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Committee on Energy and Commerce
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Thank you Mr. Chairman. Chairman Stearns and Ranking Member DeGette, my name is Barbara Walz and I am Tri-State Generation and Transmission Association's Senior Vice President for Policy and Environmental. I appreciate having the opportunity to testify before you today on Tri-State's views of the regulatory climate in the U.S. and its effect on our ability to provide affordable and reliable electricity to our consumers.

Tri-State is a not-for-profit member-owned wholesale generation and transmission electric cooperative based in Colorado. Our mission is to maintain high environmental standards, while providing reliable, cost-based wholesale electricity to our 44 not-for-profit member systems (electric cooperatives and public power districts) that serve 1.5 million predominantly rural consumers over 200,000 square miles of territory in Colorado, Nebraska, New Mexico and Wyoming. To meet our membership's electricity needs, Tri-State generates or purchases power produced by coal, and natural gas, as well as from renewables -- including hydropower, solar and wind.

Tri-State supports and is committed to good environmental stewardship, but has observed the U.S. Environmental Protection Agency (EPA) propose and finalize an unprecedented number of regulations and significant guidance documents that will greatly affect Tri-State's ability to provide affordable electricity to our member systems.. As a not-for-profit cooperative, the cost to comply with these rules and other requirements are rolled directly into our consumers' rates.

As a cooperative, Tri-State does not make any profit from the implementation of these rules. The costs we absorb from these regulations are ultimately passed onto our member systems' consumers, who are the families and individuals at the end of the electric lines.

Regulatory Uncertainty

EPA's regulatory actions are substantially undermining the ability of States to make effective decisions to adopt and implement environmental programs in a manner that addresses the needs and interests of individual states. Many of our states' Clean Air, Clean Water and Solid and Hazardous Waste Programs are adopted from EPA and implemented by the individual states. EPA's actions of late have made it difficult for states, and the business and industry that operate in those states, to know that the programs adopted by the state will survive review by this EPA.

Regional Haze is a program under which EPA is taking actions that exceed or unnecessarily stretch its legal authority and undermine the ability of states and their constituent business and industry to manage and implement regulatory programs. Under this program, states are required to conduct an analysis of the major emitting facilities in their states considering several factors. States are expressly provided the authority under the EPA rule to make decisions about how much visibility improvement is reasonable at this time and what, if any, additional controls would improve visibility. However, in many states across the country, EPA is disapproving state-adopted plans. EPA is issuing plans that impose significantly more onerous emission controls at substantially greater costs. Tri-State believes that more expensive controls will likely provide very little, if any, additional visibility improvement. The state of Colorado's Air Quality Control Commission unanimously adopted a regional haze state implementation plan

(SIP) in December 2010 that was supported by all of the parties to the rulemaking hearing. This plan was subsequently supported in letters by the Colorado Congressional delegation -- including Representatives Gardner and DeGette --, the Democratic Governor of Colorado as well as the Republican Speaker of the Colorado House. The EPA has signed a consent decree with the Wild Earth Guardians requiring it to make a decision regarding Colorado's SIP by this March. In surrounding western states EPA has disapproved or proposed to disapprove the plans of North Dakota, Wyoming, New Mexico, Oklahoma, Nevada and Arizona. The decisions of EPA come with significant economic impacts to business and industry as well as the states.

The coal ash rule is another good example of the uncertainty that EPA is creating for our industry. Over 10 years ago, EPA conducted a study and made a regulatory determination, as was required by law, that coal ash was not a hazardous waste. Now EPA has changed its mind and is not sure. EPA has made two proposals to regulate coal ash; one as hazardous waste and one as a solid waste. This decision will have significant cost impacts to our industry. EPA closed the public comment period in 2010, but may not finalize the rulemaking proposal until 2013.

Tri-State believes that classifying coal ash as a hazardous waste is unnecessary because the testing data do not support the need for this type of classification. If EPA proceeds with this designation, it is estimated that it will require about 10 times more hazardous waste landfill space than what is currently permitted. The permitting of these facilities takes years to accomplish and the ongoing operations and maintenance are very costly. Under the rulemaking for coal ash, 28 states – including Colorado's Department of Public Health and Environment and New Mexico's Public Regulation Commission -- sent letters to EPA stating that the programs they have utilized

to manage coal ash as a solid waste, are sufficient to protect the public health and environment and meet the requirements of the law.

As the Regional Haze and Coal Ash rules illustrate, the regulatory actions of EPA are creating great uncertainty in our industry. In many cases we spend a significant amount of resources to analyze and calculate how to proceed and determine the best course of action is legal challenge.

The Interior West contains vast quantities of high quality, low emitting coal that can be used responsibly to generate cost effective energy for a growing region of the country. Tri-State, in conjunction with Sunflower Electric, has a permit to build a new coal-fired unit at an existing coal-fired power station in Kansas, but the new source emissions limits finalized by EPA in the Utility MACT are likely to make it impossible to complete. It is anticipated that this facility would cost over a billion dollars to construct. Prospective lenders will not provide financing without some guarantee that the facility will be able to comply with the new requirements. Prospective contractors or vendors have not been able to provide any type of guarantee that the equipment they can build will meet the new requirements.

Regulatory Stringency

The Utility MACT rule has the dubious distinction of being an example of a rulemaking that creates uncertainty for the electric utility industry, while at the same time illustrating the how EPA stringently interprets some of its rulemakings. EPA is making the most stringent regulatory interpretations that seem possible, using questionable arguments that will likely be subjected to legal challenge and create considerable ongoing uncertainty. In doing so, EPA has created the most expensive regulatory program in history with industry costs totaling in the

billions annually. As I previously noted, because Tri-State is a not-for-profit electric cooperative, these costs will be passed on to our consumers directly in their monthly utility bills and indirectly in the goods and services that they purchase.

Examples of these costs can be seen in the final rule for the electric Utility MACT rule or, as some call it, the Mercury and Air Toxics Standards Rule. In this rule, EPA cherry picked the lowest emissions of pollutants from a variety of sources across the country to conjure up a description of facility emissions that do not represent any single facility in operation. This hypothetical facility has been deemed the "Franken MACT."

The Utility MACT rule will require the application of emission controls at hundreds of facilities across the country. These controls can cost tens to hundreds of millions of dollars and can take years to install. EPA simply believes that when the electric utility industry floods the market with a demand for this type of service, contractors will staff up and meet the demand. However, these controls are not mass produced or "off-the-shelf" technology. Each control unit is built specifically for the facility at which it will be used. The Utility MACT rule will require existing coal plants to have emission controls installed and operating in three years. This time frame may not seem difficult when you consider a single facility, but when considering the entire electric utility industry – there will be hundreds of facilities across the country that will simultaneously require the installation of emission controls. It is unrealistic to think industry can design, permit, finance, construct, test and deploy this technology in this condensed timeframe. EPA has stated that 69 facilities can comply with all the requirements of the Utility MACT. Unfortunately, that leaves over a thousand facilities needing to install these very specialized controls in this short period of time. The EPA's recent requirement for determining compliance with the new national air quality standard for sulfur dioxide is another example of a stringent

regulatory interpretation. This regulation does not allow us to show that we comply by using actual monitored data. Instead, EPA requires us to use modeled (or estimated) data based on a set of very stringent assumptions that may not accurately depict air quality conditions "on the ground" at a given location.

The emission standards that EPA is establishing for new coal fired sources is another example of a stringent regulatory interpretation. The emission standards EPA is seeking to establish are simply not achievable in the real world on a continuous basis as EPA requires. Use of the most advanced facility designs and emission control technologies that are currently commercially available will not position new units for continuous compliance. EPA has targeted setting the emission limits at the lowest levels that have ever been seen and, in some cases, lower than current instruments are able to measure. These limits may be achieved under the best operating conditions over a short period of time by facilities that do not epitomize the spectrum of the industrial operations in place today. In the Utility MACT, EPA used a relatively small facility in Hawaii that burns waste tires and coal from Indonesia to set the emission limits for new sources in the United States. There are significant questions about EPA's calculations and how much this facility is indicative of the U.S. coal-based generation. EPA estimate the benefits of the Utility MACT rule is $6 million annually. Unfortunately, the cost of compliance is estimated to be $9 billion annually.

In addition, it is Tri-State's understanding that EPA is currently considering proposing a New Source Performance Standards (NSPS), in the near future, for greenhouse gases at an emission rate about one-half that of a coal-fired power plant. It is difficult for the electric sector to understand how EPA can attempt to establish such a requirement when EPA has stated that

this technology is not commercially available. Tri-State believes that this will shut down coal operations in the U.S.

EPA is operating under unrealistic expectations about the capability of our industry to design, finance, permit, construct, test and deploy new technology -- in very short timeframes—in order to comply with the rules that it is proposing and finalizing. EPA seems to have adopted an *"if you mandate it they (the vendors) will build it"* perspective to these rules and that the industry will be able to do what EPA wants in a very limited time frame.

Conclusion

Tri-State provides electricity to many rural areas of Colorado, Nebraska, New Mexico and Wyoming, some of which are in the most economically depressed counties of the country. The economic impact that EPA creates with the programs they adopt and the manner in which they manage those programs have real adverse economic impacts on the public. The electric utility industry provides well-paying and meaningful jobs in communities across the country. We also have a significant indirect beneficial economic impact on the communities in which we operate and do business. Tri-State is not opposed to necessary regulatory requirements to protect public health, welfare and the environment that can be implemented in fair and reasonable timeframes, but we have a valid concern with the approach that EPA has taken in the recent past to implement the laws Congress has enacted. Tri-State urges the committee to exercise continued oversight over the EPA's regulatory process in order to help us to continue to provide affordable and reliable electricity to our member systems and their member-owners.

Thank you for inviting me to testify here today. I'd be happy to take any questions.