Right-to-Know Act and section 6607 of the Pollution Prevention Act. A portion of the workshops will focus on new reporting requirements for lead and lead compounds; the reports are due by July 1, 2002. Additional information regarding workshop schedule and how to register is available on the EPA web site at: http://www.epa.gov/tri/trinew.htm.

NSR COMPLIANCE WORKSHOP The American Public Power Association (APPA) is hosting a workshop on Clean Air Act New Source Review (NSR) compliance issues and has extended an invitation to members of cooperatives. The workshop is intended to address the uncertainty regarding what is and what is not permissible under EPA's current interpretations. It will include real-world case examples of routine maintenance and outage management decisions that the agency claims violated NSR requirements. The workshop is scheduled for November 30 in Orlando, Florida. Additional information about the workshop, including how to register, is available on the APPA web site at: http://www.appanet.org/general/calendar/2001nsr.htm.

Produced by the NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION
Energy Policy Department; Editor Bill Wemhoff

The Environmental Bulletin is provided free of charge to all NRECA members upon request. Prior editions and referenced documents are posted to the NRECA web site at: http://www.nreca.org/members/pub_policy/.

For additional information regarding listed issues, contact:
Rae Cronmiller, Environmental Counsel, 703-907-5791 or rae.cronmiller@nreca.org, or
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David Mohre, Executive Director, Energy & Environmental Division, Energy Policy Department, 703-907-5517 or dave.mohre@nreca.org.

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Multi-Emission Legislation – Electric Cooperative Principles

Electric cooperatives support an effort to achieve regulatory certainty that will allow for the efficient management of the resources needed to produce electricity and achieve reasonable emission objectives. Electric utilities are faced with ever expanding environmental requirements that are duplicative, piecemeal and unnecessarily expensive. A new approach would be welcome, but only if it addresses improvements in air quality in a way that harmonizes economic, energy and environmental goals. Any plan must at a minimum provide regulatory certainty and stability, increase compliance flexibility, reduce compliance costs, and maintain coal-based generation as part of the electricity supply mix while maintaining affordable rates for consumers and guarantee electric reliability.

Rural electric cooperatives serve three-quarters of the land mass in the United States and provide power to more than 35 million consumers in the rural and suburban areas of this country. Electric cooperatives generate over 32,000 megawatts of electricity for distribution to their consumers. Seventy-five percent of this generation is coal-based and will be the target of any multi-emissions legislation.

As small consumer-owned utilities, the nation's electric cooperatives provide their consumer-members with the lowest possible electricity rates and advocate fiercely for the well-being of their local communities. Any multi-emissions legislative proposal that would impact those rates will need to be closely reviewed to insure that the adoption is cost-effective and do not drain a local community's financial and economic resources and their most economically vulnerable citizens while at the same time protecting the environment.

Electric cooperatives support the effort to develop legislation that meet the aforementioned goals, nevertheless are concerned about the potential elements and details of the proposals. In general, electric cooperatives because of their size, characteristics, and dependence on coal for electric generation could be put at a severe economic disadvantage if a multi-emissions strategy is improperly designed.

Electric cooperatives are also extremely concerned that while multi-emissions policy has merit, legislation could be drafted without sufficient benefits to offset those additional costs. Multi-emission legislation must insure that once enacted that electric generating facilities have regulatory certainty for the future. If new legislation simply adds an additional requirement on electric generating stations without the removal of or non-application of existing requirements, the promise of any commensurate regulatory benefit will not be met.

Electric cooperatives believe that any legislation to alter the current regulatory scheme for electric power plants must include the following principles to achieve economic, energy and environmental goals. These goals will not be advanced if legislation only adds environmental costs and requirements.

Cooperative Principles:

1. Programs to reduce emissions should be flexible and include emissions trading to minimize the costs of these programs on individual sources and the nation. Consistent with flexibility, programs should not include unit-by-unit or other command-and-control requirements, since the size, configuration and utilization of a given unit will determine the most cost-effective compliance option for it.

2. The timing and magnitude of emissions reductions for any program or combination of programs should not impair fuel diversity needed to provide affordable and reliable electricity to the nation's consumers over the coming decades. Collectively, the programs should reconcile any conflicting national energy and environmental objectives.

3. Programs to reduce emissions should incorporate adequate future regulatory certainty, whereby utilities making capital investments and other major changes would be reasonably assured that subsequent new or additional requirements would not prematurely supercede efforts to comply with the original programs or curtail the recovery of capital costs.

4. A program to reduce mercury emissions should be phased. The initial phase should be timed and directed towards recognizing and accounting for mercury reductions resulting from existing and additional controls installed to reduce SO_2, NO_x and particulates. The latter phase should be timed so as to allow the cost-effective addition of controls, specifically for mercury, as needed to meet overall final program goals.

5. Any program directed at curtailing CO_2 emissions from coal-based units should be phased to bring about regulatory certainty, maintain national fuel diversity, and guarantee electric reliability. The initial phase should be directed at ensuring that technologies are available and cost effective for (1) the construction of new coal-based units that are significantly more carbon efficient than today's technologies can render and (2) the sequestration or capture of CO_2 emissions from the flue gas of existing coal-fired units. The latter phase should be timed to incorporate CO_2 requirements that are consistent with the ability to economically implement the technological capabilities developed during the initial phase.

6. Programs should allow sufficient lead times and phase-in periods for installation of additional pollution controls. Compressed timelines would unnecessarily escalate overall compliance costs due to supply shortages and would especially drive-up compliance costs up for smaller systems that generally are less attractive candidates for consultants and equipment vendors in a tight supply market.

7. Programs incorporating the trading of emissions credits, including a modified SO_2 allowance program, should be structured to equitably benefit all those entities that must comply with program requirements as well as the nation's electric consumers. Any allocation of emissions credits should be based on fossil fuel utilized to generate electric power.

8. Under programs incorporating national caps and trading of emissions credits, New Source Review requirements addressing modifications at existing units are unnecessary and should be eliminated.

9. Provisions for government/private sector R&D collaboration to advance combustion and pollution control technologies, such as those advanced in the NEET bill, should be incorporated into any "comprehensive air" legislation. When incorporated, these provisions should be structured such that all segments of the utility industry, including not-for-profit entities, can equitably benefit from them.

10. Programs that incorporate emissions trading should be structured to ensure no potential adverse effects on emissions credit pricing or emissions credit availability due to discriminatory market power. Smaller entities, and ultimately their electric consumers, must not be unfairly discriminated against in the emissions trading market place. Both generators and electric consumers should equitably benefit from emissions markets and their structures.

David Lyon Howland

File: 1.10.4

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MEMORANDUM

January 12, 2001

TO: Statewide Managers
G&T Managers
NRECA Board of Directors

FROM: Glenn English, Chief Executive Officer

A few things I wanted to share with you...

Overview

Senate Committees: Confirmation Hearings on Bush Cabinet Designees, Sharing Power

President-Elect George W. Bush's designated EPA Director Christine Todd Whitman is scheduled to appear before the Senate Environment and Public next Wednesday, January 17th. Energy Secretary-designate Spence Abraham and Interior Secretary-designate Gale Norton are scheduled to appear before the Senate Energy and Natural Resources Committee the next day, January 18th. Agriculture Secretary-designate Anne Veneman appears before the Senate Agriculture Committee the same day.

Weeks of negotiations between Senate leaders resulted in a landmark agreement, which the Senate approved late last week, that gives Democrats and Republicans equal representation on Senate Committees. The agreement also spells out the procedures for freeing up legislation or nominations if a deadlock occurs at the committee or subcommittee levels. On the Senate floor, the Vice President would still break the tie, as provided by the Constitution. In addition to the good faith and, according to GOP Leader Trent Lott (R-MS), the "framework for bipartisanship" that has been established, the agreement now clears the way for both the Republicans and Democrats to make their committee assignments. Rep. John Kyl (R-AZ), who is coordinating the GOP committee assignment list, was expected to finish his effort sometime this week. Democrats are expected to complete their rosters soon thereafter.

In the House: Committee Changes ...

Clean air issues are being moved within the jurisdictional authority of the House Energy and Power Subcommittee, chaired by Rep. Joe Barton (R-TX). An official announcement has

not yet been made, but the change would give Chairman Barton broad authority over environmental issues related to or impacting domestic energy policy issues.

The House Agriculture Committee has undergone significant reorganization. Chairman Larry Combest (R-TX) announced the new alignments this week, which include changes in jurisdictional authority in three of the four subcommittees, and the addition of a new, fifth subcommittee. The new subcommittee – Conservation, Credit, Rural Development and Research – will be chaired by Rep. Frank Lucas (R-OK), who is knowledgeable about electric cooperative issues. I expect that this subcommittee will have jurisdiction over some rural electric co-op issues, as it did when I chaired a panel with a similar title during my tenure in the House.

In addition to the new Conservation and Credit Subcommittee, the other Subcommittees and chairs, are:

- General Farm Commodities and Risk Management – Rep. Saxby Chambliss (R-GA), who replaces former Rep. Bill Barrett
- Specialty Crops and Foreign Agricultural Programs – a new panel chaired by Rep. Terry Everett (R-AL)
- Department Operations, Oversight, Nutrition and Forestry – Rep. Bob Goodlatte (R-VA), who continues as chair, and
- Livestock and Horticulture – Rep. Richard Pombo (R-CA), who also continues as chair.

Chairman Combest also said that the full committee would begin hearings on specific farm policy recommendations, beginning with testimony from producer groups in early February and March.

RUS: Notice of $500 million in Funding Availability—NOW—for Treasury Rate Loans

The Rural Utilities Service (RUS) has issued a Notice of Funding Availability (NOFA) announcing the availability of $500 million in direct Treasury rate electric loans for fiscal year 2001.

This new program is the fruit of one of NRECA's successful lobbying efforts this past year. I hope that electric cooperatives – particularly distribution utilities – will consider the advantage of borrowings at the government's cost of money. RUS notes also that it intends to treat all completed, qualifying applications for municipal rate loans (the cut-off date for which was October 28, 2000) as "pre-applications" for the new, direct Treasury rate loans. Our Government Relations staff has also learned that RUS may directly call the first one hundred applicants in line for municipal rate loans, to ask if they would like to be switched to the new Treasury rate line.

If any cooperatives in your state submitted applications for municipal rate electric loans prior to the October 2000 RUS cut-off date, please encourage them to complete an application for

the Treasury rate loan program as well. A copy of the *Federal Register* notification is enclosed; for additional details on the application requirements, please call or write:

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RUS Expands Section 12 Deferments to include Funding for Renewables

The Rural Utilities Service issued a proposed rule this week that calls for extending payments of principal and interest for RUS electric borrowers that choose to use the funds for new purposes, including renewable energy systems, distributed generation systems and contributions-in-aid of construction. The proposed rule expands the eligibility criteria for which RUS borrowers may defer the repayment of loans, known as Section 12 deferments. An RUS press release discussing the January 9 Federal Register notice is enclosed with this issue of *A Few Things*. Written comments are due by March 12. Please contact Jim Ardoin, 202.720.0843 or Claiborn Crain, 202.720.1255 at RUS for more information.

FERC Chairman Hoecker to Leave Commission

Federal Energy Regulatory Commission Chairman James J. "Jim" Hoecker announced this week he would be leaving the Commission January 18. A key proponent of wholesale electricity competition through the development of regional transmission organizations, Chairman Hoecker chose to highlight the policies behind FERC Orders No. 636 and 888 during his three-plus years on the Commission.

Co-op Plays a "Role" in Popular Movie "Castaway"

If you are one of the millions who have seen "Castaway," the movie starring Tom Hanks as, well, a castaway, you may not have known that an electric cooperative played a role in the film.

In an opening scene, posters of various "critters" – toads, lizards and other small animals – adorn an office wall.

Those posters might be familiar to thousands of elementary school children in Kentucky, because they were produced by East Kentucky Power Co-op, Winchester, specifically, by Jeff Hohman, the G&T's Natural Resources and Environmental Communications Manager.

The "critters" are Mr. Hohman's "personal" friends, animals that are indigenous to East

Kentucky's service area. Mr. Hohman takes his little friends to thousands of presentations each year for elementary and junior high school children where he discusses Kentucky wildlife and East Kentucky's role in preserving and protecting these species.

Word of Mr. Hohman's endeavors reached the producers of the movie, whose set designer called the co-op to request permission to use them in the filming of "Castaway." The rest, as they say, is history.

United States Department of Agriculture
Rural Development

Rural Business-Cooperative Service • Rural Housing Service • Rural Utilities Service
Washington, DC 20250

Federal Register Announcement

RUS Proposes Changes for Funding Renewable Energy Systems!

(Washington, D.C., January 10, 2001) –Rural Utilities Service (RUS) published a proposed rule in the January 9, 2001 Federal Register to specify additional procedures and conditions under which borrowers in the Electric Program may request extensions of the payment of principal and interest. These extensions, also known as Section 12 deferments, will enable RUS borrowers to use needed funds for renewable energy systems, distributed generation systems and connection fees.

RUS strongly believes it to be a good business practice to provide a Borrower the opportunity to address financial hardship and to improve access to affordable power and new renewable energy technologies, achieve specified program objectives to benefit rural America.

RUS borrowers can request Section 12 deferments to create a fund to finance eligible projects. The deferred principal and interest are then paid back at a later time. "This authority opens the door for rural Americans to participate in the new energy revolutions and help enhance our nation' energy independence," Christopher McLean, RUS Administrator said.

Presently, eligible purposes for Section 12 deferments include financial hardship and energy resource conservation loans. The proposed rule expands eligibility to include renewable energy projects, distributed generation and contributions-in-aid of construction. The procedures and conditions for these purposes have not previously been codified in the Code of Federal Regulations. In addition, eligible new purposes (renewable energy projects and contributions-in-aid of construction) are included in this proposed rule and will follow the same procedures and conditions as the energy resource conservation loans.

Contacts: Jim Ardoin 202/720-0843
Jim.Ardoin@usda.gov
Claiborn Crain 202/720-1255
ccrain@rus.usda.gov

Conservation Service, (NRCS), 441 S. Salina Street, Fifth Floor, Suite 354, Syracuse, New York, 13202–2450.

A copy of this standard is available from the above individual.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agricultural Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State Technical Guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Dated: December 7, 2000.

Wayne M. Maresch,

State Conservationist, Natural Resources Conservation Service, Syracuse, NY.

[FR Doc. 00–32737 Filed 12–21–00; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Municipal Interest Rates for the First Quarter of 2001

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of municipal interest rates on advances from insured electric loans for the first quarter of 2001.

SUMMARY: The Rural Utilities Service hereby announces the interest rates for advances on municipal rate loans with interest rate terms beginning during the first calendar quarter of 2001.

DATES: These interest rates are effective for interest rate terms that commence during the period beginning January 1, 2001, and ending March 31, 2001.

FOR FURTHER INFORMATION CONTACT: Gail P. Salgado, Management Analyst, Office of the Assistant Administrator, Electric Program, Rural Utilities Service, U.S. Department of Agriculture, Room 4024–S, Stop 1560, 1400 Independence Avenue, SW, Washington, DC 20250–1560. Telephone: 202–205–3660. FAX: 202–690–0717. E-mail: GSalgado@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The Rural Utilities Service (RUS) hereby announces the interest rates on advances made during the first calendar quarter of 2001 for municipal rate electric loans. RUS regulations at § 1714.4 state that each advance of funds on a municipal rate loan shall bear interest at a single rate for each interest rate term. Pursuant to § 1714.5, the interest rates on these advances are based on indexes published in the "Bond Buyer" for the four weeks prior to the fourth Friday of the last month before the beginning of the quarter. The rate for interest rate terms of 20 years or longer is the average of the 20 year rates published in the Bond Buyer in the four weeks specified in § 1714.5(d). The rate for terms of less than 20 years is the average of the rates published in the Bond Buyer for the same four weeks in the table of "Municipal Market Data—General Obligation Yields" or the successor to this table. No interest rate may exceed the interest rate for Water and Waste Disposal loans.

The table of Municipal Market Data includes only rates for securities maturing in 2001 and at 5 year intervals thereafter. The rates published by RUS reflect the average rates for the years shown in the Municipal Market Data table. Rates for interest rate terms ending in intervening years are a linear interpolation based on the average of the rates published in the Bond Buyer. All rates are adjusted to the nearest one eighth of one percent (0.125 percent) as required under § 1714.5(a). The market interest rate on Water and Waste Disposal loans for this quarter is 5.500 percent.

In accordance with § 1714.5, the interest rates are established as shown in the following table for all interest rate terms that begin at any time during the first calendar quarter of 2001.

Interest rate term ends in (year)	RUS rate (0.000 percent)
2022	5.500 or later
2021	5.500
2020	5.500
2019	5.500
2018	5.500
2017	5.500
2016	5.500
2015	5.500
2014	5.500
2013	5.500
2012	5.375
2011	5.375
2010	5.250
2009	5.250
2008	5.125
2007	5.125
2006	5.000
2005	4.875
2004	4.750
2003	4.500
2002	4.375

Dated: December 18, 2000.

Christopher A. McLean,

Administrator, Rural Utilities Service.

[FR Doc. 00–32645 Filed 12–21–00; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Notice of Funding Availability (NOFA); Treasury Rate Loan Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of funding availability (NOFA).

SUMMARY: This Notice of Funding Availability (NOFA) announces the availability of $500 million in direct Treasury rate electric loans for fiscal year (FY) 2001. This document describes the eligibility and submission requirements, the criteria that will be used by the Rural Utilities Service (RUS) to select applications for funding, and the expectation that the current backlog of qualifying applications for loans from RUS under the Rural Electrification Act will exhaust all of the available funding. In the event this assumption proves to be incorrect, RUS intends to publish another NOFA on or before July 1, 2001, announcing the availability of any remaining direct Treasury rate electric loan funds and how they will be allocated. The intended effect of this NOFA is to enable RUS to approve all direct Treasury rate electric loans for FY 2001 prior to July 1, 2001.

DATES: RUS intends to treat all completed qualifying applications for direct electric loans at the municipal rate as pre-applications for direct electric loans at the Treasury rate. The closing date for receipt of pre-applications that will be considered is October 28, 2000; the date on which the direct Treasury rate electric loan program was established by Pub.L. 106–387.

ADDRESSES: Loan applicants that do not have outstanding loans from RUS should write to the Rural Utilities Service, United States Department of Agriculture, Washington, DC 20250–1500. A field or headquarters staff representative may be assigned by RUS to visit the applicant and discuss its financial needs and eligibility. Borrowers that have outstanding loans should contact their assigned RUS general field representative (GFR). Borrowers may consult with RUS field representatives and headquarters staff, as necessary.

FOR FURTHER INFORMATION CONTACT: Robert O. Ellinger, Management Analyst, U.S. Department of Agriculture, Rural Utilities Service, Electric Program, Room 4023 South Building, Stop 1560, 1400 Independence Ave., SW., Washington, DC 20250–1560, Telephone: 202–720–0424.

SUPPLEMENTARY INFORMATION:

Programs Affected

The Catalog of Federal Domestic Assistance Program number assigned to this program is 10.850.

Discussion of Notice

I. Authority and Distribution Methodology

a. Authority

Section 4 of the Rural Electrification Act of 1936, (RE Act) (7 U.S.C. 904), among other things, provides RUS with the authority to make loans for rural electrification and for the purpose of furnishing and improving electric service in rural areas. Section 305 of the RE Act (7 U.S.C. 935) establishes the municipal rate electric loan program for these purposes. Title III of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Pub. L. 106–387) authorizes a direct Treasury rate electric loan program of $500 million for FY 2001.

b. Distribution Methodology

RUS believes that Congress authorized the direct Treasury rate electric program to address the backlog of qualified loan applications for direct municipal rate electric loans from RUS. Such loans are generally allocated by RUS in the order that qualified applications are received. RUS will distribute direct Treasury rate electric loans by offering those municipal rate electric loan applicants whose qualified applications were pending at the time of the enactment of Pub.L. 106–387 the option of selecting the direct Treasury rate in lieu of the municipal rate for their loans. RUS will contact applicants in the order of priority that their applications for municipal rate loans would otherwise have been funded using the loan processing priorities published in 7 CFR 1710.119. In that order, RUS will allocate up to the original (as adjusted in accordance with this NOFA) qualifying municipal loan amount to each applicant who so elects. RUS will proceed in turn until such point as the $500 million of authority has been exhausted. In the unlikely event that any of the authority remains unobligated on July 1, 2001, RUS plans to publish a notice of the availability of the remaining portion and describe the manner in which it intends to proceed. RUS intends to obligate loans for the full amount by September 1, 2001.

II. Applications Process

Qualifying applications for direct municipal rate electric loans which have been submitted to RUS in accordance with 7 CFR part 1710 subpart I, before October 28, 2000 will be treated as pre-applications for direct Treasury rate electric loans. RUS will contact qualified applicants in the order which they are presently queued, and offer the applicant the opportunity to elect to receive its loan at the direct Treasury rate in lieu of the municipal rate. Applicants should notify RUS promptly in writing of their election. Only timely responses received by RUS and electing the direct Treasury rate will qualify for further loan processing by RUS at that rate. All other applicants will remain in the municipal rate loan queue without prejudice. RUS notes that a reduction of $500 million of applications in the municipal rate loan queue will result in reaching municipal rate loan applications that otherwise would not be reached during FY 2001. Congress authorized a direct municipal rate electric loan program level of $295 million for FY 2001. RUS estimates its current backlog of qualified applications for electric distribution loans as exceeding $1.2 billion. Therefore, RUS anticipates that it will significantly reduce but not substantially eliminate its backlog of electric distribution loan applications.

III. Application Submission Requirements

Each application should include all of the information, materials, forms and exhibits required by 7 CFR part 1710 subpart I, as well as comply with the provisions of this NOFA. RUS believes that it currently has received sufficient pre-applications to exhaust all available FY 2001 funding for the direct Treasury rate electric program and therefore it is not soliciting additional applications for this rate category at this time.

IV. Differences Between Direct Municipal Rate Electric Loan Category and Direct Treasury Rate Electric Loan Category

Generally speaking, since the primary distinction between the established direct municipal rate electric loan program and the direct Treasury rate electric loan program is merely one of interest setting methodologies, RUS intends to administer the direct Treasury rate program during FY 2001 in a manner substantially the same as it administers the direct municipal rate program. General and pre-loan policies and procedures for electric loans made by RUS may be found in 7 CFR parts 1710 and 1714. It is intended that the use of established and highly successful direct electric loan program procedures will enable RUS to promptly make prudent loans to qualified applicants. These procedures have generally worked well and are familiar to both RUS staff and to the applicants. This approach helps assure that the funds authorized by Congress for FY 2001 are expended in a timely manner as Congress intended. The principal variances are as follows:

a. Interest Rates

1. The standard interest rate on direct Treasury rate loans will be established daily by the United States Treasury.

2. The interest rates for Treasury rate loans can be found on the Internet at *www.federalreserve.gov/releases/H15/currrent/*.

3. Selection of interest rate terms will be made by the borrower for each advance of funds. The minimum interest rate term shall be one year. Interest rate terms will be limited to terms published by the Treasury (*i.e.* 1, 2, 3, 5, 7, 10, 20, and 30). Interest rates for terms greater than 30 years will be at the 30-year rate.

4. There will be no interest rate cap on Treasury rate loans.

b. Prepayment

A direct Treasury rate electric loan may be repaid at par on its rollover maturity date if there is one. Such a loan may also be prepaid with no premiums or penalties at its "net present value" (NPV) as determined by RUS using the prepayment methodology in 7 CFR part 1786.

c. Supplemental Financing

The Administrator has elected not to impose any supplemental financing requirements in conjunction with direct Treasury rate electric loans made during FY 2001. Accordingly, the "original qualifying municipal amount" referred to in part I.B of this NOFA may be adjusted at the election of the applicant to include otherwise eligible amounts that would have been financed from other sources in accordance with 7 CFR 1710.110(c). Request for an adjustment in the "original" amount should specify the amount of the adjustment and accompany the applicant's election to use the Treasury rate category of direct electric loan. See part II of this NOFA.

V. Loan Documents

Successful applicants will be required to execute and deliver to RUS a promissory note evidencing the borrower's obligation to repay the loan. The note must be in form and substance satisfactory to RUS. RUS plans to require a form of note substantially in the form that it currently accepts for direct municipal rate electric loans, with such revisions as may be necessary or appropriate to reflect the different interest setting provisions and the terms of this NOFA. All notes will be secured in accordance with the terms of 7 CFR part 1718.

Dated: December 18, 2000.

Christopher A. McLean,

Administrator, Rural Utilities Service.

[FR Doc. 00–32714 Filed 12–21–00; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletion from the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a service previously furnished by such agencies.

EFFECTIVE DATE: January 22, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740

SUPPLEMENTARY INFORMATION: On September 29, October 20 and November 3, 2000, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 FR 58505, 63057 and 66231) of proposed additions to and deletion from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will not have a severe economic impact on current contractors for the services.
3. The action will result in authorizing small entities to furnish the services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Services

Base Supply Center, Trident Refit Facility, Naval Submarine Base, Kings Bay, Georgia
Commissary Warehousing and Janitorial, United States Naval Academy, Annapolis, Maryland
Janitorial/Custodial, US Border Patrol Compound, Davis Monthan AFB, Arizona
Linen Service, Hickam Air Force Base, Hawaii
Moving Services, Department of the Interior, Washington, DC

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will not have a severe economic impact on future contractors for the services.
3. The action will result in authorizing small entities to furnish the services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. Accordingly, the following service is hereby deleted from the Procurement List:

Service

Janitorial/Custodial, Drug Dependence Treatment Center, 2320 West Roosevelt Road, Chicago, Illinois

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–32720 Filed 12–21–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete services previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 22, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and service

National Rural Electric Cooperative Association
A Touchstone Energy® Cooperative

4301 Wilson Boulevard
Arlington, Virginia 22203-1860
Telephone: (703) 907-5500
TT-(703) 907-5957
www.nreca.org

DAVID FYE

File: 1.16.4.1

December 22, 2000

Dear Colleague:

Attached please find the second prototype issue of *Environmental News Gems*. We continue to refine both the content and the look to ensure that we are getting to you political news on the environment that is useful and informative.

I want to thank you for your comments on our first issue and look forward to further comments on this issue. *Environmental News Gems* is still being sent to just the test group for any final refinements or comments before we decide if this is a useful tool for the rest of the G&Ts and statewides in the coming year.

Thank you again for your thoughtful comments. We look forward to hearing from you again.

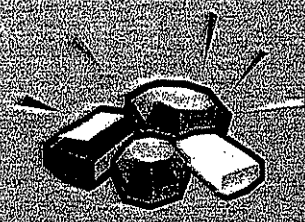
Sincerely Yours,

Dena Stoner by SP

Dena G. Stoner, Vice President and Director
Government Relations Department

NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

Environmental News Gems



NEWS Influencing Legislative Politics — December 2000

Political Pressures Mount on U.S. Senate to Address Climate Change

Senators from across the political spectrum consider drafting legislation early next year to address global warming. In fact, Sen. Frank Murkowski (R-AK) says, "...the risk of human-induced climate change is a risk we should address in a responsible manner," and further argued that, "... a new approach to dealing with the risk of climate change is necessary." Sen. Murkowski had key staffers present at the Conference of Parties on the Climate Change Convention in The Hague in December. Sens. Larry Craig (R-ID) and Chuck Hagel (R-NE), also conservative Republicans present in The Hague, made statements supporting efforts to address climate change upon their return.

New Hampshire Gov. Jeanne Shaheen (D) has announced that she intends to push through statewide reductions in greenhouse gases in a manner that reflects the targets of the Kyoto Protocol. Sen. Bob Smith (R-NH), Chairman of the Senate Committee on Environment and Public Works, will likely face Gov. Shaheen as a Senate challenger in 2002. Gov. Shaheen's announcement may add pressure on Sen. Smith to develop power plant legislation that curbs greenhouse gas emissions. While New Hampshire is fiscally conservative, environmental emissions are a very popular political issue there.

In recent months, both chambers of Congress held hearings and introduced several bills addressing multiple emissions now regulated under the Clean Air Act – and carbon dioxide, which is not now regulated but has been discussed as a part these proposals. Farm state members are considering a soil carbon program in proposals for a new farm bill as a way to address carbon issues and to provide revenue for agricultural areas. One of the ways to handle carbon emissions from fossil fuels is by "sequestering" it into soil and plants.

More to Think About

With the international failure at The Hague to craft rules for implementation of the Kyoto Protocol, the Senate seems ready to design a climate change mitigation program for the U.S.

For More Information: "Senate will Pursue Bipartisan Global Warming Legislation," Inside EPA. December 1, 2000.

Coal Industry Players Positioning Themselves as Environmentally Sensitive

The Zero Emission Coal Alliance (ZECA) is a research consortium that includes 17 corporations such as the Southern Company along with private sector groups and the U.S. Department of Energy's Los Alamos National Laboratory (LANL). It is commercializing new technology that can increase the efficiency and reduce air pollution from coal-based power generation.

Among the technologies the group is pursuing is a process that would create hydrogen from a coal-water slurry, which is converted to electricity through a fuel cell. The by-products of the chemical process are hydrogen and carbon dioxide. The carbon dioxide would react with silicates to form more complex minerals thereby sequestering the carbon. This process is exciting to ZECA members because it would eliminate the need to burn coal and, therefore, concerns about sulfur dioxide and nitrogen oxide air emissions.

ZECA plans to make a decision in mid-2001 about where to site an experimental non-air-polluting coal conversion plant. There is currently a dispute about where to site the plant because ZECA's members all want to receive the public relations benefits of being perceived as an environmentally sensitive industry leader.

For More Information: "Clean Coal Technology: Not Just Blowing Smoke," *Energy Insight*. November 30, 2000.

Clinton Administration Scrabbling to Leave Behind an Environmental Legacy

As the lame-duck administration ends, federal agencies are vigorously preparing rules on the environment, labor, health care, and other controversial topics before January 20, 2001. The Democratic administration is prepared to put forth many last minute regulations such as a 95 percent reduction in the amount of sulfur in diesel fuel. In fact, it is estimated that the Clinton administration is well on its way to fill 29,000 pages of the Federal Register. Congressional Republicans have expressed their frustration to do anything to reign in the likely onslaught of these federal agency actions, which have the force of law. Members of Congress could overturn the rules, but with a 50-50 split in the next Senate, it will be difficult to pass this kind of legislation without considerable revision from Democrats. In the

More to Think About:

Expect to see these powerful interests lobby for federal help or incentives for pursuing these new clean coal technology strategies.

Congress hands are politically tied from reigning in 29,000 pages of regulations from the outgoing Clinton administration.

event that the next Congress passes legislation to overturn the last minute rules, the federal rulemaking process will take months or years to reverse.

or More Information: "Clinton Readies an Avalanche of Regulations," *Los Angeles Times*, November 26, 2000, p. A1.

California Faces Challenge of Balancing Environmental Requirements with Power Supply Needs

As California heads into winter, several power companies have found themselves with the dilemma of whether to compound the power shortage facing the entire state or to continue operating and exceed their nitrogen oxide (NOx) emissions limits. In several instances, California generators have been requested to generate power for reliability reasons while at the same time those plants have met their annual NOx limits. The price of NOx emission allowance credits have soared. NOx emissions credits averaged $260/ton in 1999, but with high electricity demand rose to $27,000/ton in August 2000.

For More Information: "Clean-Air Rules Put Power-Crunched California in Worse Winter Trouble," *Electric Utility Week*, November 27, 2000, p. 2; "South Coast Seeks to Force Gas-Fired Power Plans to Comply with NOx Limits," *Daily Environment Report*, Bureau of National Affairs, November 20, 2000.

Canadian Companies Involved in Major Carbon Transactions

Recently Ontario Power Generation and the Canadian Greenhouse Emissions Management Consortium cemented deals with a gas processor to trade 1.9 million metric tons of carbon dioxide (CO_2). Instead of releasing CO_2 into the atmosphere, it is transported through a pipeline to oil fields where it is used to enhance oil recovery. In a separate deal, TransAlta Corp. of Calgary, Alberta has sold 210,000 tons of CO_2 emissions credits to Murphy Oil, a refinery in Arkansas. Installing new scrubbers and low emission burners gave TransAlta additional credits it could sell.

For More Information: "Ontario Power Generation Buys Carbon Credits," *Megawatt Daily*, November 21, 2000, p. 2; "TransAlta in Deal to Sell Arkansas Oil Company 210,000 Tons of CO_2 Credits," *Utility Environment Report*, November 17, 2000.

Congressional Report Names Three Environmental Priorities for the Future

In 1993, Congress called for the National Academy of Public dministration (NAPA) to analyze trends and efforts in environmental protection and provide advice, strategies, and

More to Think About

The clash between environmental controls and electricity production in California is the beginning, and will drive hearings and discussions on Capitol Hill, especially wit impacts the national economy.

Carbon trading transactions are occurring today without mandatory carbon caps. A market is developing which will create strong political advocates for legitimizing this strategy as one way to address CO_2 emissions.

insights for the future. The report posits that global climate change, uncontrolled runoff into the nation's waters (nonpoint source pollution), and smog are three most pressing concerns for America.

Among the report's recommendations was that Congress give the Environmental Protection Agency (EPA) the authority to implement allowance-trading programs to reduce both air and water pollution. The report also recommended that state agencies and the EPA embrace organizational and cultural changes that would engender environmental policies that were innovative and implemented with a broader range of tools.

Additionally the report called for the creation of an independent, well-funded bureau of environmental information and for Congress to appropriate more funds for better environmental data collection and data quality. According to one of the panel reviewers of the report, a separate office within the EPA would lend credence to the data and analysis from that office.

For More Information: "Report Calls for Changes in Policy to Tackle Climate Change, Runoff, Ozone," Daily Environment Report, Bureau of National Affairs, November 20, 2000.

Interstate Commerce and Environmental Policy

In New York, the Clean Air Markets Group, an association of utilities, allowance brokers and other companies, has filed suit against New York state in federal court saying that a law penalizing New York companies from selling their sulfur dioxide emissions credits to companies in 14 upwind states is unconstitutional. Current New York law designed to control acid rain requires companies that sell their emissions to other companies in 14 upwind states to pay an "air pollution mitigation offset" to New York state equal to the amount of the allowance credit. All allowance sales and trades must be reported to the state Public Service Commission, which imposes the offset penalty and deposits the money in an air pollution mitigation fund administered by the state's Energy Research and Development Authority.

The Clean Air Markets Group argues that the New York law is a violation of the supremacy clause of Article VI of the U.S. Constitution because congress intended to regulate sulfur dioxide emission allowances with Title IV of the Clean Air Act. The suit further alleges that the New York law violates the commerce clause of the Constitution by regulating out-of-state economic activities and by creating a regulatory scheme in which out-of-state interests are treated differently from in-state-interest.

For More Information: "Law on Sulfur Dioxide Credit Trading

More to Think About

A congressionally mandated report finds climate change, ozone and non-point source water pollution the top environmental issues of the future.

The outcome of the lawsuit will determine whether emissions trading is an interstate commerce issue and whether individual states can set their own rules. This association's membership is an example of the stakeholders who have financial interests in trading. As an interstate commerce issue, Congress is likely to take an interest.

Challenged by Industry as Unconstitutional," *BNA: Daily Report for Executives*, No. 223, 11-17-00, pages A-15-16.

lue-Power Options Offered to Ohio Consumers

A Virginia-based company is marketing two types of "blue-power" to its Ohio consumers. AES Corp.'s Power Direct subsidiary is counting on consumer support of the programs when the state opens for competition in January. The first option they offer is "CoolBlue" in which AES will plant trees in Ohio to offset the emissions of carbon dioxide as well as granting those customers who choose this option a savings on their electricity bill up to 10%. Their second environmental option has been termed, "ClearBlue" in which the company will not only plant trees in Ohio, but it also promises to fight against smog and acid rain by purchasing and permanently retiring emission allowances related to power generation. In promotional material for the program AES noted that the consumer gets "all this for about the price you pay your utility for electricity alone."

For More Information: "AES Hopes Ohio Customers Will Choose 'Blue' Power Offerings." *The Electric Power Daily*, Thursday, November 16, 2000, pages 1,4.

New Ways to Argue Environmental Harm

The EPA plans to issue final guidance on its implementation of Title VI of the Civil Rights Act in the first quarter of 2001. Title VI requires that federally sponsored programs be administered in a nondiscriminatory way. Under draft guidance issued in June 2000, permits for factories or power facilities must not have disproportionate environmental impacts on minority or disadvantaged communities or populations.

The draft also addressed procedures for investigating complaints in environmental permitting decisions. Anne Goode, director of the agency's Office of Civil Rights has noted that disparate impact alone does not constitute bias. Complaints of bias must be based on credible data that a state permitting decision has had an adverse impact on the population.

EPA has received over 90 sets of comments on the draft guidelines in which state and industry groups say the draft is too vague and that the role of individual permittees needs to be more clearly defined.

In an unrelated case, the Washington state group Save Our ummers has filed suit in a federal district court under the mericans with Disabilities Act (ADA), asking that the court set

More to Think About:

Power companies are findings ways to provide environmental choices to their customers in a competitive market.

Environmentalists have begun to argue that clean air and water are civil rights. This new argument has the potential of involving the Judiciary Committee in the environmental issue in the U.S. Congress.

up a rigid oversight program to ensure that state officials take appropriate steps to curb harmful air pollution. The suit argues that when the state grants wheat growers burning permits each year, it does not take into account the harmful effect that such smoke has on children with asthma and other respiratory conditions. ADA prohibits discrimination against disabled individuals in employment, public services, and public accommodations. According to the plaintiffs, the children are being discriminated against because they cannot go to school, play or travel as others can during the burning season.

Originally, the federal judge presiding over the case agreed with the defendants' argument that there is already a comprehensive scheme to regulate air pollution through the Clean Air Act. However, after the EPA and Justice Department filed friends of the court briefs saying that the children should be entitled to sue under ADA, the court reversed its decision, clearing the way for a trial.

For More Information: "EPA Expects to Issue Guidance on Civil Rights in Early 2001, Official Says," *BNA: Daily Report for Executives*, No. 221, November 15, 2000, Pages A-21-22; "Smoking Out the Disabilities Act," *The National Journal*, Vol. 32, NO. 41, October 7, 2000; "Novel Twist in Field Burning Suit; Center for Justice Detects Echoes of 'A Civil Action'" *Alternative Fuels*, November 6, 2000, page 22; "Activists Seek Court Oversight of Washington Air Program," *Clean Air Report*, November 9, 2000, p. 22.

Companies Seek Mercury Control Technologies

Chicago-based Midwest Generation announced in late October two proposed pilot projects aimed at testing new control technologies to reduce mercury emissions from coal-fired power plants. The group is seeking DOE funds reserved for "novel or less mature" technologies in mercury controls.

Under the proposed pilot, the company's Powerton Generating Station in Perkin, IL, would be used to test the mercury removal properties of various sorbents under actual energy production conditions. The company plans to build a pilot facility near at the power station and pipe in a small amount of boiler combustion flue gas. They then plan to inject various sorbents into the flue gas such as biomass, waste tires, and flyash to test their absorbency.

The second pilot project would test absorbency rates under much more controlled conditions. The company plans to build a small boiler at a research facility near Pittsburgh that could test the properties of various sorbents as combustion temperatures are

More to Think About

Utilities are looking for federally appropriated funds to help develop cost-effective mercury control technologies in anticipation of mercury regulations.

changed and as different qualities and grades of coal are burned.

EPA announced on December 14, 2000 that it will regulate mercury from oil and coal fired utility boilers. The development of the regulations will occur over the next 3 years.

For More Information: "Utility Proposes to Reduce Emissions from Coal-Fired Plants in Pilot Projects," *BNA: Daily Environment*, No 207, October 25, 2000, Page A-8.

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November 17, 2000

Dear Colleague:

Environmental issues – and utility emissions policies, in particular – will very likely be part of any serious and comprehensive deliberations on electricity restructuring, a national energy strategy and farm policies when the 107th Congress convenes in January 2001. In addition, the Clean Air Act is up for reauthorization. The increasing challenge for us remains how best to keep you informed about the growing sphere of outside influences that affect these deliberations.

Over the past year, I have received quite a number of requests to reconsider the decision to discontinue the monthly news clips on environmental issues affecting the legislative landscape. Given the current level of activity, I understand why you found the clips service valuable. It is nearly impossible to keep up with everything that is happening on the environmental policy front, and even key staffers on Capitol Hill want this information.

Continuing the clips service required hurdling prohibitively expensive legal and copyright barriers. This fact sent us back to the drawing board, and what emerged is the attached *Environmental News Gems*. This is a prototype.

The "Gems" are syntheses of selected news reports affecting the politics of environmental advocacy. They are written in a non-technical style for the executive level reader who needs a tool to cut through the volumes of environmental materials that come into the mailbox each week. Each "gem" cites the source and its date of publication. Perhaps more importantly, it gives you our "quickie" read – from a politically nuanced view – in a column we call "The Bottom Line", which explains why we consider this item a "gem." We will not attempt to be all-inclusive and comprehensive, but rather, we will focus on the news that gives shape to the political forces that influence legislative activity. We have copyrighted the material because this collection of gems takes some effort to polish and illuminate! As a member of NRECA, however, you have permission to use this material as you wish.

I am sending *Environmental News Gems* for three months to a test group who have expressed interest in what is happening in the environmental advocacy arena. Please let me know if this tool is useful and would be a benefit to the rest of the G&Ts and statewides. We need your feedback.

Sincerely yours,

Dena G. Stoner, Vice President and Director
Government Relations Department

NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

Environmental News Gems

NEWS influencing Legislative Politics — November 2000

Energy Leaders Call for National Energy Policy

In late October with the support of Edison Electric Institute President Thomas Kuhn, and outgoing National Mining President Richard Larson, American Gas Association President David Parker stated that whatever the outcome of the new election, policy makers are going to be forced to look at a national comprehensive energy policy. Noting last winter's heating oil price spikes, oil and gasoline price surges this summer, the California electricity crisis and looming fears about high heating oil prices this winter, Parker said, "I'm of the strong belief that if we as a community – energy officials, public affairs types, public policy makers – don't work together in the months and years ahead, we will miss a very, very large opportunity to really move the agenda forward." Parker's plan stressed the importance of all energy producers coming together to create a national energy policy.

Such a policy, he stated, would have to address land access policies on federal lands and review moratoriums on exploration and drilling in coastal areas. Most importantly, Parker stressed that such a policy would have to be comprehensive enough to include everything that impacts energy from economic policy and tax policy to environmental policy. "My belief is that whoever is President is going to have to address those issues."

Currently NRECA is participating in the development of a National Energy Strategy by the U.S. Energy Association.

For More Information: "AGA's Parker: Not an Energy Crisis, an Energy 'Awareness Opportunity,'" *The Energy Daily*, Vol. 28, No. 202, October 20, 2000, pp. 1-4.

U.S.-Canada Agreement on Transboundary Smog

U.S. and Canadian negotiators have agreed to the first annex to the 1991 U.S.-Canada Air Quality Agreement, pledging to reduce emissions of the ozone precursors nitrogen oxides (NOx) and volatile organic compounds (VOCs or hydrocarbons). The Ozone

The Bottom Line:

Work on national energy and environment strategies will likely permeate any major reform legislation (i.e. clean air act reauthorization, farm bill, electricity restructuring, etc.) in the next congress

Annex does not need ratification by the U.S. Senate because it does not require new implementing legislation. It is considered an executive agreement. In Canada, the Annex requires the approval of their federal Cabinet.

The U.S. would achieve its reductions through implementation of EPA's NOx State Implementation Plan (SIP) Call. The so-called "NOx SIP Call" would reduce summertime NOx emissions in the transboundary region through a 70 percent reduction in emissions from power plants and industrial sources in 19 states and the District of Columbia from 1990 levels. In the U.S., electric utilities are responsible for 25 percent of NO_2 emissions. Vehicles are the major source of NOx emissions, responsible for 53 percent of NO_2 in the U.S.

For More Information: "U.S., Canada Reach Landmark Accord on Reducing Transboundary Smog," *Inside EPA*, Vol. 21, No. 42, October 20, 2000, p. 9; "Canadian, U.S. Negotiators Reach Accord on Draft Ozone Annex to Bilateral Air Treaty," *Daily Report for Executives*, Bureau of National Affairs, October 19, 2000, p. A-7.

The Bottom Line

The U.S. has agreed to an Ozone Annex to the U.S.-Canada Air Quality Agreement, which will be met by implementation of pending NOx reductions.

EPA's FY 2001 Appropriations

A total of $7.8 billion in fiscal year 2001 funding was earmarked for the Environmental Protection Agency in the combined FY 2001 VA-HUD and Independent Agencies and FY 2001 Energy and Water Appropriations conference report Congress approved and the President signed in October. The report contains provisions for the following:

EPA's appropriations contain provisions supported by electric cooperatives. However, using the appropriations process is not a substitute for legislation that clearly outlines sound environmental policy.

1. Prohibits EPA use of funds to implement or for contemplating the implementation of the Kyoto Protocol. The language specifically limits EPA from any "back-door" implementation of the Kyoto Protocol;
2. Prohibits EPA use of funds to designate an 8-hour standard for ozone until the Supreme Court acts on the pending lawsuit;
3. Directs EPA to contract with the National Academy of Sciences (NAS) to review the science used to develop and implement Total Maximum Daily Loads (TMDLs) under the Clean Water Act. EPA is also directed to conduct an economic analysis of the costs to small businesses from the regulatory changes in the TMDL program;
4. Provides for a study by the National Academy of Public Administration (NAPA) on EPA's implementation of the New Source Review (NSR) and Prevention of Significant Deterioration (PSD) programs. The report created by NAPA would examine the evolution, application, interpretation and implementation of the NSR/PSD programs by EPA. The study would recommend how EPA and the Congress

can better manage or reform the program.

5. Provides $1.27 billion for Superfund (identical to FY 2000 level); and
6. Provides $123 million for the Climate Change Technology Initiative, an increase of about $10 million;

For More Information: "House, Senate Approve 2001 Funding Bill with Riders, Providing $7.8 Billion for EPA," *Daily Report for Executives*, Bureau of National Affairs, October 20, 2000, p. A-38.

Market Power Concerns

In a recently released Energy Information Administration report, by the end of this year, 10 of the largest IOUs will own more than half of all IOU-held generation capacity and 20 of the largest IOUs will own about 72 percent of all IOU-held generation. In 1992, the 10 largest IOUs owned 36 percent of total IOU-held generation, and the largest 20 IOUs owned 58 percent of capacity. Since then, the top 10 IOUs have increased their share of generation capacity by nearly 39 percent. The report, titled, "The Changing Structure of the Electric Power Industry 2000: An Update," also notes that over the past eight years, 35 mergers involving electric utilities have been completed and that 12 more are now pending approval. In addition to mergers within the electric industry, investor-owned electric utilities are also merging and acquiring natural gas businesses in what are called convergence mergers." In the last three years, 23 convergence mergers have been completed or are pending.

Additionally, competitive pressures from state restructuring and other factors are causing utilities to sell part of all of their generation assets. EIA cites the numerous divestitures of generation assets and the general growth of the independent power producer (or power marketers) as the reason that IOUs' role as the traditional provider is giving way to the expanding role of independent power producers.

Lastly, this trend will likely continue; at the Financial Times Energy PowerMart 2000 conference, Jim Mahoney, senior vice president, asset management of PG&E Generation said, "By the end of 2002, half of all generation will be in merchant hands... By the end of 2005, two-thirds of generation will be in the hands of merchants."

For More Information: "EIA: IOU Merger Wave Concentrating Generation," *The Energy Daily*, October 19, 2000, p.1; "IPPs Poised to Dominate U.S. Generation Market," *Megawatt Daily*, October 20, 2000, p. 2.

The Bottom Line

While IOUs point to the 500 or more independent power producers in the marketplace as evidence that the industry is competitive, the truth is that control over generation increasingly rests in the hands of few. This all means that investor-owned utilities, relieved of generation concerns, are free to endorse stringent clean air regulations.

Report Paints Power Plants as Killers

Clear the Air, a coalition of clean air groups, released a report critical of the nation's coal-fired electric generating plants titled "Death, Disease & Dirty Power - Mortality and Health Damage Due to Air Pollution from Power Plants" (http://www.cleartheair.org/fact/mortality/mortalitylowres.pdf). The report attributed 30,000 deaths annually to fine particle pollution (soot) from U.S. power plants. It found that two-thirds of these deaths could be avoided by cutting power plant emissions of sulfur dioxide and nitrogen oxide 75 percent below 1997 emission levels.

Press releases were issued by local environmental groups across the country in a coordinated campaign assuring that local and national coverage was given to the report. Local news reports detailed the estimated number of deaths, asthma attacks, and hospitalizations that occur in local metropolitan areas and states due to soot from power plants.

NRECA provided talking points to state managers and G&Ts on the rural electrics' commitment to the public health of their communities, investment in clean technologies, support of EPRI research on health effects, and the shortcomings of the Clear the Air report.

For More Information: "Power Plant Soot Linked to Deaths," *Washington Post*, October 18, 2000, p. B3; "Study Links Power Plants and Deaths," *Bismarck Tribune*, October 17, 2000, p. 1A.

Seven Industrial Giants Agree to Reduce CO_2 Emissions

On October 17, seven energy and industrial corporations (BP, Shell International, DuPont, Suncor Energy Inc., Ontario Power Generation, the Canadian aluminum company Alcan, and the French aluminum company Pechine) announced a partnership with the environmental advocacy group Environmental Defense. The Partnership for Climate Action (PCA) pledged their commitment to reducing annual greenhouse gas emissions by 80 million metric tons of carbon dioxide equivalents by 2010. The partnership neither endorses nor opposes the Kyoto Protocol. Their stated purpose is "to champion market-based mechanisms as a means of achieving early and credible action on reducing greenhouse gas emissions that is efficient and cost effective." Members of the new partnership will meet their goals through direct reductions as well as emissions trading. These companies promise to track their actual reductions against their goals and report all measurements publicly. This pledge is significant because among all industrial nations only 11 countries emitted more greenhouse gases in 1990 than the seven PCA members

The Bottom Line

While "Death, Disease & Dirty Power" added nothing new to the scientific debate over the impact of fine particle air pollution on health, it added more fuel to the political debate by misrepresenting the science.

Seven of the world's largest companies accept greenhouse gas emission reductions as a reality of business in the future and push for market-based mechanisms as the strategy for reductions.

combined. Environmental Defense noted, "never before have such a wide cross section of industry and a major environmental organization joined forces to institute such dramatic cuts in global pollution".

For More Information: "Environmental Defense, Oil Majors, Industrials to Promote Greenhouse Emissions Trading," *Energy Daily*, Vol. 28, No. 200, October 18, 2000, pp. 1-3; "Oil, Chemical, Metals Companies Announce Partnership to Reduce Emissions by 2010," *Daily Report for Executives*, Bureau of National Affairs, October 19, 2000, pp. A-9-10.

GAO to Review Economically Significant Agency Rules

The "Truth in Regulating Act" (PL106-312) was signed by the President on October 17, 2000. The Act establishes a three-year pilot project for the General Accounting Office (GAO) to independently evaluate major proposed or final federal rules upon request by the congressional committee with jurisdiction. Lawmakers, concerned that federal agencies are not adequately weighing the costs and benefits of regulations and alternative approaches, wanted GAO to analyze the science and economics behind proposed federal regulations.

For More Information: "Congress Sends Clinton Bill on Review by GAO of Proposed Federal Regulations," *Daily Report for Executives*, Bureau of National Affairs, October 6, 2000, p. A-4.

New Potential Uncovered in Carbon Sequestration Research

The Wall Street Journal reports that in the September 15, 2000 issue of *Science*, good agricultural practices that allow farmland to be fallow for a few years would remove significant quantities of greenhouse gases from the atmosphere. Increasing the efficiency of fertilizer nitrogen use also mitigates greenhouse gas emissions.

The Wall Street Journal goes further to say that "better management of nitrogen from fertilizer of nitrogen-adding cover crops, combined with carbon-absorbing cultivation techniques, might eliminate agriculture's estimated annual net greenhouse gas release of 60 million metric tons."

For More Information: "Study Shows Impact of Gases in Farming," *Wall Street Journal*, September 15, 2000.

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The Bottom Line:

Congress now will have access to independent evaluations of the costs, benefits and alternative approaches to economically significant federal rules.

This research supports the efforts of farm state legislators pursuing carbon sequestration programs in legislation on global climate change.