

**TESTIMONY OF ROGER S. CLARK
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ASSOCIATED ELECTRIC COOPERATIVE, INC.
BEFORE THE COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON WATER AND POWER
“NEW FEDERAL SCHEMES TO SOAK UP WATER AUTHORITY: IMPACTS ON
STATES, WATER USERS, RECREATION, AND JOBS.”
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Chairman McClintock, Ranking Member Napolitano, members of the Subcommittee. Thank you for inviting me to testify today on “New Federal Schemes to Soak Up Water Authority: Impacts on States, Water Users, Recreation, and Jobs.” My name is Roger Clark, and I am the Director of Engineering and Operations for the Associated Electric Cooperative, Inc. (Associated).

Before I begin my testimony, I'd like to thank Congressman Jason Smith from my home state of Missouri. We've had a long-standing relationship with Congressman Smith, but during his short time in Congress he's already proven his commitment to supporting reliable, affordable electricity for the people of rural Missouri. Associated supplies electricity to over 400,000 individuals in Congressman Smith's district, and we know that their interests are well represented here in Washington, D.C.

Associated Background

Associated is owned by six generation and transmission (G&T) cooperatives, which formed Associated in 1961 to provide the G&Ts with a wholesale power supply. These six G&Ts are owned by 51 distribution cooperatives in Missouri, southeast Iowa and northeast Oklahoma that are owned by about 875,000 member consumers. As an electric cooperative, Associated is a not-for-profit, private business governed by our consumers. More than 900 electric cooperatives serve 42 million consumers in 47 states.

Associated has a long-standing commitment to environmental stewardship. We're committed to this cause because we are owned by people who live on the land and want to protect rural America's water and air resources for future generations. To this end, we have 750 megawatts of wind generation under contract, representing 10% of the energy used to serve our members. In 2007, this investment earned us the Department of Energy's Wind Cooperative of the Year award. We have also spent over \$30 million on energy efficiency for our cooperative members. Over the lifetime of the equipment, these efforts will save enough electricity to serve 60,000 rural Americans for one year.

Associated has been nationally recognized for our land reclamation efforts and wildlife habitat development. We've invested \$1.1 billion in emission control equipment and have proactively developed and deployed mercury removal technology well in advance of EPA regulations. We've established a partnership with Missouri's Department of Conservation to manage the fishery at Thomas Hill Lake. These efforts earned us the distinguished title of “Conservation Organization of the Year” by the Conservation Federation of Missouri. Finally, it is worth mentioning, that we are proactively involved in voluntary state efforts to develop habitat for

species that the U.S. Fish and Wildlife Service has proposed for listing under the Endangered Species Act (ESA). We are committed to these voluntary efforts in hopes that they will give the federal government a reason to avoid listing these species under the ESA.

Notably, about 6% of our power supply comes from hydropower provided by the Southwestern Power Administration (SWPA). Associated is SWPA's largest customer, receiving 25% of the power produced by SWPA. The business relationship between Associated and SWPA represents a long-standing partnership between electric cooperatives and the federal government. It is a model that works well for providing our consumers with reliable, affordable electricity. I would like to thank the members of this Subcommittee for your continued efforts to protect electric cooperative access to this vital source of renewable energy.

Associated's Concerns with the "Waters of the United States" Proposed Rule

Associated has significant concerns with the rule proposed recently by the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) to revise the definition of "Waters of the United States" under the federal Clean Water Act. Under this draft proposal, electric cooperatives will face significant challenges as we strive to provide our member-owners with reliable and affordable energy. In my testimony, I will highlight several activities related to the transmission, distribution, and generation of energy that may require federal permits under the proposed rule, causing uncertainty, delay, and cost. The activities we are concerned about include transmission and distribution facilities, vegetation management, new generation, pond management, and mine reclamation.

Transmission and Distribution Facilities

Associated generates electricity at 15 generating units located in Kansas, Missouri, Arkansas and Oklahoma to serve customers throughout a multi-state region requiring an expansive transmission network. As we increase our generating capacity to meet the growing demands of our members, we may also need to build new transmission facilities. Looking forward, Associated and the G&Ts plan to invest an estimated \$115 million on primary transmission facilities in the next 10 years, and our experience has been that federal permit requirements add substantial cost and delays to these projects.

Transmission facilities require regular maintenance, including necessary repair and replacement of poles and towers. In addition, these facilities require upgrades to make the system more resilient in the event of extreme weather events. SWPA and other federal Power Marketing Administrations that own transmission systems will be affected similarly and any increased costs will be passed on to our member consumers.

Along these lines, we are concerned that under the proposed rule, transmission rights of way may be considered waters of the U.S. Transmission rights of way are often simple ditches alongside roads. These ditches receive road runoff, which could grow cattails even though they infrequently hold water. EPA and the Corps have said that they are exempting ditches that drain only upland and are constructed in uplands, but the term "upland" is not defined. This gives the federal government the final say on whether or not ditches are eligible for the exemption.

As a result, we will need a permit from the Corps of Engineers to maintain our transmission facilities. The Corps has a nationwide permit for utility line activities that authorizes up to ½ acre of disturbance for each “single and complete project.” Under the current permit, each stream crossing is considered a separate project. However, under the proposed rule, “ephemeral streams” that only have water when it is raining would be considered streams so it will be hard to tell where a “water” ends and land begins.

Given the large number of runoff channels that crisscross the landscape, we could easily exceed the ½ acre limit provided under the nationwide permit. If so, we would have to get an individual permit for each project, which will take time and money. Of course, the additional cost and time associated with the permit do not take into consideration NEPA litigation or Clean Water Act citizen suits that may occur as a result of federal involvement in the project.

Finally, it’s worth noting that along transmission routes Associated operates substations where we store oil requiring a Spill Prevention Control and Countermeasure (SPCC) Plan. The increased scope set forth in the proposed rule would require Associated to expand these plans to take into account the areas not currently considered waters of the U.S. This is yet another cost that will impact our member consumers.

The permitting requirements that apply to Associated’s distribution cooperatives will delay electric service to new residential, small business, and farm members, as well as any proposed economic development projects. Delays in line construction may force companies that can’t wait for permitting in the U.S. to locate elsewhere.

Vegetation Management

To maintain the reliable delivery of electricity, we also have to maintain our transmission routes, keeping them clear by controlling vegetation. To do this, we use herbicides. If our rights of way are considered waters of the U.S., we will need a permit to spray herbicides for weed control. EPA and states have issued general permits for weed control, but if you spray more than 20 linear miles, there are added burdens. And, if the area is considered a waters of the U.S. or potential habitat for endangered species, there will be even more requirements, all triggered by the assertion of federal jurisdiction.

We also maintain the property around our generating facilities and transfer stations. Using herbicides in these areas will give rise to the same issues. We are concerned that SWPA will face similar issues, incur similar costs, and pass those costs along to electric cooperatives.

New Generation

Currently coal is our primary source of generation, but looking forward, Associated will continue to invest in a broad portfolio of energy resources to meet the needs of our member consumers. The challenges previously outlined facing transmission facilities also apply to the construction of new generation, and are further complicated by the lack of a nationwide permit for new fossil fuel generation capacity. In fact, the situation will be even more challenging with respect to natural gas plants that require pipelines to transport gas to any new gas-fired plants. As we look

to bring new sources of generation on line, we are concerned that the siting and permitting of new natural gas pipelines will be further delayed. These activities become even more critical for cooperatives if we are to meet EPA's proposed requirements to replace coal generation with renewable energy sources and additional combined cycle natural gas generation.

It's also worth noting that the Corps does have a nationwide permit for land-based renewable energy development, but the permit only allows ½ acre of land to be disturbed and just 300 linear feet of stream (unless the Corps waives the 300 feet limit). Given the expanded definitions and uncertainty discussed above, this nationwide permit may have little practical application. For example, most wind farms likely will exceed ½ acre of land.

Pond Management

Associated built Thomas Hill Lake to provide cooling water for our member consumers' power plant, but the lake also provides recreation for the community and habitat for wildlife. Associated works with the Missouri Department of Conservation, which manages the lake for fishing and wildlife habitat. Water is vital for power plant operations, and we're committed to ensuring the quality of the small quantity we consume, as well as the quality of the water we return to the pond. Thomas Hill Lake is a water of the U.S. and therefore we have a permit to discharge our cooling water into the lake. However, under the proposed rule, we are concerned about the status of canals used to channel water to the lake.

In addition to providing cooling water, Associated manages coal combustion byproducts through a combination of practices including beneficial use, mine reclamation, as well as permanent disposal using permitted storage facilities, including ponds. If these ponds are determined to be waters of the U.S., Associated may no longer be able to use them for storage and could incur significant costs for alternative management options, costs that we would have to pass on to our member consumers.

Mine Reclamation

In the past, Associated operated coal mines to provide fuel for its coal-fired power plants. We closed those mines after we switched to low-sulfur coal and have been reclaiming the former mining sites, as required under the Surface Mining Control and Reclamation Act (SMCRA). We are very proud of our mine reclamation efforts, having restored thousands of acres of once-mined land to productive pasture, forests and wetlands receiving national awards for "exemplary reclamation." Our concern now is that these activities will subject us to duplicative and perhaps conflicting federal regulations.

Conclusion

Throughout the years of change and challenge Associated has never lost focus on the reason it was formed: to provide economical and reliable power and support services to its members. As we go about providing this necessary service, we are troubled by new regulations that seem to have an outsized impact on rural America. These new regulations make simple business decisions increasingly difficult, and in fact, may conflict with other policy goals. We appreciate

the Subcommittee's attention to this proposal of importance to Associated and electric cooperatives throughout the country. We look forward to continued discussion of these issues and are pleased to provide real-world examples of how decisions made in Washington, D.C. affect the day-to-day lives of rural Americans. Thank you for the opportunity to testify. I would be happy to answer any questions.

Associated serves six G&Ts operating in three states

