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Edison Electric Institute

February 3, 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

Re: Reducing Regulatory Burden RFI, 76 Fed. Reg. 75798 (Dec. 5, 2011)

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 asking for information on ways to streamline and to reduce the burden imposed by its regulations.

I. 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 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.

II. EEI Supports Efforts to Streamline and Reduce Regulatory Burden

EEI appreciates DOE asking for input on ways to streamline and 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 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."

EEI 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 as cost-effective as possible. Proper use of CBA ensures that limited agency, public, and private resources are put to the best possible use, providing maximum net benefits for the costs involved. 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 and again to ensure that the regulations are reasonable and cost-effective. Basing regulations on sound science improves their accuracy and likelihood of success. Also, providing certainty by avoiding unnecessary new constraints assists in making rational decisions, especially when large assets and significant capital investments are involved.

III. DOE Should Focus on Regulatory Improvements to its Energy Efficiency Initiatives

A. In General

EEI 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 EEI supports reasonable, fuel-neutral measures to improve appliance and building energy efficiency, these measures need to provide net actual economic benefits to consumers. Also, the measures need to take into account other impacts on consumers, such as the ability to continue relying on electrical devices that already are installed, and reduced consumer choice.

As EEI has said to DOE in past energy efficiency proceedings, DOE should adopt new appliance and building efficiency standards only if affected consumers will actually see net financial savings attributable to the standards over the life of each appliance or building component involved. DOE should perform this benefit-cost analysis using accurate assumptions as to appliance, building, and energy use and prices.

DOE should also ensure that no significant subset of consumers will face higher life cycle costs as a result of each standard, or should tailor the standard to avoid such a result. And DOE should ensure that the payback period for the standard will be less than the reasonably anticipated life of the appliance or building component involved.

In performing its benefit-cost analysis, DOE should not impute costs such as "carbon footprint" or "source energy" costs, which are already reflected in appliance, building, and energy prices as the result of environmental and energy statutes and regulations. Otherwise, if the benefit-cost analysis is based on imputed rather than actual costs, the public and regulated community will lose faith that the resulting standards will actually produce net economic benefits.

In setting efficiency standards, if more than one level of efficiency would produce net positive economic benefits for a given appliance or building component, DOE should select the level that will produce the greatest increase in benefit per unit increase in cost. This will ensure that the standards are as cost-effective as possible, producing the maximum benefits to society for the least cost.

Furthermore, in setting the standards, DOE should strive to promote market neutrality, avoiding standards that will distort appliance and building markets. Also, in keeping with federal energy efficiency laws, DOE should strive for fuel neutrality, avoiding standards that favor one energy type over another or equipment that uses one energy type over another.

B. Residential Air Conditioners and Heat Pumps

On January 11, 2012, at 77 Fed. Reg. 1649, DOE published a "proposed determination" to regulate the efficiency of residential air conditioner and heat pump condenser units. But as DOE acknowledges in the proposal, DOE has already issued efficiency standards for residential air conditioners and heat pumps – including the condensers. In fact, DOE has been regulating this equipment since 1987, and the efficiency levels of residential air conditioners and heat pumps already are due to increase again in 2015.

EEI does not understand the need for a separate rulemaking, separate efficiency test procedures, and separate standards for condenser efficiency. We encourage DOE to withdraw this proposal.

C. Miscellaneous Electrical Equipment

On January 24, 2012, at 77 Fed. Reg. 3461, DOE published a request for information regarding a large array of miscellaneous residential and commercial electric equipment.

The list of equipment includes 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.

EEI encourages DOE to focus its efforts in this area on equipment that involves the greatest potential for meaningful, cost-effective energy efficiency savings. Otherwise, DOE could simply end up dramatically expanding the number of electrical "covered products" with federal efficiency standards, thus increasing impacts on the regulated community and consumers and tying up limited DOE resources, with little benefit. DOE should be cautious not to regulate equipment efficiency where the benefits are minor or the cost of efficiency upgrades and constraints on consumer choice will outweigh the benefits.

To avoid bias as to energy type, DOE should not exclude from its review miscellaneous equipment that relies on forms of energy other than electricity. DOE's review should include such non-electric equipment.

D. Earlier Announced Regulatory Reviews

On April 29, 2011, DOE issued a draft "Preliminary Plan for Retrospective Analysis of Existing Rules" in response to E.O. 13563. In that plan, DOE indicated that it intended to review of a number of its prior efficiency standards and standard-setting practices, such as the residential water heater efficiency standards and full fuel cycle analysis.

EEI supports DOE undertaking these reviews. But we have not seen any subsequent notices announcing that the reviews are underway or inviting public comment. We encourage DOE to announce its current plans regarding the reviews, and we look forward to the opportunity to provide input to the reviews.

IV. EEI Supports DOE Attention to Electricity Transmission Issues

EEI appreciates work that DOE already has underway to implement DOE's transmission-related authorities under the Energy Policy Act of 2005. The Act added a number of such authorities in new Federal Power Act section 216.

For example, we appreciate DOE undertaking a 2012 transmission congestion study, the third in a series of triennial such studies required by FPA section 216(a). We encourage DOE to complete the study promptly, in consultation with affected stakeholders, and to designate national interest electric transmission corridors as warranted.

We also appreciate that DOE is undertaking a rulemaking to improve implementation of its lead agency authority under FPA section 216(h), to coordinate and streamline all permitting under federal law related to electric transmission facilities. We look forward to participating in that rulemaking process and hope that DOE will adopt an approach that is effective and efficient, when called into play by a permit applicant.

We appreciate work 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. We encourage DOE to ensure that those corridors are available in fact when needed. We are hearing that some field offices of the land agencies are declining to allow facilities to be sited within the corridors, undermining their value.

V. DOE Should Continue to Reduce Impacts of its Information Collections

EEI appreciates that the Energy Information Administration (EIA) revisits its electric survey forms such as the EIA Forms 411, 417R, 826, 860, 860M, 861, and 923 every three years under the Paperwork Reduction Act. We encourage EIA to avoid collecting unnecessary information, including duplicative information within the EIA forms and other agency forms, and to avoid collecting or disclosing information that can have negative commercial or security effects on companies if disclosed. This is an ongoing challenge.

VI. EEI Supports DOE efforts to Streamline its Grants Program

EEI appreciates DOE efforts to streamline the distribution of grants to promote smart grid, energy efficiency, renewable energy, and other leading-edge technology in recent years. We believe that program is yielding important dividends.

If you have any questions or need additional information, please contact me (202/508-5622, hbartholomot@eei.org), Steve Rosenstock, EEI Manager, Energy Solutions (202/508-5465, srosenstock@eei.org), or Rick Loughery, EEI Director, Environmental Activities (202/508-5647, rloughery@eei.org).

Sincerely,

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Director, Regulatory Legal Issues