



May 29, 2012

U.S. Department of Energy  
Office of the General Counsel, Room 6A245  
1000 Independence Avenue, SW  
Washington, DC 20585

Submitted via e-mail to: [Regulatory.Review@hq.doe.gov](mailto:Regulatory.Review@hq.doe.gov)

**Re: Reducing Regulatory Burden RFI, 77 Fed. Reg. 28518 (May 15, 2012)**

Dear DOE staff:

The Edison Electric Institute (EEI) is submitting these comments in response to the above-referenced request for information (RFI) issued by the Department of Energy (DOE). In the RFI, DOE is again asking for information on ways to streamline and to reduce the burden imposed by its regulations. Though DOE has just granted an extension of the comment deadline in today's *Federal Register* from today to June 19, 2012, we are filing these comments now so DOE can have the benefit of our views.

#### EEI Has a Direct Interest in This Proceeding

EEI is the association of shareholder-owned electric utilities in the United States, international affiliates, and industry associates worldwide. Our U.S. members serve 95 percent of the ultimate customers in the shareholder-owned segment of the industry, and they represent approximately 70 percent of the U.S. electric power industry.

EEI members engage in a variety of electricity generation, transmission, distribution, and related activities that can involve DOE regulatory programs and funding, including as to energy efficiency, demand response, information collections, renewable energy, transmission planning, and transmission siting. Therefore, EEI and our members have a direct interest in the regulatory review issues being raised by DOE in the RFI.

#### EEI Supports Efforts to Streamline Regulations and to Reduce Regulatory Burden

EEI appreciates that DOE is again asking for input on ways to streamline and to reduce the burden imposed by DOE regulations, focusing on "more affordable, less intrusive

means to achieve policy goals” while giving “careful consideration to the benefits and costs of those regulations.” These are appropriate goals.

In Executive Order 13563, President Obama has directed all federal agencies to ensure that their regulatory systems “protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation” using “the best, most innovative, and least burdensome tools to achieve regulatory ends.” In addition, E.O. 13563 directs agencies to “take into account benefits and costs, both quantitative and qualitative” and to “propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs” while tailoring the “regulations to impose least burden on society, consistent with the regulatory objectives” and selecting “those approaches that maximize net benefits.” E.O. 13563 also requires regulations to be based on “the best available science,” to be “written in plain language” that is easy to understand, and to “promote predictability and reduce uncertainty.”

EEl strongly supports these provisions of E.O. 13563. Cost-benefit analysis (CBA) is a fundamentally necessary tool for ensuring that agency regulations are reasonable and are as cost-effective as possible. Proper use of CBA ensures that limited agency, public, and private resources are put to the best possible use, by ensuring that the benefits of regulatory programs exceed the costs involved and that the programs provide maximum net benefits. Furthermore, we support an ongoing focus on the impact of regulations on energy supply and delivery as well as the broader economy, to avoid unintended negative consequences to the energy sector which is a vital component of the economy. Basing regulations on sound science improves their accuracy and likelihood of success. Also, providing certainty (for example, by avoiding unnecessary regulatory changes and evaluating the need for changes in a coordinated manner), and giving the regulated community ample time to adjust to changes, assists companies in making rational decisions, especially when large assets and significant capital investments are involved.

#### DOE Should Focus Attention on its Energy Efficiency Initiatives

EEl encourages DOE to focus on reducing regulatory impacts and burden, and carefully using CBA to ensure reasonable regulations, in the context of DOE’s energy efficiency initiatives. While EEl supports reasonable and fuel-neutral measures to improve appliance and building energy efficiency, these measures need to take into account impacts on consumers such as the ability to continue relying on electrical devices that already are installed, costs of adopting new technology, and reduced consumer choice.

We are concerned about DOE’s “proposed determination” on January 11, 2012, at 77 Fed. Reg. 1649, to regulate the efficiency of residential air conditioner and heat pump

condenser units. As DOE acknowledged in the proposal, DOE already has been regulating the efficiency of residential air conditioners and heat pumps – including the condensers – since 1987. In fact, the efficiency levels of residential air conditioners and heat pumps already are due to increase again 2015. We do not understand the need for a separate rulemaking, separate efficiency test procedures, and separate standards for condenser efficiency.

EEl also is concerned about DOE's request for information on January 24, 2012, at 77 Fed. Reg. 3461, regarding miscellaneous residential and commercial electric equipment. The request encompassed MP3 player docking stations, radios, clock radios, VCRs, blu-ray players, DVD players, computer speakers, external hard drives that plug in, vacuum cleaners, fax machines, security systems, electric blankets, clothes irons, hair dryers, coffee makers, rice cookers, and toasters. The request suggests that DOE may be considering a vast expansion of the number of electrical "covered products" with federal efficiency standards. Such a step would dramatically expand impacts on the regulated community and consumers as well as on DOE resources. At the same time, EEl notes that DOE is not undertaking a similar review of miscellaneous products that rely on other forms of energy. DOE should be cautious not to regulate equipment where the cost of efficiency upgrades and constraints on consumer choice will outweigh minor benefits. DOE also should be even-handed by evaluating products that rely on all forms of energy, not just ones that involve use of electricity.

On April 29, 2011, DOE issued a draft "Preliminary Plan for Retrospective Analysis of Existing Rules" in response to E.O. 13563. On August 23, 2011, DOE issued its "Final Plan for Retrospective Analysis of Existing Rules." In that final plan, DOE indicated that it intended to perform a retrospective review of issues EEl has raised with DOE in the past in the efficiency context, such as the residential water heater efficiency standards, and full fuel cycle analysis. EEl supports these reviews. But we are not aware of any such reviews yet being undertaken. We would like to know when DOE plans to undertake the reviews, and we encourage DOE to announce its current plans regarding the reviews.

#### EEl Supports DOE Attention to Transmission Issues

EEl appreciates work that DOE has undertaken to implement the agency's transmission-related authority under Federal Power Act (FPA) section 216 and other provisions of the Energy Policy Act of 2005. We encourage DOE to continue to strive to implement this authority as effectively as possible. DOE has an important role to play in facilitating the retention of existing transmission facilities and the development of needed new ones. Transmission infrastructure is a key component of our nation's electricity system.

EEl appreciates DOE undertaking the agency's 2012 transmission congestion study, the third in a series of triennial such studies required by FPA section 216(a). We encourage DOE to ensure that the study includes sufficient consultation with states, electric utilities, and the public to provide a well founded analysis. EEl also encourages DOE to revisit the designation of national interest electric transmission corridors based on the results of the study, in the wake of the Ninth Circuit U.S. Court of Appeals overturning the 2006 designation of corridors in the mid-Atlantic and Southwest United States.

We appreciate that DOE is undertaking a rulemaking to improve implementation of its lead agency authority under FPA section 216(h), which directs DOE to coordinate and to streamline permitting under federal law related to electric transmission facilities. EEl filed comments in response to the rulemaking on February 24, 2012. As we indicated in our comments, we encourage DOE to allow permit applicants to decide whether or not to use the coordinated permit process for their particular projects. We also encourage DOE not to exclude any particular types of projects from the process, nor to force projects into the process. If applicants elect to use the coordinated process, we encourage DOE to give the applicants a prominent role throughout the process. We also encourage DOE to design the process so DOE stays more fully engaged than DOE has proposed (at least on request by an applicant), to honor the statutory deadlines set in section 216(h) more fully than proposed, and to reflect other points covered in the EEl comments.

EEl appreciates work that DOE has done with the Bureau of Land Management, U.S. Forest Service, and other federal land management agencies to identify energy corridors on federal lands under section 368 of the Energy Policy Act. We encourage DOE to ensure that those corridors are available in fact when needed. We have heard that at least some field offices of the land agencies have declined to allow facilities to be sited within the corridors, undermining the value of the corridors.

#### DOE Should Continue to Reduce Impacts of its Information Collection Programs

EEl appreciates that the Energy Information Administration (EIA) reviews and takes comments on its electric survey forms, including the EIA-411, 417R, 826, 860, 860M, 861, and 923, every three years under the Paperwork Reduction Act. In fact, EIA is just now beginning its "2014" round of reviewing the forms, and EEl already has begun providing feedback as part of that review.

As a general matter, we encourage EIA to avoid collecting unnecessary information, including duplicative information that is collected elsewhere within the EIA forms or in other agency forms. We also encourage EIA to avoid collecting or disclosing information

that can have negative commercial or security effects on companies if disclosed. These are ongoing challenges.

On another information-collection topic, EEl appreciates DOE's efforts to streamline the process of applying for grants to promote smart grid, energy efficiency, renewable energy, and other leading-edge technology in recent years.

Contact Information

If you have any questions about these comments, please contact me (202/508-5622, [hbartholomot@eei.org](mailto:hbartholomot@eei.org)), Rick Loughery (202/508-5647, [rloughery@eei.org](mailto:rloughery@eei.org)), Steve Rosenstock (202/508-5465, [srosenstock@eei.org](mailto:srosenstock@eei.org)), or Meg Hunt (202/508-5634, [mhunt@eei.org](mailto:mhunt@eei.org)).

Sincerely,

A handwritten signature in cursive script that reads "Henri D. Bartholomot".

Henri D. Bartholomot  
Director, Regulatory Legal Issues