

September 1, 2016

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

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***Thank You for Making Co-ops Vote Employee Engagement Month a Success!***

Thank you for making the [Co-ops Vote](#) employee engagement month in August very successful. A number of electric co-ops took diverse and interesting approaches to encouraging their employees to take part in the Co-ops Vote initiative. More than six dozen co-ops have achieved [5-Star Co-op](#) status (see [co-ops](#)) for promoting Co-ops Vote participation. We're actively supporting electric co-ops working toward 5-Star achievement through Election Day. We continue to update [Co-ops Vote online resources](#). Co-op representatives attending the Regional Meetings can also sign a Co-ops Vote pledge card at the "scan and go" registration kiosks.



***Regional Meetings Start Next Week with Regions 1-4***

I look forward to hearing your thoughts on co-op issues during the upcoming [Regional Meetings](#) that start with [Regions 1 and 4](#) in Grand Rapids, MI, next week. This will be my first opportunity to meet many of our members, and I am looking forward to that opportunity. We have a strong agenda for the meeting covering business and policy issues important to co-ops, and your work on [proposed resolutions](#) at each Regional Meeting determines what will be considered at our Annual Meeting.

***Congress Returns with Big List of Priorities***

Congress comes back with about a month to pass legislation before lawmakers head back home for the final campaign stretch. Topping the list is a continuing resolution to keep the government funded when the new fiscal year starts October 1<sup>st</sup>. House Speaker Paul Ryan (R-WI) wants a CR lasting into December. Some conservatives are pushing for CR that extends to March 2017 – when Congress could be required to take up a debt ceiling increase. We're also pushing for any opening for legislation to extend tax credits for advanced energy technologies like the residential and commercial geothermal heat pump credits that help reduce the cost to co-op members to install geothermal heating systems and reduce energy consumption.

Energy bill conference committee negotiations are still in the early stages and conferees don't expect to finish work until after the November election. Conference aides have been meeting during the summer and expect to start weekly sessions in September to clear the easy issues. The first official conferees meeting could be next week. Coal ash legislation we support could be fast-tracked in the Senate under agreement reached by Senate Environment and Public Works Chairman Jim Inhofe (R-OK) and Ranking member Barbara Boxer (D-CA). The bill would be narrowly focused on providing state environmental departments with the primary authority to

enforce the EPA's final non-hazardous coal ash rules, rather than having enforcement come solely through citizen lawsuits.

### ***EPA Extends Comments on Proposed Incentives for Early Renewables, Efficiency Investment***

EPA issued a 60-day extension of the [comment period](#) for the proposed [Clean Energy Incentive Program Design Details](#) rule. Comments are now due November 1, 2016. There were requests for more time to develop responses to the proposal. The Clean Energy Incentive Program was proposed as part of the Clean Power Plan final rule issued in 2015. It would give incentives to states for early investment in renewable resources and energy efficiency improvements.

### ***Minnesota Officials End Legal Efforts to Restore State Coal Power Import Ban***

In a win for electric co-ops and others, Minnesota officials ended legal challenges to reinstate a state law banning power imports from coal power plants in other states, which affected G&T co-ops in North Dakota and Minnesota. After the three-judge panel of the Eighth Circuit Court of Appeals [upheld](#) a 2014 District Court decision that found the law void, the state's only recourse was to request a rehearing in the Eighth Circuit or petition the U.S. Supreme Court to take the case. If the law to require carbon offsets for out-of-state power had been upheld, utilities with coal plants in North Dakota would not have been able to sell power in the Midcontinent Independent Transmission System Operator. The appeals court noted that only the Federal Energy Regulatory Commission can regulate interstate wholesale power sales and transmission.

### ***Court to Decide Lawsuit on New Plant GHG Rule in 2017, Defense Falls to Next President***

The D.C. Circuit Court of Appeals doesn't expect to issue a decision on legal challenges of EPA's rule governing GHG emissions from new power plants before June 2017 – months after the next Administration arrives at the White House. A three-judge panel ordered a briefing schedule that begins in October 2016 and wraps up in February 2017. That places oral arguments in the spring and a ruling a few months later. EPA's GHG standards for new plants under Clean Air Act section 111(b) are so tight they can't be met with existing technologies. The court's schedule helps minimize overlap with our challenges to the Clean Power Plan final rule for existing power plants now also under court review.

### ***Solar Competition, Consumer Protection Best Addressed at Local Level***

NRECA's filed [comments](#) to the Federal Trade Commission stressing that solar energy competition and consumer protection should remain primarily under local and state oversight. Our comments emphasized points we made at the agency's [Competition and Consumer Protection Issues in Solar Energy Workshop](#) in June. We stressed that retail rate and distributed energy resources compensation policies are best made at the local level by local governing bodies, like electric co-op boards, or state public utility commissions. We endorsed the general workshop conclusion that there is no need for federal antitrust regulation because electric utilities and solar companies are selling different products and in different markets.

### ***Environmental Group Threatens Lawsuit to Force 417 ESA Reviews***

The Center for Biological Diversity (CBD) sent a [notice](#) to the Fish and Wildlife Service (FWS) that it will file a lawsuit to force action on 417 petitions for Endangered Species Act status reviews. The group claims the FWS has delayed issuing decisions on whether the species should

be listed. The lawsuit could set the stage for another major legal settlement between the group and the FWS. CBD and other groups have filed ESA lawsuits in a “sue-and-settle” tactic that ends in out-of-court settlements and deny all affected stakeholders the opportunity to be informed or heard throughout the process. Two other ESA lawsuits CBD and WildEarth Guardians filed resulted in landmark legal settlements setting listing decision deadlines for 251 species.

### ***Federal Agencies Increase Civil Penalties for Regulation and Permit Violations***

Federal agencies have issued rulemakings for a one-time “catch up” adjustment of civil penalties for rule and permit violations. The increases apply to all civil penalties assessed after August 1, 2016, for violations that happened after November 2, 2015. The [Agriculture Department](#), [Environmental Protection Agency](#), [Fish and Wildlife Service](#), [Bureau of Land Management](#), [Energy Department](#), [Federal Energy Regulatory Commission](#), [Occupational Safety and Health Administration](#), [Commerce Department](#), [Commodity Futures Trading Commission](#), [Federal Motor Carrier Safety Administration](#) and [Department of Homeland Security](#) are among agencies that issued rules to increase civil penalties that result from administration actions.

The increased penalties are required by the [Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015](#). Agencies also now must make adjustments for inflation each year. Penalties for judicial enforcement (resulting from court actions) are addressed in another law.