



April 14, 2015

The Honorable Fred Upton  
Chairman  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Frank Pallone  
Ranking Member  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515

Dear Chairman Upton and Ranking Member Pallone:

We are writing in support of the discussion draft, entitled “Improving Coal Combustion Residuals Regulation Act of 2015.”

Along with the states and other stakeholders, we applaud the decision by the U.S. Environmental Protection Agency (EPA) to regulate coal combustion residuals (CCR) as non-hazardous in its final rule. We are deeply concerned, however, that the rule is self-implementing. This means that there is no state permitting authority to issue permits and oversee compliance with the regulatory requirements and that enforcement is solely through litigation in the courts. Also, where site specific application of the requirements inevitably requires interpretive judgments, our members will be making multi-million dollar investment decisions without knowing for sure whether they will be considered in compliance by whatever court is the final arbiter.

We strongly urge a “yes” vote for the “*Improving Coal Combustion Residuals Regulation Act.*” It accomplishes several very important objectives. The bill:

- Allows the states to establish a state-based permit program to implement regulatory requirements at least as stringent as those in the final CCR rule;
- Provides EPA with authority to review state programs and their implementation of the requirements, and authorizes EPA to implement the permit program where a state chooses not to implement the requirements or has failed to implement them adequately;
- Restores to each state the normal and customary flexibility for site-specific tailoring of the minimum federal requirements; and
- Addresses the uncertainty created by EPA’s preamble language suggesting that, in the future, it might reconsider the decision to regulate CCR as non-hazardous.

In the final rule, EPA tries to finesse its lack of authority to establish a permit program under subtitle D of the Resource Conservation and Recovery Act by encouraging states to amend their

April 14, 2015

Page 2

solid waste management plans. This pathway does not result in a single set of requirements implemented through a state program, but rather a set of dual regulatory requirements that have the potential to diverge frequently and often as site-specific application of the requirements are challenged. The requirements of the final CCR rule are going to prove costly for electric utilities and their customers, but will establish a federal floor for CCR management practices throughout the country. Congress should assure that additional and unnecessary costs are not imposed on utilities, their customers, and the courts through the inefficient and unprecedented self-implementing approach of the final CCR rule. The discussion draft will ensure this will not occur.

Sincerely,



Thomas R. Kuhn  
President, Edison Electric Institute



Susan N. Kelly  
President & CEO, American Public Power Association



Jo Ann Emerson  
Chief Executive Officer, National Rural Electric Cooperative Association



James Roewer  
Executive Director, Utility Solid Waste Activities Group