

January 27, 2016

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

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***President Trump Puts His Stamp on D.C.***

The President issued a series of presidential orders based on his campaign themes about the Affordable Care Act, easing regulatory burdens, international trade pacts, government oversight, Keystone XL and Dakota Access pipelines, immigration enforcement, and the U.S.-Mexico border wall. His first [order](#) freezing all pending agency regulations for 60 days to do a review is a standard action by incoming presidents. While the rule does not impact many rules that affect electric co-ops, it will affect the Fish and Wildlife Service's [Candidate Conservation Agreements with Assurances \(CCAA\) rule](#) and [CCAA policy](#). The rule and policy, which now take effect on March 21, 2017, is intended to provide a consistent framework for volunteer species conservation agreements.

Trump met with congressional Republicans at their retreat in Philadelphia to discuss ways they can work on shared priorities. House Speaker Paul Ryan (R-WI) announced an aggressive legislative agenda to pass bills for Affordable Care Act repeal by April, then Mexico border wall funding, and a tax reform package by August. However, Senate Democrats outlined an aggressive infrastructure plan that would include funding for rural broadband and grid upgrades.

***Senate Moving Nominations, Energy and Interior Committee Votes Soon***

Senate review of President Trump's Cabinet nominees continues to move slowly. Nominations for Elaine Chao (Transportation), Wilbur Ross (Commerce), Rex Tillerson (State) and Ben Carson (Housing and Urban Development) got committee approval. The full Senate is expected to vote on Chao's nomination next Tuesday, with Ross and Carson later in the week. Tillerson's floor vote timing is uncertain. The Energy and Natural Resources Committee pushed back votes on Rick Perry (Energy) and Ryan Zinke (Interior) until next Tuesday. No hearing date has been set for Agriculture Secretary-designate Sonny Perdue, but it's expected to be in mid-February.

The President's nomination for the vacant U.S. Supreme Court seat is expected next week. That nomination will become the major focus of action in Congress, taking up a lot of time on the congressional agenda and significantly impacting business.

***HHS Nominee Agrees: Cadillac Tax Affects Middle Class***

Harmful impacts of the Affordable Care Act's "Cadillac Tax" (a 40 percent excise tax on health plans) got attention during a Senate confirmation hearing for Health and Human Services Secretary-designate Rep. Tom Price (R-GA). Sen. Dean Heller (R-NV) raised concerns about the Cadillac Tax impacts on middle class workers, and questioned if it makes the most sense.

Price said, "It does affect the middle class ... I think there are other options that may work better." Sen. Mark Warner (D-VA) also raised concerns with the tax. NRECA is actively [urging Congress](#) to pass Cadillac Tax repeal legislation, because it is fundamentally flawed and cannot be fixed.

### ***FERC to be Short of Quorum with Commissioner's Resignation***

Norman Bay's resignation from the Federal Energy Regulatory Commission (FERC) will leave the commission with three of five seats empty when he steps down next Friday. This leaves FERC without the quorum to issue final decisions on major transmission projects and ratemakings until at least one new commissioner is appointed. The agency won't shut down and can process some routine business overseen by Acting Chairman Cheryl LaFleur and Commissioner Colette Honorable, both Democrats, but a backlog of cases could pile up if a new commissioner is not appointed soon. One week into his term, President Trump has focused on major Cabinet nominees, but FERC nominations are not usually among early appointments. Senate Energy and Natural Resources Chairwoman Lisa Murkowski (R-AK) said she is set to move quickly on FERC nominations (three Republicans can be appointed) when they are made by President Trump.

### ***NRECA/CFC Governance Task Force Appointed***

Twenty co-op and statewide leaders have agreed to serve on a new NRECA/CFC Governance Task Force to consider electric co-op governance issues. They represent a [mix of NRECA voting members](#), and each brings unique knowledge and experience on governance matters. The panel includes 11 co-op directors, many of whom have served on statewide or G&T boards; three distribution co-op CEOs; four statewide managers; and one general counsel. The task force will present findings later this year. It was created in response to NRECA and CFC Board resolutions in December recommending a member task force to study co-op governance. For questions, contact NRECA's [Pat Mangan](#) and [Jessica Healy](#), the staff liaisons.

### ***WOTUS Case on Hold during Supreme Court Review***

A federal Circuit Court of Appeals in Ohio put a hold on legal proceedings in challenges of the Waters of the U.S. rule while the Supreme Court reviews whether the case should be heard at the District Court or Appeals Court level. The Supreme Court agreed to review an appeal, which is expected to be heard this spring. The WOTUS rule has been under a temporary stay in all 50 states under the Circuit Court's [order](#) until it rules on jurisdiction over the legal challenges.

### ***House Passes Fair RATES Act to Clear Path for Rate Challenges***

The House passed (voice vote) the Fair Ratepayer Accountability, Transparency and Efficiency Standards Act (H.R. 587) under suspension of the rules. The bill addresses a technical issue that prevents challenges to rate changes that took effect with "inaction" by the Federal Energy Regulatory Commission (FERC). Under current law, a rehearing request or legal challenge cannot be filed on a rate change that took effect with no order or decision issued by FERC. The bill would resolve the issue by clarifying that rate changes that go into effect with inaction by FERC will be treated as an order to allow rehearing and court appeals. The legislation would override a 2016 ruling by the D.C. Circuit Court of Appeals that rate changes with inaction by

FERC cannot be reviewed by the courts.

### ***Congress Moving Legislation for Emergency Response***

The House passed (voice vote) the Securing Access to Networks in Disasters (SANDy) Act ([H.R. 588](#)) under suspension of the rules to improve communications reliability during emergencies and disasters to help ensure that first responders, including utility crews, can communicate in those situations. A similar measure ([S. 102](#)) also cleared the Senate Commerce, Science and Transportation Committee. We worked to get the House to drop language that could have stopped electric co-ops and other electric utilities from getting quick access to disaster areas and restore power.

### ***Senate Bill to Create New Cybersecurity Committee***

NRECA has concerns about Senate legislation that would establish a permanent select committee on cybersecurity that includes the leaders of eight current committees, but notably does not include the Senate Energy and Natural Resources Committee. The proposed new Senate panel would have jurisdiction on “all proposed legislation, messages, petitions, memorials, and other matters relating to domestic and foreign cybersecurity risks,” including those for U.S. infrastructure. It is unclear whether this proposal will advance, but it clearly demonstrates a high level of interest in cyber issues by Congress.

### ***NRECA Offers Memo on RUS Limited English Proficiency Compliance***

After significant discussions with the Rural Utilities Service (RUS) and other USDA staff, NRECA has produced a memorandum (attached) on the Limited English Proficiency (LEP) obligations for co-ops and what they need to do to comply. RUS sent an e-mail to borrowers in July 2016 notifying them of the obligation that all government programs must take to ensure reasonable access to services supported by the federal government. Unfortunately, RUS’ correspondence caused confusion; the LEP obligations are not new and co-ops have been long required to ensure access for their members with limited English skills, and they have been largely successful in doing it. The LEP obligation is the result of a 2000 Executive Order, but only in 2016 did Rural Development Civil Rights contact co-ops and make them aware that the order included recipients of financial assistance from RUS. For additional questions, contact NRECA’s [Russ Wasson](#).

### ***Fred Lackey Remembered as Dedicated, Thoughtful Co-op Leader***

The electric cooperative family shares a deep loss with the passing of former NRECA Board President [Fred A. Lackey](#) in Grants, NM, on January 15. Our thoughts and prayers are with his wife Marcia and their family. Former NRECA Presidents Curtis Nolan and David Cowan represented NRECA at the funeral services. Fred served as NRECA New Mexico Director from 1991-2003 and NRECA President in 2001-2002. During his tenure as President, the NRECA Board provided leadership for co-ops in a time of great challenge and transition for the electricity sector. Fred was General Manager of Continental Divide Electric Cooperative from 1975 until 2001, and guided the co-op through an era of fastest growth.

**Attached:** Rural Development LEP memorandum