

June 27, 2014

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

FROM: Jo Ann Emerson

Supreme Court Pulls Back on EPA GHG Regulations, Sends a Warning

We have mixed feelings about the U.S. Supreme Court's ruling on Monday regarding two EPA greenhouse gas regulations from 2010. On the one hand, we're disappointed that the court didn't pull EPA back further in its overreach to regulate greenhouse gas emissions under certain EPA permitting programs. The court threw out the EPA's "Tailoring Rule" that exempted many smaller sources of CO₂ emissions. But, it also concluded that power plants and other large sources of CO₂ could be required to include CO₂ emissions in the permits they must get anyway for other emissions. EPA can therefore require "Best Available Control Technology" for GHG emissions in those permits. The court also ruled that many of the smaller sources shouldn't have been required to get permits, and therefore the Tailoring Rule was unnecessary to begin with.

On the other hand, we're very excited the court told EPA that it had significantly misread the Clean Air Act when it established the Tailoring Rule. Even more importantly, the court ruling strongly cautioned EPA against broadly interpreting the Act's provisions and, in effect, rewriting some parts of the law to expand the agency's authority. "EPA's interpretation is also unreasonable because it would bring about an enormous and transformative expansion in EPA's regulatory authority without clear congressional authorization. When an agency claims to discover in a long-extant statute an unheralded power to regulate 'a significant portion of the American economy,' we typically greet its announcement with a measure of skepticism," Justice Antonin Scalia wrote in the majority opinion.

The court's ruling and the strong language about EPA's overreach perhaps signals that the court may take a harder view in future challenges on EPA's GHG regulation efforts. The court's decision does not affect EPA's proposed existing power plant rule now open for public comment. But, we're looking at how the ruling may guide our advocacy on that proposal.

All-of-the-Above' Campaign Update: Keep It Going!

You've collected over 600,000 grassroots comments through Action.coop and TellEPA.com as we push to get a total 1 million messages to EPA by the October 16 comment deadline. We're coordinating with co-ops for a strong turnout at the upcoming EPA [hearings](#) in Atlanta and Denver on July 29, Washington, DC, on July 30 and Pittsburgh on July 31. Check your progress on [messages](#) and [state](#) tallies. ***(We're trying something new with special read-only links to get highlighted information without logging on to Cooperative.com. But you'll still need to log on to see sensitive and confidential information.)*** And, see how Mohave Electric Co-op in Arizona used its relationship with a local [TV station](#) to urge their grassroots and community to send messages.

‘Waters’ Proposal will Hurt Co-op Efforts to Keep Electricity Affordable, Reliable

A big thank you to [Roger Clark](#), Engineering and Operations Director at Associated Electric in Missouri, for testifying before the House Natural Resources Water and Power Subcommittee on the flawed “Waters of the U.S.” proposal to expand the Clean Water Act. Roger emphasized the EPA and Army Corps of Engineers’ proposed rule will make it very difficult for electric co-ops to provide affordable and reliable electricity to their members. The rule would create more regulatory red tape for utilities and could cause long delays in routine maintenance and line siting. “The ambiguity in this rule makes it impossible to understand the exact impact. It’s going to make it near impossible for us to do our job,” he said of the Administration’s regulatory land grab.

CFTC Reauthorization Bill Clears House with End-User Provisions

We applaud the House for passing the Consumer Protection and End-User Relief Act (H.R. 4413) on a 265-144 vote. This bipartisan bill clarifies the congressional intent to protect end-users, including electric co-ops, from some financial reform requirements. It also exempts co-op entities, like the Cooperative Finance Corp., from costly margin requirements under the Dodd-Frank Act. We’re pushing to get this legislation considered in the Senate.

Senate Energize Africa Bill Passes Committee

We thank the Senate Foreign Relations Committee for passing the bipartisan [Energize Africa Act](#) (S. 2508) by voice vote and sending it to the Senate floor. Please ask your senators to cosponsor this [bill](#), which may see floor debate before the November elections. It’s similar to the bipartisan House bill (Electrify Africa Act, H.R. 2548) that you worked during Legislative Conference to get passed on a 297-117 vote. The Senate bill has stronger language that will support work by NRECA’s International program.

Public Comment Extended for Critical Habitat Proposals, Comment Reopened on Bat Listing

Due to your hard work with House and Senate leaders, the Fish and Wildlife Service and National Oceanic and Atmospheric Administration extended public comment on three Endangered Species Act critical habitat [proposals](#) another 90 days until October 9. We thank Rep. Hastings (R-WA) and Sen. Vitter (R-LA) for their leadership. The proposals would significantly change how critical habitat is designated under ESA and expand affected acreage. The FWS also announced a six-month extension on the final listing determination for the northern long-eared bat and re-opened public comment on a proposal to list the species as endangered for another 60 days. A final decision is due by April 2, 2015.

Cybersecurity Bill Clears Senate Panel

We welcome the Senate Homeland Security Committee’s quick action to approve the National Cybersecurity and Communications Integration Center (NCCIC) Act. Timing on this bill going to the Senate floor is uncertain. The bill would authorize the NCCIC’s current federal and civilian cybersecurity information-sharing activities. The center shares cybersecurity information and analysis, provides incident response and technical assistance, and recommends measures to enhance cybersecurity. The bill does not give any DHS new rule making or regulatory authority and does not replace existing information-sharing avenues.

Appropriations Bills Co-ops Support Move in Committees, but Floor Action Stalled

We're urging Congress to pass FY15 agriculture, energy and water and other appropriations bills with electric co-op provisions. House and Senate bills are moving through committee review. But, floor action is stalled by Senate wrangling over amendments, and that has made the House reluctant to take action.

Committee Moves Secret Science Reform Act

We welcome the House Science, Space and Technology Committee's 17-13 vote to report the Secret Science Reform Act (H.R. 4012). The bill would require EPA to increase public access to data the agency uses to develop regulations. EPA has resisted releasing some data (notably health studies and scientific research) used to determine air quality standards, saying the information is confidential. This bill could see House floor debate this year, but the Senate outlook is uncertain.

Tribal Lands Rights-of-Way Update Proposed

We're reviewing a Bureau of Indian Affairs (BIA) [proposed rule](#) to change the tribal lands rights-of-way applications process, including reviews for electricity and broadband lines. Public comment on this proposal ends August 18. In short, the proposal: Addresses rules for compensation, drops required BIA approval for land access to do a survey before filing an application, outlines a specific review process, and sets time limits for agency review and action. We'll be getting input from member co-ops on how to respond to the proposal.

No Update Next Week; Happy Fourth of July!

With Congress recessed and other action slowing for the Fourth of July holiday, we won't send a weekly update next Friday. I will be back in touch on July 11. Have a safe and happy holiday!