“Implications of the Supreme Court Stay on the Clean Power Plan”
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Testimony by
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Introduction

- Mr. Chairman, Ranking Member Boxer and Members of the Committee, my name is Mike McInnes and I am CEO of Tri-State Generation and Transmission Association.

- Thank you for the opportunity to discuss the Clean Power Plan, its impact to my organization and the implications of the Supreme Court Stay.

- Tri-State is a wholly member-owned generation and transmission cooperative serving in Colorado, Nebraska, New Mexico and Wyoming. The association generates and transmits wholesale electricity to its 44 member cooperatives and public power districts, which supply retail electricity directly to consumers in a service area that covers approximately 200,000 square miles with a population of about 1.5 million.

- Tri-State is owned and governed by its members, and operates on a not-for-profit basis. Our board of directors, which consists of a representative from each of the 44 members, makes decisions based on sound financial principles, industry best practices and, most importantly, the needs of their members.

- To serve our members, we use more than 5,300 miles of transmission line and a diverse mix of generation sources including coal, natural gas, hydroelectric, wind and solar power.

- Tri-State relies heavily on coal and natural gas-fired generation to maintain reliability and control costs. However, over the last decade we have made significant investments in renewables, energy efficiency and distributed generation projects. Since 2008, Tri-State has added nearly 250 MW of renewable energy and is under contract to add an additional 281 MW by 2017. In 2016, we project 25 percent of energy delivered by Tri-State and its member systems to cooperative consumers will be generated from non-carbon dioxide emitting sources.

- We also invest heavily in research through organizations like the Electric Power Research Institute, where we are participating in research on battery and energy storage technologies. We are also funding a new test center in Wyoming that will conduct cutting-edge research on finding a commercial use for CO_2 and ways to capture it. The XPRIZE Foundation, which encourages advancement of technology through incentivized competition, has agreed to be one of the first tenants in the center.

- Our reliance on coal and our business model force us to be active in the regulatory and legal arenas, which is what I am here to discuss.

The Cooperative Difference

- As a cooperative, Tri-State operates differently and has different risks compared to investor-owned and municipal utilities, a fact EPA ignored in the Clean Power Plan and why Tri-State and other cooperatives were active in the rulemaking process and challenged the rule in court. Let me provide a few examples of how we are different:

    - **Cooperatives have different financial goals** – Unlike investor-owned utilities, our interests are not driven by shareholder returns, but by those we serve. Our primary goal – and contractual obligation – is to provide reliable, affordable and responsible power to our members.

      This goal is different than investor-owned utilities whose rate of return is commonly tied to equity, which gives them an incentive to build new infrastructure -- the more new infrastructure they build, the more returns they receive. These incentives do not exist for Tri-State and other cooperatives.

    - **Our costs are spread over fewer customers** – Tri-State and its members have fewer consumers per mile of line than other types of utilities, which means we have fewer consumers among whom to spread our costs. Typically, cooperatives have 1-11 consumers per mile while investor-owned and municipal utilities average more than thirty-five.

    - **When Tri-State needed generation, coal was our only option** – In the late '70s and early '80s, Tri-State's member systems were growing rapidly. During the same time period, the Power Plant and Industrial Fuel Use Act (FUA) was passed by Congress and construction of natural gas and oil plants was not allowed. We had to choose between coal and nuclear plants -- we chose coal because it was proven and affordable. On the positive side, our coal fleet is relatively new compared to other utilities.

    - **Cooperatives plants have longer remaining useful life** – Tri-State has invested hundreds of millions of dollars to improve efficiency and on pollution control upgrades. Because of these investments and the fact our plants are newer; they still have significant remaining useful life and we face large stranded costs if we are forced to shut them prematurely.

    - **Tri-State does not need new generation** – While some of our members are experiencing growth, it has been offset by losses by other members. Tri-State does not project the need to build new generation until 2024-2026, so to comply with the requirements of the Clean Power Plan we would likely have to shut down existing plants.

- Since the EPA failed to address these issues and other legal issues we raised during the rulemaking process, our board of directors felt it necessary to challenge the rule in court,resulting in the current stay.

Tri-State continues to work with states:

- While the rule is stayed, Tri-State has continued discussions with state regulators to ensure our concerns are heard.

- The five states we operate in have taken different approaches to the stay. Two states are continuing to develop plans – albeit at a slower pace-- and three states have "put the pencils down."

- Several state regulators justify moving forward based on EPA's gentle threat that deadlines may remain the same if the rule is ultimately upheld, but we have argued there is strong legal precedent supporting deadlines being tolled.

- We feel it is wasteful to spend taxpayer and rate-payer money developing a plan for an unknown target. There are so many variables that could change – a new rule, a modified rule, a new president withdraws the rule or proposes a new one, markets could change, new technology could be developed – so any plan developed today will likely have to be redone and as we realized with the Clean Power Plan, early investments do not always receive credit in the future.

- Tri-State is also concerned that if states unilaterally move forward developing a plan, it will preclude many options allowed under the Clean Power Plan to develop regional compliance options. For example:
    - A regional trading program will only be possible if states develop one together.
    - If a state plan requires retirement or curtailment of generation sources, it will it impact consumers and operations in other states.
    - State plans can either be "mass" or "rate" based, and making a unilateral decision may cause issues if surrounding states decide on a different option.
    - Transmission planning is done on the regional level and states need to work together to identify regional constraints and requirements for new lines.
    - Compliance for multi-state utilities like Tri-State becomes complicated and increases compliance costs if efforts among states are not coordinated.

Conclusion

- I am often asked, if you don't support the Clean Power Plan to reduce carbon emissions, then what do you suggest?

- Tri-State is already achieving reductions in carbon emissions as a result of maintaining highly efficient power plants and investing in renewable energy projects, and we continue to support research and development of new carbon management technologies.

- Tri-State believes that carbon dioxide regulations need to ensure the viability of all fuel sources and any emission standards need to be attainable in a reasonable timeline.

- In the end, although Tri-State and other cooperatives are different, we do have a desire to protect the environment while continuing to provide affordable and reliable energy to our members. We simply believe a different approach is needed to mitigate CO_2 emissions.

Tri-State Generation and Transmission Association, Inc.
Member Territory Map